

Item No. 24

Supplemental Material

For City of Sacramento

City Council
Housing Authority
Redevelopment Agency
Economic Development Commission
Sacramento City Financing Authority

Agenda Packet

Submitted: December 7, 2007

For the Meeting of: December 11, 2007

- Additional Material
- Revised Material

Subject: Railyards Specific Plan Final Environmental Impact Report (P05-097)

Please find enclosed a memo summarizing and responding to environmental issues raised in relevant comments submitted at the November 13, 2007 Planning Commission Hearing, November 20, 2007 City Council Hearing and raised in correspondence to the City. This information is provided to the Council as part of the administrative record to be reviewed when considering certification of the Railyards Specific Plan Environmental Impact Report (SCH.#2006032058).

Contact Information: Lezley Buford, Environmental Planning Services Manager, (916) 808-5935 and Greg Bitter, Principal Planner (916) 808-7816

Please include this supplemental material in your agenda packet. This material will also be published to the City's Intranet. For additional information, contact the City Clerk Department at Historic City Hall, 915 I Street, First Floor, Sacramento, CA 95814-2604 B (916) 808-7200.



CITY OF SACRAMENTO
CALIFORNIA

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DEPARTMENT

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MEMORANDUM

Date: December 11, 2207

To: Mayor Fargo
Councilmember Tretheway, District 1
Councilmember Sheedy, District 2
Councilmember Cohn, District 3
Councilmember Fong, District 4
Councilmember Hammond, District 5
Councilmember McCarty, District 6
Councilmember Waters, District 7
Councilmember Pannell, District 8

From: Lezley Buford, Environmental Planning Services Manager

Re: Railyards Specific Plan Final Environmental Impact Report (P05-097)

The following summarizes and responds to environmental issues raised in relevant comments submitted at the November 13, 2007 Planning Commission Hearing, November 20, 2007 City Council Hearing and raised in correspondence to the City. This information is provided to the Council as part of the administrative record to be reviewed when considering certification of the Railyards Specific Plan Environmental Impact Report (SCH.#2006032058).

Comments at the Planning Commission Hearing of November 13, 2007:

Commenter Johan Otto:

- Concerned about the traffic impacts associated with one way street conversions on 5th and 7th Streets.
 - The traffic analysis contained in the EIR evaluates a northbound one-way 5th Street and southbound one-way 7th Street connection between the Railyards and the River District after the Initial Phase. Therefore, the intersection impacts associated with this roadway change are evaluated in the EIR. As a part of the project approval, the Richards Boulevard Area Plan and Facility Element would be amended to reflect this proposed circulatory change. In order to ensure the functionality the proposed circulatory change on stakeholders in the Richards Boulevard Area, the City will study the impact of the roadway alignment changes to 5th Street and 7th Street on the operational characteristics of the Richards Boulevard Area as a part of the 2008 update to the Richards Boulevard Facility Element. Upon completion of the traffic analysis, the City will determine whether

one-way streets or two-way streets are necessary. If it is determined that two way streets would be required a subsequent amendment to the plan would be filed prior to the completion of the Initial Phase. The conclusions of the traffic impact analysis in the EIR remain valid under current conditions.

Commenter William Kopper :

Mr. Kopper provided testimony representing Robert Castro, Jr., Linda Powers, and Chris Rich. Key issues raised in his testimony include:

- The City did not adequately notify citizens about the hearing or the release of the Final EIR
 - The City regularly posts the planning commission meeting dates and agenda items at the Downtown City Planning Office (915 I Street), the North Permit Center (2101 Arena Boulevard, Suite 200), the Sacramento Public Library (828 I Street), and on its website to ensure that the public is properly notified. In addition, the City generates a notification distribution list for each project, which ensures that interested parties are notified about project hearings in advance.
- The Final EIR format was confusing did not respond to all of the comments.
 - The Final EIR was prepared consistent with Section 15132 of the CEQA Guidelines and contained responses to each of the comments on the environmental analysis. The responses are organized by issue area and the Index to Comments and Responses located in Chapter 2 of the Final EIR provides a clear guide on how to find the City's response to a particular comment. Master Responses are included in the Final EIR to facilitate the reader's ability to consider the major issues that were raised numerous times in comments. The Final EIR responds to each comment raised in written or oral testimony during the public reviews of the Draft EIR either in a Master Response or a comment-specific response.
- The air quality analysis was inadequate for a Program-level EIR.
 - The air quality analysis addresses both operation and construction related impacts associated with the Railyards Specific Plan project based on the information provided in the "Analysis Scenario" project description. The EIR "Analysis Scenario" assumes up to 12,501 residential units, 1,384,000 sf of retail, 2,828,200 sf of office space, 1,100 hotel spaces, and 485,390 sf of cultural uses. The "Analysis Scenario" also includes 491,000 sf of mixed use which could be either office or residential. The maximum of 12,501 residential units would only occur if the designated mixed use was converted to residential. Since office uses generate more trips per day than residential units, the EIR air quality analysis took the more conservative approach and assumed that the mixed use designation would be all office.

In order to evaluate construction and operation impacts of the Railyards Specific Plan Area, the EIR provides an evaluation of the construction of the above mentioned uses on a year by year basis over a twenty year period. The EIR assumes that the incremental buildout of the Initial Phase would be complete by approximately 2017 and ultimately buildout of the entire project would be complete by 2029. The vehicle and stationary emitters were analyzed using higher intensity land uses previously mentioned in order to maintain a

conservative approach to the impact analysis. This approach ensures that in most cases, slight permutations to residential, office, and retail mix will not generate increases risk for air impacts or trigger new impacts. It is likely that the ultimate land use mix will generate fewer vehicle trips than estimated in the EIR. If a specific project use is developed in the Railyards that generates air emissions that are not adequately covered by the current Railyards Specific Plan EIR, subsequent environmental analysis would be required to ensure compliance.

Commenter Roxanne Miller :

Ms. Miller indicated her concern about the evaluation of the Sacramento Intermodal Transit Facility (SITF). Key issues raised in his written comments include:

- Evaluation of the SITF
 - The EIR describes the SITF as a separate project within the project footprint and provides a programmatic analysis of the SITF. The EIR also expresses the Specific Plan's intent to coordinate with the planned facility. However, no formal project for the SITF has been finalized at this date. Once a complete project description is determined, the SITF will undergo separate environmental evaluation under CEQA and NEPA to ensure proper compliance.

Comments at the City Council Hearing of November 20, 2007:

Commenter Sam Ong:

Mr. Ong provided comments representing the Organization for Chinese Americans. Key issues raised include:

- The clarification that there are no burials sites within the Railyards.
 - Evaluations of the site by project historians have shown no records of a burial site within the Railyards Specific Plan area. In order to ensure that proper treatment of potential human remains occurs, the EIR has incorporated mitigation measures to ensure that adequate measures are in place to address concerns about the project's impact on cultural resources. To confirm the assumptions provided in the EIR about the potential for subsurface cultural resource artifacts, representatives from Environmental Resources Management (ERM), who is responsible for the soil remediation on the site, submitted a clarification letter on November 27, 2007 to explain the archaeological oversight required during excavation. ERM has been on the site since 1990 and have yet to uncover subsurface human remains. In addition, staff is required to undergo artifact awareness training by the DTSC as a part of the Archaeological Oversight Plan in order to ensure that any items including human remains uncovered during excavation are properly handled.

Commenter Roxanne Miller :

Ms. Miller provided comments reflecting her concern about the project. Key issues raised and written comments submitted include:

- The building heights along the river may impact river habitat.

- The City does not currently have height limits along the river. The proposed towers along the river could reach up to 450 feet, they have been designed step down as they got closer to the river in order to ameliorate compatibility concerns. The EIR also included mitigation measures which would reduce tower light and glare impacts on biological resources along the river.

Commenter William Kopper :

Mr. Kopper provided comments representing Robert Castro, Jr., Linda Powers, and Chris Rich. Key issues raised include:

- The EIR was completed too fast.
 - To the contrary, the Railyards Specific Plan EIR was prepared over a period of two years. The Draft EIR was completed in August 2007 and a standard public review period was provided for the Draft EIR. All of the comments received on the Draft EIR were included and responded to in the Final EIR. The Final EIR was made available the City Council, all public commenters, and the general public prior to the City Council hearing on November 20, 2007. CEQA Guideline 15108 indicates that EIRs on projects proposed by private applicants should normally be completed within one year. This Guideline has been interpreted by the courts to be directory, and not mandatory. The EIR process took longer in this case because the City ensured that a thorough review was prepared.
- The EIR does not claim whether it is a Program-level or Project-level EIR.
 - As stated in Response to Comment 4.1.3 of the FEIR, the Railyards Specific Plan EIR evaluates impacts associated with the proposed project based on the level of detail available in the Specific Plan. Also, both the Draft EIR and the Final EIR disclose the process that will be used to evaluate future applications and approvals to ensure compliance with CEQA.
- Analysis was performed with no phasing information.
 - The ultimate phasing of the proposed project is subject to market conditions. However, the EIR did include phasing assumptions that were incorporated into the air quality, noise, transportation, and other CEQA analysis areas requiring quantitative information related to construction and operation. As shown in Table 6.1-5 of the Draft EIR, the Railyards "Analysis Scenario" assumed 4 construction phases over a period of approximately 20 years, with the first two phases constituting the Initial Phase. The vehicular and stationary emission assumptions for each phase were analyzed using higher intensity land uses and construction operations in order to maintain a conservative approach to the impact analysis. This approach ensures that in most cases, slight permutations to development plan would not trigger new impacts or the need for additional analysis. If the phasing plan assumptions for the Railyards is significantly altered from the assumptions included in the Railyards Specific Plan EIR, subsequent environmental analysis would be required to ensure compliance under these new conditions. This would not impact the validity of the existing EIR conclusions.
- Air impacts cannot be evaluated at a Project-level based on the information available.
 - As stated previously, the Railyards Specific Plan EIR evaluates impacts associated with the proposed project based on the level of detail available in the Specific Plan. The air quality analysis included yearly construction and

operational assumptions over a period of twenty years based on the EIR “Analysis Scenario”. The “Analysis Scenario” assumes that the incremental buildout of the Initial Phase would be complete by approximately 2017 and ultimately buildout of the entire project would be complete by 2029. If the components of future projects are generally consistent with characteristics evaluated in the “Analysis Scenario” and trigger no new air quality impacts or mitigation measures, the document would be sufficient for future project-level approvals. Future projects within the Railyards that are inconsistent with the assumptions made in the Railyards Specific Plan EIR, may trigger new air impacts and would require additional CEQA analysis to determine the effect of the anticipated changes. In such cases, subsequent CEQA documents could tier from the Railyards Specific Plan EIR.

- The energy analysis does not contain enough mitigation.
 - The EIR requires compliance with established energy and conservation standards and recommends addition options for incorporation newer energy reduction measures. In addition, the Final EIR contains an entire discussion on Global Climate Change, which provides additional measures and project components that would result in reduce energy consumption. CEQA does not require that a project implement all mitigation measures, only those mitigation measures that are feasible. The Railyards Specific Plan EIR provides an exhaustive list of mitigation options that will be implemented when and if feasibility is determined.
- The Hydrology analysis is not adequate.
 - The analysis of the presented in the Draft EIR has been augmented by the response to comments in the Final EIR. In these responses, clarifications are provided to better explain the proposed stormwater collection, conveyance, and treatment infrastructure and the project’s impact on Water Quality.

Correspondence Received during Hearing Process (copies attached):

November 13, 2007 Letter from Patrick Soluri (Attachment1):

Patrick Soluri provided comments representing Westfield. Key issues raised in his written comments include:

- Inadequate and misleading Project Description
 - The project description of the EIR clearly states that an “Analysis Scenario” that is similar and allowable under the Specific Plan was evaluated as the proposed project. The project description also states that for some issues (e.g. traffic), an Initial Phase is evaluated. The land use components presented in the EIR “Analysis Scenario” are evaluated at buildout and no phasing plan is provided for any reason other than the identification the initial phase for analytical purposes. The phasing assumptions provided are estimates and were used to better and more conservatively determine potential impacts to air quality. Ultimately, the phasing of development will be subject to market conditions. If the phasing plan implements development changes resulting in new impacts not anticipated, subsequent CEQA would be required. The minimum requirements presented in the Development Agreement do not constitute the proposed project. Instead, they provide the City with a baseline development level which can be increased up to the amount allowed by the Specific Plan and consistent with the EIR

“Analysis Scenario”. The development of fewer uses or less intensity would likely lessen identified impacts, rather than result in new or more severe physical impacts and would therefore not trigger a new CEQA analysis.

- Project Segmentation

The EIR considers the full development of the Railyards Specific Plan based on the information available. As stated on page 3-43 of the Draft EIR, although project level designs of the SITF have not been developed, the EIR “evaluates relocation of the tracks as proposed in connection with implementation of the Specific Plan, and the possible relocation of the Depot. Numerous issues related to the technical feasibility of relocating the existing depot, funding, and other factors (including project-specific documentation under NEPA) will need to be examined and a more detailed plan developed prior to the final determination of feasibility of any one alternative.” Once a complete project description is determined, the SITF will undergo separate environmental evaluation to ensure proper compliance.

- Inadequate Fair Share Mitigation Measures

- The EIR identifies facility and infrastructure improvements which would be required as a part of the implementation of the Railyards Specific Plan. The cost of the facility and infrastructure improvements required for the proposed project are identified in the Financing Plan. The fair share mitigation measures identified in the EIR are enforceable by the City and would be funded through developer impact fees. The development impact fees are determined based on a nexus study, which determine how public facilities costs are allocated among the properties benefitting from the facility and infrastructure improvements.

- Public Trust

- The California State Lands Committee’s public trust claim has been disputed by City staff and therefore has not been incorporated into the project analysis. In addition, the title issues associated with this dispute do not result in any different physical impacts to the environment and thus do not impact the CEQA analysis.

November 13, 2007 Letter from Dan Airola (Attachment2:

Mr. Airola provided additional comments on the proposed mitigation measures for purple martins and expressed concerns that impacts to purple martins have not been adequately addressed. Key issues raised in his testimony include:

- The adequacy of mitigation for impacts to the colony,
 - The EIR contains a thorough analysis of potential effects on the purple martin population and adequate mitigation to reduce potential impacts to this population to less than significant levels. The analysis and mitigation were developed using site specific surveys, published and unpublished reports referenced in the Draft and Final EIRs, and on site meetings with the Applicant’s biologists, City Staff, the City’s biologists, and Mr. Airola. However, in an effort to further strengthen the mitigation measures contained in the Final EIR, the following changes to mitigation measure 6.2-7 shall be made:

6.2-7 (a) Prior to the realignment of the Union Pacific Railroad tracks and/or removal of the existing overhead utility lines, the following measures shall take place to reduce impacts to the purple martins.

1. To offset loss the loss of nesting material gathering sites and reduce potential predation from feral cats using tall vegetation as ambush points, during railroad track realignment the project applicant shall conduct weed abatement measures (e.g., weed whacking) bi weekly from March 15th to May 15. The area to be maintained is the area that extends out 600 feet north of the existing railroad, as detailed on Figure 5.5-1. The plant waste shall be left in place from March 15th to May 15 to allow the purple martins to use the "waste" for nest building material. This measure is temporary and shall only occur while the existing railroad tracks are being realigned.
2. To offset the potential impacts from loss of perching wires the project applicant shall erect permanent perching structures, in close proximity to the colony but within the footprint of the project, before the removal of the existing utility lines and poles (wires for perching should be 3/8-3/4 inch in diameter and shall be at least 19.5 feet off the ground. Pole mounted structures could be mounted on light poles or fencing for stability) and should be placed to provide a range of perching options for nest sites within the full span of the I St bridge ramp (i.e., near the west side, center, and east side of the east ramp). So no net loss of perching wire area occurs, the total length of perching wires shall not be less than 110 feet combined. In the event that the perching structures are not a feasible alternative within the project footprint, the The project applicant shall consult with the California State Railroad Museum as to the possibility of the perches being erected within state lands as well as within the Railyards' site.
3. As identified in Figure 5.5-1, landscaping within 120 feet of the colony shall be planned as to not disrupt the flight access to the colony, small and medium size non fruit-bearing trees shall be incorporated to the landscaping plans. Landscaping plans shall ~~also consider the option of prohibiting~~ prohibit fruit-bearing trees within 500 feet of the site. ~~and not removing all the tree clippings from the area during maintenance specifically at the beginning of the nesting season (March 15th to May 15) as to allow the purple martins to use the clippings as nesting materials.~~
 - i) From the time construction begins within the nesting material collection areas identified in Figure 5.5-1 and until the proposed open space that is adjacent to the I Street Colony is landscaped as detailed in above in 6.2-7 (a3), the project applicant shall, from March 15th to May 15, supply nesting material (straw, pine needles, etc) in designated areas close to the colony for use by the purple martins while the planted trees and shrubs develop. The areas should be no further than 200 feet from perching wires.
4. So long as the I Street Colony is active, landscaping trees adjacent to the purple martin colony shall include pine species (*Pinus* spp.) or Chinese pistache to provide a permanent source of nesting material. The pine needles, weedy stems, and leaf petioles shall be left in place where they fall and shall not be removed during landscape maintenance from January 1 to May 15th. Areas within the dripline of these trees shall not be planted with shrubs, perennials, or annuals that prevent the birds from being able to land and take off, and from seeing predators while on the ground.

Mitigation Measure 6.2-7 (b) shall be revised as follows:

b) *Although purple martins are tolerant of human activities, if active nests are present no construction shall be conducted within 120 feet of the edge of the purple martin colony (as demarcated by the active nest hole closest to the construction activity) during the beginning of the purple martin breeding season from March 15 to May 15. The buffer area shall be avoided to prevent destruction or disturbance to the nest(s) until it is no longer active. The size of the buffer area may be adjusted if a qualified biologist experienced with purple martin biology and/or CDFG determine it would not be likely to have adverse effects on the martins. The site characteristics used to determine the size of the modified buffer should include; a) topographic screening; b) distance from disturbance to nest; c) the size and quality of foraging habitat surrounding the nest; and d) sensitivity of the species to nest disturbances to specific construction activities. No project activity shall commence within the buffer area until a qualified biologist experienced with purple martin biology confirms that any nests are no longer active. In addition, no equipment taller than 9 feet in height shall be parked or stored beneath the I Street on-ramp within 100 ft of nest holes ~~or the I-5 overpass at the I Street on-ramp~~ during the breeding season (April 15 to August 1).*

- The need for monitoring of the colony.
 - As required by Section 15097 of the CEQA Guidelines, if the proposed project is approved the City must adopt a mitigation monitoring plan to ensure mitigation required by the City is undertaken and enforced. To this extent, biological monitors would ensure that the construction windows and buffers are enforced and that the plantings, nesting material, and perching requirements and restrictions are implemented. This would ensure the implementation of the measures that are designed to reduce reasonably foreseeable project impacts to purple martins to less-than-significant levels. The potential effects that could result from mitigation failure are speculative at this time since measures were developed by qualified biologists in consultation with the species experts. The City believes that the mitigation measures as drafted would clearly reduce the effects to a less-than-significant level, and do not require additional effectiveness monitoring. Consequently additional monitoring is not proposed.
- The operational impacts of the project that impact feral cat population.
 - As discussed within the Final EIR, there is a pre-existing feral cat population within the Railyards site and the City is currently working on an ordinance that would help reduce the feral cat population within the City. The proposed project, through development of the project site would reduce the habitat available for feral cats. Areas of overgrown ruderal vegetation and unoccupied structures and open space would be removed and replaced with landscaped open space and frequently used and well maintained structures. This would result in a significant reduction in feral cat refugia, hunting, and breeding sites nearby the colony. In addition, the areas adjacent to the colony would not be developed with residential or food-related retail space that would add to the feral cat problem. Homes and restaurants within the proposed project are planned in the eastern side, well away from the purple martin population, and thus any domestic cats would be kept away from the colony. Consequently additional mitigation is not proposed.
- Cumulative impacts analysis is insufficient.

- The Final EIR discussed the projects cumulative impact analysis and in summary concluded that implementation the proposed avian mitigation measures would ensure that, 1) impacts to purple martins would be reduced to less-than-significant levels through avoidance measures, 2) there would be no net loss of nesting, perching, or foraging habitat for these individuals, 3) mitigation would result in beneficial impacts such as permanent sources of nesting materials, enhanced perching habitat, and reduction of feral cat habitat. Consequently, residual cumulative impacts to purple martins would not result in a cumulatively considerable contribution to the regionally significant cumulative impact on special status species and their habitats that the Draft and Final EIR recognize.

November 27, 2007 Letter from Morris Angell (Attachment 3):

Mr. Angell provided comments on behalf of the United States General Services Administration (GSA). Key issues raised in his written comments include:

- CEQA document notification
 - All property owners within 1000 feet of the project site were sent the Notice of Preparation (NOP) and the Notice of Availability (NOA) of the Draft EIR. Owner information is obtained from Sacramento County records of parcel owners in the County. Included in this mailing of both the NOP and NOA is the United States of America, 525 Market Street 9L, San Francisco, CA 94105, which is the listed address as the owner of the parcel at 501 I Street. Additionally, the notices were sent to the US Marshals Service; US District Court Eastern District, Court Clerk; and the general address of 501 I Street. As cited in *Gilroy Citizens for Responsible Planning vs. the City of Gilroy* (2006) 140 Cal App 4th 911, Public Resources Code 21092, subd. (b)(3).) establishes statutory notice requirement is to provide notice to owners and occupants as shown on the latest equalized assessment roll.

Once completed on November 13, 2007, the Final EIR was sent to those agencies that provided comments on the Draft EIR (Notice of the availability of the Final EIR was e-mailed to the US Marshals office as no address was provided on their comment letter). Additionally, an e-mail was sent out to the non-agency commenters on the DEIR that the FEIR was available. GSA did not provide comments on the Draft EIR so they were not sent the Final EIR or e-mail.

Based upon correspondence with the GSA, their address at 450 Golden Gate Avenue, San Francisco, CA 94102 has been added to the City's mailing list for future noticing of this project.

- Courthouse Security
 - The Final EIR provides a response to the US Marshall's claim that security issues could occur as a result of project implementation. As stated in the Final EIR, the City, and the developer will continue to coordinate with the Court regarding the possible siting of a government facility adjacent to the courthouse, and the details of any specific building will also be reviewed through the design review process, with notice to the court as an adjacent property owner. The approval of the plan does not constitute approval of any particular user. The recommendations of the GSA to realign the track constitute a new project and could trigger new impacts that have not already been evaluated. The comment is noted and included in the record. Also, as noted in the Final EIR, the City

does not control the location of the tracks. The tracks are under the control of Regional Transit.

- Hydrology and Flooding
 - The GSA letter erroneously states that the project is located in the North Natomas Basin. The project is not located in that basin.

We hope these responses are helpful to the City Council. Staff and consultants will be available to respond to any questions the Council may have to these comments or other correspondence that is submitted. If you have any questions, please contact me at (916) 808-5935 or lbuford@cityofsacramento.org. Thank you.

Attachment 1: Railyards Specific Plan FEIR Errata
Attachment 2: Letter from Patrick Soluri (November 13, 2007)
Attachment 3: Letter from Dan Airola (November 13, 2007)
Attachment 4: Letter from Morris Angell (November 27, 2007)

c: City Clerk's Office
Marty Hanneman, Assistant City Manager
Sheryl Patterson, Senior Deputy City Attorney
Dave Harzoff, Economic Development Manager
Gregory Bitter, Principal Planner, DSD
Nedzlene Ferrario, Senior Planner, DSD
File

ATTACHMENT 1

ERRATA TO CITY OF SACRAMENTO RAILYARDS SPECIFIC PLAN FINAL ENVIRONMENTAL IMPACT REPORT (SCH#2006032058), NOVEMBER, 2007

This Errata summarizes text changes to the following portions of the November 2007 Railyards Specific Plan Final EIR submittal: Chapter 4, Response to Comments, Appendix D, Final Air Quality Management Plan, and the Mitigation Monitoring and Reporting Program. All new text is indicated in underline and all deleted text is reflected by a strike through. Text changes are presented in the page order in which they appear in the Final EIR.

These revisions are in response to on-going review of city staff and/or the applicant's consultants. The text changes contain clarification, amplification, and corrections that have been identified since publication of the Final EIR. The text changes do not result in a change in the analysis or conclusions of the Final EIR.

Chapter 4, Responses to Comments

The last sentence of the second paragraph on page 4.4-1 of the Final EIR is changed as follows:

~~As such, as explained in the Draft EIR, the City does not believe that it is appropriate to undertake an analysis of greenhouse gas emissions that cannot be conclusively tied to a physical change on the environment. When determining the feasibility of specific air quality mitigation measures, the City will consider emission reduction potential, as well as economic factors, and will consider the recommendations of SMAQMD staff.~~

The language in the second box of column two on page 4.4-20 of the Final EIR is changed as follows:

The project will require the use of LED traffic lights, ~~where feasible~~.

The language in the fifth box of column two on page 4.4-20 of the Final EIR is changed as follows:

The project will support the implementation of a car-sharing program through physical measures such as identifying preferential parking spaces, ~~if feasible and~~ if such a program is implemented on an area-wide or regional basis.

The language in the second paragraph of the third box of column two on page 4.4-22 of the Final EIR is changed as follows:

~~The project sponsor will ensure that participation in the Transportation Management Agency (TMA) and in the Spare the Air program are included in~~

~~future Transportation Management Plans where feasible and appropriate. All Transportation Management Plans within the Railyards Specific Plan Area will include mandatory membership and participation in a Transportation Management Association (TMA), such as the Sacramento TMA.~~

The language in the second box of column two on page 4.4-25 of the Final EIR is changed as follows:

~~The project sponsor will require future building owners and tenants to use energy efficient lighting to the extent feasible and appropriate. The City will require that all interior and exterior lighting use energy efficient technologies, to the extent feasible. Fluorescent interior lighting will be required if fluorescent technology is commercially available for the specific lighting purpose, unless another commercially available technology is more efficient.~~

The language in the fifth box of column two on page 4.4-25 of the Final EIR is changed as follows:

~~The project sponsor will require the installation and use of electrical support for transportation refrigeration units (TRUs) at loading docks, to the extent feasible and practicable.~~

Mitigation Measure 6.2-7 on page 4.5-5 and 4.5-9 of the Final EIR is changed as follows:

6.2-7 (a) Prior to the realignment of the Union Pacific Railroad tracks and/or removal of the existing overhead utility lines, the following measures shall take place to reduce impacts to the purple martins.

1. To offset loss the loss of nesting material gathering sites and reduce potential predation from feral cats using tall vegetation as ambush points, during railroad track realignment the project applicant shall conduct weed abatement measures (e.g., weed whacking) bi weekly from March 15th to May 15. The area to be maintained is the area that extends out 600 feet north of the existing railroad, as detailed on Figure 2. The plant waste shall be left in place from March 15th to May 15 to allow the purple martins to use the "waste" for nest building material. This measure is temporary and shall only occur while the existing railroad tracks are being realigned.
2. To offset the potential impacts from loss of perching wires the project applicant shall erect ~~at least 230 feet of~~ permanent perching structures ~~within 200 feet of the~~, in close proximity to the colony but within the footprint of the project. ~~The wires shall be erected,~~ before the removal of the existing utility lines and poles and (wires for perching should be 3/8-3/4 inch in diameter and shall be at least 19.5 feet off the ground. Pole mounted structures could be mounted on light poles or fencing for stability) and should be placed to provide a range of perching options for

nest sites within the full span of the I St bridge ramp (i.e., near the west side, center, and east side of the east ramp). So no net loss of perching wire area occurs, the total length of perching wires shall not be less than 110 feet combined. The project applicant ~~may also~~ shall consult with the California State Railroad Museum as to the possibility of the perches being erected, within their state lands as well as within the Railyards' site.

3. As identified in Figure 2, landscaping within 120 feet of the colony shall be planned as to not disrupt the flight access to the colony, small and medium size non fruit-bearing trees shall be incorporated to the landscaping plans. Landscaping plans shall ~~also consider the option of prohibiting~~ prohibit fruit-bearing trees within 500 feet of the site. ~~and not removing all the tree clippings from the area during maintenance specifically at the beginning of the nesting season (March 15th to May 15) as to allow the purple martins to use the clippings as nesting materials.~~

- i) From the time construction begins within the nesting material collection areas identified in Figure 2 and until the proposed open space that is adjacent to the I Street Colony is landscaped as detailed in above in 6.2-7 (a3), the project applicant shall, from March 15th to May 15, supply nesting material (straw, pine needles, etc) in designated areas close to the colony for use by the purple martins while the planted trees and shrubs develop. The areas should be no further than 200 feet from perching wires.

4. So long as the I Street Colony is active, landscaping trees adjacent to the purple martin colony shall include pine species (Pinus spp.) or Chinese pistache to provide a permanent source of nesting material. The pine needles, weedy stems, and leaf petioles shall be left in place where they fall and shall not be removed during landscape maintenance from January 1 to May 15th. Areas within the dripline of these trees shall not be planted with shrubs, perennials, or annuals that prevent the birds from being able to land and take off, and from seeing predators while on the ground.

- b) Although purple martins are tolerant of human activities, if active nests are present no construction shall be conducted within 120 feet of the edge of the purple martin colony (as demarcated by the active nest hole closest to the construction activity) during the beginning of the purple martin breeding season from March 15 to May 15. The buffer area shall be avoided to prevent destruction or disturbance to the nest(s) until it is no longer active. The size of the buffer area may be adjusted if a qualified biologist experienced with purple martin biology and/or CDFG determine it would not be likely to have adverse effects on the martins. The site characteristics used to determine the size of the modified buffer should include; a) topographic screening; b) distance from disturbance to nest; c) the size and quality of foraging habitat surrounding the nest; and d) sensitivity of the species to nest disturbances to specific construction activities. No project activity shall commence within the buffer area until a qualified biologist experienced with purple martin biology confirms that any nests are no longer

active. In addition, no equipment taller than 9 feet in height shall be parked or stored beneath the I Street on-ramp within 100 ft of nest holes ~~or the I-5 overpass at the I Street on-ramp~~ during the breeding season (April 15 to August 1).

The last two sentences of the second paragraph on page 4.15-4 of the Final EIR are changed as follows:

The Draft EIR acknowledges that the project would create a significant impact on the mainline segments and interchanges on the State Highway System (pages 6.12-72 to 6.12-77, 6.12-92 to 6.12-95, 6.12-110 to 6.12-114, and 6.12-129 to 6.12-132). Most of the freeway mainline segments are currently operating at an unacceptable level of service under existing conditions without the project and will continue to operate at an unacceptable under the same level of service with or without the project. The project will extend the duration and increase the severity of the unacceptable level of service, and so is considered a significant impact under CEQA.

The second to last sentences of the fifth paragraph on page 4.15-4 of the Final EIR is changed as follows:

As stated in a February 26, 2007 letter from City Manager Ray Kerridge to Caltrans Director Will Kempton, the City of Sacramento is committed to work in good faith with Caltrans and other regional partners to develop feasible mitigation measures to address traffic impacts associated with new development projects that create significant levels of congestion on the State Highway System. To that end, and subsequent to the February 26 letter, the City regularly meets with Caltrans to discuss potential mitigation measure(s) that would further reduce the impacts of development projects, such as the Railyards project, on the freeway mainline system and interchange facilities. As a result of these meetings, the City has agreed to adopt a mitigation measures that will reduce, but not avoid, the impacts to the I-5 mainline and the I-5/Richard Boulevard interchange. ~~The proposed mitigation measures are adequate under CEQA given that to impose additional mitigation measures to add capacity to the I-5 mainline system would be financially infeasible, as supported by the Railyards Finance Plan which identifies significant funding shortfalls and need for additional federal, state and local funding for the other required public infrastructure improvements. The mitigation measures that are required for the Railyards project are described in detail below.~~

The second paragraph on page 4.15-5 of the Final EIR is changed as follows:

To further relieve congestion on I-5, the City, Regional Transit (RT) and Caltrans have worked together to identify the Downtown-Natomas-Airport Light Rail Extension (DNA) project as a major transportation improvement that will provide regional traffic congestion relief along the mainline I-5 State Highway System. Though the DNA project has not yet completed the environmental review process under CEQA, the City strongly supports the project and is confident that the DNA project will be approved. Development impact mitigation fee contributions will be an essential funding source for the DNA project and are necessary to ensure full funding.

The last two sentences of the first complete paragraph on page 4.15-6 of the Final EIR are changed as follows:

The Draft EIR concluded several traffic impacts were significant and unavoidable because the mainline freeway improvements are within the jurisdiction of Caltrans and beyond control of the City and project applicant, and there is no established fee mechanism for contribution for Caltrans recommended mainline freeway improvements. The City acknowledges that there are standard funding and project development procedures for local agencies to use to implement mitigation measures on mainline freeways and other Caltrans facilities. The City will be using some of those procedures to implement the Richards Boulevard Interchange improvements noted above.

The last two sentences of the second complete paragraph on page 4.15-6 of the Final EIR are changed as follows:

There were suggestions in the comments for additional mitigation measures to alleviate congestion on I-5. These suggestions included providing proportional share funding contributions to Caltrans I-5 bus/carpool HOV lane project. That project is ~~not~~ part of a capital improvement plan adopted by Caltrans, the state agency with jurisdiction over freeway main line improvements, and the feasibility and desirability of constructing such improvements ~~have not been~~ are being evaluated, ~~including an analysis~~ through Caltrans' standard project development process, which the City is participating in. The project is also included within the voter approved Measure A renewal and has been adopted by the Sacramento Transportation Authority's Board, of which the City is a member.

The third complete paragraph on page 4.15-6 of the Final EIR is changed as follows:

The comment correctly notes that the current SACOG (2005-2007) Metropolitan Transportation Improvement Program ("MTIP") includes funding for the preliminary engineering and environmental phases of the I-5 HOV lanes. As the Draft EIR notes; however, these projects have not ~~gone through or~~ completed the environmental review process and are not guaranteed for full funding or construction. ~~Any commitment of resources toward such a project is premature without the proper environmental review and a nexus study to determine the appropriate level of freeway mainline mitigation (fair share contribution) for an individual project.~~ HOV lane projects, like other MTP and MTIP mainline freeway projects, are typically funded through a combination of federal, state and local financing mechanisms, including local Measure A funding, development impact mitigation fees, statewide transportation bond funds and federal highway funds.

The last sentence of the fifth complete paragraph on page 4.15-6 of the Final EIR is changed as follows:

As discussed in the EIR, the Facility Element for the Railyards and Richards areas provides for certain improvements to the I-5 and Richards Blvd interchange and the Railyards Specific Plan calls for infrastructure improvements that will serve as a parallel "reliever" to I-5 via 5th and 7th Streets and the DNA project. The applicant is required to fund these improvements as described above, which will help to substantially lessen the project's traffic impacts to I-5. Therefore, the City has satisfied its obligation to require

feasible project mitigation under CEQA for impacts to the Richards Boulevard Interchange.

The second, third and fourth sentences of the last paragraph on page 4.15-6 of the Final EIR are changed as follows:

Some comments state that the City has the responsibility to conduct a nexus study to ascertain appropriate proportional share mitigation for mainline highway impacts. As discussed above, such mainline highway improvements projects have yet to be designed and ~~subject to complete~~ environmental review. The City cannot conduct a nexus study on potential mitigation measures ~~that have not been determined to be feasible or desirable and~~ for which no CEQA review has been completed. However, the City is participating in a multi-agency committee that is developing a regional development impact fee for the I-5 corridor. The City will require individual Railyards build-out projects, at the time they obtain building permits, to participate in the I-5 fee program that is in effect at the time the building permits are approved. The City has fulfilled its obligation by determining the project's fair share mitigation for the DNA light rail project and its fair share for improvements to the Richards Boulevard Interchange, and for the off-site extension of 5th Street and the expansion of 7th Street from North B Street to Richards Boulevard through the Financing Plan, which includes the off-site infrastructure improvements as specified in the Facility Element. These improvements have been determined to be feasible and are included as mitigation measures or are part of the project.

Appendix D, Final Air Quality Mitigation Plan

The text following the fifth bullet on page 21 of Final EIR Appendix D is changed as follows:

The project will require the use of LED traffic lights, ~~where feasible.~~

The text following the seventh bullet on page 21 of Final EIR Appendix D is changed as follows:

The project will support the implementation of a car-sharing program through physical measures such as identifying preferential parking spaces, ~~if feasible and~~ if such a program is implemented on an area-wide or regional basis.

The text following the first bullet on page 22 of Final EIR Appendix D is changed as follows:

~~The project sponsor will ensure that participation in the Transportation Management Agency (TMA) and in the Spare the Air program are included in future Transportation Management Plans where feasible and appropriate.~~ All Transportation Management Plans within the Railyards Specific Plan Area will include mandatory membership and participation in a Transportation Management Association (TMA), such as the Sacramento TMA.

The text following the fourth bullet on page 22 of Final EIR Appendix D is changed as follows:

~~The project sponsor will require future building owners and tenants to use energy efficient lighting to the extent feasible and appropriate. The City will require that all interior and exterior lighting use energy efficient technologies, to the extent feasible. Fluorescent interior lighting will be required if fluorescent technology is commercially available for the specific lighting purpose, unless another commercially available technology is more efficient.~~

The text following the fifth bullet on page 22 of Final EIR Appendix D shall be stricken as shown below:

~~For consumer products, when the California Air Resources Board adopts regulations to reduce hydrofluorocarbons, any products that the regulations apply to will comply with these mitigation measures.~~

The text following the sixth bullet on page 22 of Final EIR Appendix D is changed as follows:

The project sponsor will require the installation and use of electrical support for transportation refrigeration units (TRUs) at loading docks, to the extent feasible and practicable.

Mitigation Monitoring and Reporting Plan

Mitigation Measure 6.2-7 included on pages 13 and 14 of the MMRP is changed as follows:

6.2-7 (a) Prior to the realignment of the Union Pacific Railroad tracks and/or removal of the existing overhead utility lines, the following measures shall take place to reduce impacts to the purple martins.

1. To offset loss the loss of nesting material gathering sites and reduce potential predation from feral cats using tall vegetation as ambush points, during railroad track realignment the project applicant shall conduct weed abatement measures (e.g., weed whacking) bi weekly from March 15th to May 15. The area to be maintained is the area that extends out 600 feet north of the existing railroad, as detailed on Figure ~~5-5-4~~ 2. The plant waste shall be left in place from March 15th to May 15 to allow the purple martins to use the "waste" for nest building material. This measure is

temporary and shall only occur while the existing railroad tracks are being realigned.

2. To offset the potential impacts from loss of perching wires the project applicant shall erect ~~at least 230 feet of~~ permanent perching structures ~~within 200 feet of the~~, in close proximity to the colony but within the footprint of the project. ~~The wires shall be erected,~~ before the removal of the existing utility lines and poles ~~and~~ (wires for perching should be 3/8-3/4 inch in diameter and shall be at least 19.5 feet off the ground. Pole mounted structures could be mounted on light poles or fencing for stability) and should be placed to provide a range of perching options for nest sites within the full span of the I St bridge ramp (i.e., near the west side, center, and east side of the east ramp). So no net loss of perching wire area occurs, the total length of perching wires shall not be less than 110 feet combined. ~~The project applicant may also~~ shall consult with the California State Railroad Museum as to the possibility of the perches being erected, within ~~their~~ state lands as well as within the Railyards' site.
3. As identified in Figure ~~5-5-4 2~~, landscaping within 120 feet of the colony shall be planned as to not disrupt the flight access to the colony, small and medium size non fruit-bearing trees shall be incorporated to the landscaping plans. Landscaping plans shall ~~also consider the option of prohibiting~~ prohibit fruit-bearing trees within 500 feet of the site. ~~and not removing all the tree clippings from the area during maintenance specifically at the beginning of the nesting season (March 15th to May 15) as to allow the purple martins to use the clippings as nesting materials.~~
 - i) From the time construction begins within the nesting material collection areas identified in Figure 2 and until the proposed open space that is adjacent to the I Street Colony is landscaped as detailed in above in 6.2-7 (a3), the project applicant shall, from March 15th to May 15, supply nesting material (straw, pine needles, etc) in designated areas close to the colony for use by the purple martins while the planted trees and shrubs develop. The areas should be no further than 200 feet from perching wires.
4. So long as the I Street Colony is active, landscaping trees adjacent to the purple martin colony shall include pine species (Pinus spp.) or Chinese pistache to provide a permanent source of nesting material. The pine needles, weedy stems, and leaf petioles shall be left in place where they fall and shall not be removed during landscape maintenance from January 1 to May 15th. Areas within the dripline of these trees shall not be planted with shrubs, perennials, or annuals that prevent the birds from being able to land and take off, and from seeing predators while on the ground.
 - b) Although purple martins are tolerant of human activities, if active nests are present no construction shall be conducted within 120 feet of the edge of the purple martin colony (as demarcated by the active nest hole closest to the

construction activity) during the beginning of the purple martin breeding season from March 15 to May 15. The buffer area shall be avoided to prevent destruction or disturbance to the nest(s) until it is no longer active. The size of the buffer area may be adjusted if a qualified biologist experienced with purple martin biology and/or CDFG determine it would not be likely to have adverse effects on the martins. The site characteristics used to determine the size of the modified buffer should include; a) topographic screening; b) distance from disturbance to nest; c) the size and quality of foraging habitat surrounding the nest; and d) sensitivity of the species to nest disturbances to specific construction activities. No project activity shall commence within the buffer area until a qualified biologist experienced with purple martin biology confirms that any nests are no longer active. In addition, no equipment taller than 9 feet in height shall be parked or stored beneath the I Street on-ramp within 100 ft of nest holes ~~or the I-5 overpass at the I Street on-ramp~~ during the breeding season (April 15 to August 1).

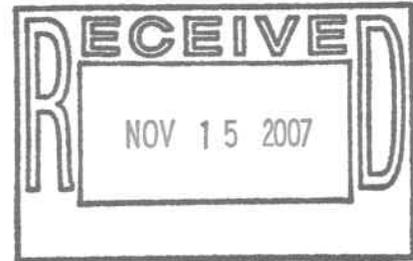
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November 13, 2007



Scott Johnson, Associate Planner
City of Sacramento Development Services Department
North Permit Center
2101 Arena Blvd, Suite 200
Sacramento, CA 95834

**RE: Railyards Specific Plan (SCH 2006032058)
Our Matter No. 0112.002**

Dear Mr. Johnson:

On October 3, 2007, this firm submitted, on behalf of Downtown Plaza, LLC, a detailed comment letter regarding the Draft Environmental Impact Report ("DEIR") for the Railyards Specific Plan ("Proposed Project"). Several of our prior comments concerned the DEIR's failure to disclose necessary details regarding the Proposed Project. Following the close of the public comment period, some of these additional requested details are now being disclosed. Unfortunately these additional details actually reinforce our substantive concerns regarding the nature and impact of the Proposed Project.

1. Inadequate and Misleading Project Description

Section I of our prior letter expressed concern about the misleading Project Description contained in the DEIR. We explained that the proposed Phasing Schedule describes a project that includes a very limited residential component and was more similar to a suburban big-box regional shopping mall than a mixed-use urban village. After reviewing the draft Development Agreement, it appears that the situation is even worse than we anticipated.

The *Development Agreement* includes specific minimum "Development Milestones" that the developer must satisfy in order to extend the term beyond the initial ten years. *Development Agreement*, draft dated Nov. 5, 2007, pp. 20-22. The *Development Agreement* sets a minimum Development Milestone of only 400 residential units. *Development Agreement*, p. 20. In other words, the

developer is perfectly free to construct – after a full ten years of development - only 400 residential units in order to extend the term for an additional five years. And if the developer chooses instead to construct its big-box regional shopping mall in the first ten years then it is not even required to construct any residential units. *Development Agreement*, §2.2.1. This is not the project that is either described in the DEIR or anticipated by the general public.

2. Impermissible Project Segmentation

Section I of our prior comment letter raised concerns about the DEIR's impermissible segmentation of the Proposed Project. We demonstrated that the DEIR refused to acknowledge as components of the Proposed Project either (i) the extensive hazardous material remediation activity at the Railyards site, or (ii) the City's acquisition of the Intermodal Transit Facility. It has now been disclosed that the DEIR also impermissibly segmented the City's approval of a new Redevelopment Plan for the Proposed Project because the City is apparently preparing a separate EIR for its adoption of this new Redevelopment Plan.

It is difficult to see how the Redevelopment Plan for the Railyards site constitutes an independent project from the development entitlements for that same development. Indeed, the NOP for the Redevelopment Plan plainly states that the purpose of the new Redevelopment Plan is “to enable the Railyards Area to be developed and to provide support and assistance to that development . . .” And the draft *Railyards Specific Plan Public Facilities Financing Plan* (“*Financing Plan*”) - which was itself circulated for the first time just a few days ago – describes the significant interrelationship between the Railyards Redevelopment Plan and the development entitlements:

A public/private partnership is required to advance the [Railyards] project through the numerous development hurdles that will be encountered. This public/private partnership will function through the terms and conditions of the Railyards Development Agreement as well as other agreements with the City and Redevelopment Agency.

Financing Plan, draft dated November 2007, p. 7.

It is not surprising that the *Financing Plan* states that redevelopment funds are “required to advance the project” because 30 percent of all the

funding for backbone infrastructure will come from “City and Redevelopment Agency sources.” *Financing Plan*, p. 12.

Thus, the new information that has become available after the close of the public comment period provides significant new evidence that the DEIR for the Proposed Project has been impermissibly segmented in violation of CEQA.

3. Inadequate “Fair Share” Mitigation Measures

Our prior comment letter noted the DEIR’s failure to adequately describe the Proposed Project’s “fair share” mitigation measures (or “mitigating project components”) for critical infrastructure improvements. Our prior letter set forth the required “fair share” information for an EIR:

- (i) An identification of the required improvement;
- (ii) An estimate of the cost of the required improvement;
- (iii) Sufficient information to determine how much the project would pay towards the improvement;
- (iv) The fees must be part of a reasonable, enforceable plan or program sufficiently tied to the actual mitigation of the impacts at issue.

Anderson First Coalition v. City of Anderson (2005) 130 Cal.App.4th 1173, 1188-89.

The *Financing Plan* now explains why the DEIR failed to adequately describe these elements for the various “fair share” mitigation measures. The reason, put simply, is that the required information had not been determined at the time the DEIR was circulated, and will not be completed until after the Proposed Project has been approved. According to the *Financing Plan*:

Depending on the timing of the General Plan Update relative to adoption of the Railyards Specific Plan, a comprehensive update to the fee programs may be completed at the same or at different times. ***Following adoption of both the Specific Plan and City General Plan Update, the technical work can be completed for a comprehensive update to the infrastructure programs and the development impact fee programs.***

Financing Plan, p. 56 (emphasis added).

This violates CEQA. CEQA case law is clear that this information must be disclosed in the DEIR – not after the close of the public comment period and certainly not after project approval. Anderson First, *supra*, 130 Cal.App. 4th 1173.

4. Public Trust

We finally note that the DEIR failed to describe the significant public trust issues implicated by the Proposed Project. As explained by the California State Lands Commission in its public comment letter dated October 3, 2007, portions of the Railyards site include tide and submerged lands under sovereign title by the State of California. These lands are subject to a public trust in favor of the use of such lands by the general public. According to the State Lands Commission, “Uses that are generally not permitted on public trust lands are those that are not trust use related, do not serve a public purpose, and can be located on non-waterfront property, ***such as residential and non-maritime related commercial and office uses.***” *Public Trust Policy for the State Lands Commission* (emphasis added).

While California law provides for a land exchange with private parties for these California sovereign lands, there is a serious question whether a land exchange for the benefit of the Proposed Project – apparently consisting in large part of a regional shopping mall – could satisfy the required conditions and purposes for such an exchange under California law. See Pub. Resources Code §6307. Moreover, the DEIR is devoid of any discussion of the potential impacts associated with such an exchange and the impact on public trust resources.

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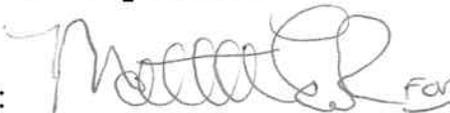
November 13, 2007

Page 5

In short, numerous unanswered questions remain regarding the nature and impacts of the Proposed Project. A new DEIR must be re-circulated for public review after these outstanding issues are addressed.

Very Truly Yours,

SOLURI & EMRICK
A Law Corporation

By:  For
Patrick M. Soluri

cc: Sacramento City Council
City of Sacramento Planning Commission
City of Sacramento Design Commission
City of Sacramento Preservation Commission
California Department of Transportation, District 3
California Department of Toxic Substances Control
Central Valley Regional Water Quality Control Board
Sacramento Metropolitan Air Quality Management District
California Public Utilities Commission
California State Lands Commission
California Department of Fish and Game

Date: November 13, 2007

To: Scott Johnson, City of Sacramento
John Spranza, PBSJ

From: Dan Airola

Subject: Response to Comment on Purple Martin Issues for the Final EIR for the Downtown Railyard Specific Plan

Attached in Redline below are proposed comments I submitted November 9, 2007 to John Spranza, PBSJ, on the draft Final EIR responses to issues raised regarding project effects on Purple Martins. None of these suggestions were incorporated into the FEIR. For this version, I have highlighted in green the proposed changes that are most important to make before the FEIR is certified.'

My notes from our field meeting state that PBSJ agreed to discuss the proposed responses and get my input before the FEIR was to be published. I received the (unmodified) text below from Mr. Spranza on the afternoon of November 9, with a statement that "This is what we ended up with" and a statement to "give me a call to discuss".. I prepared and returned my comments that same afternoon and called John at approximately 4 pm and left a message that I had sent some comments would make myself available to discuss them over the weekend, if needed.

This procedure does not match my recollection of our agreement. I believe the results, as noted below, leave some important issues inadequately addressed. I am happy to continue to work with you to refine the measures prior to EIR certification.

Start of FEIR text with my comments:

This response addresses comments 31-01 through 31-12, 20-01, and 11-18. Several comments were received regarding the impacts of the Specific Plan Area to the purple martin (*Progne subis*) colony under the I Street Bridge eastern off ramp. In general the commenters raise the following: 1) The use of sufficient published information about the I Street colony, 2) The adequacy of mitigation for impacts to the colony, 3) The analysis of long-term operational impacts, and 4) Cumulative impacts analysis. The following discussion addresses each of these by topic.

Published Information

The Biological Resources section of the Draft EIR contains 27 citations for literature or sources used. These sources were the best available information and were deemed adequate for the programmatic analysis contained in the Draft EIR. Non-cited background literature included numerous additional electronic publications as well as purple martin-specific publications such as Zeiner et al. 1990, Airola and Grantham 2003, and the California Department of Fish and Game. We are aware that Mr. Airola has published numerous articles on the Sacramento purple martin colonies but many of these were published in limited-distribution circulations (e.g., *Central Valley Bird Club Bulletin* and the *Purple Martin Update*) which are not readily available or easily obtainable. Consequently, the best available information was used in the analysis. However, in reference to the adequacy of the Draft EIR, as stated in Section 15204(a) of the CEQA Guidelines, the adequacy of an EIR is determined in terms of what is reasonably feasible in light of factors such as the geographic scope of the project, the magnitude of the project, and the severity of the likely environmental impacts. As further expressed in Section 15151 of the CEQA Guidelines, “An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible.” In this case, the literature used was what was reasonably feasible to obtain and sufficient to use to assess impacts to this species. This included published data from the CDFG, and other pertinent and reliable sources that were more readily available.-

Still, we appreciate the additional documentation provided by the commenter and have used it in formulating the following responses.

Appropriate Mitigation

The commenters assert that the Draft EIR does not contain adequate mitigation for potential impacts and that the project’s mitigation may have additional detrimental effects. Specifically, the concern is that the proposed mitigation does not address the potential significant effects of reducing reproduction through displacement.

As stated in Impact 6.2-7 of the Draft EIR, the loss of this colony, or disruption such that the project-related disturbance causes abandonment of active nests or an increased mortality or reduced reproductive success that would lead to the local extirpation of, or reduction in the population at this colony below self-sustaining levels, would be a significant impact.

It is important to note that the areas of the I Street Bridge where the colony currently nests will not be physically impacted by the proposed Specific Plan. As discussed on the proposed project’s Project Description, the elevated portion of Jibboom Street will be removed but the I Street Bridge, where the colony currently nests, will remain intact. Other indirect impacts, including potential disturbance from nearby construction and the loss of nesting material collection sites and perching areas would occur. To offset these potentially significant impacts the Draft EIR included Mitigation Measures 6.2-7(a) and 6.2-7(b), which, in part, would exclude martins from nesting areas that would be physically impacted by construction; thus limiting the chance that nesting birds would be

impacted. However, recent studies performed by Mr. Airola have shown that exclusion of birds may, in itself, prevent future nesting from occurring as the colony could be permanently displaced. Consequently, we propose the following changes to the proposed mitigation; the changes have been developed with the aid of Mr. Airola and are specifically designed for the I Street colony:

Mitigation Measure 6.2-7 (a) shall be replaced with the following:

[Former text – deleted: 6.2-7 a) Prior to beginning construction activities the project applicant shall prevent nest establishment on the areas of the structure that would be directly affected. Nest prevention methods include, but are not limited to, installation of a barrier (such as netting) to prevent bird access to the structure and/or continued removal of deposited mud material under the structure early in the nesting season to prevent construction of habitable nests. If nest prevention cannot be accomplished prior to the start of construction, and birds establish nests, the nests shall be protected from construction activity that would disrupt nesting activities until the nestlings fledge (per 6.2-7(b)). After the nestlings have fledged, the nests shall be inspected by a qualified biologist to confirm the absence of eggs and nestlings, prior to nest removal and commencement of construction activities.]

6.2-7 (a) Prior to the realignment of the Union Pacific Railroad tracks and/or removal of the existing overhead utility lines, the following measures shall take place to reduce impacts to the purple martins.

1. To offset loss the loss of nesting material gathering sites and reduce potential predation from feral cats using tall vegetation as ambush points, during railroad track realignment the project applicant shall conduct weed abatement measures (e.g., weed whacking) bi weekly from March 15th to May 15. The area to be maintained is the area that extends out 600 feet north of the existing railroad, as detailed on Figure 5.5-1. [I don't have access to the figure, but it sounds like a pretty big area – I believe that something smaller would likely suffice, perhaps 2 clearings of about 300 ft diameter] The plant waste shall be left in place from March 15th to May 15 to allow the purple martins to use the "waste" for nest building material. This measure is temporary and shall only occur while the existing railroad tracks are being realigned.

2. To offset the potential impacts from loss of perching wires the project applicant shall erect permanent perching structures, in close proximity to the colony but within the footprint of the project, before the removal of the existing utility lines and poles (wires for perching should be 3/8-3/4 inch in diameter and shall be at least 19.5 feet off the ground. Pole mounted structures could be mounted on light poles or fencing for stability). Structures should be placed to provide a range of perching options for nest sites within the full span of the I St bridge approach [name?] (i.e., near the west side, center, and east side of the onramp). In the event that the perching structures are not a feasible alternative within the project footprint, the project applicant shall consult with the California State Railroad Museum as to the possibility of the perches being erected within state lands. [What defines feasible? According to this measure, the City can declare the mitigation infeasible, and if State Parks declines to accept perch sites, then the impact would not be mitigated]

3. As identified in Figure 5.5-1, landscaping within 120 feet of the colony shall be planned as to not disrupt the flight access to the colony, small and medium size non fruit-bearing trees shall be incorporated to the landscaping plans to avoid attracting European Starlings, which are nest competitors with Purple Martins. Landscaping plans shall also consider the option of prohibiting fruit-bearing trees within 500 feet of the site and not removing all the clippings from the area during maintenance specifically at the beginning of the nesting season (March 15th to May 30th) as to allow the purple martins to use the clippings as nesting materials. [First "shall consider the option" is not adequate mitigation. They could comply simply by saying they considered the option and rejected it. Second, "Clippings" sounds like cuttings from turf areas, which are not suitable for nest construction, unless the grass is allowed to grow rank before being cut]

i) From the time of construction until the proposed open space that is adjacent to the I Street Colony is landscaped as detailed in above in 6.2-7 (a3), the project applicant shall, from March 15th to May 15, supply nesting material (straw, pine needles, etc) in designated elevated areas close to the colony for use by the purple martins while the planted trees and shrubs develop. The areas should be no further than 200 feet from perching wires. Prior to initiation of construction and landscaping, conditions should be maintained so that nesting materials are provided naturally through growth of suitable plants on the site.

4. So long as the I Street Colony is active as a purple martin nesting site, landscaping trees adjacent to the purple martin colony shall include pine species (Pinus spp., or Chinese pistache) located in an open condition to provide a permanent source of nesting material. The pine needles shall not be removed during landscape maintenance from January 1 to May 30th. [I recommend that the EIR more specifically require designation of an area that would managed to allow the accumulation of weedy stems, pine needles, or leaf petioles in areas that are open at ground level and provide ground access for nest-building martins. This could be accomplished in "islands" in parking areas or in open areas adjacent to buildings, or other locations. Also, these areas should not be designated adjacent to streets, to avoid vehicle collisions. Please see later comment re: use of turf in landscaping]

5. After implementation of the measures above, monitoring will be conducted to verify the use of newly provided nest material collection sites and to inform subsequent adjustment of landscape maintenance activities.

Mitigation Measure 6.2-7 (b) shall be revised as follows:

b) Although purple martins are tolerant of human activities, if active nests are present no construction shall be conducted within 100 feet of the edge of the purple martin colony (as demarcated by the active nest hole closest to the construction activity) during the beginning of the purple martin breeding season from March 15 to May 15. This measure therefore will require monitoring of the colony during the nesting season in which any nearby disturbance is expected to occur (so the necessity for the measure can be adequately determined). Additional note added 11/13/07: Although martins are tolerant of many human activities, it is not appropriate to allow any construction activity in the immediate are of martin nest any time after May 15. All construction activities within 100 ft of nest occurring prior to August 1 should be evaluated for their effects by a biologist with experience

in monitoring purple martins, to determine if nesting disruption is likely to occur. The buffer area shall be avoided to prevent destruction or disturbance to the nest(s) until it is no longer active. The size of the buffer area may be adjusted if a qualified biologist and CDFG determine it would not be likely to have adverse effects on the martins. The site characteristics used to determine the size of the modified buffer should include; a) topographic screening; b) distance from disturbance to nest; c) the size and quality of foraging habitat surrounding the nest; and d) sensitivity of the species to ~~specific construction activities~~ nest disturbances. No project activity shall commence within a designated ~~the~~ buffer area until a qualified biologist confirms that any nests are no longer active. In addition, no equipment taller than 9 feet in height shall be parked or stored beneath the I Street on-ramp or the I-5 overpass at the I Street on-ramp within 100 ft of nest holes during the breeding season (April 15 to August 1) to avoid blocking access to nest sites or impinge on airspace beneath and adjacent to occupied nest sites.. [Can loosen up this restriction somewhat. "Equipment" could be inferred to include car and smaller trucks, which currently park below the colony without any problem evident]

With incorporation of these revised mitigation measures impacts would remain less than significant. Accordingly, recirculation of the Draft EIR would not be required.

Long-Term Operational Impacts

The commenters assert that the Draft EIR does not address the potential long-term impacts of the proposed project. Specifically, the commenters assert that impacts of the project, including the loss of perching wires, loss of nesting materials collecting sites, loss of foraging space and access, increased exposure to competition from European Starlings, predation from feral cats, and increased mortality from vehicular collisions could result in significant impacts.

Although Impact 6.2-7 of the Draft EIR recognizes the potentially significant impact that development of the Specific Plan could have on the colony, as stated above, the I Street Bridge where the colony currently nests will not be physically impacted by the proposed project. Only the elevated portion of Jibboom Street will be removed and the I Street Bridge, where the colony currently nests, will remain intact. Consequently, there would be no direct impacts to the colony from demolition activities associated with the Specific Plan and the analysis in the Draft EIR is sufficient, and recirculation would not be required.

Potential impacts due to the loss of nesting material collection sites and perching areas would be mitigated per the revised Mitigation Measure 6.2-7, and these issues are addressed on the preceding section of this response to comment. Consequently, the impact would remain less than significant, the analysis in the draft EIR is sufficient, and recirculation would not be required.

Potential impacts associated with loss of foraging habitat would not occur. The commenter, Mr. Airola, noted in **his comment letter and in** a meeting conducted at the site in response to this comment, that **foraging areas and travel routes to foraging areas have not been monitored systematically, but he believed that (based on many hours of**

informal (unquantified) observations of martins at the project site) the primary foraging areas of the martins are south of the project site, outside of the Specific Plan boundaries. Consequently, the impact would remain less than significant.

Potential impacts associated with loss of access to the nesting areas would not be expected to occur as the I Street Bridge would not be physically altered and the area immediately adjacent to the nesting site, with implementation of landscaping provision identified in Mitigation Measure 6.2-7(a)3 and verified through site specific review of landscape designs, would not be altered in such a way as to significantly impact the approach to the nesting areas. Specifically, the areas surrounding the colony, including the I Street Bridge onramp, would remain as a transportation-orientated parcel, the same type of land use that currently exists at the site. Consequently, the access to the nesting area would not be substantially different from its current state and the impact would remain less than significant. Therefore, the analysis in the draft EIR is sufficient and recirculation would not be required.

The commenters state that the proposed Specific Plan would result in significant impacts from increased competition from European starlings. {I did not make a conclusive determination, but said an impact was possible} However, increased competition from European starlings would not likely result in significant impacts as the landscaping requirements identified within Mitigation Measure 6.2-6 would limit the location and extent of fruiting (i.e., starling-friendly) trees and areas of mowed turf, and the northern approach ramp to the I street Bridge would remain and would continue to discourage starlings from using the I Street Bridge for nesting. Therefore, with the current design and implementation of Mitigation Measure 6.2-7 the impact would remain less than significant. [A limitation on extensive turf areas would be important as well.]

The commenters expressed concern that proposed project would result in increased exposure to predation from feral cats. The City is currently working on an ordinance that would help reduce the feral cat population within the City [nice, but not really mitigation], and development of the project site would reduce the habitat available for feral cats. [This statement needs support. Commerical establishments, including restaurants and retail shops, have potential to attract feral cats. I recommend that the response include a mitigation measures that commit the city to remove any feral cat populations that establish within areas used by Purple Martin for nest material collection.] Therefore, with implementation of this mitigation measures, the impact of feral cats on purple martins would be minimized. Homes within the project are planned in the eastern side, well away from the purple martin population, and thus any domestic cats would be kept away from the colony. With the proposed mitigation, the impact would remain less than significant.

The commenters had additional concerns regarding increased mortality from vehicle collisions. However, the area surrounding the martin colony, where collisions would be most likely, would remain in its current transportation-oriented land use and the majority

of the changes in circulation would occur away from the nesting area. As the land uses would not change and the traffic volumes in the immediate area of the nesting sites are not expected to significantly increase (See Section 63.12 of the Draft EIR) the proposed project would not be expected to result in a substantial increase in vehicular-related martin deaths. **In addition, new nest material collection sites will be located away from areas of high traffic volume.** Therefore, it is our assertion that the impact would remain less than significant.

Cumulative Analysis

The commenters assert that the Draft EIR does not sufficiently address the potential cumulative impacts of the proposed Specific Plan on purple martins and that the cumulative impacts for the proposed project should be considered significant. Impact 6.2-11 of the Draft EIR recognizes that the conversion of plant and wildlife habitat on a regional level as a result of cumulative development would result in a regional significant cumulative impact on special status species and their habitats, including purple martins. It also states that construction of the Specific Plan would contribute to a loss of regional biological resources through the incremental conversion of habitat for special-status species to human use, and thus limit the availability and accessibility of remaining natural habitats to regional wildlife. Mitigation Measures 6.2-5 through 6.2-10 provide mechanisms to identify sensitive species prior to ground disturbance and require mitigation that would result in no net loss of these species. Mitigation Measure 6.2-7 is specifically designed to avoid and /or mitigate potentially significant impacts to purple martins. Implementation of these mitigation measures, in combination with compliance with State and FESA's, CWA Regulations, NPDES permit requirements, and the Fish and Game Code of California would reduce the Specific Plan Area's cumulative contribution to the Regional loss of special-status and sensitive plant and wildlife and their habitat to less-than-significant levels and additional mitigation for cumulative impacts to purple martins would not be required.

Cumulative analyses are conducted to evaluate the potential collective effects of impacts of individual projects that individually may not be significant, but together may exceed significance thresholds. There is still significant uncertainty in the effectiveness of the proposed measures at the I St. colony, such that impacts (either significant or less-than significant at a project scale) may, along with similar impacts at other project sites, become significant. For this reason, I do not believe that you can dismiss the project's potential contribution to a regionally significant impact. Again, I recommend that the City adopt the following mitigation measures:

*Mitigation Measure ___-. **Given the potential for significant cumulative impacts to purple martins at the I St as a result of this project, and at other colony sites from other proposed and planned projects, the City of Sacramento commits to work with Caltrans, Regional Transit, California Department of Fish and Game, and other parties to develop a comprehensive management plan that addresses the ongoing management and leasing of purple martin colony sites, and addresses potential impacts of construction and maintenance projects and adjacent land use projects. The City, through***

mitigation fees required from the Railyard applicant and other project proponent, agrees to fund a proportion of this plan commensurate with the number of projects and potential impacts of projects under its land use jurisdiction. This management plan will provide a firmer basis for evaluating future project impacts by identifying locations of key habitat components (nest sites, nest material collection locations, perch sites, access routes) and describes consistent and adequate methods for assessing project impacts and identifying effective mitigation measures. This management plan will be developed within 1 year of project approval.

Where is monitoring component? Measures are written as if conclusion are 100% certain, and that no monitoring is needed to verify the effectiveness of mitigation measures. Perhaps this is covered in the Mitigation Monitoring plan. In any case, monitoring of the I St. population is required to determine if mitigation measures have been effective.

Please note, I have prepared these comments in a hurry, as I am trying to be cooperative, and I know you are in a hurry. I want to make clear that I may have additional comments or may change these comments, as the process proceeds.



GSA Pacific Rim Region

November 27, 2007

Scott Johnson
Associate Planner, and
Ellie Buford,
Principal Planner
Development Services Department
City of Sacramento
2101 Arena Boulevard, Suite 200
Sacramento, CA 95834

Subject: GSA's Comments on the Railyards Specific Plan Draft Environmental Impact Report (EIR), Sacramento, CA.

Dear Mr. Johnson and Ms. Buford,

The United States of America, acting by and through the General Services Administration (GSA) is the owner and property manager of the Robert T. Matsui Courthouse, located at 501 I Street, Sacramento, CA. On October 2, 2007, Moonyeen Alameida and I contacted you to inform you that GSA had just that same day received notification of the issuance of the August 2007 Railyards Specific Plan Draft EIR and the closing date for receipt of written comments was the following day, October 3, 2007. We advised you that GSA had never received the notice of the preparation or the notice of the public scoping meetings. We also gave you the correct name and address for purposes of the receiving any additional information about the Railyards Project. However, we have since learned that the City of Sacramento had again failed to provide notice of the Final EIR to GSA.

As a directly adjacent landowner, we are exceptionally affected by this project. In addition to the substantial impacts of air quality, traffic, and noise, this building, because it is a federal courthouse and office building, has unique security interests which could be adversely impacted. However, due to the absence of required notice through out this entire project, we have never been given a meaningful opportunity to comment on any of these impacts.

U.S. General Services Administration
450 Golden Gate Avenue, 3 East
San Francisco, CA 94102
www.gsa.gov

The United States Marshals Service and the United States District Court, Eastern District of California, two of the primary Federal occupants in the Courthouse, submitted their own formal comment letters on the DEIR. These letters, dated October 2, 2007 and October 3, 2007 for the Marshals Service and District Court, respectively, outline concerns regarding perimeter buffer zones and setbacks around the Courthouse building, building heights and design standards for the proposed buildings in the Railyards project in close proximity to the Courthouse. Other issues cited are perimeter security protection, the need for relocation of the Union Pacific (UP) railroad tracks and Regional Transit tracks easterly to the center of the project site, and traffic circulation/congestion.

Due to the lack of adequate opportunity to comment on the EIR, GSA endorses the issues and concerns addressed in the comment letters from both the U.S. Marshals Service and the U.S. District Court; for this reason, we hereby incorporate both of these letters into this comment letter by reference. We believe that given adequate notice as required by law, we would have raised additional comments about possible impacts to the Matsui Courthouse.

GSA, along with the U.S. District Court and U.S. Marshals Service, strongly support the transformation of 5th and 3rd Streets into one-way streets. Based upon research presented by representatives from the City's traffic consultant, Gladding Jackson, at the Joint Commission Meeting held on October 22, 2007, one-way streets have been shown to alleviate traffic congestion and create a safer environment for pedestrians. The additional traffic, specifically trucks and buses, which will be caused by the development of the Railyards, could create a greater security risk, which necessitates effective mitigation measures. In addition, it is imperative that street parking continue to be prohibited along 5th Street in the vicinity of the Courthouse, and aggressive traffic enforcement must be imposed.

Due to security measures also presented to you in the letter from the U.S. Marshals, adjacent building heights are a concern. Any structure above six stories within a two-block radius of the U.S. Courthouse would create a serious security risk to the judges and staff personnel, since the chambers and offices are located along the east side of the Courthouse building. The U.S. Marshals have also indicated that this security risk could be mitigated if another government organization were to build a facility along the east side of H Street across the street from the Courthouse (Phase I of project area). We find that the response in the Final EIR to the issues raised by the line-of-sight problem was inadequate. The fact that some of these security issues have been experienced in other urban areas is not an adequate response to these impacts. See 4.15.7.

Currently, the Regional Transit (RT) tracks that run along H Street also create concern within the security community of the U.S. Courthouse. As indicated in the comment letter from the U.S. Marshals Service, GSA would also prefer to relocate the RT tracks easterly and adjacent to the proposed location of the Union Pacific (UP) tracks, thereby creating a greater setback from the Courthouse. As with the U.S. Marshals Service, GSA also strongly objects to the proposal to add an additional track to the RT line, which would pose a greater security risk to the Courthouse.

GSA supports the proposal to relocate the UP tracks to the north through the center of the Railyards to a point approximately 680 feet from the Courthouse, measured from the corner of 5th and H Streets. Also, GSA would support the proposed plan outlined on Pages 3-33 to 3-39 of the DEIR and FEIR to relocate the existing Historic Depot Building some 400 feet to the north along the 4th Street axis. Both of these proposals would help draw traffic away from the Courthouse, as well as reduce sound and vibration disturbance to the Federal tenants.

We would also like to bring to your attention the fact that the Federal Emergency Management Agency (FEMA) recently declined to approve the City's application for continued classification of land in the Sacramento area as Flood Zone A99 (100-year floodplain protected by levees, which allows unrestricted growth). FEMA's decision was based upon the fact that the levee improvements were not yet 50% complete. FEMA apparently recommended that the City apply for another Flood Zone classification within the 100-year floodplain on lands in the North Natoma Basin (of which the Railyards property is a part); such classification may preclude development while levees are being improved. Thus, Section 6.6," HYDROLOGY AND WATER QUALITY – Flooding," is incorrect as written and should reflect this new development.

Please note that the EIR incorrectly states that the courts are the owner of the building. As stated above and in our conversation on October 2, 2007, GSA is the owner and property manager of the Matsui Federal Building. We trust that the City will send notices of this project to GSA as required by law.

Thank you for your attention to our comments, and those of our tenants. We look forward to working with the City of Sacramento through completion of the redevelopment of the Railyards.

Sincerely,



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cc: Chief Judge Garland E. Burrell, Jr.
United States Marshal Antonio Amador
Congresswoman Doris Matsui
James Kane, GSA Pacific Rim Region
Abdee Gharavi
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