



**Supplemental Material
Received at the Meetings of
City Council
Redevelopment Agency
Housing Authority
Financing Authority**

For

December 11, 2007

Item #24: Sacramento Railyards

- a. Letter to Councilmember Rob Fong from Senator Darrell Steinberg
- b. Letter to Mayor Fargo from Assembly member 9th District Dave Jones
- c. Letter to the City Council from Joyce Eng President of the Organization of Chinese Americans – Greater Sacramento Chapter
- d. Letter to the City Council from C.C. Yin founder and chair of the Asian Pacific Islander American Public Affairs Association Community Education Foundation
- e. Memo to City Council from SHRA General Counsel Dana Phillips
- f. Letter to the City Council from Patrick Soluri with the law firm of Soluri & Emrick
- g. Letter to the project developer submitted to the City Council from citizen Roxanne Fuentez
- h. Letter to the City Council from William Kopper, attorney at law

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California State Senate

SENATOR
DARRELL STEINBERG
SIXTH SENATORIAL DISTRICT



NATURAL RESOURCES & WATER
CHAIR
APPROPRIATIONS
BUDGET & FISCAL REVIEW
SUBCOMMITTEE NO 2 ON
RESOURCES, ENVIRONMENTAL
PROTECTION & ENERGY
ENVIRONMENTAL QUALITY
JUDICIARY
HEALTH
SELECT COMMITTEE
HIGH SCHOOL GRADUATION

December 11, 2007

Honorable Rob Fong
Councilmember, City of Sacramento
915 I Street, Fifth Floor
Sacramento, CA 95814

Dear Councilmember Fong, *Rob,*

As you consider approval of the largest brownfields redevelopment in the United States, the Sacramento Railyards, I urge you to remember the important role that Chinese immigrants played in the construction of the transcontinental railroad. The Chinese community continues to contribute to the cultural heritage and diversity of our region today.

The Railyards Specific Plan explicitly mentions the rich Chinese Cultural Heritage of downtown Sacramento, and suggests reservation of space for a Chinese Garden. In fact, the Yee Fow Chinese Cultural Center Advisory Board envisions not only a garden, but one in which flexible space would provide for exhibits, banquets, and a trade facility.

As you are aware, members of the Advisory Board have been meeting with you to discuss their preliminary concepts for such a cultural and trade center. Please continue to keep this privately-funded center under consideration as you proceed with approvals and implementation of the Railyards plans. Thank you for your consideration.

Sincerely,

DARRELL STEINBERG
Senator, Sixth District

DS:kz



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ASSEMBLYMEMBER, NINTH DISTRICT
CHAIR, JUDICIARY COMMITTEE

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BUDGET
HEALTH
UTILITIES AND COMMERCE
SUBCOMMITTEE
BUDGET SUBCOMMITTEE ON
RESOURCES
SELECT COMMITTEES
FOSTER CARE
GROWTH MANAGEMENT
RAIL TRANSPORTATION
YOUTH VIOLENCE PREVENTION

December 11, 2007

Honorable Heather Fargo
Mayor, City of Sacramento
915 I Street, Fifth Floor
Sacramento, CA 95814

Dear Mayor Fargo:

I am writing thank you for remembering the important role Chinese immigrants played in the construction of the transcontinental railroad as you consider approval of the Sacramento Railyards, the largest brownfields redevelopment project in the country. Today, the Chinese community continues to contribute to the vibrant cultural heritage and diversity of our region.

To commemorate this history, the Railyards Specific Plan specifically mentions the Chinese Cultural Heritage and suggests reservation of space for a Chinese Garden. In addition to the garden, the Asian Pacific Islander and Sacramento community at-large, along with the Yee Fow Chinese Cultural Center Advisory Board, also envisions a flexible space that would provide for cultural exhibits, performances, banquets, and a world-class trade facility.

As co-chair of the Yee Fow Chinese Cultural Center Advisory Board, I thank you for keeping this privately-funded center under consideration as you proceed with approvals and implementation of the Railyards plans. Please contact me should you have further questions or concerns about this matter at (916) 319-2009.

Sincerely,

DAVE JONES
Assemblymember, 9th District

Organization of Chinese Americans, Inc.



GREATER SACRAMENTO CHAPTER
PO Box 904, Sacramento, California 95812



12/11/07 - Item #24

December 11, 2007

Dear Honorable Mayor Fargo and
Sacramento City Council Members.

The Organization of Chinese Americans (OCA) is a national organization dedicated to advancing the social, political, and economic well-being of Asian Pacific Americans in the United States. The Yee Fow History, Culture and Trade Advisory Board are working with local community leaders, architects and international landscape professionals to establish a Chinese Garden within the Railyard project. OCA is part of this Advisory Board to ensure that the Chinese American history is not lost or forgotten.

A Chinese Garden will grow not only understanding of the heritage and contributions of Sacramento's early Chinese settlers, but will also help foster businesses and trade relationships with China and numerous Asian countries helping to bring forth positive impacts to our regional economy

I urge you to support the November 1, 2007 draft of the Specific Plan and the inclusion of the language for a Chinese Garden. Thank you for your consideration in this matter.

Sincerely,

Joyce Eng, President
Organization of Chinese Americans –
Greater Sacramento Chapter



APAPA

Asian Pacific Islander American Public Affairs Association
Community Education Foundation (APAPA-CEF)
Empowerment of Asian and Pacific Islander Americans

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Fai Fong Kuahida
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Chiling Tang
David Tsang
Andrew K. C. Wong
Bill Wong
Michael Ymaki

December 11, 2007

Dear Honorably Mayor Fargo and

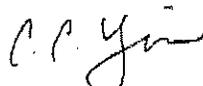
Sacramento City Council Members:

The Yee Fow History, Culture and Trade Advisory Board is working with local community leaders, architects and international landscape professionals to establish a Chinese Garden within the Railyard project.

A Chinese Garden will grow not only understanding of the heritage and contributions of Sacramento's early Chinese settlers, but will also help foster businesses and trade relationships with China and numerous Asian countries helping bring forth positive impact to our regional economy.

I urge you to support the November 1, 2007 draft of the Specific Plan and the inclusion of the language for a Chinese Garden. Thank you for your consideration in this matter.

Respectfully,


C.C. Yin

APAPA Founder & Chair

Non-profit organization 501(C)3 Tax ID No. 55-0849384

SACRAMENTO HOUSING & REDEVELOPMENT AGENCY
 LEGAL DEPARTMENT
MEMORANDUM OF OPINION

DATE:

December 12, 2007

TO:

Mayor and City Councilmembers, as the Members of the Board of the Redevelopment Agency of the City of Sacramento,

FROM:

Dana Phillips, General Counsel

RE:

Legal Opinion: Railyards Affordable Housing Requirements; Issue as Raised by Legal Services of Northern California

CONFIDENTIAL: This Opinion is subject to the attorney-client privilege. In order to preserve the attorney-client privilege, **DO NOT DISCLOSE THIS MEMORANDUM** to any persons other than officers, employees and attorneys of Sacramento Housing and Redevelopment Agency

ISSUE

Ms. Sofia Sarabia in her letter of December 11, 2007 on behalf of Legal Service of Northern California raises the following issue:

ANSWER

Are thirty percent of the housing units in the Railyards Project required to be affordable pursuant to Health and Safety Code Section 33413(b)(1)?

No. Thirty percent of "agency developed units" must be affordable pursuant to the statute. Not all of the housing in the Railyards Project is "agency developed."

ANALYSIS

Even assuming the correctness of Ms. Sarabia's comments, the OPA is to provide that the development must comply with all redevelopment requirements. See OPA Business Terms – Master OPA Section 5.

Ms. Sarabia asserts that Health and Safety Code Section 33413(b)(1) requires that thirty percent of all units in the Railyards Project be developed as affordable housing. The statute does indeed state that thirty percent of "agency developed units" must be affordable. However, the assertion that "agency developed" means all of the Railyards Project is not supportable.

Ms. Sarabia points to a 1991 letter from California Housing and Community Development staff ("HCD Letter") that attempted to answer generic questions about the statute at the time of its adoption. Paragraph 15 of the HCD Letter, in attempting explain "agency developed", states the following:

There is no standard definition [of 'agency developed']. "Agency developed" includes units developed through agency initiative as developer, owner or general manager of a project or operator, initiator or principal funder of a rehabilitation program. The category could also include units developed through implementation of a project area plan, which receives agency assistance in the form of money, land or other contributions. A reasonable test for

inclusion in this latter group is: would the development have been likely to occur without the agency involvement.

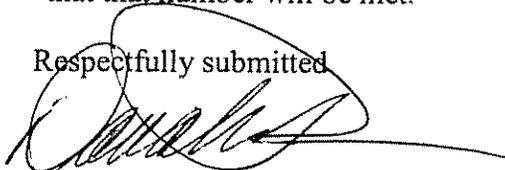
While informative, the letter has no precedential value (meaning courts are not bound by it). Common redevelopment practice, which would have weight that is equal to or greater than the HCD Letter in court, is that the phrase "agency developed" has the plain language meaning. It means housing that is developed directly by an agency.

Ms. Sarabia relies upon the portion of the HCD letter referencing implementation of a project area plan. In fact, a careful reading of the letter exposes the tentative nature of HCD's position. The HCD Letter says that the "category *could include*" units developed under a project area plan. [Emphasis added.] It also lists "[a] reasonable test" for determining if this later category applies. In reading the language, it is clear that even HCD is not claiming that the expansive language is the correct reading of the statute, only an interpretation of the language. In the absence of evident otherwise, a court relies on the plain language of the statute. The fallacy of HCD's expansive language is that all redevelopment plans qualify under its the test, and to apply the language in the manner asserted would be a de facto change in the Twenty Percent Housing Set-Aside requirements of Health and Safety Code Section 33334.2.

To date, no court has interpreted the language, and the legislature has not expanded the statute in the manner that Ms. Sarabia wants to apply to the Railyards project.

Even assuming that Ms. Sarabia is correct, an analysis of the business term shows that the direct agency support under the proposed OPA only applies to the "Initial Phase". Thereafter, use of tax increment is a project by project analysis. There are only 1000 to 1400 housing units in the Initial Phase. In other words, assuming that Ms. Sarabia is correct, the Agency affordable housing obligation under the 33413(b)(1) is 300 to 420 housing units which must be completed by the end of the redevelopment plan. There is no question that that number will be met.

Respectfully submitted



Dana W. Phillips
General Counsel

SOLURI & EMRICK

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December 11, 2007

SENT VIA HAND DELIVERY

Sacramento City Council
915 I Street
Sacramento, CA 95814

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

Honorable Mayor Fargo and Members of the City Council:

This comment letter is submitted on behalf of Downtown Plaza, LLC, which owns the Sacramento Downtown Plaza. These comments concern the proposed Railyards Specific Plan ("Railyards Project").

1. Impermissibly Shifting and Vague Project Description

On behalf of Downtown Plaza, LLC, this firm submitted a detailed comment letter on October 3, 2007 ("October 3 Letter"), regarding the Draft EIR for the Railyards Project. The October 3 Letter identified numerous deficiencies with the Draft EIR's analysis of the Railyards Project. One of the most fundamental and pervasive flaws with the DEIR is an inadequate and misleading project description. On this point we stated:

It appears that the net result of the Project's first phase will be a regional shopping mall that is anchored by a big-box retail store (the "Regional Shopping Mall"). Far from "complementing" the 773-unit "urban village," as included in the Project Description (DEIR, p. 3-11), the massive 1.1 million square foot Regional Shopping Mall will dominate the development of the Railyards site.

(October 3 Letter, p. 4).

SOLURI & EMRICK

December 11, 2007

Page 2

In an effort to address this concern about the likely Regional Shopping Mall with its identified impacts to traffic and urban decay, the October 3 Letter proposed a “Re-phased Alternative” that would avoid some of these impacts. We explained:

In lieu of a Regional Shopping Mall development concept, a re-phased alternative (i.e. an alternative that either develops residential units before retail uses or at least concurrently) (“Re-Phased Alternative”) would significantly reduce or eliminate these identified impacts of the Proposed Project and more effectively advance the Proposed Project’s stated Objectives.

(December 3 Letter, p.39).

Instead of substantively addressing these points, however, the FEIR essentially changed the project description in two critical ways. With respect to the proposed Regional Mall concern the FEIR states, “The proposed project is the Railyards Specific Plan, which allows for a wide range of land uses and densities throughout the Specific Plan Area . . . [s]pecific projects associated with the Railyards Development are currently unknown” (Final EIR, p. 4.1 3 – 4). With respect to the “Re-Phased Alternative,” the FEIR explains:

The proposed Specific Plan does not include any specific phasing program. Because the project is not phase [sic] per se, a “rephased” [sic] project does not represent an alternative to the project.

(FEIR, p.4.19-2).¹

Thus, the FEIR’s response to legitimate concerns about the nature of the Railyards Project is to redefine the Project Description into such vague terms as to be unintelligible. Now, apparently, the Railyards Project consists of a massive amount of an unknown, but “wide range” of land uses over an

¹ This representation in the FEIR is particularly troublesome as several analyses in the DEIR (including, without limitation, the traffic impact and urban decay sections) as well as the Public Facilities Financing Plan are expressly based on the proposed phasing schedule described in the DEIR. Moreover, it is directly contrary to the *Development Agreement* itself, which expressly identifies both the “Phasing Plan” and the “Phase 1 Development Plan” from the DEIR. (See *Development Agreement* version dated December 6, 2007, pp. 13, 14).

unknown time period. And the only document that is purportedly tying this all together is the "Railyards Specific Plan," a document that underwent admittedly "wholesale changes" (See October 3 Letter, pp. 11-12) after the close of the public comment period for the EIR. The result is that there is no clearly-defined project that is even capable of environmental review under CEQA. Coupled with the failure to define whether this is a project or program EIR, the City and the public have no clear picture of what will actually be developed as a result of these proposed approvals or the nature of future approvals and associated environmental review.

2. Proposition 1C Funds

The City Council hearing on December 4, 2007, included a discussion that the developer and City will seek Proposition 1C funds to help fund the Railyards Project. Proposition 1C, the Housing and Emergency Shelter Trust Fund Act of 2006, is intended to fund "housing-related programs." (Health & Saf. Code §53545. As explained in our prior letter dated November 13, 2007 ("November 13 Letter"), the Railyards Project does not require the developer to construct even a single residential unit. As more fully explained in the November 13 Letter:

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.

(November 13 Letter, pp. 1-2).²

² It appears that the *Development Agreement* version dated December 5, 2007 increased the minimum number of residential units to 700 that will trigger the five-year extension. The subsequent version did not, however, include any requirement for

It is difficult to see how a development project that is not required to construct any residential units could obtain public funds that are intended to promote residential development.

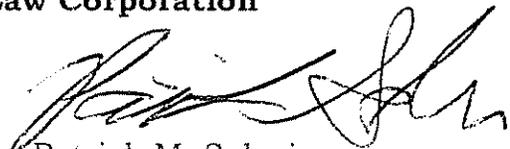
CONCLUSION

While generally agreeing with the City's broad vision for redevelopment of the Railyards as "a mixed use urban village," it does not appear that the available project documents will ensure a development of this nature. The vague and shifting project description simply does not allow any type of meaningful environmental review. And in light of this uncertainty regarding the nature of the Railyards Project, it does not appear appropriate to seek public financing that is intended to promote residential development when there is no commitment on the part of the developer to construct this land use.

Very Truly Yours,

SOLURI & EMRICK
A Law Corporation

By:



Patrick M. Soluri

residential units within the original ten-year term. Thus, the developer may still construct its Regional Shopping Mall over ten years and then walk away without any residential development.

Re: The Sacramento Railyard Proposed Development

To whom it may concern:

I'm relieved that the developer has agreed to transfer ownership of the boiler shop and erector shop to the state parks department for a railroad museum. I hope they keep their word on this. Also, a rail spur should connect this district to Old Sacramento to provide a historic rail link. In addition, I believe that a museum and outdoor area should be created recognizing the major contribution of the Chinese to the construction of the railroad.

I do not believe that high-rise buildings should be built right next to the river. The natural setting along the riverbank should be preserved. This is not Portland. People enjoy boating, fishing, swimming and related uses along the river, and putting high-rise buildings next to the river would ruin all of this.

Also, the densities proposed for this development are too high and should be reduced.

The UPRR mainline tracks should not be moved nor should the Sacramento Depot be moved. This would adversely affect the Depot, the Railway Express Agency Building, and the historic platform. Also, the water tower should not be moved.

Lighting from the proposed project should be limited in height and have shields so as to protect the night sky near the river and also near adjacent neighborhoods. Many glass walls should be avoided to prevent glare and heat islands.

P. 2 of 2

More open space should be included, especially along the perimeters of the project and some of the Chinese Trees of Heaven, which are culturally important, should be retained.

Also, some college students have a good idea – an outdoor area in the middle of a ring of buildings with a small stage for performances, an art gallery where people could show their artwork for a small fee, eating places with an international theme, an adult size jungle gym, and other activities to promote health and fitness. Thank you.

Sincerely,

Roxanne Fuentez

A handwritten signature in cursive script that reads "Roxanne Fuentez". The signature is written in black ink and is positioned below the printed name.

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Sacramento, CA 95819
916-739-0226

William D. Kopper

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Paralegal
Kristin Rauh

December 10, 2007

City Council
City of Sacramento
915 I Street
Sacramento, CA 95814

RE: Railyards Specific Plan Environmental Impact Report (SCH No. 2006032058)

Dear Mayor and Members of the City Council:

These comments on the Railyard Specific Plan Final Environmental Impact Report ("FEIR") are submitted on behalf of Sacramento Citizens Concerned About the Railyards (SCCARY) and Robert Castro Jr., Linda Powers, and Chris Rich, all residents of the City of Sacramento. SCCARY has among its members working men and women who may build projects in the Railyards. SCCARY is concerned that the Railyards EIR may be certified without an adequate Health Risk Assessment to protect construction workers. These are the comments of SCCARY, Mr. Castro, Ms. Powers, and Mr. Rich. The comments include those of Dr. Petra Pless, Air Quality Consultant; Daniel Smith, Traffic Engineer; and Dr. Mark Grismer, Hydrologist. We also incorporate into our comments all the comments of other individuals and organizations, and intend to rely on those comments as well as our own. Furthermore, we oppose the Railyards Specific Plan ("Project") and the General Plan and Community Plan Amendments necessary for the Project, the Development Agreements, and all other entitlements for the Railyard Specific Plan. In these comments, we stress some of the deficiencies in the EIR.

1. The City prepared an FEIR that thwarts public participation.

Members of the public hold a "privileged position" in the CEQA process. CEQA is founded upon "a belief that citizens can make important contributions to environmental protection and... notions of democratic decision-making..." (*Concerned Citizens of Costa Mesa, Inc v. 32nd District Agricultural Association* (1986) 42 Cal.3d 929, 936.) CEQA requires public involvement in the review and consideration of proposed projects in an effort to ensure that environmental considerations play a significant role in government decision-making; to promote agency accountability; and to improve the quality of land use decisions made by local government. Accordingly, "each public agency should include provisions in its CEQA procedures for public

involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency's activities." (Guidelines, §15201.)¹

The Supreme Court has stated that CEQA procedures should be "scrupulously followed" so that "the public will know the basis on which its responsible officials either approve or reject environmentally significant action," and will be able to "respond accordingly to action with which it disagrees." (*Laurel Heights Improvement Association v. Regents of the University of California ("Laurel Heights I")*) (1988) 47 Cal.3d 376, 392.) "Thus, the EIR process protects not only the environment but also informs self-government." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.)

The requirement of an EIR forces agencies both to develop environmental information and to disseminate it to the public. An EIR "demonstrates to an apprehensive citizenry that the agencies has, in fact, analyzed and considered the ecological impacts of its action." (Guidelines, §15003(d); *Laurel Heights I, Supra*, 47 Cal.3d at 392.) An EIR "serves not only to protect the environment but also to demonstrate to the public that is being protected" (Guidelines, §15003(b)). "A paramount consideration is the right of the public to be informed in such a way that it can intelligently weigh the environmental consequences of any contemplated action and have an appropriate voice in the formulation of any decision." (*Environmental Planning and Information Counsel v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354.)

The Final Environmental Impact Report prepared by the firm PBS&J fails to inform the public or, for that matter, anybody else "in such a way that it can intelligently weigh the environmental consequences of any contemplated action." The FEIR is written and constructed in a way so that is almost impossible to read and understand the responses to comments. In *Twainharte Homeowners Association, Inc. v. County of Tuolumne* (1982) 138 Cal.App.3d 664, 680-681, the Court indicated that "where a particular response to a comment adequately addresses an environmental issue raised by one commenter, additional responses to the same issue, as identified by other commenters, may refer the reader to the prior response. However, no case has endorsed what the authors of the FEIR have done in this case. Instead of responding to individual comments and letters by providing responses directly behind the letters, the FEIR includes a table whereby each response is referred to a 175 page chapter in the EIR which includes general responses to areas of concern. Therefore, in response to a two or three line question, the reader of the EIR may be referred to as much as 6 or 7 pages of text. The reader must read all of the text to determine whether or not the simple question was answered by the authors of the EIR. In reading the EIR, the members of the public may have to read the same section of the 175 page chapter 4 again and again to determine whether a specific question has been answered in the general answers.

The method used to prepare the Final Environmental Impact Report, in comparison to almost every other published Environmental Impact Report, interferes with public participation, because it makes it much more difficult and time consuming for the members of the public to review the

¹"Guidelines" refers to the CEQA Guidelines, Title 14, California Code of Regulations, Sections §15000 to §15387.

Final Environmental Impact Report and determine whether or not comments have been adequately answered.

Under the Federal Case Law interpreting the National Environmental Policy Act (42 U.S.C. Section §4321 et seq.) on which CEQA was modeled, an Environmental Impact Statement (EIS) should be “an essentially self-contained instrument [which should be] capable of being understood by the reader without the need for undue cross-reference.” (*Baltimore Gas & Electric Company v. Natural Resources Defense Counsel* (1983) 462 U.S. 87, 99-101, FNS.1213.) The same principle should be deemed to apply to EIRs. The very concept that a reader of an EIR must refer to a table and then read multiple sections of responses to determine if there is an answer to a specific comment thwarts the purpose of the Environmental Impact Report, which is mainly to make information available to the public and decision-makers. The Final Environmental Impact Report in this case is almost impossible to decipher, and violates CEQA.

2. The City failed to disclose key documents.

CEQA requires full public disclosure of all documents relied upon for support of the EIR and all documents that are part of the Project. In this case, the City did not close the Triparty MOU, which is a mitigation measure for the project. When attorney William D. Kopper called the State Department of Toxic Substance Control, he was informed by staff on December 3, 2007, that the Triparty MOU was available in draft form, but the department was not authorized to release the MOU until it was signed by the City. This approach obviously thwarts public participation and public comment.

With respect to the Redevelopment Business Terms that were disclosed to be part of the “major project approvals” at a hearing on the Project of the City Counsel on December 4, 2007, attorney William D. Kopper stated that the Redevelopment Business Terms were not posted online and were not available for public review. The Redevelopment Plan, or at least the Redevelopment business terms, are part of the Project and the Redevelopment documents must be disclosed for public review in time for at least some public comment. These documents were not made available for public review in violation of CEQA.

3. The City has segmented the Project into pieces.

The entire project being proposed for approval, and not some smaller aspect of it, must be described in the EIR. A complete project description is necessary to ensure that all of the Project’s environmental impacts were considered. (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 438, 450.) A lead agency may not split a single project into small pieces in order to avoid environmental review of the entire project. (*Orinda Association v. Board of Supervisors* (1986) 182 Cal.App. 3d 1145, 1171.)

In *San Joaquin Raptor/Wildlife Rescue Center v. the County of Stanislaus* (1994) 27 Cal. App. 4713, the Court held that an EIR for a housing project was legally inadequate because it did not include construction of sewer lines and expansion of a waste water treatment plant to serve the

project in the project description. Because the sewer expansion had been proposed to serve a housing project, the housing project could not proceed without the expansion of sewer service, the Court concluded that the expansion was an integral component of the housing project. The Court came to this conclusion even though the community services district, not the County, was the agency with jurisdiction over the treatment plant expansion and had prepared its own EIR for that project.

In the case of the Railyards Specific Plan, the City complied with California Government Code Section §65451(a)(4) by preparing the “Railyard Specific Plan Public Facilities Financing Plan.” The Financing Plan states as follows:

“Approximately 80 million of tax increment revenue is preliminarily allocated to fund specific facilities identified by the redevelopment agency as extraordinary costs. The availability of tax increment for the Financing Plan has been conservatively estimated by the redevelopment agency. Additional facilities may be funded by tax increment revenues should additional tax increment revenue become available. Further, if other funding sources are identified to fund facilities specified in this table, tax increment could be used to fund other facilities with extraordinary costs or to assist with private development.”

The Financing Plan states further: “that buildout under the proposed funding strategy, approximately \$168.8 million is expected to be funded with Project-based funding, \$222.1 million funded through city/redevelopment agency funding sources, and \$354.4 million funded through outside sources of funding.” As is clear from the Financing Plan, the formation of a redevelopment district for the Railyards and the tax increment funding produced through the redevelopment plan are essential to the Financing Plan. As reported on page 37 of the Financing Plan, “the remaining uncommitted [tax] increment is available for redevelopment consistent with the Redevelopment plan and five year implementation plan.”

On or about October 25, 2007, the city completed an initial study for the “Railyards Redevelopment Plan”. The initial study stated: the principal purpose to be accomplished by establishing the Railyards Project area as a separate and distinct redevelopment area are: “to enable the Railyards area to be developed and to provide support and assistance to that development as feasible, necessary, and appropriate.” The initial study discloses impacts of the redevelopment project that are very similar to those of the Railyards Specific Plan.

It is absolutely clear that the Railyards Redevelopment Plan is necessary for the Railyard Specific Plan to go forward because the Financing Plan for the Railyard Specific Plan depends upon the Railyards Redevelopment Plan.

The City of Sacramento has improperly segmented the Railyards Project into different parts and did not consider the whole project in the Railyards Specific Plan EIR. The segmentation of the Railyards Redevelopment Plan from the Railyards Specific Plan is a clear violation of CEQA.

In addition to segmenting the Redevelopment Plan from the Railyards Specific Plan EIR, the Railyard Specific Plan EIR also failed to address the environmental impacts of the realignment of the levy system within the Railyards area. The realignment of the levy system is essential to the Project and the Project cannot be completed without a realignment of the levy system. The environmental impacts of the realignments should have been addressed in the Project EIR. Further, the EIR segments the clean-up of water contaminants on the Project site from the development of the Specific Plan.

4. The authors of the Railyards Specific Plan Final Environmental Impact Report did not properly respond to comments.

The lead agency must evaluate comments on the Draft Environmental Impact Report and prepare a written response to any significant environmental issues for inclusion in the final EIR. (Guidelines, §15088(a), §15132, and *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348.) The response must be detailed and must provide a reasoned and good-faith analysis. (Guidelines, §15088(c).) Failure of a lead agency to respond to comments before approving a project frustrates CEQA's informational purposes and renders the EIR legally inadequate (see *Rural Landowners Association v. City Counsel* (1983) 143 Cal.App.3d 1013, 1020.)

The response to comments on a draft EIR must state reasons for rejecting suggestions and comments on major environmental issues. "Conclusory statements unsupported by factual information" are not an adequate response. When questions are raised about significant environmental issues, they must be addressed in detail. (Guidelines, §15088(c).) In *People v. County of Kern* (1976) 62 Cal.App.3d 761, the comments on the Draft EIR raised serious questions about the availability of water for a proposed subdivision, the inadequacy of the current data to calculate the effect of the development on the future water supply, and the potential for groundwater pollution. The Court held that the lead agencies response that all available data indicated that underground supplies would be sufficient for the subdivision was inadequate, because the data were not identified and other agencies stated that underground water studies were needed to evaluate the issue.

Specific, detailed responses, supported by reasoned analysis, are particularly important when the EIR's impact analysis is criticized by experts or other agencies with expertise in the area. At a minimum, the Final EIR must acknowledge the conflicting opinions and explain why suggestions made in the comments have been rejected, supported its statements with relevant data. (*Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1367, 1371.) In the case of the Railyards Specific Plan Draft Environmental Impact Report, there were many comments provided by responsible agencies, trustee agencies, and experts.

Comment 2.2. The Federal Courthouse states that the light rail line should be further away from the Courthouse for security reasons. The FEIR responds that it is not appropriate to consider security issues in an Environmental Impact Report. In view of the fact that the Courthouse asked for the consideration of moving the light rail as a safety factor, it would appear that the safety of persons is an environmental impact under Public Resources Code Section §21083(b)(3). Clearly, a security threat to the Federal Courthouse has the potential to “cause substantial adverse affects on human beings, either directly or indirectly.”

Comment 2.4. The commenter asked the authors of the EIR for consideration of an open space component for the Plan at 5th and I Street as a more appropriate gateway to the Railyards and to improve the project from an aesthetic standpoint. This comment was not responded to in the FEIR.

Comment 2.5. The federal commenter asked for specific mitigation measure related to Project design to promote Courthouse security. The comments in section 2.5 were not responded to in the FEIR, as well.

Comment 3.1. The Federal Marshall raised security risks to the Federal Courthouse from the Railyards Project and asked that the Specific Plan design buildings so that there would be no direct line of sight to the Courthouse to protect the Courthouse from snipers. The commenter suggested that there were mitigation measures that could be implemented that could protect the line of sight risks and other security risks. This comment was not responded to in the FEIR.

Comment 4.3. The State Department of Toxic Substance Control asked that a new item be added to the description of the Project restrictions so that the EIR would make clear that residential uses would only be permitted with additional mitigation measures that would reduce the risks of residual contaminants. In response to this comment, the FEIR provides a vague answer. The entire Specific Plan is based upon the assumption that residential uses will be permitted in the Specific Plan Area. The Draft EIR describes the project to include 12,100 residential units, which is one of the primary uses within the Specific Plan. However, the comment from the Department of Toxic Substance Control and the FEIR suggest uncertainty as to whether residential uses will ever be acceptable in the Railyards Area due to the high concentration of toxic substances. It is unclear whether the Central Shops area can be remediated to a level where residential uses are permissible. The Project description is therefore speculative, and the EIR cannot serve as Project level EIR, which requires a substantial level of detail. Further, the mitigation for toxics in the Central Shops area is speculative and improper future mitigation.

The EIR states that the City, the Department of Toxic Substance control, and the developer are working on a new tri-party MOU for the purposes of a risk analysis and identifying further mitigation that will be necessary to allow residential uses in the Specific Plan Area. The mitigation measures to be included in the tri-party MOU are an essential part of the project and must be available for public review before the EIR is certified.

Comment 5.2. The State Office of Historic Preservation criticized the Project description in the EIR because the “Central Shops Historic District Ordinance” was not available at the time the Draft Environmental Impact Report was circulated and the State Office of Historic Preservation could not determine if the EIR considered the impacts of the Central Shop Historic District Ordinance. The authors of the EIR responded that the EIR covered the Specific Plan and all implementing ordinances. The problem with this analysis is that the implementing ordinances may have their own impacts. As stated in Public Resources Code Section §21084.1, “A project that may cause a substantial adverse change in the significance of a historical resource is a project that may have a significant effect on the environment.” Without a review of the Central Shops Historic District Ordinance, in conjunction with the Environmental Impact Report, it was impossible to determine at the time of circulation of the DEIR whether the Project (i.e. including the Ordinance) would have an affect on a historical resource.

Comment 5.3. The Office of Historic Preservation indicates that the EIR does not address the Historic and Archeological resources on site. In the FEIR, the authors reiterate the presence of the boiler shop, the erecting shop, and the turn table, and delineate the parts of these particular items. The answer is nonresponsive because it doesn’t consider any other historic resources on site (other than the boiler shop, erecting shop, and turn table) and does not consider any prehistoric deposits. There has been testimony on the Record that the area includes Indian cemeteries, Chinese cemeteries, and perhaps also the cemetery of slaves.

Comment 5.4. The FEIR does not respond to the comment at all. It does not provide an answer to the question about the criteria used by the EIR to identify historical resources and how it was applied with respect to implementation the Specific Plan to determine if the Plan would cause a significant adverse change to historical resources.

Comment 5.5. The Office of Historic Preservation criticizes the DEIR and the proposed Central Shops Historic District for excluding inventoried historic assets from the Historic District. The FEIR does not answer this specific criticism by addressing whether the left-out buildings are historic resources. The FEIR ignores the issue and states there is room for disagreement among expert opinions. This is not an adequate answer. The FEIR needs to discuss the differences between the experts on the issues and why the authors of the EIR believe the position in the DEIR is correct.

Comment 5.8. The response to Comment 5.8 is inadequate. The FEIR indicates there will be future protections so that damage will not occur to historic buildings from vibrations. The FEIR refers to a future vibration study. The vibration study should be included as part of the EIR along with the recommended mitigation. There is no provision in the mitigation monitoring program or the documents to enforce any future mitigation to protect against vibration damage.

Comment 5.14. The Office of Historic Preservation criticizes the EIR for failing to include any description of the interior spaces and equipment related to the manufacturing process in the

Railyard shops. The answer is nonresponsive because it doesn't describe any equipment in the erecting shop.

Comment 6.1. The California Regional Water Quality Control Board ("Water Board") commented that figure 6.6-2 did not include all of the monitoring locations for groundwater pollutants. Even after the comment, the FEIR did not update Figure 6.6-2 to show the monitoring and extraction locations in the downtown area.

Comment 6.3. The Water Board asked for monitoring of ground water related to leaching from Vista Park, which is to include capped toxic soils. The FEIR answers that the EIR does not have to discuss the engineered cap because DTSC prepared a RAP that covered the engineered cap and also prepared environmental review for the engineered CAP. This statement in the FEIR is incorrect. Firstly, the DTSC did not discuss the construction of a dense development, including a dense residential development, in the railyards area in the vicinity of Vista Park. The Railyard Specific Plan is a separate project and the EIR must discuss all potential environmental impacts related to the Specific Plan. In the event that the authors of the EIR wish to address a specific environmental impact by incorporating by reference to a previous specific study, they may do so, but they must comply with the guidelines.

An EIR may incorporate by reference all or a portion of another document that is a matter of public record or is generally available to the public. The EIR should summarize the incorporated portion of the other document. (Public Resources Code Section §21061; Guidelines §15150(a).) When a document is incorporated by reference in an EIR the lead agency must make the document available for inspection at its offices. (Guidelines §15150(b).) The EIR must state where the incorporated documents will be available for inspection. (Guidelines §15150(b).) The Specific Plan EIR violated all of these rules.

With respect to Comment 6-3, the EIR does not address the issue of erosion of the sides of the cap with 3:1 side slopes. The only comment made is that the design of the cap is under consideration with DTSC. To consider the design of the cap, which is integral to the safety of the Project, separate from other parts of the Project is both future mitigation and segmentation of the Project into parts, which is impermissible under CEQA.

Comment 6.6. The Water Board stated that percolating water may drive contamination further down gradient exacerbating effects to restore water quality. The FEIR responds that any matters concerning down gradient pollution and water quality are covered by the RAPs and the City has no discretion. As the lead agency, the City has the duty to mitigate all impacts that are produced by the Project. The Water Board Specifically states that one potential impact of the Project will be to drive water contamination further down gradient. The EIR needs to address this issue and discuss the RAP and mitigation measures that may potentially mitigate this impact. The FEIR is not permitted to completely ignore this impact.

Comment 6.7. The Water Board sets forth very specific mitigation measures that would help reduce the potential for exacerbation of ground water contamination related to construction activities. These mitigation measures included the requirement that construction be performed in the dry season, that runoff be contained and discharged into the combined storm-sewer system, and that runoff be contained and treated prior to land discharge. Further, the Water Board recommended several specific mitigation measures to prevent further ground water contamination. The FEIR response was wholly inadequate. The author stated that the project would get a state National Pollutant Discharge Elimination System (NPDES) General Construction Permit and a Storm Water Pollution Prevention Plan (SWPPP). These are general to all construction projects, and do not address the specific toxic contaminants and special problems that are related to construction at the Railyards. The EIR violates CEQA because it does not address the very specific mitigation measures that were proposed by the Water Board.

Comment 6.9. In Comment 6.9, the Water Board discusses the possibility of individuals being exposed to VOC, not only in building spaces, but in the ambient air. Although the FEIR addresses proposed mitigation measures to prevent VOC penetrating building spaces, it includes no discussion of the current control of VOCs in ambient air.

Comment 6.10. The Water Board asks about problems with storm water runoff from graded material onsite and the toxic impacts from on site runoff. The Water Board further asks about the statement of Mitigation Measure 6.5-3, "With the exception of the central shops, development of any parcel site shall only be permitted if relevant soil remediation for an entire block and the full right-of-way of all surrounding streets has been completed." The Water Board asks what will be done for the central shops with regard to appropriate mitigation. The FEIR states that the mitigation for the central RAP will be covered by DTSC. However, the FEIR is inadequate because it does not set forth the mitigation for the central shops. There is no citation to the portions of a RAP, a previous CEQA environmental document, or any other document. There is no incorporation by reference.

Comment 6.11. The Water Board states that parcel in the Specific Plan Area should include deed restrictions to allow access to inspect, monitor, and maintain various aspects of the remediation. The FEIR does not answer this comment.

Comment 6.12. The Water Board asks the specific question, "When is the analysis of risks performed and by whom is the analysis initiated." Prior to any residential construction, there apparently must be a risk analysis. The FEIR cites two sections, but the sections cited do not respond to the comment.

Comment 6.14. In Comment 6.14, the Water Board states that the DEIR finds that finds that lead has not degraded groundwater quality. The Water Board comments about how the statement can be made if background concentrations of lead in groundwater have not been established. The FEIR responds that specific information about lead in groundwater was obtained from the DTSC-approved remedial investigation reports, which have been submitted to the RWQCB. Dissolved

metals were also part of the groundwater testing MRP. This response is non responsive. The groundwater levels of lead should be provided so that the public can see the documentation and understand the response. Moreover, the EIR is required to summarize the material in the Remedial Investigative Reports, and the City is to have the reports available at the City Offices for review. The City violates CEQA but complying with none of these requirements.

Comment 6.15. The Water Board states that VOC degradation does not always occur in the soils and that VOC degradation can lead to more toxic chemicals. The Water Board also says that bioremediation is not always effective. The authors of the EIR state that the VOC remediation plan is DTSC approved and not subject to review. The EIR violated CEQA because it did not provide a summary of the documents that it was relying upon to answer the Water Board's comment and did not incorporate these documents by reference.

Comment 6.17. The Water Board states that the EIR should state whether the protection of human health was based on a residential or commercial criteria. The FEIR does not answer this comment at all.

Comment 6.19. With respect to the Sacramento Station Area, the Water Board states an evaluation also needs to be made for the potential for vapor intrusion from VOC pollution in the groundwater in the area. It is likely that the vapor intrusion pathway was not evaluated in 1994 to standards that are applied today. The EIR states that it does not have to evaluate groundwater impacts in the EIR. Groundwater impacts from toxics are clearly an environmental impact related to the Project. Groundwater conditions must be discussed because they constitute the environmental setting and the baseline from which changes must be judged. The disturbance of the soil by digging trenches, constructing foundations, and building trenches for utilities will disturb toxics and baseline conditions. These impacts need to be discussed in the Project Environmental Impact Report. The Environmental Impact Report can summarize prior studies and documents that it relies upon and incorporate these documents by reference. However, the position that the EIR does not have to address groundwater impacts is a violation of CEQA.

The FEIR, partially in response to Comment 6.19, makes clear that at least part of the Specific Plan Area has not been cleared for residential construction. These statements appear to conflict with the statements in the DEIR, and also make the residential construction in the Specific Plan Area speculative. Therefore, the Specific Plan Project description is unstable. At best, the EIR could serve as a program EIR. However, the City insists on certifying the EIR as a project-level EIR.

Comment 6.21. The Water Board comments that the DEIR cannot make the statement as follows, "The Specific Plan contains goals and policies designed to ensure the protection of public health and safety during and after redevelopment of the Railyards and to ensure that the redevelopment project is not adversely affected due to environmental conditions." The Water Board said that the goals and policies may not be sufficient so that the redevelopment project would not adversely be affected due to environmental conditions. The Water Board made the point that the

Specific Plan goals and policies could not ensure that there would be sufficient mitigation to clean up the entire site. The FEIR answers this comment by stating that the future triparty MOU will take care of the problems. This represents future mitigation without any specifics whatsoever and is impermissible under CEQA.

Comment 6.23. The Water Board states that a change in standard should require a reassessment when there is a lowering of standards. The FEIR states that the triparty MOU will cover this matter. The triparty MOU should have been made a part of the Project documents, rather than a document that must be negotiated in the future. The public is entitled to see the mitigation measures to determine whether or not they will be adequate.

Comment 6.24. The Water Board states, "There should be a discussion as to what clean up levels in groundwater and the vedose zone are for protection of the receptor in a building set over the pollution." Further, the Water Board states: "It is not stated how mitigation measures for VOC intrusion into interior air can be incorporated into existing buildings at the central shops area prior to their being converted for commercial use." The Final Environmental Impact Report does not answer these comments at all.

Comment 8.1. Caltrans points out that according to the Project EIR, the Project will generate 149,000 vehicle trips per day. In light of this information Caltrans states the I-5/US Highway 50, and I-5/I-80 interchanges should have been evaluated for all traffic movements and all connecting ramps. Caltrans also states that the Project would affect Business-80, US-50, State Route 160, and State Route 99. Caltrans is both a trustee and responsible agency. The response in the Final Environmental Impact Report is that the EIR does not have to provide the evaluation of the Project on these interchanges, despite the huge amount of traffic volume that will be added to the freeway main lines and interchanges by the Project. The FEIR provides no reasoned analysis why at least the I-5 Interchange movements and connecting ramp movement should not be evaluated in light of the added traffic. It would appear obvious that the Project would have a huge impact on these interchanges and ramps. The EIR fails to adequately respond to comments.

Comment 8.3. Caltrans proposed a proportionate share of expenses for the Project for I-5 Bus/Carpool lane projects. Caltrans stated that these additions were necessary to access the downtown from the South to the North. Caltrans points out that even if light rail was completed, the 149,000 trips per day would far exceed the capacity of the light rail. Caltrans further commented that the Project takes credit for trip reduction for the DNA Light Rail line, but there is no guarantee that the light rail line will be built. Caltrans asks the Project to pay a proportionate share for the I-5 Bus/Carpool lane projects. The City responds that the Project does not have to pay a proportional share because no EIR has been completed for the I-5 Bus/Carpool lane projects and therefore it has not been shown that they are feasible. The City cites no authority for the proposition that CEQA environmental review must be completed for a Traffic Mitigation Measure, before a project has to pay its fair share. The City fails to adequately respond to the Caltrans comment.

Comment 8.4. Caltrans states that there is no legal preclusion for the city implementing mitigation on the State Highway system including the freeway system. Caltrans states it is most concerned about the Project causing the ramp level of service at Richards to degrade below the level of the service on the freeway main line and cause off ramp queues to exceed the available storage capacity of the ramps. Caltrans states that this situation could create a safety hazard on the freeway main line. In response to this serious safety issue raised by Caltrans, the FEIR fails to provide any response whatsoever.

Comment 11.2. The State Railyard Museum commented that the Historic District Ordinance SPD Zoning, the Finance Plan, and Development Agreement were not available for review at the time of the DEIR, and they should have been, since they are part of the Project. The FEIR answers this criticism by stating that all of these contemplated approvals were covered by the EIR. However, without the public seeing these particular parts of the Project, there was no way to determine if they were in fact covered by the EIR. Some of the zoning items and the development agreement could have their own environmental effects and not strictly implement the Plan.

Comment 11.3. The Railroad Museum makes the comment that it was impossible for the EIR to discuss the plans and policies consistency analysis because of the lack of significant information, including the SPD Ordinance. The SPD Ordinance provided the development standards and would have an aesthetic impact in the Railyards Area. The FEIR did not respond to this comment.

Comment 11.5. The Railroad Museum commented that the EIR did not address the roundhouse footprint being excluded from the proposed Historic District. The FEIR did not respond to this comment.

Comment 11.7. The State Railroad Museum commented that the SPD Ordinance was not available for review at the time of the EIR. Appendix H states, "the SPD is intended to become a City Ordinance that will officially govern the manner in which the Railyards Project is constructed." Without the Ordinance it is impossible to tell if the DEIR is adequate. The FEIR failed to respond to this comment.

Comment 11.19. The State Railroad Museum requested the EIR be project-specific for the Railroad Museum. The EIR failed to explain why it could not be project-specific for the Railroad Museum, but was project-specific for the proposed retail projects and other projects proposed within the Specific Plan.

Comment 12.3. The commenter states that the plans and policies consistency analysis is inadequate because of the lack of significant information, including the SPD Zoning Ordinance. The FEIR fails to respond to this criticism about the inadequacy of the consistency analysis.

Comment 12.4. One of the issues raised in comment 12.4 concerns the route of the first Trans-Continental Railroad. The commenter asks that the EIR to disclose whether this route will be covered by buildings. The FEIR fails to answer this concern about the potential covering of historic resources in the answer to comments.

Comment 12.11. The commenter states that the use of historic buildings can make a difference from a historical perspective. For example, a historic building that is used for its historic purpose may have a different historic significance than a historic building that is commercialized for a different purpose, such as selling gifts and tourist trinkets. The FEIR takes the position "that specific uses do not need to be known to assess environmental impact". This may be true for a Program EIR, and for some type of uses, but not historic uses.

Comment 14.4. The FEIR fails to address the need to identify a standard of significance as to the number of additional cases of cancer that would trigger the need for a health-risk assessment. The criticism in Comment 14.4 about the lack of a standard of significance was not answered. Further, the comment of the district stating that 459 cases of cancer in one million should trigger a health risk assessment was not answered.

Comment 14.5. In response to comment 14.5, the FEIR included a significant new section on the impact of greenhouse gases and global warming. However, despite the addition of what amounts to practically a new chapter, the City did not recirculate the EIR for comment. The addition of the information about greenhouse gases is significant, new information.

Comment 14.6. The Sacramento Air Quality Management District commented that there may be changes in air contaminant standards over time and that the Project will have to be adjusted to meet the new standards. This comment was not responded to.

Comment 18.12. The School District commented that the site selected for the school was not satisfactory because it was not a safe distance from the rail line. Further the school district stated that the site was not adequate in size and it should not be adjacent to a police station and fire station. The concerns about the site were not answered in the FEIR, yet the EIR purports to be a Project-level EIR. The FEIR states that it is a Program-level EIR only for schools. The EIR needs to specify in detail for which developments it serves as a Project-level EIR and which developments it serves as a Program-level EIR.

Comment 18.19. The School District comments that pile driving within 1,000 feet of the school would require relocation of the students as a mitigation measure. This comment is not answered at all in the FEIR.

Comment 18.22. Comment 18.22 involves hydrology and water quality. It spans 5 pages in the FEIR and according to the FEIR, it is broken down into sections 18-22(a)- 18-22(j) for purposes of response to comments. However, in fact, in the FEIR response, in the cross-referenced

sections of the FEIR, there are no subdivisions and the reader is told to review section 4.8.1; 4.9.1; 4.9.2; 4.9.3; 4.9.4; 4.9.5 ;4.9.9; 4.9.10;4.9.11; 4.9.12; and 4.9.13 of the FEIR. In reading section 18-22, and reading the referenced sections in the index to comments and responses, it is virtually impossible to determine the FEIR's specific answers to any of the issues raised in section 18.22. The FEIR's response to section 18.22, as much as any comment on the FEIR, demonstrates why the FEIR is inadequate. The FEIR is constructed in a way that it is virtually impossible for the public to use it and understand it.

With respect to section 18.22, the FEIR does not respond to the comment about the impact of impervious surfaces, and does not sufficiently analyze the impacts of the impervious surfaces in the Project area. One of the comments in 18.22 was that the EIR states that the current flows are 10 ft.³/second into the CSS pipeline. "This statement requires clarification with regard to whether this value represents a peak, flow or an average flow in identification of the frequency and duration of the flow." We could identify no answer to this comment.

18.22 further states, "unless the City or County requires a no net increase in peak flows, the analysis of impacts that could be significant either individually or cumulatively does not adequately addressed. Reliance and compliance with NPDES waste discharge is insufficient in and of itself; CEQA mandates that all cumulative impacts be considered and NPDES requirements do not attempt to eliminate all impacts." We could find no answer to this specific comment by a responsible agency.

Comment 18.22 specifically indicates that there may be flooding impacts on the site due to the CSS having insufficient capacity and the city allowing construction to proceed before the CSS is expanded. The comment specifically addressed flooding caused by the Project not being able to discharge storm water flows. This comment was not addressed in the FEIR.

Comment 18.22 raises the problem with applying standard practices to improve water quality. Standard practices, such as grassy swales and soil systems to purify storm water, are not feasible on the Railyards site because of the high concentrations of toxics. The FEIR should have stated how standard practices will apply in light of the specific circumstances at the Railyard site.

Comment 18.25. The School District indicates that the EIR does not address the need for two school sites in the Specific Plan area. The DEIR identifies only one school site. The FEIR does not respond to this comment, stating that the Specific Plan area will just have to pay school impact fees. There is no evidence submitted in the FEIR that the payment of school impact fees will be able to mitigate the impact of an insufficient number of school sites.

Comment 18.26. The commenter asks why more internal intersections within the Specific Plan area were not analyzed in the traffic study. The FEIR does not respond to this comment.

Comment 18.27. The commenter states that if the intersection at 16th and H Street is impacted, it would be logical to evaluate the intersections between the Specific Plan site and 16th and H Street. There is no response to this comment.

Comment 18.29. The commenter states that the DEIR failed to examine the Project impacts if the DNA light rail line was not built. The FEIR responds that the DNA line is reasonably foreseeable. That is not the test set forth in the case of *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173. While the Project may pay fair share impact fees towards the DNA line, the fees must be “part of a reasonable plan of actual mitigation that the relevant agency commits itself to implementing.” There is no plan to fund the DNA line and there is no commitment at this time. Therefore, the EIR should have examined traffic impacts without the DNA line.

Comment 18.31. The commenter states that mitigation measures should be prepared that would fully mitigate the traffic impacts of the Project, so the City Council could decide if the mitigation measures would be acceptable or feasible. This comment was not answered. It appears the commenter is correct that it is improper to reject mitigation measures as infeasible or improper before they are even developed.

Comment 18.34. The commenter states that the reduced intensity alternative was rejected because the development would otherwise go somewhere else. Therefore, the Project is the environmentally superior alternative. CEQA does not permit this type of reasoning. There is no real evidence that there will be massive growth that has to go somewhere else. The future growth in the area is largely speculative.

Comment 21.2. This comment asks whether the Specific Plan EIR addresses the Project's impacts on historic resources on a Program-level or Project-level. This comment is not answered. The commenter also states that the effectiveness of a transition zone of mitigating impacts on the historic district depends upon the boundaries of the historic district. If the boundaries are not known, it is impossible to determine whether the transition zone will be effective in mitigating the impacts on the Historic District. This comment is not answered, and it is obviously correct. Without detailed information about the Historic District and its boundaries, it is impossible to evaluate the purported mitigation measure.

Comment 24.1. The commenter addresses the widening of Railroad Boulevard and questions how the right-of-way would be acquired through the Sims Mill Recycling Facility. This comment is not answered.

Comment 24.2. The author of the comment points out that the EIR fails to include a standard of significance for incompatibility between uses such as industrial and residential. The Final Environmental Impact Report does not answer this comment and fails to consider larger buffers between the industrial and residential uses as requested in the comment.

Comment 22.4. The comment suggests that the residents of the Specific Plan may be disturbed by truck traffic in neighboring industrial areas. The authors of the EIR state that it would have to be compliant with the City's Noise Ordinance. However, truck traffic does not have to comply with the City's Noise Ordinance because it is a mobile source and is not subject to control by the City's Noise Ordinance.

Comment 24.7. In this comment, the author of the comment asks that the City redesign the Project to create a buffer next to industrial areas to protect the residential areas and to protect the industrial uses. There is no answer to this comment.

Comment 25.1. The FEIR does not answer the comment concerning the internal inconsistency regarding the phasing of the project. In some places the DEIR suggests there are five phases and in other places four phases. In Appendix N, the Environmental Impact Report suggests that there will be a retail phase which will be the first phase consisting of construction of one 1,300,000 sq. ft. of retail space.

In response to these comments, the FEIR states: "The EIR did not evaluate an alternative that incorporated an alternative phasing for several reasons. The proposed Specific Plan does not include any Specific Phasing Program. Because the Project is not phased per se a 'rephrased' [sic] Project does not represent an alternative to the Project." If the project has no phases and no timing of construction of different phases, then the EIR includes a change in Project Description. There is no stable project description. The DEIR clearly indicated that there would be phases to the project. Also, if there are no phases and the entire Project can be built in a few years or thirty years, it is impossible to determine the environmental impacts of the Project on a Project level basis. To certify the Project as a Project-level EIR would be a gross violation of CEQA.

Comment 25.2. The Comment suggests that there is an insufficient level of detail for Project-level analysis. The FEIR does not answer this comment but states that staff can decide on a case-by-case basis whether the EIR was sufficient, or whether further review is necessary. This would only be appropriate if the Specific Plan or the EIR included some Guidelines so that the public could determine the criteria for the application of additional environmental review, rather than leaving it totally in staff's discretion. The proposed concept of total discretion violates CEQA and is subject to abuse. (See *Stockton Citizens for Sensible Planning v City of Stockton* (Nov. 28, 2007) 3rd District DCA, Certified for Publication.)

Comment 25.3. The FEIR response to comment 25.3 indicates a misunderstanding of CEQA. Guidelines, §15036(a) requires consultation with surrounding communities regarding transportation issues, whether or not the agency is a responsible agency.

Comment 25.4. The FEIR does not address the confusion within the summary table. The FEIR does not address the comments why portions of the summary table were repeated three times. If the DEIR made an error, the FEIR should at least acknowledge that.

Comment 25.5. The FEIR does not respond to the comment that the Triparty MOU regarding the proposed modifications to the cleanup plan for the area was not available for public review and comment at the time of circulation of the DEIR. The Triparty MOU may have environmental ramifications. The comment regarding the need to have this document available at the time of circulation of the DEIR was not answered.

Comment 25.7. The Project is clearly a changing project. At the City Council hearings on the Project, the Council informed the Public that the Project will not have any one-way streets, in contrast to the Specific Plan that was evaluated in the DEIR. However, there was no new traffic analysis to evaluate the impact of the elimination of the one-way streets. This review would be necessary to determine if additional traffic mitigation was necessary after elimination of the one-way streets.

Most of the questions in Section 25.7 regarding the deficiencies in the consistency analysis were not addressed at all in the FEIR. There is simply no response to comments about the availability of housing for the elderly. There is no discussion about consistency with the General Plan energy goals.

Comment 25.8. The FEIR does not respond to the Comment that the analysis of the impact of TACs is inadequate. The California Air Resources Board says that 500 feet buffer from freeways is appropriate for housing, and 300 minimum. The FEIR includes no standard of significance for TACs. Any threshold level needs to be established and justified, but this was not done in the EIR. The comments on freeway pollutants' impacts on children's health and lung development are totally ignored. An EIR must address a Project's health impacts.

Comment 25.17. The FEIR does not explain the discrepancy between the "Air Quality and Land Use Handbook: A Community Health Perspective" in the analysis in the EIR. The CARB includes in the Handbook there is usually a health risk within 300 feet of a freeway if the freeway carries 100,000 cars per day. I-5 carries substantially more than 100,000 cars per day.

Comment 25.18. The portion of the comment asking for analysis of health risks associated with diesel truck traffic on Richards was totally ignored by the FEIR.

Comment 25.23. The Project EIR should provide information as to the areas on the Project site that have been cleaned up from toxic and hazardous substances, those areas that are in the process of being cleaned up, and those areas where no cleanup has begun. Further, the EIR should state when the groundwater would be cleaned up. The FEIR did not answer these questions and contends that remediation does not have anything to do with the Project. This contention is clearly incorrect as explained in comment 26.3.

Comment 25.24. The comment asks for the Plans for the remediation of hydrocarbons, but there is no answer.

Comment 25.26. The remediation plan for the Central Shops area of the Specific Plan needs to be developed and presented as part of the Project EIR. The Central Shops area cannot be developed without a RAP and a complete remediation plan. The cleanup is part and parcel of the whole Project. If the central shops area cannot be satisfactorily remediated, then the Specific Plan would have to be substantially changed. The Specific Plan indicates that residential development is intended for the Central Shops District. However, there is not sufficient information available to determine whether the Central Shops District can be remediated to a level where housing development is feasible. A study of the Central Shops toxic problems as well as a remediation plan should be part and parcel of the EIR. The Project EIR has impermissibly segmented this essential part of the EIR and the Project from the other portions of the Specific Plan.

Comment 25.27. This comment asks for clarification regarding the constituents of large quantities of inorganic rubble on the Project site. This comment is not responded to in the FEIR. Further, it is not clear whether the inorganic rubble is going to be made a part of Vista Park, even though this question was asked in Comments.

Comment 25.34. The comment asks for the criteria for on-site air monitoring. This comment was not responded to.

Comment 15.36. Comment 25.36 specifically asks the criteria for the health risk assumptions concerning exposure levels that would be acceptable for workers. Instead of listing the various compounds the workers were likely to be exposed to and the acceptable levels of exposure as requested in the comment, the EIR simply does not respond to this comment. Clearly, a potentially significant environmental impact of the Project is to create health risks for workers. The public, as well as the workers, are entitled to know the criteria that will be applied to determine whether there is a health risk exposure to workers for the various toxic substances that are on-site. The failure to provide this information is a violation of CEQA.

Comment 25.37. The commenter asked how the risks of block by block remediation would be controlled. For example, the risks of children climbing fences and playing in dirt on an adjacent construction site that had not yet been remediated. The issues raised in this comment were not responded to in the FEIR.

Comment 25.42. The information concerning the cistern is too vague. In this comment, the authors of the EIR were asked to provide specific information about the dimensions and the design of the cistern. This information has not been provided. Since the cistern must be part of the Project, sufficient details should be made available about the cistern so that the public can judge its effectiveness in controlling storm flows and assuring that untreated water will not be dumped into the river. From the information provided, it does appear that untreated water will be discharged into the river. However, the EIR does not address the impacts of the discharge of untreated storm water into the Sacramento River.

Comment 25.47. The FEIR fails to respond to the comments concerning the standard of significance for noise in outdoor areas. Further, the FEIR uses Ldn as the only standard of significance, and ignores the impact of the SEL noise levels. This approach conflicts with the holding of *Berkeley Keep Jets Over the Bay Committee*.

Comment 25.48. The FEIR fails to respond to the comment which asks the question whether the City's Exterior Noise Level Standards could be met by the Project.

Comment 25.49. The FEIR fails to respond to the comment about whether the Project's failure to meet the Exterior Noise Levels of the City Noise Ordinance would be a significant adverse impact. There is further no response to the comment about the significance of noise impacts if windows are open.

Comment 25.54. This comment asks the authors of the EIR to discuss the Project's traffic impacts on the I Street Bridge, the I-80 Bridge and the Tower Bridge, as well as the intersections in West Sacramento on the west end of the I Street Bridge and Tower Bridge. It would appear apparent that the Project, which produces about 150,000 vehicle trips per day would have a significant impact on bridges over the Sacramento River. The FEIR does not answer this comment.

Comment 25.56. This comment addresses energy and the fact that the EIR does not include any mitigation measures to reduce wasteful and inefficient use of energy. The FEIR takes the position that so long as SMUD and PG&E can supply energy to the Project, the Project doesn't have to include any measures to reduce wasteful and inefficient use of energy. The comment asks the EIR to adopt an adequate standard of significance for energy conservation. The FEIR does not respond to this comment in a comprehensible manner.

Comments of Dr. Mark Grismer. The FEIR does not include adequate responses to the comments of Dr. Mark Grismer.

Comment 25.80. The FEIR does not address the drainage of the additional 24 acres of the Project site, that were not included in the drainage studies.

Comment 26.28. This comment criticizes the fact that the Project description does not include a discussion of phasing. The commenter states the Project should have addressed the phasing included in Appendix N, which was the appendix on urban decay effects. The response to this was that the Project includes no phasing. How can the EIR include phasing for purposes of urban decay impacts, but no phasing in the project description?

Comment 26.2. The construction of a regional mall is buried in an Appendix to the EIR, but not included in the Project description. The commenter suggests that the failure to describe the Project in the Project Description portion of the EIR is a violation of CEQA. The FEIR does not respond to this comment.

Comment 26.3. This comment states that there should be a detailed discussion of the remediation plans within the Project EIR, because the discussion of remediation cannot be separated from the Project. The land use within the Specific Plan Area is related to the level of clean-up. This comment is not responded to.

Comment 26.6. Comment 26.6 states in part as follows: "following CEQA's full disclosure directives, a lead agency must clearly inform the public whether the EIR is a program or Project EIR. If the EIR is a Program EIR, then it needs to explain the subsequent discretionary entitlements and associated CEQA review process for those entitlements. If the EIR is a Project EIR, then it needs to be revised to set forth Project-level detail and not improperly defer mitigation. By identifying itself as a "Specific Plan EIR" and not addressing the issue of whether it is a Project or a Program EIR, the DEIR fails to explain how the City's certification of this EIR relates to the subsequent entitlements in the Railyard Specific Plan. This frustrates CEQA's goal of promoting informed-decisionmaking." The FEIR fails to address this important comment. Essentially, the EIR provides a carte blanche to the City Staff to treat the EIR as a Project EIR when staff wants to, and as a Program EIR when staff wants to. CEQA does not allow this discretion without identifying criteria that will be applied to formulate the decision. The FEIR does not provide any satisfactory response to comment 26.6.

Sincerely,

A handwritten signature in black ink, appearing to read "Will D. Kopper". The signature is fluid and cursive, with a large, stylized "K" at the end.

WILLIAM D. KOPPER

WDK/sw