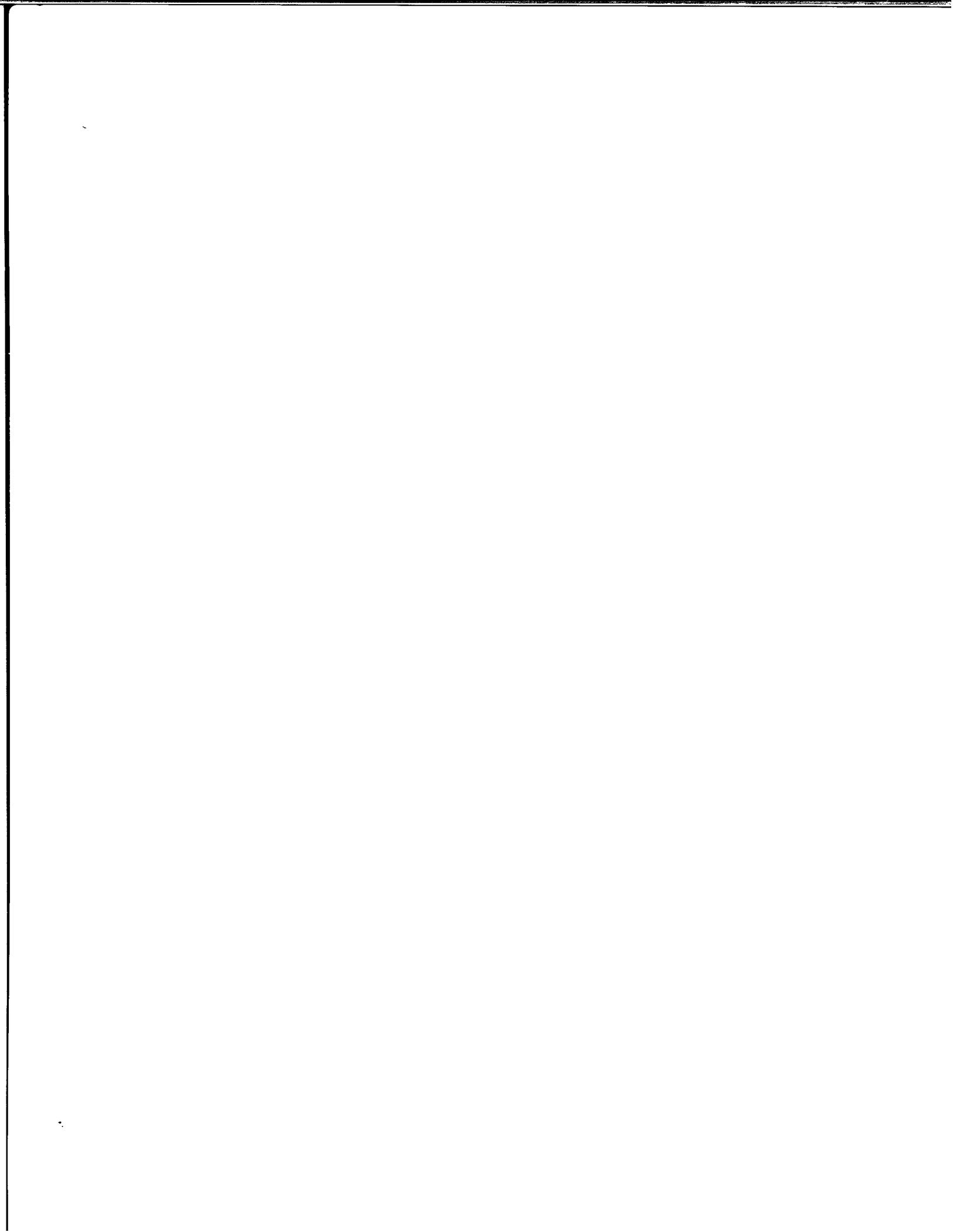


EXHIBIT B



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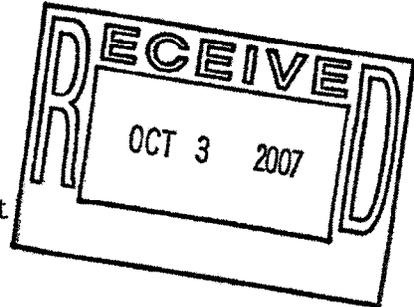
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October 3, 2007

SENT VIA HAND DELIVERY

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



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

Dear Mr. Johnson:

Thank you for the opportunity to comment on the Draft Environmental Impact Report ("DEIR") for the Railyards Specific Plan ("Railyards" or "Proposed Project" herein). These comments are submitted on behalf of Downtown Plaza, LLC, which owns the Sacramento Downtown Plaza.

While generally agreeing with the City's broad vision for redevelopment of the Railyards, Downtown Plaza LLC has some serious concerns about the Proposed Project and the DEIR that is required to identify the potentially significant impacts of the Proposed Project.

First, the development plans that are actually being proposed by the Developer appear inconsistent with the Proposed Project's stated Objective to "[c]reate a dynamic 24-hour mixed use urban village that provides a range of complementary uses . . ." (DEIR p. 3-11). Far from an "urban village," these development plans appear focused on front-loaded retail uses with potential complementing residential and office uses possibly 20 years into the future.

Second, it appears that the DEIR itself is seriously deficient in numerous fundamental aspects that are described more fully below. Unless these deficiencies are cured, the City Council may approve a project that will result in undisclosed and unmitigated significant environmental impacts. The DEIR's most serious deficiencies include:

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- A misleading project description that fails to provide relevant phasing information and impermissibly segments both the hazardous material remediation activity and the City's purchase of the Intermodal Transit Facility ("ITF") site;
- A fatally flawed analysis of Toxic Air Contaminants that fails to analyze health risks in accordance with established local protocol, and fails to disclose potentially serious impacts to future residents, visitors, and patrons of the Proposed Project;
- A refusal to analyze Global Climate Change impacts;
- An archaeological study and mitigation measures that protect archaeological resources on only a portion of the site;
- A traffic analysis of an impermissibly narrow scope; overstates the realistic use of transit, bicycle and pedestrian use; and fails to adequately explain "fair share" mitigation measures;
- Dismissive analysis of impacts to police services, fire services, parks and open space;
- No analysis of potential urban decay;
- An analysis of visual resources that conclusively assumes less than significant impacts resulting from high-rise buildings along the Riverfront;
- A failure to disclose the nature and extent of contamination in the Riverfront District;
- Mitigation Measures in a variety of subject areas that are unenforceable;
- Failure to require construction of facilities that would prevent polluted storm water runoff from entering the Sacramento River;
- A hydrologic discussion that does not take a hard look at critical water supply issues in the Sacramento Region;
- Failure to consider an environmentally superior alternative that is feasible and satisfies all of the stated Project Objectives.

26-1
(con't.)

A DEIR is required to promote the goal of informed decision-making that is the heart of the California Environmental Quality Act ("CEQA"). It appears, however, that significant revisions to the DEIR are necessary before the City's decision-makers and general public will be adequately informed about the nature of the Proposed Project and its potentially significant impacts.

We understand that development of the Railyards represents a unique opportunity due to its characteristics as a large in-fill project of an undeveloped "brownfield" property in the heart of downtown Sacramento. The unique

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characteristics of the location are all the more reason to ensure that these unanswered issues are addressed so that both the decision-makers and general public are fully informed about the nature of the Proposed Project and its potential environmental impacts going forward. This is not a time to do the minimum¹, but rather to fully engage the public and fulfill CEQA's mandate of informed public participation.

26-1
(con't.)

This letter also attaches and incorporates detailed comments on the DEIR that have been prepared by consulting firms with advanced expertise in the various technical disciplines that are analyzed in this DEIR. [See Attachment A (HR&A Advisors, Inc.); Attachment B (Carter Burgess); Attachment C (Carter Burgess); Attachment D (PCR Services Corporation); Attachment E (VRPA Technologies, Inc.)].

I. Project Description

CEQA has two basic purposes. First, CEQA is designed to inform decision makers and the public about the potentially significant environmental effects of a project. CEQA Guidelines §15002(a)(1). "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made." Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 564. Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures. CEQA Guidelines §15002(a)(2)-(3).

Several deficiencies exist in the DEIR's description of the Proposed Project that render the DEIR fatally flawed as an informational document.

a. Inaccurate Project Description

An essential element of CEQA's informed decision-making is to provide the lead agency and general public with an accurate and consistent description of a proposed project. County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d 185. Here, however, the DEIR appears to provide an inadequate and misleading Project Description.

26-2

¹This DEIR includes the statutory minimum 45-day public comment period while the prior DEIR for the 1993 Specific Plan included a 90-day public comment period. It also appears that the Planning, Design and Preservation Commissions will not have the benefit of a Final EIR before being asked to make their recommendations to City Council.

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The DEIR's Project Description provides in relevant part:

As shown in Figure 3-5, Land Use Plan, the Specific Plan Area consists of five land use designations, which are described below

...

- Residential 12,100
- Office 2.4 msf
- Hotel 1,100 rooms
- Historic and Cultural 485,390 sf
- Mixed use Flex Space 491,100 square feet, which could be developed as 491,000 of office, retail or other non-residential users or approximately 400 residential units or some combination of these uses.

(DEIR, p. 3-13).

This description is inaccurate and misleading because it entirely ignores the massive amount of retail space that is also planned for the Proposed Project. Appendix N to the DEIR explains that the Proposed Project will also include 1,539,000 square feet of retail space. (DEIR, Appendix N, p. 6). Yet this 1,539,000 square feet of retail space was not included in the DEIR's "five land use designations" described in the Project Description.

Also buried in Appendix N is the fact that this massive² amount of retail space will be constructed before most of the other "five land uses" described above. As explained in the attached analysis by HR&A Advisors, the Proposed Project includes a four-phase implementation schedule. (Attachment A, p.2). The first phase, identified as "1A" and "1B," includes 1.1 million square feet of retail space while only providing 773 residential dwellings. (City staff report dated August 15, 2007, p. 10). As further explained by the firm Carter Burgess, the Proposed Project's retail component will also include an approximately 200,000 square foot Bass Pro Shop. (Attachment B, p. 3). This big-box retail store is apparently intended to constitute a significant regional draw³ of retail customers to the Proposed Project.

² "If the proposed Railyards is built, it would . . . nearly double the amount of existing retail space currently existing in the four concentrated locations within Downtown Sacramento." (DEIR, Appendix N, p. 14).

³ On July 25, 2006, the Developer explained to the City Council that the Bass Pro Shop would constitute such a strong regional destination that customers would travel into Sacramento, stay at a hotel adjacent to the store, and spend the next day at the Bass Pro Shop.

26-2
(con't.)

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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.

The Project's Description's failure to identify the significant amount of retail and its phasing schedule misleads the public regarding the true nature of the Proposed Project and constitutes a fundamental violation of CEQA. McQueen v. Board of Directors (1988) 202 Cal.App.3d 1136, 1143 ("An accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity"). Far from providing an accurate project description, it appears that critical information regarding the nature of the Proposed Project was literally "buried in an appendix" as admonished in Santa Clarita Organization for Planning the Environment v. County of Los Angeles (2003) 106 Cal. App. 4th 715, 723.

This Regional Shopping Mall development concept, nowhere described in the DEIR's Project Description, would appear to actually frustrate one of the Proposed Project's stated objectives to create a transit-oriented development. As explained by Carter Burgess:

There are three significant drawbacks associated with front-loading the project phasing with large-box and regional-oriented retail uses. First, the phasing may impede realization of the land use synergies necessary for a successful transit oriented development (TOD), by postponing the smaller-scale, neighborhood-oriented uses to the latter stages of the project. Given the cyclical nature of the residential market, and the structure of the phasing program (which includes a super-majority of the retail commercial development and a super-minority of the residential development in the Initial Phase) ***the City could lose the opportunity to create a truly mixed-use urban village as envisioned in the project objectives.***

(Attachment 2, p. 3) (emphasis added).

Consistent with the concerns raised by Carter Burgess, the Developer has given no commitment regarding timelines for the subsequent phases of the

26-2
(con't.)

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development that may ultimately provide more of the desired “urban, mixed-use” development set forth in the Project Objectives. As recently as September 11, 2007, the Developer could not provide a specific timeline for construction of these subsequent phases. (Oral statement by the Developer at the joint session of Planning, Design and Preservation Commission, September 11, 2007).

26-2
(cont.)

In summary, the DEIR’s misleading and inaccurate Project Description contributes to the serious questions regarding whether the Proposed Project will consist of a truly mixed-use, urban village or rather a suburban-style Regional Shopping Mall anchored by big-box retail. It is impossible to have any “intelligent evaluation” about the Proposed Project until this deficiency is corrected. McQueen, supra, 202 Cal.App.3d at 1143.

b. Segmenting the Remediation Activity

The CEQA Guidelines require a “project” to include “the whole of the action . . .” CEQA Guidelines §15376. Put another way, an EIR’s Project Description must not omit integral components of a project. Santiago County Water Dist. v. County of Orange (1981) 118 Cal.App.3d 818, 829. The DEIR’s Project Description is flawed because it intentionally omitted the remediation activity at the Railyards site.

The Proposed Project’s Notice of Preparation (“NOP”) stated that the DEIR would include an analysis of the potential impacts of the remediation activity at the Railyard site, explaining in relevant part, “[T]he EIR will analyze potential impacts that may be associated with possible revisions to the approved Remediation Action Plans for contamination on the site and the related Tri-Party Memorandum of Understanding between the City, Department of Toxic Substances Control (DTSC) and UP Railyards.” (Exhibit 1, Railyards NOP dated March 10, 2007).

26-3

In an abrupt change in position, however, the DEIR expressly refuses to consider the environmental impacts of the remediation effort on the site. On this issue the DEIR states:

The Specific Plan Area is currently undergoing remediation of contaminated soils and groundwater. The remediation of the Specific Plan Area must proceed pursuant to Department of Toxic Substance Control’s (DTSC) order irrespective of development of the Specific Plan Area. The remediation studies and plans have been subject to CEQA under the jurisdiction of the city of

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Sacramento and DTSC (see Appendix I). ***Because remediation of the Specific Plan Area as a project is independent of the Specific Plan, the environmental effects of remediation activities are not evaluated in this EIR.***

(DEIR, p. 1-2) (emphasis added).

Thus, contrary to the NOP, the DEIR does not include an analysis of the impacts of the remediation because it is “independent” of the Specific Plan.

This conclusion might be justified if the remediation effort were truly independent. But it is simply not accurate to assert that the remediation effort is “independent” from the Proposed Project because the remediation is actually being modified to accommodate the Proposed Project. In other words, the remediation and the development entitlement process are so intertwined that it is impossible to assert that one is “independent” from the other.

There is no question that the remediation effort has been modified to accommodate development changes brought about by the Proposed Project. As explained in the DEIR:

The RAP [Remedial Action Plan] was modified again in 2003 to include grading and capping the northwest corner in place with an engineered cover overlain by asphalt-concrete on the top deck and vegetative soil on the side slopes. Subsequent to that amendment, remedial actions at the Railyards have progressed and ***future land uses evolved such that additional modifications to the amended RAP were warranted.*** . . . ¶

In response to concerns raised by the city of Sacramento and DTSC, the ***Vista Park cap design was changed in 2006, in part to facilitate the alignment of an extension of 6th Street*** through the specific Plan Area.

(DEIR, p. 6.5-12) (emphasis added).

The DTSC’s “Explanation of Significant Differences” for this RAP modification further explains the reason for this change:

The draft 2006 revised development plans for the Sacramento Railyard anticipate the proposed land use of the NW corner to be a 13-acre “open space”, more specifically defined as a public park. A

26-3
(cont.)

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Health Risk Assessment Addendum (HRAA, May 2005) was performed to evaluate the more focused open space scenarios of potential adult and child park users.

(Exhibit 2, DTSC Explanation of Significant Differences, p. 4).

Recent correspondence from the Regional Water Quality Board further demonstrates that changes to development plans will affect the remediation. As stated in a letter dated June 8, 2007, "We understand that a new development plan has been completed which appears to have an impact on the design of the footprint and possibly on other features of the containment unit." (Exhibit 3, letter from Regional Board to DTSC dated June 8, 2007, p. 3).

In short, far from being "independent" as claimed in the DEIR, there is ample evidence demonstrating that the remediation effort is an essential component of the Proposed Project because it is being revised to accommodate the Project. These activities are intertwined, and anything but "independent."⁴

In fact, this was the position previously taken by the City with respect to the initial Railyards Specific Plan EIRs in 1993 and 1994. At that time, the City believed that the Railyards Specific Plan and the remediation of the Railyards site were the same project. As explained in the DEIR for the 1993 Railyards Specific Plan:

The known and suspected presence of hazardous materials in the Railyards and Richards Areas presents the potential for exposure of future workers or residents to toxic contaminants. Although these impacts are considered significant for all of the Alternatives, ***the alternatives that contain substantial residential development, particularly in the Railyards Area, could be considered to present the greatest potential for long-term exposure effects.*** A program for mitigation of these impacts is presented that involves careful investigation and testing of soils

⁴Even if we assume, *arguendo*, the correctness of the DEIR's position that certain areas of the Railyards are subject to existing remediation plans and are therefore properly segmented from the Proposed Project, this analysis would not apply to other remediation areas that do not yet have approved Remediation Action Plans such as: (i) Central Shops, (ii) Manufactured Gas Plant; (iii) MGP Groundwater Plume; (iv) Central Shops/South Plume; (v) Lagoon Groundwater Study Area. (DEIR, p. 6.5-10). For these areas, there is no question that the subsequently prepared RAPs will be based on land uses derived from the Proposed Project.

26-3
(cont.)

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and groundwater, intricate ties between the remediation and development approval processes, and long-term oversight and monitoring of land use activities in the Planning Area.

(Exhibit 4, 1992 Railyards DEIR p. 1-23) (emphasis added).

The City reaffirmed the interconnectivity between the development plans and the remediation effort in its 1994 Supplemental EIR for the Railyards Specific Plan. The purpose of the Supplemental EIR was to “evaluate[] the environmental effects of the lead soil remediation alternatives described in the draft Feasibility Study prepared by Southern Pacific Transportation Company (SPTCo).” (Exhibit 5, 1994 SEIR p. 1-1). The City explained in that document why it was engaging in this supplemental analysis:

Although the City does not have authority to approve or reject a lead remediation approach, **it must examine the new information included in the Feasibility Study in connection with the land use approvals it expects to consider for the Railyards.** This DSEIR evaluates potential environmental impacts arising from the remediation approach recommended by SPTCo in the Feasibility Study as well as some of the Alternative Approaches included in that document. **While the City will not select a remediation approach, it must consider whether any of the potential approaches would affect its land use decisions.**

(Exhibit 6, 1994 Railyards SEIR p. 5.1-1) (emphasis added).

Thus, in 1993 and 1994 the City believed that the remediation effort was so central to the development of the Railyards that the City prepared a Supplemental EIR to consider these various remediation approaches that “would affect its land use decisions.” *Id.* The remediation effort appears to be anything but “independent” from the land use decisions.

We also note that the Proposed Project’s “Required Discretionary Actions” includes “Approval of the revised tri-party memorandum of Understanding (“MOU”) between DTSC, City of Sacramento, and the applicant.” (DEIR, p. 1-7). This MOU was an express Mitigation Measure in the 1993 Railyards Specific Plan to mitigate for potential impacts resulting from the presence of hazardous materials and the remediation effort. [1992 DEIR, MM 4.13-1(d), MM4.13-6(e); MM4.13-10(g)]. It now defies logic to assert that the remediation is independent from the Proposed Project when one of the mitigation measures for the remediation effort, namely the MOU, is expressly identified as a component

26-3
(con't.)

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of the Proposed Project.

In summary, the DEIR's assertion that the remediation effort is a separate, independent project is belied by both the facts and the law. Instead, the City's position asserted in the 1993 EIR, 1994 SEIR and 2006 NOP are correct in that any revisions to the remediation are components of the Proposed Project and should be analyzed as such. The DEIR must include an analysis, as plainly forecasted in the NOP, describing how any changes to the remediation effort may result in substantial impacts to the environment. It cannot be said on the basis of the information presented in this DEIR that no significant unavoidable impacts on proposed land uses will occur due to existing contamination, notwithstanding implementation of remediation plans designed for other uses in earlier plans. CEQA requires a full disclosure of this issue to both the City's decision-makers and the general public in order to satisfy its obligation as an informational document.

26-3
(con't.)

c. The Intermodal Transit Facility and its Acquisition

The DEIR's Project Description is deficient as an informational document because it impermissibly segments the City's acquisition of the Intermodal Transit Facility ("ITF") site.

The Proposed Project's NOP explains that the ITF is a component of the Proposed Project. As explained in that document:

PROJECT DESCRIPTION

The EIR will provide a programmatic evaluation of the "Railyards Specific Plan" and related entitlements pursuant to section 15168 of the CEQA Guidelines and the proposed Sacramento Intermodal Facility. . .

26-4

(Exhibit 1, p. 2).

Consistent with that position, the City in December 2006 approved a resolution authorizing a purchase and sale agreement with the Developer for the acquisition of the ITF site. According to the City's staff report dated December 5, 2006, the City's acquisition of the ITF site was a component of the Proposed Project. As plainly stated in that report:

The Purchase and Sale Agreement and the Track Relocation Financing Agreement represent the first phase of the formal

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partnership between the City and S. Thomas Enterprises of Sacramento, LLC (Thomas) for development of the Downtown Sacramento Railyards. These agreements were requested by Thomas prior to their closing escrow and taking ownership of the Railyards property. . . ¶

Approving these agreements creates the first phase of the public-private partnership necessary to develop the Railyards and the Intermodal facility.

(Exhibit 7, City staff report dated December 5, 2006) (emphasis added).

In short, the Proposed Project includes both the Specific Plan and the ITF. And the City's purchase of the ITF site is the "first phase."

Recognizing that the City's acquisition of a portion of the ITF site was subject to CEQA, the City resolved to "conditionally" approve the acquisition subject to subsequent CEQA review. As explained in the staff report:

An environmental impact report (EIR) is being prepared to evaluate the environmental impacts of the development, including the ITF. The EIR is estimated to be completed by the summer of 2007. . . ¶
The acquisition of Parcel B will require additional City Council approval to take place in conjunction with, among other things, certification of the EIR.

(Exhibit 7, Staff Report Attachment 1).

But this subsequent CEQA review never occurred. The DEIR includes no description or analysis of the City's acquisition of the ITF. In fact, the DEIR's list of "Project Approvals and Entitlements" does not even give a reference to the City's acquisition of the ITF.

CEQA requires an EIR to analyze "the whole of the action." CEQA Guidelines §15378(a). Here, the whole of the action – as explained by the City as recently as eight months ago – includes the ITF and the City's acquisition of the ITF site. In fact, the City already approved the acquisition of the ITF in reliance on the fact that it would be analyzed in this DEIR. The failure to now even identify the City's approval of the ITF as a component of the Proposed Project is the hallmark of an impermissibly segmented EIR. The recirculated DEIR for the Proposed Project must analyze the City's acquisition of the ITF site.

26-4
(con't.)

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d. Wholesale Changes to the Project

Even correcting the misleading and segmented project description described above may not cure the ultimate deficiencies in the DEIR's project description because the Proposed Project is presently undergoing "wholesale changes" that will apparently not be addressed in the DEIR. This will result in further misleading the general public and impede informed decision-making on the Proposed Project.

Even accounting for the improperly segmented analysis, the Proposed Project consists, in large part, of the City's adoption of a new Railyards Specific Plan. On this issue the DEIR explains, "The project proposes adoption and implementation of the proposed Railyards Specific Plan and approval of related entitlements." (DEIR, p. 1-1). The Specific Plan itself provides further explanation:

The Specific Plan is the overarching policy document that guides development within the Railyards Plan Area, but it works together with three other documents that provide specific guidance on matters relating to urban design, development regulations and permitting: the *Railyards Design Guidelines*, the *Railyards Special Planning District Ordinance* (SPD) and the *Central Shops Historic District Ordinance*.

26-5

(Railyards Specific Plan, draft dated August 20, 2007, p. 1).

Yet it appears that the City is now proposing to make self described "wholesale changes" to the Proposed Project that will not be subjected to public or environmental review. On the evening of October 2, 2007 – the day before the close of the public comment period on the DEIR – City staff publicly revealed that both the Specific Plan (the "overarching policy document") and the *Design Guidelines* were undergoing "wholesale changes" that would be completed in "three weeks." (Oral statement by City Staff at Joint Session on October 2, 2007). Although not expressly describing the scope of these changes, the Developer and City staff explained that they were "going through the documents page by page" in order to make these "wholesale changes" to the documents.

Moreover, City staff further explained at the Joint Session that the SPD was still in draft form and not yet even available for public review. The only document concerning the SPD that was publicly available consisted of a single-

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page flow chart identifying a proposed approval process for subsequent entitlements. (Exhibit 9). Even this single-page flowchart generated great concern by several commissioners at the Joint Session and will likely be substantially revised.

In summary, it appears that the underlying Project is being subjected to fundamental revision that will not even be completed until well after the public comment period on the DEIR. Yet there was no discussion regarding preparation or recirculation of a new DEIR for this revised project. Instead, City staff explained that the approval process would continue to move forward as initially proposed.

This result confounds CEQA's policy of promoting informed decision-making. "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." County of Inyo, supra, 71 Cal.App.3d 199. Yet an accurate project description is impossible when the underlying Project is undergoing "wholesale changes" after the close of the public comment period. The only way to cure this fundamental defect is to revise and recirculate a new DEIR after the Developer and City agree on a new proposed project.

26-5
(con't.)

II. Failure to Properly Define the Type of this EIR

The deficiencies in the DEIR's project description are further exacerbated by the failure to identify the nature of the DEIR itself and how it will be used in connection with further entitlements within the Railyards Specific Plan area.

The Notice of Preparation ("NOP") for the Proposed Project addressed the type of the forthcoming EIR by explaining:

Pursuant to CEQA Guidelines section 15168, the EIR is being prepared as a program level EIR for the "Railyards Specific Plan" and the Sacramento Intermodal Facility. . . It is also intended that the EIR will provide Project Level review of development in the Project level Area of The "Railyards Specific Plan."

26-6

(Exhibit 1, p. 1).

This strategy from the NOP was not carried forward into the DEIR. Instead of plainly explaining how the EIR would be used on a project or program level, the DEIR created for itself a new term, a "Specific Plan EIR," and

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declined to squarely address the issue.

The DEIR asserts, “[U]se of a Specific Plan EIR to cover later activities is addressed in Public Resources Code section 21080.7 and CEQA Guidelines Sections [sic] 15168(c).” (DEIR p. 1-4). This statement is incorrect. First, Public Resources Code section 21080.7 does not exist. The term “Specific Plan EIR” does not exist in the Public Resources Code, or any of the California Codes. Moreover, the DEIR’s reference to CEQA Guidelines section 15158(c) is incorrect because that regulation never mentions a “Specific Plan EIR.” Instead, that regulation concerns “Program EIRs.” CEQA Guidelines §15168(c). Accordingly, the DEIR’s argument regarding “use of a Specific Plan EIR” has no legal support.

The ambiguity in the DEIR’s description is significant. On one hand, the DEIR refers to CEQA Guidelines section 15168, which creates an impression that it is considered a Program EIR. On the other hand, the DEIR states that specific developments will not require additional CEQA review if the impacts are adequately analyzed in the DEIR. (DEIR, p. 1-4). Curiously, the DEIR never describes any of these subsequent entitlements that will be reviewed “in light of this EIR.” (DEIR, p. 1-3). Additionally, the DEIR makes a point of stating that future development projects within the Specific Plan Area may not even require discretionary entitlements.

This concern was raised by several commissioners during the joint public hearing on September 11, 2007. They expressed concern that subsequent entitlements may be approved by Planning Staff without a public hearing, and without any input by the Design Commission, the Preservation Commission, the Planning Commission or the general public. This cursory approval process is generally indicative of a ministerial approval that may not even be subject to CEQA.

The location of the Railyards site makes this development too significant to simply “hand the keys over to the Developer” and hope that the Developer follows through on its promises. Indeed, the misleading Project Description contained in the DEIR provides some indication that this strategy could result in an undesired outcome. To prevent this, the DEIR must identify the future discretionary entitlements (if any) that will be issued for the Proposed Project and the associated scope of CEQA review for those entitlements. If, on the other hand, this DEIR represents the final opportunity for CEQA review – and, by extension, the final opportunity for public review – then this also must be made clear.

26-6
(cont.)

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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 the 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 subsequent entitlements in the Railyards Specific Plan. This frustrates CEQA's goal of promoting informed decision-making.

26-6
(cont.)**III. Air Quality**

A detailed review of the DEIR's treatment of air quality issues was performed by PCR Services Corporation ("PCR"). (Attachment D). PCR's technical review of the DEIR's treatment of air quality issues identified substantial deficiencies in the areas of Toxic Air Contaminants ("TAC") and Global Climate Change ("GCC"). PCR's comments are incorporated by this reference. (See Attachment D).

a. Toxic Air Contaminants

PCR conducted a review of the DEIR's analysis of TACs and identified numerous deficiencies. These deficiencies are briefly summarized herein:

- (i) Inappropriately applying SMAQMD's screening methodology to arrive at an incorrect significance criteria of lifetime increased cancer risk of 446 per million (Attachment D, pp. 1-2);
- (ii) Failure to disclose the assumptions made in the DEIR's analysis, namely the distance from residential land uses to Interstate-5 (Attachment D, p. 3);
- (iii) Failure to perform an analysis that considers the potential effect on sensitive populations arising from exposure to multiple sources (mobile sources along I-5, rail operations and construction activities) (Attachment D, pp. 4-5).

26-7

According to PCR, "Given the complex spatial and temporal nature of TAC emissions from the freeway, rail operations, and on-going construction in the Specific Plan Area, it is suggested that a detailed refined [health risk assessment] be performed to better quantify the compounding risks."

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(Attachment D, p. 4). Applicable SMAQMD guidance dictates that a refined analysis is most appropriate to quantify the risks resulting from the Proposed Project. The results of this comprehensive HRA need to be disclosed under CEQA; therefore the "Draft EIR should be re-drafted and recirculated."
(Attachment D, p. 5).

26-7
(con't.)

The DEIR's analysis of TACs must be fundamentally revised to properly disclose the Proposed Project's potentially serious health risk impacts to future residents, visitors and patrons of the Proposed Property and identify feasible mitigation measures for any potentially significant health risks.

b. Global Climate Change

PCR reviewed the DEIR's treatment of the GCC issue. (Attachment D, p. 5). According to PCR, "The Draft EIR errs in its assertion that Global Climate Change (GCC) should not be addressed in the Impacts Analysis." Id.

The DEIR expressly refuses to consider the Proposed Project's impacts to GCC. In a section entitled "**Issues Not Addressed in the Impacts Analysis**" the DEIR provides:

The City believes that the appropriate approach to addressing the issue of global warming is through the adoption of policies, ordinances, and regulations rather than the imposition of conditions on a project-by-project basis as discussed below.

26-8

(DEIR, p. 6.1-17).

This refusal to analyze the GCC issue is not allowed under CEQA. According to the CEQA Guidelines, "If, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact." CEQA Guidelines §15145. Here, by contrast, the City terminates its analysis of the GCC issue without any investigation. Even though it is feasible to do so, the DEIR does not include a quantitative analysis of the Proposed Project's Greenhouse Gas ("GHG") Emissions. Nor does the DEIR even include a qualitative discussion of the Proposed Project's impacts to GHG Emissions. Far from conducting a "thorough investigation," the DEIR expressly refuses to conduct any discussion of the impact.

In short, the DEIR fails to proceed in a matter required by law because it

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is required to at least provide a “thorough investigation” of the GCC issue before ultimately concluding that it may be too speculative to determine whether impacts are significant. CEQA Guidelines §15145.

↑
26-8
(con't.)

IV. Archaeological Resources

PCR reviewed the DEIR’s analysis of archaeological impacts resulting from the Proposed Project. PCR identified several deficiencies in the DEIR’s analysis that are incorporated by this reference. (Attachment D, pp. 6-7).

Most significantly, it appears that the DEIR’s deficient explanation of whether it is a project or program EIR has resulted in an incomplete analysis of archaeological resources. As explained by PCR, the DEIR’s technical report on archaeological resources, contained in Appendix G to the EIR, included only the Proposed Project’s “Initial Phase Area” within the geographic scope of review. (Attachment D, p. 6). Consequently, the technical report identified “Archaeologically Sensitive Areas” only within the “Initial Phase Area.” (Attachment D, pp. 6-7).

While the technical report only addressed the “Initial Phase Area,” the DEIR’s analysis of archaeological impacts expressly includes the entire Specific Plan Area. [DEIR, p. 6.3-47 (“The Proposed Project could cause a substantial adverse change in the significance of an archaeological resource . . .”).]. Consequently, the associated Mitigation Measure (6.3-1) also addresses the entire Specific Plan Area. While this mitigation measure is intended to cover the entire Specific Plan Area, this measure only requires testing and monitoring in “Archaeologically Sensitive Areas,” which in turn are located in the smaller “Initial Phase Area.”

26-9

The DEIR states, “A more detailed analysis was prepared for the area within the Initial Phase . . .” (DEIR, p. 6.3-46), but never explains why the Proposed Project’s mitigation measure is not similarly limited, or when the necessary archaeological study will be conducted for the balance of the Special Plan Area. The result of this disjointed review of archaeological resources was explained by PCR:

There is potential for archaeologically sensitive areas to not have been appropriately studied, defined, or mitigated. Thus, significant archaeological resources within the Specific Plan Area may remain unidentified and undisclosed.



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(Attachment D, p. 7).

This defect can be corrected when the DEIR is recirculated and clarifies whether it is a project or program EIR. If a project EIR, then the technical study must include “a more detailed analysis” for *all* portions of the project site. If a program EIR, the recirculated DEIR will explain when the subsequent archaeological review will occur and not incorrectly extend mitigation measures intended for an “Initial Phase Area” into the entire Special Plan Area.

26-9
(cont.)

V. Transportation and Circulation

VRPA Technologies, Inc. (“VRPA”) conducted a detailed peer review of the DEIR’s analysis of traffic and circulation issues. VRPA’s detailed comments are attached and incorporated by this reference. (Attachment E).

a. Impermissibly Narrow Traffic Study

VRPA reviewed the geographic scope of the DEIR’s traffic study and found that it did not utilize any objective methodology to define the proper scope of study. Instead, it appears that the study intersections and road segments were subjectively selected during a meeting of the City and the traffic consultant. (Attachment E, p. 1). This subjective methodology was employed notwithstanding the fact that the City publishes an objective methodology for identifying study intersections and road segments. (Attachment E, p. 2).

26-10

According to VRPA, the failure to utilize an objective methodology for identifying the study area may result in significant traffic impacts remaining undisclosed. (Attachment E, p. 1).

To correct this deficiency, the traffic study must be expanded to include “all intersections that will attract 100 or more peak hour trips based upon the select zone analysis using the regional traffic model.” (Attachment E, p. 2).

b. Unsupported Trip Generation Adjustments

The DEIR’s traffic study estimated approximately 25% trip adjustment attributable to transit, walk, bike and other modes including the light rail. According to VRPA, this trip adjustment is not supportable as it relates to retail uses and should either “be eliminated or reduced significantly.” (Attachment E, p. 4).

26-11

As explained by VRPA, the DEIR cannot have it both ways with respect to

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transit use. If the DEIR relies on unusually high pedestrian, bicycle and transit rates to predict lower vehicle trips for the proposed project, then the DEIR must propose enforceable mitigation measures to ensure that these alternate modes are actually utilized as predicted. Moreover, the DEIR must also include an analysis of the impact of these increased transit trips on the alternate transit facilities. (Attachment E, pp. 6-7).

26-11
(con't.)

c. Inadequate Discussion of "Fair Share" Mitigation Measures

Several mitigation measures for traffic impacts (Mitigation Measures 6.12-1(a), (b), (c), (d), (e), (f), (g), (j), (l), (m), (n), (o), (p), (q), 6.12-6, 6.12-10(b), (c), (d), (f), (g), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), 6.12-16(a), (b), (c), (d), (f), (g), (h), (i), (j), (m), (n), (o), (p), (q), (s), (t), (u), (v), (w), (x), (y), (z), (aa), (bb), (cc)) rely on "fair share" impact fee payments for identified traffic improvements. The DEIR's analysis of these "fair share" impact fee mitigation measures is inadequate.

The payment of a "fair share" impact fees may constitute adequate mitigation if they "are part of a reasonable plan of actual mitigation that the relevant agency commits itself to implementing." Anderson First Coalition v. City of Anderson (2005) 130 Cal.App.4th 1173. The payment of a "fair share" impact fee is not adequate mitigation, however, when there is no evidence that the payment of the fee will actually result in mitigation of a project's significant environmental impacts. The Anderson First decision identified the information that is required in an EIR to establish the adequacy of a "fair share" impact fee mitigation measure. The required elements from the Anderson First decision include:

26-12

- (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:
 - (a) Required in, incorporated into the project;
 - (b) Fully enforceable through permit conditions, agreements, or other measures; and
 - (c) The agency must adopt a monitoring program to ensure that the mitigation measures are implemented.

Anderson First, *supra*, 130 Cal.App.4th at 1188-89.

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Here, the DEIR falls well short of providing this information regarding the improvements identified in these above mitigation measures. Instead, the DEIR simply identifies the proposed improvement and states that the “project applicant shall pay a fair share . . .” (DEIR, p. 6.12-100). No cost of the improvement is provided. No formula to actually determine the “fair share” contribution is provided. The amount of the “fair share” is not provided. There is no explanation how these “fair share” fees are tied to an enforceable plan or program that will ultimately result in the proposed improvement.

For a few of these mitigation measures the DEIR explains, “The City has included the cost of this improvement in its approved Richard Boulevard Area Plan and Facility Element and the project applicant shall provide ‘fair share’ funding for this improvement through payment of traffic impacts fees in accordance with the Railyards Financing Plan.” (DEIR, p. 6.12-101). The failure in this analysis, however, is that the “Railyards Financing Plan” was not provided with the DEIR.⁵ While a “Sacramento Railyards – Financing and Maintenance of Public Facility Improvements Summary” was included as Attachment P to the DEIR, this summary document provides none of the requisite detail.

26-12
(cont.)

In summary, the DEIR’s discussion of the “fair share” mitigation measures is inadequate under CEQA because the DEIR fails to establish that the payment of the “fair share” impact fee will actually result in the identified improvements.

VI. Public Services

A technical review of the DEIR’s treatment of public services was performed jointly by the firms HR&A Advisors, Inc. and Whitney & Whitney, Inc. (jointly referred to as “HR&A”). HR&A’s comments on the DEIR are included as Attachment A.

26-13

a. Inadequate Analysis of Parks and Open Space

HR&A conducted a technical review of the DEIR’s treatment of impacts to Parks and Open Space. HR&A found: (i) the DEIR understated the demand for

⁵It appears that the “Railyards Financing Plan” did not even exist when the DEIR was circulated for comment. Correspondence with City staff during the public comment period indicated that the Financing Plan had a target release date of the end of September.

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Parks and Open Space created by the Proposed Project, and (ii) the DEIR relied on inappropriate deferred mitigation to mitigate the Proposed Project's impacts to Parks and Open Space. (Attachment A, pp. 2-3).

Regarding the demand for Parks and Open Space, HR&A found that the DEIR's analysis relied on a point estimate of 1.76 persons per household, which was inconsistent with other sections of the DEIR that utilized 2.1 persons per residence. (Attachment A, p. 2). This inconsistency is indicative of an impermissibly unstable project description and understates the demand for parks and open space.

Regarding mitigation for these impacts to parks and open space, HR&A found that the DEIR did not rely on the existing City standard of 5 acres of neighborhood and community parks and open space for every 1,000 residents. (Attachment A, p. 3). The DEIR's position that the 5 acre standard is inapplicable to "urban" developments is not supported by any substantial evidence. Moreover, the position is particularly suspect in light of the fact that this same standard was satisfied in the prior Railyards Specific Plan from 1993. (Exhibit 8, 1993 Railyards DEIR, p. 1-26). The Proposed Project should be required to comply with applicable, long-standing City standards.

26-13
(cont.)

Even if we assume that a new standard should apply, it constitutes impermissible deferred mitigation for the developer and the City to simply agree on a new standard at a later date. The DEIR should have identified, explained, and supported the new standard with substantial evidence.

b. Inadequate Analysis of Fire and Police Services

The HR&A also conducted a technical review of the DEIR's analysis of impacts to police and fire services. (Attachment A, pp. 4-5).

The DEIR found that the Proposed Project's impact to police service was less than significant without the need for any mitigation measures. (Impact 6.10-1). The stated threshold of significance for this impact was whether "[t]he project requires, or results in, the construction of new, or the expansion of existing, facilities related to the provision of police protection." (DEIR, p. 6.101-6). The DEIR expressly found this to be the case by stating, "[A] new facility would be needed to maintain public safety within the Specific Plan Area." (DEIR, p. 6.10-9). In other words, the DEIR's conclusion of less-than-significant impact is directly contradicted by its own analysis.

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In an apparent effort to avoid consideration of feasible mitigation measures, the DEIR provides an analysis of how the project will incorporate features to reduce this impact. However, as explained by HR&A, the DEIR's analysis of impacts to police services leaves many unanswered questions regarding the feasibility of the proposed mitigating project components and the environmental impacts associated with constructing the new police substation. According to the HR&A report:

The Project includes two potential locations for a new police substation on the ground floor of a multi-story, mixed use building.⁶ But the Draft EIR does not include any estimates or evidence of financial commitments for the capital cost of acquiring or constructing a new police station, nor the costs for personnel and station equipment, staffing, or vehicles. The DEIR also fails to address whether the ground floor space allocated for a substation is large enough to accommodate all 90.5 staff and support space required to mitigate Project impacts, and how specialized space requirements such as detention facilities can be accommodated in a multi-story mixed-use building that is shared with private sector uses.

Finally, the DEIR never quantifies the city revenues generated by the Project, which would demonstrate whether there is any reasonable possibility for the Specific Plan to generate the revenue required to fund a new police station and its associated equipment and staffing costs. In this regard, the fact that the Project is in a Redevelopment Project Area means that property tax revenue generated by the Project would only be available to assist with capital costs, and would not be available for equipment or staffing costs.

(Attachment A, p. 4).

In summary, the DEIR's finding of less-than-significant impact without any required mitigation measures is not just lacking substantial evidence; rather it is directly contradicted by its own analysis. Additionally, the DEIR's description of the mitigating project components are impermissibly vague and, even if enforceable, constitute deferred mitigation. Moreover, the mitigating project components themselves raise potentially significant impacts that must be addressed more fully in the DEIR. Finally, as serious questions exist

⁶(DEIR, p. 6.10-9).

26-14
(con't.)

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whether constructing, staffing and operating a police sub-station are even feasible in light of the funding questions, the DEIR must identify other feasible mitigation measures for this significant impact.

The DEIR's analysis of fire service impacts suffers from the same deficiency. The relevant threshold of significant asks whether "[t]he project requires, or results in, the construction of new, or the expansion of existing, facilities related to the provision of fire protection." (DEIR, p. 6.10-18). As with police service, this question is answered in the affirmative: "[C]onstruction of the proposed project would require that a fire station be built to serve the proposed project," and yet the DEIR ultimately concludes that the impact is less-than-significant without any required mitigation measures. (DEIR, p. 6.10-19). The DEIR's finding of less-than-significant impact is again directly contradicted by its own analysis.

HR&A also concluded that the DEIR's analysis of fire services suffers from the same deficiencies. According to the HR&A report:

Using a service standard of one fire station per 20,000 residents, the DEIR concludes that the Project population will require one new fire station, including one engine company, one truck company, one paramedic unit and a battalion chief quarters. This includes 10 staff/shift over three shifts, or a total of 30 staff.

Here again, the DEIR notes that the Project includes two potential locations for a new fire station on the ground floor of a multi-story, mixed-use building. But the DEIR lacks any estimates for the capital cost of acquiring and constructing a new fire station, or the costs for personnel and station equipment, staffing, or vehicles. The DEIR also fails to address whether the ground floor space allocated for substation is large enough and otherwise suitable to accommodate all the staff and required support space and vehicles required to mitigate Project impacts.

As in the case of the police services analysis, the DEIR never quantifies the city revenues generated by the Project, which would demonstrate whether there is any reasonable possibility for the Specific Plan to generate the revenue required for a fire station and its associated equipment and staffing, plus the requirements for a new police station. Once again, the fact that the Project is in a Redevelopment Project Area means that property tax revenue

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(con't.)

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generated by the Project would only be available to assist with capital costs, but would not be available for equipment or staffing.

(Attachment A, p. 5).

As with the analysis of police service, the DEIR's conclusion regarding less-than-significant impacts to fire service is directly contradicted by its own analysis. Additionally, the mitigating project components described in the DEIR are impermissibly vague, constitute deferred mitigation, and raise potentially significant impacts that must be addressed more fully in the DEIR. As serious questions exist whether these mitigating project components are even feasible in light of the funding questions, the DEIR must identify feasible mitigation measures for this significant impact.

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(cont.)

VII. Urban Decay Analysis

HR&A conducted a review of the DEIR's analysis of urban decay. HR&A's comments are attached herein and incorporated by this reference. (Attachment A, pp. 5-8).

As described in section I(a) of this comment letter above, the Proposed Project's first phase will be dominated by the development of a Regional Shopping Mall that includes approximately 1.1 million square feet of retail anchored by a 200,000 square foot big-box retail tenant. The anticipated full build-out of 1.5 million square feet would "nearly double the amount of existing retail space currently existing in the four concentrated locations within Downtown Sacramento." (DEIR, Appendix N. p. 14). CEQA requires the DEIR to include an analysis of whether this massive amount of new retail will contribute to "urban decay."

26-15

CEQA requires an EIR to identify both direct and indirect significant effects on the environment from a project. CEQA Guidelines §15126.2(a). It is well settled that these indirect effects include physical deterioration of existing business areas due to economic pressure from a proposed project. Citizens for Quality Growth v. City of Mt. Shasta (1988) 198 Cal.App.3d 433, 445; Bakersfield Citizens for Local Control v. City of Bakersfield (2004) 124 Cal.App.4th 184, 1215.

The DEIR's analysis of urban decay is contained in Section 7.0. This information is based on a technical study contained by Keyser Marston Associates ("KMA Report"). The KMA Report, and by extension the DEIR's

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analysis of urban decay, suffers from several deficiencies. As described more fully below, the DEIR fails to proceed in a manner required by law because it declines to make any significance determinations regarding urban decay impacts. Finally, neither the KMA Report nor the DEIR actually perform an analysis of urban decay. The result of these deficiencies is a DEIR that completely ignores its duty to disclose potentially significant impacts of urban decay.

26-15
(con't.)

a. Significant Near-Term Economic Impacts

The KMA Report plainly identifies a near-term oversupply of retail and dining space. Thus, the DEIR's own technical report concludes that the Proposed Project will exacerbate the imbalance between retail supply and demand in 2015. (DEIR, Appendix N, p. 28). This imbalance, according to the KMA Report, "will likely have a negative impact on existing, under-construction and planned retail in the trade area." Id.

26-16

b. No Significance Determinations

Even though the DEIR's own technical report explained that the Proposed Project's significant retail component will exacerbate a negative impact on existing retail in the trade area, the DEIR never concludes whether the Proposed Project's impact on urban decay is significant. As explained by HR&A:

Appendix N concludes that the proposed supply of new retail space in the Project and other foreseeable retail projects would significantly exceed demand for comparison retail in the relevant market areas by 2015. However, the analysis never takes the necessary next steps to determine whether this significant oversupply in 2015, and the continuation of this oversupply condition until at least 2025, could reasonably be expected to result in "urban decay" in any or all of the four major retail centers or retail concentrations that the report identifies . . .

26-17

(Attachment A, p. 5.)

CEQA requires the DEIR to identify whether the impact on urban decay is significant. One of the primary purposes of an EIR is to "identify the significant effects on the environment of a project." Pub. Resources Code §21002.1(a). This is necessary to effectuate another primary purpose to

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“indicate the manner in which those significant effects can be mitigated or avoided.” *Id.* The DEIR frustrates both of these stated CEQA purposes by failing to identify whether the Proposed Project’s impacts on urban decay are significant.

On this issue the Anderson First decision is instructive. According to that case, “Here, as we have seen, City’s EIR did consider the issue of the Project’s impact on urban decay on the CBD, and **concluded that the impact was less than significant.**” *Id.* at 1185 (emphasis added). The same cannot be said here because the DEIR failed to determine whether the impact from urban decay is significant or less than significant.

The DEIR’s failure to make a significance determination of urban decay constitutes a failure to proceed in a manner required by law.

c. No Analysis of Urban Decay

While the KMA Report identifies itself as an “Urban Decay Assessment,” quite the contrary is true because it lacks an analysis of the actual elements of the urban decay issue.

As an initial matter, the KMA Report acknowledges that no objective methodology was employed to identify the proper scope of the urban decay assessment. The KMA Report explains:

KMA was retained by PBS&J and the City of Sacramento to evaluate the economic conditions of the Sacramento and to assess whether the development of the proposed Railyards project might create impacts severe and substantial enough to result in urban decay in existing retail concentrations considered most vulnerable to negative impact. **These vulnerable areas were agreed** with the City and PBS&J to be the Downtown . . .

(DEIR Appendix N, p. 1) (emphasis added).

As with the DEIR’s improperly-scoped traffic study, the failure to utilize any recognized methodology for identifying the scope of analysis means that there may be urban decay impacts from the Proposed Project in other areas that will be completely undisclosed.

Even if the KMA Report were correctly scoped, the analysis would remain

26-17
(cont.)

26-18

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deficient for the fact that it simply does not analyze urban decay. The KMA Report correctly notes that urban decay is “the closure of retail and other stores in the surrounding area as a result of market competition and disinvestment – leaving decaying building shells in a state of sustained vacancy, long-term abandonment, repeated property damage, and/or deteriorated conditions that significantly impair the proper and safe use of the real estate.” (DEIR, Appendix N. p. 1). While noting these elements, the KMA Report never actually conducts an analysis of: (i) closure of stores; (ii) vacancy; (iii) long-term abandonment; (iv) disinvestment; (v) decaying buildings and repeated property damages.

In fact, the KMA Report makes no attempt to conduct a site-specific analysis of urban decay – even for the four areas that were identified as vulnerable. As explained by HR&A:

Appropriate analysis would require, at minimum: (1) an assessment of the vulnerability of anchor stores, or other concentrations of key retail uses (e.g., restaurants), in each retail center that is potentially affected by adverse market conditions caused by the Project; (2) a determination about whether those anchors or use concentrations are likely to fail; (3) if anchors or other use concentrations are likely to fail, an assessment of the potential for those uses to be replaced by other anchors or retail concentrations; and (4) if no such replacement is likely, the potential for the failed anchors to cause an economic ripple effect in those center and any adjacent retail areas . . .

(Attachment A, p. 6).

This is not a case simply of competing expert opinion. A recent court of appeal decision clarified that an adequate assessment of urban decay requires site-specific analyses of the factors leading to urban decay. Gilroy Citizens for Responsible Planning v. City of Gilroy (2006) 140 Cal.App.4th 911, 932-33. And yet these factors were ignored in the KMA Report and DEIR.

In short, it is not sufficient to simply conduct an economic analysis and re-characterize it as an urban decay analysis. The DEIR must examine how the identified potential economic impacts from the Proposed Project may lead to urban decay in an analysis that actually considers site-specific factors contributing to urban decay.

26-18
(con't.)

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VIII. Urban Design and Visual Resources

PCR conducted a review of the DEIR's analysis of impacts to urban design and visual resources. (Attachment D, pp. 7-8). The DEIR's analysis concludes that the visual impacts of "large-floor plate and high-rise buildings" are less than significant without any need for mitigation measures. (Impacts 6.13-1, 6.13-2). PCR found that the DEIR's significance determinations were arbitrary, conclusory and not supported by substantial evidence. PCR explains:

In both cases, a conclusion of less than significant is reached, yet there is no real analysis to demonstrate that such impacts would indeed be less than significant. For example, the generalized height diagram in the EIR indicates that buildings with heights up to 450 feet would be located between the I-5 and the river. Yet there are no visual renderings, sections or elevations that demonstrate that views of the river from I-5 would not be obstructed. Such graphics are typically included within EIRs, particularly when high-rise buildings are proposed adjacent to known visual resources. The need for this analysis is underscored by the project's conversion of some 240 acres of largely open land directly adjoining the urban core of the Sacramento Metropolitan Area wherein most of the land will be subject to "unrestricted" building heights.

26-19

(Attachment D, p. 8).

In other words, the DEIR's determination of less-than-significant impacts is based on the presumption of new development to be constructed in compliance with municipal goals and policies. Yet the DEIR provides no factual and analytical support for this conclusion. If an EIR concludes that an impact is not significant, the EIR should explain the basis for its conclusion. Protect the Historic Amador Waterways v. Amador Water Agency (2004) 116 Cal.App.4th 1099, 1111. A bare conclusion unsupported by a factual and analytical basis is not a sufficient analysis. Laurel Heights Improvement Ass'n v. Regents of the Univ. of Cal. (1988) 47 Cal.3d 376, 404.

Indeed, other conclusions in the DEIR's analysis of visual resources actually contradict the DEIR's significance determinations regarding Impacts 6.13-1 and 6.13-2. As explained by PCR:

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[W]ith regard to impact hypotheses 6.13-3 and 6.13-4 regarding program potential to create new sources of nighttime light and glare, respectively, it is concluded that the same development program with the same mass, height and distribution will have potentially significant impacts prior to mitigation. ***How could such a development program causing such complete visual transition in a large downtown environment have significant impact at night or in reflection, but not in plain sight during daylight?***

(Attachment D, p. 8) (emphasis added).

In addition to being internally inconsistent, the DEIR's bare conclusions regarding the less-than-significant visual impact of large-floor plate and high-rise buildings also ignore repeated concerns raised by City officials. On July 25, 2006, the City Council expressed concern that the size of the proposed high-rise buildings in the Riverfront District was "not appropriate." This concern was apparently not subsequently addressed by the Developer because the same issue was again raised by several Commissioners during the recent Joint Session on September 11, 2007. In light of these repeatedly expressed concerns by City officials, the DEIR must do more than make bare conclusions about the Proposed Project's impacts created by the large-floor plate and high-rise buildings.

26-19
(con't.)

IX. Hazards and Hazardous Substances

Section I(b) of this comment letter describes how the DEIR improperly segmented its analysis of the remediation effort on the property formerly owned by the Railroad. In addition to these contaminated parcels, the Proposed Project includes a parcel that is currently owned by the California Department of Parks and Recreation. This parcel is identified in the DEIR is the "Riverfront District Area."

The DEIR explains that the Riverfront District Area may also be a contaminated property. (DEIR, p. 6.5-13). A Phase I site assessment was performed for the parcel that recommended both a Phase II site assessment and a geophysical survey. Rather than conduct these recommended studies so that the nature and extent of the property's contamination is properly disclosed to the decision-makers and general public, the DEIR includes the performance of these studies as a mitigation measure (Mitigation Measure 6.5-9) with the limitation that "the site shall not be developed until the site is remediated to levels that would be protective of the most sensitive population for the planned

26-20

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use.” (DEIR, p. 6.5-39).

This mitigation measure constitutes impermissible deferred mitigation. Deferral of mitigation is appropriate where the local agency commits itself to mitigation and lists the alternatives to be considered, analyzed and possibly incorporated into the mitigation plan. See Defend the Bay v. City of Irvine (2004) 119 Cal.App.4th 1261, 1275. However, an agency goes too far when it simply requires an applicant to obtain a report and comply with any recommendations. Id. Here, the mitigation measure does require compliance with regulatory law in the remediation of the site and not just implementation of some “recommendations,” the efficacy of which has never been evaluated through public review. However, it is unclear what laws and regulations apply and how they would reduce potential impacts to less than significant levels. This approach runs contrary to CEQA’s information disclosure requirement.

26-20
(con't.)

X. Unenforceable Mitigation Measures

CEQA requires an EIR to describe feasible mitigation measures for a project’s significant environmental impacts. CEQA Guidelines §15126.4(a)(1). These mitigation measures include those proposed by the project applicant as well as those proposed by the lead agency or other agencies. CEQA Guidelines § 15126.4(a)(1)(A). Finally, these mitigation measures must be “fully enforceable through permit conditions, agreements, or other legally binding instruments.” CEQA Guidelines §15126.4(a)(2). While it is true that mitigation measures may be “incorporated into the plan, policy, regulation, or project design,” this does not obviate the requirements to (i) analyze all feasible measures and (ii) make them fully enforceable. CEQA Guidelines §15126.4(a)(2).

26-21

Here, the DEIR is deficient because numerous feasible mitigation measures are not analyzed for their feasibility and made fully enforceable as required by CEQA. Instead, these measures are characterized as design features of the Proposed Project with highly questionable enforceability. The enforceability is suspect because the Proposed Project’s underlying project documents are so vague that it is impossible for the public to know how these design features, or “mitigating project components,” will actually be implemented or enforced.

One specific example of this deficiency is the DEIR’s treatment of storm water runoff. Impacts 6.6-2 and 6.11-1 correctly identify increased storm water flows as an impact associated with the Proposed Project. The DEIR

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explains that the construction of a 27 acre-foot "cistern" will mitigate these increased storm water flows. (DEIR pp. 6.6-21, 6.10-11). However, the construction and operation of this cistern is considered a component of the Proposed Project and not a mitigation measure. The result is that the DEIR never demonstrates to the public how the construction of the cistern will be enforced. To the contrary, the DEIR actually concedes the failure of any enforcement mechanism by stating that "the timing for building the cistern and outfall to the Sacramento River has not been identified" and that the Proposed Project may indeed be constructed and operated without this critical component. (DEIR p. 6.11-10).

This result is a violation of CEQA. The CEQA Guidelines make clear that mitigation measures include those activities proposed both by the lead agency and the project applicant. CEQA Guidelines §15126.4(a)(1)(A). The lead agency may not avoid its obligation under CEQA to consider the feasibility of all mitigation measures – and enforce all feasible mitigation measures – by simply re-characterizing such measures as components of the project.

In order to comply with CEQA, a recirculated DEIR will need to properly identify the construction of the "cistern" as a feasible mitigation measure. The DEIR will also need to consider whether the mitigation measure is improperly deferred⁷ and whether it is feasible to require construction of the "cistern" prior to operation of the Proposed Project.⁸

This strategy of converting mitigation measures into mitigating project components is by no means limited to construction of the "cistern." The DEIR includes numerous examples of using these "mitigating project components" as a means of avoiding enforcement of feasible mitigation measures. [See analysis of Impacts 6.2-4 ("renewal" of presently expired incidental take permit for removal of elderberry shrubs); 6.2-12 ("preparation of a mitigation plan" to mitigate for loss of 0.5 acres of riparian vegetation); 6.4-7 (excavating, remediating and re-engineering soil, and de-watering excavations, to mitigate for unstable geologic units and soils); 6.6-1 (submission of an NOI and preparation of a SWPPP to mitigate for construction-related water quality impacts); 6.8-2 (compliance with Title 24 noise standards to reduce permanent

⁷Although the "cistern" is defined as a critical infrastructure component to the Proposed Project, the DEIR explains, "[T]he proposed cistern design has not been completed and the CVRWQCB has not approved of the discharge from the cistern." (DEIR pp. 6.6-21 through 22).

⁸This DEIR, by contrast provides no estimate of when the "cistern" will be constructed; and yet offers no explanation as to why it is infeasible for the "cistern" to be designed and constructed prior to operation of the Proposed Project.

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traffic and rail noise); 6.10-1 (construction and staffing a new police sub-station); 6.10-3 (construction and staffing a new fire station); 6.11-6 (construction of new on-site water supply facilities); 6.14-1 (construction of two new electrical substations).]

These mitigating project components are not included in the DEIR's Table 2-1 (Summary of Impacts and Mitigation Measures), and therefore there is little if any likelihood that they will be included in the Proposed Project's Mitigation Monitoring and Reporting Program. While it is true that some of the measures may be included in the "Draft Specific Plan" that was posted on the City's website (and not circulated with the DEIR itself), this is no guarantee that they will ultimately be enforced measures in the "Final" Specific Plan. Consequently, the public has no way of knowing whether these mitigating project components will actually be implemented as part of the Proposed Project.

26-21
(con't.)

XI. Hydrology and Water Quality

As briefly explained above, the Proposed Project relies on the construction of a 27 acre-foot "cistern" to mitigate for its impacts on storm water discharge. Section X of this comment letter explains how the re-characterization of this mitigation measure as a component of the project leads to unenforceable mitigation. [DEIR, p. 6.11-10 ("the timing for building the cistern and outfall to the Sacramento River has not been identified")]. Even if this re-characterization were allowed, however, additional deficiencies exist concerning the Proposed Project's use of this "cistern."

Carter Burgess' engineering group reviewed the DEIR's information regarding the proposed "cistern." (Attachment C). According to Carter Burgess, several concerns are raised regarding the DEIR's analysis and reliance on the "cistern" as a mitigating project component. These comments are incorporated by this reference. (Attachment C). In summary, it appears that that the design of the "cistern" is far from final such that it is impossible to evaluate it effectiveness.

26-22

In light of the fact that the "cistern" is a fundamental infrastructure improvement for the entire Proposed Project, it is not permissible under CEQA to simply defer adequate formulation of this mitigation measure to a later stage of the development process. CEQA Guidelines §15152(b). Instead, an issue is ripe for evaluation in an EIR when it is a reasonably foreseeable consequence of approval and there exists "sufficient reliable data to permit preparation of a

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meaningful and accurate report on the impact.” Los Angeles Unified Sch. Dist. v. City of Los Angeles (1997) 58 Cal.App.4th 1019, 1028. There is no explanation in the DEIR why insufficient information exists to design the “cistern.” In the absence of such an explanation, CEQA requires the DEIR include a proposed design for the “cistern” in order to (i) disclose whether it may actually address the storm water impacts from the Proposed Project, and (ii) determine whether the construction of the “cistern” itself will result in environmental impacts that will also need to be analyzed. CEQA Guidelines § 15126.4(a)(1)(D) (EIR must include analysis of mitigation measures of a proposed project).

The DEIR must be revised to include design information for the “cistern.” Moreover, as operation of the “cistern” is necessary to mitigate storm water impacts from the Proposed Project, actual construction and operation of the “cistern” should be included as an enforceable mitigation measure before any building permit is issued for the Proposed Project.

Having already established that construction of the cistern is a necessary mitigation measure for the Proposed Project, we only briefly address the DEIR’s current mitigation measures that assume construction of the “cistern” will not be completed prior to operation of the Proposed Project.

Mitigation Measure 6.6-2 provides that the Proposed Project “shall limit discharged to the Sacramento River.” (DEIR, p. 6.6-22). This mitigation measure is facially defective as it is impermissibly vague and therefore unenforceable. Stanislaus Natural Heritage Project v. County of Stanislaus (1996) 48 Cal.App.4th 182, 195.

Mitigation Measure 6.11-2 is similarly based on the failure to construct the “cistern,” and proposes to “limit development of the proposed project” until the “cistern” is constructed. (DEIR, p. 6.11-12). This mitigation measure violates the California Supreme Court’s ruling in Vineyard Citizens, which struck down a mitigation measure limiting future development based on inadequate water supply.⁹ 40 Cal.4th 412.

XII. Water Supply Analysis

CEQA requires analysis of the environmental impacts associated with

⁹While Vineyard Citizens concerned inadequate water supply, there is no reason to believe that the court’s analysis would not equally apply to an attempt to limit development based on inadequate storm water capacity.

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supplying water to a project. The recent California Supreme Court case of Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412 sets forth the legal requirements with respect to CEQA's role in the analysis of water supply for a particular project. These requirements include the following:

- For a large, multi-phased project, the CEQA analysis must assume that all phases of the project will eventually be built and will need water. An EIR must analyze, to the extent reasonably possible, the impacts of providing water to the entire project. Tiering cannot be used to defer analysis of water supplies to serve later project phases.
- The EIR may not assume that a solution to potential water supply issues will be found. Instead, uncertainties regarding water supplies must be fully examined in order to satisfy CEQA's informational purposes.
- Long-term water supplies must bear a **likelihood of actually proving available** and the EIR must discuss the circumstances affecting the likelihood of the water's availability. A reasonable probability of accessing a source of "wet water" must be shown.
- If it is impossible to reasonably determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies.
- Although an EIR must discuss the likelihood of future water supplies, the primary issue with respect to water supply under CEQA is whether the EIR adequately addresses the reasonably foreseeable impacts of supplying water to the project.
- An EIR must discuss and analyze the regional water demands and any potential competition for the long-term water supplies identified for the project.

One of the other critical aspects of water supply analysis under CEQA relates to baseline. In order to adequately assess the environmental impacts of a particular project, the EIR must have some measure against which to compare the proposed impacts. An EIR must describe "the physical environmental conditions in the vicinity of the project" as they exist when the NOP is published. CEQA Guidelines §15125.

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(cont.)

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With respect to water supply and water rights, the baseline is the prior water use at the time of the NOP or at some other time prior to the NOP. The baseline is not the legal entitlement to water of the water supplier, landowner, or the Project if that full entitlement has never been used. Save Our Peninsula Committee v. Monterey County Board of Supervisors (2001) 87 Cal.App.4th 99. The baseline is instead the amount of water actually put to use at some point in time prior to the NOP as determined by the lead agency regardless of the amount of the entitlement to water. Impacts attributable to new water use above the baseline use must be analyzed in an EIR. Id.

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(cont.)

In the present case, the DEIR in essence determines that the City has entitlements to water far in excess of the demands of the proposed project and therefore concludes with essentially no other analysis that there will be no substantial impacts to the environment. As discussed below, this conclusion and lack of analysis fail to meet the requirements of CEQA.

a. Inadequate Analysis of Potential Groundwater Supply

As discussed below, the DEIR fails to properly analyze the potential impacts of supplying groundwater to the proposed project.

- (i) The DEIR Fails to Provide Sufficient Information Regarding the City's Rights to Groundwater.

The DEIR (and the City's Urban Water Management Plan) fails to provide any information on the nature of the City's rights to groundwater. As a municipal supplier, the City's rights are by appropriation (or by prescription) and not as an overlying user. San Bernardino v. Riverside (1921) 186 Cal.7. However, the DEIR is entirely silent as to the nature of the City's rights, if any, to extract groundwater.

26-24

This lack of information is even more striking when compared to the DEIR's analysis of its surface water supplies, which goes into great detail on the nature of the City's surface rights. Further, the DEIR and the City's Urban Water Management Plan both acknowledge some degree of overdraft in the affected groundwater basins.

Without knowing the nature of the City's rights to groundwater, it is impossible to analyze competing claims to that water as required under Vineyard Citizens and to make a determination regarding the likelihood these projected groundwater supplies will be available in the future.

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This information is crucial in meeting CEQA's requirement that the DEIR serve as an informational document to inform the decision makers and the public about the potential impacts of the proposed project on groundwater supplies. This information is also required by Water Code section 10910(d)(1) and appears absent from the City's Urban Water Management Plan as well. If the City claims that some agreement or management plan somehow addresses these issues, the DEIR needs to discuss exactly how this occurs in order to assesses the likelihood that these groundwater supplies will be available in the future.

(ii) The DEIR Fails to Identify the Amount of Groundwater Supplied to the Project and the Surplus Groundwater Available.

The DEIR discusses that the applicable groundwater basins are in varying degrees of overdraft although the extent and severity varies. However, the DEIR fails to analyze the amount of surplus water available from each basin and how much groundwater the Proposed Project will use.

This information is critically important because if the City is pumping groundwater by way of a claim to an appropriative right, it only has the right to use the surplus water from such basins. Peabody v. Vallejo (1935) 2 Cal.2d 351. If there is no surplus water available, then the City has no right to pump any groundwater. Moreno Mutual Irr. Co. v. Beaumont Irr. Dist. (1949) 94 Cal.App.2d 766, 799.10.

This analysis is even more critical because the DEIR includes a purported mitigation measure increasing the pumping of groundwater if future surface water treatment facilities are not constructed. What would be the water available to the City and what are the competing demands for this water? What would be the impacts from increased pumping? The DEIR is required to analyze these impacts.

¹⁰An appropriator may also acquire a provisional right in the regular supply of groundwater, but only during such times such regular supply is not being used by overlying groundwater users. Burr v. Maclay Rancho Water Co. (1908) 154 Cal. 428, 436-439. However, the DEIR also fails to distinguish the amount of regular supply, if any, available in the applicable basins and discuss the competing claims to such water.

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b. Inadequate Analysis of Potential Surface Water Supply

The DEIR additionally fails to adequately comply with CEQA with respect to its analysis of surface water supply as follows:

(i) The DEIR Fails to Use the Proper Baseline for Water Supply

The DEIR is vague as to the baseline conditions used for the analysis of potential impacts resulting from supplying water to the potential project. It appears the DEIR is using the City's total surface water entitlements of 326,800 afa by the year 2030 and 214,000 afa for 2007 as the baseline. (see DEIR p; 6.11-28 to 6.11-29). The DEIR then compares this total "water entitlement" baseline to the total demands of the project over the course of build out, which is 4,295 acre feet per year. The DEIR concludes there will be no significant impacts because the City's water entitlements exceed the projects water supply demands.

The DEIR's analysis is, however, flawed. As noted above, the proper baseline for CEQA analysis of water supply impacts is the actual pre-project water diversions and not the total water entitlements where such total entitlements have never been used. In Save Our Peninsula Committee, the court held:

The supplemental EIR clarified that whether the water right was riparian or appropriative, **any increase** of water use **over preproject use** would be a significant environmental impact requiring mitigation.

Id. at 132 (emphasis added).

Put simply, the amount of water to be used for the project (4,295 afa) exceeds the present amount of water actually put to use by the City. This is acknowledged in the DEIR itself on page 6.11-29:

The proposed project would increase the demand for water in the City's service area beyond the existing demand of approximately 138,671 AFA in 2006.

Therefore, in the present case, the DEIR itself provides that the water supply used for the project would be an additional new use of water in excess of pre-project water use baseline. The environmental impacts of this

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incremental new use must be analyzed. Save Our Peninsula Committee, supra, 87 Cal.App.4th 130-133.

(ii) The DEIR Fails to Analyze Potential Competing Claims to Future Water Supplies

As set forth in Vineyard Citizens, an EIR must consider competitive demands on future water supply. In the present case, the County of El Dorado is presently considering claims of between 30,000 to 40,000 acre feet of water from the City's claimed rights. However, the DEIR fails to discuss this claim or any other competing claims on the future water supplies and the potential risks to the City's water supply from such claims. It may be that the risk is found to be remote; however, the DEIR must discuss the potential claims and corresponding risks. In this regard, the DEIR fails under Vineyard Citizens and under CEQA itself as an informational document.

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(con't.)

c. Inadequate Analysis of Proposed "Mitigation Measures" Regarding the Cumulative Impacts for Future Water Treatment Needs

CEQA Guidelines section 15126.4(a)(1)(b) provides that mitigation measures shall not be deferred. In addition, mitigation measures must be enforceable to be valid through permit conditions, agreements or plans. CEQA Guideline 15126.4(a)(2). Under Vineyard Citizens, long-term water supplies must bear a likelihood of actually proving available and the EIR must discuss the circumstances affecting the likelihood of the water's availability. Additionally, the impacts of providing such future water supplies must be assessed.

In the present case, the DEIR states that there will be a deficit of potable water within the City by 2020 and the deficit will be critical by 2030. This is not necessarily due to a lack of water rights but due to a lack of adequate facilities to treat raw water from the American and Sacramento Rivers. The Project will contribute cumulatively to that deficit. The impact is deemed significant.

The DEIR identifies several "mitigation options." The DEIR then provides that these options would be available over the next 23 years to allow the City "a degree of flexibility" to implement the measures to address the water treatment shortfall but fails to implement any specific such measure. The DEIR specifically finds that some of the identified measures could have substantial impacts of their own.

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The DEIR fails to adequately analyze the potential adverse substantial impacts of some of the proposed mitigation measures. The DEIR identifies and lists potential impacts from the implementation of certain of the mitigation "options" but fails to analyze the impacts, and by doing so improperly defers any such analysis to some unknown later period of time. For example, with respect to mitigation option "d) Increase Groundwater Pumping" (DEIR p. 6.11-36), the DEIR states:

The implementation of this mitigation measure would require environmental analysis to assess if the construction or operation of new wells would have any adverse environmental consequences and would require environmental evaluation.

As Vineyard Citizens provides, for a large, multi-phased project, the CEQA analysis must assume that all phases of the project will eventually be built and will need water, and therefore, an EIR cannot defer analysis of future water supplies to later project phases. Yet this is exactly what the DEIR does in this case.

Finally, given the lack of information on the City's rights to groundwater and the fact that any such rights may no longer exist as the result of overdraft in the basin and the lack of surplus water, such a mitigation measure may not even be feasible.

XIII. Alternatives

CEQA requires an EIR to describe a range of reasonable alternatives to a project, or to the location of a project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and to evaluate the comparative merits of the alternatives. CEQA Guidelines §15126.6. The alternatives discussion must focus on alternatives "which are capable of avoiding or substantially lessening any significant effect of the project, even if such alternatives would impede to some degree the attainment of the project objectives, or would be more costly." CEQA Guidelines §15126.6(b). An EIR must not only identify but discuss alternatives, and this discussion must "contain facts and analysis, not just the agency's bare conclusions or opinions," that is, it must provide "meaningful detail" to assist the public in its role. Laurel Heights Improvement Ass'n of San Francisco v. Regents of the Univ. of California (1988) 47 Cal.3d 376, 404, 406.

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(cont.)

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In light of the above authorities, the DEIR's analysis of alternatives must be based on both the Proposed Project's stated Project Objectives and its significant impacts. As explained by both HR&A and Carter Burgess, the DEIR's alternatives analysis is flawed because it overlooks a readily available alternative consisting of a re-phased development schedule. (Attachment A, p. 7; Attachment B, p. 3).

As described above, the Proposed Project's development phasing schedule, which is not included in the DEIR's Project Description, includes a first phase that is dominated by the development of a massive 1.1 million square foot Regional Shopping Mall. The DEIR recognizes that this Regional Shopping Mall development strategy would create significant adverse impacts to traffic and circulation, including "study area intersections," "study roadway segments," "study freeway mainline segments," "study freeway interchanges," and "study freeway off-ramps" from Opening Day of the Proposed Project through 2030. (DEIR p. 8-3).

Additionally, as explained by Carter Burgess, the front-loaded retail "exacerbates the potential for urban decay identified in the project Urban Decay Study . . ." (Attachment B, p. 3). This near-term (2015) imbalance was recognized in the DEIR's own technical study by Keyser-Marston Associates. (DEIR, Appendix N, p. 28). So while the Proposed Project will admittedly exacerbate the potential for urban decay, the extent of that potential is unknown to both the decision-makers and the general public because the DEIR performed an inadequate analysis of that issue.

Finally, the Regional Shopping Mall development concept that includes big-box retail development "may impede realization of the land use synergies necessary for a successful transit oriented development (TOD), by postponing the smaller-scale, neighborhood oriented uses to the latter stages of the project." (Attachment B, p. 3).

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.

There is no question that a Re-Phased Alternative will significantly reduce the Proposed Project's near-term significant traffic impacts. In fact,

26-27
(con't.)

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Table 6.12-12 provides virtually all of the information needed to make this determination. Table 6.12-12 provides that full build-out of the residential component (11,300 units) will generate 50,780 weekday trips. Full build-out of the retail will result in 116,989 trips. So even if 100% of the residential is constructed in the Proposed Project's initial phase, only 50% of the traffic will be generated than currently proposed.¹¹ Even if one also includes 25% of the retail to the 25% residential – which would appear to provide for more of a balanced development – this would result in an approximately 50% reduction of weekday trip generation from the initial phase with the Regional Shopping Mall development concept.

The Re-Phased Alternative is also more consistent with the retail conditions that are identified in the DEIR's own technical report. The KMA Report concludes that an oversupply of retail will exist in 2015, but that the area's population growth will correct this imbalance by approximately 2025. (DEIR, Appendix N, p. 28). Instead of exacerbating the near-term oversupply of retail in 2015, the Re-Phased Alternative will bring the retail on line in a more gradual manner when it may actually be needed in 2025.

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(con't.)

The Re-Phased Alternative is more complementary to the existing contaminations issues and remediation at the Railyard site. The Proposed Project's Land Use Plan reveals that the area designated as primarily residential is generally the location of "Car Shop Nine," which has less contamination and is more readily adaptable to immediate development. The Re-Phased Alternative would allow for immediate development in this area that is less contaminated and more ready for such development. By contrast, the Regional Shopping Mall development concept provides for initial development in areas of the Railyard site that are the most contaminated, namely the "Central Shops" area.

Finally, the Re-Phased Alternative satisfies all of the Project Objectives included in the DEIR. Indeed, as explained by Carter Burgess, the Re-Phased Alternatives satisfies the Project Alternatives better than the proposed Regional Shopping Mall development concept. (Attachment B, pp. 3-4).

In summary, the DEIR's alternatives analysis must include a thorough analysis of the Re-Phased Alternative because it reduces the Proposed Project's significant environmental impacts and satisfies the Proposed Project's Objectives.

¹¹A more realistic assumption for residential build-out would be 25% during the initial phase, which translates into even less traffic.

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CONCLUSION

While the Downtown Plaza generally supports the City's goal to create "a dynamic 24-hour mixed use urban village that provides a range of complementary uses" at the former Railyards site, it appears that the Proposed Project that is described in this DEIR will not achieve that goal. Numerous technical deficiencies in the DEIR, coupled with strategies employed to seemingly evade environmental review such as an inaccurate and segmented project description, reliance on unenforceable mitigating project components and an outright refusal to address certain critical environmental impacts, have resulted in a DEIR that fails as an informational document. Too many unanswered questions remain about the nature of the Proposed Project and its potential environmental impacts, which can only be resolved appropriately with additional analysis contained in a recirculated DEIR.

Thank you for the opportunity to comment upon the Proposed Project and the DEIR.

Very Truly Yours,

**SOLURI & EMRICK,
A Law Corporation**

By: 
Patrick M. Soluri

Attachments:

- A. Letter from HR&A Advisors, Inc. dated October 2, 2007
- B. Letter from Carter Burgess dated September 19, 2007
- C. Letter from Carter Burgess dated September 18, 2007
- D. Letter from PCR Services Corporation dated October 3, 2007
- E. Letter from VRPA Technologies, Inc. dated September 21, 2007

Exhibits:

- 1. Railyards NOP dated March 10, 2006
- 2. DTSC's Explanation of Significant Differences for Northwest Corner
- 3. Regional Water Board letter dated June 8, 2007
- 4. 1992 Railyards DEIR, p. 1-23

Exhibit A



HR&A ADVISORS, INC.

Economic Development, Real Estate Advisory and Public Policy Consultants

October 2, 2007

Mr. Patrick M. Soluri, Esq.
Soluri & Emrick, L.L.P.
1822 21st Street, Suite 202
Sacramento, CA 95814

Re: Comments on the Sacramento Railyards Specific Plan
Draft Environmental Impact Report

Dear Mr. Soluri:

At your request, HR&A Advisors, Inc. (HR&A) and Whitney & Whitney, Inc. (W&W) have completed a technical review of selected sections of the Draft Environmental Impact Report (DEIR) on the Railyards Specific Plan,¹ a mixed-use development plan that would accommodate up to 12,501 dwelling units, 1.4 million square feet of retail, 491,000 square feet of either office or residential uses, 1,100 hotel rooms, 2.8 million square feet of office space, 485,390 square feet of historical/cultural uses, and 41.2 acres of open space (hereinafter the "Project") located in the downtown area of the City of Sacramento ("City").

We conclude from our review that the DEIR sections on the Project Description, Parks and Open Space, Police Services, Fire Services, and Urban Decay contain significant flaws and/or are incomplete and require further analysis before the document can fulfill the central statutory purpose of the California Environmental Quality Act (CEQA)², which is to adequately inform City decision makers and the general public about the possible impacts of the Project on the environment.

HR&A is a full-service economic development, real estate advisory and public policy consultant, whose practice lines include real estate analysis and advisory services, local and regional economic analysis, economic development program formulation and analysis, redevelopment project analysis, fiscal impact analysis, land use policy analysis, development impact fees, housing policy research and analysis, population forecasting and demographic analysis, and transportation and other capital facilities analysis and financing. HR&A has frequently been called on by its public and private sector clients to provide analysis of

¹ PBS&J/EIP, *Railyards Specific Plan, Draft Environmental Impact Report (PO5-097)*, SCH 2006032058, August 2007, prepared for the City of Sacramento. (Hereinafter, "DEIR"). All chapter, section, table, figure and page references used in this letter are to this version of the DEIR.

² Referred to herein to mean both Cal. Public Resources Code §21000 *et seq.* and 14 Cal. Code of Reg. §15000 *et seq.* ("CEQA Guidelines").

Mr. Patrick M. Soluri, Esq.
Soluri & Emrick, L.L.P.
October 2, 2007

population, housing, employment, economic, public school facilities and induced growth impacts for projects subject to CEQA and the National Environmental Policy Act. W&W is a real estate development advisory services firm specializing in market feasibility and economic/fiscal impact studies of proposed regional shopping centers and mixed use development programs throughout southern California, Hawaii, other parts of the US and overseas. Summaries of HR&A's and W&W's qualifications are included in Attachment A to this letter.

I. Incomplete Project Description

The Project Description presented in Section 3.0 of the Draft EIR fails to discuss any phasing schedule for the Project. Yet, Draft EIR Appendix N (Urban Decay) sets forth a very specific four-phase implementation schedule.³ According to that phasing schedule, Phases 1A and 1B include 1.1 million square feet of retail space that is to be constructed between 2009 and 2011 and opened for operation during 2011-2014, with 2015 as the first stabilized year of operation. This phasing schedule is also mentioned in DEIR Section 7.0. If this schedule is correct, it should have been discussed in the Project Description. In addition, all sections of the Draft EIR should have addressed this timeline for implementation of the Project, and considered whether there are any differences in the severity of environmental effects of the Project on a phase-by-phase basis, as was done — albeit to a very rudimentary extent given the potential significance — in Appendix N.

26-28

II. Inaccurate Projections of Park and Open Space Demand

A. Understatement of Project Impacts

The Section 6.9 of the Draft EIR presents an analysis of the project's impacts on parks and open space, using the City's current level of service standards for various kinds of park and recreation facilities. However, the analysis uses a point estimate of 1.76 persons per household⁴ for 12,500 units instead of 2.1 persons per household and a range of 10,000 to 12,500 units as presented in the Population and Housing analysis (Section 5.0),⁵ Appendix N, and all of the Public Services sections (Section 6.10). Thus, the Draft EIR analysis summarized in Table 6.9-2 (p. 6.9-12) understates the demand for parks and trails caused by the Project under the maximum number of housing units. These differences are shown in Table 1.

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³ DEIR, Appendix N, p. 6.

⁴ DEIR, p. 6.9-12.

⁵ DEIR, p. 5-8.

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Table 1.
Corrected and DEIR Parks and Open Space Calculations

	Min. Housing	Max. Housing
Corrected Values		
Dwelling Units		10,000
Population	2.1	21,000
Park per 1,000 pop.		
Neighborhood (ac.)	2.5	52.50
Community (ac.)	2.5	52.50
Regional (ac.)	8.0	168.00
Trails/Bikeways (miles)	0.5	10.50
DEIR Values		
Dwelling Units		12,500
Population	1.76	Not Calculated
Park per 1,000 pop.		
Neighborhood (ac.)	2.5	Not Calculated
Community (ac.)	2.5	Not Calculated
Regional (ac.)	8.0	Not Calculated
Trails/Bikeways (miles)	0.5	Not Calculated

Sources: DEIR, p. 6.9-12; HR&A, Inc.

26-29
 (con't.)

B. Inappropriate Mitigation

Notwithstanding the underestimation of the severity of the parks and open space impacts as noted above, the DEIR concludes that the Project impacts are adverse and significant. It then argues that different standards should apply to urbanized areas of the City, even though the City Council has not adopted any such alternative standards. The need for an alternative standard is questionable, because all of the alternatives, except the no project alternative, in the Draft EIR on a previous version of a Specific Plan for the Railyards indicated that required parks and open space could be accommodated using the City's existing service standards for neighborhood and community parks.⁶ Two of these alternatives included numbers of dwelling units that fall within the ranges for the Specific Plan analyzed in the DEIR.⁷

26-30

The DEIR's proposed mitigation is to develop a new urban park standard and pay fees for any difference between the Project's proposed parks acreage and the new standard, or provide additional parks equal in value to the amount of the to-be-determined fee. This proposed set of actions constitutes vague and improperly deferred mitigation. The DEIR should have evaluated more appropriate mitigation, such as additional land area designated as Open Space (OS) sufficient to meet the City's existing service standards.

⁶ EIP Associates, *Draft Environmental Impact Report, Executive Summary (Volume I), Railyards Specific Plan, Richards Boulevard Area Plan*, prepared for the City of Sacramento, June 10, 1992, p. I-26.

⁷ *Id.*, Table I-1, p. I-7. Alternative 2 included 11,630 dwelling units and Alternative 3 included 11,330 dwelling units.

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October 2, 2007

III. Incomplete Analysis of Police and Fire Services

Section 6.10 presents analysis of Project impacts on Police and Fire Protection. Each section measures Project impacts by multiplying the maximum number of housing units (12,500) by the average population per household (2.1) as presented in Section 5.0, for a total Project population of 26,252. This Project population is then compared with per-capita and other land use-specific service standards for each protective service.

A. *Inappropriate Mitigation Because Costs of Police Department Impacts Are Not Quantified and Sources of Revenue are Not Identified*

Using, among others, a service standard of 2.0 officers/1,000 population and 0.5 support staff to sworn officers, the DEIR estimates that the Project will generate demand for 90.5 police personnel, as follows:⁸

53.0 officers and 27.0 support staff for residential
4.0 offices and 2.0 support staff for retail
<u>3.0 offices and 1.5 support staff for hotel</u>
60.0 30.5

The Project includes two potential locations for a new police substation on the ground floor of a multi-story, mixed use building.⁹ But the Draft EIR does not include any estimates or evidence of financial commitments for the capital cost of acquiring or constructing a new police station, nor the costs for personnel and station equipment, staffing, or vehicles. The DEIR also fails to address whether the ground floor space allocated for a substation is large enough to accommodate all 90.5 staff and support space required to mitigate Project impacts, and how specialized space requirements such as detention facilities can be accommodated in a multi-story mixed-use building that is shared with private sector uses.

Finally, the DEIR never quantifies the city revenues generated by the Project, which would demonstrate whether there is any reasonable possibility for the Specific Plan to generate the revenue required to fund a new police station and its associated equipment and staffing costs. In this regard, the fact that the Project is in a Redevelopment Project Area means that property tax revenue generated by the Project would only be available to assist with capital costs, and would not be available for equipment or staffing costs.

B. *Inappropriate Mitigation Because Costs of Fire Department Impacts Are Not Quantified and Sources of Revenue are Not Identified*

Using a service standard of one fire station per 20,000 residents, the DEIR concludes that the Project population will require one new fire station, including one engine company, one truck

⁸ DEIR, pp. 6.10-6 and 6.10-9.

⁹ DEIR, p. 6.10-9.

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company, one paramedic unit and a battalion chief quarters. This includes 10 staff/shift over three shifts, or a total of 30 staff.¹⁰

Here again, the DEIR notes that the Project includes two potential locations for a new fire station on the ground floor of a multi-story, mixed-use building. But the DEIR lacks any estimates for the capital cost of acquiring and constructing a new fire station, or the costs for personnel and station equipment, staffing, or vehicles. The DEIR also fails to address whether the ground floor space allocated for substation is large enough and otherwise suitable to accommodate all the staff and required support space and vehicles required to mitigate Project impacts.

26-31
(con't.)

As in the case of the police services analysis, the DEIR never quantifies the city revenues generated by the Project, which would demonstrate whether there is any reasonable possibility for the Specific Plan to generate the revenue required for a fire station and its associated equipment and staffing, plus the requirements for a new police station. Once again, the fact that the Project is in a Redevelopment Project Area means that property tax revenue generated by the Project would only be available to assist with capital costs, but would not be available for equipment or staffing.

IV. Incomplete Analysis of the Potential for the Project to Cause “Urban Decay”

Section 7.0 (Urban Decay) of the Draft EIR, and Appendix N (Urban Decay) prepared by Keyser Marston Associates (KMA), discuss the CEQA concept of “urban decay” – i.e., the potential for the Project to cause adverse economic conditions that could result in “a chain reaction of store closures and long-term vacancies, ultimately destroying existing neighborhoods and leaving decaying shells in their wake.” These analyses are incomplete for the reasons discussed below.

A. No Analysis of Potential “Urban Decay” Resulting from the Project’s Significant Retail Market Impacts.

26-32

Appendix N concludes that the proposed supply of new retail space in the Project and other foreseeable retail projects would significantly exceed demand for comparison retail in the relevant market areas by 2015, and that this supply-demand imbalance raises the potential for urban decay.¹¹ However, the analysis never takes the necessary next steps to determine whether this significant oversupply in 2015, and the continuation of this oversupply condition until at least 2025, could reasonably be expected to result in “urban decay” in any or all of the four major retail centers or retail concentrations that the report identifies as areas most likely to be

¹⁰ DEIR, p. 6.10-18 and 6.10-19.

¹¹ DEIR, Appendix N, p. 28.

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directly impacted by the Project,¹² nor any other major retail developments in the surrounding primary or secondary market areas. It fails to present any analytic approach to measure “urban decay,” nor does it apply a method to the four identified retail centers, nor any other major retail development in the remainder of the primary and secondary market areas. Appropriate analysis would require, at minimum: (1) an assessment of the vulnerability of anchor stores, or other concentrations of key retail uses (e.g., restaurants), in each retail center that is potentially affected by adverse market conditions caused by the Project; (2) a determination about whether those anchors or use concentrations are likely to fail; (3) if anchors or other use concentrations are likely to fail, an assessment of the potential for those uses to be replaced by other anchors or retail concentrations; and (4) if no such replacement is likely, the potential for the failed anchors to cause an economic ripple effect in those centers and any adjacent retail areas leading to “. . . a chain reaction of store closures and long term vacancies, ultimately destroying existing neighborhoods and leaving decaying shells in their wake.”¹³

26-32
(con't.)

B. *Incomplete Application of Lessons from the Salt Lake City Case Study*

Appendix N presents case studies of two purportedly comparable downtown retail redevelopment projects in other cities, including the Gateway project in Salt Lake City. These case studies consist of anecdotal information and do not provide analysis that would demonstrate whether there are sufficient market similarities between them and the Project to make the use of the examples meaningful for the particular situation of the Railyards.

Notwithstanding the anecdotal character of the case studies, Appendix N notes that, according to a University of Utah study, the development of the Gateway project did have negative impacts on existing shopping malls, pulling retail dollars and tenants away from existing facilities. However, Appendix N stops short of evaluating how the “lessons learned” could be applied to the Railyards to mitigate the severity of the identified adverse and significant market impacts of the Project on the four identified retail centers in the downtown area of Sacramento that would be most adversely affected by the Project. These “lessons,” which are not discussed as “mitigation,” include restrictions on the movement of existing tenants to new retail space in the project, and aggressive efforts by the developer to recruit tenants unique to the market area. The Draft EIR should provide a more detailed evaluation of the mitigation employed in the Gateway situation to assess its applicability to the Project.

26-33

C. *Incomplete Discussion of Potential Mitigation Measures and their Applicability to the Project*

On page 29, Appendix N lists possible measures to “minimize” potential urban decay, although they are not called “mitigation measures.” Further, the report did not evaluate the ability of these measures, individually or cumulatively, to reduce the significant adverse impacts of the Project on market conditions in 2015, and between 2015 and 2025, to a level that would be

26-34

¹² These include the Westfield Downtown Plaza regional shopping center, the historically-themed Old Sacramento restaurant and specialty retail district, the K Street pedestrian/light rail mall, and the Midtown retail district.

¹³ *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184 at 1204.

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less than significant. Inexplicably, a reduction in Project retail space prior to 2015 or 2025 was not among the measures listed.

↑ 26-34
(con't.)

D. Parallel Deficiencies in Draft EIR Section 7.0

Inasmuch as Section 7.0 summarizes the contents of Appendix N, the problems noted above with respect to Appendix N also apply to Section 7.0. Unlike all other impact analysis sections of the DEIR, Section 7.0 does not specify an urban decay significance threshold, nor does it render a determination about whether the urban decay impacts analyzed will be significant. While it summarizes the conclusions from Appendix N that the market will be significantly oversupplied with comparison retail space by 2015, it lists only some of the strategies taken from Appendix N that could be employed to alleviate the Project's impact,¹⁴ these measures are not presented as mitigation measures. And, it fails to preface this list with the language in Appendix N which states that these measures must be part of "an intensive and coordinated public and private strategy and investments to protect and preserve the more vulnerable retail locations in Downtown."¹⁵

↑ 26-35

As noted above with respect to Appendix N, DEIR Section 7.0 lacks any statement or application of a methodology to make an "urban decay" determination based on the significant adverse market impact caused by the Project. More specifically, it does not evaluate the Project's market impacts on existing retail centers, the degree to which these impacts could result in disinvestment, store closures, resulting blight and other manifestations of physical deterioration, nor any mitigation measures for urban decay, and lacks an assessment of the level of post-mitigation significance of any urban decay impacts.

E. No Analysis of Urban Decay Impacts of the Project Alternatives

Because the DEIR never reaches a conclusion about the degree to which the adverse economic impacts of the Project documented in Appendix N are "significant" within the meaning of CEQA, this issue does not find its way onto the list of significant and unavoidable impacts that are supposed to be addressed in evaluating the merits of Project alternatives. Thus, the DEIR also lacks any discussion about the ability of the Project alternatives to reduce potentially significant urban decay impacts. It also points out a glaring omission among the analyzed alternatives — i.e., an alternative that would change the Project's phasing, such that less retail and more residential uses are developed prior to 2015. Such an alternative would have the benefits of reducing significant adverse market competition impacts and increasing the residential source of demand from new households. And, in so doing, it would enhance the Project's ability to meet its central objective of creating a mixed-use urban village near downtown and the Sacramento waterfront.

↑ 26-36

¹⁴ For some unexplained reason, Section 7 omitted one of the recommendation in Appendix N to "avoid and/or minimize" the Project's potential to cause urban decay: "Development of a significant amount of private and public amenities, such as parks, plaza, and streetscapes, and the infrastructure needed to support future improvements in the Downtown so that it can truly become a desirable and attractive 'place to be' for residents and visitors alike." (Appendix N, p. 29).

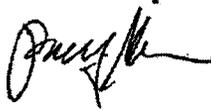
¹⁵ Appendix N, p. 29.

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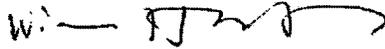
We believe the foregoing analysis provides substantial evidence that there are significant deficiencies in the DEIR sections discussed above, which will require new or additional analysis that should be included in a recirculated DEIR.

Please contact us by phone or e-mail, if you have any questions about these comments on the DEIR.

Sincerely,



PAUL J. SILVERN,
Partner, HR&A



WILLIAM H. WHITNEY, Ph. D.
Whitney & Whitney, Inc.

ATTACHMENT A

**Qualifications of HR&A Advisors, Inc. and
Whitney & Whitney, Inc.**



HR&A ADVISORS, INC.

Economic Development, Real Estate Advisory and Public Policy Consultants

QUALIFICATIONS TO PREPARE CEQA/NEPA DOCUMENTATION ON SOCIO-ECONOMIC ISSUES

HR&A Advisors, Inc. is a full service policy, financial and management consulting firm. Founded in 1976, the firm has a distinguished track record of providing realistic answers to complex economic, economic development, public finance, real estate, housing and strategic planning problems. HR&A clients include Fortune 500 corporations, all levels of government, the nation's leading foundations, and not-for-profit agencies. The firm has extensive experience working for the legal community in such roles as court-appointed special master, consent decree monitor, technical advisor and expert witness.

HR&A's practice lines include local and regional economic analysis, economic development program formulation and analysis, fiscal impact analysis, real estate analysis and advisory services, housing policy research and analysis, population forecasting and demographic analysis, and transportation and other capital facilities analysis and financing.

Among the qualities for which HR&A is widely known and respected are the impeccable quality of its analysis, ability to invent new analytic methods and approaches to suit the needs of a particular client, independent professional judgment honed through extensive exposure to the rigors of the public review process and the scrutiny of the judicial system, the ability to translate complex technical analysis for a variety of non-technical audiences, and the extensive involvement of its Partners in every project it accepts.

The firm's domestic and international consulting is provided by a staff of 25 people located in offices in Los Angeles and New York. Staff members include public finance professionals, planners, economists, architects, lawyers, and experienced project managers. Virtually every member of the firm has substantial public or private sector experience in economic, financial and policy analysis, real estate development and planning.

HR&A has frequently been called on by its public and private sector clients to provide analysis of population, housing, employment, economic, public school facilities and induced growth impacts for projects subject to the California Environmental Policy Act and the National Environmental Policy Act. The following are examples of projects that illustrate this experience.

For Public Sector Clients

- For the City of Lancaster, HR&A is preparing economic, fiscal and "urban decay" analysis for EIRs on the Lane Ranch Towne Center and The Commons at Quartz Hill, two regional shopping centers planned for opposite corners at 60th and Avenue L.
- For Los Angeles World Airports, HR&A prepared all of the economic impact analyses needed to evaluate alternative Master Plan concepts for future development of Los Angeles International Airport. The project included extensive econometric modeling of future baseline (pre-project) economic conditions and forecasts of conditions under alternative development scenarios in the City of Los Angeles, the County of Los Angeles, incorporated and unincorporated areas adjacent to the airport, and the surrounding five-county region.
- For the City of Chicago Department of Aviation, HR&A prepared regional and local economic and fiscal impact analyses of the O'Hare Modernization Program (OMP), which was used by the Federal Aviation Administration to prepare an Environmental Impact Statement on the project. The analysis includes econometric modeling of the six-county Chicago regional area to forecast the employment, total economic output, population and households, among other factors, that would be associated with the \$16-billion OMP project, as compared with a No Project scenario.
- For the City of Los Angeles Environmental Affairs Department, HR&A prepared draft Initial Study screening criteria, thresholds of significance and recommendations for analysis approach on the topics of housing, population and employment impacts.
- For Central City West Association and the City of Los Angeles, HR&A prepared a demographic portrait and forecast, and baseline "jobs/housing balance" analysis as part of the Central City West Specific Plan, a transitional neighborhood located directly north of Pico-Union, and across the Harbor Freeway, from the Los Angeles central business district. HR&A's analysis was used as the technical basis for the population, housing and employment sections of the EIR on the Plan. The firm also assisted counsel for interested parties regarding these issues during subsequent litigation over the adequacy of the Final EIR, which was ultimately decided in favor of the City.
- For the Santa Monica-Malibu Unified School District, HR&A managed a detailed review of the options available to the District to consolidate use of its four properties in the Ocean Park neighborhood of Santa Monica, an area which had been experiencing significant enrollment declines. The project included managing the preparation and certification of an EIR on the multi-site strategy adopted by the Board of Education, which included construction of the first new elementary school since the 1950s.
- For the University of California, Los Angeles, the firm prepared an analysis of the degree to which employment and housing associated with UCLA's 1991 Long Range Development Plan was consistent with the emerging regional planning concept of "jobs-housing balance." The firm's analysis was included as a technical appendix to the Final EIR on the Plan, which received approval by the Regents of the University.
- Also for the University of California, Los Angeles, HR&A prepared the population and housing section, and contributed to the induced growth section of the EIR on the 2000-2010 Long-Range Development Plan Update for the campus. The Final EIR was certified by the Regents.
- For the University of California, Santa Barbara, HR&A analyzed the public school impacts of the 1992 Long-Range Development Plan for the Santa Barbara campus, and prepared a Supplemental Environmental Impact Report on this issue, pursuant to a judgment against the University in an action brought by the Goleta Union School District. The Supplemental EIR was certified by the Regents of the University. Upon return to the writ, the court found that the analysis adequately supported the Regent's action. This determination was upheld by the Second District Court of Appeal in *Goleta Union School District v. Regents of the University of California*, 36 Cal. App. 4th 1121 (1995) (opinion on rehearing), holding that the University was not required to pay school mitigation fees.

- For the Southern California Association of Governments (SCAG), HR&A prepared the economic and fiscal impact sections of the EIR on SCAG's 1996 Regional Comprehensive Plan and Guide.

For Private Sector Clients

- For Westfield Corporation, HR&A prepared "urban decay" and public services impact analyses for a 100,000 square foot addition to the existing Westfield Santa Anita super-regional shopping center in Arcadia, urban decay analysis of a 280,000 square foot addition to Westfield Fashion Square in the Sherman Oaks community of Los Angeles, and a 445,000 square foot addition to Westfield North County in Escondido.
- For Bisno Development Company, HR&A is preparing technical reports on the population, housing employment and school facilities impacts of a 2,300-unit condominium project proposed for a former US Navy housing site in the San Pedro-Wilmington area of Los Angeles.
- For General Growth Properties, HR&A prepared detailed comments on various socio-economic issues in the Draft and Final EIR for the Americana at Brand, a "lifestyle" mall proposed for a site immediately adjacent to the Glendale Galleria in Glendale.
- For Universal Studios, Inc., HR&A analyzed the employment, housing, population and economic and fiscal impacts in Los Angeles County of a proposed \$3 billion Specific Plan that will nearly double the intensity of development at Universal City, the home of Universal Studios, Inc.'s film studio, studio tour, various entertainment retail uses, commercial office buildings and hotels. HR&A's analyses were included in the project's Draft EIR.
- For the Ratkovitch-Villaneuva Partnership, HR&A prepared the employment, housing, population and public schools impact analyses for the EIR on a proposal to construct 10 million square feet of new commercial and residential development around the City of Los Angeles' Union Station. The Draft EIR was certified by the Los Angeles City Council.
- For St. John's Hospital and Health Center, HR&A prepared analyses of the economic and fiscal impact of current health center impact on the economy of the City of Santa Monica, and the impact that will result from each of two phases of a major reconstruction of the health center following the 1994 Northridge earthquake. The analysis was relied on by the City's consultants in preparing the project's EIR, which was certified by the Santa Monica City Council. HR&A also prepared analysis for the Health Center on the degree to which draft police services mitigation measures being considered by the City met the requirements of CEQA.
- For The Walt Disney Company, HR&A prepared a comprehensive analysis of the employment, population, housing, "jobs-housing balance" and vehicle miles traveled impacts of Downtown Disney and Disney's California Adventure, in Anaheim. The firm's analysis is contained in a series of technical appendices to the EIR, which was certified by the Anaheim City Council.
- Also for The Walt Disney Company, HR&A analyzed the "jobs-housing balance" implications of a proposal to consolidate all of Disney's studio and studio-related administrative facilities on a single site in the City of Burbank. HR&A's analysis was included as a technical appendix to the project's EIR, which was certified by the Burbank City Council.
- For Wilshire-Barrington Associates, HR&A analyzed the population, housing, employment and jobs-housing balance impacts of a preliminary concept for converting the Barrington Apartments in West Los Angeles into a mixed-use project consisting of 700 apartments, a 262-room hotel, 210,000 s.f. of office space plus miscellaneous retail.
- For the Santa Monica Beach Hotel Development Partnership, HR&A coordinated an extensive review and prepared the Draft EIR comment letter for the developer of a proposed 160-room luxury hotel and community center proposed for a parcel of State-owned land along Santa Monica Beach.

Qualifications to Prepare CEQA/NEPA Documentation

- For Reliance Development Group, HR&A coordinated an extensive review and prepared the Draft EIR comment letter for the developer of a 1.8 million square foot office park and studio complex proposed for surplus land at Santa Monica Airport.
- For Maguire Thomas Partners, HR&A coordinated an extensive review and prepared the Draft EIR comment letter for the developer of a proposed office building and hotel project to be developed on Ocean Avenue in the City of Santa Monica.

REPRESENTATIVE LIST OF CLIENTS**Financial Institutions & Investment Companies**

American Council on Life Insurance
 Citibank Private Banking Group
 Citicorp Real Estate, Inc.
 Community Preservation Corporation
 First Union National Bank
 Fleet Financial Group
 Goldman Sachs
 Hartland Asset Management
 Lehman Bros.
 Shorebank Corporation

Real Estate Development Organizations and Private Companies

ARC Development
 ARCORP Properties
 Bermant Development Company
 Boeing Realty Corporation
 Casden Properties, Inc.
 Castle & Cook Development Company
 Centex Homes
 Continental Development Corporation
 Daniel Island Development Company
 Disney Development Corporation
 Edward J. Minskoff Equities
 Gaylord Entertainment
 General Growth Properties
 Gibson Speno LLC
 Home Depot Company
 JMB Urban Realty Corporation
 K. Hovnanian Companies of California
 Landmark Land Company
 Madison Square Garden
 Maefield Development Corporation
 Maserich Company
 Maguire Thomas Partners
 Millennium Partners
 Newhall Land & Farming Company
 New York Times Company
 Olympia & York (USA)
 The Related Companies
 Reliance Development Group
 Santa Monica Beach Development Corporation
 Starrett Housing Corporation
 Sunset Development Corporation
 Tishman Speyer Properties
 Trammell Crow Company
 Trammell Crow Residential
 TransAction Companies, Ltd.
 Twentieth Century Fox
 Universal Studios, Inc.
 The Walt Disney Company

Westfield Corporation, Inc.
 William Lyon Homes
 World Financial Properties

Public Development Agencies

Alliance for Downtown New York
 Battery Park City Authority
 Brooklyn Bridge Park Development
 Brooklyn Navy Yard Development Corporation
 Catskill Watershed Corporation
 Catholic Charities of Brooklyn
 Cincinnati Business Committee
 Columbus Downtown Redevelopment Corporation
 Downtown Brooklyn Local Development Corporation
 Economic Development Growth Enterprises, Oneida Co., NY
 Empire State Development Corporation
 Inland Valley Development Agency
 Memphis Riverfront Development Corp.
 National Capital Revitalization Corp.
 New York City Economic Development Corporation
 New York State Urban Development Corporation
 Penmar Development Corporation
 Port Authority of New York and New Jersey
 Queens West Development Corporation

Cultural, Recreational & Special Events Clients

American Museum of Natural History
 Brooklyn Academy of Music Corporation
 Brooklyn Museum of Art
 City of New Haven Arts & Entertainment Facilities Committee
 Lincoln Center for the Performing Arts
 Madison Square Garden
 New Jersey Performing Arts Center
 NYC2008
 Public Space for Public Life
 Randall's Island Sports Foundation
 The Trust for Public Land

Other Quasi-Public and Non-Profit Organizations and Foundations

Apartment Association of Greater Los Angeles
 The Bowery Mission
 Common Ground Community

Other Quasi-Public and Non-Profit Organizations and Foundations (con't.)

Cornell University
 Corporation for Supportive Housing
 Community Services Society of
 New York
 The Enterprise Foundation
 Ford Foundation
 Gay Men's Health Crisis
 Griffiss Local Development Corporation
 Harry Frank Guggenheim Foundation
 Kaiser Permanente
 Local Initiatives Support Corporation
 Los Angeles Collaborative for Community
 Development
 Metropolitan Boston Housing Partnership
 Metropolitan Jewish Geriatric Center
 National Equity Fund
 Neighborhood Progress, Inc.
 New York Blood Center
 Newark Alliance
 Saint John's Hospital and Health Center
 Saint Vincent's Hospital
 San Gabriel Valley Council of Governments
 Spanish-American Merchant's Assoc.
 University of California, Los Angeles
 University of California, Santa Barbara
 Upper Manhattan Empowerment Zone
 Development Corp.
 Williamsburg Affordable Housing
 Westside Urban Forum

Governmental Agencies

Boulder Urban Renewal Authority
 City of Berkeley Rent Stabilization Board
 City of Beverly Hills
 City of Chester (PA)
 City of Columbus
 City of Culver City (CA)
 City of Detroit
 City of Houston
 City of Huntington Beach (CA)
 City of Indianapolis
 City of Los Angeles
 City of New York
 City of Olathe (KS)
 City of Phoenix
 City of San Luis Obispo (CA)
 City of Santa Monica
 City of West Hollywood (CA)
 City of Yonkers
 Community Redevelopment Agency of the
 City of Los Angeles
 Compton Unified School District (CA)
 County of Santa Barbara
 District of Columbia

New Jersey Department of Commerce and
 Economic Development
 Redevelopment Authority of the
 City of Philadelphia
 San Diego Association of Governments
 Santa Ana Unified School District (CA)
 Santa Monica-Malibu Unified
 School District
 Southern California Association of
 Governments
 Yonkers Office of Downtown &
 Waterfront Development

Transportation Agencies

City of Chicago Department of Airports
 Connecticut Dept. of Transportation
 Delaware Dept. of Transportation

 Los Angeles County Metropolitan
 Transportation Authority
 Los Angeles World Airports
 Massachusetts Bay Transportation
 Authority
 New Jersey Transportation Corp.
 New York Metropolitan Transportation
 Authority
 San Diego County Regional Airport
 Authority
 U.S. Dept. of Transportation

Housing Agencies

Chicago Housing Authority
 Community Redevelopment Agency of the
 City of Los Angeles
 Cuyahoga Metropolitan Housing Authority
 (IN)
 Detroit Housing Commission
 Housing Authority of Baltimore City
 Housing Authority of the City of Houston
 Housing Authority of the County of Los
 Angeles
 Housing Authority of the City of Santa
 Monica
 Housing Bureau, City of Long Beach
 Indianapolis Housing Authority
 Los Angeles Housing Department
 New York City Housing Authority
 New York City Housing Development
 Corporation
 New York State Housing Finance Agency
 Omaha Housing Authority (NE)
 Philadelphia Housing Authority
 Redevelopment Authority of the City of
 Philadelphia
 St. Louis Housing Authority (MO)
 United States Department of Housing and
 Urban Development

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Whitney & Whitney, Inc. (W&W) is a real estate development advisory services firm located in Los Angeles, California. The company was founded by William H. Whitney, Ph.D. in 1984. After six years of serving the southern California and Hawaii markets, W&W reduced the scope of its activities when Mr. Whitney was recruited by Arthur Andersen to assist their Real Estate and Hospitality/Leisure consulting practices in establishing both a national and international presence.

Mr. Whitney served with Arthur Andersen for over nine years, participating on major real estate and hospitality consulting engagements in over 40 different countries throughout the world. Activities during this period also included starting Arthur Andersen's Asia/Pacific Region real estate consulting practice in Manila, and spending three years in Andersen's London offices serving as a resource for the European and Middle East real estate consulting practices.

Following his return to the United States in March 2000 Mr. Whitney has re-activated Whitney & Whitney, Inc. The firm's major focus is on the provision of real estate consulting services to both public and private clients in the following areas:

- Due diligence services for companies involved with the acquisition and operation of real estate assets;
- Participation on multi-disciplinary teams with architects, planners and other design professionals in the planning of resorts, new communities and urban mixed-use projects
- Advisory services related to the maximization of returns from corporate real estate assets;
- Advisory services related to the maximization of public benefits from proper utilization of public lands;
- Market feasibility studies for large scale land development programs, including waterfront projects, shopping centers, resorts, and new communities;
- Master planning for large-scale urban parks and open space programs;
- Financial feasibility studies for proposed real estate investments;
- Negotiation assistance related to the formation and implementation of public/private partnerships;
- Fiscal impact, economic impact, cost-revenue and cost-benefit evaluations of proposed real estate development activities for public agencies and private developers;
- Valuation/expert witness services related to complex real estate transactions and/or arbitration and litigation proceedings; and
- Implementation services related to attaining necessary development entitlements and funding for real estate programs.

W & W's recent projects include the following: since the early 1990s has served as a real estate economic and financial advisor to the State of Hawaii Aloha Tower Development Corporation related to the redevelopment of the downtown Honolulu waterfront; performed a market and financial analysis of a proposed "high technology" park/mixed-use commercial development program in Dubai, United Arab Emirates known as Dubai Internet City; conducted an analysis of the economic feasibility of converting the 4,700-acre El Toro Marine Corps Air Station to an urban park; conducted an analysis of the redevelopment potentials for tourist-serving projects in the Old City of Shanghai; provided a market analysis of the retail redevelopment potential for the International Market Place in Waikiki for the Queen Emma Foundation; performed an evaluation of redevelopment potentials and the resultant fiscal impacts from conversion of certain industrial lands to retail and other uses for the City of San Jose; provided an evaluation of the market feasibility for residential and commercial retail uses on surplus lands owned by Ohlone Community College, Fremont, California; evaluated the market and financial opportunity for development of a major shopping center near Mililani Town on the Island of Oahu, Hawaii for Forest City; and reviewed the market for office and retail commercial uses near the East Eisenhower Transit Station for the City of Alexandria, Virginia; and a market study for a C. J. Segerstrom & Sons development project located near South Coast Plaza in Orange County. Currently, the firm is serving as an advisor to Castle & Cooke on the preparation of a master plan and development strategy for 28,000+/- acres of land located on the North Shore of the Island of Oahu; providing a review of the master plan for the Sa'adiyat Island resort located in Abu Dhabi, United Arab Emirates; and preparing

market/financial analyses and a business plan for a proposed destination spa to be located in the Santa Monica Mountains.

Mr. Whitney's background in the analysis of major shopping center developments and the planning of their adjacent lands supersedes the formation of W & W. He has been conducting investigations of retail development opportunities for nearly 40 years, starting with the re-use of the Chevron properties located in El Segundo and Manhattan Beach that ultimately led to the development of Manhattan Beach Village. One such project, the planning of the Puente Hills Mall and its immediate surrounding lands for the Western Harness Racing Association in 1970, was the inspiration for his doctoral dissertation, "An Investigation of Selected Impacts on Surrounding Lands Which are Generated by Development of Regional Shopping Centers" (UCLA, 1975).

A partial listing of Mr. Whitney's shopping center experience includes the following:

ERNEST W. HAHN, INC. (NOW TRIZECHAHN): Regional Shopping Center Market Analysis and Economic/Fiscal Impact Studies, California and Washington

Conducted numerous market feasibility and economic/fiscal impact studies of proposed regional shopping centers for the Ernest W. Hahn Company, forerunner to TrizecHahn, including analyses for the following existing regional shopping centers: Puente Hills Mall, City of Industry; Mariner's Island, San Mateo; North County Fair, Escondido; Kelso Mall, Kelso, Washington; and Sierra Vista, Clovis, California.

PSB REALTY CORPORATION: Costa Mesa Courtyards, Costa Mesa, California

Performed market and financial feasibility studies for the Costa Mesa Courtyards, a 173,000 square foot shopping center once honored as the "Best Retail Development" in the Western States at the Pacific Coast Builders Conference. The 11-acre project has been an important stimulus to the revitalization of the City of Costa Mesa's old central business district.

JAMES YOUNGBLOOD, DEVELOPER: The Lumberyard, Encinitas, California

Conducted market and financial feasibility studies for the project, a specialty retail center with 80,000 square feet of retail space located in the City of Encinitas. The center has been successfully developed, and has performed at or above initial market expectations.

THE IRVINE COMPANY: Fashion Island and Spectrum Center Impact Studies, Newport Beach and Irvine, California

Conducted economic and fiscal impact evaluations of these two major centers as part of their submissions for general plan amendments to the Cities of Newport Beach and Irvine, respectively. The Fashion Island expansion program focused on the interactive benefits that could be generated between the existing and proposed retail uses and the surrounding hotel and office developments; in contrast, the central concern regarding the proposed Spectrum project was its potential sales and property tax generation for the municipality.

LIVERPOOL DEPARTMENT STORE AND THE FRANSEN COMPANY: Regional Shopping Center Market Evaluations, Various Metropolitan Areas, Mexico

Conducted detailed investigations of the market opportunities for Liverpool Department Store to serve as an anchor tenant and developer of regional shopping centers throughout Mexico. A number of sites in major metropolitan locations were evaluated, and projections were made of potential store sales and supportable retail space. As of 2001, the study had resulted in one new shopping center currently operating in the Mexico City metro area and a second project under construction.

MITSUI TRUST & BANKING CO., LTD.: Aloha Tower Marketplace, Honolulu, Oahu, Hawaii

Provided a market validation study for a festival marketplace that was under construction in downtown Honolulu. The development program, which ultimately became the Aloha Tower marketplace, called for approximately 200,000 square feet of retail and restaurant space at Honolulu Harbors Piers 7, 8 and 9 adjacent to the historic Aloha Tower. The analysis included a thorough examination of each segment of the potential customer base and an assessment of the potential expenditure patterns at the center from those identified market segments. The results of the market studies were then utilized to generate sales projections for the center.

THE ROBERTS GROUP: Wood Ranch Development Program, Simi Valley, California

Performed an analysis of retail commercial potentials for a major community shopping center located in the Wood Ranch planned community. The study involved a detailed assessment of competitive retail projects found within the immediate market area surrounding Wood Ranch and a determination of market support generated by Wood Ranch residents. The center is open and operating successfully.

A&B HAWAII, INC./VANGUARD PROPERTIES: Triangle Square Factory Stores, Kahului, Maui, Hawaii
Provided a market analysis of a proposed factory outlet center in Kahului, Maui near the Kahului Airport. The development program called for 110,000 square feet of retail space to be built at one of Maui's most important highway junctions. The analysis included an examination of the potential customer base, consideration of the potential expenditure patterns by the major market segments, and a projection of potential sales at the project. The project has been developed and is operating successfully.

CITY OF VISALIA: Regional Shopping Center Location Studies; Visalia, California
Served the City of Visalia as market and planning consultants in the evaluation of potential locations for new regional shopping center facilities in the City of Visalia. The analysis included an assessment of the market, fiscal, transportation and other economic and social impacts related to the alternative sites under consideration for the new center.

AMFAC/JMB HAWAII, INC.: Kaanapali North Beach Entertainment / Retail Center Feasibility Studies, Kaanapali, West Maui, Hawaii
Provided a detailed assessment of a proposed themed entertainment/retail attraction at North Beach. A number of different retail and entertainment concepts were evaluated for the property, including specialty retail alternatives similar to Whaler's Village and more elaborate commercial recreation complexes featuring entertainment venues similar to Church Street Station in Orlando, Florida. The major finding of the study was that the most profitable use in terms of land utilization and environmental constraints was a major health spa, as this use generated the highest visitor expenditures per unit of land area and required relatively low market penetration of the existing visitor base.

CASTLE & COOKE PROPERTIES, INC.: Iwilei District Market Feasibility Study, Honolulu, Hawaii
Conducted market feasibility studies to provide development guidelines for the redevelopment of the 50-acre Iwilei property. The site is located near downtown Honolulu in an area transitioning from industrial to commercial uses, and was previously occupied by the Dole Cannery. The market analysis concentrated primarily on the market potential for outlet-type retail shopping activities and "bull-pen"-type office space. Major issues raised by the study pertained to the site's relative accessibility for both local residents and visitors.

CASTLE & COOKE PROPERTIES, INC.: Mililani Town Center Market Assessment, Mililani Town, Oahu, Hawaii
Conducted a market analysis of the existing Mililani Town Center, a 166,500 square foot community shopping center located in central Oahu. The primary purposes of the investigation were to first, assess the current market performance of the center given its location, configuration and competitors; second, determine a strategy for expansion of the center to 400,000 square feet of space after giving full consideration to future market positioning, product mix and anchor tenants. Attention also focused on expanding the range of activities at the center to include a variety of service functions in addition to the retail tenants.

CITY OF LAWNSDALE: South Bay Galleria Buyout, Redondo Beach, California
Provided a financial evaluation of the ownership interest held by the City of Lawndale in the South Bay Galleria, a regional shopping center that was undergoing renovation by Forest City Development Company. The work performed by the consultant formed the basis for the city's successful sale of its interest in the project to the developer.

CITY OF PASADENA: Lake/Washington Neighborhood Shopping Center, Pasadena, California
Analyzed the development potential for a major new neighborhood shopping center intended to revitalize an older shopping district in Pasadena. The study involved an extensive review of existing businesses in order to assess both the positive and negative impacts of the new facility. The center has been constructed with a supermarket and drug store as the anchor tenants, and has successfully fostered revitalization of the entire district with new commercial development.

MAGUIRE THOMAS PARTNERS: Peter's Landing Specialty Center, Huntington Harbour, California

Provided market and financial consulting services to Peter's Landing, a specialty retail center and marina complex located in the affluent waterfront residential community of Huntington Harbour. Initially, the focus was on evaluating the market potentials for boat slips and retail and office uses. Later, attention was focused on evaluating the financial trade-offs between retention of the marina as a rental program and sale of the berths under a "dockminium" concept.

THE IRVINE COMPANY: Mervyn's Retail Location Study, Various Locations, Orange County

Assisted The Irvine Company (TIC) in evaluating potential alternative locations for Mervyn's department stores on various properties owned by TIC. The study considered both the provision of "blanket" coverage by the chain store throughout Orange County with multiple locations as well as an evaluation of specific sites on TIC lands. Presented results of the study to Mervyn's leadership in Minneapolis.

**SAN DIEGO UNIFIED PORT DISTRICT: Embarcadero Master Planning Program Feasibility Studies
San Diego, California**

Performed market studies leading to the establishment of Seaport Village, a leading specialty retail center of about 200,000 square feet located on the San Diego waterfront. Other market and related investigations have led to development of hotel, marina, convention center and cruise ship terminal facilities along the Embarcadero.

CITY OF IRVINE: Retail Commercial Needs Assessment Study, Irvine, California

Prepared a retail commercial needs assessment for the City of Irvine that considered the long term demand for and supply of retail commercial space in the community. One of the sites investigated ultimately became the Spectrum specialty/entertainment center. The results of the study were somewhat controversial, as the analysis was critical of a number of the existing and proposed retail locations in the residential villages of Irvine with respect to their long term economic viability.

DAVID HOCKER & ASSOCIATES: Shelter Cove Shopping Centers, Palmetto Dunes, Hilton Head, South Carolina

Performed market investigations of the potential for (1) a 200,000 square foot specialty retail shopping center anchored by "downsized" department stores, and a (2) 120,000 square foot convenience retail center. While the convenience center was accepted and completed as originally conceived, there was significant resistance from department stores to the concept of the specialty center in a resort setting because of the low visitation at Hilton Head during the prime Christmas season.

**ARROWHEAD REGIONAL DEVELOPMENT COMMISSION: Downtown Duluth Regional Center
Evaluation, Duluth, Minnesota**

Performed a comprehensive economic and fiscal analysis of alternative locations for a regional shopping center in the Duluth region. While the study clearly showed the advantages to the community of utilizing the downtown as a location for the facility, these potential benefits did not convince potential chain retailers that there was sufficient market support for the facility or that the center city location could be successfully "retrofitted" with large quantities of retail space.

**NANSAY CORPORATION: Market Assessment of Retail Potentials, Westwood Mixed Use Project
Westwood, California**

Analyzed the market potential for development of a major new retail center in Westwood. The study documented the need for quality retail stores and restaurants in the Westwood area, though the stigma associated with Westwood following several crimes of violence plus the recession of the early 1990s effectively doomed the project. Notwithstanding, in recent years Westwood has been rejuvenated on a piecemeal basis with many of the retail activities proposed in the study.

**PRUDENTIAL REALTY/MELVIN SIMON COMPANY: Marina Place Economic/Fiscal Impact Study,
Culver City, California**

Provided market assessments and economic and fiscal impact analyses of the proposed Marina Place regional shopping center as part of the consultant team that was successful in obtaining approvals for the proposed development on a 30+/- acre site near Marina del Rey. Unfortunately, regional economic conditions coupled with the decline in performance of traditional department stores led to the project's demise; the site was developed instead with a Costco department store.

HAWAII OMORI CORPORATION: Lahaina Cannery Shopping Center Evaluation, Lahaina, Maui

Performed a series of market evaluations for three properties owned by Hawaii Omori Corporation that were located

in the Town of Lahaina, Maui. One of the properties serves as the site for the Lahaina Cannery Shopping Center, an existing 180,000 square foot facility. The study examined the possibility of developing a multi-centered retail complex with both specialty and convenience retail nodes designed to serve the full range of resident and tourist retail needs.

MAUNA LANI RESORT, INC.: Specialty Retail Center Market Studies, Mauna Lani, South Kohala, Big Island of Hawaii

Analyzed the market potentials for the development of a specialty retail center at Mauna Lani Resort. The analysis focused on upper-income visitors and their propensities to support specialty retail shops in hotels and at "boutique" centers similar to The Shops at Kapalua. The study identified candidate tenants for the development, provided recommendations regarding store mix, and offered suggestions with respect to the optimum location for the facility within the resort.

ALOHA TOWER DEVELOPMENT CORPORATION: Aloha Tower Development Program, Fazes I and II, Honolulu, Hawaii

Prepared developer selection criteria and evaluated business terms of proposals for redevelopment of the Aloha Tower complex, a \$1 billion redevelopment program for the downtown Honolulu waterfront featuring a "festival market" specialty retail center, the precursor to current "entertainment/retail" projects. The first phase of the project, Aloha Tower Marketplace, was completed in 1994. Following the selection of the preferred developer, Enterprise Development Company, provided leasing advisory services and negotiated the business terms of the lease agreement between parties.

STATE OF HAWAII EMPLOYEES RETIREMENT SYSTEM (ERS): Kaahumanu Regional Center Expansion, Kahului, Maui, Hawaii

Provided a market and financial evaluation of the proposed expansion of Kaahumanu Center from 316,600 square feet of gross leasable area (GLA) to 542,600 square feet. The only regional center located on Maui, the property was owned by Maui Land & Pineapple Company, developers of Kapalua Resort. The analysis measured investment returns to the State of Hawaii ERS under a range of future outcomes. Of particular significance were the assessments of potential competitive impacts on the center from Mainland retailers entering the Maui market. The expansion program was successfully completed.

STATE OF HAWAII EMPLOYEES RETIREMENT SYSTEM (ERS): Waikele Shopping Center, Central Oahu, Hawaii

Completed a due diligence review of a proposed power center and an outlet mall which were developed on 40+/- acres of freeway frontage in the Waikele master-planned community. The services provided to the ERS included a review of major sources of demand for retail goods and services, a survey of existing and proposed competitive facilities on Oahu, and a detailed examination of the developer's proposed tenant mix and pro forma financial projections. Also compared actual leases with the pro-forma rent schedules to ensure that the project would achieve its target levels of return.

QUEEN LILIUOKALANI TRUST/FIRST HAWAIIAN BANK: Mauka Lands Evaluation, Kailua-Kona, Big Island of Hawaii

Served the Queen Liliuokalani Trust as market and financial advisors for 1,200 acres of land located in Kailua-Kona on the Big Island of Hawaii. Following its re-classification to urban use by the State Land Use Commission, provided assistance to the Trust by performing market studies for the site and reviewing proposals for the first phase of development from shopping center developer candidates. The project has gone forward successfully, and several increments of retail commercial development have been completed.

T & S DEVELOPMENT, INC.: Regional Shopping Center Assessment, Riverside, California

Provided a critique of the market study that supported the expansion of the existing Tyler Mall regional shopping center. Also presented a comparative analysis of the economic benefits resulting from the proposed expansion of Tyler Mall with an alternative program to develop a new regional center at Canyon Springs Road.

DONAHUE/SHRIBER AND THE IRVINE COMPANY: Comparative Analysis of Alternative Sites, City of Irvine, California

Assisted the shopping center developer and the Irvine Company in evaluating alternative locations for the development of Target department stores. Primary focus was on two sites in the City of Irvine – Interstate-

5/Myford and Culver/Barranca. The principal basis for comparison was the demographic characteristics of the primary market areas served by the two locations.

HOMART DEVELOPMENT CORP. (SEARS): Proposed Regional Shopping Center, Eugene, Oregon
Evaluated the market potential for a regional shopping center to be located in the Eugene, Oregon metropolitan area. The results of the study suggested that the market was likely too small to absorb the retail space proposed in the Homart project.

THE IRVINE COMPANY: Proposed Regional Shopping Center, Orange County, California
Provided a market analysis of the future potentials for a regional shopping center located on Santiago Canyon Road easterly of the City of Orange. The primary purpose of the study was to guide the master planning for the area and make necessary allocations for lands sufficient to accommodate future commercial space requirements.

AHMANSON COMMERCIAL DEVELOPMENT CORPORATION: Palm Desert Community Shopping Center, Palm Desert, California
Performed market and financial feasibility studies for this recently completed community shopping center located on Highway 111 adjacent to the Palm Desert Town Center regional mall. One purpose of the study was to consider a tenant mix that would be able to effectively compete with the regional mall.

**LOS ANGELES COUNTY CHIEF ADMINISTRATIVE OFFICE: Civic Center Mall Retail Analysis
Civic Center Mall, Los Angeles**
Evaluated the market potential for specialty retail and service commercial uses at a potential retail location on the Civic Center Mall near the Music Center. The purpose of the facility was to provide for the needs of governmental workers and visitors to County Hall of Administration. Consulting services also included lease negotiations with candidate tenants for the project.

Exhibit B

September 19, 2007

Mr. Patrick M. Soluri
Soluri & Emrick, LLP
1822 21st Street, Suite 202
Sacramento, CA 95814

RE: Sacramento Railyards Project

Dear Mr. Soluri:

At your request, Carter & Burgess has reviewed the Draft Environmental Impact Report (DEIR), Specific Plan and related planning documents for the Sacramento Railyards project, with a focus on the Alternatives to the Project contained in Section 8 of the DEIR. We strongly support the City's efforts to transform the Railyards from an underutilized and environmentally contaminated site into a transit-oriented, attractive, and vibrant urban place. We are also encouraged to note the Specific Plan's focus on creating a dynamic 24-hour urban environment that provides a range of complimentary uses – including cultural, office, hospitality, entertainment, retail, residential educational and open space – and a mix of housing products, including affordable housing.

As required in Section 15126 of the California Environmental Quality Act Guidelines (Consideration and Discussion of Alternatives to the Proposed Project), "An EIR must describe a range of alternatives to the project, or project location, that would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives."

The stated objectives of the project include the following:

- Integrate the Railyards area into the fabric of the existing Central City;
- Create a dynamic 24-hour mixed use urban village that provides a range of complementary uses—including cultural, office, hospitality, entertainment, retail, residential and open space-- and a mixture of housing products, including affordable housing;
- Connect the Railyards area with Sacramento's downtown office, retail, government center areas, Old Sacramento, the Richards Boulevard area, and the Alkali Flat neighborhood, using pedestrian and bicycle facilities, roadways, and public transportation routes;
- Connect the Railyards area to the Sacramento River waterfront, and allow for hotel, public open space, residential waterfront and recreational uses consistent with the

Carter & Burgess, Inc. Carter & Burgess Consultants, Inc.

C & B Architects/Engineers, Inc. C & B Architects/Engineers, P.C. C&B Nevada, inc

Riverfront Master Plan that will result in a vibrant waterfront, valuable to the region and the City;

- Transform the Railyards area from an under-utilized and environmentally contaminated industrial site into a transit-oriented, attractive, and nationally renowned mixed-use urban village;
- Utilize the historic Central Shops buildings as a heritage tourism draw and as inspiration for a mix of uses that will help to create a culturally-vibrant, urban community;
- Create a development that is a regional draw for the City of Sacramento due to its geographic location downtown near the Sacramento River waterfront and its unique mix of transportation, residential, cultural, office, hospitality, entertainment, retail and open space uses;
- Provide a mixture of uses that complement and support the City's planned Sacramento Intermodal Transit Facility (SITF), connecting the Central City to the region, the state and beyond; and
- Create a sustainable community that utilizes green building technology, water conservation measures and renewable energy sources.

Section 8 of the DEIR analyzes four project alternatives, including a No Project/ No Development Alternative, a No Project/ General Plan Buildout Alternative, a Reduced Density/ Reduced Intensity Alternative, and a Water Supply Constrained Alternative. The No Project/ No Development and No Project/ General Plan Buildout Alternatives are rejected as failing to meet the project objectives for developing a mixed use urban center. The Reduced Density/ Reduced Intensity and the Water Supply Constrained Alternatives are rejected on the basis that the office and residential development anticipated in the Specific Plan would need to be accommodated elsewhere in the region, due to projected population and job growth. These uses would be developed farther from the downtown core and result in increased levels of traffic congestion on regional roadways, higher levels of air pollutant emissions, and more conversion of farmland to urban sprawl in the region. The DEIR concludes the Specific Plan as proposed is the environmentally superior alternative, in that it avoids the aforementioned higher overall levels of environmental impacts to the greater region.

In our opinion, the Alternatives to the Project section of the DEIR is deficient, because it fails to consider a readily available alternative that would meet all of the project objectives, reflect a greater degree of consistency with the City's goals for mixed-use development in the downtown core, and reduce the severity of potential environmental impacts. This alternative would entail a significant adjustment to the proposed project phasing program.

26-37

Although not clearly outlined in Section 3 (Project Description) of the DEIR, other associated planning documents and staff reports (reference the July 12th Staff Report to Planning Commission) indicate the project will be broken into two phases: an Initial Phase consisting of Phases 1A, 1B and 2 of the Specific Plan and the Full Project Phase consisting of Phases 3 and 4. There exists, in our judgment, an extreme imbalance in the land uses and types of development between these two phases. The Initial Phase envisions development of 1,373,800 square feet, or 89%, of the total planned retail and up to 3,078 dwellings, or 25%, of the total planned residential. The Staff Report notes the Initial Phase will include a large-box destination retail use (Bass Pro Shops), and regional-drawing retail and entertainment uses. The Full Project Phase contains the remaining 11% (165,000 square feet) of the commercial retail and the remaining 75% (up to 9023 units) of the residential development.

There are three significant drawbacks associated with front-loading the project phasing with large-box and regional-oriented retail uses. First, the phasing may impede realization of the land use synergies necessary for a successful transit oriented development (TOD), by postponing the smaller-scale, neighborhood-oriented uses to the latter stages of the project. Given the cyclical nature of the residential market, and the structure of the phasing program (which includes a super-majority of the retail commercial development and a super-minority of the residential development in the Initial Phase) the City could lose the opportunity to create a truly mixed-use urban village as envisioned in the project objectives. Retail commercial development could proceed as part of the Initial Phase while construction of the residential units could stall indefinitely due to a depressed housing construction market.

Second, the phasing program exacerbates the potential for urban decay identified in the project Urban Decay Study prepared by Keyser-Marston Associates, Inc. in Appendix N of the DEIR. The study clearly notes that the Railyards Projects' planned 1.5 million square feet of retail development will contribute to a projected imbalance between comparison retail sales requirements (i.e. sales venues) in the trade area and comparison retail sales potential (i.e. consumer demand) in the trade area. Until the future comparison retail market supply is sufficient to support future retail sales requirements, the more vulnerable retail locations in the trade area may experience an interim period (until a least 2015) of economic instability that could lead to vacancies, which, if not mitigated, could be a prolonged condition.

Third, the phasing program exacerbates the severity of the significant traffic and air quality impacts anticipated in the Initial Phase of the project, by virtue of the fact that retail development generates substantially more traffic than residential development. These impacts could be more easily and successfully addressed if the rate of retail development is metered to a commensurate rate of residential development.

The City should require a more balanced and sustainable approach to the phasing program – one that assures development of the residential units concurrent with the proposed commercial retail. Further, this balanced phasing program should be analyzed in the Alternatives to the Project in

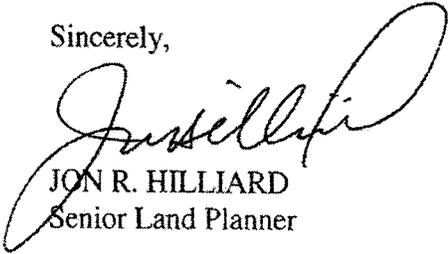
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(con't.)

the DEIR, and if found to be environmentally superior while still meeting the project objectives, adopted as the Preferred Project Alternative.

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(con't.)

In conclusion, we would like to reiterate our support of the City's ongoing efforts to revitalize the central city, and share their enthusiasm towards realizing the development of the Sacramento Railyards as a vibrant, sustainable mixed-use urban community. If you have any questions regarding this letter, please call me at 916-929-3323.

Sincerely,



JON R. HILLIARD
Senior Land Planner

Cc: Ken Smith

Exhibit C

September 18, 2007

Patrick M. Soluri
SOLURI & EMRICK
1822 21st St, Suite 202
Sacramento, CA 95814

Mr. Soluri,

Upon reviewing the DEIR, some questions and concerns have surfaced regarding the drainage of storm water runoff at the Railyard site. The report mentions that the site already has ponding and drainage issues as it stands undeveloped; after construction, the increase in impervious area will also increase storm water runoff. In fact, the Regional Board has indicated its concern that due to the existing remediation of the property, the developer should implement measures that will actually reduce percolation in open spaces. This will further increase the post-construction storm water flows. The proposed method for handling this increase in storm water runoff is the use of a "cistern" planned to be located near the northwesterly corner of the Specific Plan Area. This cistern will operate as a dual-use water quality/detention basin by treating the "first flush" storm water runoff as well as storing water to be later pumped into the Combined Sewer and Sanitary System (CSS) or the Sacramento River. Some concerns encountered with the cistern are as follows:

- A time frame of construction of the cistern is undefined.
- A responsible party for the construction and maintenance of the cistern is unclear.
- The design for the cistern is not stated. In fact, Impact 6.6-2 states that the "proposed cistern design has not been completed and the CVRWQCB has not approved the discharge from the cistern." It is difficult to determine the environmental impact on water quality and storm water runoff without additional information pertaining to the design of the cistern.
- The applied method for determining the 27 ac-ft runoff is not apparent.
- The effectiveness of the cistern to attenuate peak storm water runoff and address water quality concerns seems uncertain. Perhaps rather than the proposed mitigation measure 6.6-2 to "limit discharges", the developer should be required to obtain Regional Board approval of the design of the cistern or other treatment methods prior to the issuance of grading permits.

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Without the cistern, the post-construction storm drain run off may significantly affect the water quality of the Sacramento River. The DEIR does not propose another means of treatment.

Please feel free to contact us with any further questions or concerns.

Sincerely,



David Lawson