3 COMMENTS AND RESPONSES TO COMMENTS ON THE DEIR

This section of the Final EIR contains comment letters received during the public review period for the Draft EIR, which concluded on February 9, 2009. In conformance with State CEQA Guidelines §15088(a), written responses to comments on environmental issues received from reviewers of the Draft EIR were prepared.

3.2 COMMENTS AND RESPONSES ON THE DRAFT EIR

This section presents master responses, comment letters and supplementary materials provided by commenters, and individual comment responses. Section 3.2.1, "Master Responses," presents responses to environmental issues raised in multiple comments. They are organized by topic to provide a more comprehensive response than may be possible in responding to individual comments, and so that reviewers can readily locate all relevant information pertaining to an issue of concern. Section 3.2.2, "Individual Responses," presents copies of comment letters and supplementary materials received by the County from commenters, and individual responses to each comment, with cross-references to relevant master responses as necessary. Individual responses are presented in three groups; comments received from State agencies, comments received from local and regional agencies, and comments received from individuals. Within each group, comments and responses are arranged by the date of their receipt by the county.

3.2.1 MASTER RESPONSES

MASTER RESPONSE 1—MEASURE M

Several commenters on the DEIR noted that Measure M is merely advisory, not mandatory, and criticized the County and project proponents for relying on the directives of Measure M to shape the Sutter Point Specific Plan and alternatives considered in the DEIR. This master response attempts to provide some further explanation of Measure M and how it is interpreted and applied by the County with respect to the South Sutter Specific Plan project and the analysis in this EIR.

It is correct, as stated by several commenters, that Measure M was merely an advisory measure, which was provided as an opportunity for the voters of Sutter County to express their views on the appropriate direction and substance of future development within South Sutter County. The measure was not binding and does not obligate or require the County to take any particular action with respect to the area of the South Sutter Specific Plan. However, that fact does not diminish Measure M's importance in the view of the County. Measure M inquired of the voters of Sutter County whether they approved of planning and development of industrial, commercial and residential uses within the current South Sutter County Industrial/Commercial Reserve if certain planning standards were met. The ballot put before the voters in November 2004 articulated those standards as follows:

- **At least 3600 acres would be provided for commercial and industrial parks to create new jobs in Sutter County as a condition of having residential units approved.**

    - *Large commercial and industrial parks would be developed and marketed in the initial phases of the community to attract new employers to the County. Programs would be developed to maximize employment opportunities for County residents. The plan would include at least 3600 acres of industrial/commercial property, enough to support an estimated 70,000 jobs.*

- **At least 1,000 acres would be provided for schools, parks, open space, libraries, retail areas, and other community facilities, paid for by the development.**

- *The planned development would be required to include the full range of uses necessary to create a complete community in one coordinated plan, including schools, parks, open space, libraries, retail areas, and a variety of other community and civic uses. These facilities would be privately financed and/or funded by fees on development. All necessary schools would be paid for by a combination of State funding and fees on development. Development fees or similar measures would make up for any shortfall in State funding for school construction.*

► **No more than 2,900 acres would be available for residential construction on land protected, at a minimum, from a 100-year flood event, resulting in an estimated population of 39,000.**

- *Residential construction would be protected, at a minimum, from a 100-year flood event. No more than 2,900 net acres would be allowed for housing, including a maximum of 17,500 residential units supporting an estimated population of 39,000 at full build-out. The exact mix of housing types, number of units, and location of the residential development would be determined by the Board of Supervisors through the planning process.*

► **All necessary road, bridge, water, drainage, sewer and other improvements would be paid for by the development.**

- *The Board would adopt a detailed infrastructure, public services and finance plan that would require specific improvements to be provided as a condition of having residential development approved. The finance plan would implement development fees and other similar measures to ensure that the required improvements are paid for by the development without cost to existing residents. In addition to fees, developers may be required to advance funds to build initial infrastructure in advance of development.*

► **On-going law enforcement, fire, library and other public services would be paid for by the development, without reducing current service levels.**

- *The Board would adopt a detailed infrastructure, public services and finance plan that would require the development to fully fund all necessary public facilities and services on an ongoing basis. This would include all "municipal services" provided by the County, such as fire protection, law enforcement, library, animal control, street maintenance and the provision of utilities (i.e., water, sewer, drainage). This also would include services provided solely by the County, such as judicial, health, mental health, and social services.*

► **Developers would sign binding contracts to assure these planning requirements are met.**

- *The Board of Supervisors would require all developers to sign development agreements enforcing the planning standards shown in the ballot measure.*

The ballot measure was approved by the voters by a margin of 59%. The Board of Supervisors is popularly elected by the voters of Sutter County and thus, as the ultimate decision-maker for the County, is accountable to the voters of Sutter County for its decisions. It therefore simply makes good sense that the project would be designed to conform as closely as feasible to Measure M if it were to ultimately be supportable by the Board. The County, in preparing the EIR, felt that Measure M is clearly important to the citizens of the county, and that the conformance of the project to Measure M should be clearly articulated and reported in the EIR.

Further, by virtue of the strong citizen support expressed for Measure M, it was appropriate for the applicants, in proposing the Sutter Pointe Specific Plan, and County, in putting together the Draft EIR, to identify as a project objective (see CEQA Guidelines, § 15124, subd. (b)) the intention to "[d]evelop a project that complies with the Measure M advisory initiative as approved by Sutter County voters in 2004." (See DEIR, p. 1-5.) Similarly, when the time comes for the Board of Supervisors, after certifying the Final EIR, to consider approving either the proposed Specific Plan or one of the alternatives described in the Draft EIR (see Section 4.0), the Board may

exercise its legislative discretion to give weight to the extent to which the various proposals do or do not conflict with the voters' wishes as expressed in Measure M. (See *Sequoyah Hills Homeowners Association v. City of Oakland* (1993) 23 Cal.App.4th 704, 715 [court upholds respondent agency's adoption of findings rejecting as infeasible alternatives that did not further project objectives]; and *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1507-1508 [same]; see also *City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417 [court upholds respondent agency's adoption of findings rejecting alternatives as infeasible, reasoning that "'feasibility' under CEQA encompasses 'desirability' to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, legal, and technological factors"].)

MASTER RESPONSE 2—PROGRAMMATIC NATURE OF EIR ANALYSIS

Several commenters on the DEIR requested additional impact analysis of specific developments that may occur over time with implementation of the Sutter Pointe Specific Plan and/or criticized the Specific Plan or DEIR for not providing further detail about the development that would occur under the Specific Plan if it is approved by the County. Some commenters further argued that, under the circumstances surrounding the proposed Specific Plan, CEQA prohibited the County from preparing a Program EIR (see CEQA Guidelines, § 15168) premised on the future preparation of individual "second-tier" environmental documents for individual development proposals, and instead required the County to prepare a single Project EIR (see *id.*, § 15161) addressing each and every possible impact that could occur not only with build-out of the Specific Plan but also with the provision of various public services (such as water and wastewater services) during that build-out period. In other words, such commenters argued that "tiering" was disallowed for the Specific Plan. (See CEQA Guidelines, § 15385 for a definition of "tiering.")

These commenters are mistaken, in that CEQA not only allows, but actively encourages, the use of "tiering" for major land use approvals such as the adoption of a Specific Plan covering a substantial land area. In addition, the complex division of labor between various governmental agencies involved in approving the provision of, and providing, services to developed areas also makes impossible the kind of all-encompassing Project EIR advocated by some commenters. Here, in preparing a Program EIR for the Sutter Pointe Specific Plan, the County has completed all of the environmental analysis that was reasonably feasible under the circumstances. (See CEQA Guidelines, § 15151.) Note that impacts were not ignored; rather, the degree to which impacts details were evaluated was based on the level of detail of the project, and what is reasonable to detail at this level of project planning.

The general order and hierarchy of plans and other entitlements under California law, from broad and general to narrow and site-specific, is as follows: General Plans, Specific Plans, Zoning, Subdivision Maps, Use Permits, and Building Permits. Each type of plan or entitlement following a General Plan must be consistent with the General Plan and other plans and entitlements preceding it in this hierarchy. Thus, the Sutter Pointe Specific Plan must be consistent with the County's General Plan, and subsequent zoning ordinances, subdivision map approvals, and permits approved for development within the boundaries of the Specific Plan must be consistent with the Specific Plan's policies and guidelines. Because no General Plan can perfectly predict the types of development or uses that may be determined later to be appropriate for a particular area, the State Planning and Zoning Law allows for General Plans to be amended from time to time, frequently in conjunction with the proposal for a Specific Plan, or other specific development, in order to achieve the "vertical consistency" required by State law. Thus, the proponents of the Sutter Pointe Specific Plan submitted applications for certain amendments to the General Plan to maintain the required consistency between the documents. (See, e.g., DEIR, pp. 1-1, 2-5.) The legislative decision whether to approve those amendments and the determination whether the proposed Specific Plan and other related approvals are in fact consistent ultimately lies with the Sutter County Board of Supervisors.

According to the State CEQA Guidelines (Section 15168[a]), a local agency may prepare a program-level EIR to address a series of actions that can be characterized as one large project and are related either geographically; as logical parts of a chain of contemplated events; through rules, regulations, or plans that govern the conduct of a

continuing program; or as individual activities carried out under the same authorizing statutory or regulatory authority, and that have generally similar environmental effects that can be mitigated in similar ways. As noted above, this EIR was prepared as a Program EIR. (See DEIR, pp. 1-6—1-8.) As a Program EIR, this document serves as a "first-tier" document that assesses and documents the broad environmental impacts of a program with the understanding that a more detailed site-specific environmental review will be required to assess future projects implemented under the program. As individual projects with specific site plans and facilities are planned, the County will evaluate each project to determine the extent to which this EIR adequately addresses the potential impact of the project and to what extent additional environmental analyses may be required for each specific future project. (See Public Resources Code Sections 21083.3, 21093, and 21094 and State CEQA Guidelines Sections 15152, 15168, and 15183.) The fact that the County and the project proponents had the *option* of trying to prepare project-level analysis for the residential components of the Specific Plan does not mean that the County had the *duty* to take such an approach. (See Gov. Code, § 65457; CEQA Guidelines, § 15182.) Such an approach may be feasible for specific plans covering relatively confined geographic areas but has proven to be infeasible with respect to the 7,528-acre Sutter Pointe Specific Plan.

Because of the efficiencies allowed by tiering, the Legislature has declared that "*environmental impact reports shall be tiered whenever feasible*, as determined by the lead agency." (Pub. Resources Code, § 21093, subd. (b) (emphasis added).) The use of tiering is intended to allow agencies to avoid repetitiveness, wasted time, and unnecessary premature speculation by preparing a series of EIRs (or an EIR and later EIRs and/or negative declarations) on related projects. (Pub. Resources Code, §§ 21068.5, 21093, subd. (a); CEQA Guidelines, § 15152.)

According to the Court of Appeal for the Third Appellate District, "'tiering is a process by which agencies can adopt programs, plans, policies, or ordinances with EIRs focusing on "the big picture," and can then use streamlined CEQA review for individual projects that are consistent with such. . . [first tier decisions] and are. . . consistent with local agencies' governing general plans and zoning.'" (*Koster v. County of San Joaquin* (1996) 47 Cal.App.4th 29, 36.) Public Resources Code section 21068.5 defines "tiering" as:

> [T]he coverage of general matters and environmental effects in an environmental impact report prepared for a policy, plan, program or ordinance followed by narrower or site-specific environmental impact reports which incorporate by reference the discussion in any prior environmental impact report and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior environmental impact report.

Notably, the California Supreme Court recently upheld a program EIR in *Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143 (*Bay-Delta*) and in doing so provided a useful explanation of the purposes and benefits of such EIRs. In that case, a consortium of federal and state agencies created a long-term comprehensive plan, known as "the CALFED Program" ("CALFED") to address pollution problems and other environmental issues associated with the Bay-Delta region. Because of the plan's comprehensive and long-term nature, the proponents of CALFED opted to proceed in stages and to prepare a program environmental impact statement/environmental impact report (PEIS/R) for the project. Among other things, project opponents claimed the PEIS/R lacked sufficient detail regarding the sources of water that would be used to implement the CALFED Program because the PEIS/R merely listed potential sources of water, indicating that the ultimate source determination would be made later. The Court of Appeal agreed, holding that the PEIS/R needed to more specifically identify potential water sources and needed to include additional analysis of the impacts of supplying water from each identified potential source. The California Supreme Court reversed, however, holding that the PEIS/R fully complied with CEQA in identifying potential sources of water and analyzing the associated environmental effects in general terms. As explained by the Court:

> The purpose of tiering is to allow a lead agency to focus on decisions ripe for review. (Pub. Resources Code, § 21093, subd. (a); [CEQA Guidelines], § 15385, subd. (b).) An agency that

> chooses to tier may provide analysis of general matters in a broader EIR, then focus on narrower project-specific issues in later EIR's. ([CEQA Guidelines], § 15152, subd. (a).) Future environmental documents may incorporate by reference general discussions from the broader EIR, but a separate EIR is required for later projects that may cause significant environmental effects inadequately addressed in the earlier report. (Id., § 15152, subds. (a), (f).)
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> ...
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> Although later project-level EIR's may not simply tier from the PEIS/R analysis and will require an independent determination and disclosure of significant environmental impacts (see [CEQA Guidelines], § 15152, subd. (f)), this stage of program development did not require a more detailed analysis of the Program's future water sources, nor did it appear practicable. By compelling CALFED at the first-tier stage to provide greater detail about potential sources of water for second-tier projects, the Court of Appeal's decision undermined the purpose of tiering and burdened the program EIR with detail that would be more feasibly given and more useful at the second-tier stage. Such details were properly deferred to the second-tier of the CALFED Program, when specific projects can be more fully described and are ready for detailed consideration.
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> (*Bay-Delta, supra*, 43 Cal.App.4th at pp. 57-59.)

Here too, future CEQA review of site-specific projects would require detailed analysis of potential impacts where, given the broad, programmatic nature of this EIR, those impacts have only been analyzed at a general level. However, consistent with the long-term and comprehensive nature of the Sutter Pointe Specific Plan, a program EIR with program-level analysis is appropriate in this circumstance. (See *ibid.*, see also Public Resources Code Sections 21083.3, 21093, and 21094 and State CEQA Guidelines Sections 15152, 15168, and 15183.)

Sutter County's approach here is not only consistent with the Legislature's directive that EIRs "shall be tiered whenever feasible," but also recognizes the complex division of labor amongst California public agencies involved in process of approving development and providing services thereto. Although Sutter County's DEIR provides program-level analysis of the impacts of actions needed by other public agencies to facilitate development in the project area, a greater level of specificity is not reasonably feasible, and any attempt to provide full CEQA analysis now for future actions of such other agencies would tend to usurp the prerogatives for those agencies and prevent them from accounting for future environmental conditions as they unfold. For example, the provision of wastewater service to the project area will require approval by the Local Agency Formation Commission ("LAFCO") of Sacramento County of an expansion of the sphere of influence of the Sacramento Regional County Sanitation District ("SRCSD") (please refer to Master Response 8 for a detailed discussion of wastewater service to the project site). Sacramento County LAFCO's own rules require LAFCO to act as lead agency on any proposed sphere of influence expansion; so even if Sutter County had attempted to provide project-level review for any future SCRSD or LAFCO actions needed to provide wastewater service, such an attempt by Sutter County would not have resulted in a single project EIR that would suffice for all actions to be taken by these two other agencies. Nevertheless, a broad analysis of the expected impacts was conducted and included in the EIR.

Another impossible task would be to provide project-level analysis of all of the impacts associated with future actions by the State Water Resources Control Board ("SWRCB") to change the purpose of use for surface water currently being diverted for agricultural irrigation by the Natomas Mutual Water Company. Because the initial phases of development at Sutter Pointe can be served sustainably by groundwater, any such action of the SWRCB would not occur for several years, by which time the dynamic and ever-changing conditions in the Sacramento River and other affected water bodies are likely to be considerably different than what exist today. Impacts of these actions were considered in the EIR, but were considered programmatically and broadly. Any attempt in the present to undertake a project-level CEQA analysis for the proposed SWRCB action would likely be doomed to

failure in the sense that the analysis would almost certainly have to be substantially modified to account for changed conditions. Notably, nothing in the California Supreme Court's decision in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412 suggests that, in identifying the water sources needed for proposed development and assessing the environmental impacts associated with those sources, an EIR for a land use plan must provide *project-level* review of any proposed water rights approvals or the physical facilities needed to treat and deliver water to areas proposed for development.

MASTER RESPONSE 3—DEFERRED AND/OR HORTATORY MITIGATION

Several comments raised concerns that some of the mitigation measures included in the Draft EIR impermissibly deferred mitigation. In particular, some commenters expressed the belief that the Specific Plan's policies and some of the more broadly worded mitigation measures designed to reduce the project's impacts on biological resources, climate change and climate change impacts on the project improperly deferred the formulation of precise mitigation.

The commenters are correct that, as a general matter, a lead agency must not defer the formulation of mitigation until after project approval. (CEQA Guidelines, § 15126.4 subd. (a)(1)(B).) The state courts, however, have developed legal principles regarding the extent to which an agency can rely on a mitigation measure that defers some amount of environmental problem-solving until after project approval. In particular, deferral is permissible where the adopted mitigation measure commits the agency to a realistic performance standard or criterion that will ensure the mitigation of the significant effect or lists alternative means of mitigating an impact that must be considered, analyzed and possibly adopted in the future. (See *ibid* ["measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way"]; *Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th 777, 793-794 [deferral is permissible where the agency commits itself to mitigation and either (1) adopts a performance standard and makes further approvals contingent on finding a way to meet the standard or (2) lists alternative means of mitigating the impact which must be considered, analyzed, and possibly adopted in the future]; *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1448–1450 [a deferred approach may be appropriate where it is not reasonably practical or feasible to provide a more complete analysis before approval and the EIR otherwise provides adequate information of the project's impacts]; *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1029-1029 (*SOCA*); *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275.)

The use of performance standards is particularly appropriate in connection with "program EIRs", such as the Sutter Pointe Specific Plan EIR, that will necessarily be followed by additional, project-level environmental review. "[F]or kinds of impacts for which mitigation is known to be feasible, but where practical considerations prohibit devising such measures early in the planning process (e.g., at the general plan amendment or rezone stage), the agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval. Where future action to carry a project forward is contingent on devising means to satisfy such criteria, the agency should be able to rely on its commitment as evidence that significant impacts will in fact be mitigated." (*SOCA, supra*, 229 Cal.App.3d at pp. 1028-1029; see also *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351.)

Consistent with the CEQA requirements set forth above, the mitigation set forth in the Draft EIR, and the policies and programs included in the Sutter Pointe Specific Plan, the County proposes to adopt performance standards to ensure the efficacy of the mitigation measures, policies and programs. (*Endangered Habitat League*, *supra*, 131 Cal.App.4th at pp. 793-794.) For instance, Mitigation Measure 3.12-2 states that environmental assessment of remaining areas of the project site must be conducted prior to construction or ground disturbance in these areas, and requires that the investigation and remediation recommended by these assessments be conducted, identifying the specific regulatory requirements and components of these investigations. The mitigation measure specifies particular actions which must be taken, and identifies the performance standards which must be met before construction or ground disturbance can take place, ensuring the efficacy of the mitigation measure.

Moreover, the Sutter Pointe Specific Plan includes numerous policies and programs that do not defer some amount of formulation. Examples of these policies include, but are not limited to Policy 4.1-2, which establishes a parks standard of 5.0 acres per 1,000 residents for parks, and 10 acres per 1,000 residents of total parkland and open space; Policy 5.2-2, which states that development plans shall ensure no net loss of wetlands, other waters of the United States, and associated functional values; and Policy 8.6-1, which states that adequate school capacity to serve the number of students anticipated in the plan area shall be provided.

The fact that certain policies and programs do not include detailed site-specific information on how the policy or program will be implemented is attributable to the programmatic and necessarily broad nature of the Sutter Pointe Specific Plan. (**See also Master Response 2, "Programmatic Nature of EIR Analysis".)** CEQA Guidelines section 15152, which sets forth principles governing tiering, recognize that "[w]here a lead agency is using the tiering process in connection with an EIR for a large-scale planning approval. . . site-specific information may not be feasible but can be deferred, in many instances, until such time as the lead agency prepares a future environmental document in connection with a project of a more limited geographical scale." Section 15152 also acknowledges that "not all effects can be mitigated at each step of the process. There will be some effects for which mitigation will not be feasible at an early step of approving a particular development project." Second- or even third-tier CEQA review would then be required to develop the detailed mitigation.

The extent to which some of the proposed mitigation measures are general in nature is simply a reflection of the fact that the proposed project is a Specific Plan covering over 7,500 acres of land, with a build-out timeline of 20-30 years. The specificity of a Draft EIR's discussion of mitigation measures should be proportionate to the specificity underlying the project. (*Rio Vista Farm Bureau Center, supra,* 5 Cal.App.4th at p. 376.) If the proposed Specific Plan is adopted, the County will have successive opportunities in the future, in processing future tentative subdivision maps, use permit applications, and similarly specific entitlement requests, to translate some of the broadly framed, specific plan-level mitigation measures into more detailed, site-specific measures. For example, the County will have the opportunity, as the years pass, to keep abreast of the latest science on climate change as it considers future site-specific approvals. In addition, as the statewide implementation of AB 32 progresses, it is very likely that development within the County, like development elsewhere in California, will be subject to new regulatory requirements and mandates developed by the Air Resources Board.

Some commenters quote various sections of CEQA relating to the requirement to mitigate significant environmental impacts and then conclude that the goals and policies cited by the DEIR are not enforceable, mandatory or effective. These comments apparently mix considerations that may be germane to the Specific Plan (i.e., goals and policies) with those that may be relevant to the DEIR (i.e. proposed mitigation measures), making it difficult to discern which topics presented by the commenters are CEQA-related and which ones are not. With respect to the goals and policies cited by the DEIR, these goals and policies were listed in the DEIR as evidence of components of the proposed Specific Plan that would tend to reduce or avoid impacts, and not as mitigation measures as required by CEQA.

MASTER RESPONSE 4—ALTERNATIVES

The Draft EIR considers a reasonable range of potentially feasible alternatives, as required by CEQA Guidelines Section 15126.6. That section provides that

> "[a]n EIR shall describe a range of reasonable alternatives to the project, or to the location of the 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 evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project

> alternatives for examination and must publicly disclose its reasoning for selecting those alternatives."
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> (CEQA Guidelines, § 15126.6, subd. (a).)

An EIR's alternative analysis need not be driven by any one particular impact or project objective, as some of the commenters appear to suggest. (See *Sierra Club. v. City of Orange* (2008) 163 Cal.App.4th 523, 545-547 [rejecting argument that EIR's alternative analysis was insufficient because each alternative had environmentally disadvantageous aspects).] "CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR. Each case must be evaluated on its own facts, which in turn must be reviewed in light of the statutory purpose." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 566.) For many projects, including this one, there may be "literally thousands of 'reasonable alternatives' to the proposed project" along a continuum of possible plans or versions of a proposed project. (*Village Laguna of Laguna Beach v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1028-1029.) "Thus, as both the California and federal courts have recognized, '[t]he statutory requirement for consideration of alternatives must be judged against a rule of reason.'" (*Ibid.*)

The rationale for selecting the alternatives discussed in the Draft EIR can be found in Chapter 4, "Alternatives to the Proposed Project." That discussion provides the reasoning that informed the decision to select four alternatives for analysis in the Draft EIR, including the required "No Project" alternative. The County believes that both the range of the alternatives selected for analysis and the alternatives themselves are "reasonable" in light of the basic project objectives and the facts and circumstances affecting the project, including its location, prior relevant planning and approvals, site ownership and control, and economic and technological feasibility. No changes to the Draft EIR's alternatives analysis are necessary.

MASTER RESPONSE 5—SCOPE OF TRAFFIC ANALYSIS

Some commenters criticized the scope of the DEIR's analysis of regional traffic impacts, asking for either specific additional roadway segments or intersections to be studied or, in one instance, that "all" roadways within a particular jurisdiction (Placer County) be analyzed.

The County disagrees that any additional roadway segments or intersections need to be studied, based on both the evidence of the scope of likely impacts and CEQA provisions setting forth the proper scope of such analysis.

Public Resources Code section 21092.4 is the vehicle by which the Legislature has required local lead agencies to prepare regional traffic impact analyses in appropriate circumstances. Where a lead agency is commencing preparation of an EIR for a project of statewide, regional, or areawide significance (see also CEQA Guidelines, Section 15206), the lead agency must seek input on the scope of the necessary traffic impact analysis from expert "transportation planning agencies" and from other "public agencies which have transportation facilities which could be affected by the project." The lead agency's consultation with such entities "shall be conducted in the same manner as for responsible agencies[.]" Thus, for purposes of determining the scope of an EIR's traffic impact analysis, Section 21092.4 elevates the status of a regional transportation agency or public agency with transportation facilities that could be affected by the project to that of a de facto "responsible agency" under CEQA. Under ordinary circumstances, a responsible agency "is an agency, other than the lead agency, which has responsibility for carrying out or approving a project." (Pub. Resources Code, Section 21069.) Responsible agencies play a key role in determining the scope and content of an EIR. However, under the circumstances where an agency is granted de facto responsible agency status merely by virtue of meeting the criteria of Section 21092.4, the agency's authority to dictate the scope and content of an EIR is not unfettered. Rather, in the case of a public agency with "transportation facilities" that could be affected by the project, its authority is limited to requesting that the lead agency analyze only those roadways that meet the statute's definition of "transportation facilities." At the time Sutter County commenced preparation of the Draft EIR, section 21092.4 provided that "'transportation facilities' includes major local arterials and public transit *within five miles of the project site* and

freeways, highways, and rail transit service *within 10 miles of the project site*." (Emphasis added.) Effective January 1, 2009 (too late to influence the scope of the Draft EIR), the Legislature modified this definition to include "overpasses, on-ramps, [and] off-ramps . . . within 10 miles of the project site."

As required by Section 21092.4, Sutter County provided its notice of preparation to all agencies required to receive it under the statute. Pursuant to the directives in the statute, the scope of the traffic analysis included in the DEIR covered all major local arterials and public transit within five miles of the boundaries of the Specific Plan area that were identified by commenting agencies such as the adjacent cities and counties bordering the project, and all freeways, highways, and rail transit service within 10 miles of the Specific Plan's boundaries. CEQA does not require the County to analyze all roadways or intersections within a particular jurisdiction unless they meet the locational and size criteria set forth in Section 21092.4 and the commenting agencies request that they be studied. This is especially true of Placer County, which extends eastward all the way to the Tahoe Basin and California-Nevada border. Sutter County carefully considered all of the requests by adjacent jurisdictions to analyze specific roadways and intersections outside of Sutter County, and where the traffic modeling suggested there would be an impact, or where the roadways fell within the category of affected "transportation facilities" as defined by Section 21092.4, the DEIR analyzed the impacts to those traffic facilities and proposed mitigation where necessary. The traffic engineer investigated the amount of traffic added by the project to major local arterials in the region, and did extend the study limits beyond those specified by the Public Resources Code where warranted by the modeling. For example, the study area extended eastward more than five miles from the project limit to the intersection of Fiddyment and Baseline Roads. Consequently, the geographic scope of the traffic analysis is considered sufficient to identify all significant traffic impacts on major local arterials.

MASTER RESPONSE 6—TRAFFIC MITIGATION

Some commenters questioned the DEIR's proposed approach to mitigating the extra-jurisdictional traffic impacts, and specifically, Mitigation Measure 3.3-1. In response, the County notes that its approach of assessing the project only for its "fair share" of the costs of various improvements is consistent with constitutional limitations (see CEQA Guidelines, Section 15126.4 (a)(4), and court cases cited therein), and further notes that with respect to impacts occurring outside the County's jurisdiction, the County proposes to commit to the steps necessary to create the institutional and legal arrangements needed to create a flow of money from the project proponents to the County and thence to other entities such as Caltrans and neighboring counties affected by the proposed development under the Specific Plan. If adopted by the Board of Supervisors, Mitigation Measure 3.3-1 would bind the County to attempt to reach agreement with the affected jurisdictions, and would bind the project applicants to pay only for their "fair share" of the improvements needed to address demands created by the proposed project.

The County has disclosed the impacts of its proposed approach in an honest, straightforward, and technically conservative manner (see Master Response 5). It has proposed mitigation that would, if implemented, reduce the proposed project's impacts on some facilities to a less-than-significant level. Not all impacts, however, can be mitigated to less-than-significant levels. In particular, those impacts that can only be mitigated through fair-share contributions to proposed facilities that would be built outside Sutter County, and that therefore require the cooperation and participation of one or more agencies other than Sutter County, have been conservatively identified as significant and unavoidable, since the cooperation of those agencies cannot be guaranteed at this time. The County is not aware of any mechanism whereby it can cause improvements to be made in another jurisdiction. Even so, the County would commit itself, under this approach, to work in good faith with its neighboring counties and Caltrans in order to fashion an agreement that would accomplish the extra-territorial mitigation measures set forth in the document.

The actual mechanism for funding improvements in other jurisdictions would depend on the agreements between Sutter County and each jurisdiction or agency. Options include the collection of fees that are transmitted to the affected jurisdiction, calculated according to each jurisdiction's standard formulas, and/or requiring the applicant

to fully fund and/or construct the improvements with the expectation of reimbursement as fees are collected from other jurisdictions.

Should the agreements come to pass as the County reasonably anticipates, the Sutter Pointe Specific Plan project's fair share contributions should suffice to mitigate its own impacts to less-than-cumulatively considerable or less-than-significant levels. As the Third District Court of Appeal noted in *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1188, "a single project's contribution to a cumulative impact is deemed less than significant if the project is required to implement or fund its 'fair share' of a mitigation measure designed to alleviate the cumulative impact." (See CEQA Guidelines, Section 15130, subd. (a)(3).) "Fee-based mitigation programs for cumulative traffic impacts – based on fair-share infrastructure contributions by individual projects – have been found to be adequate mitigation measures under CEQA." (*Ibid.*, citing *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 140.) In *Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 363, the court stated broadly that "[f]ee-based infrastructure can be adequate mitigation under CEQA, and can be particularly useful where, as here traffic congestion results from cumulative impacts, and not solely from the development of a single project." This statement makes it clear that the payment of fees is in general a legitimate form of mitigation. Numerous public agencies throughout California regularly utilize the payment of fees into a capital improvement program as standard mitigation for a variety of project-specific impacts (e.g., increased demands on water or wastewater treatment plants, road systems, parks, etc.) "To be adequate, these mitigation fees, in line with the principle discussed above, must be part of a reasonable plan of actual mitigation that the relevant agency commits itself to implementing." (*Anderson First Coalition v. City of Anderson, supra,* 130 Cal.App.4th at p. 1188, citing *Save Our Peninsula, supra,* 87 Cal.App.4th at pp. 140-141.) The agreements contemplated by DEIR Mitigation Measure 3.3-1 are intended to create such "reasonable plans" for mitigation. As explained above, because such "reasonable plans" for impacts occurring outside of Sutter County and on Caltrans facilities do not yet exist, the County has conservatively, and appropriately, concluded for the time being that the impacts will be significant and unavoidable. Many of them, however, may ultimately prove to be less than significant if DEIR Mitigation Measure 3.3-1 functions as intended and leads to binding agreements between the various public agencies involved.

Under the circumstances at hand, where institutional arrangements between Sutter County, Caltrans, and adjacent counties to effectuate extra-territorial traffic mitigation do not yet exist, CEQA does not require that these inter-agency agreements be drafted, circulated, or approved prior to certifying the Final EIR for the Sutter Pointe Specific Plan. Given the current absence of existing inter-jurisdictional institutions to deal with these impacts absent such agreements, the County is not in a position to require any other agencies to enter into any agreements with the County with respect to a project that has not yet even been approved. Once the contemplated agreements are in place, however, future County projects causing impacts in these other participating jurisdictions should be able to rely on what will then be an existing mechanism for assessing and implementing extra-territorial mitigation. In short, if the Board of Supervisors chooses to approve the proposed Sutter Pointe Specific Plan and adopts DEIR Mitigation Measure 3.3-1, such action will be a pioneering step towards building a regional traffic mitigation program that will be in place for the benefit of future development approvals in the general geographic area in which the project site is located.

The DEIR recognizes that there is a time delay between when an improvement is needed and when development is fully built out and can pay its full share of the improvement costs (see discussion under Mitigation Measure 3.3-6 [page 3.3-81], for example). There is also often a funding gap between the total amount of impact fees that can be legally collected and the total cost of the improvement. For these reasons, the DEIR has determined that certain impacts are significant and unavoidable even when an adequate mitigation measure has been identified in the DEIR.

MASTER RESPONSE 7—GREENHOUSE GAS ANALYSIS AND MITIGATION

Some commenters asserted that the DEIR improperly defers greenhouse gas mitigation to future projects within the specific plan rather than adopting a comprehensive and specific set of mitigation measures that would be binding on all future projects. In other comments, individuals and entities proposed a number of specific additional policies and measures to be applied to future development within the Specific Plan area. Those comments providing specific suggestions are addressed in the responses to individual comments. This Master Response focuses on the broader theme of some of those comments asserting that the County should adopt more specific measures as binding on all future projects within the SPSP area. As described in Master Response 3, "Deferred and/or Hortatory Mitigation," the policies contained in the Specific Plan and the mitigation proposed in the DEIR are by no means the County's only mechanisms to address climate change concerns. Numerous design principles, and transportation guidelines aimed at promoting energy efficient design, equipment, and development patterns, are "built into" the Specific Plan, including provision of bicycle and pedestrian infrastructure, integration of transit into the plan, creation of a Transportation Management Association, requiring an additional 20% energy conservation beyond Title 24 energy conservation requirements, and water-efficient design and landscaping.

The commenters criticizing the County's climate change impact analysis and proposed mitigation have provided no specific evidence as to why implementation of these policies and programs would be ineffective at substantially reducing greenhouse gas (GHG) emissions generated under the Sutter Pointe Specific Plan. The mitigation measures cross-referenced in DEIR Section 3.17, "Climate Change" (Mitigation Measures 3.4-1, 3.4-2, and 3.17-1) provide a menu of individual mechanisms that would reduce air-quality, traffic, and waste disposal impacts and have the concurrent co-benefit of reducing greenhouse gas emissions. Contrary to some commenters' assertions, the mitigation measures are written in mandatory language (e.g., "the County shall require…," "the developer shall then submit…," "the report shall also demonstrate….") such that there is no question that each increment of new development within the Specific Plan will have to comply with and implement a broad range of feasible measures. The fact that any chosen mitigation must be "feasible" is not surprising, as CEQA never requires public agencies to impose infeasible mitigation measures but rather, permits agencies to conclude the certain proposed mitigation, for various reasons, is simply not feasible to implement. Here, any such determinations will be made in the light of day, with ample opportunity for public input, in connection with the processing and approval of future project-level entitlements.

The extent to which the proposed mitigation measures are general in nature is simply a reflection of both (i) the early stage in the development process for which the draft Sutter Pointe Specific Plan is proposed and (ii) the early stage in the history of implementing AB 32, the Global Warming Solutions Act of 2006 (Health & Saf. Code, § 38501 et seq.). The specificity of an EIR's discussion of mitigation measures should be proportionate to the specificity underlying the project. (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 376.) If the proposed Specific Plan is adopted, the County will have opportunities in the future, in processing future small-lot tentative subdivision maps, use permit applications, and similar entitlement requests supported by site-specific environmental documents, to translate some of the broadly framed, program-level specific plan level mitigation measures into more detailed, site-specific measures. This process will occur over many years, and perhaps more than two decades, as the Specific Plan area gradually builds out in response to market and demographic forces. The County will also have the opportunity, as the years pass, to keep abreast of the latest science on climate change as it considers future site-specific approvals. In addition, as the statewide implementation of AB 32 progresses, it is very likely that development within Sutter Pointe, like development elsewhere in California, will be subject to new regulatory requirements and mandates developed by the Air Resources Board (ARB).

At present, although the ARB has adopted a "Scoping Plan" laying out in general terms the broad strategies the agency intends to follow in fashioning and adopting future regulations, ARB has not yet adopted any such regulations. Only when those regulations are finally adopted will land use planning agencies such as Sutter County be able to ascertain or learn of new energy conservation requirements or other measures that will be mandated on new development on a statewide basis. At that time, compliance with any such measures will not put

developers in Sutter Pointe at a competitive disadvantage vis-à-vis their competitors in other areas and jurisdictions within California.

ARB's regulations should also reveal the strategies that ARB believes are most cost-effective in reducing GHG emissions and may identify technological trends or preferences that will inform future actions of the County as it processes future site-specific approvals within the project area. Because most of the project area will be mapped and given project-level entitlements *after* the AB 32 regulations are in place, it made little sense to the County to choose an inflexible list *today* of specific measures that may become disfavored over time as other options and approaches gain traction. Another reason for following the approach taken is that, as the ARB AB 32 regulations are first adopted and then implemented, it is very likely that GHG emissions from vehicles traveling to and from the project area will go down, and that power plants providing electricity to the project area will become cleaner. Progress on these two fronts may allow the County to avoid imposing on new development (e.g., new housing intended to be affordable to families working within the Specific Plan area and the County) extraordinary measures as means to reduce overall GHG emissions levels that in large part are attributable to vehicle engines and power plants over which the County has absolutely no control or legal authority.

To the extent that some commenters rely solely on goals and policies of the Specific Plan cited in the EIR and conclude that they are not enforceable, mandatory, or effective due to the directive nature of or flexibility found within the language of those goals and policies, these commenters may be mixing considerations that are germane to the Specific Plan (i.e., goals and policies) with those that may be relevant to the EIR (i.e., mitigation measures). With respect to the goals and policies cited by the EIR, these goals and policies were listed in the Draft EIR as evidence of components of the proposed Specific Plan that would tend to reduce GHG emissions in the plan area, and not as mitigation measures as required by CEQA.

The policies and programs identified in the Specific Plan that would reduce vehicle miles traveled (VMT), energy consumption, water consumption, and waste would all act to further the County and State's goals of substantially reducing GHG emissions below current levels. Further, as suggested above, technological innovation and legislation on the subject of climate change that is already in effect, including legislation other than AB 32, will facilitate the GHG emission reduction efforts within the County. For example, SB 1368 requires the Public Utilities Commission to increase its renewable energy portfolio over the planning horizon. Similarly, Executive Order S-1-07, the low carbon fuel standard, will reduce GHG emissions associated with transportation fuels. Thus, GHG emission factors are expected to decrease over the planning horizon even in the absence of mitigation imposed on the project. The County will implement the strategies contained in Sutter Pointe Specific Plan and future requirements mandated by state and federal law to achieve an additional level of GHG emissions reduction, while accommodating growth in the County, and working toward its emissions reduction target. There is no evidence suggesting that this goal is impossible to achieve, and much evidence supporting the view that the County is considering a wide range of feasible GHG emissions reductions policies, programs, and strategies that will be developed further in as the Sutter Pointe Specific Plan develops.

MASTER RESPONSE 8—WASTEWATER SERVICE TO THE PROJECT SITE

Introduction

This master response addresses a number of comments received on the Sutter Pointe Draft EIR related to the provision of wastewater service for the proposed project and alternatives considered, but rejected, during the preparation of the Sutter Pointe Specific Plan. These comments argued, for example, that the Draft EIR lacked sufficient detail regarding impacts related to sewer service and that the DEIR should have included more details regarding possible alternative service scenarios. This master response describes the wastewater alternatives considered during the planning process, the potential relationship of wastewater services in the Sutter Pointe Specific Plan and the Natomas Joint Vision areas, the capacity of the SRCSD system and the status of a pending legal challenge to the DEIR prepared for the 2020 Master Plan, SRCSD WWTP discharge into the Sacramento River, the SRCSD annexation status, and SRCSD Principles of Agreement.

Wastewater Alternatives

Several wastewater treatment and disposal alternatives were evaluated during the preparation of the Sutter Pointe Specific Plan. As discussed in Section 3.10, Public Utilities," the preferred option for wastewater treatment is connecting to the Sacramento Regional County Sanitation District's (SRCSD's) Upper Northwest Interceptor (UNWI) and conveyance to the Sacramento Regional Wastewater Treatment Plant (SRWTP) for treatment and disposal. Implementing this option relies on obtaining a principles of agreement and wastewater services agreement between the Sutter County and SRCSD and amending the Sacramento County LAFCO sphere of influence before SRCSD could provide wastewater service to the proposed project. If this option becomes infeasible, an analysis of alternative sources of wastewater treatment other than what has been identified and analyzed in the DEIR is provided below. These alternatives include:

- Alternative 1: On-Site Treatment with:
  - Land Discharge
  - River Discharge
  - SRCSD Discharge

- Alternative 2: Connection to City of Roseville
  - Dry Creek Wastewater Treatment Plant
  - Pleasant Grove Wastewater Treatment Plant

Each of these alternatives is evaluated below based on potential physical environmental effects. The County and the applicants also considered relevant technical, economic, and political concerns in determining which alternative would be preferred, and therefore analyzed in the DEIR. The following is a summary of each alternative, along with the projected environmental impacts and a discussion as to why each alternative was not selected as the preferred option.

Alternative 1: On-Site Treatment with Various Disposal Options

This alternative would develop an on-site WWTP to treat, store, and dispose of sewer flows generated by the proposed project. The treatment plant would consist of conventional or mechanically intensive treatment processes, disinfection facilities, a storage pond for wet-weather storage, and a spray field to distribute treated effluent. The treatment plant capacity would be incrementally expanded as needed to meet the demands of the proposed project. Impacts associated with construction of the on-site WWTP would be the same as those already identified in Sections 3.1 through 3.17 of this DEIR. The on-site WWTP would be a CCR Title 22, non-restrictive use tertiary treatment facility. Disposal of treated effluent could be accomplished through land disposal, conveyance to the SRCSD's UNWI 3, or discharge into the Sacramento River. Descriptions of these disposal systems and potentially significant impacts associated with operation of the on-site WWTP and use of these disposal systems are identified below.

Land Disposal Option

This alternative would consist of a conventional or mechanically intensive tertiary level wastewater treatment plant that would be constructed in phases over time as the project was developed. Initially, this option would be capable of serving the early phase needs of the proposed project, and then be expanded over time as development within the community occurs.

This treatment facility would consist of primary, secondary, and tertiary level, mechanically-intensive treatment processes, a storage reservoir to detain wintertime flows until the next irrigation season, disinfection facilities, and a large spray disposal facility. Over time, the capacity of this facility would be expanded until it was capable of serving the entire needs of the community.

Preliminary calculations indicate that this option would require approximately 2,800 acres on the project site for wastewater treatment and land disposal facilities to serve full buildout of the proposed project. Accordingly, the developable area within the project site would be reduced to approximately 4,500 acres; thereby reducing development by 40% (7,500 – 4,500/7,500 x 100).

Potentially significant impacts related to operation of the WWTP and use of land disposal could include, but are not limited to:

- **Hydrology and Water Quality—**Increased stormwater discharges of suspended solids, increased turbidity, and potential mobilization of other pollutants from project-related construction sites; potential adverse effects on groundwater depending on crop uptake rates of sprayed effluent.

- **Land Use—**Potential incompatibility of residential and/or commercial land uses immediately adjacent to agricultural land that would be needed for application of spray-irrigated effluent.

- **Public Health and Hazards—**Exposure of construction crews and the public to hazardous materials used in construction or present in excavated soils; exposure of the public to hazardous materials used at the WWTP in the treatment of raw wastewater; exposure of the public to vectorborne or airborne diseases at land disposal sites; and increased potential for bird aircraft strike hazards from the attraction of birds to the disposal sites and detention ponds.

- **Cultural Resources—**Potential destruction of historic or prehistoric artifacts or disturbance of human remains.

- **Biological Resources—**Loss and degradation of habitat for special-status wildlife and plants, potential loss and degradation of jurisdictional wetlands and other waters of the United States or waters of the State at land disposal sites.

- **Air Quality—**Short-term generation of particulates during construction activities and long-term generation of particulates from operation of generators; exposure of residents and employees to odorous emissions.

- **Visual Resources—**Exposure of residents and permanent on-site workers to views of treatment plant facilities (such as aeration ponds) that could be objectionable; impacts related to new nighttime light and glare effects.

- **Noise—**Exposure of employees to noise levels above County thresholds during construction and operation.

Additional CEQA analysis would be required to analyze specific impacts and identify any required mitigation measures if this alternative were implemented; however, based on the issues identified above, implementation of this wastewater treatment option would not reduce or avoid any of the significant impacts of the proposed project. In fact, this option would, in some cases, increase the severity of impacts already identified in the DEIR.

The on-site WWTP and land disposal facilities could be used until wastewater generated by the proposed project were discharged into the Sacramento River or conveyed to the SRCSD's UNWI 3. If wastewater were discharged into the Sacramento River, the on-site WWTP could be expanded over time into a permanent facility capable of meeting the wastewater demands of the proposed project and the spray disposal facilities could be abandoned and reclaimed for development once river discharge became operational. This scenario would reduce the area of development although to a lesser extent if the spray disposal facilities were reclaimed and developed.

If wastewater were conveyed to the SRCSD's UNWI 3, the on-site WWTP and land disposal facility could provide a long-term facility to generate recycled water for use within the project site or the facility could be decommissioned and the area reclaimed for development. Decommissioning the facility and reclaiming the area for development would allow full buildout of the project site; however, it is likely that the land use diagram would

be modified and result in changes to the number of dwelling units and square footage of commercial uses and the location of public facilities.

A reduction in development or changes to the land use diagram would not be consistent with the objectives of the proposed project to provide residential uses, commercial/industrial uses, supporting public facilities and services, and necessary infrastructure improvements.

The feasibility of this option would also be affected by the need to design, locate, operate, and manage a wastewater storage reservoir in a manner that would minimize its potential to attract wildlife that could be hazardous to aircraft using Sacramento International Airport. The land disposal option discussed above would introduce a substantially greater hazard to aircraft than is expected under the proposed project.

In determining the best wastewater treatment plant option for the proposed project, the applicants also performed a preliminary economic analysis which determined that (1) reduced development levels would not be economically feasible, and (2) the cost of infrastructure would be too high.

For the reasons described above, the County and the applicants determined that the land disposal alternative was not the appropriate or feasible option to provide wastewater treatment services for the proposed project.

River Discharge Option

This option would entail the construction of a force main system from the on-site WWTP to a new discharge to the Sacramento River somewhere upstream of the Sacramento International Airport. If this option were implemented, the on-site WWTP could be expanded over time into a permanent facility capable of meeting the wastewater demands of the proposed project and the temporary spray disposal facilities could be abandoned and reclaimed for development once river discharge became operational. This scenario is discussed above under "Land Disposal."

Potentially significant impacts related to construction of the off-site force mains and discharge of treated effluent to the Sacramento River could include, but are not limited to:

- **Transportation and Circulation—**Temporary lane closures, increased truck traffic, and other off-site roadway impacts during construction.

- **Air Quality—**Temporary, short-term generation of criteria air pollutants, such as PM10 (e.g., respirable particulate matter with a diameter smaller than 10 microns) and emissions of ozone precursors (e.g., reactive organic gases and oxides of nitrogen) during construction of off-site force mains.

- **Noise—**Exposure of sensitive receptors to noise levels above noise ordinances during construction of off-site force mains.

- **Geology, Soils, and Paleontological Resources—**Temporary, short-term construction-related erosion, damage to structures and infrastructure from construction on expansive/unstable soils, and loss of or damage to known and to as-yet-discovered paleontological resources during construction of off-site force mains.

- **Hydrology and Water Quality—**Increased stormwater discharges of suspended solids, increased turbidity, and potential mobilization of other pollutants from project construction sites; increased erosion and sedimentation from increases in discharges to the Sacramento River; increased levels of coliform bacteria; petroleum hydrocarbons; nitrogen and phosphorous; ammonia; heavy metals such as lead, copper, and zinc; and suspended solids; and increased water temperature and pH, which could result in localized impacts at the point of discharge (see biological impacts discussion below).

- **Agricultural Resources—**Conversion of Important Farmland to nonagricultural urban uses, conflicts with existing agricultural operations, and the disruption of existing agricultural operations during construction of off-site force mains.

- **Public Health and Hazards—**Exposure of construction crews and the public to hazardous materials used in construction or present in excavated soils or from the routine transport, use, and disposal of hazardous materials and exposure of the public to increased levels of coliform bacteria; petroleum hydrocarbons; nitrogen and phosphorous; ammonia; heavy metals such as lead, copper, and zinc from increases in discharges to the Sacramento River.

- **Biological Resources—**Loss and degradation of habitat for special-status wildlife and plants, potential loss and degradation of jurisdictional wetlands and other waters of the United States or waters of the State, and impacts on fisheries resulting from any increased levels of coliform bacteria; petroleum hydrocarbons; nitrogen and phosphorous; ammonia; heavy metals such as lead, copper, and zinc; and suspended solids; and water temperatures or pH at the point of discharge. Similar pollutant loading would result from disposal at the Sacramento Regional Wastewater Treatment Plan, but this alternative would add a new discharge point and a new area along the river where localized impacts could occur.

- **Cultural Resources—**Loss of or damage to known and as-yet-discovered cultural resources during construction of off-site force mains.

- **Visual Resources—**Temporary degradation of visual character for developed land uses during construction of off-site force mains.

- **Climate Change—**Emissions of greenhouse gases from construction vehicles.

Additional CEQA analysis would be required to analyze specific impacts and identify any required mitigation measures if this alternative were implemented; however, based on the issues identified above, implementation of this wastewater treatment option would not reduce or avoid any of the significant impacts of the proposed project. In fact, this option would, in some cases, increase the severity of impacts already identified in the DEIR.

A National Pollutant Discharge Elimination System (NPDES) permit from the Central Valley Regional Water Quality Control Board (RWQCB) would be required before treated effluent could be discharged to the Sacramento River. However, the discharge of treated effluent to the Sacramento River upstream of the City of Sacramento is prohibited by the Water Quality Control Plan for the Sacramento and San Joaquin River Basins (Basin Plan) adopted by the Central Valley RWQCB.

Currently, the Sacramento International Airport and the Cities of Sacramento and West Sacramento draw water from the Sacramento River for municipal and industrial (M&I) uses within a relatively short distance downstream from the likely point of discharge of wastewater from an on-site wastewater facility.

In addition, new M&I diversion facilities are planned downstream from the likely point of discharge of wastewater from the on-site WWTP. The Sacramento County Water Agency and East Bay Municipal Utility District are currently constructing the Freeport Regional Water Project, which includes a surface water intake facility and pumping plant located on the Sacramento River near Freeport. This facility will provide M&I water to customers in Sacramento, Contra Costa, and Alameda Counties.

The Placer County Water Agency, in conjunction with the City of Sacramento and other local water purveyors, is planning a major new M&I diversion facility on the Sacramento River immediately upstream of the Sacramento International Airport. Likewise, the Cities of Davis and Woodland in Yolo County are planning a major surface water diversion project from the Sacramento River downstream of the Sacramento International Airport to serve M&I needs in these two communities. Both of these proposed diversions are located a relatively short distance downstream from the likely point of discharge of wastewater from a Sutter Pointe wastewater facility.

This option would also require the construction of a tertiary level wastewater treatment plant capable of serving the projected needs for the entire project and the construction of a new discharge to the Sacramento River somewhere upstream of the Sacramento International Airport. While it is technically possible to design such a facility to meet NPDES requirements for such a discharge, it is highly unlikely that the necessary approvals and permits could be obtained; the cost of constructing such a facility would be substantial; and this option would likely result in greater environmental impacts as compared to the proposed project. Therefore, the applicants and the County do not believe this is a feasible option for provision of wastewater treatment to the proposed project.

SRCSD Discharge Option

Under this option, on-site WWTP and land disposal facilities would be used until wastewater generated by the proposed project is conveyed to the SRCSD's UNWI 3. At that time, the treatment plant and land disposal facility could provide a long-term facility to generate recycled water for use within the project site or the facility could be decommissioned and the area reclaimed for development. These two scenarios are discussed and evaluated above under "Land Disposal."

Wastewater generated by the proposed project would be pumped through a set of off-site force mains to a point of connection with SRCSD's UNWI 3. Environmental impacts associated with construction of these off-site force mains would be the same as those already identified in Sections 3.1 through 3.17 of this DEIR.

As discussed in DEIR Impact 3.10-2 of Section 3.10, "Public Utilities," a principles of agreement and wastewater services agreement between the Sutter County and SRCSD and an amendment to the Sacramento County LAFCO sphere of influence would be required before SRCSD could provide wastewater service to the proposed project.

Because this wastewater treatment alternative would (1) have greater environmental impacts than the preferred option evaluated in the DEIR, (2) would not provide any benefit over the preferred option, and (3) would be substantially more expensive to implement as compared to the preferred option, this alternative was not selected for the proposed project.

Alternative 2: Connection to City of Roseville

Wastewater treatment could be provided by the City of Roseville at the Dry Creek WWTP or Pleasant Grove WWTP. These treatment plants are operated by the City of Roseville for the South Placer Wastewater Authority (SPWA), which includes the City of Roseville, Placer County, and the South Placer Municipal Utility District.

Dry Creek Wastewater Treatment Plant

Under this alternative, wastewater treatment would be provided by the City of Roseville at the Dry Creek WWTP. A force main system would convey raw wastewater to the Dry Creek WWTP located 9 miles east of the SPSP. The actual force main route would follow existing road rights-of-way for approximately 12 miles to the Dry Creek WWTP.

Sutter County would own and operate the on-site pump station and off-site force main system to the point of discharge into the Dry Creek WWTP. This alternate, while geographically possible, would require the following issues to be resolved.

Sutter County is not a member of the SPWA and annexation to the service area and existing Joint Powers Authority would likely be required.

An off-site force main system would need to be constructed to convey raw wastewater to the Dry Creek WWTP. The force main system could potentially connect to the Placer Vineyard Specific Plan (PVSP) area at its western boundary approximately 0.5 mile east of the project site. The PVSP was approved by the Placer County Board of Supervisors in July 2007; however, federal permits and approvals have not been obtained and the PVSP is the subject of pending litigation. There is currently no timeframe for development of the PVSP, and it is likely that

the force main system would be constructed in existing road rights-of-way for approximately 12 miles to the Dry Creek WWTP.

Roseville recently completed a service area boundary update to incorporate areas annexed to the SPWA since 1995. As part of the update, urban growth areas were identified by the City to plan for the ultimate buildout of the Dry Creek WWTP. The total buildout flow for Dry Creek WWTP was projected to be 21.1 million gallons per day (mgd) average dry-weather flow (ADWF). The Dry Creek WWTP's current design capacity is 11 mgd ADWF, and the treatment plant would have to be incrementally expanded to 21.1 mgd by 2030.

Implementation of the proposed project would generate 11.2 mgd of ADWF based on Sutter County and SRCSD flow rate factors. The proposed project is not within the SPWA and the proposed project's wastewater flows were not considered in the buildout capacity of the Dry Creek WWTP. The additional wastewater flows from project site to the Dry Creek WWTP would require expansion of the Dry Creek WWTP. Discussion with the Roseville Environmental Utilities Department indicated that there is limited expansion capability at the Dry Creek WWTP. If expansion of existing facilities is not feasible, new wastewater treatment facilities and conveyance infrastructure would have to be constructed to serve the proposed project.

The Dry Creek WWTP discharges tertiary treated effluent to a small ephemeral stream that eventually flows to the Sacramento River. Under low flow conditions, this stream, if it is not already, will ultimately be effluent dominated. Dischargers seeking new permits, or renewing existing NPDES permits to discharge into effluent-dominated streams, are facing increasingly onerous discharge standards that require advanced treatment and/or elaborate operating procedures to comply with permit standards. Compliance with anticipated discharge permit standards for the additional discharge to effluent-dominated streams such as Dry Creek is anticipated to be problematic at best, and perhaps highly improbable. Notably, Dry Creek has been designated by the National Marine Fisheries Service as critical habitat for the spring run and winter run Chinook Salmon and the Central Valley Steelhead.

Potentially significant impacts related to implementation of this alternative could include, but are not limited to:

- **Land Use—**Approval from the Placer County Local Agency Formation Commission for annexation of the proposed project to the SPWA service area, and other service agreements with SPWA.

- **Population, Employment, and Housing—**Indirect inducement of population and housing growth by potentially adding capacity to existing wastewater treatment facilities or through potential development of new wastewater treatment facilities.

- **Transportation and Circulation—**Temporary lane closures, increased truck traffic, and other roadway impacts during construction.

- **Air Quality—**Temporary, short-term generation of criteria air pollutants, such as PM10 (e.g., respirable particulate matter with a diameter smaller than 10 microns) and emissions of ozone precursors (e.g., reactive organic gases and oxides of nitrogen) during construction, and long-term emissions of criteria air pollutants or local mobile source carbon monoxide resulting from potential development of new wastewater treatment facilities or wastewater conveyance infrastructure.

- **Noise—**Exposure of sensitive receptors to noise levels above noise ordinances during construction, and exposure of sensitive noise receptors to new stationary-source noise from potential development of new wastewater treatment facilities or wastewater conveyance infrastructure.

- **Geology, Soils, and Paleontological Resources—**Temporary, short-term construction-related erosion, damage to structures and infrastructure from construction on expansive/unstable soils, and loss of or damage to known and to as-yet-discovered paleontological resources during construction.

- **Hydrology and Water Quality—**Increased stormwater discharges of suspended solids, increased turbidity, and potential mobilization of other pollutants from project construction sites; increased erosion and sedimentation from increases in discharges to Dry Creek; increased potential for flooding from increases in discharges to Dry Creek; increased levels of coliform bacteria; petroleum hydrocarbons; nitrogen and phosphorous; ammonia; heavy metals such as lead, copper, and zinc; and suspended solids; and increased water temperature an pH.

- **Public Services—**Temporary obstruction of roadways during construction. Increased demand for fire protection facilities, services, and equipment; police protection facilities, services, and equipment; and school facilities and services resulting from indirect inducement of population and housing growth.

- **Water Supply—**Increased demand for water supplies and related facilities resulting from indirect inducement of population and housing growth.

- **Public Utilities—**Increased demand electricity, natural gas, and communications services resulting from potential development of expanded or new wastewater treatment plants. Increased demand for wastewater service; solid-waste disposal, or electricity, natural gas, and communications services and systems resulting from indirect inducement of population and housing growth.

- **Agricultural Resources—**Conversion of Important Farmland to nonagricultural urban uses, conflicts with existing agricultural operations, and the disruption existing agricultural operations during construction of new wastewater facilities or wastewater conveyance infrastructure.

- **Public Health and Hazards—**Exposure of construction crews and the public to hazardous materials used in construction or present in excavated soils or from the routine transport, use, and disposal of hazardous materials and exposure of the public to increased levels of coliform bacteria; petroleum hydrocarbons; nitrogen and phosphorous; ammonia; heavy metals such as lead, copper, and zinc from increases in discharges to Dry Creek.

- **Biological Resources—**Loss and degradation of habitat for special-status wildlife and plants, potential loss and degradation of jurisdictional wetlands and other waters of the United States or waters of the State, and impacts on fisheries resulting from any increased levels of coliform bacteria; petroleum hydrocarbons; nitrogen and phosphorous; ammonia; heavy metals such as lead, copper, and zinc; and suspended solids; and water temperatures or pH.

- **Parks and Open Space—**Increased demand for parks and open space from indirect inducement of population and housing growth.

- **Cultural Resources—**Loss of or damage to known and as-yet-discovered cultural resources during construction.

- **Visual Resources—**Temporary degradation of visual character for developed land uses during construction, and degradation of visual character for developed land use and creation of new light and glare and skyglow from potential development of expanded or new wastewater treatment facilities.

- **Climate Change—**Emissions of greenhouse gases from construction vehicles or from operation of new wastewater treatment facilities.

Additional CEQA analysis would be required to analyze specific impacts and identify any required mitigation measures if this alternative were implemented; however, based on the impacts identified above, implementation of this alternative would not reduce or avoid any of the significant impacts of the proposed project, and could in fact result in increased severity of impacts already identified.

Because the additional wastewater flows from the proposed project would require expansion of the treatment plant and/or new wastewater treatment facilities, which would in turn result in impacts substantially greater than those identified under the proposed project along with a substantial increase in cost, and because substantial jurisdictional issues would need to be overcome, the County and the applicants determined that this was not a feasible alternative for provision of wastewater service to the proposed project.

Pleasant Grove Wastewater Treatment Plant

Under this alternative, wastewater treatment would be provided by the City of Roseville at the Pleasant Grove WWTP located approximately 6 miles east of the project site. An off-site force main system would convey raw wastewater to the Pleasant Grove WWTP. The force main system could potentially connect to the PVSP area at its western boundary approximately 0.5 mile east of the project site. The PVSP was approved by the Placer County Board of Supervisors in July 2007; however, federal permits and approvals have not been obtained and the PVSP is the subject of pending litigation. There is currently no timeframe for development of the PVSP, and is likely that the force main system would be constructed in existing road rights-of-way for approximately 10.5 miles to the Pleasant Grove WWTP. Sutter County would own and operate the off-site force main system to the point of discharge into the Pleasant Grove WWTP.

Roseville recently completed a service area boundary update to incorporate areas annexed to the SPWA since 1995. As part of the update, urban growth areas were identified by the City to plan for the ultimate buildout of the Pleasant Grove WWTP. The total build out flow for Pleasant Grove WWTP was projected to be 24.6 mgd ADWF. The Pleasant Grove WWTP's current design capacity is 12 mgd ADWF, and the treatment plant would be incrementally expanded to meet buildout conditions.

The treatment plant discharges into a small ephemeral stream under a NPDES permit issued by the Central Valley RWQCB. As part of the expansion, the City would apply to the Central Valley RWQCB for a NPDES permit to accommodate additional discharges into this stream.

Implementation of the proposed project would generate 11.2 mgd of ADWF based on Sutter County and SRCSD flow rate factors. The project is not within the SPWA and the project's wastewater flows were not considered in the buildout capacity of the Pleasant Grove WWTP. The additional wastewater flows from project site to the Pleasant Grove WWTP would require expansion of the Pleasant Grove WWTP. Discussion with the Roseville Environmental Utilities Department indicated that there is limited expansion capability at the Pleasant Grove WWTP beyond 24.6 mgd ADWF. If expansion of existing facilities to provide an additional 11.2 mgd ADF (total of 35.8 mgd ADWF) is not feasible, a separate WWTP would need to be constructed to serve the proposed project.

Potentially significant impacts related to implementation of this alternative are described above under "Dry Creek Wastewater Treatment Plant." Additional CEQA analysis would be required to analyze specific impacts and identify any required mitigation measures if this alternative were implemented. Because the additional wastewater flows from project would require expansion of the treatment plant and/or a new wastewater treatment plant, this would not be a feasible alternative.

Natomas Joint Vision Area Wastewater Service

For the last several years, the City and County of Sacramento have been cooperating on a joint planning process for the lands generally known as the Natomas Joint Vision Area (NJVA). This planning area, which is located within the unincorporated area of Sacramento County, is generally bounded on the north by the Sutter County line, the east by the Natomas East Main Drainage Canal, on the south by Elkhorn Road, and on the west Highway 99/70. Since no definitive development proposals for the NJVA have been developed or released for public review to date, the development of this area is not believed to be imminent.

Since this area is outside of the Urban Services Boundary (USB) of Sacramento County, this area was not considered for sewer service by SRCSD during the preparation of the SRCSD Sewer Master Plan. Nonetheless, considerable thought has been given to how this area would receive sewer service from SRCSD. SRCSD studies have concluded the NJVA could be served in a similar manner as is being proposed for Sutter Pointe – pumping and discharge of wastewater flows to the UNWI during non-peak weather periods, and storage of wastewater flows during peak wet weather conditions when there is no available capacity in the UNWI system. These studies have determined that the SRCSD system is capable of serving both the NJVA and Sutter Pointe while still preserving the ability of SRCSD to serve 100% of the peak wet weather flows from its Contributing Members.

While the coordinated development of both Sutter Pointe and the Natomas Vision Area could possibly result in some economies of scale, especially in terms of pumping, storage and conveyance facilities, there are substantial practical and legal difficulties in accomplishing this objective. First and foremost, the Natomas Vision Area does not have coverage under the Natomas Basin Habitat Conservation Plan (HCP). Sutter Pointe, on the other hand, has coverage under the HCP. This single difference between Sutter Pointe and Natomas Vision Plan projects make it speculative to consider Natomas Vision Plan as a viable development proposal at this time. Accordingly, it would be speculative to consider opportunities of scale at this stage.

The extension of sewer service to Sutter Pointe would not preclude the opportunity for the Natomas Vision Area to obtain service from SRCSD at some future date. On the contrary, SRCSD has the ability to extend sewer service to the Natomas Vision Area regardless of whether Sutter Pointe is served by SRCSD or not.

SRCSD Regional Wastewater Treatment Plant

Capacity vis-à-vis Existing Conditions & NPDES Permit Maximum

The SRWTP receives and treats an average of 141 mgd (as of 2008) and has a permitted dry-weather flow design capacity of 181 mgd. The Sacramento Regional Wastewater Treatment Plant 2020 Master Plan provides for the expansion of the SRWTP to 218 mgd, and the SRWTP has applied to the Central Valley RWQCB for a NPDES permit to accommodate these additional discharges into the Sacramento River. At the time it adopted its Master Plan (2004), flows were approximately 155 mgd and were projected to reach the 181 mgd capacity by 2007. Instead, flows have reduced, and there is currently 40 mgd of available capacity within the 181 mgd, a roughly similar amount of capacity as would be provided in the increment between 181 mgd and the expansion to 218 mgd (37 mgd).

Status of SRCSD WWTP EIR Litigation

In December 2007, the Sacramento County Superior Court issued a decision directing the SRCSD Board of Directors to set aside its approval of SRCSD's 2020 Master Plan, which was intended to allow the expansion of the SRCSD facility near Freeport to treat wastewater anticipated to be generated within the SRCSD service area by the year 2020. The plan contemplated an increase in treatment capacity from 181 mgd ADWF to 218 mgd ADWF. The superior court's decision came in response to a CEQA challenge filed by the Contra Costa Water District, the Alameda County Flood Control and Water Conservation District, Metropolitan Water District of Southern California, and Santa Clara Valley Water District, in which those entities alleged that the EIR prepared by SRCSD fell short of complying with CEQA in various respects. The court agreed with some of the contentions, and found the EIR to be deficient with respect to its analysis of certain water pollutants (nutrient loading, pathogen loading, total organic carbon, chloride, and chlorine). The court also concluded that the EIR had not adequately addressed the prospect of "double dosing," whereby certain pollutants in the discharge from the SRCSD plant would remain present near the point of discharge due to occasional "reverse flows" in the Sacramento River. Finally, the court also found that the EIR was deficient in its treatment of cumulative water quality impacts.

The case is now on appeal, SRCSD having chosen not to accept the ruling but to appeal instead. In response, the petitioners filed a cross-appeal. As of May 2009, when this Final EIR was nearly ready for publication, the Court of Appeal had not yet issued its own ruling, and it would be pure speculation to try to predict the outcome. A

decision is likely some time in 2009, however. Notably, the Court of Appeal is not required to defer to the lower court but rather will reach its own conclusions based on the same administrative record considered by the lower court. (See *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 427.) Thus, it remains to be seen whether or not SRCSD's 2020 Master Plan was lawfully approved or was approved in violation of CEQA. Should the Court of Appeal (or the California Supreme Court) find problems with the EIR, the likely scenario on remand would be that SRCSD would have to address a targeted list of issues in a new or modified EIR before making any new attempt to reapprove the Master Plan either in its original form or as modified. (See *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1202-1205; Pub. Resources Code, Section 21168.9, subd. (b).). SRCSD may also need to obtain the sign-off of the superior court (and possibly a higher court in the event of another appeal) before any new or modified environmental analysis will be legally unassailable. (Pub. Resources Code, Section 21168.9, subd. (b).)

SRCSD WWTP Discharge into Sacramento River

The EIR for the 2020 Master Plan included extensive modeling of water quality effects associated with an increase in capacity from the then existing level of 155 mgd to the proposed permitted capacity of 218 mgd. Modeling looked at the fate and transport of pollutants near the point of discharge ("near-field effects") and at various points within the Delta where urban water users divert water for municipal and industrial uses. The modeling and analysis concluded that there would be no significant water quality impacts from the increased treated effluent. The EIR found that construction associated with expansion of the SRWTP would result in significant and unavoidable air quality impacts. No other significant unavoidable impacts would result. The issue of water quality is also discussed in response to comments, most notably in Response to Comment Friends-A-15.

Development of the Sutter Pointe project, if approved, would not hasten the need to expand the SRWTP by taking up capacity otherwise available to other development. The Sacramento region is not currently constrained by entitled land uses. Land is available for development in Natomas, Rancho Cordova, Elk Gove, Folsom, and downtown Sacramento, among other places. Further, new entitlements for land uses are being sought throughout the region. The rate of growth for the region, as projected in the Master Plan, is affected by dynamic factors, including the economy, price of housing, internal population growth, housing prices in other areas of the state, etc. Importantly, if Sutter Pointe is served by the SRWTP, its development will serve the same growth in the region that would otherwise be dispersed to areas listed above. It would not accelerate the need to expand the SRWTP because, absent Sutter Pointe, the same growth would occur elsewhere within the region, and likely within the SRCSD. The only instance in which this would not occur is if development were to occur at Sutter Pointe rather than in Placer County, which is served by a different set of wastewater treatment providers (all of whom discharge into tributaries of the Sacramento River).

Finally, flows to the SRWTP have decreased, rather than increased, since the Master Plan was adopted in 2004. Flows are currently at 141 mgd, roughly 10% below the 155 mgd flows that were occurring around the time of Master Plan adoption. While growth in the area served by the Master Plan has slowed, population has nevertheless increased. According to the California Department of Finance, population in Sacramento County increased from 1,358,331 in 2004 to 1,427,885 in 2008, an increase of 5%. This suggests that more development could be accommodated by the existing and proposed capacity at the SRWTP than had previously been assumed.

SRCSD Annexation Status

Sutter Pointe is not located within SRCSD's service area or sphere of influence. Before SRCSD could provide wastewater service to the proposed project, Sutter County LAFCO would need to approve the connection to SRCSD. Also, Sacramento County LAFCO would need to amend the sphere of influence of SRCSD to include the project site in anticipation of a later "change of organization" as defined by statute. At this point, the staff members of SRCSD, Sacramento County LAFCO and Sutter County LAFCO have concluded that the later change of organization as required by statute means that Sutter Pointe would need to annex into SRCSD service

area at some point in the future. Since annexation is not a condition precedent to service, however, Sutter County and SRCSD will be able enter into a contract for service before the annexation is completed, once the appropriate CEQA documentation has been completed (i.e., the Sutter Pointe EIR is certified and additional environmental review has been conducted by Sacramento County LAFCO in connection with the proposed SRCSD sphere of influence expansion). The likely terms of the service, exact timing and trigger point for the future annexation into the service area, as well as the documentation of the requirement to amend the SRCSD's sphere of influence to include Sutter Pointe, will be addressed in the Principles of Agreement between Sutter County and SRCSD. See the discussion below.

SRCSD Principles of Agreement

Until Sutter County is annexed into the service area of SRCSD, for SRCSD to serve Sutter County and for Sutter County to accept such wastewater services from SRCSD, the two agencies will first need to enter into a wastewater services agreement ("WWSA"). The WWSA will address the definitive business aspects of SRCSD providing wastewater service to Sutter County under a contract for service.

The Principles of Agreement ("POA") is an attempt to identify and resolve the potential major issues anticipated in negotiating the WWSA. The POA is an expression of intent by SRCSD and Sutter County; it is not binding on either agency. The WWSA will be a binding agreement and will not be adopted until after both agencies have complied with CEQA. Such compliance will consist, initially, of certification of the Sutter Pointe Specific Plan EIR by the Sutter County Board of Supervisors and, later, by a separate environmental analysis prepared by Sacramento County LAFCO in connection with the proposed expansion of the SRCSD sphere of influence.

SRCSD is expected to function as a responsible agency in the latter CEQA process, which should be sufficiently detailed to support action not just on the sphere expansion but also on the WWSA itself. In going forward with the POA in advance of such CEQA compliance, both Sutter County and SRCSD are conscious that the roadmap for sewer service is conditional on both agencies choosing to go forward after they have learned more about the environmental impacts of SRCSD providing sewer service. Most notably, SRCSD cannot commit to providing such sewer service until project-level CEQA analysis has been conducted by Sacramento County LAFCO, with SRCSD acting as a responsible agency. Even with these caveats, however, the POA is a legally significant document insofar as it indicates a potentially promising scenario for sewer service for the Sutter Pointe project. At this early stage of the planning process, a more definitive commitment from SRCSD is not available or possible.

The POA contains the key deal points regarding the extension of SRCSD service to Sutter County that will be incorporated into subsequent contracts and agreements between the County and SRCSD if the parties choose to proceed after the further CEQA compliance discussed above. These deal points include, but are not limited to the following:

a. Extension of SRCSD sewer service to Sutter Pointe will be consistent with SRCSD's Master Interagency Agreement, specifically that the SRCSD will not enter into agreements to provide sewer service with Contracting Agencies (Sutter County, in this case) if it will materially affect the ability of SRCSD member agencies to make reasonable use of SRCSD facilities;

b. Approval of the SRCSD sphere of influence will be necessary as described above;

c. Annexation to the SRCSD service area will be needed eventually;

d. Identification of key back-bone facilities to serve Sutter Pointe, including needed storage facilities to be located in Sutter County, and the timing of construction of such facilities;

e. Compensation for services including rates and connection fees; and

f. WWSA will need to be entered into before service can commence.

The POA is anticipated for adoption around the time Sutter County plans to consider the Sutter Pointe Specific Plan and EIR. The POA is the product of years of work by Sutter County staff and SRCSD staff. The following is a summary of the milestones of the work on the POA.

- **October 25, 2006—**The Board of Directors of SRCSD received and filed a report describing the principles for developing agreements to provide sanitary sewer service to locations outside the SRCSD service area. The report identified the process for SRCSD to consider requests from outside agencies, which included preparation of principles of agreement. The report identified south Sutter County as a potential location outside its service area for future service. The report suggested wastewater flows from south Sutter County could be conveyed in the UNWI system and downstream facilities to the SRCSD treatment plant south of the city of Sacramento. The study noted that the UNWI could handle average dry weather wastewater flows utilizing capacity available for peak wet weather wastewater flows. Under peak wet weather conditions, wastewater would need to be stored until after the peak storm event and then discharged into the UNWI. (See Memo from Wendell Kido and Mary Snyder to the SRCSD Board of Directors dated October 25, 2006.)

- **February 20, 2007—**The Sutter County Board of Supervisors directed Larry Combs, the County Administrative Officer, to send a letter to SRCSD formally initiating discussions with the SRCSD to extend wastewater service into Sutter County to serve Sutter Pointe. (See Letter from Larry Combs to Wendell Kido dated February 20, 2007.)

- **September 12, 2007—**The SRCSD Board of Directors authorized SRCSD staff to work with Sutter County and the applicants of the Sutter Pointe project in support of a feasibility study to determine whether, and if so, under what conditions, the SRCSD could provide sanitary sewer service to Sutter Pointe. (See Memo from Wendell Kido and Mary Snyder to the SRCSD Board of Directors dated September 27, 2007.)

- **March 26, 2008—**The Board of Directors of the SRCSD received and filed a report on the Sutter Pointe Specific Plan's Sewer Feasibility Study. This study concluded that the UNWI system is capable of servicing both Sutter Pointe and the Natomas Joint Vision Area in northern Sacramento County without significant operational impacts to SRCSD or its member agencies. At that meeting, the Board of Directors authorized the staff to develop the draft POA with Sutter County for service to Sutter Pointe. (See Memo from Wendell Kido and Mary Snyder to the SRCSD Board of Directors dated March 26, 2008.)

- **June 3, 2008—**The Sutter County Board of Supervisors received a briefing on the status of the draft POA. Sutter County staff outlined and reviewed the draft POA with the Board and received direction to work with SRCSD and the Sutter Pointe applicants to complete the POA.

- **July 23, 2008—**The Board of Directors of the SRCSD was presented with the draft POA and asked for feedback on the concepts and whether to return with a final POA for consideration. At that meeting, the Board of Directors provided feedback and directed staff to bring back a final POA for consideration. (See Memo from Wendell Kido and Mary Snyder to the SRCSD Board of Directors dated July 23, 2008 and Action Summary for July 23, 2008.)

Since the July 23, 2008 meeting, SRCSD staff, Sutter County staff and the applicants have worked to finalize the terms of the POA, including how to address CEQA requirements and future annexation issues. SRCSD staff anticipates taking a final draft POA to its Board in May 2009 with action on the POA expected to occur in June 2009 around the time Sutter County is expected to take action on Sutter Pointe. With the work on the benefits provided to all parties involved, it is likely, though not certain, that wastewater service will be provided to Sutter Pointe by SRCSD.

3.2.2 RESPONSES TO COMMENTS

The written comments received on the Draft EIR and the responses to those comments are provided in this section. Each comment letter is reproduced in its entirety and is followed by the response(s) to the letter. Where a commenter has provided multiple comments, each comment is indicated by a line bracket and an identifying number in the margin of the comment letter. The comment letters are arranged into three groups; State agencies, local agencies, and individuals. Within these groups, comment letters are presented in the order in which they were received.

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STATE OF CALIFORNIA Arnold Schwarzenegg

CPUC-RR

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298





February 2, 2009

Doug Libby, AICP
County of Sutter
1130 Civic Center Boulevard
Yuba City, CA 95993

Re: Notice of Completion-Draft Environmental Impact Report (DEIR)
Sutter Pointe Specific Plan/SCH # 2007032157

Dear Mr. Libby:

As the state agency responsible for rail safety within California, the California Public Utilities Commission (CPUC or Commission) recommends that development projects proposed near rail corridors be planned with the safety of these corridors in mind. New developments and improvements to existing facilities may increase vehicular traffic volumes, not only on streets and at intersections, but also at at-grade highway-rail crossings. In addition, projects may increase pedestrian traffic at crossings, and elsewhere along rail corridor rights-of-way. Working with CPUC staff early in project planning will help project proponents, agency staff, and other reviewers to identify potential project impacts and appropriate mitigation measures, and thereby improve the safety of motorists, pedestrians, railroad personnel, and railroad passengers. 1

Of concern are the at-grade rail crossings at Riego Road (CPUC# 004-150.90), and Sankey Road (CPUC # 004-152.90) from traffic impacts of industrial, business and commercial projects proposed in this specific plan. The County should consider how to address direct and cumulative impacts when processing entitlement applications for proposed projects and their impacts/mitigation measures to rail corridors and at-grade rail crossings. 2

Please forward a copy of the DEIR to the address listed below as a copy was not attached to the SCH notice. 3

Thank you for your consideration of these comments. If you have any questions on this matter, please contact me at (415) 713-0092 or email at

Sincerely,

Moses Stites
Rail Corridor Safety Specialist
Consumer Protection and Safety Division
Rail Transit and Crossings Branch
515 L Street, Suite 1119
Sacramento, CA 95814

CPUC-RR-1

The commenter states the CPUC's responsibility for rail safety, makes general statements about the need to plan for rail safety in mind and acknowledges that development will increase vehicular and pedestrian traffic at rail crossings, and that working with the CPUC early in the project planning process will help improve safety for both rail and roadway users. No comments on the impacts addressed in the DEIR are provided, so no response is required.

CPUC-RR-2

The commenter expressed concern about traffic impacts from industrial, business, and commercial developments associated with the Sutter Pointe Specific Plan with respect to existing at-grade rail crossings at Riego Road and Sankey Road. In particular, the CPUC requested that the County "should consider how to address direct and cumulative impacts when processing entitlement applications for proposed projects and their impacts/mitigation measures to rail corridors and at-grade crossings."

The Draft EIR does address the direct impacts of the proposed project upon the Riego Road and Sankey Road at-grade crossings as well as the cumulative effects upon the two at-grade crossings anticipated from implementation of the proposed project and related projects and forecasted regional development. Baseline conditions and methods of analysis related to the UPRR track and grade crossings are presented in the Draft EIR, pages. 3.3-6–11 [Table 3.3-2]; pages 3.3-19–30 [Table 3.3-16]; and page 3.3-44 [Tables 3.18-3.20].

The Draft EIR further recommends measures, where appropriate, to mitigate traffic-related impacts upon the existing at-grade crossings (discussed below). With regard to the Riego Road at-grade crossing, the Draft EIR concludes that the traffic impacts would be significant and, as a mitigation measure, proposes to require that the County widen Riego Road from two to four or six lanes and contribute its fair share towards the construction of a six-lane separated crossing of the Union Pacific's ("UP") track and right-of-way. (See DEIR Mitigation Measures 3.3-2, 3.3-10, 3.3-24, 3.3-28, and 3.3-31.) Full funding for the recommended grade separated crossing is contingent upon fair share contributions from the County as well as proponents of neighboring development projects, including the Placer Vineyards Project in Placer County. In recognition of the conditional nature of such full funding, the Draft EIR also addresses the alternative of widening Riego Road and crossing the UP tracks and right-of-way at grade for project-specific impacts. However, in the event the CPUC declines to authorize the widening of the existing at-grade crossing on Riego Road, the Draft EIR, as a mitigation measure, requires the project proponents to widen Riego Road starting 500 feet west of Pleasant Grove Road (N) and continuing 500 feet east of Pleasant Grove Road (S), and contribute its fair share towards construction of a separated railroad grade crossing. (See DEIR Mitigation Measures 3.3-2, 3.3-24, 3.3-28.)

With regard to the Sankey Road at-grade railroad crossing, the Federal Highway Administration (FHWA) crossing exposure criterion would not be met. As documented on Page 3.3-44 of the DEIR, the FHWA has published Guidelines on Traffic Control Devices at Highway-Rail Crossings for determining when a railroad crossing should be considered for grade separation. The FHWA crossing exposure criteria was evaluated for the crossing based on forecasted cumulative travel demand at the UPRR crossing on

Sankey Road without the Placer Parkway. The crossing exposure criterion is outlined below:

> Crossing Exposure – is met if the product of the number of trains per day and annual average daily traffic (AADT) exceeds 1,000,000 in urban areas or 250,000 in rural areas.

The following summarizes the evaluation of the crossing exposure criterion for the Sankey Road at-grade railroad crossing. The daily traffic volume forecast is 7,900 (Table 3.3-18, Segment 3b.), which is equivalent to an average annual daily traffic volume of about 7,200. Therefore, the crossing exposure is about 172,800 (7,200 AADT x 24 trains = 172,800). The crossing exposure criterion would not be met.

Accordingly, the Draft EIR proposes no mitigation measure with respect to the Sankey Road at-grade crossing.

CPUC-RR-3 The commenter requests that a copy of the Draft EIR be sent to the Rail Transit and Crossings Branch of the CPUC at the address shown in the commenter's letter (a copy of the Draft EIR was submitted to the CPUC). Comment noted; no response is required.

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Caltrans

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY ARNOLD SCHWARZENEGGER, Governor

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Flex your power!
Be energy efficient!

February 5, 2009

Sutter Pointe Specific Plan
Draft Environmental Impact Report
SCH 2007032157
IGR 032008SUT0044

Doug Libby
County of Sutter
1130 Civic Center Blvd
Yuba City, CA 95993

Dear Mr. Libby:

Thank you for the opportunity to review and comment on the Draft Environmental Impact Report (DEIR) for the Sutter Pointe Specific Plan. Based on the location and size of this project, 7,500 acres including development of up to 17,500 dwelling units, the traffic analysis findings conclude that this project will have a significant impact to traffic conditions on State Route (SR) 99/ 70 and on Interstate-5 mainlines, interchanges, and intersections. Caltrans concurs with this finding.

We appreciate all of the County's efforts in contributing fees towards mitigating traffic impacts to the State Highway System (SHS) resulting from the proposed project. However, we are concerned that even though the project adequately addresses significant impacts to the SHS, the language used in the "Significance after Mitigation" does not acknowledge that the proposed mitigation is actually feasible and reasonable. 1

Several inconsistencies have been discovered in the DEIR with respect to the SR 99/ 70 and Sankey Road intersection. Impact 3.3-6, Intersection A, specifies that an interchange will be constructed and makes no mention of installing a signal at this location. Figure 3.3-35 shows that a signal will be installed during Phase I of the proposed project and Figures 3.3-36 and 3.3-38 show that at final project build-out, with or without Placer Parkway, this intersection will be constructed into an interchange. Table 3.3-16 indicates that this intersection will remain a side street stop during Phase I and at final project build-out a signal will be installed. Table 3.3-20 indicates that during Phase I a signal will be constructed and there will be no other 2

"Caltrans improves mobility across California"

changes at final project build-out. Caltrans will not permit the installation of a signal at the SR 99/ 70 and Sankey Road intersection, and the only feasible mitigation will be to construct an interchange. All references in the DEIR that indicate the installation of a signal at this location must be corrected to support the construction of the interchange.

2 Cont'd

The County acknowledges in the DEIR that the Sutter Pointe development will create significant impacts to the SHS, but ultimately finds that the impacts are, after mitigation, "significant and unavoidable." Caltrans disagrees with all instances in the DEIR that state the impacts to the SHS are "significant and unavoidable." Once the acceptable Level of Service (LOS) is achieved after mitigating, the significance of the impact becomes "less than significant with mitigation incorporated" and is no longer considered unavoidable. On the other hand, if the LOS is not achieved after mitigation, then further consideration of mitigation alternatives must be explored. The findings must show that there are no alternatives to reduce the significance of the impacts and only then is an impact justifiably "significant and unavoidable." It is understood that the County cannot control portions of mitigation projects taking place outside of their jurisdiction.

3

There is no such "enforceable agreement" as stated in Mitigation Measure 3.3-1, Item 6, for Caltrans and the County to enter into. It is the responsibility of the lead agency, the County of Sutter, to collect the fair share funds from the proponents and account for them until such time as the mitigation measures are implemented. Additionally, it is the responsibility of the lead agency to establish the nexus between the fair share fees and the traffic impacts, and to develop the mitigation plan while working with reviewing agencies, such as Caltrans, to determine the necessary mitigation. We strongly encourage the County to establish traffic mitigation agreements with the future project proponents/ developers of Sutter Pointe. We would be pleased to meet with the County to discuss the scope of such agreements.

4

The DEIR, Section 3.3, Transportation and Circulation, lists the following mainline segments, interchanges, and intersections that will as a result of the proposed project have significant traffic impacts to the SHS and it identifies the proposed mitigation measures. With the exception of the finding "Significance after Mitigation: significant and unavoidable," Caltrans is in agreement with the listed locations and their associated mitigation.

5

- 3.3-5: I-5 between Del Paso Road and Arena Boulevard – contribute fair share funds towards widening I-5 between Del Paso Road and Arena Boulevard from 6 to 8 lanes.

- 3.3-6: Intersection A, Sanky Road and SR 99/ 70 – construct or make fair share contribution to a grade-separated locally-serving interchange.
- 3.3-6: Intersection C, Riego Road/ SR 99/ 70 – construct or make fair share contribution to a grade-separated locally-serving Type-L7 with a minimum bridge width to accommodate five travel lanes.
- 3.3-8: Intersection B, Elverta Road/ SR 99/ 70 – construct or make fair share contribution to a grade-separated interchange on SR 99 at Elverta Road.
- 3.3-8: Intersection E, Elkhorn Boulevard/ SR 99/ 70 NB & SB Ramps – install or make fair share contribution to traffic signals.
- 3.3-9: Unacceptable LOS at 6 listed locations – contribute fair share funds towards construction of HOV lanes, HOV connector ramps, and auxiliary lanes.
- 3.3-13: Segment A, I-5 – SR 99/ 70 to Del Paso Road – contribute fair share funds towards widening I-5 between SR 99/ 70 to Del Paso Road from 6 to 8 lanes.
- 3.3-13: Segment B, I-5 – Del Paso Road to Arena Boulevard – contribute fair share funds towards implementing 3.3-5, widening I-5 between Del Paso Road and Arena Boulevard from 6 to 8 lanes.
- 3.3-13: Segment C, I-5 – Arena Boulevard to I-80 – contribute fair share funds towards widening I-5 between Arena Boulevard and I-80 from 8 to 10 lanes.
- 3.3-17: I-5 & SR 99/ 70 mainlines – contribute fair share funds towards adding mainline capacity to I-5 and SR 99/ 70.
- 3.3-27: I-5 between Del Paso Road and Arena Boulevard – contribute fair share funds towards widening I-5 between Del Paso Road and Arena Boulevard from 6 to 8 lanes.
- 3.3-34: Segments A, B, & C, I-5 between SR 99/ 70 and I-80 – contribute fair share funds to implement mitigation measures 3.3-13 Segment A, 3.3-5, and 3.3-13 Segment C, respectively.
- 3.3-38: I-5 & SR 99/ 70 mainlines – contribute fair share funds to implement mitigation measure 3.3-9.

5 Cont'd

- 3.3-40: SR 99/ 70 and Riego Road interchange – coordinate with Caltrans to implement lower speed entrances to the slip on-ramps at the Riego Road interchange AND implement reduced cross-sections at study intersections by minimizing the number of left- and right-turn lanes at intersections providing controlled right-turn movements.

5 Cont'd

Caltrans agrees with the method by which the County will calculate fair share fees and would appreciate the opportunity to review and comment on the calculations prior to implementation. Furthermore, we agree with the timeframe in which the County will collect the fees, "at the time of issuance of building permits for individual development projects within the plan area" (Mitigation Measure 3.3-1, Section e).

6

DEIR Figure 3.3-5, Inset "B" was determined to contain two numerical errors when compared with Figure 3.34A, Box #5. The southbound SR 99, south of Riego Road, should read 2642 (1211) and northbound should read 1076 (2475) and the DEIR should be corrected accordingly.

7

Please provide our office with copies of any further actions regarding this project. If you have any questions regarding these comments, please do not hesitate to contact Cassandra Eaton, of my staff, at (530) 634-7612.

Sincerely,

NICHOLAS DEAL, Chief
Office of Transportation Planning – East

c: Scott Morgan, State Clearinghouse
Nelson Xiao, Caltrans Traffic Operations
Cynthia Smith, Caltrans Travel Forecasting

"Caltrans improves mobility across California"

Caltrans-1

The County notes Caltrans' discomfort with the DEIR's conclusion of significance for traffic impacts on the State highway system, and responds as follows. First, Sutter County has chosen to take the more conservative approach in the EIR of finding all project impacts on State highways "significant and unavoidable" if the improvements lie outside of the jurisdiction of Sutter County. Although the DEIR identifies mitigation measures that would reduce these impacts, in some cases to a less than significant level (see e.g., Mitigation Measures 3.3-1, 3.3-5, and 3.3-6), these improvements lie outside the jurisdiction of Sutter County, and thus cannot be guaranteed to occur – at least from the County's standpoint. Although Caltrans may have procedures in place to facilitate the implementation of these mitigation measures, until the County and Caltrans agree on the means of collecting and spending the project proponents' funds, the physical improvements at issue cannot be guaranteed to occur. If, for whatever reason, the proposed mitigation measures, or equally effective measures, are not implemented, the roadway segments would continue to operate at an unacceptable level. Thus, the County, as the CEQA lead agency acting in advance of its potential funding partners, has conservatively considered the project's impacts on State highways to be significant and unavoidable, at least at the present time and at the time when the Board of Supervisors will be asked to take action on the Sutter Pointe Specific Plan. However, this does not detract from or change the commitment of the project to contribute its fair share of funds to mitigate the project's contribution to this cumulative impact.

Caltrans-2

The commenter states that there are several "inconsistencies" in the Draft EIR related to SR 99/70 and the Sankey Road intersection, and suggests various corrections.

As shown in FEIR Chapter 4, "Corrections and Revisions to the DEIR," references to traffic signal control at the Sankey Road/SR 70/99 intersection have been corrected on Figure 3.3-35 and in Tables 3.3-16 and 3.3-20, as shown in Section 4.0, "Revisions and Corrections to the Draft EIR." Mitigation measures for impacts at the Sankey Road/SR 70/99 intersection do not need to be changed and already identifies the construction of a grade-separated locally-serving interchange.

Caltrans-3

Please refer to Response to Comment Caltrans-1 above. In the comment itself, Caltrans acknowledges this concept when it states that Sutter County does not have control over mitigation outside its jurisdiction.

Caltrans-4

The County agrees that there need to be traffic mitigation agreements between Caltrans, Sutter County, and the Specific Plan proponents regarding the project's fair-share responsibility for mitigating its traffic impacts. The language of Mitigation Measure 3.3-1 makes clear that a fair-share contribution by the project, and similar contributions from all other projects responsible for increasing congestion on these highway segments, will only be viable after an appropriate fee collection and expenditure mechanism is first established. As noted in Master Responses 5 and 6, "Scope of Traffic Analysis" and "Traffic Mitigation," because County decision-makers will take action on the Specific Plan without knowing with certainty that the agreements contemplated by Mitigation Measure 3.3-1, including the proposed agreement with Caltrans, will come to fruition, the language of both the measure and the EIR recognize that such success cannot be absolutely guaranteed.

The County believes that the establishment of an enforceable agreement between Caltrans and Sutter County, consistent with State law and Sutter County General Plan Policy 3.A.7, is a proper prerequisite to the County making the Specific Plan's fair share contributions, and all other project's fair share contributions, available to Caltrans. (See Mitigation Measures 3.3-1, 3.3-5 and 3.3-6.) Under the federal and state constitutions, the County cannot impose on the project proponents the obligation to mitigate impacts not attributable to their project. Thus, without the matching, reciprocal funds needed for certain improvements, the collection of fees from the project applicants would be an idle act. Although Caltrans has established methods in place to assist local agencies with the implementation of local development mitigation measures, until Sutter County and Caltrans—as well as other local jurisdictions—establish one or more appropriate, enforceable agreements, the Specific Plan's impacts on the State highway system must be considered significant and unavoidable, as explained above. Without such an agreement or agreements, the mitigation measures identified in the DEIR would be infeasible and the identified improvements would not be guaranteed to occur.

The key point here is that, in preparing the Draft EIR, County staff devised a mitigation strategy that represents a good faith attempt – all too rare amongst local agencies in California – to grapple with the challenges of imposing on a local development project the obligation to mitigate its ascertainable significant impacts on the state highway system. At present, the institutional and legal mechanisms for a flow of money from the applicants to the County and thence to Caltrans simply do not exist, and thus must be created; and the Specific Plan, of course, has not yet been approved. In considering the Specific Plan, the Board of Supervisors will determine whether, if it approves the Specific Plan, it will also adopt Mitigation Measures 3.3-1, 3.3-5 and 3.3-6. If the Board takes both such actions, the County will be legally bound to approach Caltrans with the intention of seeking an agreement by which the project can be made to mitigate its impacts on Caltrans' facilities.

Caltrans-5 The commenter states that Caltrans is in agreement with the locations of various traffic impacts identified in the DEIR (a list is provided) and their associated mitigation. However, Caltrans does not agree with the DEIR conclusion that impacts would be significant and unavoidable.

Please see Master Response 6, "Traffic Mitigation," for a detailed discussion of traffic mitigation.

Caltrans-6 The commenter states that it agrees with the method by which the County will calculate fair share fees and the timeframe for collection of fees, and would appreciate the opportunity to review and comment on the calculations prior to implementation.

This comment supports the responses provided above and does not raise additional environmental issues; therefore, no response is required.

Caltrans-7 The commenter states that DEIR Figure 3.3-5, Inset "B," contains two specific errors that should be corrected.

As shown in FEIR Chapter 4, "Corrections and Revisions to the DEIR," Figure 3.3-5 and Table 3.3-3 have been corrected to show the correct AM and PM peak hour traffic volume on northbound and southbound SR 70/99 south of Riego Road. This change does not alter the conclusions of the EIR.

CPUC

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

February 6, 2009

VIA ELECTRONIC MAIL

Doug Libby, Principal Planner
Sutter County Planning Commission
1130 Civic Center Blvd.
Yuba City, CA 95993

RE: Comments on the Draft Environmental Impact Report for Sutter Pointe Specific Plan

Dear Mr. Libby:

The Energy Division of the California Public Utilities Commission (CPUC) appreciates the opportunity to provide comment on the Sutter Pointe Specific Plan Draft Environmental Impact Report ("DEIR"), State Clearinghouse No. 2007032157. These comments are submitted to ensure that the agency decision makers comply with the provisions of the California Environmental Quality Act[1] ("CEQA"), the CEQA Guidelines[2] and applicable case law. More specifically, the Energy Division of the CPUC intends that our comments ensure that the Final Environmental Impact Report (FEIR) produced by Sutter County for the Sutter Pointe Specific Plan is adequate for the Commission's decision-making purposes in the application of Golden State Water Company (A.08-08-022) for a Certificate of Public Convenience and Necessity (CPCN) to provide municipal and industrial (M&I) water service to the Sutter Pointe project. The Commission will serve as a Responsible Agency for compliance with the California Environmental Quality Act (CEQA) in Golden State Water Company's application before the CPUC.

The Energy Division's comments will be limited in scope to two issues:

1) It is clear from the filings before the Commission in A.08-08-022 that the legitimacy of the water supply proposed for the Sutter Pointe project is in the very least questionable and certainly in dispute. A variety of legal arguments are being offered up in the CPCN proceeding before the Commission regarding the issue of adequacy and reliability of the potential water supply for the proposed project. It would appear that the issue of the control of shares in Natomas Central Mutual Water Company (Natomas) is a critical and key issue with respect to the viability of any proposed project for the Sutter Pointe area. Clearly, the development of a project cannot proceed without the guarantee of an adequate water supply. The fundamental viability of the Sutter Pointe project as proposed by Sutter County is certainly in question given the issues of controversy between the parties to A.08-08-022. The Energy Division requests that Sutter County clarify this underlying dispute regarding water rights and the water supply for the proposed project such that the proposed Sutter County project can be considered a viable project with reliable water supply. 1

[1] Cal. Pub. Res. Code §§ 21000 *et seq*.
[2] 14 Cal. Code Regs. §§ 15000 *et seq*.

2) Mitigation Measures 3.9-1 and 3.9-4 appears to achieve a single aim: to ensure the transfer of shares and control of the underlying water supply to Sutter County for their (or another agency's) proposed use in an effort to provide a water supply to Sutter Pointe that is publicly owned and operated. It is not clear what environmental impact this mitigation measure is intended to address. The Energy Division believes that Mitigation Measures 3.9-1 and 3.9-4 are misplaced and are not designed to serve the purposes for which mitigation measures were intended by the Public Resources Code. 2

Thank you for the opportunity to comment on the Sutter Pointe Specific Plan Draft Environmental Impact Report ("DEIR"), State Clearinghouse No. 2007032157.

Sincerely,

Andrew Barnsdale

Energy Division, CEQA Unit

California Public Utilities Commission

CPUC-1 The commenter notes the existence of a dispute about the legitimacy of the water supply proposed for the Sutter Pointe project and requests clarification of the issues regarding rights to the supplies at issue. These issues are addressed at length in the responses to the more detailed comments on the same issue as set forth by the Golden State Water Company. See generally, responses to comments GSWC-3 through GWSC-37.

CPUC-2 The commenter asserts that the goals of proposed Mitigation Measures 3.9-1 and 3.9-4 addressing the transfer of shares and control of the underlying water supply to Sutter County's proposed use within Sutter Pointe are misplaced and are not consistent with the purposes embodied in the Public Resources Code. The County disagrees with this characterization of the proposed mitigation measures. To the contrary, these measures are intended to satisfy the County's duties under SB 610, SB 221, and CEQA, especially as most recently articulated by the California Supreme Court in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412. That case set forth four principles that lead agencies must follow in analyzing water supplies for long-term planning projects:

> First, CEQA's informational purposes are not satisfied by an EIR that simply ignores or assumes a solution to the problem of supplying water to a proposed land use project. Decision makers must, under the law, be presented with sufficient facts to "evaluate the pros and cons of supplying the amount of water that the [project] will need." [] Second, an adequate environmental impact analysis for a large project, to be built and occupied over a number of years, cannot be limited to the water supply for the first stage or the first few years. . . [¶] Third, the future water supplies identified and analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic allocations ("paper water") are insufficient bases for decision-making under CEQA. [] An EIR for a land use project must address the impacts of likely future water sources, and the EIR's discussion must include a reasoned analysis of the circumstances affecting the likelihood of the water's availability. [] Finally, where even a full discussion leaves some uncertainty regarding actual availability of the anticipated future water sources, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies. . . . when an EIR makes a sincere and reasoned attempt to analyze the water sources the project is likely to use, but acknowledges the remaining uncertainty, a measure for curtailing development if the intended sources fail to materialize may play a role in the impact analysis. . . . [¶] CEQA should not be understood to require assurances of certainty regarding long-term future water supplies at an early phase of planning for large land development projects. Pertinent are two measures enacted in 2001 "to ensure that local land use authorities will thoroughly consider the availability of water supplies before approving major new developments." [referring to SB 610 and SB 221.]

(*Id*. at pages 430-432.) Mitigation Measure 3.9-1 is intended to avoid the potentially significant impact that could result if future development phases were approved prior to verification of available water supplies to serve that development. Mitigation Measure

3.9-4 is intended to serve the related purpose of ensuring verification of adequate treatment capacity at the proposed groundwater treatment plants and the surface water treatment plant prior to approval of any future development phases. Both the DEIR's analysis of water supplies and the proposed mitigation measures are consistent with and in fact are intended to fulfill the requirements of CEQA as explained in the *Vineyard* decision.

CVFPB

STATE OF CALIFORNIA – THE RESOURCES AGENCY ARNOLD SCHWARZENEGGER, GOVERNOR

CENTRAL VALLEY FLOOD PROTECTION BOARD
3310 El Camino Ave., Rm. LL40
SACRAMENTO, CA 95821
(916) 574-0609 FAX: (916) 574-0682
PERMITS: (916) 574-0685 FAX: (916) 574-0682

FEB 1 2009

February 11, 2009

Doug Libby
1130 Civic Center Boulevard Suite E
Yuba City, California 95993

Dear Mr. Libby:

State Clearinghouse (SCH) Number: 2007032157
Draft Environmental Impact Report (EIR) - Sutter Pointe Specific Plan

Staff for the Department of Water Resources has reviewed the subject document and provides the following comments:

The proposed project is located within the jurisdiction of the Central Valley Flood Protection Board (Formerly known as The Reclamation Board). The Board is required to enforce standards for the construction, maintenance and protection of adopted flood control plans that will protect public lands from floods. The jurisdiction of the Board includes the Central Valley, including all tributaries and distributaries of the Sacramento River and the San Joaquin River, and designated floodways (California Code of Regulations (CCR) Title 23, Section 2).

A Board permit is required prior to starting the work within the Board's jurisdiction for the following:

- The placement, construction, reconstruction, removal, or abandonment of any landscaping, culvert, bridge, conduit, fence, projection, fill, embankment, building, structure, obstruction, encroachment, excavation, the planting, or removal of vegetation, and any repair or maintenance that involves cutting into the levee;

- Existing structures that predate permitting or where it is necessary to establish the conditions normally imposed by permitting. The circumstances include those where responsibility for the encroachment has not been clearly established or ownership and use have been revised (CCR, Title 23, Section 6);

1

The permit application and CCR Title 23 regulations can be found on the Central Valley Flood Protection Board's website at http://www.cvfpb.ca.gov/.

If you have any questions please call me at (916) 574-0651.

Sincerely,

James Herota

James Herota
Staff Environmental Scientist
Floodway Protection Section
Division of Flood Management

Letter **CVFPB** Response	Central Valley Flood Protection Board James Herota, Staff Environmental Scientist Floodway Protection Section, Division of Flood Management February 11, 2009

CVFPB-1 The commenter notes that the project is located within the jurisdiction of the Central Valley Flood Protection Board and that a Board permit is required prior to starting work within the Board's jurisdiction. As shown in Chapter 4 of this FEIR, "Corrections and Revisions to the DEIR," the following text has been added preceding the discussion of the Central Valley Flood Protection Plan on page 3.7-12 of Chapter 3.7, "Hydrology and Water Quality:"

> ***Central Valley Flood Protection Board***
>
> The proposed project is located within the jurisdiction of the Central Valley Flood Protection Board, which is required to enforce standards for the construction, maintenance, and protection of adopted flood control plans that will protect public lands from floods. The jurisdiction of the Board includes the Central Valley, including all tributaries and distributaries (e.g. canals and engineered conveyances) of the Sacramento and San Joaquin Rivers and designated floodways (CCR Title 23, Section 2). A permit from the CVFPB will be required for the placement, construction, reconstruction, removal, or abandonment of any landscaping, culvert, bridge, conduit, fence, projection, fill, embankment, building, structure, obstruction, encroachment, or excavation that involves cutting into a levee under CVFPB jurisdiction, as well as the planting or removal of vegetation on such a levee, and any repair or maintenance that involves cutting into such a levee.

Placer

COUNTY OF PLACER
Community Development/Resource Agency
Michael J. Johnson, AICP
Agency Director

PLANNING

January 30, 2009

Mr. Doug Libby, AICP
Principal Planner
Sutter County Community Services Department
1130 Civic Center Boulevard
Yuba City, CA 95993

SUBJECT: Sutter Pointe Specific Plan – *DEIR County Comments*

Dear Mr. Libby:

Thank you for the opportunity to review and comment on the Draft Environmental Impact Report (DEIR) for the Sutter Pointe Specific Plan project. Given the scale of the project, approval of the Specific Plan is a decision that will have significant regional impacts, including impacts to Placer County infrastructure, residents and businesses. Specifically, Placer County has concern regarding impacts associated with transportation and solid waste disposal within the County. To ensure that these impacts are fully mitigated, the County offers the following comments on the Draft Environmental Impact Report for the project. 1

Project Description
After reviewing the Project Description contained in the Draft EIR, the County has identified two areas of oversight: 2

1. Section 2.4.1, Page 2.7 – Placer County should be listed under "Other Agencies"
2. Section 2.4.3., Page 2-19 – In Table 2-4, Roadway improvements are not listed for Base Line Road, Watt Avenue, Walerga Road, or other Placer County roadways. 3

Transportation
Placer County initially provided comments related to transportation during the Notice of Preparation for the project and, after reviewing the DEIR for the project, the County has found that some issues raised in the County's comments for the NOP were not addressed. Given the large volume of traffic utilizing Base Line Road, would the provision of additional local east-west connector roads, parallel to Base Line Road, provide better circulation within the project and region? While Impact 3.3-20 (Page 3.3-96) discusses some of the issues, it does not provide any specific analysis or recommendations. In addition, Placer County's Placer Vineyards project will be installing an ITS system in conjunction with road improvements within Placer County. Therefore, it is the County's opinion that the EIR for the Sutter Pointe Specific Plan should examine how this system could be extended and/or interconnected with a similar system along Riego Road or other connecting roadways within Sutter Pointe or Sutter County. 4 5

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Internet Address: http://www.placer.ca.gov/planning / email: planning@placer.ca.gov

Upon further review of the DEIR, the County's has concluded that the Draft EIR needs to identify impacts to *all* Placer County roadways, and mitigation should be provided accordingly. Mitigation measures should include the type, extent and timing of necessary improvements. Impacts associated with the actual construction of required improvements need to be addressed in the DEIR. 6

Additionally, fair-share funding may not result in timely construction of required improvements and, as a result, these impacts should also be analyzed. Mitigation for all impacts should be addressed in the project's Finance Plan. 7

With respect to fair-share funding, Mitigation Measure 3.3-1b describes developing agreements with other agencies pertaining to payments of fair-share impacts as mitigation. The Mitigation Measure describes the need for ongoing updates of these payments. The County has concern with this Mitigation Measure in that funding for the updates shall be provided by the project applicant, not Sutter County. Placer County would like the DEIR to identify who will oversee the updates, and how often the updates will occur. Additionally, the DEIR should identify who will administer the updates and traffic analysis. A copy of the project Development Agreement should be made available for review to verify that it contains language obligating the developer to either pay their fair-share of mitigation measures (including the timing of such payments), or defining the timing of construction improvements. 8 9

Placer County has identified further areas of oversight within the DEIR that need to be addressed. These include the following:

1. On Page 3.3-32, the Roadway Segment 8 is in Sutter County rather than Placer County; and on Page 3.3-34, the Roadway Segments 34 and 35 are in Placer county rather than Sacramento County. 10

2. In Section 3.1.3, Page 3.1-19, the sentence in the second paragraph reads "All off-site improvements would be constructed within existing roadway rights-of-way in Placer and Sacramento Counties". This statement is incorrect, in that Placer County does not currently have sufficient rights-of-way for the necessary improvements, including those on Baseline, Watt or Walerga Roadways. 11

3. In Section three, the Mitigation Measures and Impacts within Placer County area identified as on-site elements yet they are off-site of the projects and outside Sutter County. In other areas of this section, impacts are identified as on-site and off-site elements. Please provide for consistency with regard to the labeling of such impacts within Placer County. 12

4. The DEIR and the Finance Plan indicate that Sutter Pointe will construct a portion of Placer Parkway within its project limits; however, the documents do not indicate how construction of such improvements compares to their fair-share of the complete Placer Parkway project. In addition, the documents do not include any discussion regarding how the "gap" portion of the Placer Parkway within Sutter County will be funded or when it would be constructed. The DEIR and Finance Plan should provide for more discussion regarding Sutter Pointe's responsibility towards funding and constructing this "gap" portion of the roadway in a timely manner. 13

Solid Waste Disposal
Upon reviewing the Public Utilities Section of the DEIR, Placer County has found that while solid waste disposal services would be provided to the site by the Regional Waste Management Authority, through its service contract with Yuba-Sutter Disposal, Inc., short-term construction-related solid waste is proposed to be exported to Placer County's landfill.

Section 3.10 of the DEIR states that "The off-site elements of the proposed project would extend into Placer County..."; and that "Construction of the off-site program elements would generate temporary, short-term construction-related debris and solid waste". The DEIR also notes that because the export of solid waste would be construction-related and therefore short-term, the landfill was not further discussed in the EIR. 14

Please note that while the DEIR indicates that exporting of solid waste to Placer County's landfill would be a short-term construction-related activity, Placer County prohibits the transport of solid waste materials into the County. Placer County Code Section 8.16.210 states that "It is unlawful for any person excluding individual homeowners to transport refuse into this County without first securing a written permit to do so from the Board of Supervisors". This issue will need to be more thoroughly addressed in the EIR so that it is acknowledged that solid waste materials *will not* be transported to Placer County. To this end, it is important that the EIR acknowledge where the solid waste material will be transported.

Once again, thank you for the opportunity to comment on the Draft EIR for the Sutter Pointe Specific Plan. Should you have any questions regarding these comments, please do not hesitate to contact me at 530.745.3197.

Sincerely,

MICHAEL J. JOHNSON, AICP
Community Development Resource Agency Director

Cc:
Tom Miller, County Executive Officer
Holly Heinzen, County Executive Office
Allison Carlos, County Executive Office
Jim Durfee, Facility Services Department
Ken Grehm, Public Works Department
Loren Clark, Planning Department
Paul Thompson, Planning Department
Crystal Jacobsen, Planning Department
Andrew Gaber, Public Works Department
Maywan Krach, Environmental Coordination Services

Placer-1 The commenter provides a general outline of his concerns, each of which are addressed in detail in the subsequent responses to Placer County's comments below. No other response is required.

Placer-2 The commenter requests that Placer County be listed under "Other Agencies" in Section 2.4.1 of the Project Description (page 2-7). As shown in Chapter 4 of this FEIR, "Corrections and Revisions to the DEIR," the project description has been amended to add a bullet for "Placer County" at the top of page 2-7. No additional response is required.

Placer-3 The commenter states that roadway improvements to Base Line Road, Watt Avenue, Walerga Road, and other Placer County roadways are not listed in Table 2-4 on page 2-19. The commenter is correct. Table 2-4 describes only those improvements that would be completed as part of the proposed project, and does not include roadway improvements not under the jurisdiction of Sutter County. Table 3.3-10 (pages 3.3-21 and 3.3-22) summarizes planned roadway improvements through 2035 in the study area.

Placer-4 The commenter states that some issues raised in Placer County's comments for the NOP were not addressed. Specifically, the commenter states that, while Impact 3.3-20 (Page 3.3-96) discusses some of the issues, it does not provide any specific analysis or recommendations for additional local east-west connector roads.

Analysis of additional east-west roadway connections between Sutter County and Placer County is included in the DEIR. Specifically, the analysis in the DEIR includes detailed traffic operations of the Riego Road/Baseline Road corridor without and with the proposed Placer Parkway connection between SR 99/70 and SR 65. A roadway along the general alignment of the proposed Placer Parkway is shown on the 1994 Placer County General Plan Circulation Plan Diagram. Placer Parkway would represent a new parallel connection to Riego Road/Baseline Road between Sutter County and Placer County and provides a basis for evaluating the effect of improved accessibility between the counties as requested in Placer County's NOP comments. Thus, the issue of an additional east-west connector was addressed. The County notes that the corridor, except for the alignment on the site, would be entirely within Placer County. Sutter County has reasonably considered an east-west alignment, generally as proposed by Placer County, and any other alignment would presume that Sutter County has land use control in Placer County, which it does not. Consequently, analysis of additional connections between Sutter County and Placer County was considered redundant and would not meet the scope of CEQA or land use planning principles and law. In addition, new roadway connections to the east of the Specific Plan were not desired between Sankey Road and Riego Road.

Placer-5 The commenter states that Placer County's Placer Vineyards project will be installing an ITS system in conjunction with road improvements within Placer County and suggests that the DEIR should examine how the Placer Vineyards system could be extended and/or interconnected with a similar system along Riego Road or other connecting roadways within Sutter Pointe or Sutter County.

The traffic operations analysis in the DEIR assumes that the signal system on the Riego corridor would include ITS-elements like traffic signal interconnect. This system could be connected with the proposed system in Placer County on Riego Road. However, the specific features of an integrated system would require coordination between Sutter County and Placer County prior to the design of improvements on the Riego Road/Baseline Road corridor. Mitigation Measure 3.3-1 requires that developers of property within the plan area be responsible for the project's fair share of all feasible physical improvements necessary and available to reduce the severity of the project's significant transportation-related impacts. Paragraph (a)(5) of this mitigation measure identifies the mechanism by which fair share fees would be collected by Sutter County and then transmitted to other agencies through one or more enforceable agreements. Implementation of this mitigation measure would identify improvements and funding requirements.

Placer-6

The commenter states that Draft EIR needs to identify Impacts to "all" Placer County roadways and that mitigation measures should include the type, extent, and timing of necessary improvements. The commenter also requests that impacts associated with the actual construction of required improvements be addressed in the DEIR.

See Master Response 5, "Scope of Traffic Analysis" for a detailed discussion of the scope of traffic analysis in the DEIR. The DEIR analyzed the transportation facilities as required by CEQA (Public Resources Code Section 21092.4(b)), which mandated at the time of the publication of the NOP (i.e., the environmental baseline) the analysis of major local arterials and public transit within five miles of the project site and freeways, highways, and rail transit service within 10 miles of the project site. Further, it is unclear whether the commenter truly means <u>all</u> roadways in the County, or just those to which the project would have a potentially significant effect. The traffic engineer investigated the amount of traffic added by the project to major local arterials in the region, and did extend the study limits beyond those specified by the Public Resources Code where warranted by the modeling. For example, the study area extended eastward more than five miles from the project limit to the intersection of Fiddyment and Baseline Roads. Consequently, the geographic scope of the traffic analysis is considered sufficient to identify all significant traffic impacts on major local arterials. The EIR does address impacts to roadways where they may be significant, including in Placer County. The County's comment does not identify what roadways should have been considered but were not, and without this information, no further response can be provided.

As shown in FEIR Chapter 4, "Corrections and Revisions to the DEIR," the DEIR has been revised to include Exhibit 3.3-39, which shows all of the facilities within the specified distances. In addition, the DEIR also analyzed all of the specific roadways identified in NOP comments received from Placer County. Analysis of "<u>*all*</u> Placer County roadways" (which extend to Lake Tahoe and the California/Nevada state line) would require analysis of roads to which the project would have no effect, and this is beyond the requirements of CEQA.

Placer-7

The commenter states that funding may not result in timely construction of required improvements and, as a result, these impacts should also be analyzed, and that mitigation for all impacts should be addressed in the project's Finance Plan.

The DEIR discloses that even if all mitigation measures that require the payment of fair share costs are successfully implemented, there may be a short-term significant and unavoidable impact, in the form of unacceptable levels of service, until such time as the

contemplated improvements are in place. The impacts of transportation mitigation are discussed in DEIR Impacts 3.3-21 and 3.3-41. Table 2-2 of the Public Facilities Financing Plan, which is Appendix G1 to the Sutter Pointe Specific Plan, identifies the total estimated costs for all off-site road improvements, Sutter Pointe's estimated share of those off-site improvements, and the potential sources of funds for the non-Sutter Pointe shares. See Response to Comment Friends-A-21 for a fuller explanation of the discussion in the Public Facilities Financing Plan regarding funding of road impact mitigation measures.

Placer-8

The commenter points out that Mitigation Measure 3.3-1b requires development of agreements with other agencies pertaining to fair-share payment of impacts, and that the mitigation measure described the need for ongoing updates of these payments.

On-going updates to the traffic modeling are necessary. As development projects are built out over time and new projects are approved in the region, it is important for public agencies to maintain flexibility in providing cross-jurisdictional credits and reimbursements with the fair-share mitigation standard identified in the measure. Updated model runs incorporating the best available information (i.e. most accurate and up to date) allow for the most reliable estimates of the parties' fair-shares.

The commenter further states that funding should be provided by the project applicant, not by Sutter County. The commenter also requests that the DEIR identify who will oversee the updates, how often they will occur, and who will administer them. The commenter suggested the development agreement should include a provision that requires the applicant to pay the costs of such updates. The commenter also asked that a copy of the Development Agreement be made available for review.

The agreements outlined in DEIR Mitigation Measure 3.3-1(b) would be between Sutter County and other jurisdictions and agencies, such as Placer County. The parties to the agreements would meet and confer to negotiate the details of the agreements (i.e., the funding, timing, and implementation of updates). The issues raised by the commenter would be a part of the negotiations between the jurisdictions, as suggested in the mitigation. Therefore, it would be speculative at this time to outline the precise details of the agreements. Ultimately, however, the applicant would provide funding, either directly to the involved agencies, or through Sutter County. The County has noted that commenter would like to review these agreements once they are available. See also Master Response 6, "Traffic Mitigation."

Placer-9

The commenter requests that a copy of the draft development agreement be made available for review to verify it contains language obligating the developer to either pay their fair-share of mitigation measures (including the timing of such payments) or defining the timing of construction improvements.

Please refer to Response to Comment Friends-A-1. The County intends to include the issues addressed by the commenter in the future development agreement(s).

Placer-10

The commenter suggests that Roadway Segment 8 should be shown in Sutter County rather than Placer County on DEIR page 3.3-32, and that Roadway Segments 34 and 35 should be shown in Placer County rather than Sacramento County on DEIR page 3.3-34.

As shown in FEIR Chapter 4, "Corrections and Revisions to the DEIR," the roadway segment jurisdiction references in Table 3.3-15 have been updated to reference the correct jurisdiction for Segments 8 (Sutter County) and 34 (Placer County). The reference

for Segment 35 (Sacramento County) is correct in Table 3.3-15 and was not changed. These corrections do not affect the conclusions of the impact analysis.

Placer-11 The commenter indicates that there is not sufficient right-of-way for proposed off-site utility improvements within Baseline Road, Watt Avenue, and Walerga Road in Placer County.

> With regards to natural gas service, as discussed in Impact 3.10-6, PG&E could provide service west along Riego Road (Baseline Road in Placer County) from Roseville to an existing pipeline at the intersection of Baseline and Fiddyment Roads in Roseville. Alternatively, PG&E is more likely to provide service from its new 406/407 line. PG&E is proposing to install a portion of its new natural gas 406/407 line along Baseline Road; as stated in DEIR Impact 3.10-6 (page 3.10-22), the pipeline would consist of approximately 12 miles of 30-inch-diameter pipeline and would extend east from the junction of the new Powerline Road distribution feeder main and follow Riego and Baseline Roads. The route would connect with an existing pipeline at the intersection of Baseline and Fiddyment Roads in Roseville. An NOP (SCH # 2007062091) for the Line 406/407 project was prepared and circulated for public review in June 2007, and potential impacts for construction of the proposed PG&E Pipeline 406/407 project as identified in the NOP are summarized above in the "Environmental Setting." An EIR is currently being prepared to identify analyze specific impacts of the proposed pipeline project and identify any required mitigation measures. According to PG&E, a DEIR for the Line 406/407 project may be released in 2009. The pipeline project is anticipated to be constructed in late 2009 and 2010. Any necessary road right-of-way acquisitions for either pipeline route would be the responsibility of PG&E.

The only utility improvements proposed along Watt Avenue in Placer County relate to Comcast cable lines. Overhead lines are already present along Watt Avenue. Cable service in Placer County along Baseline Road would likewise be provided through an extension of the existing overhead lines.

No project-related off-site utility improvements are proposed along Walerga Road in Placer County.

Placer-12 The commenter states that "In Section three, the Mitigation Measures and Impacts within Placer County area identified as on-site elements yet they are off site of the projects and outside Sutter County."

It is not possible for the County to respond specifically to this comment because it is unclear what Chapter of the DEIR the commenter is referring to or exactly what the commenter's concerns are. As a general response, the County notes that it believes on-site and off-site project elements are appropriately identified in the DEIR.

Placer-13 The commenter states that the DEIR does not describe how construction of improvements to a portion of Placer Parkway within the Sutter Pointe project boundaries compares to the project's fair share of the complete Placer Parkway project or how the "gap" portion of the Placer Parkway within Sutter County will be funded or when it would be constructed.

At this point, Sutter County has not committed to funding Placer Parkway beyond what has been proposed in the Sutter Pointe Specific Plan and DEIR. Details for the funding

for the Placer Parkway would be negotiated through agreement reached between Sutter County and other jurisdictions consistent with DEIR Mitigation 3.3-1. Preliminary analysis indicates that construction of Placer Parkway in Sutter County is likely to cause impacts on Sutter County roads, SR 99/70, and the future interchanges at Sankey Road and SR 99/70 and at Riego Road and SR 99/70. In addition, the proposed Placer Parkway would limit accessibility to the Sutter Point Specific Plan to only one access from Sankey Road. Any contribution toward Placer Parkway will need to be off-set against impacts caused in Sutter County by Placer Parkway.

Placer-14 The commenter notes that Placer County prohibits the transport of solid waste materials into the County. As stated on page 3.10-7 of the DEIR, "In Placer County, solid waste would be disposed of at the Western Regional Landfill, which is permitted to accept 1,900 tpd of solid waste." As indicated by the DEIR text that precedes this statement on page 3.10-7, only construction waste generated by portions of the off-site infrastructure which are constructed in Placer County would be disposed at the Western Regional Landfill. No additional response is required.

WPWMA

WESTERN PLACER
WASTE MANAGEMENT AUTHORITY

JOHN ALLARD, ROSEVILLE, CHAIRMAN
ROCKY ROCKHOLM, PLACER COUNTY
GEORGE MAGNUSON, ROCKLIN
SPENCER SHORT, LINCOLN
ROBERT WEYGANDT, PLACER COUNTY
JAMES DURFEE, EXECUTIVE DIRECTOR

January 30, 2009

Mr. Doug Libby, AICP
Principal Planner
Sutter County Community Services Department
1130 Civic Center Boulevard
Yuba City, CA 95993

RE: Sutter Point Specific Plan - Draft Environmental Impact Report

Dear Mr. Libby,

Thank you for the opportunity to review the above mentioned Draft Environmental Impact Report (DEIR).

In the Public Utilities section, the DEIR states:

> *The off-site elements of the proposed project would extend into Placer and Sacramento Counties. Construction of the off-site program elements would generate temporary, short-term construction-related debris and solid waste. In Placer County, solid waste would be disposed of at the Western Regional Landfill… Because construction-related solid waste would be short-term, these landfills are not discussed in further detail in this section.*

The Western Placer Waste Management Authority (Authority) is a regional agency comprised of Placer County and the Cities of Roseville, Rocklin, and Lincoln. The majority of the solid waste collected in western Placer County is first received and processed at the Authority's Material Recovery Facility (MRF) which separates, processes and markets recyclable materials removed from the waste stream. The facility also processes source separated wood waste and composts green waste. The MRF is permitted to accept 1,750 tons per day and currently receives an average of 1,086 tons per day. 1

Residual waste from the MRF is transported to the Western Regional Sanitary Landfill (WRSL). The landfill is specified as a Class II/Class III non-hazardous site and a private firm, under contract to the Authority, manages its operation. The WRSL is permitted to accept 1,900 tons per day and currently receives an average of 824 tons per day. Based on a 2007 capacity study, the landfill has a total capacity of 36,350,000 cubic yards, used capacity of 12,551,577 cubic yards, and remaining capacity of 23,798,423 cubic yards. Under current land use and development conditions, the landfill has a projected lifespan extending to 2042.

As the primary waste facility in western Placer County, we are interested in the potential volumes of waste generated from development projects, even short term, construction related waste. Please consider the following comments: 2

RECYCLING AND DISPOSAL MADE EASY
11476 C AVENUE AUBURN, CA 95603
(916) 543-3960 / (916) 543-3990 FAX
WWW.WPWMA.COM

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- Western Regional Sanitary Landfill – the DEIR refers to the landfill as the Western Regional Landfill; the appropriate name is Western Regional Sanitary Landfill. 3

- Waste Estimates – Please provide the estimated types and quantities of the waste anticipated to be delivered to the Authority. The DEIR should also discuss the ability of the Authority's solid waste handling facilities to accept and process the projected quantities. Although it is anticipated that the amounts of solid waste generated by the project will not be significant, in conjunction with other proposed projects in the area it may create a significant impact on the Authority's handling abilities. 4

  The California Integrated Waste Management Board provides estimated waste generation rates for residential, commercial, industrial, institutional, multifamily, and service establishments at:
  http://www.ciwmb.ca.gov/wastechar/wastegenrates/default.htm

- Waste Acceptance – To confirm, Placer County Code prohibits the transport of out-of County waste to a Placer County-owned disposal site; only waste generated from the off-site elements within Placer County will be accepted at the Authority facility. 5

- Waste Diversion – Placer County Code promotes the maximum use of solid waste source reduction, recycling, and composting. Unless the construction debris is hauled to the Authority's MRF for appropriate recycling, contractors should provide on-site separation of construction debris to assure a minimum 50% diversion of this material. 6

Thank you for the opportunity to respond. Please feel free to call me at (530) 886-4965 should you have any questions.

Sincerely,

Chris Hanson
Sr. Planner

CH/lm

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WPWMA-1 The commenter quotes a portion of the Public Utilities section of the DEIR, and provides information about the WPWMA and landfill capacity of the Western Regional Sanitary Landfill.

Thank you for your comment; no changes to the DEIR text are required.

WPWMA-2 The commenter notes that it is interested in the potential volumes of waste generated from development projects, even short term waste.

Please see response to Comment WPWMA 4.

WPWMA-3 The commenter notes that the correct name of the "Western Regional Landfill" as it is referred to in the DEIR is the "Western Regional Sanitary Landfill."

As shown in FEIR Chapter 4, "Corrections and Revisions to the DEIR," the following revisions have been made to pages 3.10-7 (Solid Waste) and 3.10-19 (Impact 3.10-4, Increased Generation of Solid Waste):

Page 3.10-7:

> The off-site elements of the proposed project would extend into Placer and Sacramento Counties. Construction of the off-site program elements would generate temporary, short-term construction-related debris and solid waste. In Placer County, solid waste would be disposed of at the Western Regional Sanitary Landfill, which is permitted to accept 1,900 tpd of solid waste. In Sacramento County, solid waste would be disposed of at Kiefer Landfill, which is permitted to accept a maximum of 10,815 tpd of solid waste. Because construction-related solid waste would be short-term, these landfills are not discussed in further detail in this section.

Page 3.10-19:

> The off-site elements and force mains would extend into Placer and Sacramento Counties. Construction of the off-site program elements would generate short-term construction-related debris and solid waste. Solid waste generated by construction activities in Placer County would be disposed of at the Western Regional Sanitary Landfill, which is permitted to accept 1,900 tpd of solid waste and has a remaining capacity of 29 million cubic yards. In Sacramento County, solid waste would be disposed of at Kiefer Landfill, which is permitted to accept a maximum of 10,815 tpd of solid waste and has a remaining capacity of 117 million cubic yards. Because these landfills have sufficient permitted capacity to accommodate short-term construction-related disposal needs for the proposed project and because the construction-related solid waste would be short term, this direct impact is less than significant. No indirect impacts would occur.

WPWMA-4 The commenter requests that the County provide the estimated types and quantities of waste anticipated to be delivered to WPWMA, and states that the DEIR should also discuss the ability of the WPWMA facilities to accept and process the projected quantities.

DEIR Impact 3.10-4 (pages 3.10-19 and 3.10-20) sets forth a detailed calculation of the amount of projected generation of solid waste by the proposed project, and concludes that, "Combining residential and business solid-waste generation, total solid-waste generation for the proposed project would be approximately 120,656 tons per year (330.6 tpd). Much lower generation rates would occur at project initiation, with gradual increases in the rate as development progressed." The DEIR evaluates potential impacts at a programmatic level; the County understands the commenter's concerns, and notes that future CEQA review will be performed as tentative maps and improvements plans are put forward for approval. The specific details of the types of waste cannot be ascertained until the specific project-level details (e.g., tentative maps and improvements plans) are placed before the County and other local regulatory agencies for consideration.

The commenter further notes that while it is anticipated that short-term construction-relate waste generated by the project will not be significant, it may create a significant impact on the WPWMA's handling facilities in conjunction with waste from other projects in the region.

As stated in DEIR Impact 3.10-3, solid waste generated by construction activities for off-site project-related improvements in Placer County would be disposed of at the Western Regional Sanitary Landfill. According to information available at the time the DEIR was prepared, the landfill was permitted to accept 1,900 tpd of solid waste and had a remaining capacity of 29 million cubic yards. Because the landfill has sufficient permitted capacity to accommodate short-term construction-related disposal needs for the proposed project, the DEIR identified this impact as less than significant. The DEIR evaluates potential impacts at a programmatic level; the County understands the commenter's concerns, and notes that future CEQA review will be performed as tentative maps and improvements plans are put forward for approval. The specific details of the types of waste cannot be ascertained until the specific project-level details (e.g., tentative maps and improvements plans) are placed before the County and other local regulatory agencies for consideration. The commenter states in his letter that the Western Regional Sanitary Landfill still has a remaining capacity of more than 23 million cubic yards, with a projected lifespan expected until 2042. Therefore, the County does not believe that the anticipated small amounts of short-term construction-generated waste related to the project that is generated off-site in Placer County would result in a significant cumulative impact (see DEIR Chapter 5, "Cumulative Impacts," page 5-24). Therefore, no changes to the DEIR text are necessary.

WPWMA-5 The commenter observes that Placer County Code prohibits the transport of out-of-county waste to a Placer County-owned disposal site.

As noted in the DEIR at page 3.10-7 and 3.10-19, only waste from off-site project-related elements that are constructed in Placer County would be disposed of at the Western Regional Sanitary Landfill.

WPWMA-6 The commenter suggests that if construction debris is not hauled to WPWMA's material recovery facility for recycling, the construction contractors should provide on-site

separation of construction debris to ensure that a minimum of 50% of the debris is recycled.

As shown in FEIR Chapter 4, "Corrections and Revisions to the DEIR," the following revisions have been made to Impact 3.10-3, "Short-Term Generation of Solid Waste during Project Construction," on page 3.10-19 in Section 3.10, "Public Utilities."

Off-Site Elements

The off-site elements and force mains would extend into Placer and Sacramento Counties. Construction of the off-site program elements would generate short-term construction-related debris and solid waste. Solid waste generated by construction activities in Placer County would be transported to the Western Placer Waste Management Authority Materials Recovery Facility. Unrecyclable solid waste would be disposed of at the Western Regional Landfill, which is permitted to accept 1,900 tpd of solid waste and has a remaining capacity of 29 million cubic yards. In Sacramento County, solid waste would be disposed of at Kiefer Landfill, which is permitted to accept a maximum of 10,815 tpd of solid waste and has a remaining capacity of 117 million cubic yards. Because these landfills have sufficient permitted capacity to accommodate short-term construction-related disposal needs for the proposed project and because the construction-related solid waste would be short term, this **direct** impact is **less than significant**. **No indirect** impacts would occur.

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RD1000

RD1000

RECLAMATION
DISTRICT 1000

February 2, 2009

Mr. Doug Libby
Sutter County Community Services Dept
1130 Civic Center Boulevard, Suite E
Yuba City, CA 95993

Subject: Sutter Pointe Specific Plan Draft EIR

Mr. Libby;

We have reviewed the Sutter Pointe Specific Plan Draft EIR and have some comments as the proposed development impacts Reclamation District No. 1000's facilities. As you know, Reclamation District No. 1000 is a local government entity created by the State of California and provides flood control and stormwater drainage services to the Natomas Basin where the proposed project is located. We have been working with Sutter County staff and the project proponent to address the impacts of the proposed project on the District's facilities and our ability to provide services to the properties in Natomas. Our primary concern is that impacts to District facilities and services as a result of proposed project be appropriately mitigated to our reasonable satisfaction. 1

To this end, we have the following comments on the Draft EIR: 2

1. Page ES-2; The Objective 11 should also note compliance with RD 1000's drainage requirements and standards.

2. Page ES-60; the mitigation measure suggests a post project runoff not to exceed 0.16 cfs/acre. The current agreement between Sutter County and RD 1000 requires a Drainage Plan be prepared by Sutter County to analyze the impacts and recommend mitigation measures. The Agreement does not specify a runoff rate but requires mitigation (i.e. through detention) to limit post project peak runoff rates to the current agricultural rates. This Agreement was executed by Sutter County and RD 1000 in 2008 requires improvements to RD 1000 drainage system which may provide for: "(i) on or offsite detention of storm water runoff and delivery of such storm water runoff to RD1000's drainage system at rates not in excess of agricultural storm water runoff rates; (ii) no increase in the extent of and no change in the location of the one in 100 year internal flood plain within the boundaries of RD1000, except within the Sutter 3

Pointe Specific Plan area or as may be contained within on or offsite detention basins acceptable to RD1000; (iii) no increase in the one in 100 year stage within RD1000's drainage system; (iv) reasonably necessary improvements to RD1000's system of drainage ditches, canals and pumping plants to accommodate RD1000's disposal of such additional storm water runoff; and (v) ownership and operation and maintenance of any on or offsite detention basins and any storm water collection systems within the Sutter Pointe area by SUTTER or any municipality which may be formed within the Sutter Pointe area". 3 Cont'd

3. Page 2-18; Note the current provider of flood control is SAFCA as well as RD 1000. SAFCA was a joint powers authority formed to provide the planning and financing of regional flood control projects working with the State and Corps of Engineers. Their mission has expanded to provide construction of these facilities also. RD 1000 constructed the original levees and holds the easements (along with the State of California) and is responsible for the on-going operation and maintenance of these facilities. 4

4. Page 2-20; The overflow through Sankey Gap is a result of backwater conditions caused by high stages in the Sacramento River at its confluence with the Natomas Cross Canal. In this proximity, the Sacramento, Feather and Bear Rivers all come together creating a hydraulic dam which is partially relieved by the Fremont Weir which spills these high flows into the Yolo By-pass. However this backwater is what does not allow floodwaters from Pleasant Grove to drain and spills water through the Sankey Gap. 5

5. Page 3.7-8; the 2000 Agreement between Sutter County and RD 1000 has been replaced by the 2008 Agreement. The 2008 Agreement explicitly terminates and replaces the 2000 Agreement. 6

6. Page 3.7-13; note SAFCA is a joint powers authority formed by RD 1000, Sutter County, Sacramento County, Sacramento City and American River Flood Control District. 7

7. Page 3.7-21; Natomas Mutual Water Company uses some of RD 1000 facilities through an agreement between them. The current agreement has expired and a new agreement is being negotiated. There are no "joint use" facilities between the parties. 8

8. Page 3.7-22; The North Drainage Canal also conveys water to the west where it historically had been pumped into the Sacramento River at the RD 1000 Plant No. 2 (Prichard Lake). This facility was removed during a flood emergency in 2006 and is scheduled to be reconstructed in the same general location in 2010. 9

9. Page 3.7-36; the drainage design will be based on the information developed by the Drainage Plan referenced in the Agreement between Sutter County and RD 1000 described in more detail in comment No. 2 above. 10

10. Page 3.7-55; strike the reference to the 0.16cfs/acre post-project runoff rate. See comment No. 2 above. 11

11. At several locations in the document reference is made to the Sankey Road Gap and the existing spills through this gap under current conditions. RD 1000 is on record as supporting the closing of this gap to reduce flooding in the Natomas Basin. It is recognized that closing the gap may have adverse impacts on properties upstream from the gap. The project proponent should be encouraged to work with RD 1000, SAFCA, the State of California and others in developing a project which would lead to closing the gap in a manner which is fair and reasonable to all parties and properties involved. 12

Please note, most of the comments are general. We expect the majority of the drainage and flood control issues to be resolved in the Drainage Plan to be prepared by Sutter County pursuant the 2008 Agreement with RD 1000. We appreciate your consideration of our comments. If you have any questions, please contact me at 916-922-1449 or via e-mail at pdevereux@rd1000.org. 13

Sincerely,

Paul Devereux
General Manager/District Engineer

cc Tim Washburn (SAFCA)

RD 1000-1

The District requests that impacts to District facilities and services from the proposed project be appropriately mitigated to the District's "reasonable satisfaction."

RD 1000 is a "Responsible Agency" under CEQA. Responsible agencies are encouraged to actively participate in the CEQA process of the lead agency, review the CEQA document of the lead agency, and use the document when making their own decisions on the project. A responsible agency may adopt the lead agency's environmental document(s) after making certain findings, or it may conduct additional analysis of its own, if warranted under CEQA, prior to issuing any separate entitlements within its authority. In this case, the County and the District have negotiated an agreement that addresses a threshold for impacts to the District's facilities, a method for determining whether impacts exist, and a methodology for mitigating those impacts. The County and the project applicant have worked cooperatively with the District to investigate impacts to District's facilities and services and to develop feasible mitigation to address those impacts, and they intend to continue working in cooperative fashion in the future. No changes to the text of the DEIR are required..

RD 1000-2

The commenter requests that Objective 11 on page ES-2 of the DEIR be modified to note compliance with RD 1000's drainage requirements and standards.

As shown in FEIR Chapter 4, "Corrections and Revisions to the DEIR," the following change is hereby made to the text on DEIR page ES-2:

- **Objective 11:** Comply with the Natomas Basin Habitat Conservation Plan, Sacramento Area Flood Control Agency flood control plans, RD 1000 drainage requirements and standards, and other regional resource conservation and safety plans.

RD 1000-3

The commenter states that Mitigation Measure 3.7-2c, described on page ES-60 of the DEIR, requires that post project runoff not exceed 0.16 cfs/acre. The commenter observes that the current agreement between the County and RD 1000 (attached to the FEIR as Appendix L) requires a Drainage Plan be prepared by the County to analyze the impacts and recommend mitigation measures. The agreement does not specify a runoff rate, but requires mitigation to limit post project peak runoff rates to the current agricultural rates. This agreement—which includes quantitative standards that function as performance standards for purposes of CEQA mitigation—is summarized briefly on page 3.7-8 of the DEIR; please refer to response to Comment RD1000-5, which changes the DEIR text to clarify that the 2008 agreement is referenced.

The commenter correctly observed that the maximum rate of runoff (0.16 cfs/acre) cited in Mitigation Measure 3.7-2c was incorrect. The Sutter Pointe Drainage Master Plan determined the rate of discharge from agricultural lands within the project site was approximately 0.16 cfs/acre, while the maximum rate of discharge after development would be in the magnitude of 0.067 cfs/acre, both rates being the result of a 100-year event. However, rather than providing a summarized list of conditions included in the agreement, the DEIR text is amended to require compliance with the agreement, and the agreement is provided as Appendix L to the FEIR. As shown in Chapter 4 of this FEIR,

"Corrections and Revisions to the DEIR," the following text changes have been made to Mitigation Measure 3.7-2c on page 3.7-55 of Chapter 3.7, "Hydrology and Water Quality:"

> Mitigation Measure 3.7-2c: Negotiate an Agreement with RD 1000.
>
> **On-Site Elements**
>
> The project applicant(s) of all project phases shall comply with the Drainage Improvement Agreement between RD 1000 and Sutter County. The agreement specifies the standards for design and construction of the improvements within the RD 1000 system that are required to accommodate the runoff from the channel improvements that would be required to convey storm water runoff through the Natomas Basin in order to maintain flood control requirements for the 100-year flood stage. ~~This agreement includes the following provisions:~~
>
> - ~~Stormwater from the project site discharged into the RD 1000 drainage system shall not exceed 0.16 cfs/acre.~~
> - ~~Hydrologic modeling for stormwater drainage impacts shall use RD 1000's Natomas Basin Modeling Plans.~~
> - ~~The proposed project shall provide additional pumping and carrying capacity to the extent that demands on RD 1000 pumping plants and canals are increased as a result of the proposed project.~~
> - ~~The agreement defines the roles and responsibilities of the project applicant(s), Sutter County, and RD 1000.~~
>
> **Implementation:** Project applicant(s) of all project phases and off-site elements.
>
> **Timing:** Before the issuance of grading permits for all project phases and off-site elements throughout project construction.
>
> **Enforcement:** RD 1000; applicable county public works department(s); and other regulatory agencies, such as DTSC or Central Valley RWQCB, if warranted.

RD 1000-4 The commenter observes that the current provider of flood control is SAFCA as well as RD 1000, because RD 1000 constructed the original levees and is responsible for the on-going operation and maintenance of these facilities. The description of the Flood Control service provider on Table 2-3 will be changed from "SAFCA" to "SAFCA/RD 1000" on page 2-18 of the DEIR in response to this comment. This change does not alter the conclusions of the EIR.

RD 1000-5 The commenter states that what causes overflow through the Sankey Gap is backwater conditions caused by high stages in the Sacramento River at its confluence with the Natomas Cross Canal. Text in the fifth paragraph on page 2-20 has been changed to read:

> As discussed in detail in Section 3.7, "Hydrology and Water Quality," the capacity of the Pleasant Grove Canal, located east-northeast of the project site, is

exceeded during a 100-year flow event. The overflow enters the Natomas Basin at the Sankey Gap, a low point in the levee where Sankey Road crosses the Canal, which is the RD 1000 eastern boundary. The Sankey Gap flow travels west along Sankey Road, and comprises the 100-year floodplain north of Riego Road and east of SR 99/70. ~~The cause of the Sankey Gap overflow is a lack of conveyance capacity in the Natomas Cross Canal that would allow runoff from Pleasant Grove Creek and adjacent watersheds to enter the Sacramento River. Additionally, d~~During high stages in the Sacramento River, water backs up in the Cross Canal and ponds in the Pleasant Grove Canal and adjacent areas, and these backwater conditions result in overflow through the Sankey Gap. The proposed Drainage Master Plan contains three different alternatives (summarized briefly below), all of which were designed to add detention and pumping facilities to provide for ~~both~~ displaced floodplain storage (from the Sankey Gap).

This change does not alter the effectiveness of the alternatives being considered to resolve this flooding challenge.

RD 1000-6 The commenter observes that the 2000 agreement between the County and RD 1000 has been replaced by the 2008 agreement. As shown in Chapter 4 of this FEIR, "Corrections and Revisions to the DEIR," the following text has been added below the third bullet on page 3.7-8 of Chapter 3.7, "Hydrology and Water Quality:"

> This agreement was terminated and replaced by the December 2008 agreement between the County and RD 1000, which specifically addressed Measure M, approved after the October 2000 agreement, and the resulting Specific Plan development. The latest agreement, subject to approval of the Sutter Pointe Specific Plan, incorporates the following provisions for drainage to the proposed project:
>
> - Preparation of a Drainage Plan for Sutter Pointe "reasonably acceptable" to RD 1000, as part of the studies recommended in the Sutter Pointe Drainage Master Plan (Wood Rodgers 2008) for the Sutter Pointe Specific Plan;
> - All improvements to RD 1000's drainage ditches, canals and pumping plants called for in the Drainage Plan will be installed in accordance with the improvement plans and specifications as approved by the district and paid for by the County (with funding through the developers); and
> - RD 1000 would be provided all costs "reasonably associated" with the additional pumping required to dispose of additional stormwater runoff generated by the proposed project, as well as emergency maintenance costs and emergency power backup for the additional stormwater disposal.

This change does not alter the conclusions of the EIR.

RD 1000-7 The commenter notes that SAFCA is a joint powers authority formed by RD 1000, Sutter County, Sacramento County, the City of Sacramento, and the American River Flood Control District. As shown in Chapter 4 of this FEIR, "Corrections and Revisions to the DEIR," the following italicized text has been added to page 3.7-13 of Chapter 3.7, "Hydrology and Water Quality:"

> The Sacramento Area Flood Control Agency (SAFCA), a joint powers authority formed by RD 1000, Sutter County, Sacramento County, the City of Sacramento, and the American River Flood Control District, was formed in September 1989 to

work with USACE, Sacramento District and the State through the Reclamation Board (now the Central Valley Flood Protection Board) to provide all of Sacramento's floodplains that are protected within the Sacramento River Flood Control Project (SRFCP) with at least a 100-year level of flood protection as quickly as possible, while working to achieve a 200-year level of flood protection over time.

This change does not alter the conclusions of the EIR.

RD 1000-8 The commenter notes that NCMWC uses some of RD 1000's facilities through an agreement between them. The current agreement has expired and is being renegotiated. The commenter observes that there are no "joint use" facilities between the parties. As shown in Chapter 4 of this FEIR, "Corrections and Revisions to the DEIR," the following italicized text has been added to page 3.7-21 of Chapter 3.7, "Hydrology and Water Quality:"

> Drainage and flood control for the Natomas Basin is provided by RD 1000, a public agency that has a coinciding service area ~~and several joint-use facilities~~ with Natomas Mutual, and uses some RD 1000 facilities through an agreement between them.

This change does not alter the conclusions of the EIR.

RD 1000-9 The commenter states that the North Drainage Canal conveys water to the west, where it historically had been pumped into the Sacramento at RD 1000 Plant #2. This facility was removed during a flood emergency in 2006 and is scheduled for reconstruction in 2010. As shown in Chapter 4 of this FEIR, "Corrections and Revisions to the DEIR," the following text has been added to the first bullet on page 3.7-22 of Chapter 3.7, "Hydrology and Water Quality:"

- The North Drainage Canal is an interior canal that conveys drainage water from the Sutter County portion of the Natomas basin northward, where it is pumped into the Natomas Cross Canal. The North Drainage Canal also conveys water to the west where it historically had been pumped into the Sacramento River at the RD 1000 Plant No. 2. This facility was removed during a flood emergency in 2006 and is scheduled to be reconstructed in the same general location in 2010.

This change does not alter the conclusions of the EIR.

RD 1000-10 The commenter observes that the drainage design referenced on page 3.7-36 will be based on the information developed in the Drainage Plan referenced in the agreement between Sutter County and RD 1000. As shown in Chapter 4 of this FEIR, "Corrections and Revisions to the DEIR," the following text has been added to page 3.7-36 of Chapter 3.7, "Hydrology and Water Quality:"

> …the final drainage design ~~would be based on the best available information at the time project development occurs~~ will be based on the information developed by the Drainage Plan required in the agreement between Sutter County and RD 1000 (see "Reclamation District 1000" in Regulatory Settings section above).

Also please refer to RD 1000 Comment No. 3. This change does not alter the conclusions of the EIR.

RD 1000-11 The commenter requests that a reference to a 0.16 cfs/acre post-project runoff rate be stricken from page 3.7-55 of the draft document. Please see the response to RD 1000 Comment No. 3.

RD 1000-12 The commenter states that RD 1000 is on record as supporting the closing of Sankey Gap, and that the project proponent should be encouraged to work with RD 1000, SAFCA, the State, and others in developing a project which would close the gap. The commenter further states that closing the gap may have adverse impacts on properties upstream from the gap.

The County agrees with this comment. One of the drainage alternatives analyzed in the DEIR (Drainage Alternative Two, page 3.7-36) proposes to close the Sankey Gap and store the Sankey Gap flood flows outside of the Natomas Basin, east of the East Main Drain Canal.

The agreement between RD 1000 and the County (see DEIR Mitigation Measure 3.7-2c: "Implement Conditions in Agreement with RD 1000") implies that a mutually agreeable solution to the Sankey Gap closure question will be implemented because both RD 1000 and the County are required to sign off on a mutually agreeable Drainage Plan for Sutter Pointe that will involve the applicant as well. However, no specific agreement has been reached regarding the Sankey Gap. The County also notes that the DEIR provides only a broad, programmatic level of analysis related to hydrology and water quality. Future project-level environmental review will be required as individual developments within the specific plan area are proposed.

RD 1000-13 The commenter states that the majority of the flood control issues are expected to be resolved in the Drainage Plan to be prepared by Sutter County pursuant to the 2008 agreement with RD 1000. The above comments, particularly RD 1000 Comments 6, 10, and 11, incorporate the contents of the 2008 agreement into the mitigation measures.

George Carpenter

From: Doug Libby [dglibby@co.sutter.ca.us]
Sent: Monday, February 02, 2009 4:21 PM
To: George Carpenter
Cc: Dameron, Daniel E; Larry Bagley; Randy Cagle; Janet Bender; Lisa Purvis Wilson; Al Sawyer
Subject: Regional Waste Management Comments on the Sutter Pointe DEIR

Regional Waste Management Comments on the Sutter Pointe DEIR....

From: Keith Martin [mailto:keith_martin@sbcglobal.net]
Sent: Monday, February 02, 2009 4:01 PM
To: Doug Libby
Cc: Alyson Burleigh; Jackie Sillman; Dave Vaughn
Subject: RWMA Comments on the South Pointe DEIR

Doug,

On behalf of the Regional Waste Management Authority, thank you for the opportunity to review the Sutter Pointe Specific Plan and Draft EIR. I commented on an earlier version of the specific plan in my e-mail dated September 8, 2006, but the plan was then incomplete and needed to be expanded especially regarding solid waste management. 1

First, while the specific plan does mention that the plan area will be subject to a mandatory collection ordinance, there is no reference to such an ordinance in the DEIR. This is an important mitigation measure because there is now no such ordinance anywhere within the unincorporated area of Sutter County. Even though no portion of unincorporated Sutter County is covered by such an ordinance, the size and urban densities of this project make an enforceable mandatory collection ordinance essential to the responsible management of municipal solid waste. 2

Second, the plan should include specific conservation goals, objectives and development design guidelines to encourage waste reduction, reuse and recycling within the plan area to minimize the amount of waste that must be otherwise disposed. At a minimum, this should specifically include reference to the three cart curbside collection program now provided in other urban and incorporated areas of Yuba and Sutter County and adequate areas to store and transfer recyclable materials as required by the model design guidelines as referenced below: 3

On October 11, 1991, Assembly Bill No. 1327, Farr, (Statutes of 1991, Chapter 842) was signed into law. This bill added Chapter 18 (commencing with Section 42900) to Part 3 of Division 30 of the Public Resources Code. Chapter 18 is known as the California Solid Waste Reuse and Recycling Access Act of 1991 (Act). Chapter 18 required the California Integrated Waste Management Board to develop by March 1, 1993, a model ordinance for adoption of recyclable materials in development projects. Local agencies were then required to adopt the model, or an ordinance of their own, governing adequate areas for collection and loading of recyclable materials in development projects by September 1, 1993. If, by that date, a local agency had not adopted its own ordinance, the model ordinance adopted by the CIWMB took effect and shall be enforced by the local agency.

Recycling Space Allocation Guide (3/93, CIWMB Pub. #310-00-012) is a model ordinance designed to meet the requirements of AB 1327: http://www.ciwmb.ca.gov/Publications/default.asp?pubid=832

Third, though generally referenced in the specific plan, I don't believe the services or financing sections of the plan or DEIR adequately address the provision of facilities necessary to serve the residential, commercial and construction waste generators within the plan area. Such facilities may include a material recovery facility, solid waste transfer facility, composting facility and household hazardous waste collection facility. 4

Finally, for clarification purposes, the City of Gridley was identified in both the specific plan and the DEIR as a member of the Regional Waste Management Authority. Gridley withdrew from our organization in 2001. 5 In addition, the specific plan references the YSDI and YSDA landfills and both have been closed for many years. As noted in the DEIR, the only active landfill in the bi-county area is the Ostrom Road Landfill. 6

Thank you for your consideration of these comments and please contact me if you have any questions or need additional information.

Letter **RWMA** Response	Regional Waste Management Authority Keith Martin February 2, 2009

RWMA-1 The commenter reports that comments were provided on an earlier version of the specific plan in September 2006 which, as the commenter notes, was then incomplete. The County notes that the specific plan has been revised since the time those original comments were provided. Responses to the commenter's concerns regarding the current version of the plan are provided below.

RWMA-2 The commenter states that although the specific plan mentions that the plan area will be subject to a mandatory collection ordinance, there is no reference to such an ordinance in the DEIR. In fact, the DEIR does note that the proposed project would be subject to a mandatory collection ordinance. (See page 3.10-20.) Further, as described in DEIR Impacts 3.10-3 and 3.10-4, impacts related to the generation of solid waste are less than significant, and therefore no mitigation measures are required.

RWMA-3 The commenter states that the specific plan should include specific conservation goals, objectives, and development design guidelines to encourage waste reduction, reuse, and recycling. The County agrees that waste reduction, reuse, and recycling should be encouraged. However, this is a planning issue which does not related to the analysis contained in the DEIR. As noted in DEIR Impact 3.10-4 on page 3.10-20, the proposed project would be required to comply with all federal, state, and local statutes and regulations related to solid-waste reduction and recycling, including the California Integrated Waste Management Act. No changes to the DEIR are required.

RWMA-4 The commenter states that the services and financing sections of the Specific Plan and DEIR do not adequately address the provision of facilities (such as a material recovery facility, solid waste transfer facility, composting facility, and household hazardous waste collection facility) necessary to serve the residential, commercial, and construction waste generators within the project site. As the commenter notes, the Specific Plan indicates that locations in the Employment 1 and Employment 2 land use designations would be suitable for facilities necessary to support collection, disposal, and recycling of solid waste, potentially including a material recovery or recycling facility, a solid waste transfer facility, a composting facility, and a household hazardous waste collection facility (page 8-18 of the Specific Plan). All facilities that could be located on the project site are covered under the program-level analysis provided in DEIR, since the Employment 1 and 2 land use designation would permit these uses. The County also notes that the project site is within the YSDI service area, and therefore specific details raised by the commenter about these facilities (such as facility type and exact location within areas designated as Employment 1 and 2) have yet to be determined. The County understands the commenter's concerns, and notes that future CEQA review will be performed as tentative maps and improvements plans are put forward for approval.

RWMA-5 The commenter notes that the City of Gridley is not a member of the Regional Waste Management Authority. As shown in Chapter 4 of this FEIR, "Corrections and Revisions to the DEIR," mention of the City of Gridley has been removed from the discussion on page 2-43 and page 3.10-7 of the DEIR. This change does not alter the conclusions of the EIR.

RWMA-6 The commenter notes that the YSDI and YSDA landfills mentioned in the specific plan are closed, and notes that the DEIR correctly describes the Ostrom Road Landfill as the only active landfill in Yuba and Sutter counties. Comment noted; no change to the DEIR is required.

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Municipal Services Agency

Department of Transportation
Michael J. Penrose, Director

SacDOT
Terry Schutten, County Executive
Paul Hahn, Agency Administrator

County of Sacramento

February 2, 2009

Mr. Doug Libby
dglibby@co.sutter.ca.us
Sutter County Community Services Department
1130 Civic Center Boulevard
Yuba City, CA 95993

SUBJECT: DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) FOR THE SUTTER POINTE SPECIFIC PLAN PROJECT

Dear Mr. Libby:

The Sacramento County Department of Transportation has reviewed the DEIR for the above project and we appreciate the opportunity to comment on this document. Our comments are as follows:

1. The document identifies several roadway infrastructure impacts to facilities in Sacramento County as well as mitigation measures that require the applicant to pay their fair share to improvements at these locations. This is generally an acceptable approach in the cumulative analysis scenario as well as in existing condition situations where a facility is already operating unacceptably and the project will exacerbate the condition. There are; however, situations where facilities are operating acceptably in the existing condition and the addition of project traffic causes operations to change to unacceptable. When this occurs the fair share contribution should be identified as 100% since it is the project alone that causes the impact. Sacramento County would like to work closely with Sutter County in identifying these fair shares and financial contributions. 1

2. Exhibit 2-13 identifies several new north south roadways that appear to provide the potential connection to and from Sacramento County. We would request that the DEIR identify if these roadways will simply be stub streets or if they are planned to connect to existing roads in Sacramento County (i.e. Lone Tree Road, Ernst Road, and East Levee Road). Power Line Road and SR 70/99 are obvious but others are not. If these connections are to be made please identify the potential impacts and potential incompatibility to what is likely a substandard farm road to the south. 2

SacDOT

3. Cumulative plus project traffic volumes for the SR 99 - Elverta Road interchange are very low when compared to the recently completed SR 99 Elverta Road Project report. I have attached a copy of future volumes and the ultimate lane configuration for your use. Please reflect these assumptions correctly. 3

4. The following comments apply to Table 3.3-15 4
   - Roadway segments 13 and 14 for Elverta Road should be analyzed with the capacity of a 2-lane rural road.
   - Please note that roadway segment numbers 3, 14, and 20 are outside of the urban services boundary. According to County of Sacramento - Traffic Impact Analysis Guidelines, July 2004, the acceptable level of service standard should be D. Using LOS D standard and significant impact criteria, roadway segment 20 for Power Line Road will result in a significant impact. Please correct and add these impacts to the discussion on page 3.3-80, Impact 3.3-4. 5
   - Roadway segment 25 for East Levee Road and roadway segment 28, Sorento Road are both substandard roadway facilities and are not designed to handle heavy traffic. The current pavement condition index is fair and the addition of project traffic will result in a significant impact and further deteriorate this condition. Please add these impacts to the discussion on page 3.3-80, Impact 3.3-4. 6
   - Roadway segment 34 for Watt Avenue between Baseline Road and PFE Road is in Placer County. Please correct. 7
   - Roadway segment 35 for Watt Avenue between PFE Road and Baseline Road is a long roadway segment with varying number of lanes and traffic volumes. Please break this stretch of the roadway into logical segments. 8

5. **Impact 3.3-4 on the page 3.3-80.** Please update this section and add the roadway segments as discussed comment 4. 9

If you have any questions please call me at (916) 874-6121 or Kamal Atwal at (916) 875-2844.

Sincerely,

Dean Blank
Principal Civil Engineer

Attachment: Excerpts from the SR 99/Elverta Interchange Project Report


2032 SR 99 & Elverta.pdf


2032 SR99 & Elverta geometrics.pdf

DB:mgd:ka

c: Steve Hong – IFS
Matt Darrow – DOT
Kamal Atwal – DOT

Sac DOT-1

The commenter generally agrees with the methodology described in the DEIR that requires the applicant to pay its fair share of roadway improvement costs. However, in situations in which a roadway facility is operating acceptably under existing conditions, and the addition of a project causes operations to change to unacceptable, the commenter suggests that impacts of the project that are identified under the "existing plus project" scenario should be assigned 100% of the improvement cost.

While this cost allocation approach is reasonable for projects that have short development horizon, it is not reasonable for a project that will develop over many years (20 to 30 years) like the Sutter Pointe Specific Plan, because over time, other projects that would also affect these roadways are likely to develop. Mitigation Measure 3.3-1 requires that project applicants be responsible for the project's fair share of all feasible improvements necessary and available to reduce the severity of the project's significant transportation-related impacts, based on "cumulative plus project conditions." As the proposed project and other potential cumulative projects build out, the fair share of the improvements for each project in the cumulative scenario which would contribute to impacts would be established, as described in Mitigation Measure 3.3-1(d), which requires that the most recent traffic modeling that accounts for newly approved projects and their effects on traffic, as well as up-to-date construction cost assumptions.

Sac DOT-2

The commenter requests that the DEIR identify whether various north-south roadways identified in the Specific Plan will be stub streets or will connect to existing roads in Sacramento County (i.e., Lone Tree Road, Ernst Road, and East Levee Road), and if these connections are to be made, to identify the potential impacts, including potential incompatibility with what the commenter describes as a "substandard farm road" to the south.

Roadways R, A, and C provide north/south access internal to the SPSP area but were not assumed to connect/extend south of the Specific Plan area and are not necessary for operation of SPSP roadways at the levels of service identified in the SPSP. Roadways R, A, and C were incorporated into the Specific Plan so the future parallel road alternatives to SR 99/70 are not precluded if needed or planned for by any development that may be approved south of the Specific Plan area in Sacramento County and the City of Sacramento (referred to as the Natomas Joint Vision Area) even though new connections are not currently identified in the Sacramento County of City of Sacramento general plan circulation elements. Also see Response to comment Brookfield-10.

Sac DOT-3

The commenter notes that cumulative plus project traffic volumes for the SR 99 - Elverta Road interchange are very low when compared to the recently completed SR 99 Elverta Road Project report. The commenter attaches and has submitted a copy of future volumes and the ultimate lane configuration for this interchange for use in the DEIR. The report to which the commenter refers was dated January 18, 2008, after the date of release of the Sutter Pointe EIR NOP (March 29, 2007). According to the CEQA Guidelines (§15125[e]), the existing physical conditions (environmental setting or baseline) for projects being compared to an adopted plan are those present at the time of publication of a Notice of Preparation. Nevertheless, this new information does not change any of the conclusions or recommended mitigation measures in the DEIR. The traffic analysis in the

DEIR identifies as a mitigation measure the obligation to make fair share contributions towards construction of an interchange at Elverta Road and SR 99/70. Even taking the new numbers into account, this improvement would mitigate impacts at this location to a less than significant level. Therefore, no revision to the DEIR or additional analysis is required based on the data in this report.

Sac DOT-4 The analysis of roadway segments 13 and 14 in Table 3.3-15 has been revised as requested. The roadway segments are now analyzed as two-lane rural roads.

Sac DOT-5 The commenter indicates that the County's traffic impact study guidelines establish a different level of service (LOS) significance threshold for roadways that are outside the Sacramento County Urban Services Boundary (USB). A LOS E threshold applies to roadways inside the USB while LOS D applies to roadways outside the USB.

Because some segments of the two Sacramento County study roadways (Power Line Road and Elverta Road) are outside the USB, while other segments are inside the USB, using the LOS E threshold instead of the LOS D threshold was considered reasonable for the traffic analysis. However, as requested by the commenter, the DEIR traffic analysis has been updated using the requested LOS D threshold for roadways outside the USB designation. As already identified in DEIR Table 3.3-15 (page 3.3-32), the segment of Power Line Road between the Sacramento County Line and Elverta Road would be LOS E—this LOS would not change. However, based on the County's requested threshold change, the LOS E level would increase the severity of the impact such that it would now be considered a significant impact. However, Impact 3.3-4 already addresses the addition of traffic from the proposed project on this roadway segment, and Mitigation Measure 3.3-4 already requires the road to be widened in order to accommodate project-related traffic, which would reduce the impact to a less-than-significant level in the long term. Consequently, the application of the LOS D threshold to this roadway segment would not create a need for any additional mitigation in order to reduce this impact to a less-than-significant level. As shown in Chapter 4, "Revisions and Corrections to the Draft EIR," the discussion of Impact 3.3-4 has been revised to indicate that the addition of project-generated traffic would result in LOS E operations of the study segment.

Sac DOT-6 The commenter states that roadway segments 25 (East Levee Road) 28 (Sorento Road) are both "substandard roadway facilities and are not designed to handle heavy traffic." The commenter further states that the current pavement condition index is "fair" and that the addition of project traffic will result in a significant impact that will cause the pavement condition to deteriorate. The commenter requests that this impact be added to the discussion on page 3.3-80 (Impact 3.3-4).

As shown in FEIR Chapter 3, "Correction and Revisions to the DEIR," the referenced roadway segments (25 and 28) have been added to Impact 3.3-4 to address increased traffic on roadways that do not meet Sacramento County minimum roadway design standards (confirmed through personal communication with Dean Blank at Sacramento County DOT, March 18, 2008). It should also be noted that Mitigation 3.3-8C for the Elverta Road/East Levee Road intersection identifies limiting access to East Levee to right-in/right-out, which would reduce the number of trips from the Sutter Pointe Specific Plan vehicles using the roadway.

Sac DOT-7 The commenter states that roadway segment 34 for Watt Avenue between Baseline Road and PFE Road is in Placer County and requests a correction to Table 3.3-15 of the DEIR.

As shown in FEIR Chapter 4, "Corrections and Revisions to the DEIR," the roadway segment jurisdiction reference in Table 3.3-15 has been updated to reference the correct jurisdiction for segment 34 between Baseline Road and PFE Road (Placer County). This change does not alter the conclusions of the EIR.

Sac DOT-8 The commenter notes that roadway segment 35 for Watt Avenue between PFE Road and Baseline Road is a long roadway segment with varying numbers of lanes and traffic volumes and requests that the DEIR include an analysis that breaks this stretch of the roadway into logical segments.

To clarify, roadway segment 35 is the segment of Watt Avenue between PFE Road and Elverta Road. As noted, the roadway segment transitions from two lanes between PFE Road and La Madera Way (to the north) to five lanes between la Madera Way and Elverta Road. Most of the segment 35 is five lanes. As noted by the commenter, traffic volumes vary along the corridor and increase as you travel from the north to south on Watt Avenue (from Baseline Road to Elverta Road). Therefore, traffic volumes would be lower on the two-lane segment between La Madera Way and PFE Road (the north end of segment 35) than the traffic volumes shown in Table 3.3-15, which represent traffic near Elverta Road (on the south end of segment 35) where traffic volumes are higher.

As documented in the DEIR, roadway segment 35 was analyzed as a five-lane moderate access control roadway and would operate acceptably at level of service (LOS) A. If the two-lane segment is analyzed separately, it would operate acceptably at LOS C as a moderate access control facility (see DEIR Table 3.3-4 for roadway capacity threshold) even using the higher traffic volumes, since the traffic volumes are below the roadways defined capacity. While the LOS would change from A to C on the two-lane segment, this would not change the findings of the traffic analysis.

Sac DOT-9 The commenter requests that Impact 3.3-4 on page 3.3-80 be updated to include the roadway segments discussed in comment SacDOT-4.

Please refer to the responses to comments SacDOT 4, 5, 6, 7, and 8 above.

SRCSD

Wastewater Treatment

Technology in balance with nature

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Board of Directors
Representing:

County of Sacramento

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City of Sacramento

City of West Sacramento

Mary K. Snyder
District Engineer

Stan R. Dean
Plant Manager

Wendell H. Kido
District Manager

Marcia Maurer
Chief Financial Officer

February 2, 2009

Mr. Doug Libby, AICP
Principal Planner
Sutter County Community Services Department
1130 Civic Center Boulevard
Yuba City, CA 95993

Subject: Draft Environmental Impact Report for the Sutter Pointe Specific Plan (south Sutter County, California)

Dear Mr. Libby:

The Sacramento Regional County Sanitation District (SRCSD) has reviewed the Notice of Availability of the Draft Environmental Impact Report (EIR). Following are some general comments, and the attached table provides more specific comments to the Draft EIR.

The SRCSD has been in early discussions with Sutter County and the project team regarding the Principals of Agreement (POA) to provide sewer service to the Sutter Pointe Specific Plan project area. Should the SRCSD proceed with the development of the Wastewater Services Agreement, or some other servicing authority, the POA will serve as guidance for those negotiations. 1

It is important to note that the SRCSD Board has not given approval to provide service. In addition, staff is expected to return to the Board in March for further discussion on how to proceed. 2

If you have any questions or comments, please contact me at (916) 876-6119.

Sincerely,

Ruben Robles, P.E.
Principal Civil Engineer
SRCSD, Policy and Planning

cc: Stan Dean, SRCSD P&P
Bob Seyfried, SRCSD P&P
John Dodds, SRCSD County Counsel

SRCSD

Sacramento Regional County Sanitation District Comments
Draft Environmental Impact Report for the Sutter Pointe Specific Plan

Page No.	Section	Comment	
3.1-27	On-Site Elements (last paragraph on page)	*REVISE last sentence on page as marked:* "... consistency with LAFCO guidelines, and annexation of the territory into SRCSD's service area, and a wastewater services agreement and operations agreement..."	3
3.1-28	On-Site Elements (top paragraph on page)	*REVISE sentences in paragraph as marked:* "A Principles of Agreement between Sutter County and SRCSD are under discussion but no timeline for completion has been agreed to by the SRCSD (typical comment throughout). "The Principles of Agreement (POA) do not commit the County or the SRCSD to approve the project, but they provide guidelines for wastewater disposal in the event that the proposed project is approved. Approval of the POA and the subsequent wastewater services agreement, are required before wastewater flows generated by the proposed project could be conveyed and treated at the SRWTP. The proposed project would require a wastewater services agreement, which would act as a binding contract between Sutter County and SRCSD, and an operations agreement, which would define the operational responsibilities and expectations."	4
3.10-4	Wastewater Collection (third paragraph in section)	*REVISE sentence in paragraph as marked:* "The district owns, operates, and is responsible for both the public interceptor sewer system serving portions of Sacramento County as well the Sacramento Regional Wastewater Treatment Plant (SRWTP) located south of the City of Sacramento."	5
3.10-4	Wastewater Collection (fourth paragraph in section)	*REVISE sentence in paragraph as marked:* "A "Principles of Agreement," which is a preliminary outline of the terms of the proposed agreement for service by SRCSD, are under discussion but no timeline for completion has been agreed to by the SRCSD.	6
3.10-5	Wastewater Treatment (first and second paragraph)	...The SRWTP receives and treats an average dry weather flow of 141 mgd (as of 2008) and has a permitted dry-weather flow capacity of 181 mgd (Seyfried, pers. Comm.., 2008). Flows to the SRWTP have decreased between 2000 and 2006 from 155 mgd to 131 mgd and increased to 141 mgd in 2008....	7

Page No.	Section	Comment	
3.10-13	Off-Site Interceptor Conveyance Facilities (first paragraph in section)	*REVISE sentences in paragraph as marked:* "A Principles of Agreement between Sutter County and SRCSD are under discussion but no timeline for completion has been agreed to by the SRCSD. "The POA would not commit the County or SRCSD to approve the proposed project, but would provide guidelines for wastewater disposal in the event that the proposed project is approved. Approval of the POA and the subsequent wastewater services agreement, would be required before wastewater flows generated by the proposed project could be conveyed and treated at the SRWTP. The proposed project would require a wastewater services agreement, which would act as a binding contract between Sutter County and SRCSD, and an operations agreement, which would define the operational responsibilities and expectations."	8
3.10-16	On-Site Elements (first paragraph in section)	Draft EIR notes that the peak wet-weather flow for the proposed project is estimated to be 27.03 mgd. More storage volume maybe needed than the 3.9 million gallons noted in the draft POA. This volume was based on a peak wet weather flow of 23.1 MGD, previously noted in MacKay & Somps preliminary sewer master plans. Sutter County and/or the project proponents will need to reassess the required storage volume based on the higher peak wet-weather flow of 27.03 mgd noted in the Draft EIR. This is necessary in order to prevent inundation and be protective of the SRCSD interceptor system.	9
3.10-16 and 3.10-17	IMPACT 3.10-2 (third and fifth paragraph)	...The SRWTP receives and treats an average dry weather flow of 141 mgd (as of 2008) and has a permitted dry-weather flow capacity of 181 mgd. However, average dry weather flows to the SRWTP have decreased between 2000 and 2006 from 155 mgd to 131 mgd and in 2008 increased to 141 mgd....	10
3.10-26	3.10.4 RESIDUAL SIGNIFICANT IMPACTS (second paragraph)	The Sutter Pointe DEIR on page 3.10-26 states that the Project would "contribute indirectly to the two significant and unavoidable impacts identified in the 2020 Master Plan EIR", while as noted on page 3.10-17 of the DEIR, the 2020 Master Plan EIR identified only one significant unavoidable impact, a short-term impact to air quality from operation of construction equipment. Thus the impact summary should be verified and revised accordingly."	11

3 2/2/2009

SRCSD-1 The District expresses that the Principles of Agreement will serve as a guideline for negotiations for proving wastewater services to the project. This comment does not raise any environmental issues, so no further response is provided.

SRCSD-2 The District makes clear that the District's Board has not approved provision of service to the site. This is not a comment on the DEIR. It is expected that this EIR will be used by the District Board in its deliberations over providing service to the site, should the project be approved by Sutter County.

SRCSD-3 The commenter proposes a text change to the discussion of Impact 3.1-2 on page 3.1-27 of the DEIR to clarify the LAFCO approvals necessary to serve the proposed project. As shown in Chapter 4 of this FEIR, "Corrections and Revisions to the DEIR," the following text change is proposed to the final paragraph on page 3.1-27 of Section 3.1,"Land use:"

> For the proposed project, the Sutter County LAFCO and Sacramento LAFCO would oversee the establishment or revision of boundaries for local municipalities and independent special districts, such as SRCSD. The project site is not currently located in SRCSD's service area. Before SRCSD could serve the proposed project, Sacramento LAFCO would need to conduct proceedings to consider an amendment to the sphere of influence based on consistency with LAFCO guidelines, and ~~either~~ annexation of the territory into SRCSD's service area, ~~or~~ and a wastewater services agreement and operations agreement (which would act as a binding contract between Sutter County and SRCSD, as well as defining facilities and operation).

This change does not alter the conclusions of the DEIR.

SRCSD-4 The commenter proposes a text change to page 3.1-28 of the DEIR to indicate the date when the Principles of Agreement between Sutter County and SRCSD is expected. As shown in Chapter 4 of this FEIR, "Corrections and Revisions to the DEIR," the following text change is proposed to the first paragraph on page 3.1-28 of Section 3.1,"Land use:"

> Principles of Agreement between Sutter County and SRCSD ~~is expected in late 2008~~ are under discussion. Consideration of the agreement by both the SRCSD Board of Directors and the Sutter County Board of Supervisors is anticipated in the early summer of 2009.. This agreement would define the general terms through which wastewater service would be provided to the proposed project by SRCSD, summarize the maximum wastewater flow rates generated by the proposed project, identify wastewater conveyance and storage facilities to be constructed by the project applicant(s), and establish fees to be paid to SRCSD for wastewater service. The Principals of Agreement do not commit the County or SRCSD to approval of the project, but they provide for a means for wastewater disposal in the event that the proposed project is approved. Approval of this agreement is required before wastewater flows generated by the proposed project could be conveyed and treated at the SRWTP. In addition, the proposed project would require a wastewater services agreement, which would act as a binding contract between Sutter County and SRCSD, and an operations

agreement, which would identify the specific wastewater facilities required, and would define the operational responsibilities and expectations ~~of these facilities~~, before SRCSD would provide sewer service to the project site.

SRCSD-5–6 The commenter proposes text changes to page 3.10-4 of the DEIR regarding the details of SRCSD sewer systems. As shown in Chapter 4 of this FEIR, "Corrections and Revisions to the DEIR," the following text change is proposed to the discussion of Wastewater Collection on page 3.10-4 of Section 3.10,"Public Utilities:"

> The applicant is proposing that the Sacramento Regional County Sanitation District (SRCSD) would provide off-site interceptor conveyance and sanitary sewer treatment and disposal for the project site. SRCSD is responsible for collection by interceptors (sanitary sewers that are designed to carry flows in excess of 10 million gallons per day [mgd]) and for wastewater treatment in Sacramento County. This district owns, operates, and is responsible for both the public ~~collection, trunk, and~~ interceptor sewer systems throughout Sacramento County and ~~as well as~~ the Sacramento Regional Wastewater Treatment Plant (SRWTP) located south of the community of Freeport. Exhibit 3.10-1 illustrates the location of SRCSD facilities and connection to the project site.
>
> No SRCSD interceptors are located in the immediate vicinity of the project site, and the project site is not currently located in SRCSD's service area. Before SRCSD could provide wastewater service to the project, Sacramento County Local Agency Formation Commission (LAFCO) would need to amend the sphere of influence of SRCSD to include the project site in anticipation of a later "change of organization" as defined by statute. (See Section 3.1, "Land Use.") For SRCSD to provide service, Sutter County and SRCSD would need to enter into a formal agreement for service and operations to describe the interceptor conveyance, treatment obligations of SRCSD, and the fees to be paid for new residences and businesses to connect to the SRCSD system. Sutter County is currently negotiating an agreement with SRCSD to provide sewer service to the project site, should the project be approved. A "Principles of Agreement," which is a preliminary outline of the terms of the agreement for service by SRCSD, is under discussion. Consideration of the agreement by both the SRCSD Board of Directors and the Sutter County Board of Supervisors is anticipated in the early summer of 2009~~is expected in early 2009~~. Annexation of the project site into the service area of SRCSD may be required. Such an annexation would require approval by the Sutter County Local Agency Formation Commission (LAFCO) and Sacramento County LAFCO before SRCSD could provide wastewater service to the project (see Section 3.1, "Land Use").

SRCSD-7 The comment updates the treatment data associated with the SRWTP. The DEIR reported on page 3.10-5 that flows had decreased from 155 mgd to 131 mgd from 2000 to 2006, and the comment updates this data to show that flows increased to 141 mgd by 2008. This update does not alter the conclusions of the DEIR, which suggest that more development could be accommodated within existing permitted capacity (181 mgd) than was previously assumed when the 2020 Master Plan was prepared. At the time the Master Plan was prepared (2003), it was assumed that flows would increase, consistent, from 155 mgd and would surpass 181 mgd by 2007 (EDAW 2003). Based on current data, which shows substantial remaining unused capacity (40 mgd) as of 2008, the discussion in the Sutter Pointe DEIR that the plant can accommodate more people at its existing capacity

than previously assumed is still valid. See also Master Response 8, "Wastewater Service to the Project Site."

SRCSD-8 The commenter requests a text change to the discussion of off-site interceptor conveyance facilities in page 3.10-13 of the DEIR. As shown in Chapter 4 of this FEIR, "Corrections and Revisions to the DEIR," the following text change is proposed to the discussion of Wastewater Collection on page 3.10-13 of Section 3.10,"Public Utilities:"

> Flows from the central pump station on the project site would be pumped through a set of force mains to a point of connection with SRCSD's UNWI 3 at Elkhorn Boulevard and West Sixth Street in Rio Linda. Currently, the project site is not within the SRCSD's service area. Before wastewater flows could be discharged into the UNWI, Sacramento County LAFCO would need to amend the sphere of influence of SRCSD to include the project site in anticipation of a later "change of organization" as defined by statute. Sutter County is currently negotiating an agreement with SRCSD to provide sewer service to the project site. Consideration of the agreement by both the SRCSD Board of Directors and the Sutter County Board of Supervisors is anticipated in the early summer of 2009~~, which is expected in early 2009.~~ This agreement would define the general terms through which wastewater service would be provided to the proposed project by SRCSD, summarize the maximum wastewater flow rates generated by the proposed project, identify wastewater conveyance and storage facilities to be constructed by the project applicant(s), and establish fees to be paid to SRCSD for wastewater service. The agreement would not commit the County to approve the proposed project, but would provide for a means for wastewater disposal in the event the proposed project is approved. Approval of this agreement would be required before wastewater flows generated by the proposed project could be conveyed and treated at the SRWTP. In addition, the proposed project would require a wastewater services agreement, which would act as a binding contract between Sutter County and SRCSD, and an operations agreement, which would identify the specific wastewater facilities required and would define the operational responsibilities and expectations~~of these facilities~~, before SRCSD would provide sewer service to the project site.

SRCSD-9 The commenter observes that the peak wet-weather flow for the proposed project is estimated to be 27.03 mgd, and suggests that more storage volume may be needed than the 3.9 million gallons noted in the draft POA. The commenter states that the County will need to reassess the required storage volume based on the peak wet-weather flow noted in the DEIR in order to prevent inundation and be protective of the SRCSD interceptor system. Montgomery Watson Harza (MWH) prepared a report and a technical memo citing two different peak wet weather flows and storage capacity needs for the proposed project. In a March 2008 report, MWH followed Sacramento County's model and identified a peak wet weather flow of 23.1 mgd (and a corresponding storage capacity need of 3.6 million gallons). In April 2008, MWH prepared a technical memo following Sutter County's model for peak wet weather flows and storage capacity need. This memo identified a peak wet-weather flow of 27.03 mgd (as cited in the DEIR) and a required storage capacity of 3.9 million gallons. The 3.9 million gallon storage capacity identified in the draft POA is adequate to meet the need generated by a peak wet-weather flow of 27.03 mgd, as shown on page 7 of the Sewer Master Plan (Appendix D to the Specific Plan).

SRCSD-10 The comment updates the treatment data associated with the SRWTP. The DEIR reported on page 3.10-17 that flows had decreased from 155 mgd to 131 mgd from 2000 to 2006, and the comment updates this data to show that flows increased to 141 mgd by 2008. This update in the flows at the SRWTP does not alter the conclusions of the DEIR regarding the ability of the treatment plant to accommodate the project through 2020 and beyond. As stated, the treatment plant has capacity to treat 181 mgd, and is planned to be expanded to treat 218 mgd. The project would contribute to the need to expand the treatment plant to its 218 mgd capacity and would therefore contribute to significant impacts associated with the expansion, as discussed on page 3.10-17 of the DEIR. See also Master Response 8, "Wastewater Service to the Project Site."

SRCSD-11 The comment points out that the DEIR acknowledges, on page 3.10-17, that the project, in contributing to the need for expansion of the SRWTP, also contributes to the one significant unavoidable impact (air quality) identified in the treatment plant's EIR, but that it suggests that the project would contribute to two significant unavoidable impacts on page 3.10-26. The discussion on page 3.10-17 is correct.

As shown in Chapter 4 of this FEIR, "Corrections and Revisions to the DEIR," the following text has been added to page 3.10-26 of Chapter 3.10, "Public Utilities":

> Implementing the proposed project would increase demand for wastewater treatment facilities and would contribute to the need to expand the SRWTP; therefore, the project would contribute indirectly to the ~~two~~ single significant and unavoidable impact~~s~~ identified in the 2020 Master Plan EIR.

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SPRTA

SOUTH PLACER REGIONAL TRANSPORTATION AUTHORITY

City of Lincoln • City of Rocklin • City of Roseville • Placer County

Via email – dglibby@co.sutter.ca.us and U.S. Postal Service

February 2, 2008

Doug Libby, AICP
Principal Planner
Sutter County Community Services Department
1130 Civic Center Blvd.
Yuba City, CA 95993

Re: Sutter Pointe Specific Plan Draft Environmental Impact Report

Dear Mr. Libby:

Thank you for the opportunity to review the Draft Environmental Impact Report (DEIR) for the proposed Sutter Pointe Specific Plan (Specific Plan).

The South Placer Regional Transportation Authority (SPRTA) and the Federal Highway Administration (FHWA) are working to complete the Placer Parkway Corridor Preservation and Tier 1 Environmental Impact Statement/Environmental Impact Report (Tier 1 EIS/EIR). A portion of the Specific Plan lies in the western segment of the Placer Parkway Corridor Preservation Project's study area.

The Placer Parkway Draft Tier 1 EIS/EIR evaluates a No Build alternative along with five corridor alignment alternatives. All five would cross the Specific Plan from east to west. There would be a State Route (SR) 70/99 connection either north of Riego Road or at Sankey Road. 1

Comments were provided (Attachment 1) on the Specific Plan's Notice of Preparation (NOP) on April 30, 2007. On August 6, 2007, the SPRTA Board held a public hearing in Yuba City to get comments on the Draft Tier 1 EIS/EIR. The final Tier 1 EIS/EIR for the Placer Parkway Corridor Preservation Project is expected to be completed by summer 2009.

Specific Plan DEIR and General Plan Amendment (GPA) Comments 2

Our review of the Specific Plan, the proposed GPA, and the DEIR identified the following key issues relative to the Placer Parkway Corridor Preservation project:

299 NEVADA STREET ▪ AUBURN, CA 95603 ▪ (530) 823-4030 ▪ FAX 823-4036

1. The Specific Plan (Regional Roadway Access) supports and anticipates the completion of the Placer Parkway along the current Sankey Road alignment with a future freeway-to-freeway interchange at SR 70/99. A four-lane interim condition is described. A future improvement within the Parkway corridor, at buildout, would include full interchanges art SR 70/99 and a future north-south arterial on the eastern side of the Plan area, and a grade-separated overcrossing at Pacific Avenue. As described, this circulation scheme is consistent with assumptions for Placer Parkway Tier 1 EIS/EIR Alternatives 4 and 5. However, this Parkway description is not consistently referred to in the GPA or the DEIR. 2 Cont'd

2. The Specific Plan shows a right-of-way width for Sankey Road between 103 and 107 feet and thus does not appear to provide the required 500 foot wide right-of-way for Placer Parkway -- even if open space and detention basin land could be used along with the proposed right-of-way. How is this Specific Plan reference consistent with the Parkway's 500'-wide corridor width and its ultimate six-lanes? 3

3. The GPA does not include the Placer Parkway as part of its functional classification of roadways. 4

4. On pages 3.3-22 and 3.3-23, the DEIR describes the two corridor alignment corridor alternatives for Placer Parkway, which it calls Alternative 1 (the southern alignment –north of Riego Road) and Alternative 2 (the Sankey Road alignment). It states that "The proposed Specific Plan includes the 500-foot right-of-way reservation for Alternative 2 but not for Alternative 1". However, the Specific Plan does not appear to provide a 500 foot right-of-way for the Placer Parkway along Sankey Road and it appears that the Parkway would cross proposed park land in the SPSP, which may pose Section 4f impacts. 5

5. The DEIR shows that under cumulative conditions Placer Parkway would eliminate some Level of Service (LOS) impacts of the Specific Plan on roadways in other jurisdictions, including portions of Baseline Road in Placer County and Elverta Road in Sacramento County. The DEIR includes a mitigation measure that states that the project applicant shall pay its fair share of costs to construct Placer Parkway as a four-lane freeway/expressway between SR 65 and SR 70/99. 6

6. The DEIR states that "full funding for Placer Parkway has not yet been identified" and thus evaluates cumulative traffic conditions with and without Placer Parkway. However, the DEIR only evaluates the Placer Parkway alignment along Sankey Road, not the southern corridor alignment alternatives and the SR 70/99 connection north of Riego Road. 7

7. The Public Facilities Financing Plan (PFFP) does not discuss participation in financing of Placer Parkway, such as a fee program. SPRTA's (soon to be adopted) Tier II Fee Program assumes that the Specific Plan would pay the same average fee as development located in Placer County within SPRTA's boundaries. The Specific Plan's Phase 1 would have about 25,000 dwelling unit equivalents (DUEs). Parkway funding, through the Specific Plan, should be coordinated with SPRTA. 8

8. SPRTA recognizes the County's process to approve this development, including the Specific Plan, is concurrent with the efforts of FHWA and SPRTA to complete the Tier 1 EIS/EIR for the future Placer Parkway, and this concurrent process creates challenges. Because of the complexity of the issues associated with the Placer Parkway's multiple corridor and SR 70/99 interchange alternatives and the numerous development proposals being considered in south Sutter and western Placer counties. SPRTA will continue to work cooperatively with the Sutter County to assure that the processing of the Final Tier 1 EIS/EIR for the Placer Parkway is not adversely affected. FHWA and SPRTA will continue to evaluate all five corridor alternatives, regardless of the County action on a particular development proposal. In this regard, the DEIR for the Specific Plan should analyze the impacts of all of the corridor alternatives. 9

SPRTA appreciates Sutter County's and the Specific Plan's applicant's cooperation and involvement in the Placer Parkway planning and environmental process. If you have any questions, please contact me at 530.823.4030.

Sincerely,

Celia McAdam, AICP
Executive Director

Enclosure

Copies: Gary Sweeten, Federal Highway Administration
Rick Dondro, Placer County Public Works
Bill Moore, Roseville Public Works
Kathy Pease, Roseville Planning

SPRTA

ATTACHMENT 1

PLACER COUNTY
TRANSPORTATION
PLANNING AGENCY

BOB SNYDER
City of Auburn
SHERRIE BLACKMUN
City of Colfax
TOM COSGROVE
City of Lincoln
RUSS KELLEY
Town of Loomis
KATHY LUND
City of Rocklin
GINA GARBOLINO
City of Roseville
JIM HOLMES
KIRK UHLER
Placer County
RON McINTYRE
Citizen Representative
CELIA McADAM
Executive Director

April 30, 2007 *via email – dglibby@co.sutter.ca.us and U.S. Postal Service*

Doug Libby, Senior Planner
Sutter County Community Services Dept. -- Planning
1130 Civic Center Blvd.
Yuba City, CA 95993

Re: Sutter Pointe Specific Plan Draft Environmental Impact Report Notice of Preparation Comments

Dear Mr. Libby:

Thank you for the March 29, 2007 Notice of Preparation (NOP) for the Draft Environmental Impact Report (DEIR) for the Sutter Pointe Specific Plan. A portion of the proposed specific plan lies in the western segment of the Placer Parkway Corridor Preservation project's study area. See the attached vicinity map. Placer County Transportation Planning Agency (PCTPA), on behalf of the South Placer Regional Transportation Authority (SPRTA), is working to complete the Placer Parkway Corridor Preservation and Tier 1 Environmental Impact Statement/Environmental Impact Report (Tier 1 EIS/EIR).

Placer Parkway

Concept

Placer Parkway is a high-priority regional transportation project. It would connect rapidly growing areas of western Placer County at State Route (SR) 65 to planned development in south Sutter County at SR 70/99.

The concept of the Placer Parkway has been considered for over a decade. Placer County's 1994 General Plan depicts a plan line for it. Later, PCTPA and Sacramento Area Council of Governments (SACOG) Boards adopted preliminary planning documents for the Parkway (2000 Conceptual Plan and 2001 Project Study Report). The project is also identified in the 2027 Placer County Regional Transportation Plan and SACOG's 2027 Metropolitan Transportation Plan. See the PCTPA web site – www.pctpa.org.

Basic Placer Parkway concepts developed through this preliminary planning work and being carried forward in the Corridor Preservation project are:

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1. The transportation facility will be in a corridor varying from 500'- wide in the east/west segments and 1,000'-wide between Pleasant Grove Road and Fiddyment Road.

2. There will be a number of Parkway interchanges (SR 65 & SR 70/99, Fiddyment, Foothills, etc.). Only one potential interchange, at a future extension of Watt Ave. or other nearby roadway extension, will be allowed in the central segment (Fiddyment Rd. to Pleasant Grove Rd.). The impacts of the Placer Parkway with and without such a connection will be studied.

3. The corridor area on either side of the future transportation facility is to be a no-development buffer.

Corridor Preservation Project

The Corridor Preservation project has two phases:

- Phase 1 – identify feasible corridor alignment alternatives.
- Phase 2 – complete the Tier 1 EIS/EIR.

Phase 1. During this phase, two, very well attended meetings were held at Pleasant Grove School. The first was a 2003 scoping meeting. The second was a 2004 public meeting on potential corridor alignments alternatives.

Three newsletters were sent to several thousand individuals. Twenty advisory committee meetings were also held to help guide the project. Sutter County staff, via the Technical Advisory Committee and Study Advisory Committee has participated on the project. The Sutter County Administrative Officer and two Board members served on the Policy Advisory Committee. In addition, informational briefings were made to the Sutter County Board of Supervisors and the SPRTA Board, and individual meetings were held with interested members of the public on a variety of topics.

Sutter Pointe representatives, County staff, and the Parkway project teams have exchanged information over the past two years. We have set-up meetings with Caltrans and Natomas Basin Conservancy along with County staff to discuss circulation (SR 70/99 connections, a potential Sankey Road relocation, conceptual Parkway interchange configurations, and local access); agricultural land preservation, and biological resources.

On September 28, 2005, the SPRTA Board identified five 'build' corridor alignment alternatives, in addition to the No Project alternative, to be analyzed in the Tier 1 EIS/EIR (see attached map). All of the corridor alignment alternatives cross over the proposed specific plan. Alternatives 1, 2, and 3 would connect

with SR 70/99 approximately one half mile north of Riego Road. Alternatives 4 and 5 would also cross the specific plan area and connect with SR 70/99 at Sankey Road. The corridor width for all these alternatives though the specific plan area is 500'-wide.

Federal resource agencies concurred that these corridor alternatives represent a reasonable range to be analyzed in the Tier 1 EIS/EIR. It was further agreed that these five 'build' alternatives would be considered with a commitment to construction options and resource protection techniques as a way to meet avoidance obligations.

Phase 2. There is no 'preferred' or 'recommended' corridor alignment for the Placer Parkway, or will there be until the Tier 1 EIS/EIR is completed. The Tier 1 EIS/EIR must equally analyze all reasonable alternatives. A draft Tier 1 EIS/EIR is expected by summer 2007. Federal and State clearances for the corridor preservation environmental work may be ready by summer 2008. Once the preferred corridor is determined, key pieces of land can be acquired to preserve right-of-way for the Parkway.

The approximate 350'-wide transportation facility will eventually be located within the Parkway corridor. The roadway's precise location within the corridor will be determined by a second project-level environmental review.

NOP Comments

The Placer Parkway is cited in the NOP as a planned alignment parallel to Sankey Road, which is a future east-west corridor that would provide access to the southwest Placer County area.

The DEIR should:

1. Indicate that there are two potential corridor alignments, identified through a public review process, which would cross over the proposed specific plan.

2. Analyze the impacts of the 500'-wide Parkway corridor through the specific plan area. If the 500'-wide corridor is not to be accommodated by the specific plan, the DEIR should clearly cite this intent and analyze how it would affect the Placer Parkway.

3. Address how the proposed specific plan could stage or phase development in order to avoid conflict with the Placer Parkway development process.

PCTPA recognizes the concurrent development of proposals such as Sutter Pointe along with the Parkway's Corridor Preservation Tier 1 EIS/EIR creates a challenging situation for all involved. We appreciate the applicant's cooperation and Sutter County's involvement in the Placer Parkway planning and environmental process.

Thank you for the opportunity to comment. If you have any questions, please call Celia McAdam at 823.4030 or me at 823.4033.

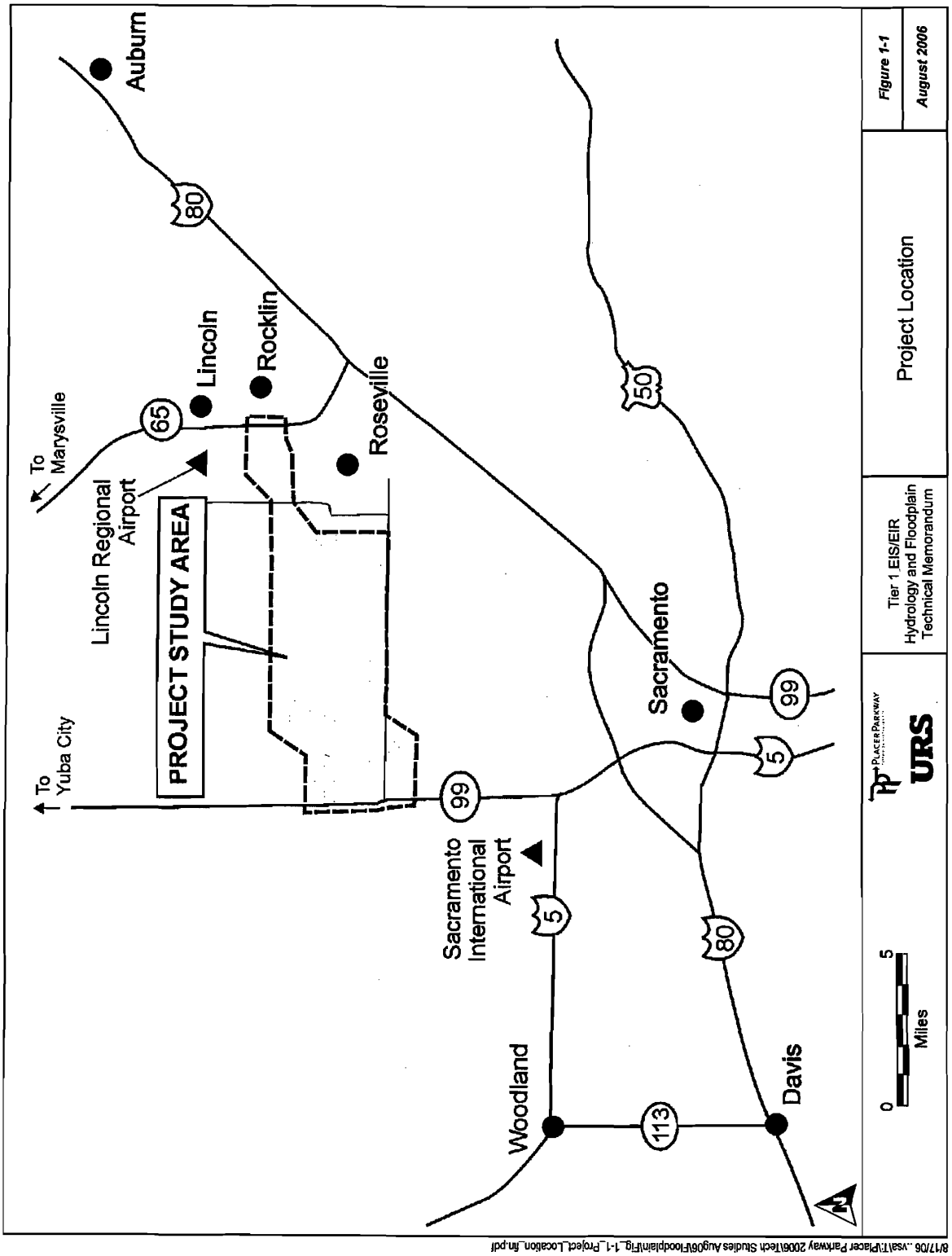
Sincerely,

Stan Tidman

Stan Tidman, Senior Planner

ST:ss
Enclosures

Copies: Celia McAdam, PCTPA Executive Director
Denise Heick, URS Corporation


Auburn
80
Lincoln
Rocklin
Roseville
65
To Marysville
Lincoln Regional Airport
PROJECT STUDY AREA
To Yuba City
99
50
Sacramento
5
Sacramento International Airport
80
Woodland
113
Davis
0
5
Miles
N
PLACER PARKWAY
URS
Tier 1 EIS/EIR
Hydrology and Floodplain Technical Memorandum
Project Location
Figure 1-1
August 2006

Alternative 1
Alternative 2
Alternative 3
Alternative 4
Alternative 5
Study Area Boundary
County Boundary
City Boundary
PLACER PARKWAY
URS
Tier 1 EIS/EIR
Hydrology and Floodplain
Technical Memorandum
Project Alternatives
Figure 2-1
August 2006
SR 70
SR 99
SR 65
SUTTER COUNTY
PLACER COUNTY
SACRAMENTO COUNTY
CITY OF LINCOLN
CITY OF ROCKLIN
CITY OF ROSEVILLE
ALTERNATIVE 4
ALTERNATIVE 5
1000 FT
PHILLIPS RD
Western
8/17/06 ..\GIS\TM\Placer Parkway 2006\Tech Studies Aug06\Floodplain\Fig_2-1_Project_Alternative_fin.pdf

SPRTA-1

The commenter notes that (SPRTA) and the Federal Highway Administration (FHWA) are preparing a Tier 1 EIS/EIR for the Placer Parkway Corridor Preservation Project, and that the study area includes a portion of the western Specific Plan area. SPRTA provided comments on the NOP for the Specific Plan EIR.

The NOP comments provided by SPRTA were reviewed and considered in the preparation of the DEIR traffic analysis for the Sutter Pointe Specific Plan.

SPRTA-2

The commenter notes that the Specific Plan (Regional Roadway Access) supports and anticipates the completion of the Placer Parkway but that the description of the Parkway is not consistently referred to in the proposed General Plan amendment application (GPA) or the DEIR.

The description of Placer Parkway in Section DEIR 3.3 is consistent with the assumptions for Placer Parkway Tier 1 EIS/EIR Alternatives 4 and 5. Further, planning for the Parkway is subject to the authority of agencies in Placer County. The fact that other alternative routes for the Parkway may be considered will be important to decision-making in Placer County. The Sutter Pointe Specific Plan DEIR sufficiently described impacts of the project with and without a Placer Parkway extension; therefore, no DEIR text revisions are necessary.

SPRTA-3

The commenter identifies the proposed 103-foot to 107-foot right-of-way proposed for the Sankey Road corridor within Sutter Pointe and asks how that is consistent with the 500-foot wide Placer Parkway corridor and its ultimate six lanes.

Using the cross-section F from the Sutter Pointe Specific Plan as an example, the proposed 107-foot cross-section represents a proposed four-lane divided arterial with a Class II bike lane. This facility would have 31.5 feet of pavement in each direction to accommodate two travel lanes and a bike lane in each direction. The travel lanes would be separated by a 16-foot median. There would be 14-foot landscape setbacks outside of each of the travel lanes. This is consistent with the typical width of the four-lane Placer Parkway cross-section. The typical cross-section identifies two 12-foot travel lanes with varying width (but approximately 10-foot) shoulders in each direction. The discrepancy that the commenter identifies is due to the fact that the Placer Parkway typical section identifies over 100 feet for the median and 50 to 100 feet beyond the travel lanes as "corridor." Where the Placer Parkway enters the Sutter Pointe and continues west, there is no need for such wide medians and the corridor. The proposed cross-section F is adequate to accommodate the proposed Placer Parkway facility should it be built.

SPRTA-4

The commenter states that the GPA does not include the Placer Parkway as part of its functional classification of roadways.

Placer Parkway is being proposed by SPRTA. It is not proposed by the Sutter Pointe applicants. It is therefore not part of the General Plan amendment application. However, as described above, the project would be designed to consistently convey traffic flow from the site to Placer Parkway, should both be approved.

SPRTA-5 The commenter states that the Sutter Pointe Specific does not appear to include the 500-foot right-of-way reservation to accommodate Placer Parkway along Sankey Road, and that it appears the Parkway would cross proposed park land in the SPSP, which may pose Section 4f impacts.

As discussed above in response to comment SPRTA-3, cross-section F does not provide 500 feet of right-of-way. The reference to the 500-foot right-of-way reservation refers to the flexibility provided by the Specific Plan. The intent is that the ultimate Sankey Road four-lane buildout could be accommodated somewhere within 500 feet of the existing Sankey Road right-of-way (250 feet north or 250 feet south of the center line of the existing road right-of-way). The Specific Plan provides that the exact location of future land uses may be shifted and adjusted over time to accommodate the construction of public facilities and utilities. This Specific Plan and its EIR are prepared and analyzed at the programmatic level. Subsequent approvals, such as phasing plans, infrastructure master plan updates and tentative maps, along with project-specific environmental review where necessary, will be required before development can occur. With these entitlements, the actual alignments of roadways will be established. Since most of the Placer Parkway is in the later phases of Sutter Pointe, it is expected to take a number of years before the final alignment of Sankey Road is set.

SPRTA-6 The commenter notes that, according to the DEIR, Placer Parkway would eliminate some Level of Service (LOS) impacts of the Specific Plan on roadways in other jurisdictions under cumulative conditions, and that the DEIR includes a mitigation measure that the project applicant shall pay its fair share of costs to construct Placer Parkway as a four-lane freeway/expressway between SR 65 and SR 70/99.

The commenter is correct. The County assumes that the mitigation measure referred to by the commenter is Mitigation Measure 3.3-11, and the applicants would be subject to fair share cost as defined by Mitigation Measure 3.3-1.

SPRTA-7 The commenter restates the DEIR indicating that because full funding has not been identified for Placer Parkway, the DEIR evaluates cumulative conditions both with and without the parkway. The commenter further states that the DEIR fails to evaluate the Placer Parkway southern corridor alignment alternatives at the SR 70/99 connection north of Riego Road.

Sutter County has on multiple occasions reiterated that only the Sankey Road alignments are viable alignments. On March 16, 2009, Sutter County again wrote the Placer County Transportation Planning Agency (which provides the staffing to SPRTA) telling the Agency that only the Sankey Road Alignments are viable. The southern alignments would interfere with traffic operations at the interchange at SR 99/70 and Riego Road.

SPRTA-8 The commenter states that the Public Facilities Financing Plan (PFFP) does not discuss participation in the financing of Placer Parkway, such as a fee program.

See response to comment Placer-13.

SPRTA-9 The commenter indicates that SPRTA will continue to work cooperatively with Sutter County to assure that the processing of the Tier I EIS/EIR for Placer Parkway is not adversely affected. The commenter notes that FHWA and SPRTA will continue to evaluate all five corridor alternatives, regardless of the County action on a particular development proposal. In this regard, the DEIR for the Specific Plan should analyze the impacts of all of the corridor alternatives.

Sutter County has on multiple occasions reiterated that only the Sankey Road alignments are viable alignments. On March 16, 2009, Sutter County again wrote the Placer County Transportation Planning Agency (which provides the staffing to SPRTA) telling the Agency that only the Sankey Road Alignments are viable. The southern alignments would interfere with traffic operations at the interchange at SR 99/70 and Riego Road.

ENJUSD

Received
FEB 3 2009
Community Services

EAST NICOLAUS JOINT UNION HIGH SCHOOL DISTRICT

RESPONSE TO SUTTER POINTE SPECIFIC PLAN/DRAFT ENVIRONMENTAL IMPACT REPORT

February 2009

Prepared for:
Dr. Matthew Roberts
Superintendent

Prepared by:
William Wright, Special Counsel
Rainforth Grau Architects
Architecture 4 Education Inc.
Sage Institute Inc.

East Nicolaus Joint Union High School District ENJUSD
"A California Distinguished School"

2454 Nicolaus Avenue, Nicolaus, CA 95659
Phone (530)656-2255 Fax (530) 656-1065
Matthew Roberts, Ed.D. Superintendent/Principal
Email: mroberts@eastnicolaus.k12.ca.us
School Website: www.eastnicolaus.k12.ca.us

February 3, 2009

Mr. Douglas Libby, Senior Planner
Sutter County Planning Services
1130 Civic Center Boulevard
Yuba City, California 95993

Re: Sutter Pointe Specific Plan and Draft EIR

Dear Mr. Libby:

We appreciate this opportunity to comment on the Sutter Pointe Specific Plan (Project) and Draft Environmental Impact Report (DEIR). The comments by the East Nicolaus Joint Union High School District ("District") reflect review and comment from The Wright Law Office, Sage Institute, Inc., and the District architects. They are hereby submitted by the District as a responsible agency under the EIR and related CEQA process. The District's comments are based on the understanding that the DEIR is programmatic and that additional environmental analysis will be necessary for the final approval of specific school sites.

Background

The District has had several meetings with the Measure M Group, developer of the Sutter Pointe Project ("Developer"), throughout the planning process and is encouraged by the Developer's willingness to mitigate the impacts and address the issues this Project presents for the District. The District is currently a small rural high school district that serves just over 300 students. It is projected that at full build-out of Sutter Pointe Specific Plan project ("SPSP"), the District will serve at least 2,000 additional high school students. This figure does not include new students who will be generated by growth within the District from areas outside the SPSP project. Therefore the project will have a major impact upon the District. 1

The existing East Nicolaus High School facility currently accommodates a total of 390 staff and students in eleven buildings, some of which are portables. There are twenty classrooms including the portables, a main office, meeting rooms, and a single

East Nicolaus Joint Union High School District ENJUSD
"A California Distinguished School"

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Email: mroberts@eastnicolaus.k12.ca.us
School Website: www.eastnicolaus.k12.ca.us

gymnasium, library/science lab, and multi-use room. The DEIR notes that expansion of the existing site will be necessary to serve the increased enrollment from the Sutter Pointe project. Such expansion will require substantial improvements to the existing school site. In addition, at least one new high school will have to be constructed to serve the projected number of students to be generated by the project. 1 Cont'd

Measure M Issues

Measure M, which was passed by 59% of voters on November 2, 2004, requires developers to execute binding contracts in order to provide for the schools, parks, libraries, law enforcement, fire departments, and other services and facilities necessary to serve the needs of new developments. Although Measure M is an advisory measure only, it clearly indicates Sutter County voters' expectations that developers within the SPSP be responsible for providing all public facilities and infrastructure that become necessary as a result of the development. In several meetings over the past three years and in a recent presentation to the District Board, the Developer has confirmed its commitment to honor the principles of Measure M. The Developer has followed through on that commitment by proposing a Mitigation Agreement to construct and/or fully fund the school facilities needed to serve the Project. The District strongly agrees that such an agreement is necessary in order to meet future school needs generated by the project in a manner consistent with Measure M, and believes that execution of such an agreement should be a prerequisite to approval of the Project. 2

As noted above, the District is encouraged by the commitment evidenced by the Developer to implement the provisions of Measure M in the Sutter Pointe project. The project's Specific Plan DEIR expresses the Developer's intention to develop "a project that complies with the Measure M advisory initiative as approved by Sutter County voters in 2004." The planning documents include numerous statements of the Developer's commitment to Measure M, including the Notice of Preparation and the SPSP's Project History and Planning Context, and Public Services sections. Measure M is referenced throughout the DEIR including such sections as Objective 16, Project Characteristics (General Characteristics), Section ES.5.1, and Table ES-2 Sections 3.1-5 and 3.1-10. It is clear that the Developer is committed to implementing the provisions of Measure M, as desired by an overwhelming number of Sutter County voters. 3

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The Developer and the District representatives (jointly "Parties") are engaged in on-going substantive discussions to determine the manner in which the Developer will provide the necessary high school facilities to serve the needs of its project, pursuant to Measure M. We have currently agreed that a project Mitigation Agreement will be approved between the Developer and the District ***prior*** to approval of the Specific Plan ***and*** either attached to or referenced in a Development Agreement with the County. Failure to successfully negotiate the Mitigation Agreement will result in the District requesting that the County delay adoption of the Specific Plan until such time as the District and the Developer come to agreement on the terms of the Mitigation Agreement and it is approved by the District's Board of Trustees in order to mitigate the impacts on the District from the Project.

2 Cont'd

The District also anticipates collateral agreements to implement the Facility Master Plan and the School Financing and Construction Plan after the approval of the SPSP. These aforementioned agreements will provide for the timely construction of school facilities acceptable to the District and the planning and funding obligations of the parties. The Developer has verbally committed to fully mitigate the impacts to the District as provided in Measure M. The Developer has prepared draft agreements which have been reviewed by the District and are currently being revised to reflect District comments regarding the need for both land and facilities.

4

Draft EIR Issues

Impact 3.8-5 of the SPSP DEIR is inconsistent with the Developer's stated commitment to Measure M found in the Notice of Preparation and throughout the Specific Plan and the DEIR. Impact 3.8-5 states:

> "As required by state law, the project applicant(s) would have to pay school impact fees, which would be allocated to Pleasant Grove Joint Union School District and East Nicolaus Joint Union High School District. These school districts would be responsible for constructing the facilities needed to serve this project. Although the school impact fees are often insufficient to fund 100% of new school facility construction and operation, the California State Legislature has declared the school impact fee to be full and adequate mitigation under CEQA. Under California Government Code Section 65996, the County is limited to charging the statutorily created fee to offset impacts

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on local school districts generated by proposed projects. Section 65996 does not provide for remediation of existing deficiencies in school services. Construction of the proposed elementary schools and high school and payment of school impact fees would result in a **direct, less-than-significant** impact on school services and facilities as defined by CEQA."

This discussion in the DEIR conflicts with the Measure M provisions referenced above and with Section 8.6 of the Specific Plan which states that the Plan "... is required to fully mitigate school impacts in accordance with the School Mitigation Agreements." On the one hand the above discussion acknowledges that "school impact fees are often insufficient to fund 100% of new school facility construction and operation" and yet on the other hand it argues that payment of the fees alone will result in a less than significant impact even if no schools are constructed.

The above discussion fails to address the real issue, which is that payment of the fees without additional mitigation is inconsistent with Measure M, the requirement of full mitigation in the Specific Plan, and the requirements in the Sutter County General Plan.

5
Cont'd

Sutter County General Plan Policy 3.A -2 provides, "The County shall require that adequate public facilities and services be available to serve new development. The County shall not approve new development where existing facilities are inadequate unless both of the following conditions are met:

A. The applicant can demonstrate that all necessary public facilities will be installed prior to the issuance of a certificate of occupancy or adequately financed through fees or other means.

B. Proposed facility improvements are consistent with applicable facility plans approved by the County or have been reviewed and approved by the County. Policy 3.A-3 requires: "Public facilities and services for new urban and suburban residential development shall be provided by an entity other than Sutter County." These terms are consistent with Measure M.

Accordingly, the Developer has proposed supplemental mitigation to be reflected in a Mitigation Agreement to be negotiated with the District and incorporated

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or referenced in the Development Agreement for the Project, as previously discussed. The Sutter Pointe General Plan Consistency Analysis reflects this supplemental mitigation. 5 Cont'd

The Sutter Pointe Consistency Analysis claims consistency with Goal 3.A because "new development will fund the costs of new infrastructure and facilities." The Consistency Analysis claims consistency with Policy 3.A-2 because the Specific Plan and its associated documents "describe a process that will ensure that adequate public facilities and services will be provided and adequately funded to serve new development." 6

The Consistency Analysis also claims consistency with Policies 3.H-2, and 3.H-3, by reference to the "developer's obligation to construct school facilities and/or to provide shortfall funding to the school districts for the facilities needed to support the Specific Plan." 7

Because Impact 3.8-5 is inconsistent with the terms of Measure M and the guiding concepts in the Specific Plan, the District suggests that Impact 3.8-5 be revised to reflect the Developer's stated commitment to provide school sites and facilities that will be fully funded by the Developer pursuant to Measure M. The District requests that impact 3.8-5 be revised as follows:

> "As required by state law, the project applicant(s) would have to pay school impact fees, which would be allocated to Pleasant Grove Joint Union School District and East Nicolaus Joint Union High School District. These school districts would be responsible for constructing the facilities needed to serve this project. Although the school impact fees are often insufficient to fund 100% of new school facility construction and operation, the California State Legislature has declared in Government Code Section 65996 that payment of the school impact fee ~~to be~~ is full and adequate mitigation under CEQA. ~~Under California Government Code Section 65996, the County is limited to charging the statutorily created fee to offset impacts on local school districts generated by proposed projects. Section 65996 does not provide for remediation of existing deficiencies in school services. Construction of the proposed elementary schools and high school and payment of school impact fees~~ In order to establish consistency with Measure M and to provide 8

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funding to fully mitigate the impact of the development on the school districts, the proponents of the Sutter Pointe Specific Plan have agreed to enter into a Mitigation Agreement with the school districts. The agreement shall provide for fully funded timely construction of school facilities to serve the development and shall provide for supplemental funding in addition to the requirements of State law. Since the impact to the school districts will be fully mitigated under the mitigation agreement, this will result in a **direct, less-than-significant** impact on school services and facilities as defined by CEQA."

8 Cont'd

If Impact 3.8-5 is revised to include the above wording, we believe the impacts discussed above will have been appropriately mitigated.

High School Site Issues

Although it may be premature to engage in a detailed discussion of site specific issues for the school site in a program level EIR, we believe it will be helpful to provide as much discussion as possible at this early stage. However, we understand that it may be more appropriate to address many of these issues during the environmental review process for the tentative map where the school site is eventually designated.

Current discussions between the Parties have focused on a single new high school on approximately fifty-three acres, which would serve most of the new students generated by the project. A site of fifty-three acres is currently designated in the Specific Plan, adjacent to a community park. Joint use of facilities is proposed to enhance the availability of facilities for use by both the school and the community. It is important to note that exhibit 8.4 in the Draft Specific Plan is intended only to illustrate the concept of joint-use and does not reflect the careful review and analysis that the District and its school architect will need to conduct as part of the design process for the school. While the District is generally supportive of the joint-use concept, there are many practical design and operational issues concerning specific joint-use facilities, which will need to be addressed prior to final approval by the District. Due to the importance of the joint-use concept, a more detailed and comprehensive Joint-Use Agreement will be required prior to implementation of any joint use of facilities, including a discussion of the entity that will be responsible for developing and maintaining the facilities, when those facilities will be available to serve the school site,

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and the terms of use. The design and operational issues associated with joint-use will need to be fully addressed to the satisfaction of the District and may affect the size and location of the proposed school site, as well as which facilities are ultimately deemed appropriate for joint-use. Since the development of the school site is subject to the jurisdiction of the State of California, we will need firm answers to those questions before the State will approve our application. 9 Cont'd

Requirements for joint-use and the entity with which the District will contract for the joint-use are currently unknown, and a related and required Joint-Use Agreement does not exist at this time. Due to the unanswered questions regarding the joint-use of District facilities, the mandatory language on page 2-44 of the DEIR requiring the joint-use should be revised with permissive language to allow such use. Accordingly, the language that the high school *would* provide community use facilities and that a joint-use athletic complex and multipurpose building *would* be located on the school site should be changed to say that such facilities *may* be located on the school site with District approval. Similarly, the language on page 2-44 stating that a joint-use community library facility *would* be located on the high school site should be changed to *may* be located on the high school site with District approval. 10

Page 2-44 of the DEIR also states that the high school site will be 53 acres. It is premature at this stage to limit the size to 53 acres, as the size will be dependent upon the extent and location (on-site or off-site) of joint-use facilities.

The District Board is currently considering whether two smaller high schools would provide a better educational environment for the District and its students. This option should be kept open in the Plan and the DEIR. Flexibility should be maintained in the documents in case yield rates change and a second high school is required to serve the development. 11

In addition, administrative offices will be required to serve the District and the Pleasant Grove School District. The Developer and the District have agreed that this issue will be addressed in the Mitigation Agreement. The administrative offices should be mentioned in the SPSP to make sure the location within the Project of the administrative offices is consistent with the SPSP. 12

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As discussed above, the joint-use of facilities language should be revised to be discretionary. In addition, the following provision should be added to the Specific Plan:

> "The approval of school sites is subject to approval by the State Department of Education. It is possible that the size and location of the school sites may change as a more specific analysis is conducted as part of the tentative map process. It is possible that less land will be required if there is a joint use of facilities with adjacent park land. More land may be required if the joint-use does not materialize. In addition, Department of Education siting requirements may impact the location of a particular site. The actual size and location of the school sites and of the administrative offices will be determined in consultation with the school districts prior to approval of the first tentative map."

13

If the above revisions are made to the SPSP, we believe the issues discussed above will be appropriately mitigated.

Timing and Funding Issues

The greatest challenge in meeting the projected demand from the Sutter Pointe project will be to provide the schools on a timely basis. A comprehensive School Master Facilities and Financing Plan ("Financing Plan") must be developed for the SPSP that clearly links the timing of development to the improvements at the existing high school facility and the construction of a new high school. In addition to the timely delivery of schools, the Financing Plan must address the lengthy process for school site approval through the State Department of Education, the Office of Public School Construction and the State Architect. Since this is a very expensive and time consuming process, the Financing Plan must address the timeline for funds to be available to pay for the planning effort with the State. It should identify a source of funds to construct the facilities. If bonds are anticipated, the general fund of the District should not be at risk in issuing the bonds. If the financial markets will not buy the bonds, alternative financing must be available. Because it is not certain that the District could meet the state requirements to impose Level 2 fees, the Financing Plan cannot be dependent on the implementation of Level 2 fees.

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The Financing Plan is particularly critical to a successful project in this case, since the traditional method of financing school construction with fees will prove problematic due to the significant time required to obtain State approval for the plans and the lack of existing funds at the District. Unlike a larger district with an existing developer fee account, East Nicolaus cannot advance funds for this effort and reimburse the account later from building permit fees. Therefore, a comprehensive Financing Plan must establish timely funding for the planning effort as well as the actual construction of the sites. These and other important issues will be addressed in the Mitigation Agreement and related Financing Plan. 14 Cont'd

The District appreciates the commitment made by the Developers to enter into the Mitigation Agreement with the District concurrent with the approval of the Specific Plan, as discussed above. Preparation of the comprehensive Financing Plan will be addressed in the Mitigation Agreement.

If Impact 3.8-5 is revised to require the Mitigation Agreement as discussed above, we believe the above impacts will have been appropriately mitigated.

Traffic, Infrastructure, Wetlands, School Siting

The District expects that road improvements and traffic flow have been or will be calculated in anticipation of developing the school sites. The existing high school site will require convenient and safe access to adequate parking, safe parent and bus drop-off areas, and bus turnaround areas. The future high school project will be subject to the same analysis. Planning for traffic and parking issues should be addressed in the environmental review process for the tentative map where the school is located. Traffic related to the two nearby K-8 schools should also be taken into consideration. 15

We also assume that water and sewer lines will be sized to accommodate the schools, including fire flow. Storm water drainage should anticipate construction of the schools. Again, the environmental review process for the tentative maps should address the SWPPP requirements, and run-off from the schools should be included in the calculations for the detention basins. 16

The school sites should not be in designated wetlands or environmentally sensitive areas. These issues should be confirmed in the SPSP so that the District will 17

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not be required to engage in this analysis when it completes its environmental review for the school sites. 17 Cont'd

It is important to confirm that the proposed site is over two nautical miles from any airport. This is critical as it is unlikely that the State will approve a site that fails to satisfy this standard. Also, as discussed above, maximum flexibility should be retained in the document to revise the acreage and the shape of the site, since the size and shape may change as the site undergoes a more detailed analysis by the Parties and the District architect, including compliance with the California Department of Education guidelines for school design and components along with requirements of the Department of State Architect, Department of Toxic Substances Control and the Office of Public School Construction as well as compliance with the local planning authorities and special service Districts. 18

Thank you for this opportunity to comment on the Sutter Pointe Draft EIR. If the modifications addressed above are included in the EIR and the SPSP, the impacts to the District will have been mitigated to a less than significant level. We look forward to continuing to comment on this Project as it progresses. 19

Very truly yours,

Dr. Matthew Roberts
Superintendent

cc: Board of Trustees
Mr. Timothy Cary, General Counsel
Dr. Joel Kirschenstein, Sage Institute
Mr. Jeff Grau, Rainforth Grau, Architects
Ms. Jacqueline S. McHaney, General Counsel, Pleasant Grove
Mr. George M. Carpenter, Jr., Project Manager
Mr. William Wright, Special Counsel, East Nicolaus

East Nicolaus-1 The commenter provides background information on the school district. Comment noted; no response is required.

East Nicolaus-2 The commenter agrees with the project applicants' proposal to enter into a Mitigation Agreement to construct and/or fully fund school facilities to serve the project, consistent with the advisory commitments of Measure M that the developers should provide for all public services and facilities. No specific criticism or requested changes to the DEIR are identified in the comment. Comment noted; no response is required.

East Nicolaus-3 The commenter notes that the applicant clearly appears committed to implementing the provisions of Measure M, and states that such a mitigation agreement must be approved and either attached to or referenced in the Development Agreement. This comment does not raise any environmental issue associated with the DEIR; therefore, no response is required.

East Nicolaus-4 The commenter observes that it anticipates collateral agreements to implement the Facility Master Plan and the School Financing and Construction Plan after the approval of the Sutter Pointe Specific Plan. The commenter then observes that the developer has verbally committed to fully mitigate the impacts to the District as provided in Measure M, and that the developer has prepared draft agreements which have been reviewed by the East Nicolaus Joint Union High School District, and are currently being revised to reflect district comments. The DEIR discusses potential impacts associated with increased demand for school facilities and services in Impact 3.8-5 (pages 3.8-14 and 3.8-15), and concludes that this impact would be less than significant, noting that the California State Legislature has declared that payment of school impact fees is full and adequate mitigation under CEQA. Other agreements entered into between the project applicant and the school district to address planning issues are not intended to function as mitigation measures as defined by CEQA. Therefore, no changes to the text of the DEIR are required.

East Nicolaus-5 The commenter asserts that the discussion of Impact 3.8-5 in the DEIR is inconsistent with the provisions of Measure M relating to full funding and provision of public facilities, the requirement of full mitigation for school impacts stated in the draft Specific Plan, and the County's General Plan Policy 3.A-2, which provides that the County shall require that adequate public facilities and services be available to serve new development.

The discussion of Impact 3.8-5 in the DEIR is an accurate characterization of the requirements of state law with respect to school funding. The County may not legally require additional mitigation for school funding impacts, regardless of what Measure M and the General Plan require. Thus, it would be improper for the County to try to impose on the project proponents obligations that the County has no legal authority to impose. (The General Plan language at issue was written prior to the 1998 enactment of Senate Bill 50, which changed principles from prior case law allowing agencies, in considering whether to take legislative actions, to deny such actions based on inadequate school facilities or to include mitigation beyond the payment of school impact fees. Under SB 50, neither of those two options now exists.) However, as the commenter notes further in

the comment letter, the project applicants have volunteered to negotiate and enter into a supplemental Mitigation Agreement with the District to complete the funding necessary to provide the project site with adequate school facilities and avoid any deficiencies in school services that could be caused by new development within the project site. Once the Mitigation Agreement is finalized and signed, it would be separately binding and enforceable on the project applicants by the District as would any other contract. Once it is incorporated into an adopted Development Agreement between the County and the project applicants as planned, the County would also have the authority to enforce the obligation of the project applicants to implement the Mitigation Agreement. The project applicants have been negotiating in good faith with the District regarding the terms of the supplemental Mitigation Agreement, with the intent of finalizing the Agreement prior to the Board of Supervisors' consideration of approval of the Specific Plan. At the time of the publication of this FEIR, however, the parties had not yet reached final agreement on all terms.

East Nicolaus-6 The commenter notes that the Sutter Pointe Consistency Analysis claims consistency with General Plan Goal 3.A because "new development will fund the costs of new infrastructure and facilities" and with Policy 3.A.2 because the Specific Plan and its associated documents "describe a process that will ensure that adequate public facilities and services will be provided and adequately funded to serve new development."

This statement is a correct characterization of the positions taken in the Sutter Pointe Consistency Analysis. To the extent the District is asserting that these stated positions evidence a mandatory obligation to fund school facilities greater than that set forth in Government Code section 65996, neither the County's General Plan nor the proposed Specific Plan can contravene state law.

East Nicolaus-7 The District notes that the Specific Plan Consistency Analysis also claims consistency with General Plan Policies 3.H-2 and 3.H-3 by reference to the "developer's obligation to construct school facilities and/or to provide shortfall funding to the school districts for the facilities needed to support the Specific Plan."

This statement is a correct characterization of the positions taken in the Sutter Pointe Consistency Analysis. To the extent the District is asserting that these stated positions evidence a mandatory obligation to fund school facilities greater than that set forth in Government Code section 65996, neither the County's General Plan nor the proposed Specific Plan can contravene state law. In fact, the General Plan acknowledges this. Policy 3.H-3 states "The County shall support local school district efforts to mitigate significant impacts of new development on school facilities, consistent with state law." (Emphasis added.) Acknowledgement of the limitations of state law notwithstanding, the project developers intend to continue to negotiate in good faith with the District to finalize the terms of the voluntary, supplemental Mitigation Agreement referenced in the Consistency Analysis. Once the Agreement is finalized and executed, it would become binding and enforceable on the project developers.

East Nicolaus-8 The commenter requests revisions to the discussion of DEIR Impact 3.8-5 that would make the proposed Mitigation Agreement with the school districts a mandatory component of the mitigation for this impact.

The County cannot require under Measure M (an advisory measure), or its General Plan, additional funding that exceeds the limits set by state law. (Gov. Code Section 65996.) Nonetheless, the project developers have demonstrated their good faith intent to negotiate

and enter into such Agreement(s) voluntarily by providing a draft Agreement to the District for the purposes of opening the discussions. Although the final terms of the Agreement have not yet been reached, the project developers continue to state their intent to keep negotiating and the County pledges its support to facilitate successful negotiations in whatever manner it can, within the limits of state law.

East Nicolaus-9 The commenter notes that joint use of school facilities for parks and recreation purposes (as illustrated in Exhibit 8.4 of the draft Specific Plan) is conceptual, and that the East Nicholas Joint Union High School District will need to conduct careful review and analysis of this issue. The commenter states that a comprehensive Joint Use Agreement will be required prior to implementation of any joint use facilities. This comment does not address environmental impacts described in the DEIR; further discussion of the language used to describe joint use facilities occurs in the response to comment East Nicolaus-10.

East Nicolaus-10 The commenter notes that joint use of school facilities for parks and recreation purposes is conceptual, and that the East Nicholas Joint Union High School District will need to conduct careful review and analysis of this issue. The commenter requests that mandatory language ("would") requiring joint use of facilities (which appears on page 2-44 of the DEIR) be replaced by permissive language ("may") allowing such use.

This is a planning issue, not an environmental one. Nonetheless, the County believes that a further response, while not warranted under CEQA, is helpful here. It is the intent of the Specific Plan to maximize joint use for the benefit of both the schools and the community. However, the Specific Plan stops short of *requiring* the high school's facilities to be subject to joint use; rather, proposed Specific Plan Policy 8.6-9 merely "encourages" joint use. The County recognizes that such joint use facilities raise design and operational issues that will be more specifically addressed in the School Master Facilities and Finance Plan and associated joint use agreements and design documents which will be subject to the approval of the School District. The resolution of these issues may change the list of joint use facilities and may require changes to the proposed configuration and size of the high school site. Because the Specific Plan already provides for the necessary flexibility to change the list of joint use facilities or the configuration and size of the high school site, no changes to the DEIR text are necessary. The County does not believe the use of the word "would" in the section of the DEIR cited by the commenter indicates an intent to make joint use of the high school site mandatory; rather, it merely describes the facilities and site layout that are preferred for the site if the future coordination with the School District results in an agreement allowing for joint use.

East Nicolaus-11 The commenter has asked that the flexibility for two high school sites be kept open.

For the purposes of developing the Specific Plan, the proposed project needed to identify the conceptual locations of all of the school sites. In order to ensure that the high school becomes a central feature with attractive amenities for the community, the proposed project has a single high school site located in the center of the Great Park. The high school is proposed to be co-located with parkland and designed to encourage joint recreational uses in tandem with adjacent community parks. It would also provide opportunities for community use facilities. The precise location and size may change based on discussions with the District. Siting criteria and design characteristics for the high school have been provided in the Sutter Pointe Design Guidelines (Appendix A to the Specific Plan). The School Facilities Master Facilities and Financing Plan would address the specific site design, detailed development plan (including phasing and

triggers for design, construction and completion of planned facilities), and amenities for the high school site.

East Nicolaus-12 The commenter notes that administrative offices will be required to serve the district, and requests that these offices be mentioned in the specific plan, to ensure that the location of the offices on the project site is consistent with the specific plan. This comment addresses a planning issue, and requests a change to the specific plan. Because the proposed changes to the specific plan would not affect the environmental impacts of the project as described in the DEIR, no change to the text of the DEIR is proposed.

East Nicolaus-13 The commenter has requested that text be added to the Specific Plan that addresses the following points: approval of school sites is subject to state Department of Education, the size and location of the school sites may change as more analysis is conducted, more or less land may be required for school sites depending on joint-use arrangements, the size and location of school sites and administrative offices will be determined before approval of the first tentative map.

These comments relate to the Specific Plan and not the DEIR. However, the County acknowledges that the school sites would be subject to state approval. The siting issues related to school facilities are covered in general on pages 8-10 of the Specific Plan. These issues will also be addressed specifically in the School Mitigation Agreement and the School Master Facilities and Financing Plan, both of which will be in place before approval of the first tentative subdivision map (see section 10.5.2 of the Specific Plan). The County disagrees with the District's position that further "mitigation" in the form of revisions to the Specific Plan is required. Please refer to Response to Comment East Nicolaus-8.

East Nicolaus-14 The commenter identifies the costly process of planning, designing, and building school facilities. The commenter references the requirement that a School Master Facilities and Financing Plan be prepared and adopted before development in Sutter Pointe can commence. The commenter also suggests that the method of financing, source of funds, and timing of financing for the planning, design, and building of school facilities be described in the School Master Facilities and Financing Plan.

The County agrees with these comments and has noted this suggestion.

East Nicolaus-15 The commenter notes that road improvement and traffic flow have been or will be calculated for development of the school sites. The commenter further notes that planning for traffic and parking issues, including convenient and safe access to parking, parent and bus drop off areas, and turnaround areas, should be addressed in the environmental review process for the tentative map where the school is located. The DEIR provides a program level of analysis regarding the ability of planned schools to meet projected demand. This comment pertains to future project-level environmental review that would be required for individual components of the proposed project such as tentative maps that include school sites. No change to the DEIR is proposed in response to this comment.

East Nicolaus-16 The commenter assumes that water and sewer lines will be sized to accommodate the schools, including fire flow. The commenter further notes that storm water drainage should anticipate construction of the schools. The DEIR provides a program level of analysis regarding the ability of planned schools to meet projected student demand. As the commenter notes, this comment pertains to future project-level environmental review which will be required for individual components of the proposed project, such as the

construction of future schools and infrastructure necessary to serve those schools. No change to the DEIR is proposed in response to this comment. Notably, however, water, sewer, and storm drainage master plans (Appendices C, D, and E to the Specific Plan) include the schools in the land uses and consequently, adequate water, sewer, and storm drainage service will be provided for the schools. See also Master Response 8, "Wastewater Service to the Project Site."

East Nicolaus-17 The commenter states that school sites should not be located in designated wetlands or environmentally sensitive areas. Based on the County's best available knowledge, no schools or other community facilities have been proposed in area supporting natural wetland features. However, because the wetland delineation has not been verified by the U.S. Army Corp of Engineers (USACE) and the footprints for these facilities have yet to be finalized, it is not known if construction of these facilities would affect created wetland habitats (e.g., irrigation canals) that could be determined by USACE, at a later date, to be subject to federal jurisdiction. The Sutter Pointe DEIR provides a program-level evaluation of the proposed adequacy of schools to meet projected demand; it does not contain a project-level analysis of the school siting requirements promulgated by the California Department of Education.

East Nicolaus-18 The commenter requests that the County confirm that proposed high school site is more than 2 nautical miles from any airport. The only areas of the project site which are within a 2-nautical-mile radius of the Sacramento International Airport are located west of SR 99, and no school sites are proposed in this area. No portions of the project site are within 2 nautical miles of McClellan Airport.

East Nicolaus-19 The commenter states that with proposed changes, impacts to the District will have been mitigated to a less-than-significant level. Please see responses to *East Nicolaus* comments 1 through 18.

NBC

The Natomas Basin Conservancy
Comment memo
Draft Environmental Impact Report for the
Sutter Pointe Specific Plan Project
February 3, 2009

Introduction. This communicates reaction to the above-referenced document pertaining to the Measure M Sutter Pointe development proposed in the Natomas Basin portion of South Sutter County. The Natomas Basin Conservancy ("Conservancy") is the designated Plan Operator of the Natomas Basin Habitat Conservation Plan (NBHCP) through which Sutter County has been issued an Incidental Take Permit ("Permit") by the federal and state Wildlife Agencies. This Permit effectively allows Sutter County to authorize development in that portion of the County where the Measure M development is proposed, and do so given the area's protected status as habitat for one or more of 22 covered species. 1

Meeting biological effectiveness tests critical to maintaining usefulness of Incidental Take Permit. In order for Sutter County to utilize the protections it sought and acquired under the terms of the NBHCP Implementation Agreement (IA), certain biological "effectiveness" tests must be met. Most significantly, the "mid-point review" required in the NBHCP will determine if the habitat lands established by the Plan Operator have been effective in mitigating for the loss of habitat of the Covered Species. The Conservancy has implemented the NBHCP in such a fashion that it expects to achieve a passing grade in the mid-point review process. If it is successful in achieving this measure, the NBHCP can continue to be used by Permitees, including Sutter County, as Permittees have anticipated. 2

Adjacency of NBHCP mitigation lands and planned Measure M development. The Conservancy, as Plan Operator, recognizes that it may not count as new mitigation land any land acquired within 800 feet of land designated for urban use. However, certain of the Conservancy's already-established habitat lands are immediately adjacent to land proposed by the Measure M Sutter Pointe development for urbanization, and additional land similarly situated is also targeted for habitat use. The geographic area at question is generally that which parallels the Sutter County – Sacramento County line east of U.S. Highway 99 and west of East Levee Road. In that area, which is a designated flood plain, the Measure M developers have proposed high density and medium density residential land uses. 3

Conservancy's willingness and ability to assist with Measure M process. The Conservancy has met periodically with the Measure M Sutter Pointe developers over several years. A number of opportunities for cooperation and joint use of resources have been explored and some appear mutually attractive. The Measure M Sutter Pointe development itself even offers opportunity to enhance the value of the Conservancy's preserve system to the south if carefully considered and explored. 4

NBHCP compliance potentially adversely impacted. The Conservancy has made it clear to the Measure M Sutter Pointe developers that the worst possible land use adjacent to the county line and the Conservancy's existing and planned preserves would be high- and medium-density residential development. It is the Conservancy staff opinion that the productive value of the assembled system of reserves on the southerly border of the proposed Measure M development is potentially at risk of diminishment if such land use types were to be established there. 5

This is especially true if the proposed roads moving south through Conservancy's system of preserves are realized. Giant garter snake mortality is pronounced along roadways, and routing these vehicle corridors through existing mitigation land is a risk.

The NBHCP notes in numerous places the importance of minimizing disturbance of the refuges and sanctuaries created by the Plan Operator. Experience has indicated that establishing this level of urban activity (e.g., thoroughfares and high- and medium-density residential development) immediately adjacent and through existing preserves has the ability to compromise the effectiveness and productivity of the preserves. The terms of Sutter County's ITP include numerous important elements, but to this point, one of the most important is that mitigation land which supports Sutter County's ITP be managed in such a manner that disturbance be minimized and that access be strictly controlled. Introducing new and substantial traffic flows can compromise these standards. Again, the Conservancy has worked with the development proponents on identifying ways to minimize these impacts, and continues to encourage productive discussions on how the NBHCP and the County's ITP can remain fully intact as this development project moves forward. 5 Cont'd

Sensitivity to preserving the viability of the NBHCP indicated. In order for the Conservancy to continue to ensure Sutter County that the NBHCP has been effective and that performance and effectiveness tests can reasonably be expected to be passed, the system of preserves needs to be given the widest latitude practical in terms of disturbance and intrusion minimization. Cushioning the interface between more intensive urban activity and habitat can be achieved, and can prove helpful in this regard. The recent experience in the City of Sacramento along Fisherman's Lake is instructive. There, the developers proposed to re-orient a detention pond system for a 450-acre development between the development and the environmentally-sensitive Fisherman's Lake. 6

Conclusion. We remain available to work with the Measure M developers and Sutter County on this matter. However, we felt it was the Conservancy's responsibility to advise its partner in the NBHCP (Sutter County) of the expected risks it is exposed to if intense urban activity as a land use type is situated immediately adjacent to and through the NBHCP's system of mitigation lands. It is our hope that the best possible conditions are available to Sutter County when the time comes for it to enjoy the benefits of the NBHCP. 7

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NBC-1

The commenter notes that the Natomas Basin Conservancy ("Conservancy") is the designated Plan Operator for the NBHCP, and that the incidental take permit issued to Sutter County authorizes development where the Measure M development is proposed.

The DEIR describes the NBHCP, and identifies the Conservancy role as the NBHCP manager. (DEIR, at page 2-4 [Chapter 2.0 "Project Description"] and Section 3.1, "Land Use," on page 3.1-7.) And as stated in the DEIR at page 3.1-7, Sutter County is authorized under its incidental take permit to develop 7,467 acres within the Natomas Basin, which includes approximately 16.5 acres of proposed drainage channel improvements located within Sacramento County. No text changes to the DEIR are required.

NBC-2

The commenter states that the NBHCP must pass certain biological "effectiveness" tests, and must undergo a "mid-point" review. The Conservancy has implemented the NBHCP in such a manner that it expects to pass the mid-point review, which will allow the NBHCP to continue to be relied upon by Sutter County.

The comment references the periodic and "independent mid-point reviews," which are comprehensive reviews that must be conducted by the Conservancy to evaluate the status of NBHCP implementation and the success of mitigation measures, in addition to ensuring progress toward the establishment of a 2,500-acre reserve and an overall minimum 400-acre reserve size at the end of 50 years. (NBHCP, at page I-36.) During the overall program and independent mid-point reviews, the Conservancy is tasked with assessing "impacts and habitat types." (NBHCP, at page VI-44.) If imbalances are identified, the Conservancy can respond through "adaptive management and future reserve acquisition and establishment" as outlined in Response to FRIENDS-A-9. "In this way, the monitoring program for both compliance and effectiveness monitoring will interact with the reserve design and management to ensure successful and responsive habitat mitigation to impacts." (NBHCP, at page IV-45.)

As the comment notes, the Conservancy believes that the NBHCP is on track to satisfy its mid-point review (e.g., by demonstrating sufficient progress in meeting the NBHCP's biological goals and objectives), in which case the NBHCP remains available to provide incidental take authorization for the proposed project. DEIR Section 3.13, "Biological Resources," explains on page 3.13-5 that approximately half of the reserve lands required under the NBHCP have already been acquired since 2003. In any event, "so long as the City and Sutter limit urban development to their respective Permit Areas and continue to meet their respective obligations under the NBHCP, the Operating Conservation Program and associated permits will remain valid for each Permittee's Covered Activities." (Findings & Recommendations for the Issuance of Section 10(a)(1)(B) Incidental Take Permits Associated with the Natomas Basin Habitat Conservation Program (June 27, 2003), at page 7.)

NBC-3

The commenter recognizes that the Conservancy may not count as new mitigation land any land acquired within 800 feet of land designated for urban use. The commenter further states that existing Conservancy habitat lands already occur adjacent to an area

along the Sutter County—Sacramento County line that the Measure M group has proposed to develop as high density and medium density residential land uses.

Under the criteria for acquiring reserve lands, the NBHCP limits where reserve lands can be located. "The setback criteria requires that mitigation lands acquired by the Conservancy or for which conservation easements are obtained shall, at the time of acquisition, be situated at least 244 m (800 ft.) from existing urban lands or lands that are designated for urban uses in an adopted general plan within the City or Sutter Permit Areas." (U.S. Fish & Wildlife Service Biological Opinion, at page 34.) This setback requirement, however, is not meant to in any way limit Sutter County's ability to approve development "within the setback zone and adjacent to the boundaries of reserve lands" (id.), particularly in this case where the development footprint was already authorized for take under the NBHCP and Sutter County Incidental Take Permit.

The Sutter Pointe Specific Plan area had been designated for urban uses when the NBHCP was adopted and, as stated above, the setback limitation was not meant to limit the ability of Sutter County to approve urban land uses within the Specific Plan area. It should also be clarified that the geographic area referenced in the comment—the area that parallels the Sutter County and Sacramento County line east of SR 70/99 and west of East Levee Road—has not been proposed for high density or medium density residential land uses as the commenter suggests. Instead, the area immediately adjacent to the county line is proposed to include a 200-foot open space buffer. (See DEIR Section 3.1, "Land Use," Exhibit 3.1-5.) The applicant is proposing to include low-density residential land uses immediately north of the open space buffer. (Id.)

NBC-4 Conservancy acknowledges opportunities for cooperation with Measure M developers, and the opportunity for the Measure M development to enhance the value of the Conservancy's preserve system to the south.

The SPSP will contribute significantly to conservation and management of habitat lands in the Natomas Basin through the NBHCP mitigation fee program. (See, e.g., NBHCP, at page IV-6 [NBHCP and fee program will help establish 8,750 acres of managed reserves].) As the NBHCP acknowledges, this fee program will enable the acquisition and management of mitigation lands that "will result in a substantial increase in overall habitat value" within the Natomas Basin. (Id., at page IV-6.) No changes to the text of the DEIR are required.

NBC-5 The commenter expresses concern for the type and density of land uses proposed adjacent to the county line, and expresses the opinion that productive value of the reserve system is potentially at risk based on these proposed land uses. The commenter further states that introducing new and substantial traffic flows on thoroughfares and high density residential development immediately adjacent to and through existing preserves can compromise the effectiveness and productivity of the preserves. The commenter notes that, in particular, giant garter snake mortality is pronounced along roadways and that, if roads are proposed south through the Conservancy's system of preserves, such routes through existing mitigation land is a risk. The Conservancy continues to encourage productive discussions with the development proponents on how the NBHCP and ITP can remain "fully intact."

As stated above in Response to NBC-3, the area east of SR 99/70 and immediately north of the county line and Central Basin Reserve areas is proposed to include a 200-foot open space buffer, which will separate the Central Basin Reserve from an area further north

proposed to be zoned low-density residential. (DEIR Section 3.1, "Land Use," Exhibit 3.1-5.) The applicant is not proposing high- or medium-density residential land uses anywhere adjacent to existing habitat reserves. Likewise, other than improvements that may be carried out by other agencies along SR 99/70—an existing and major highway running north between portions of the Central Basin Reserve—the proposed project does not include development of new roads south through the Conservancy's reserve system. Road A, for example, is designed to provide north/south access internal to the SPSP area and is not assumed to connect/extend south of the county line. (See Response to Comment Brookfield-10, above.)

The fact that the proposed project would add significantly to the traffic along SR 99/70 cannot be avoided, and is not prohibited under the NBHCP for it to remain effective. Indeed, Sutter County secured incidental take authorization for development of 7,467 acres within the Natomas Basin. The setback/buffer criteria set forth in the NBHCP controls the acquisition and establishment of reserve areas, and was not designed to limit development within the authorized Sutter County permit area. (U.S. Fish & Wildlife Service Biological Opinion, at page 34.)

The NBHCP EIR/EIS and SPSP DEIR took into consideration direct, indirect, and cumulative effects, and concluded that the 7,467 acres of development proposed by Sutter County would have a less-than-significant impact on NBHCP-protected species with implementation of avoidance, minimization, and mitigation measures. Impacts associated with the additional traffic on SR 99/70 would generally be minor because that traffic would occur along a major, pre-existing highway. As noted in Response to Comment NBC-2, the Conservancy expects the NBHCP to achieve a passing grade in its upcoming mid-point review, which itself indicates that the NBHCP is on track to achieve its land acquisition and management goals.

Likewise, the DEIR evaluated the effects that on-site and off-site improvements might have on the NBHCP's conservation strategy, and found that the SPSP's impacts would be less than significant. (DEIR Section 3.13, "Biological Resources," page 3.13-52.) In any event, the proposed project's impacts on NBHCP-covered species—both on-site and off-site—must be consistent with the NBHCP's conservation strategy. (See, e.g., DEIR Mitigation Measure 3.13-1b, requiring a conservation strategy "consistent with the NBHCP's strategy" and which "meets the performance standard of no net loss in function and value".)

NBC-6 To ensure that the NBHCP remains effective, the commenter suggests that the preserve be given wide latitude to minimize disturbances and intrusions. The commenter states that cushioning the interface between more intensive development activity and habitat can be achieved, as was the case at Fisherman's Lake in Sacramento where the land plan was reoriented.

See Response to Comments NBC-3 and NBC-5. The SPSP includes a 200-foot open space buffer within the Sutter County permit area, which would address the interface with development and minimize disturbances and intrusions into the Central Basin Reserve by removing higher density development from the interface area along the lines of what the comment suggests.

NBC-7 The commenter states that the Conservancy remains available to work with Measure M and Sutter County to ensure the "best possible conditions are available" for the County to enjoy the benefits of the NBHCP. The commenter further states that it was the

Conservancy's responsibility to advise its partner in the NBHCP (Sutter County) of the expected risks it is exposed to if intense urban activity as a land use type is situated immediately adjacent to and through the NBHCP's system of mitigation lands.

Sutter County and the Measure M Group have expressed a commitment to continue the dialogue with the Conservancy on land-use patterns and the project's interface with the adjacent preserve system. As noted in responses to comments NBC-3 through -6, the Sutter Pointe Specific Plan has incorporated a number of features and the DEIR includes several mitigation measures to address the concerns expressed by NBC. No changes to the text of the DEIR are required.

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PLEASANT GROVE JOINT UNION SCHOOL DISTRICT



RESPONSE TO SUTTER POINTE SPECIFIC PLAN/DRAFT ENVIRONMENTAL IMPACT REPORT

February 3, 2009

Prepared for:
Dr. Rebecca Gillespie
District Superintendent

Prepared by:
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Pleasant Grove Joint Union School District

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Dr. Rebecca Gillespie, Superintendent

February 3, 2009

Douglas Libby, Senior Planner
Sutter County Planning Services
1130 Civic Center Boulevard
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Re: Sutter Pointe Specific Plan and Draft EIR

Dear Mr. Libby:

The Pleasant Grove Joint Union School District ("District") appreciates this opportunity to comment on the Sutter Pointe Specific Plan ("Project") and Draft Environmental Impact Report ("DEIR"). The comments by the District, which reflect review and comment from the law office of Thurbon & McHaney, Sage Institute, Inc., and Stafford King Wiese Architects are hereby submitted as a responsible agency under the EIR and related CEQA process. The District's comments are based on the understanding that the DEIR is programmatic and that additional environmental analysis will be necessary for the final approval of specific school sites. 1

Background

The District has had several meetings with the Measure M Group of the Project ("Developer") throughout the planning process and is encouraged by their willingness to mitigate the impacts and address the issues this Project presents for the District. The District is currently a very small K-8 school district that serves approximately 170 students. It is projected that at full build-out of Sutter Pointe, the District will serve at least 6,200 additional K-8 school students. This figure does not include new students who will be generated by growth within the District from areas outside the Sutter Pointe project. Therefore, the Project will have a major impact upon the District. 2

The existing Pleasant Grove School facility currently accommodates a total of approximately 200 students. There are eight classrooms, one of which is a portable, a main office with a few meeting rooms for addressing student specialized needs on a pull-out basis, a cafeteria/multi-purpose room, and the Sutter County library branch housed in a portable located on the school site.

BOARD OF TRUSTEES: ● John Hewitt ● Shawn Withrow ● Leo Hoyt ● Brandi Burnsed ● Joe Gutierrez

The site is served by a well and a septic system and for all practical purposes is essentially land-locked; therefore, options to significantly expand the existing site do not exist. The DEIR recognizes that the K-8 school is near student capacity with little to no opportunity for expansion of this site to serve the increased enrollment from the Sutter Pointe project. At least six new K-8 schools, or a combination of K-5 and 6-8 junior high schools, will have to be constructed to serve the projected number of students to be generated by the project.

2 Cont'd

Measure M Issues

Measure M, which was passed by 59% of voters on November 2, 2004, requires developers to execute binding contracts in order to provide for the schools, parks, libraries, law enforcement, fire departments, and other services and facilities necessary to serve the needs of new developments. Although Measure M is an advisory measure only, it clearly indicates Sutter County voters' expectations that developers within the Sutter Pointe Specific Plan ("SPSP") be responsible for providing all public facilities and infrastructure that become necessary as a result of the development. In several meetings over the past three years and in a recent presentation to the District Board, the Developer confirmed its commitment to honor the principles in Measure M. The Developer has followed through on that commitment by proposing a Mitigation Agreement to construct and/or fully fund the school facilities needed to serve the Project. The District strongly agrees that such an agreement is necessary in order to meet the school needs of the project in a manner consistent with Measure M and believes that execution of such an agreement should be a prerequisite to approval of the Project.

3

The District is encouraged by the commitment evidenced by the Developer to implement the provisions of Measure M in the Sutter Pointe project. The project's Specific Plan DEIR expresses the Developer's intention to develop "a project that complies with the Measure M advisory initiative as approved by Sutter County voters in 2004." The planning documents include numerous statements of the Developer's commitment to Measure M, including the Notice of Preparation and the Specific Plan's Project History and Planning Context, and Public Services sections. Measure M is referenced throughout the DEIR including such sections as Objective 16, Project Characteristics (General Characteristics), Section ES.5.1, and Table ES-2 Sections 3.1-5 and 3.1-10. It is clear that the Developer is committed to implementing the provisions of Measure M, as desired by an overwhelming number of Sutter County voters.

4

The Developer and the District (jointly "Parties") have engaged in on-going substantive discussions to determine the manner in which the Developer will provide the necessary K-8 school facilities to serve the needs of its project, pursuant to Measure M. We have currently agreed that a project School Mitigation Agreement will be approved between the Developer and the District prior to approval of the Specific Plan and either attached to or incorporated into the Development Agreement with the County. Failure to successfully negotiate the Mitigation Agreement will result in the District requesting that the County

3 Cont'd

delay adoption of the Specific Plan until such time the District and the Developer come to agreement on the terms of the Mitigation Agreement and its subsequent approval by the Districts' Board of Trustees in order to mitigate the impacts on the District from the Project.

3 Cont'd

The District also anticipates collateral agreements for Facility Finance Master Planning and Construction after the approval of the SPSP. These aforementioned agreements will establish the basic road map for establishing school facilities programmatically acceptable to the District and in a timely manner to serve the District including the planning and funding obligations of the parties. The Developer has verbally committed to fully mitigate the impacts to the District as provided in Measure M. The Developer has prepared draft agreements which have been reviewed by the District and are being revised to reflect District comments regarding the need for both land and facilities.

5

Draft EIR Issues

Impact 3.8-5 of the SPSP DEIR is inconsistent with the Developer's stated commitment to Measure M found in the Notice of Preparation and throughout the SPSP and the DEIR. Impact 3.8-5 states:

> "As required by state law, the project applicant(s) would have to pay school impact fees, which would be allocated to Pleasant Grove Joint Union School District and East Nicolaus Joint Union High School District. These school districts would be responsible for constructing the facilities needed to serve this project. Although the school impact fees are often insufficient to fund 100% of new school facility construction and operation, the California State Legislature has declared the school impact fee to be full and adequate mitigation under CEQA. Under California Government Code Section 65996, the County is limited to charging the statutorily created fee to offset impacts on local school districts generated by proposed projects. Section 65996 does not provide for remediation of existing deficiencies in school services. Construction of the proposed elementary schools and high school and payment of school impact fees would result in a **direct, less-than-significant** impact on school services and facilities as defined by CEQA."

6

This discussion in the DEIR conflicts with the Measure M provisions referenced above and with Section 8.6 of the Specific Plan which states that the Plan "… is required to fully mitigate school impacts in accordance with the School Mitigation Agreements." On the one hand the above discussion acknowledges that "school impact fees are often insufficient to fund 100% of new school facility construction and operation" and yet on the other hand it argues that payment of the fees alone will result in a less than significant impact even if no schools are constructed.

The above discussion fails to address the real issue, which is that payment of the fees without additional mitigation is inconsistent with Measure M, the

requirement of full mitigation in the Specific Plan and the requirements in the Sutter County General Plan.

Sutter County General Plan Policy 3.A -2 provides, "The County shall require that adequate public facilities and services be available to serve new development. The County shall not approve new development where existing facilities are inadequate unless both of the following conditions are met:

A. The applicant can demonstrate that all necessary public facilities will be installed prior to the issuance of a certificate of occupancy or adequately financed through fees or other means.

B. Proposed facility improvements are consistent with applicable facility plans approved by the County or have been reviewed and approved by the County. Policy 3.A-3 requires: "Public facilities and services for new urban and suburban residential development shall be provided by an entity other than Sutter County." These terms are consistent with Measure M.

6 Cont'd

Accordingly, the Developer has proposed supplemental mitigation to be reflected in a Mitigation Agreement to be negotiated with the District and incorporated or referenced in the Development Agreement for the Project as previously discussed. The Sutter Pointe General Plan Consistency Analysis reflects this supplemental mitigation.

The Sutter Pointe Consistency Analysis claims consistency with Goal 3.A because "new development will fund the costs of new infrastructure and facilities." The Consistency Analysis claims consistency with Policy 3.A-2 because the Specific Plan and its associated documents "describe a process that will ensure that adequate public facilities and services will be provided and adequately funded to serve new development."

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The Consistency Analysis also claims consistency with Policies 3.H-2, and 3.H-3, by reference to the "developer's obligation to construct school facilities and/or to provide shortfall funding to the school districts for the facilities needed to support the Specific Plan."

8

Because Impact 3.8-5 is inconsistent with the terms of Measure M and the guiding concepts in the Specific Plan, the District suggests that Impact 3.8-5 be revised to reflect the Developer's stated commitment to provide school sites and facilities that will be fully funded by the Developer pursuant to Measure M. The District requests that Impact 3.8-5 be revised as follows:

> "As required by state law, the project applicant(s) would have to pay school impact fees, which would be allocated to Pleasant Grove Joint Union School District and East Nicolaus Joint Union High School District. These school districts would be responsible for constructing the facilities needed to serve this project. Although the school impact fees are often insufficient to fund 100% of new school facility construction and

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operation, the California State Legislature has declared in Government Code Section 65996 that payment of the school impact fee ~~to be~~ is full and adequate mitigation under CEQA. ~~Under California Government Code Section 65996, the County is limited to charging the statutorily created fee to offset impacts on local school districts generated by proposed projects. Section 65996 does not provide for remediation of existing deficiencies in school services. Construction of the proposed elementary schools and high school and payment of school impact fees~~ In order to establish consistency with Measure M and to provide funding to fully mitigate the impact of the development on the school districts, the proponents of the Sutter Pointe Specific Plan have agreed to enter into a Mitigation Agreement with the school districts. The Agreement shall provide for fully funded timely construction of school facilities to serve the development and shall provide for supplemental funding in addition to the requirements of State law. Since the impact to the school districts will be fully mitigated under the Mitigation Agreement, this will result in a **direct, less-than-significant** impact on school services and facilities as defined by CEQA."

9 Cont'd

If Impact 3.8.5 is revised to include the above wording, we believe the impacts discussed above will have been appropriately mitigated.

K-8 Site Issues

Although it may be premature to engage in a detailed discussion of site specific issues for the school site in a program level EIR, we believe it will be helpful to provide as much discussion as possible at this early stage. However, we understand that it may be more appropriate to address many of these issues during the environmental review process for the tentative map where the school site is eventually designated.

Current discussions between the Parties have focused on a six (6) new K-8 school sites on approximately twenty acres each, which would serve most of the new students generated by the project. These sites are currently designated in the Specific Plan to be located adjacent to parks. Joint use of facilities is proposed to enhance the level of facilities available for use by both the school and the community. It is important to note that exhibit 8.3 in the Draft Specific Plan is intended only to illustrate the concept of joint-use and does not reflect the careful review and analysis that the District and its school architect will need to conduct as part of the design process for the school sites. While the District is generally supportive of the joint-use concept, there are many practical design and operational issues concerning specific joint-use facilities, which will need to be addressed prior to final approval by the District. Due to the importance of the joint-use concept, a more detailed and comprehensive Joint-Use Agreement will be required prior to implementation of any joint use of facilities, including a discussion of the entity that will be responsible for developing and maintaining the facilities, when those facilities will be available to serve the school site, and the terms of use. The design and operational issues associated with joint-use will

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need to be fully addressed to the satisfaction of the District and may affect the size and location of the proposed school site, as well as which facilities are ultimately deemed appropriate for joint-use. Since the development of the school site is subject to the jurisdiction of the State of California, we will need firm answers to those questions before the State will approve our application.

10 Cont'd

Due to the unanswered questions about the joint use of facilities, any mandatory language in the DEIR requiring the joint use of facilities should be revised with permissive language to allow such use. Requirements for joint-use, the entity with whom the District will contract for the joint use of facilities and a related and required Joint Use Agreement does not exist at this time.

11

In addition, administrative offices will be required to serve the District and the East Nicolaus High School District. The Developer and the District have agreed that this issue will be addressed in the School Mitigation Agreement. The administrative offices should be mentioned in the SPSP to make sure the location within the Project is consistent with the SPSP.

12

As discussed above, the joint-use of facilities language should be revised to be discretionary. In addition, the following provision should be added to the Specific Plan:

> "The approval of school sites is subject to approval by the State Department of Education. It is possible that the size and location of the school sites may change as a more specific analysis is conducted as part of the tentative map process. It is possible that less land will be required if there is a joint use of facilities with adjacent park land. More land may be required if the joint-use does not materialize. In addition, Department of Education siting requirements may impact the location of a particular site. The actual size and location of the school sites and of the administrative offices will be determined in consultation with the school districts prior to approval of the first tentative map."

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If the above revisions are made to the SPSP, we believe the issues discussed above will be appropriately mitigated.

Timing and Funding Issues

The greatest challenge in meeting the projected demand from the Sutter Pointe project will be to provide the schools on a timely basis. A comprehensive School Master Facilities and Financing Plan ("Financing Plan") must be developed for the SPSP that clearly links the timing of development to the improvements at the existing K-8 school facility and the construction of the six K-8 school sites.

14

In addition to the timely delivery of schools, the Financing Plan must address the lengthy process for school site approval through the State Department of Education, the Office of Public School Construction and the State Architect. Since this is a very expensive and time consuming process, the Financing Plan must address the timeline for funds to be available to pay for the planning effort

with the State. It should identify a source of funds to construct the facilities. If bonds are anticipated, the general fund of the District should not be at risk in issuing the bonds. If the financial markets will not buy the bonds, alternative financing must be available. Because it is not certain that the District could meet the state requirements to impose Level 2 fees, the Financing Plan cannot be dependent on the implementation of Level 2 fees. These and other important issues will be addressed in the Mitigation Agreement and related School Master Facilities and Financing Plan.

The School Financing Plan is particularly critical to a successful project in this case, since the traditional method of financing school construction with fees will prove problematic due to the significant time required to obtain State approval for the plans and the lack of existing funds at the District. Unlike a larger district with an existing developer fee account, Pleasant Grove Joint Union School District cannot advance funds for this effort and reimburse the account later from building permit fees. Therefore, a comprehensive School Master Facilities and Financing Plan must establish timely funding for the planning effort as well as the actual construction of the sites. 14

The District appreciates the commitment made by the Developers to enter into the Mitigation Agreement with the District concurrent with the approval of the Specific Plan, as discussed above. Preparation of the comprehensive Financing Plan will be addressed in the Mitigation Agreement.

If Impact 3.8-5 is revised to require the Mitigation Agreement as discussed above, we believe the above impacts will have been appropriately mitigated.

Traffic, Infrastructure, Wetlands, School Siting

The District expects that road improvements and traffic flow have been or will be calculated in anticipation of developing the school sites. The K-8 school sites will require convenient and safe access to adequate parking, safe parent and bus drop-off areas, and bus turnaround areas along with the analysis for the future K-8 school sites. Planning for traffic and parking issues should be addressed in the environmental review process for the tentative maps where the schools are to be located. Traffic related to the nearby high schools should be taken into consideration. 15

We also assume that water and sewer lines will be sized to accommodate the schools, including fire flow. Storm water drainage should anticipate construction of the schools. Again, the environmental review process for the tentative maps should address the SWPPP requirements and run-off from the schools should be included in the calculations for the detention basins. 16

The school sites should not be in designated wetlands or environmentally sensitive areas. These issues should be confirmed in the SPSP so that the District will not be required to engage in this analysis when it completes its environmental review for the school sites. 17

It is important to confirm that the proposed sites are over two nautical miles from any airport. This is critical as it is unlikely that the State will approve a site that fails to satisfy this standard. Also, as discussed above, maximum flexibility should be retained in the document to revise the location, acreage and the shape of the site, since the size and shape will most likely change as the site undergoes a more detailed analysis by the parties and the District architect, including compliance with the California Department of Education guidelines for school design and components along with requirements of the Department of State Architect, Department of Toxic Substances Control and the Office of Public School Construction as well as compliance with the local planning authorities and special service Districts. 18

Thank you for this opportunity to comment on the Draft EIR. If the modifications addressed above are included in the EIR and the SPSP, the impacts to the District will have been mitigated to a less than significant level. The Pleasant Grove Joint Union School District looks forward to continuing to comment on this Project as it progresses. 19

Respectfully submitted,

Dr. Rebecca D. Gillespie,
Superintendent

cc: Board of Trustees, Pleasant Grove Joint Union School District
Jacqueline S. McHaney, General Counsel
Dr. Matthew Roberts, Superintendent East Nicolaus High School District
Timothy Cary, General Counsel
William M. Wright, Special Counsel
Dr. Joel Kirschenstein, Sage Institute
Kip Grubb, SKW, Architects
George M. Carpenter, Jr., Sutter Pointe Project Manager

PGJUSD-1

The commenter states that comments are based on understanding of DEIR as a programmatic document. The commenter is correct that the DEIR is a largely programmatic document. This does not raise comments on the environmental analysis in the DEIR. Therefore, no response is required.

PGJUSD-2

The commenter states his appreciation for the Measure M Group's willingness to mitigate impacts the project would have on the District. The commenter states that at full buildout, the District will need to serve approximately 6,200 additional K-8 students from the project, and therefore the project will have a "major impact" on the District.

The estimate of approximately 6,200 additional K-8 students is consistent with information presented in the DEIR on pages 2-16 and 3.8-15. As discussed in DEIR Impact 3.8-5, the K-8 schools proposed as part of the SPSP would have sufficient capacity to meet the demands generated by the project, and no long-term shortfall of elementary or high school services and facilities would result. Therefore, the County respectfully disagrees with the assertion that the project would have a "major impact" on the District.

The commenter provides information about the existing Pleasant Grove school facility. This information provided by the commenter is consistent with the text of the DEIR on page 3.8-14.

The commenter states that at least six new K-8 schools, or a combination of K-5 and 6-8, would have to be constructed to serve students generated by the project. The County agrees, and this information is consistent with the text of DEIR Impact 3.8-5.

PGJUSD-3

The commenter notes that advisory Measure M indicates the expectation of the Sutter County voters' that the project developers will be responsible for providing all public facilities and funding that will be necessary to serve the development and that to that end, the project developers have provided a draft Mitigation Agreement to cover supplemental funding and/or construction of school facilities to serve the project area. The commenter requests that the execution of such an agreement be made a prerequisite to approval of the project.

The County may not legally *require* additional mitigation for school funding impacts, regardless of what Measure M and the General Plan require. (Gov. Code, Section 65996.) Acknowledgement of the limitations of state law notwithstanding, the project developers intend to continue to negotiating in good faith with the District to finalize the terms of the voluntary, supplemental Mitigation Agreement referenced in the Consistency Analysis. Once the Agreement is finalized and executed, it would become binding and enforceable on the project developers, just like a mitigation measure. Please see responses to comments East Nicolaus-5.

PGJUSD-4

The commenter observes that it is clear that the project applicant is committed to implementing the provisions of Measure M.

Thank you for your comment recognizing the applicants' commitment to Measure M.

PGJUSD-5 The commenter states its anticipation of various collateral agreements that would establish a road map for establishing school facilities in a programmatic and timely manner, including the planning and funding obligations of the parties. The commenter states that the developer has committed to "fully mitigate the impacts to the District as provided in Measure M." Finally, commenter notes that the applicant has prepared draft agreements which the District is revising to reflect the need for both land and facilities.

The County agrees that draft agreements are in process. No changes to the text of the DEIR are necessary.

PGJUSD-6 The commenter asserts that the discussion of Impact 3.8-5 in the DEIR is inconsistent with the provisions of Measure M relating to full funding and provision of public facilities, the requirement of full mitigation for school impacts stated in the draft Specific Plan, and the County's General Plan Policy 3.A-2, which provides that the County shall require that adequate public facilities and services be available to serve new development.

Please refer to Response to Comment East Nicolaus-5.

PGJUSD-7 The commenter notes that the Sutter Pointe Consistency Analysis claims consistency with General Plan Goal 3.A because "new development will fund the costs of new infrastructure and facilities" and with Policy 3.A.2 because the Specific Plan and its associated documents "describe a process that will ensure that adequate public facilities and services will be provided and adequately funded to serve new development."

Please refer to Response to Comment East Nicolaus-6.

PGJUSD-8 The District notes that the Specific Plan Consistency Analysis also claims consistency with General Plan Policies 3.H-2 and 3.H-3 by reference to the "developer's obligation to construct school facilities and/or to provide shortfall funding to the school districts for the facilities needed to support the Specific Plan."

Please refer to Response to Comment East Nicolaus-7

PGJUSD-9 The commenter requests revisions to the discussion of Impact 3.8-5 that would make the proposed Mitigation Agreement with the school districts a mandatory component of the mitigation for this impact.

Please refer to Response to Comment East Nicolaus-8.

PGJUSD-10 The commenter notes that joint use of school facilities for parks and recreation purposes (as illustrated in Exhibit 8.3 of the draft Specific Plan) is conceptual, and that the Pleasant Grove Joint Union School District will need to conduct careful review and analysis of this issue. The commenter states that a comprehensive Joint Use Agreement will be required prior to implementation of any joint use facilities. This comment does not address environmental impacts described in the DEIR; Please see response to comments PGJUSD 11 and East Nicolaus 10 for further discussion of the language used to describe joint use facilities in the project site.

PGJUSD-11 The commenter notes that joint use of school facilities for parks and recreation purposes is conceptual, and requests that mandatory language ("would") requiring joint use of facilities be revised with permissive language ("may") allowing such use. This comment

is similar to East Nicolaus-10. Please see the response to East Nicolaus-10 for proposed text revisions to address this comment.

PGJUSD-12 The commenter states that administrative offices will be required to serve the District, and that this issue will be addressed in the School Mitigation Agreement. Comment states that these offices should be mentioned in the specific plan. The specific location of administrative offices does not affect the environmental impacts which are evaluated in the DEIR. This comment pertains to the specific plan document. No changes are proposed to the DEIR in response to this comment.

PGJUSD-13 The commenter suggests adding to the Specific Plan language acknowledging that approval of school sites is subject to approval by the State Department of Education and that the size and location of school sites and administrative offices may change as a more specific analysis is conducted as part of the tentative map process and depending on whether there is a joint use of facilities with adjacent park land.

See response to Comment East Nicolaus-13.

PGUSD 14 The commenter makes several points:

1. A comprehensive School Master Facilities and Financing Plan must be developed for the SPSP that clearly links the timing of development to the improvements at the existing K-8 school facility and the construction of the six K-8 school sites.

2. The Financing Plan must address the lengthy process for school site approval through the State Department of Education, the Office of Public School Construction and the State Architect and must identify a source of funds to construct the school facilities.

3. The School Financing Plan is particularly critical to a successful project in this case, since the traditional method of financing school construction with fees will prove problematic due to the significant time required to obtain State approval for the plans and the lack of existing funds at the District.

See response to Comment East Nicolaus-14.

PGJUSD-15 The commenter states it expects road improvements and traffic flow either have been or will be calculated for development of the school sites. The commenter further notes that planning for traffic and parking issues, including convenient and safe access to parking, parent and bus drop off areas, and turnaround areas, should be addressed in the environmental review process for the tentative map where the school is located.

The County recognizes the commenter's concerns. However, the DEIR provides a program level of analysis regarding the ability of planned schools to meet projected demand. This comment pertains to future project-level environmental review that would be required for individual components of the proposed project when tentative maps are submitted. Therefore, no changes to the DEIR are necessary.

PGJUSD-16 The commenter assumes that water and sewer lines will be sized to accommodate the schools, including fire flow. The commenter further notes that storm water drainage should anticipate construction of the schools. The commenter further notes that the environmental review process "for the tentative maps" should address SWPPPs and that detention basins should be sized to accommodate runoff from school sites.

The County recognizes the commenter's concerns. However, the DEIR provides a program level of analysis regarding the ability of planned schools to meet projected demand. As the commenter notes, this comment pertains to future project-level environmental review that will be required for individual components of the proposed project when tentative maps are submitted for approval. Therefore, no changes to the DEIR are necessary. Notably, however, water, sewer, and storm drainage master plans (provided as Appendices C, D, and E to the Specific Plan) include the schools in the land uses and consequently, adequate water, sewer, and storm drainage service will be provided for the schools. See also Master Response 8, "Wastewater Service to the Project Site."

PGJUSD-17 Please refer to response to comment East Nicolas No.17.

PGJUSD-18 The commenter requests that the County confirm that proposed school sites are more than 2 nautical miles from any airport. The only areas of the project site which are within a 2-nautical-mile radius of the Sacramento International Airport are located west of SR 99, and no school sites are proposed in this area. No portions of the project site are within 2 nautical miles of McClellan Airport.

PGJUSD-19 The commenter states that with proposed changes, impacts to the District will have been mitigated to a less-than-significant level. Please see responses to PGJUSD comments 1 through 18.

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ROSEVILLE-A

CITY OF ROSEVILLE
TRADITION • PRIDE • PROGRESS

Community Development
311 Vernon Street
Roseville, California 95678-2649

February 4, 2009

Sutter County Community Services Department
Attn: Doug Libby, Senior Planner
1130 Civic Center Boulevard
Yuba City CA 95993

Via: Standard and Electronic Mail

Subject: ***Comments on the draft EIR for the Sutter Pointe Specific Plan Project***

Dear Mr. Libby:

Thank you for the opportunity to review and comment on the Sutter Point Specific Plan draft EIR. We understand the proposed project is expected to generate 58,000 jobs and 17,500 residential units. This far surpasses the definition of a project of statewide or regional significance as outlined in State CEQA Guidelines Section 15206 (employment over 1,000 persons or residential uses over 500 units). Because of its scale, the project has the potential to significantly impact the City of Roseville in regard to transportation and circulation, solid waste transport and disposal and air quality. 1

The City previously provided comment in response to the project's Notice of Preparation via letter dated April 30, 2007 (attached). Given the enormity of the project and the fact that the City requested analysis of project impacts on Roseville in our NOP comment letter, upon review of the draft EIR we were disappointed regarding the lack of analysis concerning the City of Roseville. 2

Upon receipt, the draft EIR was circulated among various City departments for review resulting in the following consolidated comments:

Planning 3

1. Page 3.3-20 *Transportation and Circulation*, the Creekview Specific Plan is not included in the traffic analysis. A Notice of Preparation for the Creekview Specific Plan was circulated in May of 2007. Copies of the NOP were sent to Sutter County. Please include the Creekview Specific Plan in the analysis.

2. Page 3.3-113, *Cumulative Conditions beyond 2035*, again the Creekview Specific Plan is missing from the table. Pending City of Roseville projects should be included in the cumulative analysis (Downtown Specific Plan [EIR is currently circulating], Fiddyment Rezones, Brookfield [future specific plan north of Creekview] etc). See the City of Roseville's website for a current list of projects. www.roseville.ca.us 4

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3. The proposed mitigation measures are inadequate. In *Gray v. County of Madera*, 167 Cal.App.4th 1099, (2008), the courts have indicated EIRs need to include substantial evidence in the record on how impacts will be mitigated. Simple reference to a payment of fees is not adequate. If fees are proposed the EIR needs to provide the formula for calculating the fee and detailed information on what improvements the fee would pay for. 5

   The mitigation measure on Page 3.3-77, Measure 6 b. indicates that Sutter County will seek to negotiate in good faith with other jurisdictions to enter into fair and reasonable arrangements with the intention of achieving commitments for the provision of adequate "fair share" mitigation payments from the project for out of jurisdiction traffic impacts and impacts on federal and state freeways and highways, and reciprocal payments from regional developments projects to Sutter County to address cumulative fair share mitigation payments. The mitigation measure goes on to specifically call out the City of Roseville projects; Sierra Vista and Creekview specific plans, as needing to contribute to the funding of necessary improvements to serve the project. Given the fact that the EIR does not include an analysis of the Sutter Point project's impacts on City of Roseville roadways, this mitigation measure is premature. The EIR should be looking at the impacts of the Sutter Point project and identify specific mitigation measures to reduce impacts, not pass the responsibility to other jurisdictions (see also comment 8 below). 6

5. Page 3.10-7. No solid waste management facilities or transfer stations are located within Sutter County. Therefore, all solid waste will be trucked and disposed of in other counties.

   There is no analysis of the amount of waste that will need to be transported daily to offsite locations, nor the transportation routes. For offsite infrastructure in Placer County, (page 3.10-19), the EIR indicates that waste will be transported to the Western Regional Landfill, but there is no indication of the volume, types of waste or how it will be transported. It is likely that it will be transported over City of Roseville streets, therefore, the EIR should analyze the amount of waste that will be generated, how many truck trips per day, impacts to local roadways from truck trips, wear and tear on local roadways, and nuisance from debris. Mitigation measures should be included to reduce impacts to a less-than-significant level. 7

6. For waste that would be hauled to the YSDI Integrated Waste Recovery Facility/Ostrom Road Sanitary Landfill there is no analysis of truck routes. What impacts to Highway 65 or other roadways in Placer County will result from the operations? Impacts and mitigation measures need to be identified. 8

Public Works/Traffic

7. The City's NOP comment letter specifically requested a meeting with Sutter County staff to discuss an approach for identifying potential traffic impacts on the City of Roseville's transportation system from the Sutter Pointe Specific Plan (SPSP). However the City was never contacted by Sutter County Staff and the DEIR does not contain any analysis for transportation impacts to Roseville facilities. The project likely does cause significant transportation and associated 9

air quality and noise impacts in Roseville that have not been identified. The Final EIR needs to address project-specific impacts to Roseville and fair share mitigation for Roseville facilities. If significant transportation related impacts to the City are identified, the draft EIR would need to be re-circulated so the City has the opportunity to review and comment on the related analysis. Again, our Public Works staff is available to meet with Sutter County staff to discuss the appropriate approach for this analysis. 9 Cont'd

8. Mitigation measure 3.3-1 speaks to the desire to negotiate in good faith towards reciprocal cross jurisdiction payment from regional development projects to Sutter County to address cumulative "fair share" mitigation payments for facilities within Sutter County. Specific reference is made to the proposed Sierra Vista and Creekview specific plans that are being processed through the City of Roseville. While in concept the City is open to negotiating such an agreement, discussions can not begin until the impacts from the SPSP on the City's transportation system are completed, as discussed above. 10

9. The member jurisdictions of the South Placer Regional Transportation Authority (cities of Roseville, Rocklin, Lincoln and unincorporated Placer County) are in the process of approving a Memorandum of Agreement to establish a "Tier II Development Fee program" for new growth areas in southwest Placer County to fund approximately $475 million for Placer Parkway. While Mitigation Measure 3.3-1 of the DEIR includes a general description for the participation in funding improvements to regional roadways, we believe there should be a specific reference to the SPSP implementing a fee program for the purpose of funding the proposed future Placer Parkway project. Such a fee program should be based on the same methodology as used in the Tier II fee program and should be coordinated through PCTPA and the South Placer Transportation Authority. 11

10. Considering the need for a substantial amount of additional traffic study, the City would appreciate an opportunity to review and comment on pertinent sections of any administrative draft analysis prepared in response to the above comments as part of either a recirculated draft EIR or for Final EIR. 12

Thank you for consideration of the above comments. If you have any questions please contact me at 916/774-5334.

Sincerely,

Mark Morse
Environmental Coordinator

Attachment: Notice of Preparation Comment Letter dated April 30, 2007

CITY OF ROSEVILLE
TRADITION·PRIDE·PROGRESS

Community Development
311 Vernon Street
Roseville, California 95678-2649

April 30, 2007

Sutter County Community Services Department
Attn: Doug Libby, Senior Planner
1130 Civic Center Boulevard
Yuba City CA 95993

Via: Standard and Electronic Mail

Subject: ***Comments on the NOP for the Sutter Pointe Specific Plan Project***

Dear Mr. Libby:

Thank you for the opportunity to review the Notice of Preparation for the Sutter Point Specific Plan project. The City of Roseville has reviewed the NOP for the proposed project and would like to offer the following comments:

Transportation

1. Prior to the initiating the technical studies for the EIR, our Public Works staff would like to meet with Sutter County staff to discuss an appropriate approach for identifying potential traffic impacts on the City of Roseville's transportation system from the Sutter Pointe Specific Plan.

2. The Placer County Transportation Planning Agency (PCTPA), in cooperation with affected stakeholders, has initiated the preparation of a Draft Tier 1 Environmental Impact Report/Environmental Impact Statement (EIR/EIS) document for the purposes of preserving a corridor for the eventual construction of the Placer Parkway. An extensive technical and public review process has been on-going in an effort to identify a reasonable number of potential alternative alignments to take forward in the Draft Tier 1 EIR/EIS. The Sutter Pointe Specific Plan EIR should consider the proposed Placer Parkway alignments and address any conflicts the proposed Specific Plan may have with these alignments that could preclude (or affect) the ability for the Parkway to be constructed.

3. South Placer County jurisdictions have been working through the South Placer Regional Transportation Authority (SPRTA) to approve a new transportation-impact fee for new development to help fund the construction of Placer Parkway. As approximately 1/3rd of Placer Parkway will be located in Sutter County, there will be significant benefit to the Sutter Pointe development area. Sutter County should coordinate directly with PCTPA to participate in the funding strategy for Placer

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Parkway to help offset the regional transportation impacts associated with the Sutter Pointe Specific Plan.

Parks and Recreation

4. The discussion in the NOP seems to address the construction of park facilities in the Specific Plan area. However, the City of Roseville Parks and Recreation Department requests that financing for ongoing recreation programs also be addressed in the DEIR.

Libraries

5. The NOP states that the Sutter Pointe development will be required to pay for library facilities (page 5) and for library services, without reducing current service levels (page 6). At present Sutter County has one library facility and four stations throughout the County. A development of this size should result in a branch library facility being constructed as the plan builds out and as future residents require library services within this area. On behalf of the Roseville Public Library, we ask that the DEIR include appropriate mitigation so that development of the plan will finance both library facilities and library services, in a manner that keeps pace with the County's increasing population.

Fire

6. The City of Roseville does not anticipate a significant impact from the project to the Roseville Fire Department. However, there could potentially be an impact on services given an increase in mutual aid requests. The project should provide and plan for fire protection services at an urban level. The Draft EIR should analyze any impacts to surrounding jurisdictions for Fire Protection.

Thank you for consideration of the above comments. If you have any questions please contact me at 916/774-5334.

Sincerely,

Mark Morse
Environmental Coordinator

Roseville-A-1

The commenter expresses that the project is of the size that should be considered a project of statewide or regional significance, as defined in CEQA Guidelines Section 15206. The County agrees with this characterization, and has processed the DEIR under the requirements , including conducting scoping meetings, filing the DEIR with the State Clearinghouse, and meeting other requirements as specified.

Roseville-A-2

The commenter refers to NOP comments (provided by the City of Roseville in 2007) requesting analysis of issues affecting the City of Roseville, and expresses disappointment at a perceived lack of analysis concerning potential effects of the proposed project on the City of Roseville. The referenced NOP letter (attached) identifies transportation, parks and recreation, libraries, and fire as areas of particular interest to the City of Roseville. Specific NOP comments include a request for a meeting with County staff regarding the County's analytical approach for traffic (please see the response to Roseville-A-9 for a discussion of the meeting that the County held with the City of Roseville), proposed Placer Parkway alignment and fee strategy (please see responses to SPRTA-2 and SPRTA-9 for a discussion of Placer Parkway alignment, and Roseville-A-11 for a discussion of fees and fair share), financing for ongoing recreation programs (addressed in this response), financing for library facilities and services (addressed in this response), and fire protection services at an urban level, including analysis of impacts to surrounding jurisdictions for fire protection (addressed in this response). For additional discussion of traffic and transportation issues, please see Master Responses 5 and 6, "Scope of Traffic Analysis" and "Traffic Mitigation."

With respect to park and recreation issues, Roseville's comment number 4 on the NOP requests that the DEIR address funding of ongoing recreational programs. The availability or source of funding for particular services is not a required subject for environmental review under CEQA. However, the Urban Services Plan, provided as Appendix F1 to the Specific Plan, includes a description of projected cost per unit for provision of recreational services, and identifies a surplus of recreational program funds during the period of project buildout.

With respect to library services issues, Roseville's comment number 5 on the NOP requests that the DEIR include mitigation to address funding of library facilities and services. The availability or source of funding for particular services is not a required subject for environmental review under CEQA. However, as discussed in Impact 3.8-6 on page 3.8-16, the impact of increased demand for library services is less than significant, and therefore mitigation measures are not required. Furthermore, the Urban Services Plan, provided as Appendix F1 to the Specific Plan, includes a description of projected cost per unit for provision of library services, and identifies a surplus of library program funds during the period of project buildout.

With respect to provision of fire protection services, Roseville's comment number 6 identifies the potential for impact to services based on an increase in mutual aid requests. The City of Roseville notes that it does not anticipate a significant impact from the project to the Roseville Fire Department, but suggests that the Draft EIR should analyze impacts to surrounding jurisdictions for fire protection. As described in Impact 3.8-2 (page 3.8-11 of the DEIR), the proposed project would include an urban level of fire

protection, and the impact related to increased demand for fire protection facilities, systems, equipment, and services is less than significant. Since adequate fire protection would be provided to the proposed project, no indirect impacts to surrounding jurisdictions are expected, consistent with the City of Roseville's own expectation described in its letter.

The City's views regarding the scope of the DEIR and analysis of impacts are noted. The DEIR included an analysis of all potentially significant impacts of the project, and where the impacts would occur.

Roseville-A-3 The commenter alleges that the Creekview Specific Plan was not included in the cumulative traffic analysis on page 3.3-20 of the DEIR.

Development in the Creekview Specific Plan was included in the cumulative conditions traffic analysis but was not summarized in DEIR Table 3.3-9 on Page 3.3-20..

Roseville-A-4 In addition to the Creekview Specific Plan, commenter states that other pending projects in the City of Roseville are missing from the cumulative traffic analysis on DEIR page 3.3-20, including the Downtown Specific Plan, Fiddyment Rezones, and Brookfield Specific Plan, and provide a list of the projects that should be included in the analysis.

The Creekview Specific Plan was included in the analysis of cumulative conditions beyond 2035 (super-cumulative) traffic analysis but was not summarized in DEIR Table 3.3-20. As stated on Page 3.3-113, the super-cumulative scenario was included for informational purposes only and was not used as the basis for identifying impacts and formulating mitigation because of the speculative nature of development so far into the future. Therefore, to clarify the discussion on Page 3.3-113, the analysis of super-cumulative scenario includes the development summarized in Table 3.3-20 (including the Creekview Specific Plan) with planned development project located on key study corridors, including the Riego Road/Baseline Road corridor and the SR 99/70 corridor. The planned projects added for the super-cumulative scenario include Curry Creek, the Natomas Joint Vision Area, and build-out of the Metro Air Park. Other development located further from these corridors was not included in the super-cumulative scenario. As shown in FEIR Chapter 3, "Corrections and Revisions to the DEIR," the text on Page 3.3-113 has been modified as follows:

CUMULATIVE CONDITIONS BEYOND 2035

The cumulative analysis also included one scenario that represents conditions beyond ~~2025~~2035. This scenario is referred to as the super-cumulative scenario and is included for informational purposes only. This scenario includes development outlined for cumulative year 2035 conditions and planned development projects near the Riego Road/Baseline Road and SR 70/99 corridors, including the potential Curry Creek development and the Natomas Joint Vision Area. Other potential development areas located further from these corridors were not included. ~~a forecast of build-out for all planned and proposed residential land in Placer County west of Sierra College Boulevard and t~~Table 33.28 summarizes~~ he following~~ major development projects in west Placer County and northern Sacramento County beyond year 2035 conditions.

In the second sentence of the comment, the commenter indicates that pending City of Roseville projects should be included in the cumulative analysis and identifies the Downtown Specific Plan, Fiddyment Rezones, and the future Brookfield Specific Plan. The following discussion is provided for clarification. Development in the Fiddyment Rezone area was included in the cumulative conditions traffic analysis but was not summarized in DEIR Table 3.3-9 on Page 3.3-20. The Brookfield development was not included in the cumulative analysis because it was not considered reasonably foreseeable at the time the NOP for the Sutter Pointe Specific Plan was issued. Development levels in areas more distant from the project site were based on 2025 SACOG land use forecasts, as outlined on Page 3.3-20 of the DEIR, which includes the Downtown Roseville Specific Plan area.

Roseville-A-5 The commenter makes the general statement that "The proposed mitigation measures are inadequate."

The County notes that it is not possible to respond with any degree of specificity because the commenter fails to state which mitigation measures in the DEIR he is concerned with.

The commenter goes on to cite the case of *Gray v. County of Madera* indicating that "EIRs need to have substantial evidence in the record of how impacts will be mitigated. Simple reference to a payment of fees is not adequate."

Assuming that the commenter is concerned with any of the mitigation measures in DEIR Chapter 3.3, "Transportation and Circulation," that require payment of fees as part of a mitigation strategy (this is the focus of other comments on fee payment), the commenter is referred to Master Response 6, "Traffic Mitigation," which provides a more detailed discussion of the legality of fee-based mitigation measures.

Roseville-A-6 The commenter restates Mitigation Measure 6 b (DEIR page 3.3-77), in which Sutter County will seek to negotiate in good faith with other jurisdictions to for the provision of adequate "fair share" mitigation payments. The commenter further states that DEIR does not include an analysis of the Sutter Point project's impacts on City of Roseville roadways and that this mitigation measure is premature.

The DEIR does include an analysis of certain roadways within the City of Roseville, as discussed particularly in Impact 3.3-1. At the time Sutter County commenced preparation of the Draft EIR, Public Resources Code Section 21092.4 provided that "'transportation facilities' includes major local arterials and public transit within five miles of the project site and freeways, highways, and rail transit service within 10 miles of the project site." (Emphasis added.) Effective January 1, 2009 (too late to influence the scope of the Draft EIR), the Legislature modified this definition to include "overpasses, on-ramps, [and] off-ramps . . . within 10 miles of the project site." Please refer to Master Responses 5 and 6, "Scope of Traffic Analysis" and "Traffic Mitigation," for a detailed discussion of the scope of the traffic analysis and the proposed approach to mitigating the extra-jurisdictional traffic impacts. See also Response to Comment Roseville-9 below.

Roseville-A-7 The commenter states that because no solid waste management facilities or transfer stations are located within Sutter County, all solid waste will be trucked and disposed of in other counties.

The commenter is correct that no solid waste management facilities or transfer stations are located within Sutter County. As stated on page 3.10-7 of the DEIR, the Regional Waste Management Authority works in conjunction with Yuba-Sutter Disposal, Inc.

(YSDI) to provide for the collection, recycling, and disposal of municipal solid waste in Sutter County. As further stated on page 3.10-7 of the DEIR, the off-site elements of the proposed project would extend into Placer and Sacramento Counties. Construction of the off-site program elements would generate temporary, short-term construction-related debris and solid waste. In Placer County, solid waste would be disposed of at the Western Regional Landfill, which is permitted to accept 1,900 tpd of solid waste. In Sacramento County, solid waste would be disposed of at Kiefer Landfill, which is permitted to accept a maximum of 10,815 tpd of solid waste.

The commenter also states that there is no analysis of the amount of waste that would be transported daily to off-site locations, nor the transportation routes, and that while the DEIR states that waste in Placer County will be transported to the Western Regional Landfill, there is no indication of the volume, types of waste, or how it would be transported.

DEIR Impact 3.10-4 (pages 3.10-19 and 3.10-20) sets forth a detailed calculation of the amount of projected generation of solid waste by the proposed project, and concludes that, "Combining residential and business solid-waste generation, total solid-waste generation for the proposed project would be approximately 120,656 tons per year (330.6 tpd). Much lower generation rates would occur at project initiation, with gradual increases in the rate as development progressed." The DEIR evaluates potential impacts at a programmatic level; the County understands the commenter's concerns, and notes that future CEQA review will be performed as tentative maps and improvements plans are put forward for approval. The specific details of the types of waste and the transportation routes cannot be ascertained until the specific project-level details (e.g., tentative maps and improvements plans) are placed before the County and other local regulatory agencies for consideration.

The commenter further suggests that an analysis of truck trips transporting solid waste to the Western Regional Landfill through the City of Roseville should be performed in the Sutter Pointe Specific Plan DEIR.

The DEIR evaluates potential impacts at a programmatic level; the County understands the commenter's concerns, and notes that future CEQA review will be performed as tentative maps and improvements plans are put forward for approval. The specific transportation routes cannot be ascertained until the specific project-level details (e.g., tentative maps and improvements plans) are placed before the County and other local regulatory agencies for consideration.

Roseville-A-8 The commenter states there is no analysis of truck routes that would be used for waste that is hauled to the YSDI Integrated Waste Recovery Facility/Ostrom Road Sanitary Landfill, and asks what impacts will occur to Highway 65 or other roadways in Placer County.

Please see response to Roseville-A comment 7.

Roseville-A-9 The commenter indicates that the City submitted comments on the NOP requesting a meeting with Sutter County to discuss how to identify potential impacts of Sutter Pointe on the City's transportation system, but no such meeting was ever held. The commenter reiterates that the DEIR does not contain any analysis for transportation impacts to Roseville facilities and that the Final EIR needs to address project-specific impacts to Roseville and fair share mitigation for Roseville facilities. Finally, the commenter states

that if significant transportation related impacts to the City are identified, the draft EIR would need to be recirculated.

As the City of Roseville has acknowledged in a letter to Sutter County dated February 20, 2009 (included in the FEIR as Roseville-B), a meeting occurred on July 9, 2007 between the City of Roseville staff, Sutter County's traffic consultant, the project applicants, and the applicant's traffic consultant. At that meeting, the applicant's traffic consultant described the proposed methodology for studying the potential impacts to the City's transportation system and the proposed traffic study area. According to an internal memorandum prepared by the County's traffic consultant (provided in Appendix M to this FEIR) based on notes taken at the meeting (and produced and transmitted on the day of the meeting), the City staff considered the proposal by the applicant's traffic consultant and found it to be a reasonable approach. Although the February 20, 2009 letter from the City sets forth the City's recollection of details of the meeting, this recollection is inconsistent with the contemporaneous notes taken by Sutter County representatives the day of the meeting.

Nevertheless, the DEIR analyzed the transportation facilities based on modeling results and as defined and required by CEQA (Pub. Resources Code Section 21092.4(b)) which identifies major local arterials and public transit within five miles of the project site and freeways, highways, and rail transit service within 10 miles of the project site. The City of Roseville facilities were not analyzed since they are more than five miles from the project site. The traffic engineer investigated the amount of traffic added by the project to major local arterials in the region, and did extend the study limits beyond those specified by the Public Resources Code where warranted by the modeling. For example, the study area extended eastward more than five miles from the project limit to the intersection of Fiddyment and Baseline Roads. Consequently, the geographic scope of the traffic analysis is considered sufficient to identify all significant traffic impacts on major local arterials. Please see Master Responses 5 and 6, "Scope of Traffic Analysis" and "Traffic Mitigation," for a detailed response regarding the duty of the County to evaluate traffic impacts in the surrounding area.

Roseville-A-10 The commenter reiterates that it is open to negotiating reciprocal cross-jurisdiction agreements to address cumulative "fair share" mitigation payments for traffic impacts, as described in DEIR Mitigation Measure 3.3-1, but that such discussions cannot begin until the impacts from the Specific Plan on the City of Roseville's transportation system are completed.

Please see Master Responses 5 and 6, "Scope of Traffic Analysis" and "Traffic Mitigation," for a discussion as to why the County believes impacts to the circulation system in the surrounding area has been appropriately analyzed and mitigated in the DEIR. The inter-agency agreements proposed in DEIR Mitigation Measure 3.3-1 would include mechanisms to assess and mitigate for fair-share impacts from regional development projects as related to the Sutter Pointe Specific Plan.

Roseville-A-11 The commenter describes the South Placer Regional Transportation Authority (cities of Roseville, Rocklin, Lincoln, and unincorporated Placer County) and the process of approving a Memorandum of Agreement to establish a "Tier II Development Fee program" for new growth areas in southwest Placer County to fund approximately $475 million for Placer Parkway.

The commenter further states that Mitigation Measure 3.3-1 in the DEIR should include a reference to a fee program to fund the project's fair share contribution to the proposed Placer Parkway project, base the calculation of the fee on the same methodology as used in the Tier II fee program, and commit to the County to coordinating through PCTPA and the South Placer Transportation Authority.

Please see Master Response 6, "Traffic Mitigation," for a discussion regarding the legal requirements of traffic mitigation as contained in the Sutter Pointe Specific Plan DEIR. As detailed in DEIR Mitigation Measure 3.3-1, good faith negotiations between the member jurisdictions of the South Placer Regional Transportation Authority and Sutter County could include a review of the methodology used to develop the Tier II fee, including what projects (i.e., part of Placer Parkway) that are being funded with the Tier II fee, relative to the reciprocal payments and credits for the cost of improvements that the Sutter Pointe Specific Plan would incur for improvements needed to accommodate its development.

Roseville-A-12

The commenter states that, considering the City's perceived need for a substantial amount of additional traffic study, the City would appreciate an opportunity to review and comment on pertinent sections of any administrative draft analysis prepared in response to the above comments as part of either a recirculated draft EIR or for Final EIR.

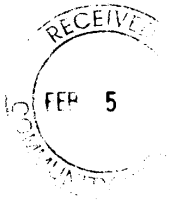
Sutter County respectfully disagrees with the commenter's assertion that a "substantial amount of additional traffic study" is needed to make the EIR's traffic analysis adequate for the reasons listed in response to comment Roseville 9 and Master Responses 5 and 6,"Scope of Traffic Analysis" and "Traffic Mitigation." These responses contain a detailed discussion as to why the County believes the traffic analysis contained in the DEIR is adequate and no further environmental analysis is necessary.

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FRAQMD



Serving Sutter and Yuba Counties



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David A. Valler, Jr.
Air Pollution Control Officer

February 5th, 2009

Doug Libby, Principal Planner
Planning Department
1130 Civic Center Blvd.
Yuba City, CA 95993
Fax: 822-7109

Re: Sutter Pointe Specific Plan DEIR

Dear Mr. Libby,

Feather River Air Quality Management District appreciates the opportunity to review and comment on the above referenced project. The District staff have provided the applicant with information regarding the development of the Master Air Quality Mitigation Plan (MAQMP), modeling the emissions from the project, and evaluating the project's impact to air quality and climate change. The District appreciates the efforts made by the applicant to develop a plan to reduce the project's impact to air quality. Overall, the applicant has addressed many of the concerns of the District in regards to incorporating a MAQMP that all future phases of development must adhere to, in creation of a Transportation Management Agency to provide comprehensive transit service, phasing of residential and commercial/industrial development to provide housing as well as employment and services simultaneously, promoting energy efficiency in building design, and the creation of pedestrian/bicycle friendly communities. The District does have some remaining concerns with the DEIR and would like to provide the following comments. 1

Master Air Quality Mitigation Plan

1. **Remove the reduction in bicycle parking at commercial land uses.** Sutter County Zoning Code section 1500-8118 (e) (1) requires commercial and industrial land uses provide bicycle parking at a ratio of 3% of required auto parking. The MAQMP incorporates the mitigation measure 10.3 Bicycle Storage, which increases the required bicycle parking by 20%, which is an appropriate mitigation measure. However, 10.3 goes on to state that certain facilities such as restaurants, medical centers, and retail centers will be exempt from this mitigation measure, and in fact only provide 2% bicycle parking per required auto parking. The District does not recommend reducing the required bicycle parking at these commercial uses. Restaurants and retail centers would be ideal 2

candidates for increased bicycle parking facilities to encourage patrons to utilize this alternative mode of transport. While many visitors to medical centers may not be the best candidates for bicycling, the staff working at the medical centers should be allotted at least the same percent of bicycle parking as other land uses. The reduction in bicycle parking should be removed from the DEIR and all commercial land uses be held to the same mitigation measure of 20% increase in bicycle parking. 2 Cont'd

2. **The SPSP should prohibit all woodburning devices.** The District has been designated nonattainment for particle matter (PM) pollution for California Ambient Air Quality Standards (AAQS) for PM 10 as well as the Federal AAQS for PM 2.5. Under the Air Quality section 3.4, the DEIR lists Standard Mitigation Measures Applicable to all Projects (Page 3.4-32). One of the measures is to use only EPA Phase II-certified woodburning devices. The District would strongly recommend prohibiting all woodburning devices. Residential woodburning is a significant contributor to PM 10 and PM 2.5 emissions, especially during wintertime months when the District has the highest number of exceedences above the AAQS. Woodburning devices, even when EPA Phase II-certified, may still emit PM when not used properly, or during initial lighting up of fires. By restricting all woodburning devices, the project would reduce the emissions of PM pollution, for Phase I and Phase A only, by 1,322 lbs/day; ROG emissions by 1,563 lbs/day; and NOx emissions by 182 lbs/day (according to Table 3.4-5). While the mitigation measure will not reduce the impact of Phase I and Phase A to a less than significant level, prohibiting woodburning devices would reduce operational PM 10 emissions by 36%. The District believes this is a significant reduction in emissions that is feasible and simply implemented, and considering the District's nonattainment status for PM, should be mandatory for all Phases of the SPSP. 3

Mitigation Measures for Phase I and Phase A

1. **Mitigation measures for Phase I and Phase A have not been adequately addressed nor incorporated in the DEIR.** The mitigation measure for impact 3.4-7 Generation of Long-Term Operation-Related Emissions of Criteria Air Pollutants for development of Phase I and Phase A simply refers back to MM 3.4-2 (page 3.4-52). MM 3.4-2 (beginning on page 3.4-32) lists four measures that are standard and several measures that are "Supplemental" or "Additional." The District does not believe that mitigation measures for Phase I and Phase A have been adequately outlined in the DEIR. The applicant should clearly state which measures Phase A and Phase I will incorporate out of the "Supplemental" and "Additional" measures as part of the mitigation for impact 3.4-7. The applicant should also make part of its mitigation measures for impact 3.4-7 specific targets and goals for the measures that are enforceable (see comment #3). 4

2. **The DEIR has not set a specific percent reduction in emissions that will be achieved by Phase I and Phase A.** Page 3.4-32 of the Air Quality Section states "Each individual AQMP shall prescribe a percent reduction target for emissions of ozone precursors and PM10 as determined by Sutter County in consultation with FRAQMD." The District agrees with this statement, yet could not find where in the DEIR a specific percent reduction for Phase I and Phase A had been proposed. The District recommends that 5

Phase I and Phase A achieve a 30% reduction in emissions by incorporating specific measures from the MAQMP and MM 3.4-2. 5 Cont'd

3. **Many of measures in MM 3.4-2 are weak and unenforceable.** The District recommends the use of measures that set specific goals and/or targets, rather than qualitative and therefore, unenforceable. Examples of vague, unenforceable mitigation measures included in the DEIR are:

   - Consider passive solar cooling and heating designs, ceiling and whole house fans, and programmable thermostats in the design of heating and cooling systems. 6
   - Implement energy-efficient design feature in all buildings.
   - Use clean fuel vehicles in the vehicle fleet.
   - Provide bicycle storage at apartment complexes or condos without garages.

   The District recommends that Air Quality Mitigation Plans incorporate specific targets for mitigation measures. The Phase I and Phase A mitigation measures should describe these targets along with the mitigation measures that should be included in this EIR.

The District staff will be available to the Lead Agency or Project Proponent as needed. Please call me at (530) 634-7659 ext 210.

Sincerely,

Sondra Andersson
Air Quality Planner

Enclosures: None

File: Chron

FRAQMD-1 The comment is a general introduction to its comments on the DEIR. Specific responses to comments are provided below.

FRAQMD-2 The commenter recommends that the Specific Plan use the bicycle storage standards set forth in the County Zoning Code (three percent of required auto parking spaces) for restaurants, medical centers and retail centers, instead of two percent of required auto parking spaces as proposed in the Land Use and Development Code (Appendix B to the Specific Plan).

For the Sutter Pointe Specific Plan, the County prefers the approach proposed in the DEIR because it is more likely to induce the use of the bicycle storage facilities. The County Zoning Code requires bicycle storage spaces at a ratio three percent of required auto parking spaces, but has no mandatory obligation for the type of bicycle storage space. Under the County Zoning Code all bicycle storage could be in the form of frame locking racks, which provide limited theft protection. (See Appendix I to the Specific Plan, Master Air Quality Mitigation Plan, page 20.) In the proposed Land Use and Development Code, 75% of all bicycle parking spaces must be enclosed lockers (Class I storage facilities), which provide a higher level of theft protection and increase the likelihood of use. The County believes that by providing more Class I bicycle storage facilities, the goal cited by the commenter of encouraging more Plan-area employees to bicycle to work is more likely to be effected. Therefore, no change is proposed to the Specific Plan or DEIR.

FRAQMD-3 The commenter notes that Section 3.4, "Air Quality," of the DEIR lists Standard Mitigation Measures Applicable to all projects (page 3.4-32) and that one of the measures is to use only EPA Phase II-certified wood burning devices. The commenter recommends prohibiting all wood burning devices as mitigation.

As shown in FEIR Chapter 4, "Corrections and Revisions to the DEIR," the following revisions have been made to Mitigation Measure 3.4-2 (page 3.4-32) in Section 3.4, "Air Quality":

> **FRAQMD Standard Mitigation Measures Applicable to All Projects**
>
> - ~~Use EPA Phase II-certified devices for all newly installed woodburning devices.~~ Prohibit wood burning devices in all residences.

FRAQMD-4 The commenter asserts that mitigation measures for GHG emissions of Phase 1 and Phase A have not been adequately outlined in the DEIR, and asks that the DEIR identify specifically which measure will be implemented rather than providing performance standards. The commenter states that mitigation measures for Impact 3.4-7 should include specific targets and goals that are enforceable.

The County notes that this DEIR is not intended to contain a project-level evaluation of CEQA impacts; rather, the DEIR offers a programmatic level of evaluation. Further

evaluation of CEQA impacts will be required as tentative maps and improvements plans are brought before the County for each of phase of development. Please see Master Response 2—Programmatic Nature of EIR Analysis and Master Response 3—Deferred and/or Hortatory Mitigation for further discussion of this issue. Please see also Master Response 7— Greenhouse Gas Analysis and Mitigation for detailed discussions as to why the County believes that Mitigation Measure 3.17-2 is appropriate for the programmatic nature of the analysis presented in the DEIR. No changes to the text of the DEIR are required.

FRAQMD-5

The commenter agrees with the approach of preparing an AQMP with each phase of development and having each AQMP prescribing a percent reduction target for emissions. The commenter notes that the DEIR does not propose a specific percent reduction to be achieved in the Phase I and Phase A areas. The commenter further recommends a 30% reduction standard be applied in the Phase I and Phase A AQMDs.

The EIR is programmatic. This DEIR is not intended to provide project-level analysis for the Phase I and Phase A areas. At the time of issuance of the NOP in March 2007, the County considered preparing the Sutter Pointe to cover the Phase I and Phase A at the project-level of detail. However, since that time, the County decided to prepare the Sutter Pointe DEIR as a program-level EIR (see DEIR page 1-6). For that reason, DEIR Mitigation Measure 3.4-2 requires an individual air quality mitigation plan to be developed with each phase of the project and the percent emission reduction targets for emissions of ozone precursors and PM_{10} to be determined by the County in consultation with FRAQMD at that time. Prior to each phase of development, the applicants for that phase will need to submit a phasing plan with the tentative map for the phase. As part of that approval process, the applicants will be required to submit an AQMP that has been prepared in consultation with FRAQMD and that is to be approved by the County. It is at that point that applicants and the County will have enough information to determine whether a specific phase of the project can meet a particular emission reductions standard imposed by the County in consultation with the air quality district.

The commenter does not explain whether FRAQMD has adopted the 30% reduction standard that the commenter recommends as a standard percent reduction target for all new development. The County understands that FRAQMD has not yet adopted any specific percentage reduction target for new development. For comparison, Sacramento Metropolitan Air Quality Management District (SMAQMD) has adopted a 15% emissions reduction standard for new development. At the time that applicants for future phases of site-specific development within Sutter Pointe undergo their review and consultation with the County and FRAQMD in the process described above, the County will determine whether to recommend requiring SMAQMD's existing 15% reduction standard, if FRAQMD has not yet adopted its own standard, or a different standard as determined appropriate in consultation with FRAQMD.

FRAQMD-6

The commenter suggests that four of the measures listed in DEIR Mitigation Measure 3.4-2 are weak and unenforceable because they are qualitative rather than quantitative. The commenter requests that the Phase 1 and Phase A mitigation measures incorporate specific emissions reduction targets.

The County notes that this DEIR evaluates impacts at a programmatic level. The analysis contained in the DEIR is not intended to serve as a project-level evaluation of Phase 1 or Phase A (See response to FRAQMD-5). Consistent with the commenter's recommendation, specific emissions reduction targets and quantitative mitigation

measures will be determined during future project-level review of Phase 1 and Phase A. Please see response SMAQMD-18 for a discussion of the nature of the programmatic measures provided in Mitigation Measure 3.4-2. No changes to the text of the DEIR are required.

Yuba City

CITY of YUBA CITY COMMUNITY DEVELOPMENT

1201 CIVIC CENTER BOULEVARD, YUBA CITY, CA 95993 • (530) 822-4700/822-4629 • FAX (530) 822-4694

February 5, 2009



Mr. Doug Libby, Principal Planner
Sutter County Community Services Department
1130 Civic Center Boulevard
Yuba City, CA 95993

Subject: Comments on Sutter Pointe Specific Plan Draft Environmental Impact Report

Dear Mr. Libby,

Thank you for the opportunity to review and comment on the proposed Sutter Pointe Specific Plan project. The City of Yuba City has reviewed the Draft Environmental Impact Report (DEIR), Specific Plan and associated documents and would like to offer the following.

The proposal to develop the subject property with over 49 million square feet of commercial, office, and industrial space has the potential to negatively impact the City of Yuba City's long-term fiscal health. Although the fiscal impacts upon Yuba City are not considered an environmental impact under CEQA, the City believes that a fiscal analysis should be prepared to determine the potential effect(s) that the development of a new "city" (as defined in Objective 15 of the DEIR document) would have upon Yuba City. 1

Additionally, the proposed project has the potential to adversely impact Yuba City's planned jobs/housing balance with the development of two significant employment centers and limited affordable housing within the plan area. The proposal to provide only five percent affordable housing within the boundaries of the plan for future employees appears inadequate. As a result, a potential imbalance of residential development within Yuba City beyond that anticipated for an acceptable jobs/housing balance could be created. The City of Yuba City requests that additional analysis be completed in the DEIR to address this concern. 2

Thank you for your consideration of the above comments. If you have any questions, please do not hesitate to contact me at (530) 822-5135.

Sincerely,

Aaron Busch
Community Development Director

cc: Larry Combs, County Administrator
Steven Jepsen, City Manager

Building Division 822-4629 • Planning Division 822-4700
website: www.yubacity.net

Yuba City-1

The commenter asserts that the proposal to develop the project site with over 49 million square feet of commercial, office, and industrial space has the potential to negatively impact the City of Yuba City's long-term fiscal health. The commenter notes that the fiscal impacts upon Yuba City are not considered an environmental impact under CEQA, but nevertheless requests that a fiscal analysis be prepared. As stated in CEQA Guidelines Section 15131, "Economic or social effects of a project shall not be treated as significant effects on the environment. … The focus shall be on physical changes." The County believes that purely economic considerations are properly addressed through the planning process. No changes to the analysis contained in the DEIR are required in response to this comment. In any event, consistent with Measure M, the proposed project would represent a substantial reduction in the acreage designated for commercial and industrial uses in south Sutter County from 9,500 under the existing General Plan to approximately 3,600 acres.

Yuba City-2

The commenter states that the proposed project has the potential to create an imbalance in Yuba City's planned jobs/housing balance, and suggests that the proposal to provide five percent affordable housing is inadequate. The commenter requests additional analysis in the DEIR to address this concern. As discussed in DEIR Impact 3.2-3 (p. 3.2-9), the proposed project provides affordable housing in accordance with Sutter County's general plan and Affordable Housing Program Ordinance. In anticipation of a comment regarding the proposed project's jobs/housing balance, a discussion of the jobs/housing balance in the Sacramento, Sutter, and Placer County region is presented on p. 5-13 of the DEIR. However, the jobs/housing balance itself does not represent a physical impact on the environment. By themselves, economic and social impacts of a project "shall not be treated as significant effects on the environment. (CEQA Guidelines, §§ 15131, subd. (a), 15382.) "An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. . . . The focus of the analysis shall be on the physical changes." (Ibid.) The magnitude of the economic and social consequences may be relevant in determining whether the physical impacts are significant, but there must be an associated physical change before an agency is required to evaluate economic and social effects in an EIR. Thus, the proposed project's incidental effects on the jobs/housing balance does not necessitate discussion in an EIR unless such effects are "related to or caused by physical change." (Ibid.)

Sacramento

PLANNING DEPARTMENT
NEW GROWTH DIVISION

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February 6, 2009

Mr. Doug Libby, AICP
Principal Planner
Sutter County Community Services Department
1130 Civic Center Boulevard
Yuba City, CA 95993
dglibby@co.sutter.ca.us

Subject: Comments on Sutter Pointe DEIR

Dear Doug:

The City has reviewed the Draft EIR for the Sutter Pointe Specific Plan. The Specific Plan covers 7,528 acres of agricultural land in south Sutter County and would guide development of a mixed-used community over an approximately 20- to 30-year period. The project proposes approximately 49.7 million square feet of industrial, commercial, and business/ professional development; and 17,500 low-, medium-, and high-density residential units. 1

The City has three key issues addressed in this letter:

- Total specific plan acreage exceeds authorized HCP incidental take permit 2
- importance of maintaining a setback from existing TNBC preserves 3
- potential connectivity of vehicular and bicycle roads and open space trail systems between the Sutter Pointe Specific Plan Area and any future development in the Natomas Joint Vision Area. 4

HCP Incidental Take Permit

Sutter County is authorized for slightly less HCP acreage than the 7,528 acres covered in the Specific Plan. Any development beyond the 7,467 acres to be covered under its incidental take permits will not be covered under the respective incidental take permits and will trigger a reevaluation of impacts to and mitigation for biological and other resources in the Natomas Basin and amendment of the NBHCP and the incidental take permits or development of a new HCP and issuance of new incidental take permits to address such impacts and mitigation as appropriate. 2 Cont'd

Setbacks from TNBC Preserves

The HCP requires that TNBC preserves include a buffer from adjacent uses. The buffers will help ensure that the management of reserve lands does not impose an unnecessary burden on 3 Cont'd

adjoining landowners and that the adjacent development minimizes impacts on the habitat. (2003 HCP, Section IV-C-1-c). However, the preserves were designed prior to the entitlements of land within Sutter County, and the existing preserves may not have adequate setbacks. The Sutter Pointe Specific Plan calls for a 200' setback from the existing preserves. While this setback may be adequate for non-residential uses, it may not be sufficient for residential uses. We urge the County to require additional setback from the existing preserves at the County line. 3 Cont'd

Potential Connectivity for Vehicles & Bicycles

The emerging vision for future additional development of lands within the Sacramento County of the Natomas Basin is based on the premise that Natomas should have exceptional development. As such, there is an opportunity for the jurisdictions to coordinate land use plans with respect to roadways and trails. 4

The City looks forward to working through these issues with the Natomas Joint Vision and Sutter Pointe property owners group and the counties of Sacramento and Sutter, among others.

Sincerely,

Scot Mende
New Growth Manager

Copies Sent to:
Carol Shearly, Director of Planning, City of Sacramento
Robert Sherry, Director of Planning & Community Development, Sacramento County

Letter **Sacramento** Response	City of Sacramento Scot Mende, New Growth Manager February 6, 2009

Sacramento-1

The commenter restates a portion of the project description. The comment is general and does not address the contents of the DEIR; no further response is warranted.

Sacramento-2

The commenter notes that Sutter County is authorized for slightly less HCP acreage than the 7,528 acres covered in the Specific Plan and suggests that any development beyond the 7,467 acres to be covered under its incidental take permits will not be covered under the respective incidental take permits and will trigger a reevaluation of impacts to, and mitigation for, biological and other resources in the Natomas Basin, amendment of the NBHCP and the incidental take permits or development of a new HCP, and issuance of new incidental take permits to address such impacts and mitigation.

Sutter County is authorized to develop and convert 7,467 acres of habitat lands to urban uses. The commenter suggests that the Specific Plan exceeds this acreage limit because it is identified as encompassing 7,528 acres. Because this amount supposedly exceeds the 7,467 acres covered by the NBHCP, the comment suggests that the proposed project must be reevaluated under the NBHCP and that it would require amendments to the NBHCP and new take permits.

The commenter neglects to consider that existing developed properties within Sutter County are exempt from the NBHCP. For example, according to the NBHCP, 146 acres of urban development and 291 acres of roads and highways were developed in Sutter County prior to 1997 and are considered "exempt" from the NBHCP. (NBHCP, at page III-2, page III-16.) Likewise, Exhibit C to the NBHCP Implementing Agreement (referred to as the "Sutter County Baseline Map") identifies several developments within the Sutter County Permit Area that are "Exempt Lands." Without including the existing road rights-of-way—which are also exempt from the NBHCP—the Exempt Lands identified on Exhibit C to the NBHCP total about 228 acres. When the Exempt Lands are excluded from the total acreage identified in the Specific Plan, the SPSP area consists of 7,300 acres of urban development already covered under the NBHCP. The total development acreage subject to the NBHCP drops even further when the road rights-of-way are subtracted from the Specific Plan. In addition, much of the proposed infrastructure—drainage, outfalls, intakes, sewer lines, water lines, and other utilities—are already proposed to be developed within existing paved rights-of-way or other developed infrastructure, and thus would be similarly exempted from the NBHCP's acreage calculations. Consequently, the Sutter Pointe Specific Plan and related infrastructure is well within the County's acreage limit and would not trigger reevaluation under the NBHCP. Therefore, the County believes that the proposed project does not exceed Sutter County's approved 7,467-acre allocation, and that DEIR Impact 3.13-6 correctly concludes this impact is less than significant.

In consideration of the commenter's concern, text will be added to page 5-2 and page 10-25 of the Specific Plan stating that each phase of project-level development will perform an exact accounting of the number of on-site and off-site acres, the results of which will be provided to the County for review. The County reiterates that it will not issue any Specific Plan-related permits or authorize any Specific Plan-related development that exceeds the total acreage allowed in Sutter County's Incidental Take Permit (currently 7,467 acres).

Sacramento-3 The commenter notes that the NBHCP requires that preserves include a buffer from adjacent land uses, that the preserves were designed prior to the entitlements within Sutter County, and that existing reserves may not have adequate setbacks. The commenter urges the County to require additional setback from the existing preserves at the County line. The commenter urges Sutter County to consider requiring additional setbacks from the existing preserves.

See Responses to Comments NBC-3, -5, and -6, above. As the commenter appears to acknowledge, the setback and buffer criteria in the NBHCP concern the initial decision to acquire and establish new reserve areas. The setback and buffer criteria do not apply to prohibit or otherwise limit development within authorized permit areas. (DEIR Section 3.13, "Biological Resources," at page 3.13-52.) Reserves are to be located with consideration of areas planned for development. The Sutter County Permit Area was planned for development and incidental take was authorized by the USFWS and DFG. Nonetheless, the SPSP includes an open-space buffer immediately north of the Central Basin Reserve that would help avoid any indirect effects on nearby reserve units. (DEIR Section 3.1, "Land Use," at page 3.1-21.)

Sacramento-4 The commenter states that one of its issues of interest is the potential connectivity of vehicular and bicycle roads and open space trail systems between the Sutter Pointe Specific Plan and any future development in the Natomas Joint Vision Area. The commenter suggests that Sutter Pointe should coordinate with the Natomas Joint Vision Area.

See Response to Comment Brookfield–15.

SCAS

County Executive
Terry Schutten

Sacramento County
Airport System
G. Hardy Acree, Director of Airports

County of Sacramento

Sacramento International Airport
Mather Airport
Executive Airport
Franklin Field

February 6, 2009

Mr. Doug Libby, AICP
Principal Planner
Sutter County Community Services Department
1130 Civic Center Boulevard
Yuba City, CA 95993

Subject: Comments on Draft Environmental Impact Report (DEIR)
Sutter Pointe Specific Plan

Dear Mr. Libby:

Thank you for taking into consideration the comments submitted by the Sacramento County Airport System (County Airport System) on April 24, 2007 in response to the Notice of Preparation (NOP) issued for the proposed Sutter Pointe Specific Plan project. Although we are pleased that it appears a number of our comments and concerns were taken into consideration in preparation of the DEIR, several issues warrant additional comment. Our 2007 comments focused on three areas:

- The relationship between the components of the Master Plan for Sacramento International Airport (Sacramento International) and the proposed Sutter Pointe Specific Plan Project (Project);
- The potential impact of aircraft noise resulting from increased operations at Sacramento International; and
- The potential impact on the Project resulting from future potential aircraft operations at McClellan Airport, which is managed by the County Airport System on behalf of the County of Sacramento Department of Economic Development and Intergovernmental Affairs (DEDIA).

1

Our current comments follow.

Sacramento International Airport (SMF) Master Plan

As noted in our previous letter, in February 2004 the Sacramento County Board of Supervisors (Board) accepted the draft Master Plan for Sacramento International (Master Plan), and directed initiation of an environmental analysis of the plan pursuant to the California Environmental Quality Act (CEQA). Our 2007 letter therefore suggested that

2

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the EIR for the Sutter Pointe project would "…be incomplete unless potential impacts of the SMF Master Plan are thoroughly examined." The County Airport System remains concerned about the potential unintended consequences of locating a large multi-use complex due north of Sacramento International, especially in light of the future airport master plan operational projections summarized in Table 1 at the end of this letter.

On August 7, 2008, the Board certified the Final EIR for the Master Plan, approved the plan, and approved the Mitigation Monitoring and Reporting Program (MMRP). As a result, the "All North" alternative for adding 2,400 feet to the East Runway (16L/34R) was identified as the Environmentally Superior Alternative. The configuration of the runway extension was depicted in an exhibit provided with our April 2007 letter, which is again enclosed for reference. It is anticipated that the runway extension will become operational in 2018. Its potential impact on the Sutter Pointe project was described as follows in our 2007 letter: 2 Cont'd

> This extension would position the end of runway 16L almost a half-mile closer to the Project (than is currently the case), and would result in an aircraft angle of approach that would bring aircraft close to the low and medium density housing proposed for the east side of State Route 99/70. It is possible that most—if not all—of the proposed maximum of 17,500 residential dwelling units would therefore be exposed to aircraft overflights. In addition, commuting patterns between the Project and Sacramento International would be potentially impacted by the northward relocation of Elverta Road that would be necessitated by the "all north" extension of the east runway.

Potential Impacts on Willey Wetland Preserve

As you are no doubt aware, between 2006 and 2008 the County of Sutter facilitated establishment of the County of Sacramento's 217-acre Willey Wetland Preserve (Preserve), located on the south side of Sankey Road (County of Sutter project 06-073). As shown on enclosed Exhibit 1, the RD 1000 West Drainage Canal forms the east boundary of the preserve, and a portion of the south boundary. At its meeting of January 29, 2008, the Sutter County Board of Supervisors took the following action regarding the Preserve: 3

> Adopted the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program; and authorized the Community Services Director to accept the Grant of Open Area Easement and Agreement to Dedicate Development Rights from Sacramento County Airport System.

Including land acquisition, construction, endowment payment and consulting fees, the County Airport System expended approximately $18.5 million in creating the Preserve. The Preserve was created under the requirements of a Settlement Agreement between the United States Department of the Interior and the County of Sacramento, and is man-

aged in perpetuity by the Center for Natural Lands Management (Center). Third party beneficiaries to the preserve include the US Fish and Wildlife Service, the US Army Corps of Engineers, and the Center. On February 2, 2009, the United States Fish and Wildlife Service notified the County Airport System that the terms of the Settlement Agreement under which the Preserve was established had been completed to the satisfaction of the Service. The Preserve was exclusively designed to provide upland and aquatic habitat for the giant garter snake (GGS), a species listed as "threatened" under the federal and State Endangered Species Acts. Because of the proximity of the Preserve to the approach and departure zone for the east runway of the airport, however, the Preserve consists of narrow, steep-sided channels intended to minimize the attraction of hazardous wildlife. In addition, the channels can be drained during the winter, when the GGS is hibernating in burrows within the channel banks.

3 Cont'd

As noted in the DEIR, "The third alternative would involve directing the Sankey Gap overflow into a channel flowing westward along the Sankey Road corridor, crossing under Sankey Road and SR 99/70, and stored at a location west of the project site..." The DEIR does not mention or consider the impact of the proposed detention basin in close proximity to the sensitive GGS habitat comprising the Preserve. The County Airport System is therefore greatly concerned that introducing the detention basin so close to the Preserve would impact the hydrology of the Preserve, and therefore potentially impact the County Airport System's investment of $18.5 million. Please conduct a detailed hydrological analysis to determine how the proposed detention basin would impact the preserve, and measures for avoiding and/or mitigating such impacts.

Proposed Detention Basin and Hazardous Wildlife Attractants

It is with concern that we noted on Exhibit 3.7-11 of the DEIR that Alternative Three – Conceptual Drainage Plan, includes a large detention basin immediately east and south of the Willey Preserve. The proposed location of the detention basin is of concern to the County Airport System because the Federal Aviation Administration (FAA) Advisory Circular addressing hazardous wildlife management[1] strongly discourages the establishment of hazardous wildlife attractants, such as detention basins, within a five-mile radius of airports serving turbine-powered ("jet") aircraft. (The County Airport System refers to the 5-mile perimeter as the General Zone.)

4

As shown on the enclosed exhibit depicting the current and projected future location of the General Zone and 10,000-foot "Critical Zone," for the airport, the proposed site of the detention basin is well within both the current and projected perimeter of the General Zone. We therefore strongly suggest that the conceptual drainage plan for the Sutter Pointe Specific Plan should be designed to meet the design criteria specified in the referenced FAA Advisory Circular, or that the proposed Detention Basin Spill be located outside the current and future General Zone for Sacramento International Airport.

[1] *Hazardous Wildlife Attractants on or Near Airports*. Advisory Circular 150/5200-33B, August 28, 2007.

It was noticed that Exhibit 3.1-5 shows what appears to be landscaped open water features within the park areas on the southeast portion of the project area amongst various residential land uses. Because these features are located within the FAA recognized General Zone, they too have the potential to attract wildlife hazardous to aircraft. It is recommended that these features be required to incorporate design features to reduce the attraction of wildlife. While the aforementioned FAA Advisory Circular provides guidance to assist in reducing the attractant factors associated with various landscapes, including retention and detention basins, wetlands, marshes, etc., it is strongly recommend that airport wildlife staff be consulted regarding design features of these elements to minimize the hazardous wildlife attractant factor arising from their creation. 4 Cont'd

Landscaped areas should not be an attractant to hazardous wildlife through roosting and feeding. It is recommended that airport staff be consulted to review all landscaping plans to ensure that proposed vegetation is not fruit-bearing, that such plants have predominately vertical branching systems, and are not attractive for use by wildlife. 5

Airport staff is available to assist in the interpretation of the FAA Advisory Circular to meet the above recommendations. Should these recommendations not be acceptable, we would otherwise request that a Bird Aircraft Strike Hazard Analysis be a conducted to ensure wildlife attraction will not increase the hazard to aircraft and passenger safety and that the findings of that analysis be adopted for implementation as a condition of project approval. 6

Airport Related Emissions

The DEIR includes a summary discussion of the potential impacts of "Airport-Related Emissions" relative to the proposed project. The analysis focuses on research findings at other airports, but fails to include any reference to the detailed air quality analysis that appeared in the FEIR for the Sacramento International Airport Master Plan, or the Environmental Assessment (EA) prepared for the Terminal Modernization Program (TMP) for the FAA pursuant to the National Environmental Policy Act (NEPA). Again, the Master Plan was certified by the Sacramento County Board of Supervisors on August 7, 2007, and the FAA issued a Finding of No Significant Impact/Record of Decision (FONSI/ROD) on April 7, 2008. Chapter 8 of the Master Plan FEIR analyzed all potential short-term construction and long-term operational air quality impacts. We respectfully suggest that the FEIR and EA would have been preferable source documents for the Sutter Pointe Specific Plan DEIR. Chapter 8 of the master plan FEIR was transmitted to you by email on February 5, 2009, and Section 5.5 of the EA was transmitted on February 6, 2009. 7

Probable Noise Effects Resulting From the Proposed Project

Section 3.5 addresses noise effects resulting from the proposed project, including the potential for impacts associated with aircraft operations to and from SMF. In reviewing 8

the portions of this section pertaining to these impacts, impact 3.5.2 highlights those impacts on residential and school uses developed within the project site. The voluntary requirement for deed notices for areas affected by aircraft overflights is commendable. However, it is not clear exactly which areas are to be subject to the deed notice requirement. Review of data and analyses used in the establishment of Sacramento County's Airport Planning Policy Area (APPA) for SMF indicates that all residential land uses proposed within the entire project area should be subject to the deed notice requirement. The enclosed package of executed materials recorded when the SMF APPA was established by the Sacramento County Board of Supervisors in April of 2006 includes the recommended SMF APPA based on where large aircraft routinely operate at altitudes below 3,000 above the ground, unconstrained by political boundaries. 8 Cont'd

As indicated by the executed APPA materials, within the APPAs, residential land uses within the 60 CNEL noise contour are prohibited, and residential land uses inside the APPA but outside the 60 CNEL noise contour are conditioned to be appropriately sound insulated and to grant an avigation easement to the County of Sacramento. Also provided is an exhibit showing both the original and adopted APPAs for both SMF and McClellan Airports overlaid on the Sutter Point Specific Plan project areas. While the adopted APPAs were established only for unincorporated areas of Sacramento County (the extent of County jurisdiction), the implication of the unconstrained SMF APPA makes clear that the entire project area will be regularly subjected to such overflights, and that flights to and from MCC will operate at similar altitudes in very close proximity to the project area. Therefore, we recommend that the deed notice requirement be extended to all residential land uses within the proposed project. 9

Our review of the noise monitoring data cited as the basis for the single event noise analysis indicates that the use of a single monitoring date, August 22, 2007 did not provided an adequate sample size from which to draw accurate single event conclusions. This is due to the flight procedures in effect on the day the monitoring was performed. On August 22, 2007, SMF was operating in what is called "South Flow", which means that aircraft are landing and taking off in a southerly direction, using runways 16L and 16R. While this is in fact the flow pattern used approximately 75% of the time during the year, it is important to also assess single event impacts from north flow operations.

Evaluation of "North Flow" conditions is especially important with respect to this project. Radar flight track data from the Sacramento County Airport System's Airport Noise and Operations Monitoring System indicates that in north flow conditions, areas of the project will be subjected to larger numbers of overflights at lower altitudes by aircraft departing runways 34L and 34R, at higher power settings climbing north and then turning east and then south while still over the project site, including areas identified for residential land uses. For additional detail on the potential for impacts from north flow operations, a flight track and penetration gate analysis has also been provided. This analysis has been specifically tailored to consider areas in the project identified for residential land uses, but land uses in areas in the west side of the project area should also be evaluated for potential impacts from north flow operations. 10

SMF is also frequently utilized for flight training by military aircraft, including the U.S. Air Force's C-5 Galaxy, the largest aircraft in the U.S. military inventory, along with T-38 fighter aircraft, as well as various other military aircraft. Military aircraft are not designed to the same civilian standards for noise attenuation as civil aircraft. ANOMS data indicates that C-5 flights pass over areas of the project area identified for residential land uses at altitudes below 2,000 feet. 11

It is therefore recommended that additional noise monitoring be performed to reassess the potential significance of single event impacts at the original monitoring sites, specifically those associated with north flow operations at SMF and military training operations at SMF.

McClellan Airport

The County Airport System's April 2007 comment letter addressed potential concerns related to McClellan Airport (MCC). Those comments are replicated below. In our review of the DEIR, we did not find any reference to MCC other than to groundwater contamination and a weather station. In addition to the previous discussion of the MCC APPA, please reconsider our original comments:

> A number of aircraft operations currently occur at McClellan, including those of the United States Coast Guard, California Department of Forestry (CDF), Sacramento Metro Fire District, and several flight schools and aircraft charter companies. This includes military aircraft, executive jets, helicopters, and general aviation aircraft. Aircraft operations at McClellan likewise are expected to increase in the future. The main runway at McClellan is oriented in a north/south direction. Aircraft approaching and departing this runway to/from the north will come very close to the proposed residential development proposed in the Project plans specifications. 12

Thank you for the opportunity comment on the DEIR for the Sutter Pointe Specific Plan Project. Questions may be directed to me at the telephone number and email address listed below.

Sincerely,

J. Glen Rickelton
Manager – Planning and Environment
916-874-0482
rickeltong@saccounty.net

Enclosures: Plate A-5 – All North Runway Extension Alternative
Exhibit 1 – Willey Wetland Preserve
Critical Zone and General Zone – Sacramento International Airport
April 19, 2006 Executed APPA Materials
SMF MCC APPAs and Sutter Point Project Areas
Sutter Pointe North Flow Flight Track Analysis

Table 1
Aircraft Operations and Enplanements – FAA TERMINAL AREA FORECAST
Sacramento International Airport (SMF)

Year	Annual Aircraft Operations	Annual Commercial Passenger Enplane-ments
2005[(1)]	167,763	5,104,404
2010	185,685	5,783,416
2015	209,180	6,875,472
2020	234,697	8,174,485
2025	263,548	9,719,831

Source: Federal Aviation Administration, *Terminal Area Forecast (TAF)*, issued February 2006.
[(1)] 2005 data is actual as reported by SMF.

Note: this table assumes the following annual average growth rates between 2005 and 2020:

passenger enplanements, 3.52%; aircraft operations, 2.39%.

C: Lisa J. Stanton, Airport Chief Administrative Officer
Michael B. La Pier, Airport Chief Operating Officer
Deborah Rogers, Ph.D., Director of Conservation Science – Center for Natural Lands Management

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Environmental Impact Report
Sacramento International Airport
Proposed Master Plan Improvements

ALL NORTH RUNWAY EXTENSION ALTERNATIVE

PLATE A-5

Relocated MALSR (with RAIL) Approach Lights
New Localizer Antenna (CAT-I)
Relocated ILS Glide Slope (CAT-I)
Additional RSA
Culvert Existing Ditch
2400 ft. Runway Extension
Parallel Taxiways, Angled Exits (Future T/W E)
Apron Expansion
Terminal Concourse Extensions
New ILS Glide Slope (CAT-I)
Culvert Existing Ditches
New ALSF-2 Approach Lights
Future Bayou Way Construction Improvements
Commercial Development (+/- 79.0 acres)
Future Commercial Development Alternative (+/- 28.5 acres)
Future Commercial Development Alternative (+/- 75.5 acres) for ST-2
Power Line Rd. & Bayou Way Signage Improvements
Short-term Project Parking Alternatives (ST-1 and ST-2)
Future Commercial Development (+/- 18.0 acres)
Future Light Rail Station
Future Light Rail
Future Commercial Development (+/- 77.3 acres)
Landscape Maintenance Area
Parking Garage Expansion
Future Concourse B Extension
Future New Concourse
Terminal Expansion
Cargo Apron
Cargo Building
Culvert Existing Ditch
Crossfield Taxiway Z
Extend Cy Homer Rd.
Aircraft Rescue & Fire Fighting
Culvert Existing Ditches
Culvert Existing Ditches
Culvert Existing Ditches
Elverta Rd. Relocation
Culvert Existing Ditches
RPZ
Earhart Dr Extension & Improvements
Culverts
Future Commercial Development (+/- 135 acres)
Close Elverta Rd.
Extend Cy Homer Rd.
Future RPZ
Future Cy Homer Extension
Perpendicular Taxiway Exits for Parallel Taxiway A
Future West Runway/ Taxiway System With Associated Intstrumentation and Ditch Culverting
Culvert Existing Ditches
Power Line Rd.
Elverta Rd.
Earhart Dr
Cy Homer Rd.
Delta Rd.
Aviation Dr.
McNair Cir.
Airport Blvd
Lindbergh Dr.
Reservoir Rd.
Garden Hwy
Unnamed Rd.
Farm Rd.
Walnut Rd.
School House Rd.
Old River Rd.
Yolo Short Line
Sacramento River
RD 1000 West Drainage Canal
Sacramento County
Yolo County
Metro Air Pkwy
Meister Way
Elkhorn Blvd
Skyking Rd.
Del Paso Rd.
Power Line Rd.
16L
34R
16R
34L
5

LEGEND

Alternative Components
- Projects
- Runway Protection Zone (RPZ)
- Runway Safety Area (RSA)
- Culvert/Pipe/Ditch Fill
- Approach Lighting
- New Road
- Road Closure
- Future Project

- Local Roads and Highways
- Interstate
- Railroad
- Existing Airport Pavement, Building, & Other Features
- Existing RPZ
- Existing RSA
- Water Feature
- Airport Property
- County Boundary
- Short-Term Land Acquisition
- Short-Term Projects

N W E S

2,000 0 2,000 Feet

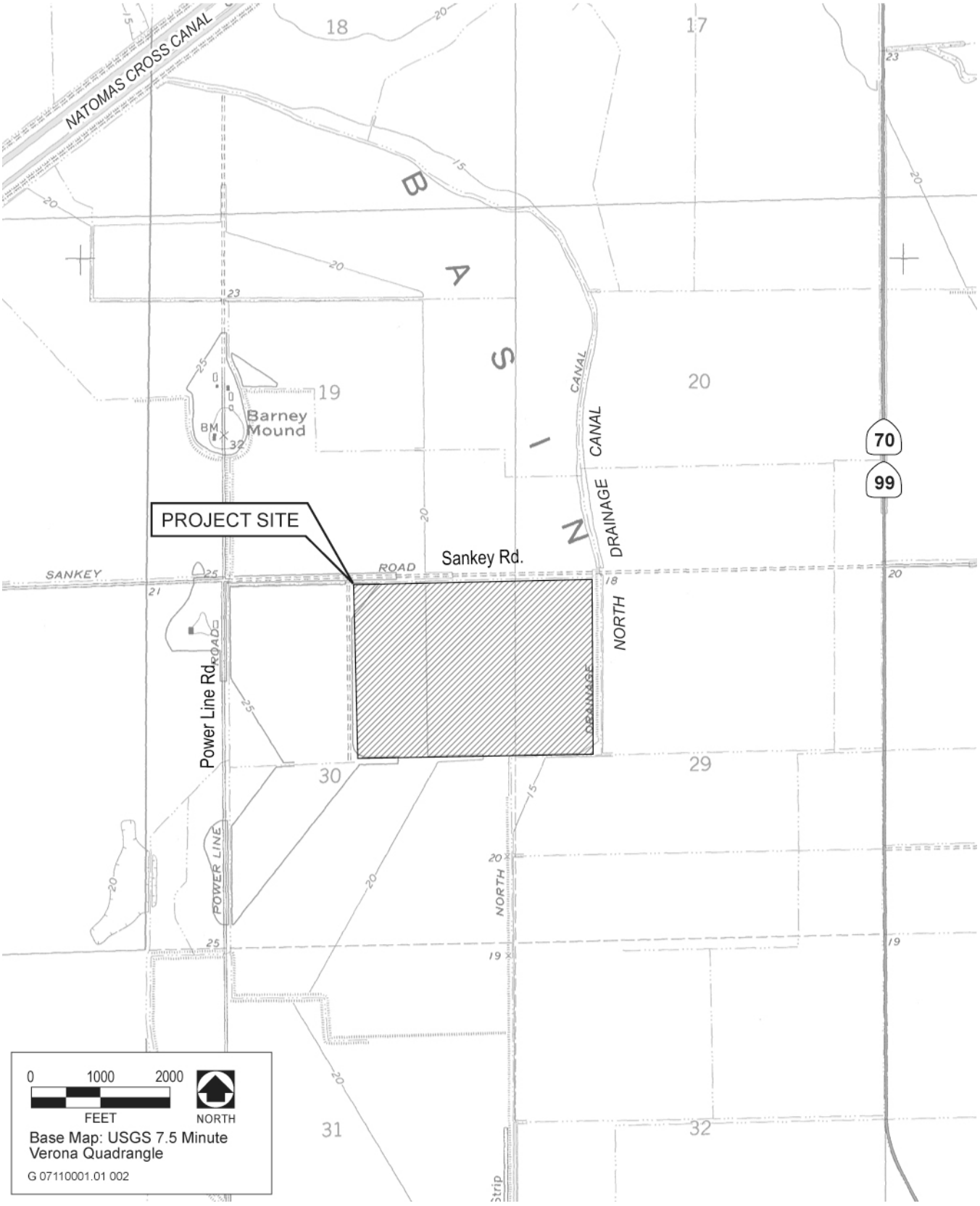
1 inch equals 2,000 feet at 11" x 17"

Sources:
Hydrology: Teale GIS Solutions Group, 1998
Streets: Sacramento County, Sutter County, SACOG, 2005
Railroad, Political Boundaries: SACOG, 2005
Existing Airport Features, Alternative Components: PB Aviation and URS, 2006
Ditches and Elverta Rd Relocation, Sacramento Int'l Airport & URS, 2006
Elkhorn Blvd Extension, Approach Lighting: URS, 2006

Notes: Elverta Rd. and culvert locations are approximate alignments. Installation of Terminal landside road landscaping will also occur.

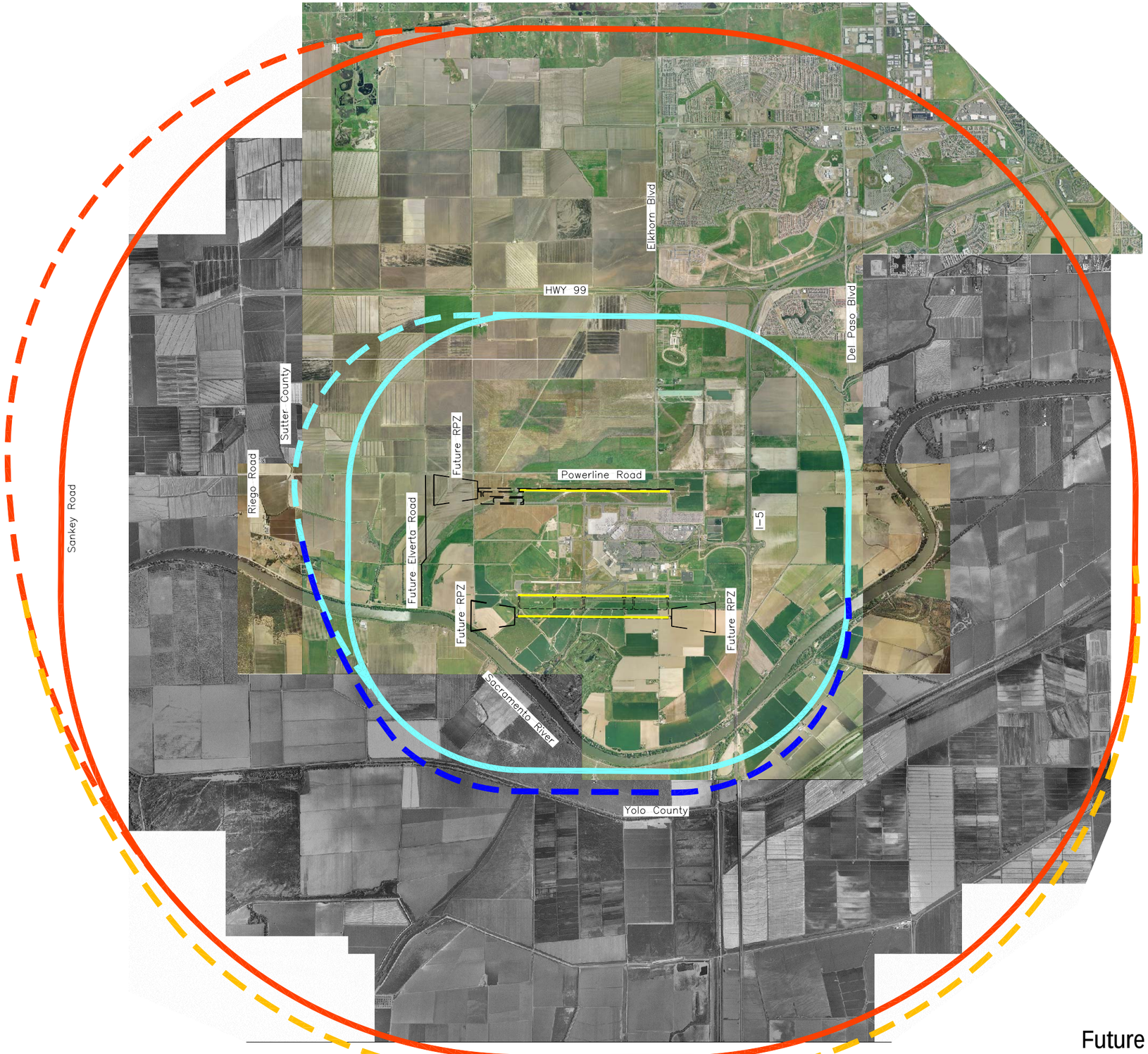
H:/projects/Sacramento_EIS/projectnumber_name/Applications/mxd/Figures/EIR/Plate A-5, All North Runway Extension Alternative.mxd, {llp, llp, rpf 03/13/07}

Exhibit 1



Willey Habitat Preserve

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LEGEND	
	10,000' Critical Zone
	Future 10,000' Critical Zone RWY Ext.
	Future 10' Critical Zone 3rd RWY
	5 Mile Radius
	Future 5 Mile Radius RWY Ext.
	Future 5 Mile Radius 3rd RWY
	Runway Centerline

2,500 10,000 Feet
0 5,000

Future 10,000' Critical Zone and 5 Mile Radius
North Runway Expansion and Thrid Runway

SACRAMENTO COUNTY AIRPORT SYSTEM
6900 AIRPORT BLVD.
SACRAMENTO, CA 95837

SACRAMENTO INTERNATIONAL AIRPORT

Future 10,000' Critical Zone and 5 Mile Radius

REVISIONS				
NO.	DATE	BY	DESCRIPTION	APP'D

LINE IS 2 INCHES AT FULL SIZE (IF NOT 2" SCALE ACCORDINGLY)

FILE NAME:
DRAWN BY:
DATE:
DESIGNED BY:
CHECKED BY:
DRAWING NO.
SCALE:
SHEET NO.
OF

File: W:\AUTOCAD\master\smf\FAC\10250-SMF\ENV\Future 10000' Critical Zone WHMP (North RWY and 3rd RWY) Updated: 8/27/08 Printed: 8/27/08-11:36am By: MoultonK

COUNTY OF SACRAMENTO
Inter-Department Correspondence

REVISED November 29, 2006

TO: Robert B. Leonard, Chief Operating Services
Sacramento County Airport System

Paul Hahn, Director
Economic Development and Intergovernmental Affairs

Robert Sherry, Director
Planning and Community Development

FROM: for Sandra Leahy
Cindy H. Turner, Clerk
Board of Supervisors

SUBJECT: **Item #2, April 19, 2006, Agenda**
Airport Land Use Planning Initiatives For Sacramento International, Mather, and McClellan Airports

The Board of Supervisors, at the regular meeting held on Wednesday, April 19, 2006, adopted Resolution Nos. **2006-0490**, **2006-1378**, and **2006-1379** as amended. These include the following recommendations:

1. Forwarding the theoretic airport capacity noise 60 CNEL exposure methodology and the proposed Master Plan 60 CNEL exposure methodology for Sacramento International Airport and Mather Airport for review;

2. Adopting the definition of the Sacramento International, Mather, and McClellan Airport Planning Policy Areas in accordance with current and future uses; and

3. Forwarding the McClellan Airport Planning Policy Area to SACOG for consideration in the Airport Land Use Policy Update.

The Board also directed the Planning Department to draft policy language for the incorporation of the Airport Planning Policy Areas into the County General Plan and return to the Board with a resolution to initiate the County General Plan Amendment process.

Cc: Terry Schutten, County Executive

COUNTY OF SACRAMENTO
CALIFORNIA

2

For The Agenda Of:
April 19, 2006
Timed: 1:00 p.m.

To: Board of Supervisors

From: Sacramento County Economic Development and
Sacramento County Airport System

Subject: Airport Land Use Planning Initiatives For Sacramento International, Mather And McClellan Airports (Continued From March 22, 2006)

Contact: Robert B. Leonard, County Airport System Chief Operating Officer, 874-0960

Overview
California Public Utilities Code requires that public service airports have an Airport Land Use Compatibility Plan (ALUCP), formerly known as Comprehensive Land Use Plans (CLUPs), in place for two purposes:

1. To "provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission. . ." and
2. To "safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general."

ALUCPs are reflected in the County General Plan and are also required by State Law to be incorporated in city General Plans. Sacramento County, the City of Sacramento and the City of Rancho Cordova are each in the process of updating their General Plans. The ALUCPs for Sacramento International Airport, Sacramento Mather Airport, and McClellan Airfield are outdated. They represent operational scenarios that are no longer accurate and apply dated methodologies that do not provide optimal guidance for long-term airport land use compatiblity. The ALUCP for each airport needs to be updated to reflect current and forecast operations and the Master Plans (or Reuse Plan) for each facility as approved by the Board. On March 22, 2006 the Sacramento County Airport System (Airport System) presented a series of recommendations to your Board which comprised a methodology for the preparation of new ALUCPs for various airports. On that date your Board directed the County Airport System to meeting with interested jurisdictions and report back on April 19, 2006.

Recommendations

Approve the attached Resolution which:

1. Utilizes the theoretic airport capacity noise 60 CNEL exposure methodology for determining the appropriate noise exposure contours for Sacramento International and Mather Airports;
2. Defines the proposed the Sacramento International, Mather, and McClellan Airport Planning Policy Areas for purposes of consideration for incorporation into the Sacramento County General Plan;
3. Forwards studies and data developed by the Sacramento County Airport System relating to aircraft overflights associated with operations at McClellan Airfield to SACOG with a request that SACOG analyze this information and develop appropriate policies for incorporation into the McClellan ALUCP update as required by the California Airport Land Use Planning Handbook;

4. Directs the Sacramento County Planning Department to draft policy language for the incorporation of the Airport Planning Policy Areas into the County General Plan and return to the Board with a resolution to initiate the County General Plan Amendment process. The proposed policy will include the following:
    - Prohibit residential development in areas greater than 60 CNEL for Sacramento International, McClellan and Mather Airports;
    - Establish the Airport Planning Policy Areas for Sacramento International, Mather, and McClellan Airports within the unincorporated area of the County.
    - Establish within the unincorporated area of the County Airport Planning Policy Area policies for of Sacramento International, Mather, and McClellan Airports that would prohibit residential uses within the 60 CNEL noise contours, require the conveyance of appropriate avigation easements to the County in connection with specified residential land use entitlement applications, and require compliance with the 45 db CNEL insulation requirements.
5. Pending Board action on the proposed 60 CNEL noise contour and the proposed Airport Planning Policy Areas, the Planning Department is directed to forward all applications for residential land use entitlements within the proposed Airport Planning Policy Areas located within the unincorporated area of the County to Sacramento County Airport System for review as to potential aircraft overflight issues and the development of appropriate conditions to mitigate any potential issues related to such aircraft overflights.

Performance Measures/Evaluation
The incorporation of the Airport Planning Policy Areas into the County General Plan will allow for compatible development of the areas surrounding the airports in a manner that safeguards the general welfare of the public in the vicinity of the airports and preserves the utility of the airports into the reasonably foreseeable future.

Fiscal Impact
There is no impact on the County General Fund or the Airport Enterprise Fund with these recommendations.

BACKGROUND:

In May 2005, the Sacramento County Airport System and the Department of Economic Development and came to your Board to initiate Airport Land Use Planning Initiatives for Sacramento International Airport, Mather Airport, and McClellan Airfield. The ALUCPs for Sacramento International Airport, Sacramento Mather Airport, and McClellan Airfield are outdated. They represent operational scenarios that are no longer accurate and apply dated methodologies that do not provide optimal guidance for long-term airport land use compatibility. The ALUCP for each airport needs to be updated to reflect current and forecast operations and the Master Plans (or Reuse Plan) for each facility as approved by the Board. Those initiatives focused on determination of both an aircraft noise contour methodology and the creation of an "Airport Planning Policy Area" for the long-term determination of airport land use compatibility planning recognizing the County's obligation under State Law to have an ALUCP.

Recognizing that the existing ALUCP for McClellan Airfield was not current and needed to be updated to reflect the McClellan Reuse Plan and current operating conditions, your Board

approved the 60 CNEL Theoretic Capacity noise contour for land use planning purposes and forwarded that contour to the Sacramento Area Council of Governments to initiate an ALUCP update for McClellan Airfield. This action defined the 60 CNEL Theoretic Capacity noise contour as the area within which residential land use is considered incompatible. The Board did not act on a noise contour for International or Mather Airports. At that time your Board directed the County Airport System to return with a more detailed analysis of the proposed Airport Planning Policy Area for McClellan, International, and Mather Airports, along with a discussion of the noise contours for International and Mather Airports.

On March 22, 2006, the County Airport System returned to your Board to provide alternatives and detailed discussion related to the noise contours for International and Mather Airports as well as the Airport Planning Policy Areas for McClellan, International, and Mather Airports.

There were three elements of the recommended Airport Land Use Planning Initiatives identified in the March 22, 2006 staff report to your Board: Aircraft Noise Exposure Contours, Airport Planning Policy Area, and the conditions that will apply to new residential development located within the Airport Planning Policy Area. The Aircraft Noise Exposure Contours would determine the boundary within which new residential development would not be allowed. The Airport Planning Policy Area would not restrict residential development but would rather apply State guidance to address aircraft overflight and related noise beyond the normally mapped noise exposure contours by providing disclosure to potential homebuyers.

Airport Theoretic Airport Capacity Noise Exposure Contours

A theoretic capacity noise exposure contour has been prepared for each airport based on the maximum aircraft activity that can be accommodated at the ultimate build-out of the landside facilities (terminal facilities, air cargo facilities and other building and ground areas) of each airport as reflected in the Draft Master Plans for International and Mather Airports and the McClellan Reuse Plan. This approach allows consideration beyond a typical 20-year Master Plan planning horizon because it is not tied to any forecast market condition. Theoretic capacity is less than the ultimate capacity of any given airport's airfield (runways and taxiways) capacity as reflected by the FAA defined ASV. This methodology was used for the preparation of the McClellan Airfield noise exposure contour which was used in the McClellan Reuse Plan Environmental Impact Report (EIR) and was also approved by your Board in May 2005 for the purpose of the SACOG update of the McClellan ALUCP.

As aircraft operations increase over time reflecting the vision of the community and the Board expressed in the plans for each airport, the aircraft noise contours for County Airport System airports and McClellan Airfield can be expected to increase in size. It is recommended that the theoretic capacity aircraft noise exposure contours be utilized to ensure that future residential development does not occur on property where noise contour growth is likely. Though the Theoretic Capacity 60 CNEL Contour would limit residential development within its confines, other development could be allowed within the 60 CNEL contour which could include certain retail, certain commercial, industrial, and agricultural. This recommendation is consistent with your Board's action in May

2005 to utilize the theoretic capacity aircraft noise exposure contours for McClellan Airfield for determining residential compatibility.

Airport Planning Policy Area – Least Flight Track Inclusion and the 55 CNEL Aircraft Noise Contour

The proposed Airport Planning Policy Area would be an area beyond the 60 CNEL noise contour inside the County's jurisdiction where residential development would be allowed but would require a disclosure notice and the grant of an avigation easement to Sacramento County. These type conditions for development have been applied within the existing Mather Airport Planning Policy Area (MAPA) where two significant developments, Villages of Zinfandel and Independence at Mather have been completed and also outside of MAPA with the Sun Ridge development.

Sacramento County Airport System staff adopted an overflight zone methodology to define a new Airport Planning Policy Area utilizing aircraft overflights, which is similar to the planning area currently in effect at Mather Airport with the MAPA. Airport consultants, Harris, Miller, Miller & Hanson, developed the boundary of the overflight areas for each airport by encompassing the preponderance of flight operations while omitting those areas where the plot of flight tracks indicated only a "few" aircraft operated during the period of review.

The recommended Airport Planning Policy Area for Sacramento International, Mather, and McClellan Airports is the least inclusive methodology including the theoretic capacity 55 CNEL noise exposure contour. The least inclusive alternative Airport Planning Policy Area boundary was developed for each airport with emphasis on containing the 55 CNEL aircraft noise contour and most of the lower altitude portions of the flight tracks for large aircraft.

Conditions for Development within the Airport Planning Policy Area up to the Theoretic Capacity 60 CNEL Contour within Sacramento County Jurisdiction

With respect to aircraft overflight annoyance concerns, compatibility between airports and surrounding land uses also can be improved through actions intended to enhance the public's knowledge and understanding of the airport impacts. These actions focus on informing prospective buyers of property within an airport vicinity about the airport's impact on the property. These measures are typically referred to as buyer awareness measures. The County Airport System recommends incorporating buyer awareness measures in the area encompassed by the Airport Planning Policy Areas within the County's jurisdiction.

Residential development outside the 60 CNEL Theoretic Capacity Noise Contour but within the Airport Planning Policy Area within Sacramento County's jurisdiction would not be restricted, however, it would be conditioned. Residential development would be contingent upon the requirement of a disclosure notice to prospective buyers identifying the property as residing within the Airport Planning Policy Area and that aircraft can be expected to fly at varying altitudes below 3,000 feet AGL in that area as well as the

granting of an Avigation Easement to further ensure that future home buyers are aware of potential aircraft overflights.

At the March 22, 2006 Public Hearing, the Board directed the County Airport System to do additional outreach to jurisdictions encompassed by the Airport Planning Policy Areas and to return for further discussion on April 19, 2006. An Inter-Agency Meeting was held on April 7, 2006 to provide additional outreach and information to jurisdictions which are encompassed by the proposed aircraft noise exposure contours or the proposed Airport Planning Policy Areas for Sacramento International, Mather, and McClellan Airports.

DISCUSSION:

There were three areas of interest from the March 22, 2006 Public Hearing: Comparison of Master Plan and Theoretic Capacity Noise Contour Input Information, Changes in Air Traffic Control Procedures at McClellan Airfield, and additional Multi-Jurisdictional Outreach. The following discussion addresses each of these areas.

Comparison of Draft Master Plan and Theoretic Capacity Noise Exposure Contour Input Information:

The Draft Master Plan and Theoretic Capacity Noise Exposure scenarios differ on a number of elements. The primary difference between these two alternatives is the version of INM used to prepare the noise contours. The master plan noise contours were prepared utilizing INM 6.0. Since that time, the FAA released INM 6.1. This update incorporated new algorithms that alter the fundamental lateral attenuation equations contained in INM for propeller aircraft and jet aircraft with wing-mounted engines.

Aircraft fleet mix between these alternatives also varies, specifically within seven aircraft types: 727EM2, 727QF, DC1030, DC870, DC93LW, MD11PW, and S70. In addition, when comparing the aircraft operations, in the theoretic capacity case there are significantly more 757PW operations and the twin-engine turboprop operations (CNA441) outnumber the twin-engine piston (BEC58P) operations by more than two to one. In the master plan alternative, the twin-engine turboprop operations and the twin-engine piston operations are nearly equivalent. All other aircraft operations appear to be proportionately distributed within each case. Tables 1 and 2 below depict the differences between the overall operational inputs for the Master Plan and Theoretic Capacity scenarios.

Table 1: International Airport Aircraft Comparison

Sacramento International Airport	Annual Operations	Daily Operations (All Aircraft)	Daily Operations (Air Carrier Jets)	Nighttime* Operations (Air Carrier Jets)
Draft Master Plan	250,000	685	382	46
Theoretic Capacity	450,000	1,233	867	119
Difference	200,000	548	485	73

Table 2: Mather Airport Aircraft Comparison

Mather Airport	Annual Operations	Daily Operations (All Aircraft)	Daily Operations (Air Cargo Jets)	Nighttime* Operations (Air Cargo Jets)
Draft Master Plan	118,900	326	59	40
Theoretic Capacity	129,400	355	70	47
Difference	10,500	29	11	7

Operations in the INM are segregated by time of day: day (7:00 am-6:59 pm), evening (7:00 pm-9:59 pm) and night (10:00 pm-6:59 am). The day/evening/night split of operations is important, since, when computing the Community Noise Equivalent Level (CNEL), every evening operation counts as three operations and every night operation counts as ten operations. Because CNEL contours determine aircraft noise exposure, it is important to compare the theoretic capacity and master plan alternatives using the "equivalent" number of operations. A quick comparison shows that the theoretic capacity cases has a greater total number of "equivalent" operations due primarily to more nighttime operations at Mather Airport and due to more nighttime and evening operations at Sacramento International. Tables 3 and 4 depict the difference in nighttime operations in both the Master Plan and Theoretic Capacity scenarios.

Table 3: International Airport Nighttime[1] Air-Carrier Comparison

International Airport	Nighttime Operations (Air Carrier Jets)	Nighttime Arrivals (Air Carrier Jets)	Nighttime Departures (Air Carrier Jets)
Draft Master Plan	46	14	32
Theoretic Capacity	119	55	64
Difference	73	41	32

Table 4: Mather Airport Nighttime Air-Carrier Comparison

Mather Airport	Nighttime Operations (Air Cargo Jets)	Nighttime Arrivals (Air Cargo Jets)	Nighttime Departures (Air Cargo Jets)
Draft Master Plan	40	23	17
Theoretic Capacity	47	27	20
Difference	7	4	3

Also compared were the modeled aircraft departure stage lengths in these two alternatives. For the theoretic capacity case, the consultant analyzed the actual altitude profiles for the Boeing 757 and 767 aircraft in the Airport Noise and Operations Monitoring System (ANOMS) radar data and determined that the actual altitude profiles for these aircraft correlate with higher takeoff weights than those associated with the departure stage lengths reported in the master plan. Therefore, the consultant preparing the theoretic capacity noise analysis increased the stage lengths used in the modeling process to provide a better representation of the actual altitude profiles being flown by these aircraft. The master plan alternative used departure stage lengths determined by distance flown. The theoretic capacity alternative also used different departure stage lengths to compensate for heavier takeoff gross weights shown in flight altitude data. A detailed comparison including numbers of operations, time of day and departure stage lengths between the Draft Master Plan and Theoretic Capacity scenarios can be found in Attachment 1.

Changes in Air Traffic Control Procedures at McClellan Airfield

At the March 22, 2006 Public Hearing, the County Airport System was asked to provide greater detail with relation to what impact commissioning of an air traffic control tower at McClellan Airfield would have on the area which defines the McClellan Airport Planning Policy Area. Though projected aircraft operations do not meet the FAA threshold of necessity for an air traffic control tower, should one be commissioned in the future and the overflight area of large aircraft changes, it would be the Airport System's recommendation that the Airport Planning Policy Area be revised to reflect this change. This would also hold true for all airports which would have a defined Airport Planning Policy Area. If operational changes at the airport would effect a change on the footprint of large aircraft overflights below 3,000 feet AGL, those Airport Planning Policy Areas would be recommended to change as well.

Multi-Jurisdictional Outreach

Due to the concerns by other jurisdictions expressed at the March 22, 2006 Public Hearing, your Board directed the Airport System to continue our outreach to the concerned jurisdictions prior to returning to your Board today. A Multi-Jurisdictional Meeting was coordinated to provide additional information to interested jurisdictions and to allow the Airport System to gain a greater understanding of their concerns. This meeting occurred on April 7, 2006 at the Sacramento International Airport. An invitee list, an attendee list, and a summary of the meeting are provided in Attachment 2.

The meeting was very helpful for the Airport System and County Counsel to gain a greater understanding of the concerns of the various jurisdictions while they simultaneously learned more about the methodologies being considered by the County. As a result of the meeting the recommended actions and the attached resolutions have been rewritten to clearly define how the recommended policies will be applied within the unincorporated area of Sacramento County and how they may be applied in other jurisdictions as they may view appropriate.

Implementation Plan

In order to implement the Airport Theoretic Airport Capacity Noise Exposure Contours and the Planning Policy Areas prior to the updates of the Airport Land Use Compatibility Plans for each airport, it is recommended that the Planning Department incorporate in the General Plan Update the proposed policy which is attached in the resolution for each airport.

Performance Measures/Evaluation

The incorporation of the Airport Planning Policy Areas into the General Plan will allow for compatible development of the areas surrounding the airports in a manner that safeguards the general welfare of the public in the vicinity of the airports and preserving the utility of the airports into reasonably foreseeable future.

FINANCIAL ANALYSIS:

This section is not applicable as the recommendations do not have any fiscal impact on the County General Fund or the Airport Enterprise Fund.

LEGAL ISSUES:

County Counsel has reviewed and approved this report.

Respectfully submitted,

G. HARDY ACREE
Director of Airports

APPROVED:

TERRY SCHUTTEN
County Executive

Concur

By:
GEOFFREY B. DAVEY
Chief Financial Officer/Operations

Officer

Attachments: Resolution – McClellan Airfield
Resolution – Sacramento International Airport
Resolution – Sacramento Mather Airport
Attachment 1, Comparison of Draft Master Plan and Theoretic Capacity Noise Exposure Contour Input Information
Attachment 2, Airport Land Use Compatibility Planning Initiatives, Inter-Agency Meeting Information
Attachment 3, Correspondence Regarding Airport Land Use Planning Initiatives

REVISED

RESOLUTION NO. 2006-0490

WHEREAS, the California Public Utilities Code requires that public service airports have an Airport Land Use Compatibility Plan (formerly known as a Comprehensive Land Use Plan, or CLUP, and hereinafter referred to as the "ALUCP"); and

WHEREAS, the purpose of the ALUCP is to provide for the orderly growth of the subject airport and its environs while insuring the general welfare of residents and the public at large; and

WHEREAS, on February 24, 2004 the Board of Supervisors ("Board") approved the Sacramento International Airport ("International") Draft Final Master Plan; and

WHEREAS, the environmental review for the Draft Final Master Plan is now underway; and

WHEREAS, upon completion of the International Master Plan environmental review and its approval by the Board, the Sacramento County Airport System ("SCAS") intends to submit a request to the Sacramento Area Council of Governments to update the International ALUCP based on the International Master Plan approved by the Board; and

WHEREAS, pending completion of the International Master Plan and ALUCP, SCAS has prepared comprehensive aircraft noise and aircraft overflight studies to identify areas in the vicinity of International that are and may be affected by noise from aircraft overflights from International operations; and

WHEREAS, these studies have included the development of both a 60 CNEL theoretic airport capacity noise contour and a 60 CNEL master plan twenty-year activity forecast noise contour (collectively referred to as "60 CNEL noise contours") for International based on the Draft Final International Master Plan; and

WHEREAS, the purpose of developing the 60 CNEL noise contours is to identify the areas within the unincorporated area of the County where new urban residential uses would be prohibited; and

WHEREAS, SCAS has developed a proposed Airport Policy Planning Area ("APPA") for International; and

WHEREAS, the purpose in developing the proposed International APPA is to identify areas outside a selected 60 CNEL noise contour and within the unincorporated area of the County that are and may be affected by aircraft overflights from International and which would be subject to land use policies intended to minimize conflicts between future residential development and existing and future airport operations; and

WHEREAS, it is the intent of the Board to forward the 60 CNEL noise contours and the International APPA located within the unincorporated area of the County to the County Department of Planning and Community Development ("Planning Department") for incorporation into the pending proposal to update the County General Plan; and

WHEREAS, it is the further intent of the Board to evaluate both CNEL noise contours for possible incorporation into the County General Plan; and

WHEREAS, the Board believes that it is appropriate for the County to forward the 60 CNEL noise contours and the proposed International APPA, together with the aircraft overflight information that that was used to develop such noise contours and APPA, to surrounding jurisdictions so that they can consider whether it would be appropriate for them to develop the same or similar policies for implementation within their respective jurisdictions.

NOW, THEREFORE, IT IS HEREBY RESOLVED AND ORDERED as follows:

1. The Planning Department is directed to incorporate the following items into the pending proposal to update the County General Plan: (i) both a 60 CNEL theoretic airport capacity noise contour and a 60 CNEL master plan twenty-year activity forecast noise contour for areas surrounding International that are located within the unincorporated area of the County; (ii) that portion of the proposed International APPA as shown on Exhibit A that is located within the unincorporated area of the County; and (iii) the implementing policies for the proposed International APPA as depicted in Exhibit B.

2. SCAS is directed to prepare and submit to the Planning Department a map that depicts each of the 60 CNEL noise contours within the unincorporated area of the County based on the most recent Federal Aviation Administration approved noise models.

3. The County Department of Environmental Review and Assessment is directed to conduct appropriate environmental review for the items specified in Section 1 above as part of the environmental review process for the County General Plan update and the Planning Department is directed to bring the items specified in Section 1 above back to the Board for further consideration as part of the public hearing process for the County General Plan update.

4. Pending Board action on the 60 CNEL noise contours and the proposed International APPA, the Planning Department is directed to forward all applications for residential land use entitlements within the proposed International APPA located within the unincorporated area of the County to SCAS for review as to potential International aircraft overflight issues and the development of appropriate conditions to mitigate any potential issues related to such aircraft overflights.

5. SCAS is directed to forward the following items to those land use jurisdictions within the areas of overflight as indicated within the proposed International APPA:

a. The Board's direction to the Planning Department with respect to the proposed 60 CNEL noise contours and APPA;

b. All studies and data prepared by SCAS in the development of the proposed 60 CNEL noise contours and APPA; and

c. A request that those jurisdictions review the information submitted to them and consider whether it is appropriate for them to implement the same or similar policies within their respective jurisdictions.

On a motion by Supervisor Dickinson, seconded by Supervisor MacGlashan, the foregoing Resolution was passed and adopted by the Board of Supervisors of the County of Sacramento this 19th day of April, 2006, by the following vote, to wit:

AYES: Supervisors, Dickinson, Peters, MacGlashan

NOES: Supervisors, Nottoli

ABSENT: Supervisors, Collin

ABSTAIN: Supervisors, none

Roberta MacGlashan

Chairperson, Board of Supervisors

(SEAL)

ATTEST: Cindy H. Turner

Clerk, Board of Supervisors

By DeAnn Kirkland Deputy Clerk

For Cindy Turner

In accordance with Section 25103 of the Government Code of the State of California a copy of the document has been delivered to the Chairman of the Board of Supervisors, County of Sacramento on April 19, 2006

By Gwayne Dewlen's

Deputy Clerk, Board of Supervisors

In accordance with Section 25103 of the Government Code of the State of California a copy of the document has been delivered by the [illegible] of Sacramento on [illegible]

By.

FILED

APR 19 2006

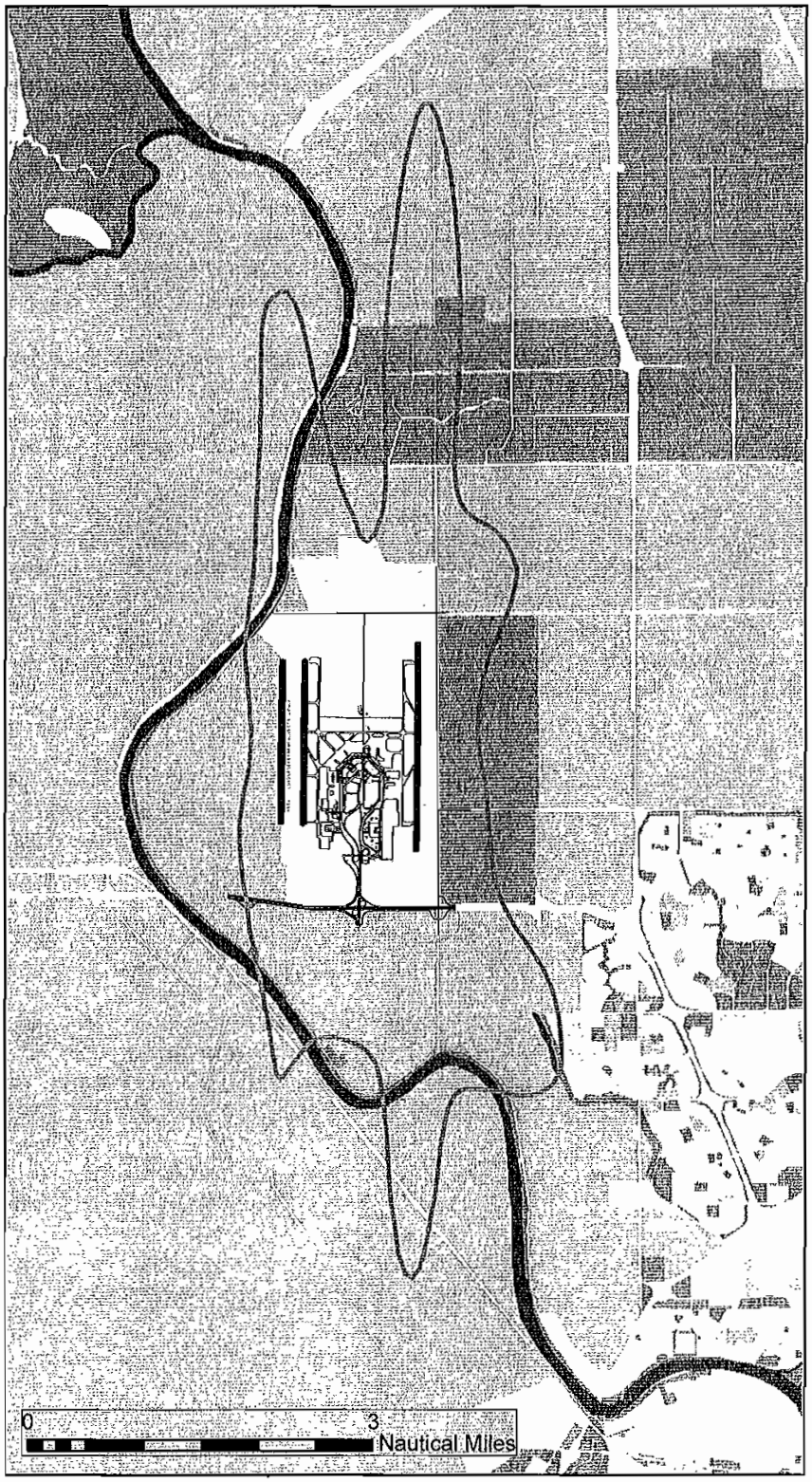
BOARD OF SUPERVISORS

BY Cindy H. Turner

CLERK OF THE BOARD

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Exhibit C
Sacramento International Airport
SMF Theoretic Capacity Noise Contour (60)



SACRAMENTO COUNTY AIRPORT SYSTEM

04/10/2006

LEGEND

Landuse

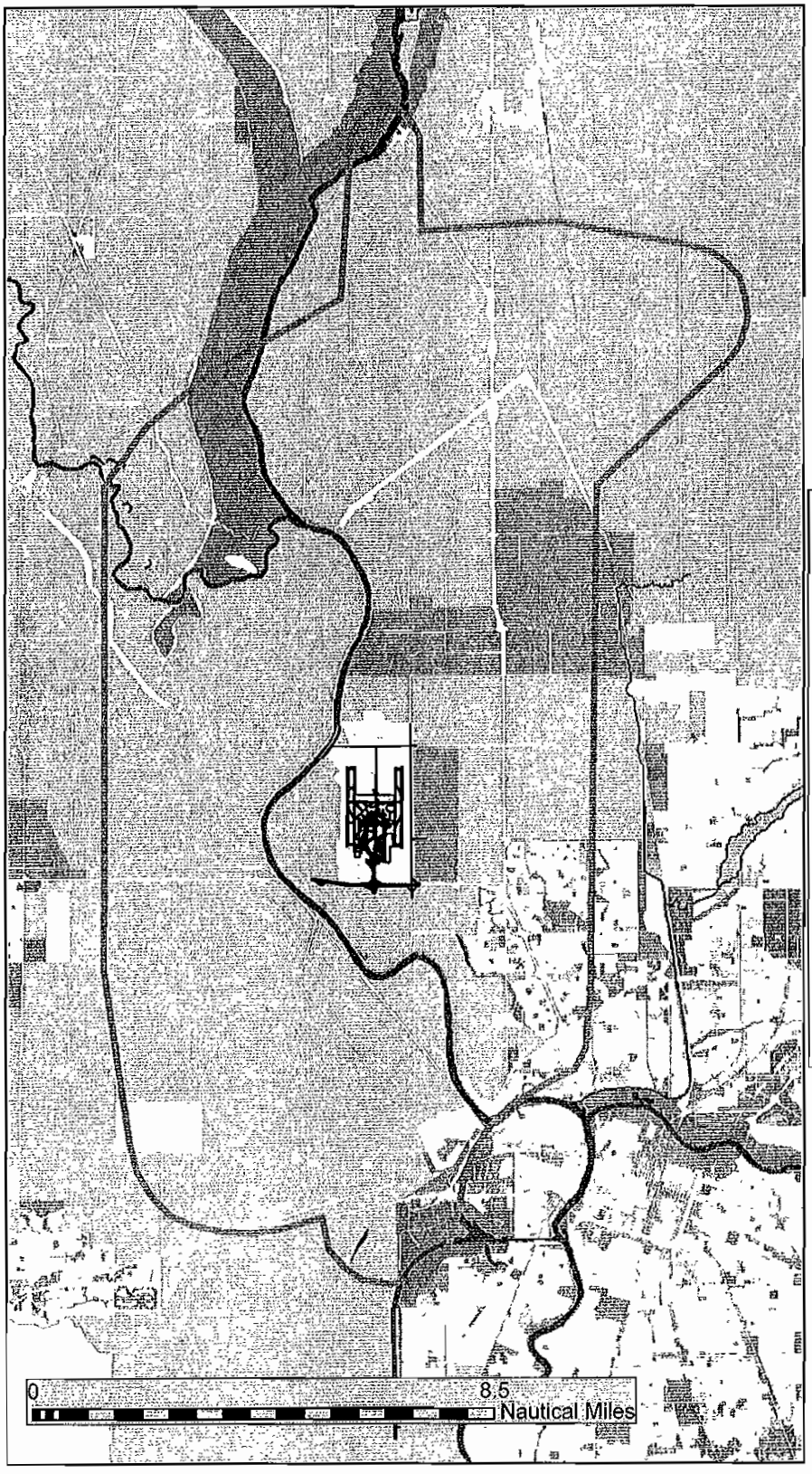
- Rural Residential
- Very Low Density Residential
- Low Density Residential
- Medium Density Residential
- Medium High Density Residential
- High Density Residential
- High-Intensity Office
- Moderate-Intensity Office
- Community/Neighborhood Commercial/Office
- Regional Commercial/Office
- Community/Neighborhood Retail
- Regional Retail
- Light Industrial
- Heavy Industrial
- Public/Quasi-Public
- Mixed Use
- Urban Reserve
- Agriculture
- Open Space
- Forest
- Water

SMF_TC_60_CNEL_Contour

LANDUSE Sources:

SACOG - Sacramento, El Dorado, Placer Counties
CASIL - Amador, San Joaquin Counties

Exhibit D
Sacramento International Airport
Airport Planning Policy Area (APPA)



SACRAMENTO COUNTY AIRPORT SYSTEM

04/10/2006

LEGEND

Landuse

- Rural Residential
- Very Low Density Residential
- Low Density Residential
- Medium Density Residential
- Medium High Density Residential
- High Density Residential
- High-Intensity Office
- Moderate-Intensity Office
- Community/Neighborhood Commercial/Office
- Regional Commercial/Office
- Community/Neighborhood Retail
- Regional Retail
- Light Industrial
- Heavy Industrial
- Public/Quasi-Public
- Mixed Use
- Urban Reserve
- Agriculture
- Open Space
- Forest
- Water
- APPA with - Recommended Flight Track Inclusion

LANDUSE Sources:

SACOG - Sacramento, El Dorado, Placer Counties
CASIL - Amador, San Joaquin Counties

EXHIBIT E

SACRAMENTO INTERNATIONAL AIRPORT PLANNING POLICY AREA PROPOSED POLICY

Dated: April 19, 2006

Purpose: This policy is intended to increase the awareness of residents, in any future residential communities that are approved, of their possible exposure to aircraft operations; to limit the potential for conflict between the Sacramento International Airport and adjacent communities; and, to protect future airport development and aircraft operations flexibility beyond that obtainable solely by relying upon the noise and safety land use guidelines contained within the existing Airport Land Use Compatibility Plans.

Justification: Successful operation of Sacramento International Airport is largely based on the successful operation of these airports as an economic engine and commerce center. These goals can best be realized if the airport can function both in an environment free of as many aircraft operational restrictions as possible, and within a positive, mutually beneficial relationship with nearby communities.

Experience has shown that the primary cause of airport operational restrictions is the encroachment of residential development within the airport environs. Encroachment in turn, has led to many airport-related complaints from the new residents living within these areas. The State of California has adopted airport noise and safety standards which are implemented through Airport Land Use Compatibility Plans prepared by Airport Land Use Commissions in order to assist local governments in preventing these types of situations.

Despite the standards in the Airport Land Use Compatibility Plan legislation, airports receive complaints outside the areas defined as receiving "significant" noise exposure by residents who perceive they are impacted or potentially impacted by airport operations. These complaints, whether valid or not, can result in restrictions to airport operations. Sacramento County currently has an opportunity to create an additional envelop of protection for Sacramento International Airport since much of the surrounding area is not yet urbanized.

Policy: New residential development within the 60 CNEL noise exposure contour for Sacramento International Airport shall be prohibited. Also, new residential development within the Airport Planning Policy Area boundaries for the airport, but outside the 60 CNEL, shall be subject to the following conditions prior to any approval by Sacramento County:

1. Minimum noise insulation to protect persons from excessive noise within new residential dwellings, including detached singe family dwellings, that limits noise to 45 dB CNEL, with windows closed, in any habitable room.
2. Notification in the Public Report prepared by the California Department of Real Estate disclosing to prospective buyers that the parcel is located within the applicable Airport Planning Policy Area and that aircraft operations can be expected to overfly that area at varying altitudes less than 3,000 feet Above Ground Level (AGL)

3. Execution and recordation with the Sacramento County Recorder of Avigation Easements prepared by the Sacramento County Counsel's Office on each individual residential parcel contemplated in the development in favor of the County of Sacramento. All avigation easements recorded pursuant to this Policy shall, once recorded, be copied to the Director of Airports and shall acknowledge the property location within the appropriate Airport Planning Policy Area and shall grant the right of flight and unobstructed passage of all aircraft into and out of the appropriate airport.

Exceptions: New accessory residential dwellings on parcels zoned Agricultural, Agricultural Residential, Interim Agricultural, Interim General Agricultural, or Interim Limited Agricultural, shall be exempt from the Airport Planning Policy Areas prohibitions.

REVISED

RESOLUTION NO. 2006-1378

WHEREAS, the California Public Utilities Code requires that public service airports have an Airport Land Use Compatibility Plan (formerly known as a Comprehensive Land Use Plan, or CLUP, and hereinafter referred to as the "ALUCP"); and

WHEREAS, the purpose of the ALUCP is to provide for the orderly growth of the subject airport and its environs while insuring the general welfare of residents and the public at large; and

WHEREAS, on February 17, 2004 the Board of Supervisors approved the Mather Field ("Mather") Draft Final Master Plan; and

WHEREAS, the environmental review for the Draft Final Master Plan is now underway; and

WHEREAS, upon completion of the Mather Master Plan environmental review and its approval by the Board of Supervisors ("Board"), the Sacramento County Airport System ("SCAS") intends to submit a request to the Sacramento Area Council of Governments to update the Mather ALUCP based on the Mather Master Plan approved by the Board; and

WHEREAS, pending completion of the Mather Master Plan and ALUCP, SCAS has prepared comprehensive aircraft noise and aircraft overflight studies to identify areas in the vicinity of Mather that are and may be affected by noise from aircraft overflights from Mather operations; and

WHEREAS, these studies have included the development of a proposed 60 CNEL theoretic airport capacity noise contour ("60 CNEL noise contour") for Mather based on the Draft Final Mather Master Plan; and

WHEREAS, the purpose of developing the 60 CNEL noise contour is to identify the areas within which new residential uses would be prohibited; and

WHEREAS, SCAS has developed a proposed Airport Policy Planning Area ("APPA") for Mather; and

WHEREAS, the purpose in developing the proposed Mather APPA is to identify areas outside the 60 CNEL noise contour and within the unincorporated

area of the County that are and may be affected by aircraft overflights from Mather and which would be subject to land use policies intended to minimize conflicts between future residential development and existing and future airport operations; and

WHEREAS, it is the intent of the Board of Supervisors to forward the 60 CNEL noise contour and the Mather APPA located within the unincorporated area of the County to the County Department of Planning and Community Development ("Planning Department") for incorporation into the pending proposal to update the County General Plan; and

WHEREAS, the Board believes that it is appropriate for the County to forward the proposed 60 CNEL noise contour and the proposed Mather APPA, together with the aircraft overflight information that that was used to develop such noise contour and APPA, to surrounding jurisdictions so that they can consider whether it would be appropriate for them to develop the same or similar policies for implementation within their respective jurisdictions.

NOW, THEREFORE, IT IS HEREBY RESOLVED AND ORDERED as follows:

1. The Planning Department is directed to incorporate the following items into the pending proposal to update the County General Plan: (i) that portion of the proposed 60 CNEL noise contour as shown on Exhibit F that is located within the unincorporated area of the County; (ii) that portion of the proposed Mather APPA as shown on Exhibit G that is located within the unincorporated area of the County; and (iii) the implementing policies for the proposed Mather APPA as depicted in Exhibit H.

2. The County Department of Environmental Review and Assessment is directed to conduct appropriate environmental review for the items specified in Section 1 above as part of the environmental review process for the County General Plan update and the Planning Department is directed to bring the items specified in Section 1 above back to the Board for further consideration as part of the public hearing process for the County General Plan update.

3. Pending Board action on the proposed 60 CNEL noise contour and the proposed Mather APPA, the Planning Department is directed to forward all applications for residential land use entitlements within the proposed Mather APPA located within the unincorporated area of the County to SCAS for review as to potential Mather aircraft overflight issues and the development of appropriate conditions to mitigate any potential issues related to such aircraft overflights.

4. SCAS is directed to forward the following items to those land use jurisdictions within the areas of overflight as indicated within the proposed Mather APPA:

a. The Board's direction to the Planning Department with respect to the proposed 60 CNEL noise contour and APPA;

b. All studies and data prepared by SCAS in the development of the proposed 60 CNEL noise contour and APPA; and

c. A request that those jurisdictions review the information submitted to them and consider whether it is appropriate for them to implement the same or similar policies within their respective jurisdictions.

On a motion by Supervisor Dickinson, seconded by Supervisor MacGlashan, the foregoing Resolution was passed and adopted by the Board of Supervisors of the County of Sacramento this 19th day of April, 2006, by the following vote, to wit:

AYES: Supervisors, Dickinson, Peters, MacGlashan

NOES: Supervisors, Nottoli

ABSENT: Supervisors, Collin

ABSTAIN: Supervisors, None

Roberta MacGlashan
Chairperson, Board of Supervisors

In accordance with Section 25103 of the Government Code of the State of California a copy of the document has been delivered to the Chairman of the Board of Supervisors, County of Sacramento on APR 19 2006

By Georgine Denbeing
Deputy Clerk, Board of Supervisors

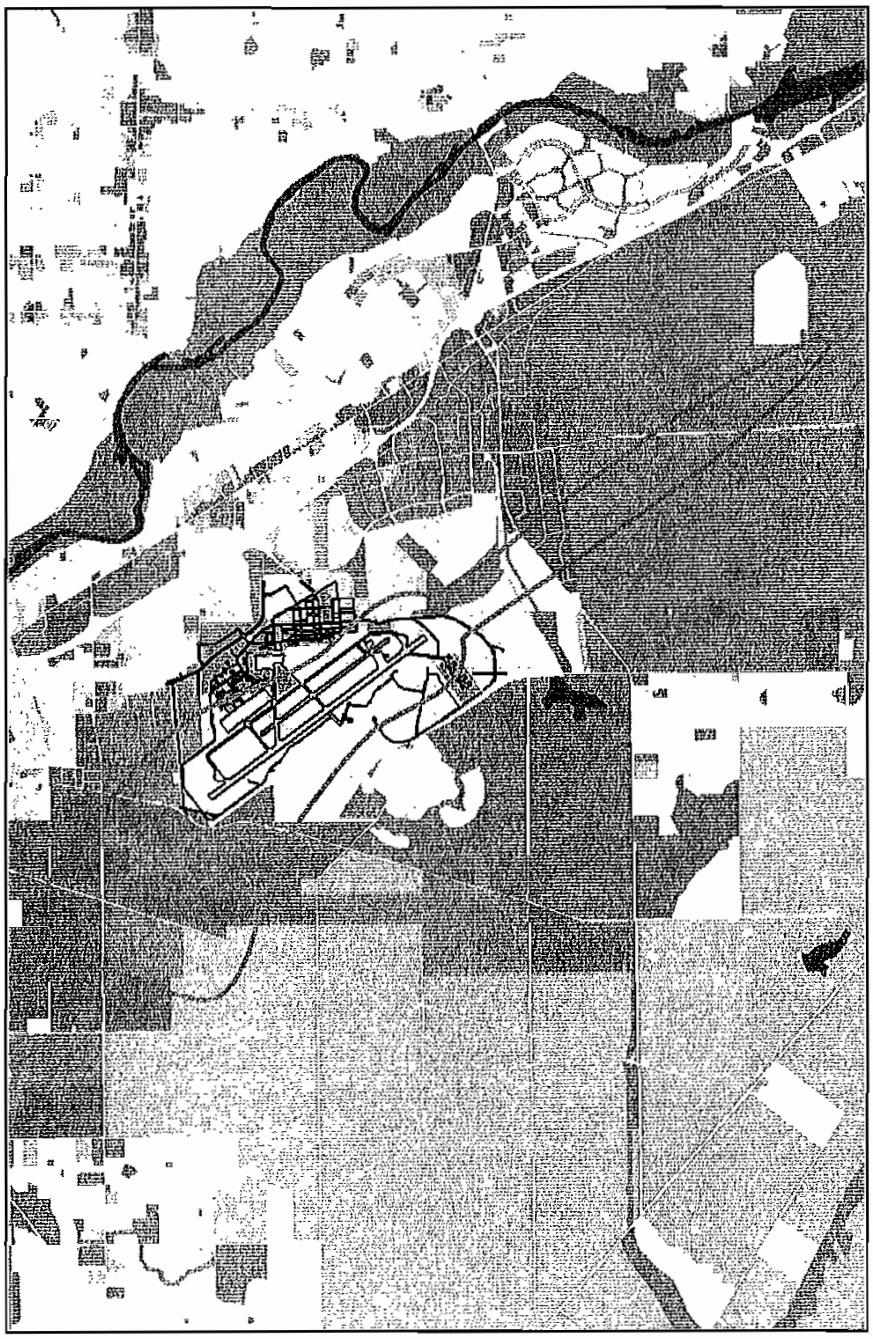
COUNTY OF SACRAMENTO
(SEAL)
CALIFORNIA

ATTEST: Sandra Leahy
Clerk, Board of Supervisors

FILED
APR 19 2006
BOARD OF SUPERVISORS
BY Cindy H. Turner
CLERK OF THE BOARD

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Exhibit F
Mather Airport
MHR Theoretic Capacity Noise Contour (60)



SACRAMENTO COUNTY AIRPORT SYSTEM

04/10/2006

LEGEND

Landuse

- Rural Residential
- Very Low Density Residential
- Low Density Residential
- Medium Density Residential
- Medium High Density Residential
- High Density Residential
- High-Intensity Office
- Moderate-Intensity Office
- Community/Neighborhood Commercial/Office
- Regional Commercial/Office
- Community/Neighborhood Retail
- Regional Retail
- Light Industrial
- Heavy Industrial
- Public/Quasi-Public
- Mixed Use
- Urban Reserve
- Agriculture
- Open Space
- Forest
- Water
- MHR_Theoretic_Capacity_60_CNEL_Contour

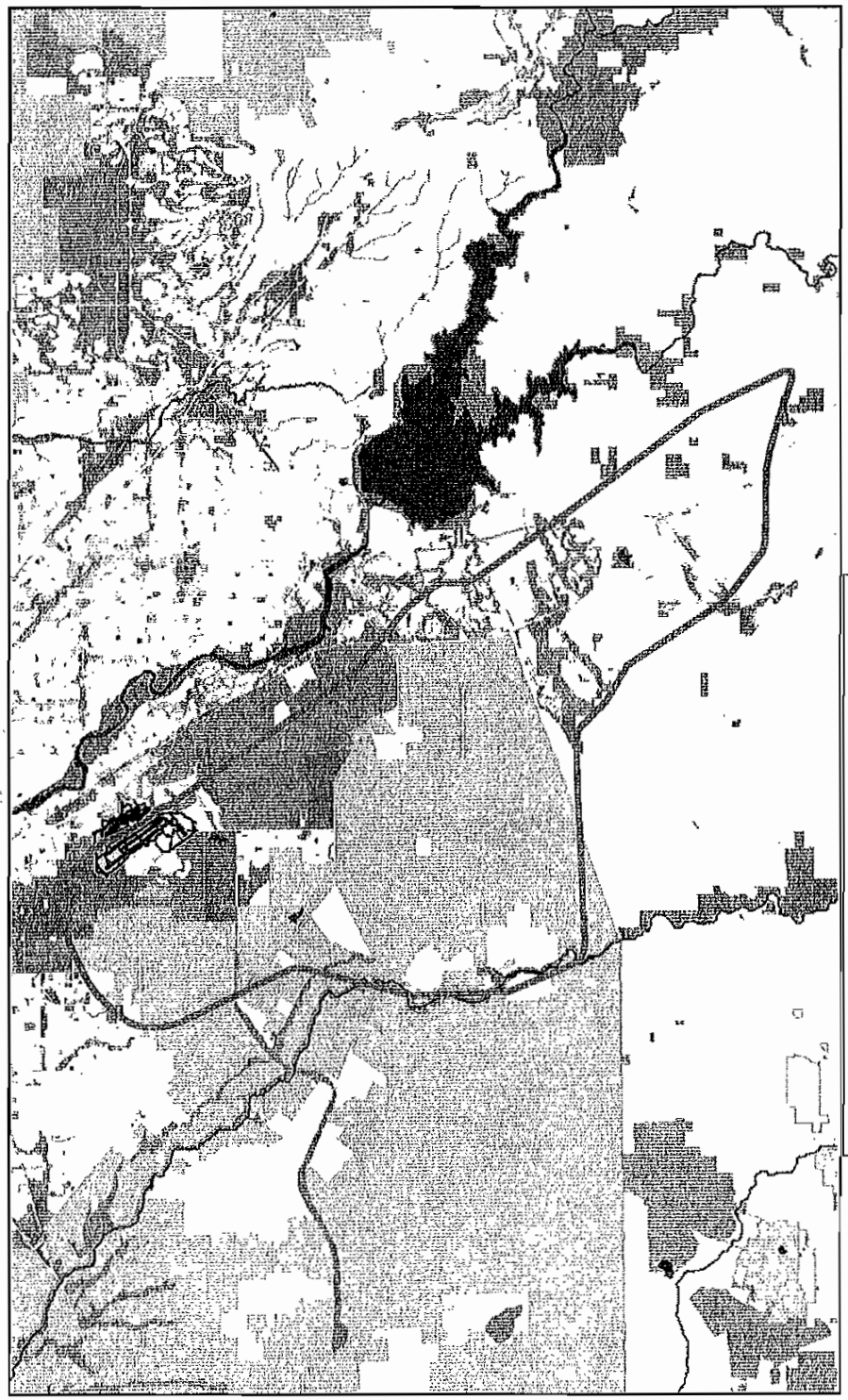
Nautical Miles

0 0.4 0.8 1.6 2.4 3.2

LANDUSE Sources:

SACOG - Sacramento, El Dorado, Placer Counties
CASIL - Amador, San Joaquin Counties

Exhibit G
Mather Airport
Airport Planning Policy Area (APPA)



SACRAMENTO COUNTY AIRPORT SYSTEM

04/10/2006

LEGEND

Landuse

- Rural Residential
- Very Low Density Residential
- Low Density Residential
- Medium Density Residential
- Medium High Density Residential
- High Density Residential
- High-Intensity Office
- Moderate-Intensity Office
- Community/Neighborhood Commercial/Office
- Regional Commercial/Office
- Community/Neighborhood Retail
- Regional Retail
- Light Industrial
- Heavy Industrial
- Public/Quasi-Public
- Mixed Use
- Urban Reserve
- Agriculture
- Open Space
- Forest
- Water
- APPA with - Recommended Flight Track Inclusion

0 14 Nautical Miles

LANDUSE Sources:

SACOG - Sacramento, El Dorado, Placer Counties
CASIL - Amador, San Joaquin Counties

EXHIBIT H

MATHER AIRPORT PLANNING POLICY AREA
PROPOSED POLICY

Dated: April 19, 2006

Purpose: This policy is intended to increase the awareness of residents, in any future residential communities that are approved, of their possible exposure to aircraft operations; to limit the potential for conflict between the Mather Airport and adjacent communities; and, to protect future airport development and aircraft operations flexibility beyond that obtainable solely by relying upon the noise and safety land use guidelines contained within the existing Airport Land Use Compatibility Plans.

Justification: Successful operation of Mather Airport is largely based on the successful operation of these airports as an economic engine and commerce center. These goals can best be realized if the airport can function both in an environment free of as many aircraft operational restrictions as possible, and within a positive, mutually beneficial relationship with nearby communities.

Experience has shown that the primary cause of airport operational restrictions is the encroachment of residential development within the airport environs. Encroachment in turn, has led to many airport-related complaints from the new residents living within these areas. The State of California has adopted airport noise and safety standards which are implemented through Airport Land Use Compatibility Plans prepared by Airport Land Use Commissions in order to assist local governments in preventing these types of situations.

Despite the standards in the Airport Land Use Compatibility Plan legislation, airports receive complaints outside the areas defined as receiving "significant" noise exposure by residents who perceive they are impacted or potentially impacted by airport operations. These complaints, whether valid or not, can result in restrictions to airport operations. Sacramento County currently has an opportunity to create an additional envelop of protection for Mather Airport since much of the surrounding area is not yet urbanized.

Policy: New residential development within the 60 CNEL noise exposure contour for Mather Airport shall be prohibited. Also, new residential development within the Airport Planning Policy Area boundaries for the airport, but outside the 60 CNEL, shall be subject to the following conditions prior to any approval by Sacramento County:

1. Minimum noise insulation to protect persons from excessive noise within new residential dwellings, including detached singe family dwellings, that limits noise to 45 dB CNEL, with windows closed, in any habitable room.
2. Notification in the Public Report prepared by the California Department of Real Estate disclosing to prospective buyers that the parcel is located within the applicable Airport Planning Policy Area and that aircraft operations can be expected to overfly that area at varying altitudes less than 3,000 feet Above Ground Level (AGL)

3. Execution and recordation with the Sacramento County Recorder of Avigation Easements prepared by the Sacramento County Counsel's Office on each individual residential parcel contemplated in the development in favor of the County of Sacramento. All avigation easements recorded pursuant to this Policy shall, once recorded, be copied to the Director of Airports and shall acknowledge the property location within the appropriate Airport Planning Policy Area and shall grant the right of flight and unobstructed passage of all aircraft into and out of the appropriate airport.

Exceptions: New accessory residential dwellings on parcels zoned Agricultural, Agricultural Residential, Interim Agricultural, Interim General Agricultural, or Interim Limited Agricultural, shall be exempt from the Airport Planning Policy Areas prohibitions.

REVISED

RESOLUTION NO. 2006-1379

WHEREAS, the California Public Utilities Code requires that public service airports have an Airport Land Use Compatibility Plan (formerly known as a Comprehensive Land Use Plan, or CLUP, and hereinafter referred to as the "ALUCP"); and

WHEREAS, the purpose of the ALUCP is to provide for the orderly growth of the subject airport and its environs while insuring the general welfare of residents and the public at large; and

WHEREAS, the California Public Utilities Code also requires the ALUCP to be prepared in accordance with the most recent California Airport Land Use Planning Handbook (the "Handbook"); and

WHEREAS, the Handbook requires that consideration be given to areas of aircraft overflight beyond the aircraft noise exposure contours mapped in accordance with federal guidelines that define significant noise impacts; and

WHEREAS, the most recent ALUCP for McClellan Airfield was updated in 1994, when the airport still operated as an Air Force Base; and

WHEREAS, the County of Sacramento ("County") submitted a request to the Sacramento Area Council of Governments ("SACOG") in May of 2005 to update the McClellan ALUCP to reflect current and projected operations at McClellan Airfield consistent with the airfield component of the McClellan Air Force Base Reuse Plan ("McClellan Master Plan"); and

WHEREAS, the proposed McClellan ALUCP update that has been submitted to SACOG includes the use of a theoretic capacity noise contour for McClellan Airfield based on the McClellan Master Plan; and

WHEREAS, the McClellan ALUCP should reflect the current as well as future operations of aircraft utilizing McClellan Airfield and their impact on the surrounding communities; and

WHEREAS, the Sacramento County Airport System ("SCAS") has prepared comprehensive aircraft overflight studies to identify areas in the vicinity of McClellan Airfield that are and may be affected by noise from aircraft

overflights from current and future operations at McClellan Airfield but that are outside aircraft noise exposure contours mapped in accordance with federal guidelines that define significant noise impacts; and

WHEREAS, the Handbook now requires that ALUCPs include policies to address such aircraft overflights;

WHEREAS, the County intends to forward its studies and data relating to aircraft overflights associated with operations at McClellan Airfield to SACOG; and

WHEREAS, the County intends to request that SACOG analyze this information and develop appropriate policies for incorporation into the McClellan ALUCP update, as required by the Handbook, that minimize potential conflicts between McClellan Airfield operations and future residential development that may experience aircraft overflights from McClellan Airfield; and

WHEREAS, SCAS has developed a proposed 60 CNEL theoretic airport capacity noise contour ("60 CNEL noise contour") for McClellan based on the McClellan Master Plan; and

WHEREAS, the purpose of developing the proposed 60 CNEL noise contour is to identify the areas within which new residential uses would be prohibited; and

WHEREAS, the proposed 60 CNEL noise contour has been forwarded to the County Department of Planning and Community Development ("Planning Department") for the initiation of a proposed County General Plan amendment that would prohibit residential uses within the proposed 60 CNEL noise contour; and

WHEREAS, SCAS has also developed a proposed Airport Policy Planning Areas ("APPA") for McClellan Airfield; and

WHEREAS, the purpose of developing the proposed APPA is to identify areas that are and may be affected by aircraft overflights by current and future operations at McClellan Airfield but are outside aircraft noise exposure contours mapped in accordance with federal guidelines that define significant noise impacts for those airports; and

WHEREAS, it is the further purpose of the proposed APPA to identify land use policies that seek to minimize conflicts between future residential development within the boundaries of the APPA and existing and anticipated airport operations; and

WHEREAS, it is the intent of the Board of Supervisors to forward the proposed McClellan APPA located within the unincorporated area of the County to the Planning Department for incorporation into the pending proposal to update the County General Plan; and

WHEREAS, the Board believes that it is appropriate for the County to forward the proposed McClellan APPA, together with the aircraft overflight information that that was used to develop such APPA, to surrounding jurisdictions so that they can consider whether it would be appropriate for them to develop the same or similar policies for implementation within their respective jurisdictions.

NOW, THEREFORE, IT IS HEREBY RESOLVED AND ORDERED as follows:

1. The Planning Department is directed to incorporate the proposed McClellan APPA located within the unincorporated area of the County and its implanting policies, as depicted in Exhibit A and Exhibit B, respectively, attached hereto, into the pending proposal to update the County General Plan, to conduct appropriate environmental review of the proposed McClellan APPA as part of the environmental review process for the County General Plan update, and to bring the proposed McClellan APPA back to the Board for further consideration as part of the public hearing process for the County General Plan update.

2. Pending Board action on the proposed 60 CNEL noise contour and the proposed McClellan APPA, the Planning Department is directed to forward all applications for residential land use entitlements within the proposed McClellan - APPA located within the unincorporated area of the County to SCAS for review as to potential McClellan Airfield aircraft overflight issues and the development of appropriate conditions to mitigate any potential issues related to such aircraft overflights.

3. SCAS is directed to forward its studies and data relating to aircraft overflights associated with operations at McClellan Airfield to SACOG and request that SACOG analyze this information and develop appropriate policies for incorporation into the McClellan ALUCP update, as required by the Handbook, that minimize potential conflicts between McClellan Airfield operations and future residential development that may experience aircraft overflights resulting from the operation of McClellan Airfield.

4. SCAS is directed to forward the following to those land use jurisdictions within the areas of overflight as indicated within the McClellan APPA:

a. The Board's direction to the Planning Department with respect to the proposed APPA;

b. All studies and data prepared by SCAS in the development of the APPA; and

c. A request that those jurisdictions review the information submitted to them, together with the proposed APPA, and consider whether it is appropriate for them to implement the same or similar policies within their respective jurisdictions .

On a motion by Supervisor Dickinson, seconded by Supervisor MacGlashan, the foregoing Resolution was passed and adopted by the Board of Supervisors of the County of Sacramento this 19th day of April , 2006, by the following vote, to wit:

AYES: Supervisors, Dickinson, Peters, MacGlashan

NOES: Supervisors, Nottoli

ABSENT: Supervisors, Collin

ABSTAIN: Supervisors, None

In accordance with Section 25103 of the Government Code of the State of California a copy of the document has been delivered to the Chairman of the Board of Supervisors, County of Sacramento on APR 19 2006

By Lurayne Dewlenia
Deputy Clerk, Board of Supervisors

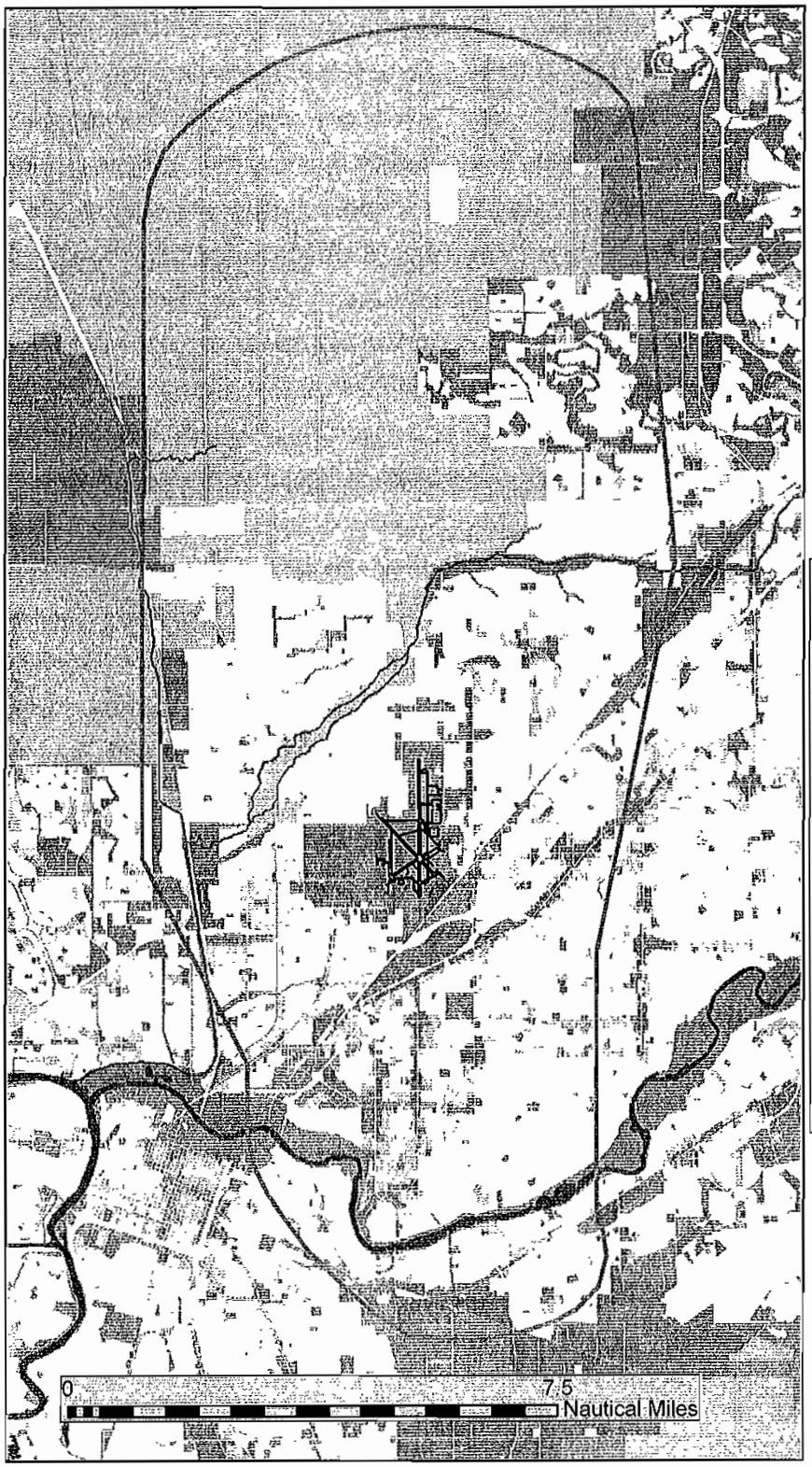
Roberta MacGlashan
Chairperson, Board of Supervisors

(SEAL)

ATTEST: Sandra Leahy
Clerk, Board of Supervisors

FILED
APR 19 2006
BOARD OF SUPERVISORS
BY
CLERK OF THE BOARD

Exhibit A
McClellan Airport (MCC)
Airport Planning Policy Area (APPA)



SACRAMENTO COUNTY AIRPORT SYSTEM

04/10/2006

LEGEND

Landuse

- Rural Residential
- Very Low Density Residential
- Low Density Residential
- Medium Density Residential
- Medium High Density Residential
- High Density Residential
- High-Intensity Office
- Moderate-Intensity Office
- Community/Neighborhood Commercial/Office
- Regional Commercial/Office
- Community/Neighborhood Retail
- Regional Retail
- Light Industrial
- Heavy Industrial
- Public/Quasi-Public
- Mixed Use
- Urban Reserve
- Agriculture
- Open Space
- Forest
- Water
- APPA with - Recommended Flight Track Inclusion

LANDUSE Sources:

SACOG - Sacramento, El Dorado, Placer Counties
CASIL - Amador, San Joaquin Counties

EXHIBIT B

MCCLELLAN AIRFIELD PLANNING POLICY AREA
PROPOSED POLICY

Dated: April 19, 2006

Purpose: This policy is intended to increase the awareness of residents, in any future residential communities that are approved, of their possible exposure to aircraft operations; to limit the potential for conflict between the McClellan Airfield and adjacent communities; and, to protect future airport development and aircraft operations flexibility beyond that obtainable solely by relying upon the noise and safety land use guidelines contained within the existing Airport Land Use Compatibility Plans.

Justification: Successful operation of McClellan Airfield is largely based on the successful operation of these airports as an economic engine and commerce center. These goals can best be realized if the airport can function both in an environment free of as many aircraft operational restrictions as possible, and within a positive, mutually beneficial relationship with nearby communities.

Experience has shown that the primary cause of airport operational restrictions is the encroachment of residential development within the airport environs. Encroachment in turn, has led to many airport-related complaints from the new residents living within these areas. The State of California has adopted airport noise and safety standards which are implemented through Airport Land Use Compatibility Plans prepared by Airport Land Use Commissions in order to assist local governments in preventing these types of situations.

Despite the standards in the Airport Land Use Compatibility Plan legislation, airports receive complaints outside the areas defined as receiving "significant" noise exposure by residents who perceive they are impacted or potentially impacted by airport operations. These complaints, whether valid or not, can result in restrictions to airport operations. Sacramento County currently has an opportunity to create an additional envelop of protection for McClellan Airfield since much of the surrounding area is not yet urbanized.

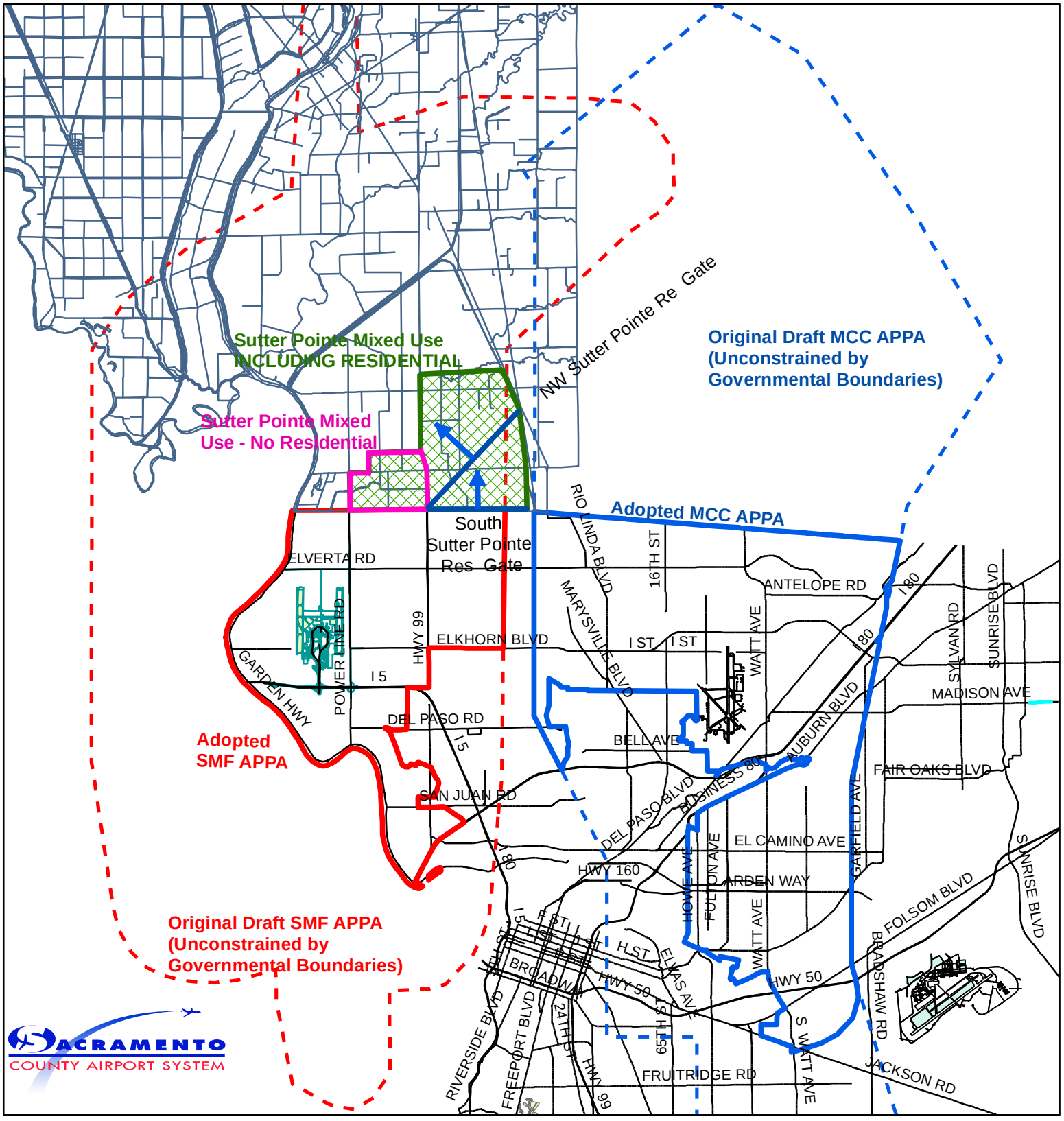
Policy: New residential development within the 60 CNEL noise exposure contour for McClellan Airfield shall be prohibited. Also, new residential development within the Airport Planning Policy Area boundaries for the airport, but outside the 60 CNEL, shall be subject to the following conditions prior to any approval by Sacramento County:

1. Minimum noise insulation to protect persons from excessive noise within new residential dwellings, including detached singe family dwellings, that limits noise to 45 dB CNEL, with windows closed, in any habitable room.
2. Notification in the Public Report prepared by the California Department of Real Estate disclosing to prospective buyers that the parcel is located within the applicable Airport Planning Policy Area and that aircraft operations can be expected to overfly that area at varying altitudes less than 3,000 feet Above Ground Level (AGL)

3. Execution and recordation with the Sacramento County Recorder of Avigation Easements prepared by the Sacramento County Counsel's Office on each individual residential parcel contemplated in the development in favor of the County of Sacramento. All avigation easements recorded pursuant to this Policy shall, once recorded, be copied to the Director of Airports and shall acknowledge the property location within the appropriate Airport Planning Policy Area and shall grant the right of flight and unobstructed passage of all aircraft into and out of the appropriate airport.

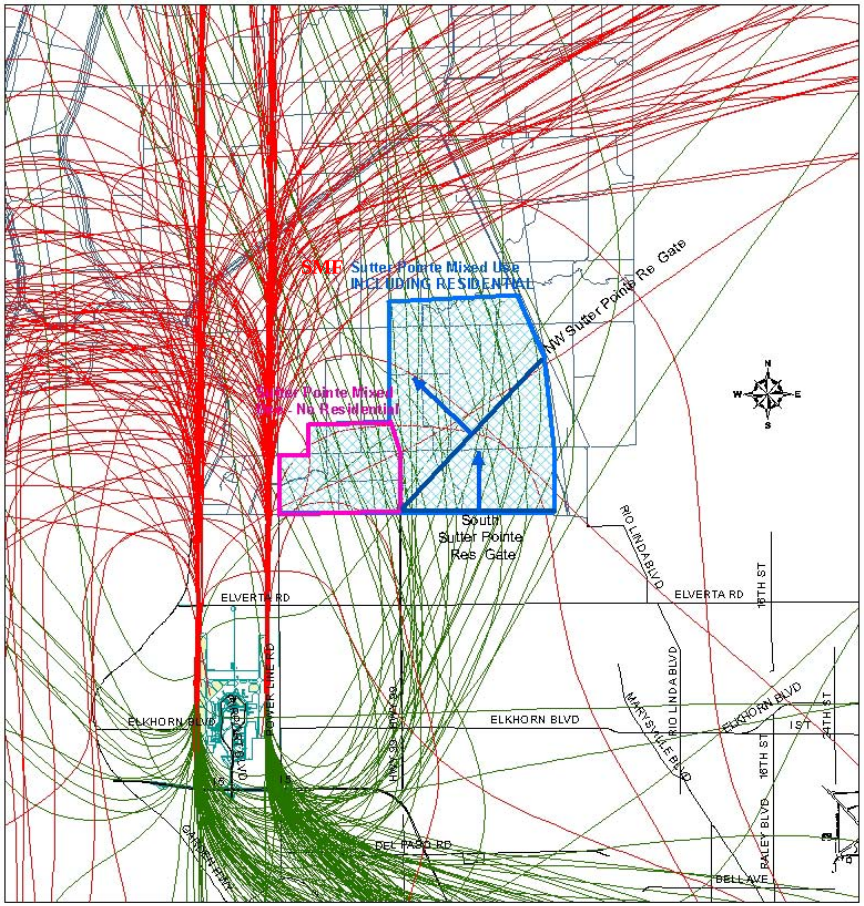
Exceptions: New accessory residential dwellings on parcels zoned Agricultural, Agricultural Residential, Interim Agricultural, Interim General Agricultural, or Interim Limited Agricultural, shall be exempt from the Airport Planning Policy Areas prohibitions.

SMF andMCC Original Draft and Adopted Airport Planning Policy Areas and Proximity to Sutter Pointe Specific Plan Project Areas

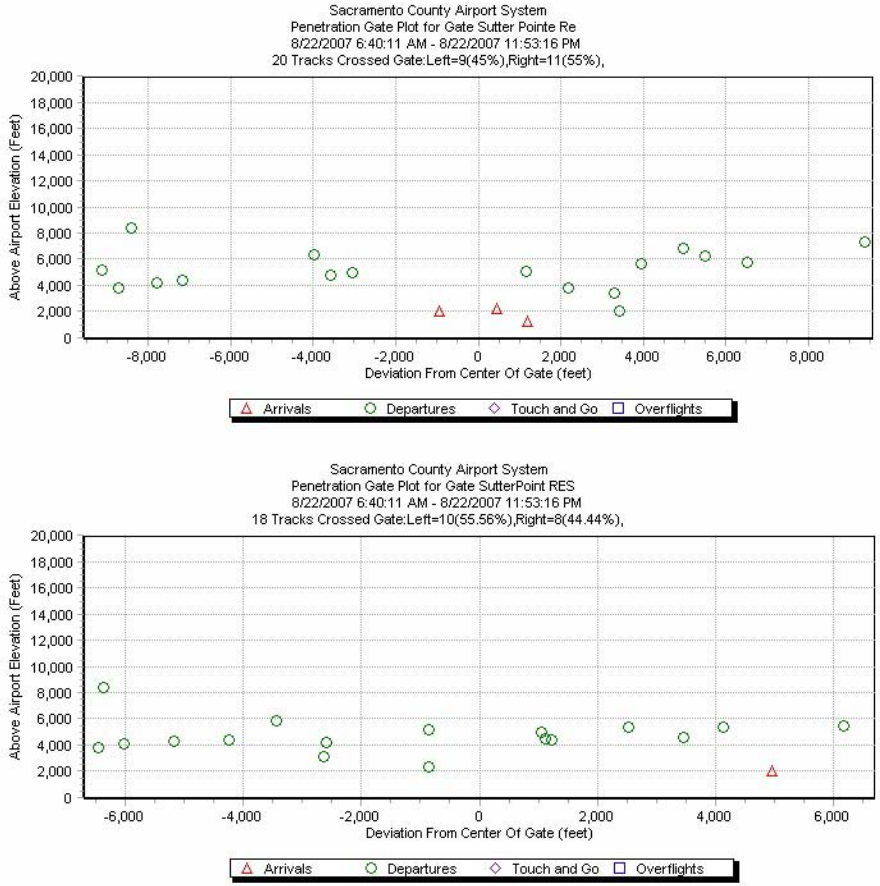


Sacramento County Airport System
Aircraft Noise Information Office
Sacramento International Airport (SMF) Flight Tracks (428) On Sutter Pointe EIR Noise Monitoring Date August 22, 2007
Flight Track and Penetration Gate Analysis

Sutter Pointe Residential Areas Flight Track Analysis



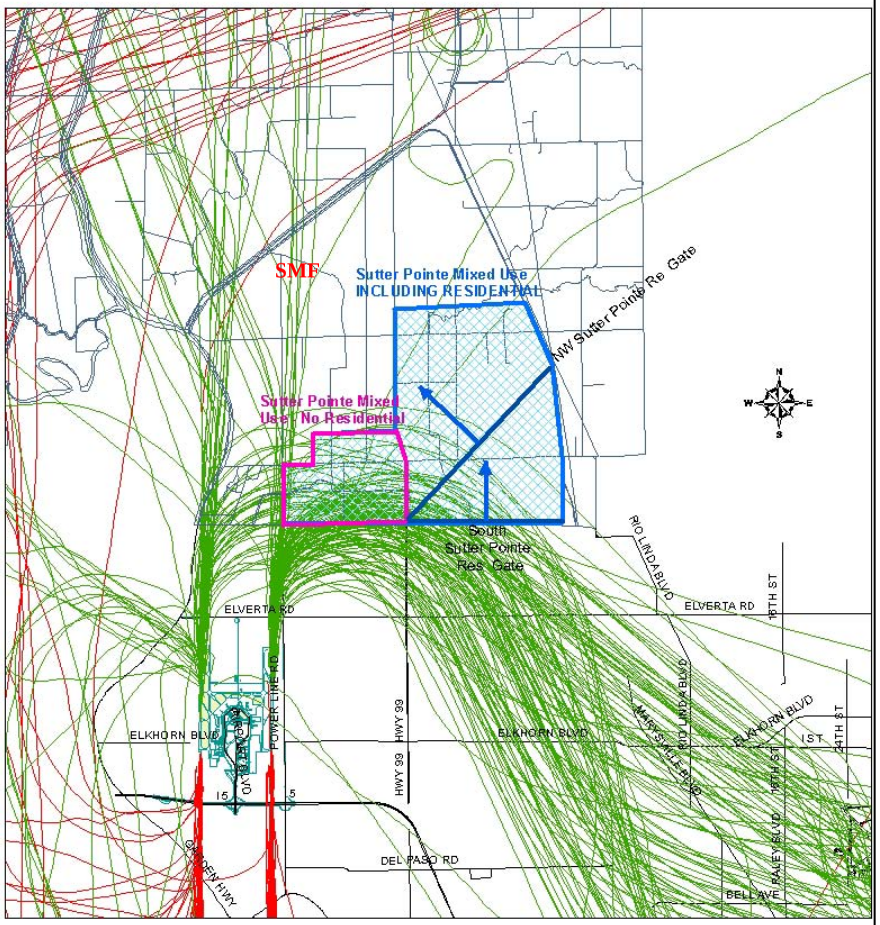
Sutter Pointe Residential Areas Gate Penetration Analysis



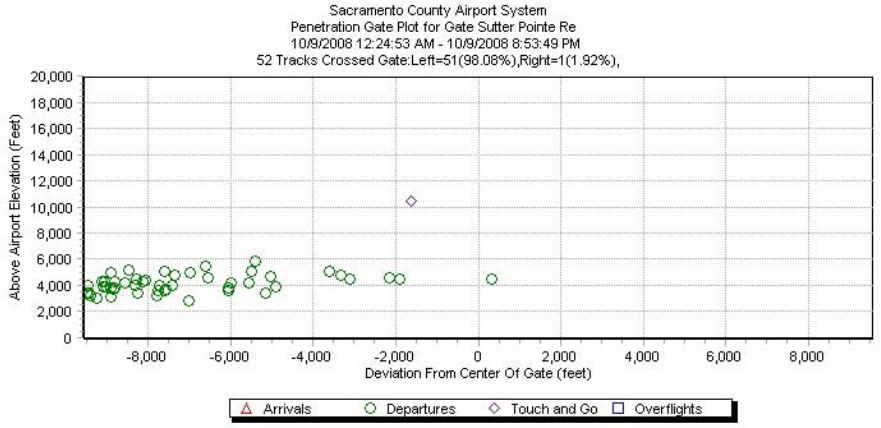
On August 22, 2007, SMF's Runways were operated in south flow. Of the two penetration gates placed over the residential areas, overflights were almost exclusively limited to departures that reversed course to northerly headings. The penetration gate analysis (above right) indicates that a total of 20 and 18 respectively penetrated the gates out of total of 438 flight operations that day. These penetrations occurred at altitudes between approximately 1,000 feet MSL and 8,000 feet MSL, with the majority of departures at between 3,000 and 6,000 feet and the few arrivals much lower, generally at less than 2,000 feet.

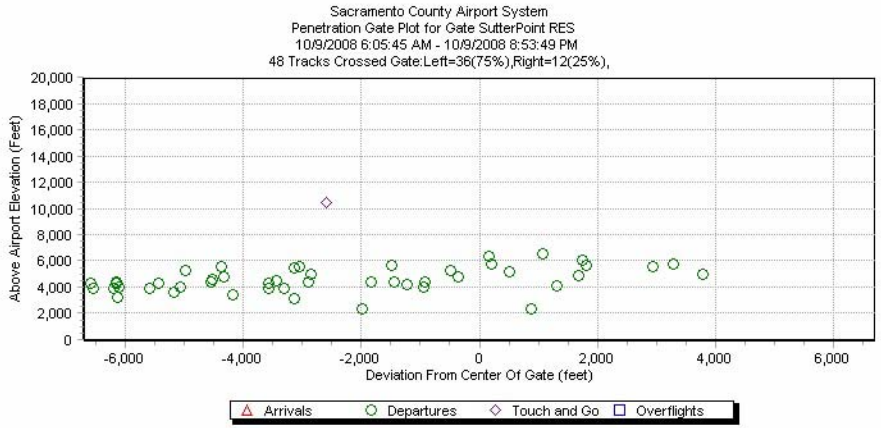
Sacramento County Airport System
Aircraft Noise Information Office
Sacramento International Airport (SMF) Flight Tracks (365) On North Flow Date October 8, 2008
Flight Track and Penetration Gate Analysis

Sutter Pointe Residential Areas Flight Track Analysis



Sutter Pointe Residential Areas Gate Penetration Analysis





On October 9, 2008, SMF's Runways were operated in north flow. Of the two penetration gates placed over the residential areas, overflights were almost exclusively limited to departures that reversed course immediately after takeoff with many of them executing the reversal turn over project areas identified for residential land uses The penetration gate analysis (above right) indicates that a total of 52 (14%) and 48 (13%) respectively penetrated the gates out of total of 365 flight operations that day. Though overall flights per day have actually dropped between 2007 and 2008 due to the economic downturn, data indicates that there are still more overflights during north flow now despite a 14% reduction in total daily flight operations since the project's noise monitoring was done in 2007. These penetrations occurred at altitudes between approximately 2,000 feet MSL and 5,000 feet MSL, lower than the departures monitored during south flow on August 22, 2007, and by aircraft operating a high power settings rather than idle thrust settings used for arrivals. The failure to conduct monitoring during north flow conditions represents a potentially significant omission in the single event analysis that may call into question the conclusion drawn on Impact 3.5-2 that impacts would be less than significant.

Subject: FW: Airport Air Quality Analysis
Date: Friday, February 6, 2009 8:32 AM
From: Doug Libby <DGLibby@co.sutter.ca.us>
To: George Carpenter <georgemcarpenter@comcast.net>
Cc: Janet Bender <JBender@co.sutter.ca.us>, Larry Bagley <LBagley@co.sutter.ca.us>, Randy Cagle <rcagle@co.sutter.ca.us>, Lisa Wilson <lpurviswilson@co.sutter.ca.us>, Al Sawyer <asawyer@co.sutter.ca.us>, "Dameron, Daniel E" <DEDameron@pbsj.com>

Sac. County airport information. Letter to follow.

From: Rowe. Greg [mailto:RoweG@saccounty.net]
Sent: Thursday, February 05, 2009 6:26 PM
To: Doug Libby
Subject: Airport Air Quality Analysis

Doug: the County Airport System is preparing a comment letter on the Sutter Pointe Specific Plan DEIR. In terms of air quality, we are suggesting that the DEIR would have benefited from reviewing the detailed air quality analysis that appeared in the airport master plan FEIR and in the NEPA Environmental Assessment. Attached is a copy of Chapter 8 - Air Quality, an excerpt of the FEIR. There is also a more detailed air quality appendix available.

<<Chap 8_Air Qual_FEIR_SMF MP_July07.pdf>>

Greg Rowe
Senior Environmental Analyst
Planning and Environment
Sacramento County Airport System (SCAS)
6900 Airport Boulevard
Sacramento, CA 95837
916.874.0698 (office)
916.874.0741 or 0764 (fax)
e-mail: roweg@saccounty.net
www.sacairports.org <file:///\\www.sacairports.org>

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8 AIR QUALITY

INTRODUCTION

A technical air quality analysis was prepared by KB Environmental Sciences, Inc. and URS Corporation for Sacramento County Department of Environmental Review and Assessment (DERA) and is included in Volume II of this EIR. This chapter summarizes that analysis.

ENVIRONMENTAL SETTING

CLIMATE AND ATMOSPHERIC CONDITION

Sacramento County is about 50 miles northeast of Carquinez Strait, a sea-level gap between the Coast Ranges and the Diablo Range. The prevailing winds are from the south, primarily because of marine breezes through Carquinez Strait, although during winter the sea breezes diminish and winds from the north occur more frequently.

The climate of Sacramento County (and that of the Study Area for this assessment) is characterized as maritime with few extremes of heat or cold. According to the Western Regional Climate Center, Sacramento International Airport (SMF) has an average January temperature of about 46 Fahrenheit (°F) and an average July temperature of about 75°F. Precipitation occurs mostly in the winter and spring months with about 20 inches recorded annually. The average wind speed is about 8 miles per hour at SMF and the predominate wind directions are from the south-southeast in the spring, summer, and fall, trending to the north-northwest in the winter.

The project area experiences episodes of poor atmospheric mixing caused by inversion layers. Inversion layers are formed when temperature increases with elevation above ground, or when a mass of warm dry air settles over a mass of cooler air near the ground. Surface inversions (0 to 500 feet) occur most often during the winter, while subsidence inversions (1000 to 2000 feet) are most frequent during the summer. Inversion layers limit vertical mixing in the atmosphere, trapping pollutants near the surface.

AIR POLLUTANTS AND AMBIENT AIR QUALITY STANDARDS

California and the U.S. Environmental Protection Agency (USEPA) have established criteria for airborne concentrations of carbon monoxide (CO), ozone (O_3), nitrogen dioxide (NO_2), sulfur dioxide (SO_2), particulate matter 10 microns in diameter and smaller (PM_{10}), particulate matter 2.5 microns in diameter and smaller ($PM_{2.5}$), and lead. These standards are termed the National Ambient Air Quality Standards (NAAQS) and California Ambient Air Quality Standards (CAAQS), and the pollutants they address are often termed "criteria pollutants." For some criteria pollutants, separate standards have been set for different durations of time (e.g., 1-hour, 24-hour, annual, etc). Most

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standards have been set to protect public health. For some criteria pollutants, standards have been based on other values (such as protection of crops, protection of materials, or avoidance of nuisance conditions). The criteria pollutants of greatest concern in Sacramento County are CO, O_3, PM_{10}, and $PM_{2.5}$. A summary of NAAQS and CAAQS for criteria pollutants along with information on their health and environmental affects is provided in Table AQ-1.

Table AQ-1
National/California Ambient Air Quality Standards[3] (NAAQS/CAAQS)

Pollutant	Time Period	NAAQS	CAAQS	Comments
Carbon monoxide (CO)	1 hour	35 ppm (40 mg/m^3)	20 ppm (23 mg/m^3)	CO is a colorless, odorless, tasteless gas; can temporarily accumulate into localized "hot spots" in calm weather conditions and in the wintertime. CO usually dissipates quickly, posing no widespread threat to human health or the environment. Under elevated ambient concentrations, CO can cause headache and nausea in humans. Mobile sources (i.e., motor vehicles), indoor heating, and open burning are among the dominant human-made sources of CO.
	8-hour	9 ppm (10 mg/m^3)	9.0 ppm (10 mg/m^3)	
Ozone (O_3)	1 hour*	0.12 ppm	0.09 ppm	O_3 is a secondary pollutant, formed from daytime reactions of NO_x and volatile hydrocarbons rather than being directly emitted by natural or human-made sources. In elevated concentrations, O_3 is a strong oxidant with deleterious effects on both human health and the natural environment. The NAAQS/CAAQS for O_3 was lowered recently and the averaging period changed from one to eight hours.
	8-hour*	0.08 ppm	0.070 ppm	
Nitrogen dioxide (NO_2)	1 hour	n/a	0.25 ppm (470 µg/m^3)	NO_2, nitric oxide (NO), and the nitrate radical (NO_3) are collectively called oxides of nitrogen (NO_x) and NO_2 is the compound commonly measured with air quality monitors. NO_x is generally emitted in the form of NO, which is oxidized to NO_2. The principal human-made source of NO_x is fuel combustion in motor vehicles and power plants. In elevated concentrations, NO_2 causes adverse health effects and reactions of NO_x with other atmospheric chemicals can lead to the formation of O_3 and acidic precipitation.
	Annual	0.053 ppm (100 µg/m^3)	n/a	

Table AQ-1
National/California Ambient Air Quality Standards[3] (NAAQS/CAAQS)

Pollutant	Time Period	NAAQS	CAAQS	Comments
Sulfur dioxide (SO_2)	1 hour	n/a	0.25 ppm (655 µg/m^3)	For human-made sources, SO_2 is emitted primarily by the combustion of sulfur-containing fuels and sulfuric acid manufacturing. SO_2 can lead to the formation of acidic precipitation and in elevated concentrations impair human lung functions and plant growth.
	3 hour	0.5 ppm (1,300 µg/m^3)	n/a	
	24-hour	0.14 ppm (365 µg/m^3)	0.04 ppm (105 µg/m^3)	
	Annual	0.03 ppm (80 µg/m^3)	n/a	
Respirable Particulate Matter (PM_{10})	24-hour	150 µg/m^3	50 µg/m^3	PM comprises of very small particles of dirt, dust, soot, or liquid droplets called aerosols. The regulatory standards for PM are segregated by sizes (i.e., respirable < 10 and fine < 2.5 microns as PM_{10} and $PM_{2.5}$, respectively). PM is formed from both natural and human-made sources including wind erosion over exposed soils (i.e., fugitive dust), the burning of fossil fuels and incineration of solid wastes, and as an exhaust product from the internal combustion engine. Of growing concern are the effects of PM on visibility and the potential impairment to human health as diesel emissions.
	Annual **	50 µg/m^3	20 µg/m^3	
Fine Particulate Matter ($PM_{2.5}$)	24-hour	35 µg/m^3	n/a	
	Annual	15 µg/m^3	12 µg/m^3	
Lead (Pb)	Monthly	n/a	1.5 µg/m^3	Lead is a "heavy metal" most commonly associated with emissions from industrial sources including waste oil and solid waste incineration, iron and steel production, lead smelting, and battery and lead alkyl manufacturing. The lead content of motor vehicle fuel, which was a major source of atmospheric lead in the past, has significantly declined with the widespread use of unleaded fuel.
	Quarterly	1.5 µg/m^3	n/a	

Source: http://www.epa.gov/air/criteria.html http://www.arb.ca.gov/research/aaqs/caaqs/caaqs.htm
ppm = part(s) per million, µg/m^3 = microgram(s) per cubic meter, mg/m^3 = milligram(s) per cubic meter; n/a = not applicable
The CAAQS also include sulfates, hydrogen sulfides, and vinyl chloride, but these pollutants are not associated with airports.

* On June 15, 2005 the 1-hour ozone standard was revoked by U.S. EPA and replaced with the 8-hour standard. On December 22, 2006, the DC Circuit Court of Appeals vacated the 8-hour ozone standard and remanded the entire ozone issue to EPA. This is still under review at the time the SMF Draft EIR was published.

** Due to a lack of evidence linking health problems to long-term exposure to coarse particle pollution, the agency revoked the annual PM_{10} standard in 2006 (effective December 17, 2006).

TOXIC AIR CONTAMINANTS

Toxic air contaminants are a classification of air pollutants for which no NAAQS/CAAQS exist. Also known as hazardous air pollutants (HAPs), these pollutants are considered to be potentially harmful to human health when they occur in concentrations and over

exposure periods that are sufficiently high and long enough to cause short-term (acute) or long-term (chronic) impacts.

EXISTING AIR QUALITY CONDITIONS

Together, the California Air Resources Board (CARB) and the Sacramento Metropolitan Air Quality Management District (SMAQMD) operate a network of ambient air quality monitoring stations throughout Sacramento County. These stations are designed to sample and record outdoor levels of air pollutants on a regular basis. As shown on Plate AQ-1, four of the closest air monitoring sites to SMF are approximately 6 to 12 miles away. Presently, no air monitoring stations are located directly on, or adjacent to, SMF.[1]

Table AQ-2 contains a summary of the data collected at the four air monitoring sites including the pollutants measured and the highest recorded levels in 2003 through 2005.[2] Information is also provided on whether or not the highest recorded levels represent violations of the NAAQS/CAAQS. With the exception of O_3, which is a regional pollutant, these levels are not necessarily representative of the conditions at SMF but serve as general indicators of overall air quality conditions in the area.

[1] An air quality monitoring station was located adjacent to SMF on Earhart Drive until 1998. Concentrations for the pollutants CO and PM_{10} were below the NAAQS/CAAQS and were above the NAAQS/CAAQS for O_3.

[2] The data summary is provided for the years 2003 through 2005 and is generally representative of recent trends. Data is available from CARB at http://www.arb.ca.gov/adam/welcome.html and USEPA at http://www.epa.gov/air/data/index.html.

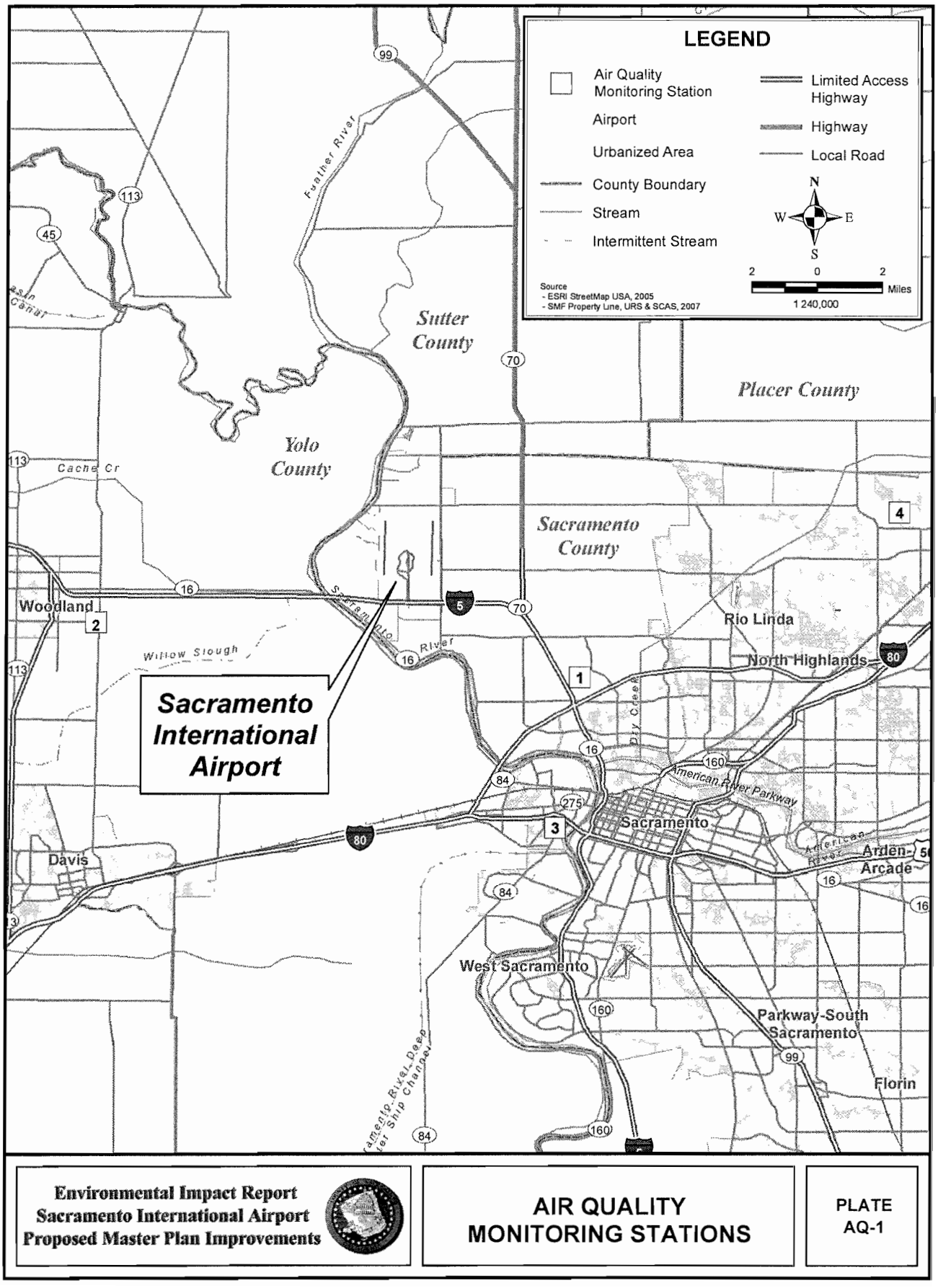

LEGEND
Air Quality Monitoring Station
Airport
Urbanized Area
County Boundary
Stream
Intermittent Stream
Limited Access Highway
Highway
Local Road
N
W
E
S
2 0 2
Miles
1 240,000
Source
- ESRI StreetMap USA, 2005
- SMF Property Line, URS & SCAS, 2007
Sutter County
Placer County
Yolo County
Sacramento County
Sacramento International Airport
Woodland
Davis
West Sacramento
Rio Linda
North Highlands
Sacramento
Arden-Arcade
Parkway-South Sacramento
Florin
Feather River
Sacramento River
Willow Slough
Cache Cr
American River Parkway
Dry Creek
99
113
45
70
5
80
16
84
160
275
1
2
3
4
Environmental Impact Report
Sacramento International Airport
Proposed Master Plan Improvements
AIR QUALITY MONITORING STATIONS
PLATE AQ-1
H:/projects/Sacramento_EIS/projectnumber_name/Applications/mxd/Figures/EIR/Plate AQ-1, Air Quality Monitoring Stations.mxd (jlb jlb rpf 03/09/07)

Table AQ-2
Air Monitoring Data Summary – 2003 through 2005

Site No.	Location / Distance & Direction from SMF	Pollutant	Time Period	Units	Year			Below Standards	
					2003	2004	2005	NAAQS	CAAQS
1	3801 Airport Road (Natomas Air Park) Sacramento / 5.8 miles southeast	CO	1-Hour	ppm	4.1	4.0	3.9	Yes	Yes
			8-hour	ppm	3.1	3.5	3.0	Yes	Yes
		O_3	1-Hour	ppm	0.097	0.090	0.100	Yes	**No**
			8-hour	ppm	0.085	0.072	0.087	~~Yes~~**No**	**No**
		PM_{10}	24-hour	$\mu g/m^3$	57	47	56	Yes	~~Yes~~**No**
			Annual	$\mu g/m^3$	20.7	19.6	20.4	n/a	~~Yes~~**No**
		NO_2	1-Hour	ppm	0.102	0.082	0.074	n/a	Yes
			Annual	ppm	0.018	0.015	0.015	Yes	n/a
2	Gibson Road, Woodland / 7.8 miles west	O_3	1-Hour	ppm	0.097	0.096	0.099	Yes	**No**
			8-hour	ppm	0.084	0.073	0.086	~~Yes~~**No**	**No**
		PM_{10}	24-hour	$\mu g/m^3$	55	169	59	Yes	**No**
			Annual	$\mu g/m^3$	21	35	24	n/a	**No**
		$PM_{2.5}$	24-hour	$\mu g/m^3$	31	36	35	~~Yes~~**No**	n/a
			Annual	$\mu g/m^3$	8.4	10.4	8.4	Yes	Yes
3	15th Street, West Sacramento/ 9.3 miles southeast	PM_{10}	24-hour	$\mu g/m^3$	69	54	63	Yes	**No**
			Annual	$\mu g/m^3$	23	24	23	n/a	**No**
4	Blackfoot Way, North Highlands / 11.5 miles northeast	CO	1-Hour	ppm	4.4	7.3	8.0	Yes	Yes
			8-hour	ppm	2.1	4.1	2.9	Yes	Yes
		O_3	1-Hour	ppm	0.131	0.103	0.103	~~Yes~~**No**	**No**
			8-hour	ppm	0.094	0.088	0.085	**No**	**No**
		PM_{10}	24-hour	$\mu g/m^3$	62	44	110	Yes	~~Yes~~**No**
			Annual	$\mu g/m^3$	21.0	23.5	27.2	n/a	**No**
		NO_2	1-hour	ppm	0.087	0.146	0.060	n/a	Yes
			Annual	ppm	0.015	0.014	0.011	Yes	~~Yes~~**n/a**
		SO_2	1-hour	ppm	0.012	0.008	0.010	~~Yes~~**n/a**	Yes
			3-hour	ppm	0.008	0.006	0.007	Yes	~~Yes~~**n/a**
			24-hour	ppm	0.004	0.002	0.002	Yes	Yes
			Annual	ppm	0.001	0.001	0.001	Yes	~~Yes~~**n/a**

Table AQ-2
Air Monitoring Data Summary – 2003 through 2005

Site No.	Location / Distance & Direction from SMF	Pollutant	Time Period	Units	Year			Below Standards	
					2003	2004	2005	NAAQS	CAAQS

Source: CARB 2006 and USEPA *AIRData – Monitor Values Reports*. (http://www.epa.gov/air/data/index.html), 2006
See Plate AQ-1 for the locations of the monitoring stations.
NAAQS = National Ambient Air Quality Standards, CAAQS = California Ambient Air Quality Standards (see Table AQ-1),
$\mu g/m^3$ = microgram(s) per cubic meter, ppm = part(s) per million, n/a = not applicable,
PM_{10} = particulate matter > 10 micrometers in diameter, $PM_{2.5}$ = particulate matter > 2.5 micrometers in diameter,
CO = carbon monoxide, SO_2 = sulfur dioxide, NO_2 = nitrogen dioxide, O_3 = ozone
Yes = below NAAQS/CAAQS, No = does not meet NAAQS/CAAQS
Note: Although some of the maximum concentrations exceed the AAQS, these do not necessarily represent a violation of the AAQS, as for some pollutants and averaging periods the determination of a AAQS violation is based on other statistical measures (i.e., for ozone, the 3-year average of the fourth-highest daily maximum 8-hour average concentrations measured at each monitor within an area over each year).

As shown in Table AQ-2, the 2004 data collected at these air monitoring stations are below the NAAQS/CAAQS for all of the pollutants listed, with the exception of O_3 and PM_{10}. Exceedances of the O_3 standards occurred at the Natomas Air Park, Woodland, and Blackfoot Way sites and of the PM_{10} standards at the Natamos Air Park, 15th Street West Sacramento, and Blackfoot Way sites. These exceedances generally reflect the nonattainment status of the region.

REGULATORY SETTING

AIR QUALITY REGULATORY AND MANAGEMENT AGENCIES

The USEPA, CARB, and SMAQMD are together primarily responsible for the regulation and management of air quality in Sacramento County. The Sacramento Area Council of Governments (SACOG) is also involved with SMAQMD in transportation planning activities related to air quality.

ATTAINMENT / NONATTAINMENT DESIGNATIONS

SMF is located within the southern sector of **the Sacramento Air Basin, and near the center of the Sacramento Ozone** ~~a federal O_3~~ Nonattainment Area. Under the federal Clean Air Act (CAA), this designation signifies that violations of the NAAQS for this pollutant have occurred in the region.[3] Sacramento County is also designated as a nonattainment area for the PM_{10} NAAQS and an "attainment/maintenance" area for the CO NAAQS as well as "attainment" for the other USEPA criteria air pollutants (i.e., NO_2, SO_2, lead, $PM_{2.5}$).[4] On the state level, the Sacramento area is in attainment of all the CAAQS, with the exception of O_3 and PM_{10}, for which it is designated nonattainment.

[3] With the 2005 replacement by the USEPA of the former 1-hour NAAQS for O_3 with a more stringent 8-hour standard, this "nonattainment" designation now applies to this same area but to the new standard and averaging period.

[4] Nonattainment areas are areas that do not meet the NAAQS/CAAQS; attainment areas are areas that meet the NAAQS/CAAQS and attainment/maintenance areas are areas that are in transition from nonattainment to attainment.

These federal and state nonattainment designations are discussed further in the Air Quality Technical Appendix.

AIR QUALITY MANAGEMENT PLANS

In accordance with federal and state regulations, air quality management plans have been developed to help bring the nonattainment areas of the Sacramento Valley Air Basin and Sacramento County into compliance with the NAAQS and CAAQS. Prepared and approved jointly by the USEPA, CARB, SMAQMD, and SACOG, these plans establish emission budgets, control strategies, and time frames for achieving the requisite attainment status. On the local level the plans are called the Clean Air Plans and when combined with plans from other nonattainment areas in California they become part of the State Implementation Plan (SIP).

The current SIP for the Sacramento O_3 nonattainment area approved by the USEPA is called the *Regional Ozone Attainment Plan* (or the 1994 SIP), and anticipated attainment of the federal NAAQS by 2005. This plan was updated in 2005 with the *Sacramento Regional Nonattainment Area 8-Hour Ozone Rate-of-Progress Plan* and addresses the nonattainment requirements through 2008. Due in mid-2007, the CARB and SMAQMD are developing a draft SIP for the new 8-hour O_3 nonattainment designation, which calls for attainment of the NAAQS by the year 2013.[5] In all of these cases, the plan's strategies focus on the continued control of NO_x and VOCs – the two primary contributors to O_3 formation.

The Sacramento area is also classified as attainment/maintenance for the 8-hour CO NAAQS and is under a CO Maintenance Plan developed by SMAQMD/SACOG. Since no violations of the CO standard have occurred in several years, it is expected that the Sacramento area will be redesignated as an attainment area by 2008 for this pollutant.

These air quality management plans are discussed further in the Air Quality Technical Appendix. No SIP or Clean Air Plan is in place in Sacramento for the federal PM_{10} nonattainment designation or the state PM_{10}/$PM_{2.5}$ designations.

GENERAL CONFORMITY

Because of the nonattainment and maintenance designations for the pollutants O_3, PM_{10}, and CO, the requirements of the federal CAA General Conformity Rule have been considered. In summary, this provision prevents any federal agency from approving, funding or permitting any project or action that does not conform to the appropriate SIP.

[5] On June 15, 2005 the 1-hour ozone standard was revoked by U.S. EPA and replaced with the 8-hour standard. On December 22, 2006, the DC Circuit Court of Appeals vacated the 8-hour ozone standard and remanded the entire ozone issue to EPA. This action is still under review at the time the Draft EIR was published.

IMPACT ASSESSMENT METHODOLOGY

The air quality impact assessment is comprised of several individual technical analyses. These analyses include emissions inventories and atmospheric dispersion modeling of airport-related operational emissions and project-related construction emissions; the analysis of potential CO "hot spots"; a human health risk assessment; and applicability analyses of the federal General and Transportation Conformity Rules. These assessments were conducted using appropriate and up-to-date guidelines and models including the Federal Aviation Administration's Emissions & Dispersion Modeling System (EDMS), the USEPA's AERMOD dispersion model, CARB's motor vehicle and off-road emissions models, and SCAQMD's air quality assessment guidelines.[6] The Air Quality Technical Appendix contains additional information and data used in these assessments.

SIGNIFICANCE CRITERIA

The County of Sacramento considers impacts to air quality to be significant if a project:

- Generates emissions in excess of the following amounts:
  - NO_x: 85 pounds/day (for construction only)
  - NO_x or VOCs/reactive organic gases: 65 pounds/day, or
  - PM_{10}: 50 $\mu g/m^3$ (based on atmospheric dispersion modeling)[7]
- Is in conflict with, or obstructs implementation of, an applicable air quality plan.
- Violates any air quality standard or contributes substantially to an existing or projected air quality violation.
- Results in a cumulatively considerable net increase of any criteria pollutant for which the project region is in nonattainment.
- Exposes the public to substantial pollution concentrations.
- Creates (or is located near) objectionable odors affecting a substantial number of people.

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[6] These models include the FAA EDMS Version 4.5 which contains the U.S. EPA AERMOD dispersion model; CARB's EMFAC2002, OFFROAD and CAL3QHC models; and U.S. EPA's MOBILE6.2 and NONROAD (ver. 2005.0.0) models. The guidelines include the SMAQMD 2004 *Guide on Air Quality Assessment in Sacramento County*, FAA Order 10501E, Chg. 1, *Environmental Impacts: Policies and Procedures* and FAA *Air Quality Procedures for Civilian Airports and Air Force Bases*.

[7] Under the PM_{10} 50 $\mu g/m^3$ threshold, a project (or project phase) is considered significant if:
a. The project's contribution by itself violates the CAAQS; or
b. The project's contribution plus the background level violates the CAAQS, and
i) A sensitive receptor is located within a quarter-mile of the project, or
ii) The project's contribution exceeds five percent of the CAAQS.

- Has potential to emit toxic air contaminants that contribute to an exceedance of the action level for cancer.
- Has potential for creating an accidental release of air toxic emissions or acutely hazardous materials.
- Has potential for the burning of hazardous, medical or municipal wastes.
- Has sensitive receptors (schools, households, etc.) located within ¼ mile of air toxic emissions or CO hot spots.

IMPACTS AND ANALYSIS

CONSTRUCTION IMPACTS

Construction-related emissions associated with Phases 1 and 2 of the SMF Master Plan projects are summarized in Table AQ-3. These predicted values represent the maximum daily amounts of emissions combined for construction of each of the project elements. Emissions are provided for construction equipment emissions and fugitive dust with (i.e., mitigated) and without (i.e., unmitigated) SMAQMD-recommended mitigation measures.

Table AQ-3
Construction Air Emissions Inventory for SMF

Time Frame	Condition[3]	Total Maximum Emissions[1] (lbs/day)					
		CO	VOCs	NO_x	SO_x	PM_{10}	$PM_{2.5}$
Phase 1 (2008-2013)	Unmitigated	284	38	386	34	245	33
	Mitigated	284	38	309	34	77	14
Phase 2 (2014-2020)[2]	Unmitigated	124	20	148	31	241	26
	Mitigated	124	20	118	31	78	9

CO = carbon monoxide, VOCs = volatile organic compounds, NO_x = nitrogen oxides, SO_x = sulfur oxides, PM_{10} = particulate matter greater than 10 micrometers in diameter, $PM_{2.5}$ = particulate matter greater than 2.5 micrometers in diameter

[1] Total maximum emissions represent the greatest daily amounts of emissions generated by construction activities and combined for all of the projects analyzed. The computation sheets for calculating construction-related emissions are voluminous and can be made available for review upon request.

[2] Construction-related emissions are assumed to be the same for the Proposed Project and All North Runway Extension Alternative in Phase 2.

[3] Unmitigated = total construction-related emissions without any additional mitigation measures applied to construction equipment or fugitive dust. Mitigated = total construction-related emissions with the standard SMAQMD-recommended mitigation measures applied.

As shown in Table AQ-3, unmitigated ~~and mitigated~~ emissions of NO_x are predicted to exceed the California Environmental Quality Act (CEQA) significance threshold of 85 pounds/day in both Phases 1 and 2 and are therefore considered significant. **Following application of on-site mitigation measures and banked emission reduction credits that have been received by SCAS, NO_x emissions would continue to exceed the CEQA significance threshold.** This impact will be reduced to less than significant **by application of the SMAQMD off-site mitigation fee, as**

discussed below under ~~with the following~~ mitigation measures. Atmospheric dispersion modeling of the mitigated construction emissions shows that the ambient levels of $PM_{10/2.5}$ associated with the Master Plan project will be below five percent of the CAAQS for these pollutants and are, therefore, not considered to be significant.

MITIGATION MEASURES

AQ -1: Prior to construction, SCAS will provide to the SMAQMD a work plan (i.e., Construction Period Air Quality Mitigation Plan) that includes an inventory of the heavy duty (> 50 horsepower) off-road vehicles to be used in the construction projects; including owned, leased, and subcontractor vehicles. The work plan will demonstrate a project-wide fleet average 20 percent NO_x reduction and 45 percent particulate matter reduction compared to the most recent CARB fleet average at the time of construction.

The work plan will also include a comprehensive inventory of all off-road construction equipment, equal to or greater than 50 horsepower, that will be used an aggregate of 40 or more hours during any portion of the construction projects. The inventory will include the horsepower rating, engine production year, and projected hours of use or fuel throughput for each piece of equipment. The inventory will be updated and submitted monthly throughout the duration of the construction period, except that an inventory will not be required for any 30-day period in which no construction activity occurs. At least 48 hours prior to the use of subject heavy-duty off-road equipment, the project representative will provide the SMAQMD with the anticipated construction timeline including start date, and name and phone number of the project manager and on-site foreman.

AQ-2: The SMF Master Plan construction specifications and work plan will ensure that exhaust emissions from all off-road diesel-powered equipment used on the project site(s) does not exceed 40 percent opacity for more than three minutes in any one hour. This test will be performed by a CARB-certified visible emissions evaluator. Any equipment found to exceed 40 percent opacity (or Ringelmann 2.0) will be repaired immediately, and DERA and SMAQMD will be notified within 48 hours of identification of noncompliant equipment. A visual survey of all in-operation equipment will be made at least weekly, and a monthly summary of the visual survey results will be submitted throughout the duration of the project, except that the monthly summary will not be required for any 30-day period in which no construction activity occurs. The monthly summary will include the quantity and type of vehicles surveyed as well as the dates of each survey. The SMAQMD may conduct periodic site inspections to determine compliance. Nothing in this section will supersede other SMAQMD or state rules or regulations pertaining to exhaust emissions.

AQ-3. A portion of the Emission Reduction Credits (ERCs) received by SCAS on September 19, 2006 for the modification of aircraft fueling operations and elimination of fuel trucks trips at SMF (ERC No. ER00927) will be applied toward

mitigation of NO_x construction emissions associated with the Master Plan project.[8]

AQ-4. Prior to construction activities, SCAS will submit proof that an off-site ~~air quality~~ **construction emissions** mitigation fee ~~of $156,229~~ **using the most current SMAQMD recommended fee calculation methodology and fee rate available at the time of ground disturbance** has been paid to the SMAQMD, and that the work plan has been approved by the SMAQMD and DERA. If differences occur in the estimated equipment list and/or construction phasing used for the EIR analysis, and what is approved in the work plan, the fee may be recalculated by the SMAQMD based on the new information.

AQ-5. The following mitigation measures will be incorporated into the work plan to minimize the generation of PM_{10} dust during construction conditions:

- Enclose, cover, or water twice daily all soil piles
- Water exposed soil with adequate frequency for continued moist soil
- Water all haul roads twice daily
- Cover loads of all haul/dump trucks securely

OPERATIONAL IMPACTS

SOURCES OF AIRPORT EMISSIONS

Air emissions at SMF are most commonly associated with the following general source categories: aircraft, ground support equipment (GSE), and motor vehicles traveling to, from, and moving about the airport site; fuel storage and transfer facilities; stationary sources (e.g., backup generators); aircraft maintenance activities (including deicing); routine airfield, roadway, and building maintenance activities (e.g., painting, cleaning, repair, etc.); and periodic construction activities for new projects or improvements to existing facilities. The Air Quality Technical Appendix provides additional information on these sources of air emissions, the pollutants, and their characteristics.

BASELINE CONDITIONS

Total emissions from SMF are presented in Table AQ-4 for the year 2004 (existing conditions); segregated by emission source and pollutant type.

[8] The Air Quality Technical Appendix to the EIR provides details on the certified ERCs and the amounts used as part of the Master Plan project.

Table AQ-4
Air Emissions Inventory for SMF – Year 2004

Emission Source	Pollutant (lbs/day)					
	CO	VOCs	NO_x	SO_x	PM_{10}	$PM_{2.5}$
Aircraft[1]	2,706	328	1,556	147	26	26
GSE/APUs[2]	2,195	106	551	56.1	20	19
On-site Motor Vehicles[3]	2,886	150	542	6.83	27	18
Stationary Sources & Fuel Facilities[4]	0	32	0	0	0	0
TOTALS	7,787	616	2,649	210	73	64

CO = carbon monoxide, VOCs = volatile organic compounds, NO_x = nitrogen oxides, SO_x = sulfur oxides, PM_{10} = particulate matter greater than 10 micrometers in diameter, $PM_{2.5}$ = particulate matter greater than 2.5 micrometers in diameter, GSE/APUs = ground support equipment/auxiliary power units
[1] Aircraft emissions comprise the entire landing and take-off cycle (i.e., approach, landing, taxi-in, taxi-out, take-off, and climb out) to the atmospheric mixing height.
[2] GSE and APU emissions are combined.
[3] On-airport motor vehicles include airport patron, employee, and cargo traffic operating in on-site parking facilities, along terminal curbsides, and on the internal roadways.
[4] Fueling sources include jet, avgas, gasoline, and diesel storage facilities.

As shown in the table, airport-related CO emissions are estimated to be emitted in the greatest quantities followed by NO_x, VOCs, SO_x, and $PM_{10/2.5}$. For VOCs and NO_x, aircraft emissions are the dominant source of these pollutants with off-airport motor vehicles and GSE/APUs being secondary.

Based upon atmospheric dispersion modeling, the highest predicted concentrations of CO, NO_2, and $PM_{10/2.5}$ on, and in the vicinity of, SMF are summarized in Table AQ-5. As shown in the table, the maximum values for CO and NO_2 are well within the NAAQS/CAAQS. For PM_{10}, the values are ~~within~~the **below the annual and 24-hour** NAAQS but exceed the **annual and 24-hour** CAAQS. On the other hand, for $PM_{2.5}$, the values are ~~within~~**below** the **annual** CAAQS **and NAAQS** but exceed the **24-hour** NAAQS. These results are consistent with the nonattainment designation for $PM_{10/2.5}$ assigned to the Sacramento area.

Table AQ-5
Atmospheric Dispersion Modeling for SMF – Year 2004

CO (ppm)		NO_2 ($\mu g/m^3$)		PM_{10} ($\mu g/m^3$)		$PM_{2.5}$ ($\mu g/m^3$)	
1-Hour	8-Hour	1-Hour	Annual	24-Hour	Annual	24-Hour	Annual
7	4	463	28	58	22	37	11

ppm = part(s) per million, $\mu g/m^3$ = microgram(s) per cubic meter,
CO = carbon monoxide, NO_2 = nitrogen dioxide, PM_{10} = particulate matter > 10 micrometers in diameter, $PM_{2.5}$ = particulate matter greater than 2.5 micrometers in diameter

The ~~reported atmospheric dispersion modeling~~ values **in Table AQ-5** are the highest predicted **pollutant** concentrations ~~at all of the receptors~~ analyzed **from SMF emissions added to** ~~and include~~ the following background concentrations: CO, 1- and 8-hour of 6 and 3 ppm, respectively; NO_2 1 hour and annual of 113 and 17 $\mu g/m^3$,

respectively; PM_{10}, 24-hour and annual of 55 and 21 µg/m^3, respectively; and $PM_{2.5}$, 24-hour and annual of 34 and 10 µg/m^3, respectively. For CO, NO_2 and annual PM_{10}, these values were obtained from SMAQMD air quality assessment guidelines. The 24-hour PM_{10} value is based on CARB and EPA published data for the second highest value at the Natamos Air Park monitoring site. The $PM_{2.5}$ values are based on CARB and USEPA published data for the second highest value at the Woodland monitoring site.

OPERATIONAL EMISSION INVENTORY

As shown in Table AQ-6, total emissions associated with SMF in 2013 are predicted to increase over existing conditions (see Table AQ-4) for NO_x and $PM_{10/2.5}$. This increase is primarily because of the forecast increase in airport operations over this time frame. By comparison, total CO, SOx, and VOC emissions are expected to decline over existing conditions largely because of federally and state-mandated improvements in motor vehicle and off-road engine emissions performance.

Table AQ-6
Operational Air Emissions Inventory for SMF

Year	Condition	Total Emissions (lbs/day)*					
		CO	VOCs	NO_x	SO_x	PM_{10}	$PM_{2.5}$
2004	Existing	7,787	616	2,649	210	73.0	64.0
2013	No Project Alternative	5,688	596	2,765	192	78.3	68.5
	Proposed Project	5,772	604	2,863	200	79.6	69.7
2020	No Project Alternative	4,218	512	2,614	196	73.7	63.8
	Proposed Project	5,140	622	3,270	248	89.7	77.5

CO = carbon monoxide, VOCs = volatile organic compounds, NO_x = nitrogen oxides, SO_x = sulfur oxides, PM_{10} = particulate matter greater than 10 micrometers in diameter, $PM_{2.5}$ = particulate matter greater than 2.5 micrometers in diameter

*Total emissions include the following: aircraft emissions over the entire landing and take-off cycle (i.e., approach, landing, taxi-in, taxi-out, take-off and climb out) to the atmospheric mixing height; GSE and APU emissions; on-airport motor vehicles operating on on-site parking facilities, along terminal curbsides and on the internal roadways; fueling and stationary source emissions.

As indicated in Table AQ-7, the incremental change in NO_x emissions are predicted to be above the CEQA significance threshold of 65 pounds/day with the proposed project. By comparison, changes in VOC and $PM_{10/2.5}$ emissions are well below the CEQA significance thresholds.

Table AQ-7
Incremental Changes in Operational Air Emissions for SMF with the Proposed Project

Year	Differences in Total Emissions (lbs./day)*					
	CO	VOCs	NO_x	SO_x	PM_{10}	$PM_{2.5}$
2013	-2,016	-12	214	-10	7	6
2020	-2,648	~~1106~~	621	39	17	14

CO = carbon monoxide, VOCs = volatile organic compounds, NO_x = nitrogen oxides, SO_x = sulfur oxides,

Table AQ-7
Incremental Changes in Operational Air Emissions for SMF with the Proposed Project

Year	Differences in Total Emissions (lbs./day)*					
	CO	VOCs	NO_x	SO_x	PM_{10}	$PM_{2.5}$

PM_{10} = particulate matter greater than 10 micrometers in diameter,
$PM_{2.5}$ = particulate matter greater than 2.5 micrometers in diameter
*Differences in total emissions are the increase or decrease in emissions between the future year and baseline conditions.

At present, SCAS has a wide array of air quality mitigation measures in place at SMF that help reduce emissions of NO_x from airport operations. These measures include the use of gate-furnished electricity and air conditioning, thereby eliminating the need for aircraft to use their APUs during the passenger loading and unloading process[9], the use of electrical and other low-emitting GSE, the use of alternative-fueled buses to transport passengers and employees, and the use of solar panels. These predicted increases on NO_x emissions associated with the proposed project are considered significant and unavoidable.

ATMOSPHERIC DISPERSION MODELING

The results of the atmospheric dispersion analysis for SMF for 2020 under the No Project Alternative and proposed project are summarized in Table AQ-8. Again, these values are the maximum predicted concentrations (including background levels) at all of the receptors analyzed.

Table AQ-8
Atmospheric Dispersion Modeling Results[1] for SMF – Year 2020

Condition	CO (ppm)		NO_2 ($\mu g/m^3$)		PM_{10} ($\mu g/m^3$)		$PM_{2.5}$ ($\mu g/m^3$)	
	1- Hour	8-Hour	1-Hour	Annual	24-Hour	Annual	24-Hour	Annual
Proposed Project[2]	6	3	451	22	58	22	38	11
No Project Alternative	6	3	390	21	57	22	36	11

See Air Quality Technical Appendix for the locations of the receptors.
See Table AQ-1 for National/California Ambient Air Quality Standards (NAAQS/CAAQS).
CO = carbon monoxide, NO_2 = nitrogen dioxide, PM_{10} = particulate matter greater than 10 micrometers in diameter, $PM_{2.5}$ = particulate matter greater than 2.5 micrometers in diameter
$\mu g/m^3$ = microgram(s) per cubic meter, ppm = part(s) per million
[1] Reported values include the following background concentrations: CO, 1- and 8-hour of 6 and 3 ppm, respectively; NO_2 1 hour and annual of 113 and 17 $\mu g/m^3$, respectively; PM_{10}, 24-hour and annual of 55 and 21 $\mu g/m^3$, respectively; and $PM_{2.5}$, 24-hour and annual of 34 and 10 $\mu g/m^3$, respectively.
[2] The Proposed Project was selected for the atmospheric dispersion modeling as the emissions inventory shows that total emissions associated with the All North Runway Extension Alternative are slightly less, by comparison.

As shown in the table, the maximum predicted concentrations of CO and NO_2 on, and in the vicinity of, SMF are expected to remain below the NAAQS/CAAQS under both the No Project Alternative and the proposed project. Maximum PM_{10} levels are likewise

[9] An auxiliary unit on a typical Boeing 737 (the most common aircraft at SMF) can consume up to 34 gallons of jet fuel per hour.

expected to remain below the NAAQS with and without the project. In contrast, exceedances of the 24-hour and annual CAAQS are predicted for PM_{10} and exceedances of the 24-hour NAAQS are predicted for $PM_{2.5}$. Based on these results, the concentration attributed to the proposed project is expected to be greater than five percent of the value represented by the 24-hour PM_{10} and $PM_{2.5}$ standards. Therefore, its contribution is potentially significant and unavoidable under CEQA.

MITIGATION MEASURES

AQ-6: The applicant will continue to implement emission reduction measures as new mobile-source equipment is brought into service and new terminal facilities are constructed including electric charging stations for GSE, gate-furnished air conditioning and power for aircraft, low-emitting buses for on-site travel, and solar-energy cells for electricity. A hydrant fueling system will also be installed at the airport to reduce fuel truck trips.

CO "HOT-SPOT" ANALYSIS

As discussed in Chapter 7 (Traffic and Circulation), the proposed project will result in an increase in traffic at intersections in SMF's vicinity. For this reason, an analysis of the maximum CO concentrations at Airport Boulevard/I-5, Elkhorn Boulevard/SR 99, and Elverta Road/SR 99 was conducted to determine whether airport-related traffic would result in an exceedance of CO standards when added to background CO levels. As shown in Table AQ-9, traffic associated with the proposed project is not expected to exceed the NAAQS/CAAQS for CO at any of the receptors analyzed nor impact any sensitive receptors located within ¼-mile of these facilities.

Table AQ-9
CO "Hot-Spot" Analysis Results

Condition	Year 2013		Year 2020	
	1-Hour (ppm)	8-Hour (ppm)	1-Hour (ppm)	8-Hour (ppm)
Proposed Project	6.8	3.6	6.5	3.4
No Project Alternative	6.8	3.6	6.6	3.4

CO = carbon monoxide, ppm = part(s) per million
Results include background CO concentrations of 6 and 3 ppm for 1 and 8-hour conditions, respectively.
See Air Quality Technical Appendix for the locations of the receptors.
See Table AQ-1 for National/California Ambient Air Quality Standards 3 (NAAQS/CAAQS).

HUMAN HEALTH RISK ASSESSMENT

A human health risk assessment evaluates the potential impacts upon cancer risks and other human health effects associated with exposure to HAPs (or toxic air pollutants).[10,11]

[10] For the purposes of this assessment, the term "hazardous air pollutants" ("HAPs") is meant to mean the same as "toxic air pollutants" and "toxic air contaminants."
[11] Human health effects (i.e., noncancer) comprise disorders such as eye watering, respiratory or heart ailments, and other related diseases.

The assessment methods are designed to estimate the highest possible (i.e., upperbound) risks to the most sensitive members of the population (i.e., children, elderly, infirm) as well as those that are potentially exposed to HAPs on a routine and prolonged basis (i.e., residents and workers).

The results of the risk assessment are used to compare the potential changes in cancer and health risks between the baseline (2004) and future-year (2020) conditions. For this reason, it is termed an "incremental" risk assessment as the differences between the existing and future conditions are of primary importance.

According to SMAQMD guidelines, a project may have potentially significant impacts if it could expose sensitive receptors (i.e., schools, hospitals, day-care facilities, etc.) to substantial pollutant concentrations, including HAPs such as diesel particulates. However, because the term "substantial pollutant concentrations" is not well defined, the following significance criteria for evaluating human health risks developed by the California Office of Environmental Health Hazard Assessment has been used in this analysis:

- Increase in cancer risk of 10 in 1 million
- Hazard Index (HI)[12] greater than one (1.0) for acute or chronic health (noncancer) risks

Table AQ-10 presents a summary of the incremental human health risks associated with the proposed project in 2020.

Incremental Cancer Risk. The incremental cancer risks in 2020 ranges from 0 to 0.64 in 1 million for the maximally exposed individual receptors analyzed (i.e., residence, school, and off-site workers). These values are well within the significance threshold of 10 in 1 million for cancer. Generally, incremental cancer risks are low due to the decreasing emission factors and emissions related to diesel-powered GSE at SMF.

Incremental Noncancer Health Risk. The 2020 chronic (long-term) incremental noncancer health risks of the proposed project range from 0.00 to 0.12 and are well within the recommended HI (1.0) for all the receptors (i.e., residential, school, and off-site worker) analyzed. However, the acute (short-term) incremental noncancer health risks are above the recommended HI (1.0) for the closest residential receptor (1.51). This outcome is driven principally by acrolein with lesser contributions from formaldehyde.

It is important to note that the health risk assessment results for acrolein are likely overestimated. Similar results were reported in the health risk assessments conducted for Los Angeles, Oakland, and San Diego airports. These studies noted that air monitoring conducted by the Illinois Environmental Protection Agency in the vicinity of O'Hare International Airport (the world's busiest) did not detect acrolein in the ambient air. This is thought to have been due to the fact that acrolein degrades quickly in the air

[12] An HI below one indicates no adverse health effect.

after it is released. Therefore, it appears that acrolein in aircraft exhaust is substantially overstated in the available speciation profiles for aircraft engines. Any analysis of acrolein effects must take this tendency into account.

Table AQ-10
Total Incremental Health Risk Values

Receptor Type	Risk Category	Total*
Residence	Cancer Incidence	0 per million
	Chronic Health Impact	0.04
	Acute Health Impact	1.51
School	Cancer Incidence	0 per million
	Chronic Health Impact	<0.01
	Acute Health Impact	0.25
Off-Site Worker	Cancer Incidence	0.64 per million
	Chronic Health Impact	0.12
	Acute Health Impact	0.68

*Chronic and acute health impacts are unitless.

General Conformity

Under the General Conformity Rule of the federal CAA, the FAA must ensure that the SMF Master Plan conforms to the applicable SIP. Because the FAA review and approval process only extends to the 2013 timeframe, construction- and operational-related emissions through 2013 are relevant to this requirement.

When compared to the No-Project Alternative, the increases in total emissions associated with the proposed project are well below the applicable *de minimis* levels for CO, VOCs, NO_x, and $PM_{10/2.5}$. Therefore, both construction and operational emissions associated with these projects conform to the SIP and no formal conformity determination is necessary.

Greenhouse Gas Emissions

Recent scientific evidence now strongly suggests that there is a connection between climate change (or global warming) and emissions of greenhouse gases (GHG). These GHG, comprised primarily of carbon dioxide (CO_2), methane (CH_4), nitrous oxides (NO_x), and water vapor, are emitted by both natural and man-made sources. However, it is the increase in man-made GHG over the past several decades that have caused global atmospheric temperatures to rise above historic levels. Among the sources of man-made GHG that are of the greatest concern are power plants, industry, agriculture, home heating, open burning, motor vehicles, and other transportation modes that use fossil fuels (i.e., ships, trains, aircraft, construction vehicles).

Presently, there are no CEQA thresholds of significance established for GHG. However, in September 2006, California Assembly Bill (AB) 32 called for CARB to adopt regulations requiring the reporting and verification of statewide greenhouse gas emissions and that a limit equivalent to the statewide greenhouse gas emissions in 1990 be achieved by year 2020.

GHG associated with the construction and operation of the SMF Master Plan project are primarily associated with energy consumption for heating, air conditioning, and lighting and fuel consumption associated with aircraft, GSE, construction equipment, and motor vehicles traveling to, from, and moving about the airport. An objective of the proposed project is to accommodate projected air travel demand in the Sacramento region. This will result in an increase in aircraft operations and passenger enplanements at SMF over existing and No Project conditions, resulting in an increase in the generation of GHG in the airport environs from airplanes, motor vehicles, required heating, cooling, and ventilation for a larger terminal complex, and GSE operations.

As stated above, state law has delegated to CARB the task of implementing a strategy to combat GHG emissions. CARB's response to that duty may include establishing uniform thresholds of significance for GHG emissions caused by local projects. Currently, there does not appear to be consensus in the scientific community as to when and under what circumstances a project's incremental contribution to the global problem of climate change would be considered "cumulatively considerable." Nevertheless, and in light of the emissions reductions goals of AB 32, it can be argued that implementation of this project may result in a cumulatively considerable contribution to the global problem. As discussed below, various mitigation measures have been incorporated into the project to sufficiently reduce any impact the project may have on global warming.

SCAS has already implemented a number of air quality mitigation measures that are designed to minimize operational emissions at SMF, all of which reduce GHG emissions. These measures include electric charging stations for GSE, gate-furnished air conditioning and power for aircraft, ~~hydrant fueling stations to reduce fuel truck trips,~~ low-emitting buses for on-site travel, and solar-energy cells for electricity. **SCAS also plans to install hydrant fueling stations to reduce fuel truck trips.** In addition, SCAS is planning on obtaining Leadership in Energy and Environmental Design (LEED) certification of the new terminal complex at SMF.

The LEED Green Building Rating System™ is a nationally accepted benchmark for the design, construction, and operation of high performance green buildings. LEED gives building owners and operators the tools they need to have an immediate and measurable impact on their buildings' performance. LEED promotes a whole-building approach to sustainability by recognizing performance in five key areas of human and environmental health: sustainable site development, water savings, energy efficiency, materials selection, and indoor environmental quality. To earn certification, a building project must meet certain prerequisites and performance benchmarks ("credits") within each of these five categories.

Subject: FW: NEPA AQ Chapter
Date: Friday, February 6, 2009 8:34 AM
From: Doug Libby <DGLibby@co.sutter.ca.us>
To: George Carpenter <georgemcarpenter@comcast.net>
Cc: Janet Bender <JBender@co.sutter.ca.us>, Larry Bagley <LBagley@co.sutter.ca.us>, Randy Cagle <rcagle@co.sutter.ca.us>, Lisa Wilson <lpurviswilson@co.sutter.ca.us>, Al Sawyer <asawyer@co.sutter.ca.us>, "Dameron, Daniel E" <DEDameron@pbsj.com>

Additional information provided by SCAS….

From: Rowe. Greg [mailto:RoweG@saccounty.net]
Sent: Friday, February 06, 2009 8:26 AM
To: Doug Libby
Subject: NEPA AQ Chapter

Doug: as a follow-up to last night's transmittal of the Air Quality section of the FEIR on the SMF Master Plan, attached is the air quality analysis excerpt from the NEPA Environmental Assessment. Again, as with the CEQA document, a more detailed analysis is in the appendix to the EA. -- GR

<<AQ Excerpt_Sec5.5.pdf>>

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5.4.2 Impacts and Mitigation

5.4.2.1 No-Action Alternative

Under the No-Action Alternative, passenger activity not served at SMF would be accommodated either by a shift to other airports or a shift to other modes.

The No-Action Alternative would not result in any shift in development or growth to areas other than those currently planned for development in local and regional plans. Total future growth could be slightly, but insignificantly, affected under the No-Action Alternative. No significant secondary or induced impacts would result from the No-Action Alternative.

5.4.2.2 Proposed Project

Implementation of the Proposed Project would create temporary construction jobs during the construction period; however, the employees required for construction would be hired or provided by the construction contractor from the existing regional labor force. It is not anticipated that there would be any significant permanent relocation of construction workers to Sacramento County as a result of the Proposed Project.

It is likely the economic impacts of construction would spread throughout the Sacramento area and accrue to industries and businesses in the regional economy that provide the goods and services necessary to support construction. Maintenance/operation of the Proposed Project is anticipated to be accommodated by minimal additional SMF staff. Therefore, no significant increase in employment, production, and salary is associated with the Proposed Project Alternative.

The potential for indirect inducement of population growth in areas served by SMF is further addressed in Section 5.17, Cumulative Impacts. Such new development is not directly related to the SMF project itself, as no new residential, commercial, or industrial uses would be constructed. In addition, the Proposed Project would not include construction of any new municipal non-airport facilities such as schools, police stations, or any other public facilities.

The Proposed Project would not result in any significant direct or indirect inducement of population growth in the project area.

5.4.2.3 Mitigation

Since no identifiable secondary or induced impacts would occur in the analysis area from the alternatives studied in detail in this EA, mitigation measures are not necessary.

5.5 AIR QUALITY

This air quality analysis was prepared in support of the SMF TMP EA and is consistent with the following guidelines: 1990 Clean Air Act (CAA) Amendments (U.S. Congress, 1990); FAA Order 1050.1E Change 1, *Environmental Impacts: Policies and Procedures (Appendix A, Section 2, Air Quality)* (FAA, 2004b); FAA Order 5050.4B, the NEPA *Implementing Instructions for Airport Actions* (FAA, 2006a); the FAA document *Air Quality Procedures for Civilian Airports and Air Force Bases* (FAA, 1997) and its 2004

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Addendum (FAA, 2004a); and the requirements of the U.S. Environmental Protection Agency (EPA) Region 9. In addition, the General Conformity Rule provides *de minimis* thresholds below which project-related emissions are presumed to conform to the State Implementation Plan (SIP). The majority of the technical analyses were also accomplished using the FAA required and EPA preferred program, the *Emissions and Dispersion Modeling System* (EDMS Version 4.5) (FAA, 2006c). FAA approved the use of EDMS Version 4.5 for this EA since the majority of the analyses was complete prior to the release of EDMS Version 5.0.2.

5.5.1 Background and Methodology

5.5.1.1 Regulatory Context

The EPA, the California Environmental Protection Agency (CalEPA), and the Sacramento Metropolitan Air Quality Management District (SMAQMD) are together primarily responsible for the regulation and management of air quality in the Sacramento region. The SACOG is also involved with SMAQMD in transportation planning activities related to air quality. For airport projects, the FAA is responsible for evaluating air quality impacts under NEPA and compliance with the CAA.

The EPA established the National Ambient Air Quality Standards (NAAQS) to protect public health, the environment, and the quality of life from the detrimental effects of air pollution. The NAAQS have been set for carbon monoxide (CO), ozone (O_3), nitrogen dioxide (NO_2), sulfur dioxide (SO_2), respirable and fine particulate matter ($PM_{10/2.5}$), and lead (Pb). The NAAQS can be referenced in Appendix C, Air Quality of the International Airport Master Plan EIR, along with brief explanations of the physical/chemical characteristics, environmental, and health effects of these pollutants.

SMF is located within the southern sector of a federal O_3 nonattainment area. Under the federal CAA, this designation signifies that violations of the NAAQS for this pollutant have occurred in the region.[1]

Sacramento County is also designated as a nonattainment area for the PM_{10} NAAQS and an "attainment/maintenance" area for the CO NAAQS, as well as "attainment" for the other EPA "criteria" air pollutants (i.e., NO_2, SO_2, Pb, $PM_{2.5}$)[2]. These federal nonattainment designations can be referenced in tabular form in Appendix C, Air Quality of the International Airport Master Plan EIR.

In accordance with federal and state regulations, air quality management plans have been developed to help bring the nonattainment areas of the Sacramento Valley Air Basin (SVAB) and Sacramento County area into compliance with the NAAQS. Prepared jointly by the California Air Resources Board (CARB), SMAQMD, and SACOG, and approved by the EPA, these plans establish emission budgets, control strategies, and timeframes for achieving the requisite attainment status. On the local level, the plans are called the Clean Air Plans and when combined with plans from other nonattainment areas in California,

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[1] With the 2005 replacement by the EPA of the former 1-hour NAAQS for O_3 with a more stringent 8-hour standard, this nonattainment designation now applies to this same area but to the new standard and averaging period.

[2] Nonattainment areas are areas that do not meet the NAAQS, attainment areas are areas that meet the NAAQS, and attainment/maintenance areas are areas that are in transition from nonattainment to attainment.

they become part of the SIP. A more detailed discussion of the SIP and Maintenance Plans for the area is provided in Appendix C, Air Quality of the International Airport Master Plan EIR.

5.5.1.2 Significant Impact Thresholds

The FAA has developed guidelines for addressing potential air quality impacts assessed under NEPA (FAA, 2006a). According to these guidelines, compliance with the NAAQS and the CAA General Conformity Rule are among the most important considerations. The criteria are both quantitative and qualitative based on the specific pollutant, regulation, or potential impact evaluated. For ease of consideration, these criteria are listed in **Table 5.5-1** and were used to evaluate the potential air quality impacts in this EA.

Table 5.5-1: NEPA Criteria and Significance Thresholds

Federal NEPA[1]
Quantitative Criteria[2]
NO_x and VOCs - 50 tpy[3]
CO - 100 tpy[4]
PM_{10} - 100 tpy[5]
Qualitative Criteria[6]
Cause or contribute to a new violation of any NAAQS in any area.
Increase the frequency or severity of any existing violation of any NAAQS in any area.
Delay timely attainment of any NAAQS or any SIP-required interim emissions reductions or other milestones in any area.

[1] The federal NEPA criteria are summarized from FAA Order 1050.1E, *Environmental Impacts: Policies and Procedures*, Section 2, Air Quality, FAA, June 8, 2004.
[2] Under the federal CAA, the quantitative criteria are the General Conformity Rule *de minimis* levels and are applied to project-related emissions. If project-related emissions are less than these values, the project is assumed to conform.
[3] Based on the federal CAA General Conformity Rule *de minimis* levels for a serious nonattainment area for O_3.
[4] Based on the federal CAA General Conformity Rule *de minimis* levels for CO.
[5] Based on the federal CAA General Conformity Rule *de minimis* levels for PM_{10}.
[6] For the qualitative criteria, the stated conditions are applied to the following statement: "If project emissions …"
tpy = tons per year.

5.5.1.3 Methodologies

This section describes the overall approach, methodology, and models used to assess the air quality impacts associated with the Proposed Project at SMF. The assessment methodologies described in this section apply to both existing and future-year conditions. Detailed data concerning model assumptions and project data are contained in Appendix I, Air Quality of this EA, and Appendix C, Air Quality of the International Airport Master Plan EIR.

The air quality impact assessment is comprised of several individual technical analyses including an operational emissions inventory, a construction emissions inventory, a General Conformity analysis, and a Transportation Conformity analysis.

The air quality assessment also involved a number of different models, including the EDMS, EMFAC, OFFROAD, MOBILE6.2, and NONROAD. Information, data, and other supporting materials that were used as input to the air quality analyses are provided in Appendix I, Air Quality of this EA, and

Appendix C, Air Quality of the International Airport Master Plan EIR. The application of this information and data is discussed further in the following sections.

Emissions Inventory

An emissions inventory is a quantification of the amounts (or mass) of pollutants emitted from a source (or combination of sources) over a period of time. The outcome is a product of source activity levels (i.e., aircraft operations) combined with appropriate emission factors (i.e., grams of pollutant/operation). The results are segregated by pollutant type, emission source, and project phase (or time period). For this assessment, the EPA "criteria" pollutants CO, $PM_{10/2.5}$, and sulfur oxides (SO_x) were included, as were emissions of VOCs and NOx.[3] The resulting data are reported in units of tons per year (tpy). The EPA criteria air pollutant Pb was not included in the emissions inventory because the Sacramento area is in attainment for Pb and since the prohibition of Pb as an additive in liquid fuels, Pb has ceased to be a major transportation-related pollutant.

Under NEPA, the outcome is used to compare future No-Action conditions to the Proposed Project Alternative and then compare the Proposed Project-related emissions to appropriate CAA General Conformity Rule *de minimis* levels.

Both operational- and construction-related emissions associated with SMF and the Proposed Project were analyzed. However, because they occur in distinct timeframes (i.e., first construction, then operational) and involve different emission sources (i.e., bulldozers and dump trucks versus aircraft and ground support equipment [GSE]) they are computed and evaluated separately in this assessment.

For calculating operational emissions from these airport-related emission sources, FAA's EDMS was used.[4] EDMS is the FAA-required and EPA-preferred model for assessing airport-related sources of air emissions.[5] For motor vehicles, the CARB's EMFAC2002 emissions model was used to compute motor vehicle emission factors and these values were input into EDMS to compute motor vehicle emissions.

For the construction-related emissions inventories, the total number of hours of equipment operation (by equipment type), work crew trips, and daily activity levels were developed for the anticipated construction period. These data were then combined with appropriate emission factors obtained from the EPA NONROAD and MOBILE6.2 emission models to obtain estimates of annual total emissions of CO, NO_x, VOCs, SO_x, and $PM_{10/2.5}$.

The detailed methodologies for developing the operational and construction-related emissions inventories are provided in Appendix C, Air Quality of the International Airport Master Plan EIR. Dispersion modeling was not required for this EA in order to assess impacts from the Proposed Project on local air quality conditions in 2013.

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3 Because emissions of O_3 cannot be calculated directly, emissions of VOC and NO_x (the primary precursors to O_3 formation) are viewed as surrogates for this pollutant.

4 FAA, EDMS, Office of Environment and Energy, 2006, Version 4.5.

5 18068 Federal Register/Volume 63, No. 70, EDMS Policy for Airport Air Quality Analysis.

General Conformity Applicability Analysis

The General Conformity Rule of the CAA prohibits federal governmental agencies (including the FAA) from approving, funding, or permitting any projects (or actions) that do not conform to an approved SIP. Because SMF is located in a nonattainment area for the air pollutant O_3, an applicability analysis is conducted to determine if the requirements of this rule apply.

This analysis consists of comparing the emissions inventory results for NO_x and VOCs under the future Proposed Project to the future No-Action Alternative condition. If the differences (i.e., Proposed Project minus No-Action) in emissions (in tpy) are below prescribed *de minimis* levels (also in tpy), the project-related emissions are presumed to conform to the SIP.[6] In contrast, if the differences in emissions between the future Proposed Project and No-Action conditions are greater than the *de minimis* levels, a formal General Conformity Determination is required.

Transportation Conformity Applicability Analysis

The Transportation Conformity section of the CAA also prohibits federal governmental agencies from approving, funding, or permitting any surface transportation or transit projects (or actions) that are not part of an approved Transportation Improvement Plan (TIP). In this case, the applicability analysis is based upon whether or not a roadway or transit project is being funded or approved by the Federal Highway Administration or Federal Transit Administration.

5.5.2 Impacts and Mitigation

The following sections present the air quality impacts associated with the Proposed Project at SMF and describe the mitigation strategies evaluated in this analysis.

5.5.2.1 No-Action Alternative

The results of the air quality assessment for 2013 No-Action Alternative are discussed below. The methodologies for preparing the emissions inventory analyses are consistent with the methodology described previously.

Emissions Inventory

The results of the SMF emissions inventory for the 2013 No-Action Alternative are presented in **Table 5.5-2**. As shown, airport-related CO emissions are expected to be emitted in the greatest quantities followed by NO_x, VOC, SO_x, and $PM_{10/2.5}$. For all pollutants aircraft are the dominant source of these pollutants with motor vehicles and GSE/APUs being secondary.

[6] As a condition of the CAA General Conformity Rule, the project-related emissions must also be shown not to be "regionally significant" if they are *de minimis* in order to meet the "presumed to conform" criteria.

Table 5.5-2: 2013 No-Action Alternative Operational Air Emissions Inventory for SMF

Emission Source	Pollutant (tpy)					
	CO	VOC	NO_x	SO_x	PM_{10}	$PM_{2.5}$
Aircraft	547	68	409	34	7.1	7.1
GSE/APU	230	11	60	2	2.5	2.4
Onsite Motor Vehicles	312	27	61	1	5.5	3.6
Fuel Facilities	0	7	0	0	0	0
Total	**1,089**	**113**	**530**	**37**	**15.1**	**13.1**

Source: URS Corporation/KB Environmental Sciences, Inc., 2007.

Note: Numbers may not add due to rounding.

Construction Emissions

Because the No-Action condition in 2013 does not involve construction activities associated with the Proposed Project, no construction-related emissions would occur.

5.5.2.2 Proposed Project

This section presents the results of the air quality assessment for 2013 conditions with the Proposed Project. The methodologies for preparing the emissions inventory are described in Section 5.5.1.3 presented previously.

Emissions Inventory

The results of the SMF emissions inventory for the Proposed Project in 2013 are presented in **Table 5.5-3**. As shown, airport-related CO emissions are expected to be emitted in the greatest quantities followed by NO_x, VOC, SO_x, and $PM_{10/2.5}$. For all pollutants aircraft are the dominant source of these pollutants with motor vehicles and GSE/APUs being secondary. As indicated in Tables 5.5-2 and 5.5-3, emissions of all pollutants for the Proposed Project would be lower than the corresponding emissions from the No-Action alternative, due primarily to the improved roadway efficiencies associated with the TMP. Therefore, there would be no air quality impacts associated with the Proposed Project.

Table 5.5-3: 2013 Proposed Project Operational Air Emissions Inventory for SMF

Emission Source	Pollutant (tpy)					
	CO	VOC	NO_x	SO_x	PM_{10}	$PM_{2.5}$
Aircraft	547	68	409	34	7.1	7.1
GSE/APU	230	11	60	2	2.5	2.4
Onsite Motor Vehicles	276	24	54	<1	4.9	3.2
Fuel Facilities	0	7	0	0	0	0
Total	**1,053**	**110**	**523**	**0**	**14.5**	**12.7**

Source: URS Corporation/KB Environmental Sciences, Inc., 2007.

Note: Numbers may not add due to rounding.

Construction Emissions

Table 5.5-4 contains the annual emissions inventories due to construction-related activities for the Proposed Project (2008 through 2013) in tpy. The year with the highest CO emissions is 2009 with 12.9 tpy. The highest emissions for VOC, NO_x, and SOx occur in calendar year 2008 with 1.0, 8.0, and 1.4 tpy, respectively. The maximum year for PM_{10} emissions is 2010 with 37.5 tpy. The maximum emissions $PM_{2.5}$ occur in 2009 and 2010 with 4.0 tpy. Emissions in all other years are less than these values.

General Conformity Analysis

Because SMF is located in a nonattainment area for the air pollutants O_3 and PM_{10}, as well as being in a maintenance area for CO, an applicability analysis was conducted to determine if the Proposed Project requires a formal General Conformity Determination.

Table 5.5-4: Construction-Related Emissions Inventory for the Proposed Project

Year	Annual Emissions (tpy)					
	CO	VOC	NO_x	SO_x	PM_{10}[1]	$PM_{2.5}$
2008	11.8	1.0	8.0	1.4	23.9	3.0
2009	12.9	1.0	6.2	1.0	35.1	4.0
2010	10.9	0.8	4.3	0.6	37.5	4.0
2011	5.2	0.4	2.1	0.3	25.7	2.7
2012	5.7	0.5	4.5	0.9	19.5	2.4
2013	5.4	0.5	.4	0.8	14.8	1.9

Source: URS Corporation/KB Environmental Sciences, Inc., 2007.

[1] Fugitive dust emissions include all short-term projects originally calculated in the EIR.

Applicability Criteria

As a means of determining whether or not a General Conformity Determination is required, the EPA has established *de minimis* levels for all nonattainment air pollutants. The applicable *de minimis* values for the Sacramento area are 50 tpy each for NO_x and VOCs, 100 tpy for CO, and 100 tpy for PM_{10}. Because the area around SMF is designated as in attainment with respect to NO_2, $PM_{2.5}$, and SO_2, no *de minimis* values apply to these criteria pollutants. [On June 15, 2005, the EPA revoked the 1-hour O_3 standard and replaced it with the 8-hour standard. On December 22, 2006, the DC Circuit Court of Appeals vacated the 8-hour O_3 standard and remanded the entire O_3 issue to the EPA.]

Under the applicability test, the sum of future net direct and indirect emissions must be evaluated. Net direct and indirect emissions include those emissions that are explicitly created by the Proposed Project, are reasonably foreseeable, and are controllable by the federal agency. Under the General Conformity Rule, both operational and construction-related emissions are classifiable as direct emissions.

In addition, according to the General Conformity Rule, conformity with the SIP is demonstrated when the total direct and indirect emissions are not "regionally significant" (e.g., greater than 10 percent of the emissions inventory for the nonattainment area) (40 CFR 81.153).

Under the applicability test, emission levels generated by the federal action which are below these *de minimis* thresholds are presumed to conform to the SIP. However, when the emissions exceed the *de minimis* levels or the emissions are regionally significant, further demonstration must be made in a formal General Conformity Determination to show that the action conforms to the applicable SIP before the federal agency is allowed to approve the proposed action.

Operational Emissions Applicability Test

Emissions attributable to the Proposed Project were determined by subtracting the emissions due to the No-Action Alternative from the future emissions from the Proposed Project (i.e., the 2013 Proposed Project emissions minus the 2013 No-Action Alternative emissions).

Operational emissions of CO, NO_x, VOCs, and PM_{10} from the Proposed Project for 2013 are presented in **Table 5.5-5**. As shown, the emissions generated due to the Proposed Project for all pollutants are less than the No-Action emissions, and are; therefore, well below their applicable General Conformity *de minimis* thresholds. [*De minimis* values are based on the 8-hour O_3 standard attainment designation. If the 1-hour O_3 standard designation is used, the *de minimis* levels for VOCs and NO_x are each 25 tpy. In that case, project-related emissions would also be below the applicable *de minimis* levels.] Therefore, no formal General Conformity Determination is required based on project-related operational emissions in 2013.

Table 5.5-5: *De minimis* Assessment of Project-Related Operational Emissions for the Proposed Project in 2013

Analysis Condition	Pollutant (tpy)			
	CO	VOC	NO_x	PM_{10}
2013 No-Action Alternative	1,089	113	530	15.1
2013 Proposed Project	1,053	110	523	14.5
2013 Project-Related Emissions	-36	-3	-7	-0.6
de minimis Level	100	50[1]	50[1]	100
Below *de minimis*	**Yes**	**Yes**	**Yes**	**Yes**

Source: URS Corporation/KB Environmental Sciences, Inc., 2007.

[1] *De minimis* values are based on the 8-hour O_3 standard attainment designation. If the 1-hour O_3 standard designation is used, the *de minimis* levels for VOCs and NO_x are each 25 tpy. In that case, project-related emissions would also be below the applicable *de minimis* levels.

Construction Emissions Applicability Test

Emissions of the pollutants with *de minimis* emissions rates attributable to the construction of the Proposed Project during the 2008 through 2013 time period are presented in **Table 5.5-6**. As shown, the emissions generated due to the construction of the Proposed Project for CO, VOC, NOx, and PM_{10} are well below their applicable General Conformity *de minimis* thresholds. Therefore, no formal General Conformity Determination is required based on project-related construction emissions. [*De minimis* values are based on the 8-hour O_3 standard attainment designation. If the 1-hour O_3 standard

designation is used, the *de minimis* levels for VOCs and NO_x are each 25 tpy. In that case, construction-related emissions would also be below the applicable *de minimis* levels.]

Regional Significance Applicability Test

According to the General Conformity Rule, a regionally significant action is a federal action with total direct and indirect emissions greater than 10 percent of the emissions inventory for the nonattainment area. As shown in Table 5.5-6, construction-related emission increases due to the Proposed Project are much less than 10 percent of the SVAB emissions for all pollutants and operational emissions due to the Proposed Project decrease from the No-Action emissions. Thus, these emissions are not regionally significant and the Proposed Project conforms to the goals and requirements of the CAA and the applicable SIP.

Table 5.5-6: Operational and Construction Emissions Compared to Sacramento Metropolitan Nonattainment Area Emissions in 2013

	Pollutant (tpy)			
	CO	**VOC**	**NO_x**	**PM_{10}**
Operational Emissions				
2013 Project-Related Operational Emissions[1]	-36	-3	-3	-0.6
2005 SVAB Emissions[2]	431,321	74,971	90,885	82,490
Percent of Air Basin Inventory	<0.1	<0.1	<0.1	<0.1
Less than 10 Percent of Inventory	**Yes**	**Yes**	**Yes**	**Yes**
Construction-Related Emissions				
Maximum Year Project-Related Construction Emissions[3]	12.9	1.0	8.0	37.5
2005 SVAB Emissions[2]	431,321	74,971	90,885	82,490
Percent of Air Basin Inventory	<0.1	<0.1	<0.1	<0.1
Less than 10 Percent of Inventory	**Yes**	**Yes**	**Yes**	**Yes**

Sources: CARB Emission Inventories (2007); URS Corporation, 2007.
[1] Emissions associated with the Proposed Project are defined as the Proposed Project emissions minus the No-Action Alternative emissions.
[2] Taken from the Emission Inventories for 2005 (the closest year to 2013 available) as published by the CARB on their website: http://arbis.arb.ca.gov. Data accessed February 26, 2007.
[3] Taken from Table 5.5-4.

General Conformity Assessment

Based on the findings presented above, project-related emissions due to construction activities of the Proposed Project and due to routine operations in 2013 are all well below the applicable *de minimis* levels. In addition, total project-related operational and construction emissions due to the Proposed Project in 2013 are less than 10 percent of the emissions inventory for the nonattainment areas and, thus, the Proposed Project is not regionally significant. Therefore, the project-related construction emissions in 2008 through 2013, as well as operational emissions from the Proposed Project in 2013, conform to the SIP and no formal General Conformity Determination is required.

Transportation Conformity Applicability Analysis

Offsite airport-related motor vehicle traffic traveling to and from SMF is inherently integrated with all of the non-airport traffic operating on the same highways and roadways. Therefore, this airport traffic is already

included in the regional transportation system Traffic Demand Model for the Sacramento area. The emissions associated with these vehicles are already accounted for in the TIPs for Sacramento County (SMAQMD, 1994, 1998, 2005). Additionally, there are no roadway improvements associated with the Proposed Project that are funded or approved by the Federal Highway Administration/ Federal Transit Administration. As a result, the Transportation Conformity Rule does not apply to the Proposed Project.

5.5.2.3 Mitigation

Based upon the results of the air quality assessment for the Proposed Project at SMF, it was determined that all operational and construction-related emissions for 2013 are below the General Conformity *de minimis* thresholds; i.e., the project-related emissions do not represent a significant environmental impact. Therefore, no mitigation measures are required for the Proposed Project. However, as part of the proponent's overall emissions reduction program, a list of construction-related measures that are expected to be implemented can be referenced in Appendix C, Air Quality of the International Airport Master Plan EIR.

5.6 WATER QUALITY

5.6.1 Background and Methodology

5.6.1.1 Significant Impact Thresholds

FAA Order 1050.1E, Appendix A, Section 17, indicates that normally applicable water quality regulations and issuance of permits will identify any deficiencies with regard to water quality and the significance of impacts. The potential for exceeding water quality standards, difficulty in obtaining permits, or water quality problems that cannot be avoided or satisfactorily mitigated may indicate the potential for significant impacts requiring that an EIS may be required.

5.6.1.2 Methodologies

Aerial photographs, maps, and other relevant documents were reviewed and used to describe water resources for the study area. Groundwater information is from documents available from the Department of Water Resources (DWR) and Sacramento Groundwater Authority. Airport-specific documents include the *Inventory of Hydrologic Resources for the Sacramento International Airport* (West Yost and Associates, 2004), SMF's water supply requirements and wastewater studies (HDR, 2003; CH2M HILL, 1996), and SMF's existing Storm Water Pollution Prevention Plan (SWPPP) for operations (SCAS, 2003).

To evaluate potential impacts, conceptual-level plans for each of the project alternatives were reviewed and compared with existing surface water and groundwater features. Existing impervious areas and proposed disturbance locations were reviewed to evaluate potential direct and indirect impacts to groundwater and surface water resources. A direct effect occurs through increased turbidity and erosion during construction and increased runoff. An indirect effect occurs when there are changes in the planned development of an area that results in increased water needs or reduced water quality.

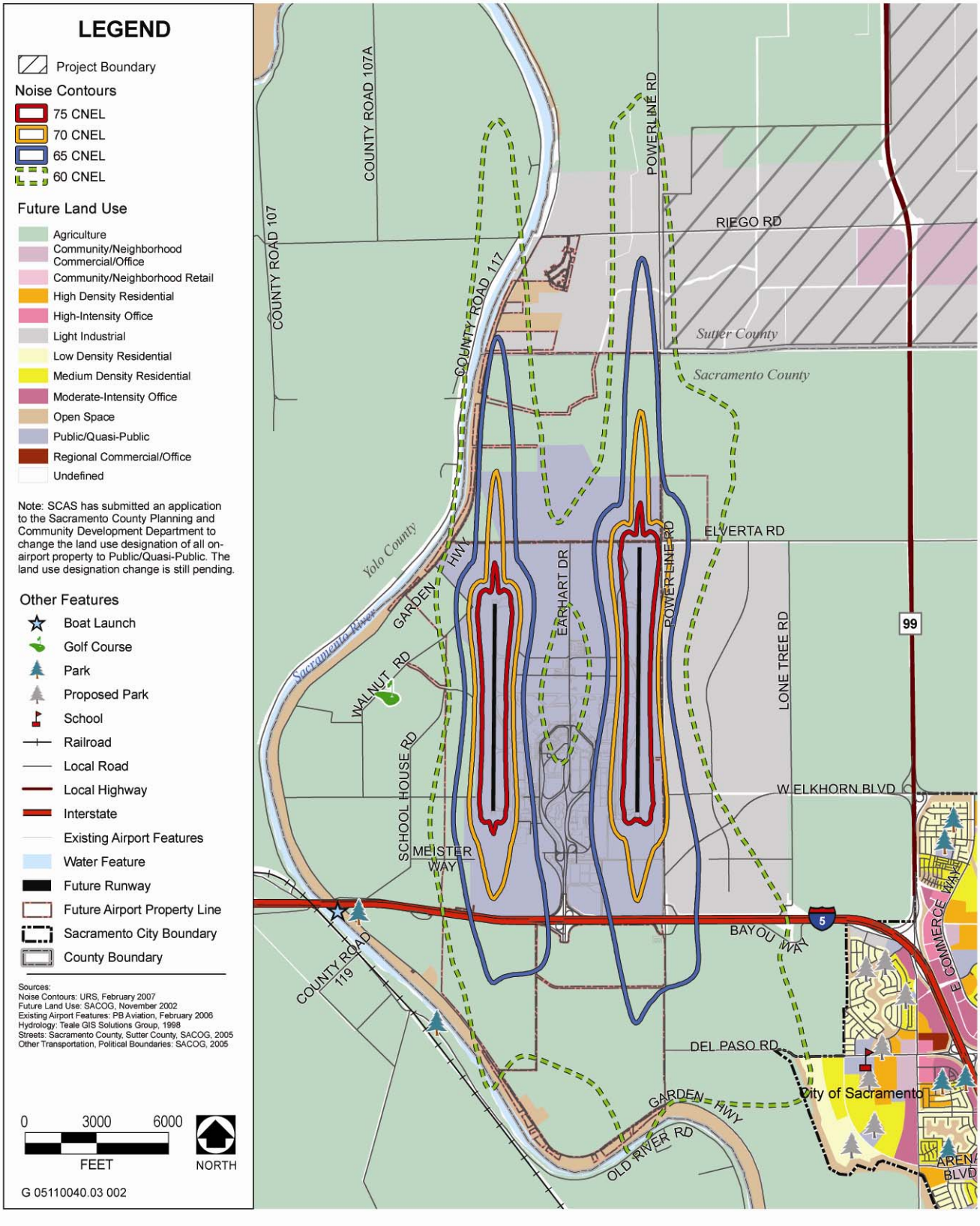
SCAS-1 The commenter provides a general outline of his concerns, each of which are addressed in detail in the subsequent responses to SCAS comments below.

SCAS-2 The commenter notes that the Sacramento County Board of Supervisors certified the Final EIR for the Sacramento International Airport Master Plan on August 7, 2008. As a result, an alternative that would extend the east runway 2,400 feet northward was identified as the environmentally superior alternative. The commenter provides the runway configuration proposed. Based on this proposed runway extension, the commenter observes that the aircraft angle of approach to the new runway would bring aircraft close to the low and medium density housing proposed for the east side of SR 99/70. Exhibits provided with the SCAS comment letter identify a 60-CNEL noise contour that the commenter states would affect a portion of the project site and an "Airport Planning Policy Area," (APPA) that would extend across most of the project site.

In portions of the APPA which lie within Sacramento County's jurisdiction, Sacramento County requires that noise insulation be provided in dwellings to limit interior noise to 45 dB CNEL, and that notification be provided in the Public Report prepared by the California Department of Real Estate disclosing to prospective buyers that aircraft operations can be expected to overfly the area at altitudes less than 3,000 feet above ground level. Sacramento County also requires execution and recordation of Aviation Easements with the Sacramento County Recorder's office for properties within the APPA. As noted in Impact 3.5-2 (page 3.5-27 of the DEIR), recorded deed notices would be required in areas of the project site subject to aircraft overflights to provide initial and subsequent prospective buyers, lessees, and renters of property on the project site, particularly residential buyers, with information that the project site is subject to routine overflights and associated noise by aircraft from Sacramento International Airport. While Sutter County acknowledges SCAS's concerns as expressed in this comment, this deed recordation requirement is similar to Sacramento County's own procedures. Please see the responses to SCAS-8 through SCAS-11, which address the noise considerations alluded to by SCAS in this comment.

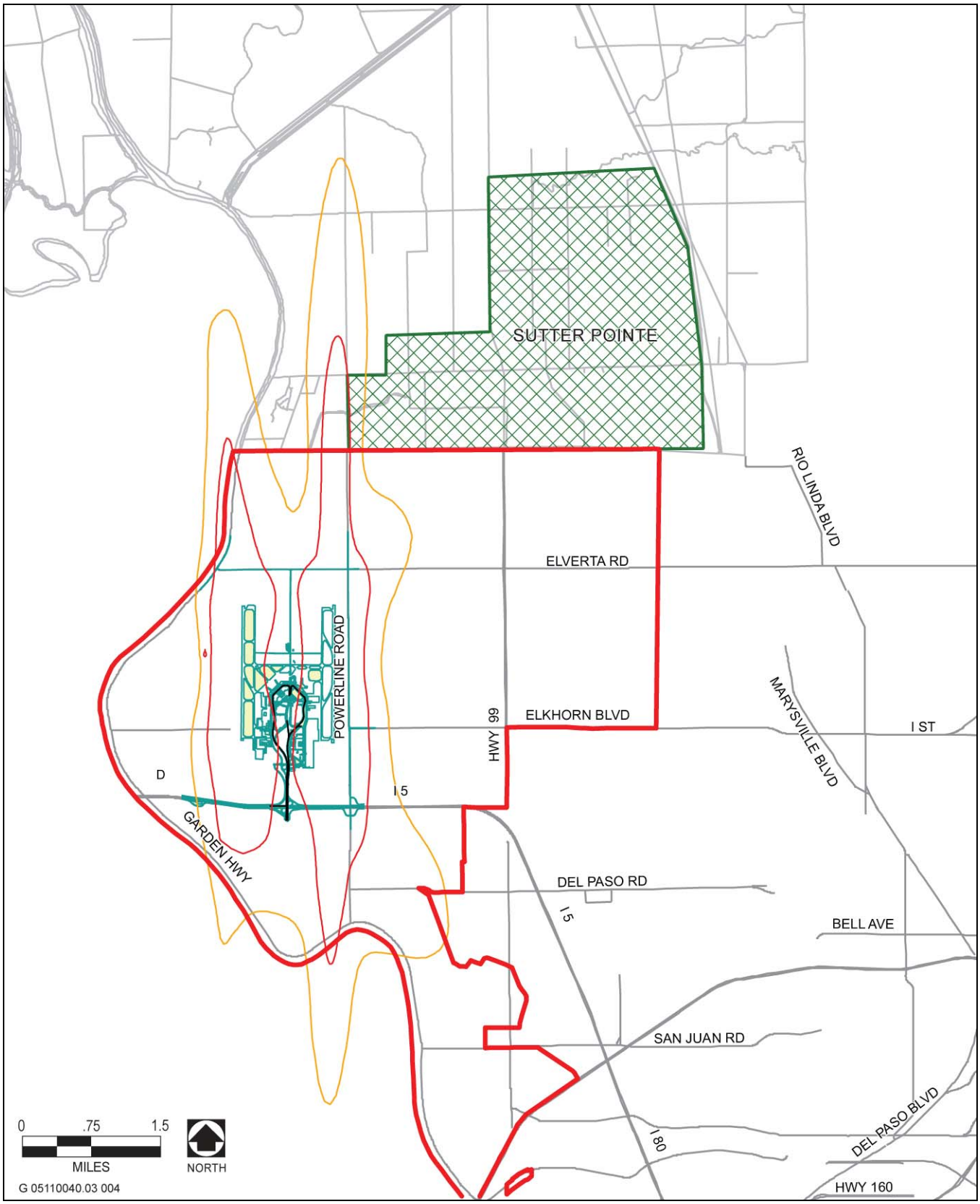
As shown in FEIR Chapter 4.0, "Corrections and Revisions to the DEIR," the following text change is proposed to Section 3.5-2 Environmental Setting (p. 3.5-21):

> As indicated on Exhibit 3.5-2, portions of the project site are located within the modeled 60 dB CNEL noise level contours under the existing master plan conditions, <u>as presented in the current CLUP. Furthermore, Sacramento County recently adopted the Sacramento International Airport Master Plan, which proposes a 2,400-foot extension of the existing northern terminus of runway 34R/16L. The Final Environmental Impact Report prepared for the Sacramento International Airport Master Plan contains aircraft noise contours for future 2020 conditions incorporating the "all north" runway extension. The Master Plan "all north" extension aircraft noise contours are presented in Exhibit 3.5-4, additionally the theoretical maximum capacity aircraft noise contours are included in Exhibit 3.5-5. As indicated in Exhibit 3.5-4, the Master Plan aircraft noise contours encompass a marginally larger portion of the project site within</u>



Source:

Sacramento International Airport Master Plan
"All North" Runway Extension Aircraft Noise Contours **Exhibit 3.5-4**



Source:

Sacramento International Airport Theoretical Capacity Noise Contours **Exhibit 3.5-5**

the 60 dB CNEL noise level contour in comparison to the existing CLUP contours, with~~A~~ a similar area of the project site ~~lie~~located~~s~~ within the 60-dB CNEL noise level contours under the theoretical capacity predicted with the inclusion of the northerly runway extension.

The 60-dB CNEL aircraft noise contours contained in the existing CLUP, the Master Plan EIR, and the theoretical maximum capacity noise contours all encompass a portion of the project site; however, the noise contours do not include or encroach on any noise-sensitive development areas proposed on the project site.

The commenter also expresses concern that the DEIR does not address the impact on commuting patterns between the proposed project and Sacramento International Airport from the proposed relocation of Elverta Road as part of the SMF Master Plan.

The proposed relocation of the segment of Elverta Road (west of Power Line Road) would not affect travel between the Sutter Pointe Specific Plan and Sacramento International Airport since the Elverta Road access to the airport would remain (i.e., would just be relocated) and the access to SR 99 by way of Power Line Road and Elverta Road would be unchanged. Therefore, no changes to the DEIR are necessary.

SCAS-3 The commenter requests that the County conduct a detailed hydrological analysis to determine how the proposed detention basin that would be located west of the project site in Drainage Alternative 3 would impact the giant garter snake habitat at the Willey Wetland Preserve, and how the proposed basin could affect the hydrology of said preserve, and include measures for avoiding and/or mitigating such impacts. The commenter notes that the Willey Wetland Preserve was "exclusively designed to provide upland and aquatic habitat" for the giant garter snake.

The detention basin mentioned by the commenter is part of an *alternative* drainage plan that could be implemented at the project site; Drainage Alternative 1 (not 3) is the Proposed On-Site Drainage Plan. Because the detention basin discussed in this comment is part of an alternative to the proposed project, rather than the proposed project itself, engineering data that would permit a detailed hydrological analysis of impacts related to the Willey Wetland Preserve as requested by the commenter are not available, and cannot be provided in this program-level DEIR. Hydrologic studies regarding flow rates, detention, and water quality have been performed and are provided in the Drainage Master Plan (Wood Rodgers 2008), and impacts related to hydrology and water quality of all three drainage alternatives are included in DEIR Section 3.7, "Hydrology and Water Quality." However, no mitigation was proposed for impacts that could result from the drainage alternatives because CEQA does not require a discussion or adoption of mitigation for alternatives to a project or specific components of a project. If the Drainage Alternative 3 were to be selected as the preferred drainage alternative, the more detailed analysis of impacts on the Willey Wetland Preserve that the commenter requests would be need to be performed during the required project-level CEQA environmental review. Any additional or different impacts resulting from implementation of that alternative and any necessary and feasible mitigation and avoidance measures would be identified at that time.

SCAS-4 The commenter states that Figure 3.1-5 appears to show a landscaped water feature within the FAA recognized General Zone, that such a water feature has the potential to attract wildlife hazardous to aircraft, that the design and construction of such water

features should comply with FAA Advisory Circular 150/5200-33B (Hazardous Attractants on or Near Airports), that Sacramento International airport staff be consulted to review all landscaping plans, and that, if the Airport's recommendations are not acceptable, a Bird Aircraft Strike Hazard Analysis should be conducted and the findings of that analysis be adopted for implementation as a condition of project approval.

The current primary land use on the project site is active agricultural land that is predominantly irrigated rice. Rice fields receive high use by birds, which are considered hazardous to aircraft, especially shorebirds, wading birds, and waterfowl. While urban lands uses, such as those proposed as part of the project, can also attract hazardous wildlife species, the attraction is generally much lower than found with irrigation rice fields. Moreover, the abundance of many hazardous wildlife species that are currently common on the project site would decrease due to the change in land use. A very high percentage of the project site is proposed for residential, industrial, and commercial uses that generally support low bird diversity and provide limited if any suitable habitat for hazardous species of waterfowl. The on-site lake/detention basin could attract hazardous waterfowl species but the attractiveness of this project feature would be greatly diminished by the proposed urban land uses that would completely surround the lake/detention basin. Thus, because approximately 6,000 acres of irrigated rice land would be converted to urban uses, the project would substantially reduce the hazard to aircraft from birdstrikes.

Notwithstanding the above, the DEIR acknowledges that bird species which are hazardous to aircraft could be attracted to the on-site lake/detention basin, as discussed in Impact 3.12-5 on page 3.12-28. In this impact discussion, the DEIR identifies the potential for airspace safety hazards associated with project water features as a significant impact. Proposed Mitigation Measure 3.12-5 (page 3.12-29) would require that the project applicant(s) of all project phases prepare and implement a design and management plan for all proposed water features in coordination with Sacramento Airport Operations Manager and approved by Sutter County and the Sacramento County ALUC (which would presumably include consideration of the measures set forth in FAA Advisory Circular 150/5200-33B) before commencement of construction. The mitigation measures specifically includes the avoidance measures that would reduce impacts associated with the attractiveness of water features to birds. The mitigation would also require preparation of an adaptive management plan that would provide for the long-term management of hazardous bird species around the lake/basin. Implementation of the design and management plan and the adaptive management strategy would be expected to further reduce the attractiveness of the project site below existing conditions.

SCAS-5 Please refer to response to comment SCAS-4.

SCAS-6 Please refer to response to comment SCAS-4.

SCAS-7 The commenter suggests that the discussion of airport-related toxic air contaminants (TACs) in Impact 3.4-4 reference the detailed air quality analysis that was provided in the FEIR for the Sacramento County International Airport (airport) Master Plan or the Environmental Assessment (EA) prepared for the Terminal Modernization Program.

The County points out a difference between the TAC analysis in the airports environmental documents and the TAC analysis in for the proposed project. The airport is the source of TAC emissions it analyzes in determining whether the increased emissions associated with increased airport activity would expose off-site receptors to substantial

health risk. The health risk analyses provided in the Airport Master Plan EIR and the Terminal Modernization Program EA present the incremental increase in health risk estimated for the airport's expansion; neither of these analyses, nor their detailed appendices, present the total levels of health risk generated by the airport under baseline conditions or under full buildout of the Airport Master Plan and Terminal Modernization Program. The analysis shows that the increased risk to the maximally exposed individual would be less than 1 in 1 million additional cancers, and states the impact is less-than-significant.

This is fundamentally different from the analysis conducted by the County for the proposed project on pages 3.4-38 and 3.4-39 under Impact 3.4-4. The County is analyzing the issue of locating sensitive land uses in close proximity to an existing source of TAC emissions (i.e., the airport). The focus of this analysis is not the *incremental* increase in health risk exposure, but rather the *total* health risk exposure to which residents, workers, and children on the proposed land uses would be subjected. This is why the County's analysis focuses on the research findings of other airports which have attempted to perform this type of land use compatibility analysis.

SCAS-8 The commenter observes that DEIR Impact 3.5-2 highlights aircraft noise impacts on residential and school uses developed within the project site, and notes that the voluntary requirement for deed notices in areas affected by aircraft overflights is commendable. However, the commenter notes that it is not clear which areas are to be subject to a deed notice requirement, and proposes that the entire project site should be covered by this requirement. The commenter proposes a text change.

As shown in FEIR Chapter 4, "Corrections and Revisions to the DEIR," the following text change is proposed to Impact 3.5-2 (p. 3.5-27) and 3.5-12 (p. 3.5-40):

> Because of the distance between proposed noise-sensitive land uses and the flight paths of Sacramento International Airport, it is unlikely that aircraft operations would have an appreciable effect on the proposed project. <u>As previously noted, the Sacramento International Airport conducts aircraft arrivals and departures in two operational modes: north flow and south flow. During north flow operations, which occur approximately 25% of the year, aircraft departures utilize runways 34L/34R with a large portion of those departures making an immediate course reversal passing directly over the project site. Because of the high power levels, low take-off altitudes, and course reversals that occur over the project site, the north flow operational mode results in increased noise levels, as compared to south flow conditions. However, prevailing wind conditions result in south flow operational conditions occur approximately 75% of the year. For the proposed project, single event noise levels from aircraft overflights were analyzed for both north and south flow operational conditions based on aircraft SEL data collected at two locations on the project site. Additional analysis of north flow operational conditions was conducted through computerized aircraft noise modeling.</u>
>
> Recorded deed notices will be required ~~in areas affected by aircraft over-flights~~ <u>for all residential parcels on the project site</u> to ensure that initial and subsequent prospective buyers, lessees, and renters of property on the project site, ~~particularly residential property,~~ are informed that the project site is subject to routine overflights and associated noise by aircraft from

Sacramento International Airport, that the frequency of aircraft overflights is routine and that aircraft events can be expected to increase through the year 2020 and beyond in accordance with the Sacramento International Airport Master Plan, and that ~~such~~aircraft overflights could cause occasional speech interference, increased potential for sleep disruption ~~that could affect more than 10% of all residents at any one time~~, and other annoyances associated with exposure to aircraft noise.

Furthermore, an additional policy, Policy 3.2-9, is proposed for p. 3-29 of the Specific Plan. The text of this policy will state:

> Policy 3.2-9: All residential properties in the Plan area shall be subject to deed notification requirements to inform project residents that the project site is subject to routine overflights and associated noise by aircraft from Sacramento International Airport, that the frequency of aircraft overflights is routine and that aircraft events can be expected to increase through the year 2020 and beyond in accordance with the Sacramento International Airport Master Plan, and that such overflights could cause occasional speech interference, sleep disruption that could affect residents of the site, and other annoyances associated with exposure to aircraft noise.

These text changes do not change the significance conclusions contained in the DEIR.

SCAS-9 The commenter provides information on the Airport Planning Policy Areas (APPAs) for both Sacramento International Airport and McClellan Airport, and interprets exhibits (provided in the comment letter) that illustrate the APPAs. Based on the extent of the proposed APPA, the commenter reiterates its recommendation that the deed notice requirement be extended to all residential uses within the project site.

Please see the response to comment SCAS-8 for a description of the proposed DEIR text changes in response to this comment. These text changes do not change the significance conclusions contained in the DEIR.

SCAS-10 The commenter expresses concern that noise monitoring data conducted for the single event Sound Exposure Level (SEL) impact analysis did not provide an adequate sample size for evaluating the impact at the project site. The commenter provides a penetration gate analysis evaluating the impact of aircraft overflights on the project site depending on north or south flow operational flight procedures. The penetration gate analysis shows that a greater number of flights occur over the project site, at lower altitudes and higher power levels, during north flow conditions. The commenter reiterates that the SEL impact analysis was conducted only for south flow conditions, and that north flow conditions should also be evaluated.

The original noise monitoring that served as the basis for the single event SEL impact analysis was conducted on August 22, 2007, on which date the airport was operating in south flow flight procedures. The DEIR states that during north flow conditions, single event noise levels would be higher at the project site due to power levels and the substantial number of planes executing course reversal turns directly over the project site. However, it is important to note that south flow conditions are the predominant flight procedure in place for approximately 75% of the year due to prevailing winds in the area. Additionally, the main intent for analyzing single event SEL noise levels is to evaluate the potential for sleep disturbance during nighttime periods; nighttime departures from

Sacramento International Airport occur infrequently, and as such, the potential for sleep disturbance is statistically very low.

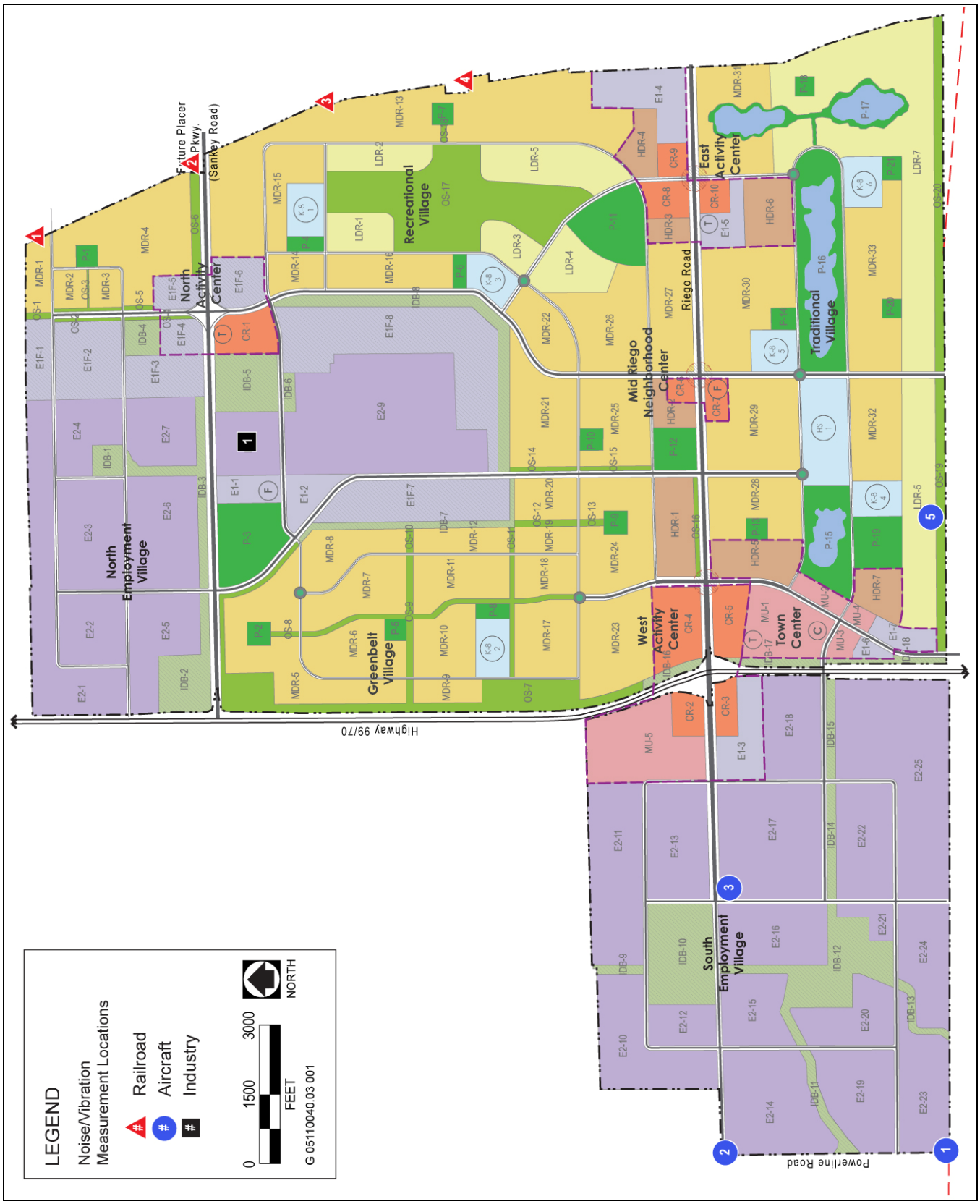
However, despite the low probability of nighttime departures over the project site, and resulting sleep disturbance, the analysis of SEL values resulting from north flow flight procedures was evaluated based on additional aircraft noise monitoring and computer analysis of aircraft SEL levels.

As shown in FEIR Chapter 4, "Corrections and Revisions to the DEIR," the following text change is proposed to Section 3.5.2 Environmental Setting (p. 3.5-21):

> Although the majority of the project site is unaffected by the aircraft noise contours shown on Exhibit 3.5-2, BAC conducted SEL measurements at 4 locations within the project site on August 22, 2007. Furthermore, EDAW conducted short-term and continuous noise monitoring and SEL measurements at 2 locations from April 11, 2009 to April 14, 2009. The SEL measurements were ~~for~~ subsequently analyzed~~sis~~ ~~of~~for potential impacts associated with speech interference and sleep disturbance due to aircraft arrivals, departures and overflights. The Sacramento International Airport operates in two modes, north flow and south flow. The mode of operation is dependent primarily on wind direction and meteorological conditions, as interpreted by air traffic control tower and the tower manager. During the August 22, 2007 measurement period the airport was operated in south flow. During the April 11, 2009 through April 14, 2009 measurement period the airport operated in both north and south flow. A flight track and penetration gate analysis conducted by the Sacramento County Airport System Aircraft Noise Information Office indicates that a greater number of aircraft operating under high power settings would occur over the proposed noise-sensitive areas during north flow conditions resulting in more substantial aircraft noise levels on the project site. This is attributed to a large number of departures executing course reversal turns over the project area and the lower altitudes which are inherent to northern departures. As such, the subsequent noise monitoring conducted during April 2009 focuses on north flow airport operations. The noise measurement locations are shown on Exhibit 3.5-3, and ~~the~~ a summary of the monitoring results are provided in Tables 3.5-17 and 3.5-18, for south and north flow conditions respectively.

Further, as shown in FEIR Chapter 4 "Corrections and Revisions to the DEIR," the following text change is proposed to Impact 3.5-2 (p. 3.5-27 and 3.5-12 (p. 3.5-40):

> Because of the distance between proposed noise-sensitive land uses and the flight paths of Sacramento International Airport, it is unlikely that aircraft operations would have an appreciable effect on the proposed project. As previously noted, the Sacramento International Airport conducts aircraft arrivals and departures in two operational modes: north flow and south flow. During north flow operations, which occur approximately 25% of the year, aircraft departures utilize runways 34L/34R with a large portion of those departures making an immediate course reversal passing directly over the project site. Because of the high power levels, low take-off altitudes, and course reversals that occur over the project site, the north flow operational mode results in increased noise levels, as compared to south flow conditions. However, prevailing wind conditions result in south flow operational



Source: Adapted by EDAW 2008

Noise/Vibration Measurement Locations **Exhibit 3.5-3**

conditions occur approximately 75% of the year. For the proposed project, single event noise levels from aircraft overflights were analyzed for both north and south flow operational conditions based on aircraft SEL data collected at two locations on the project site. Additional analysis of north flow operational conditions was conducted through computerized aircraft noise modeling.

Recorded deed notices will be required ~~in areas affected by aircraft over-flights~~ for all residential parcels on the project site to ensure that initial and subsequent prospective buyers, lessees, and renters of property on the project site, ~~particularly residential property,~~ are informed that the project site is subject to routine overflights and associated noise by aircraft from Sacramento International Airport, that the frequency of aircraft overflights is routine, and that aircraft events can be expected to increase through the year 2020 and beyond in accordance with the Sacramento International Airport Master Plan, and that ~~such~~aircraft overflights could cause occasional speech interference, increased potential for sleep disruption ~~that could affect more than 10% of all residents at any one time~~, and other annoyances associated with exposure to aircraft noise.

The recorded deed notices would not change the noise environment; however, they would notify people with above-average sensitivity to aircraft overflights (as well as all other prospective residents)—people who are highly annoyed by overflights—that they are choosing to live in a location where such activities frequently occur. This strategy involves making people more aware of the airport's proximity and current and future potential noise exposure before prospective buyers, lessees, and tenants move to the project site.

Table 3.5-17 indicates that the measured aircraft SEL at test location Site 3 on Exhibit 3.5-3 was 66 ~~dB~~dB during south flow airport operations. This site is approximately 2,000 feet west of the nearest residential and school uses on the project site (Mixed Use are at northwest quadrant of the Highway 99 / Riego Road interchange). It should be noted that attempts were made to quantify aircraft ~~Single~~ single ~~Event~~ event noise closer to the proposed mixed-use and school site, but aircraft noise levels were too low to be measurable over background freeway (SR 99) noise levels at that location. However, because of the increased distance to the airport from where the 66 dB SEL value was measured, exterior SEL values at the nearest proposed school and residential sites are expected to be less than 60 dB. Because standard residential and school construction would provide at least a 25 dB noise reduction with windows closed, an exterior SEL of approximately 60 would be reduced to 35 dB within residences and classrooms, during south flow airport operations. This level is well below the recommended ~~70~~ 80 dB SEL sleep disturbance ~~and 60 dB SEL speech interference~~ threshold~~s~~ of significance for findings of noise impacts because of single events. Based on measured SEL noise level, no adverse noise impacts are identified during south flow conditions.~~As a result, this impact is considered **less than significant**~~

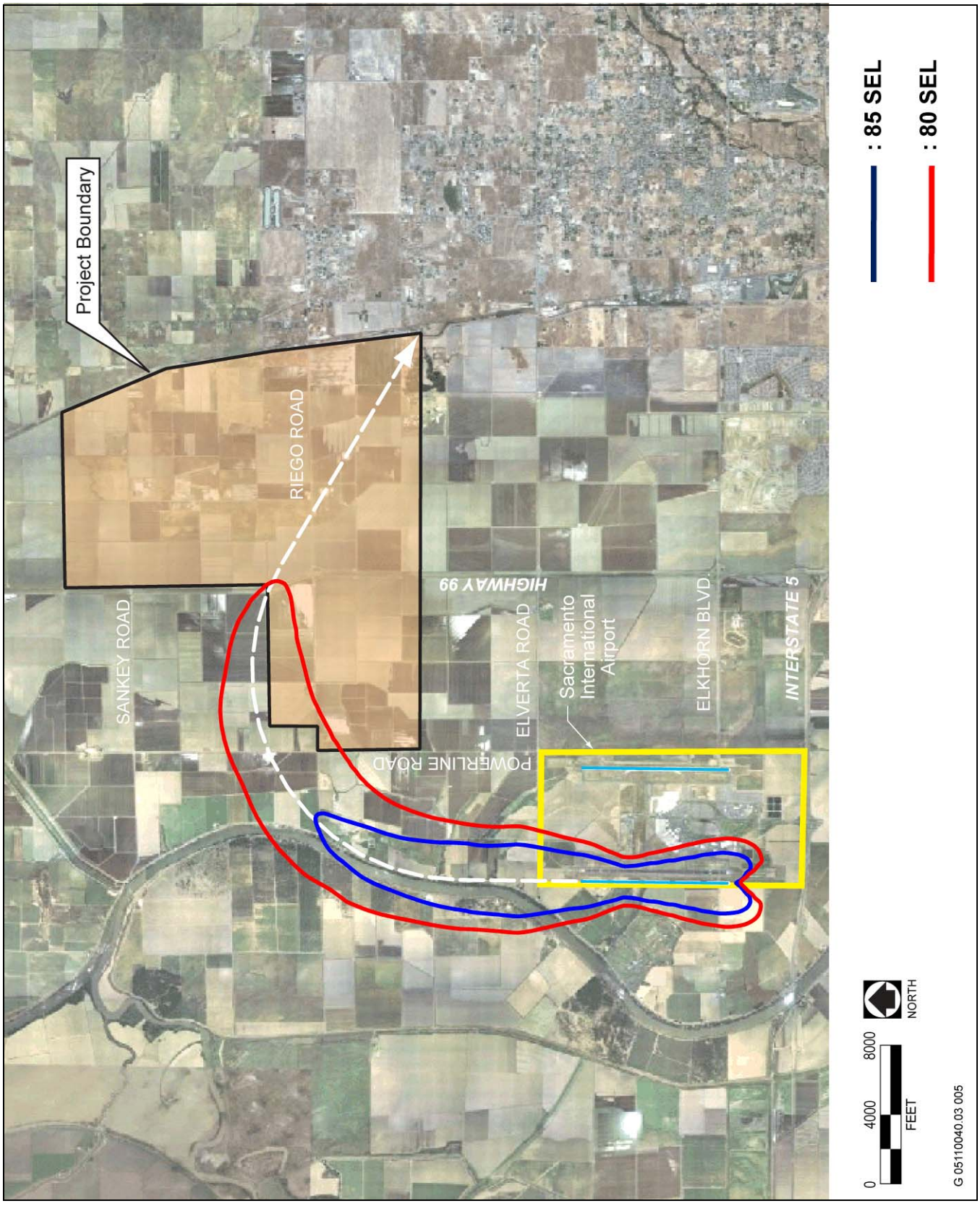
Aircraft measurement location 5, as shown on Exhibit 3.5-3, represents the low density residential land use located on the southern portion of the project site. Additionally, this location would be routinely exposed to aircraft overflights

during both north and south flow airport operational procedures. Aircraft noise measurement location 5 provides further characterization of aircraft noise levels that would be experienced during north flow conditions, when aircraft overflights would be operating under high power settings at lower altitudes. As shown in Table 3.5-18, average measured aircraft SELs at measurement site 5 were 79.7 dB and 79.4 dB SEL on April 13, 2009 and April 14, 2009, respectively. Because standard residential construction would provide at least a 25 dB noise reduction with windows closed, an exterior SEL of approximately 80 dB would be reduced to 55 dB SEL within the residences. This level is well below the recommended 80 dB SEL interior sleep disturbance threshold of significance for noise impacts due to single events. Based on measured SEL noise levels, no adverse noise impacts are identified during north flow conditions.

The SELs associated with a variety of aircraft types were modeled for typical north flow flight tracks and runway usage with the Federal Aviation Administration Integrated Noise Model (INM) Version 6.2a. The aircraft noise assessment included consideration of the northern extension of the existing runways recently adopted by the Sacramento County Board of Supervisors. Inputs to INM were based on information from the Sacramento County Airport System (SCAS) WebTrak software (the SCAS web-accessible aircraft flight tracking system), which was used to determine flight tracks and aircraft fleet mix. Modeling assumptions were derived from observations of WebTrak data for March 5, 2009, on which date the airport operated in a north flow mode, utilizing runways 34L and 34R. Average modeled aircraft SELs at proposed noise-sensitive land uses determined to be most potentially affected (i.e., the mixed-use area located northwest of Riego Road and Highway 99) were 81.2 dB SEL. Thus, the results of the assessment indicate that during the relatively infrequent northern departure conditions, SEL values within proposed residences would be well below the project threshold of significance of 80 dB SEL for sleep disturbance. Based on modeled SEL noise levels, no adverse noise impacts are identified during north flow conditions. Modeled SEL contours for typical aircraft operations at Sacramento International Airport are presented in Exhibit 3.5-6 and 3.5-7.

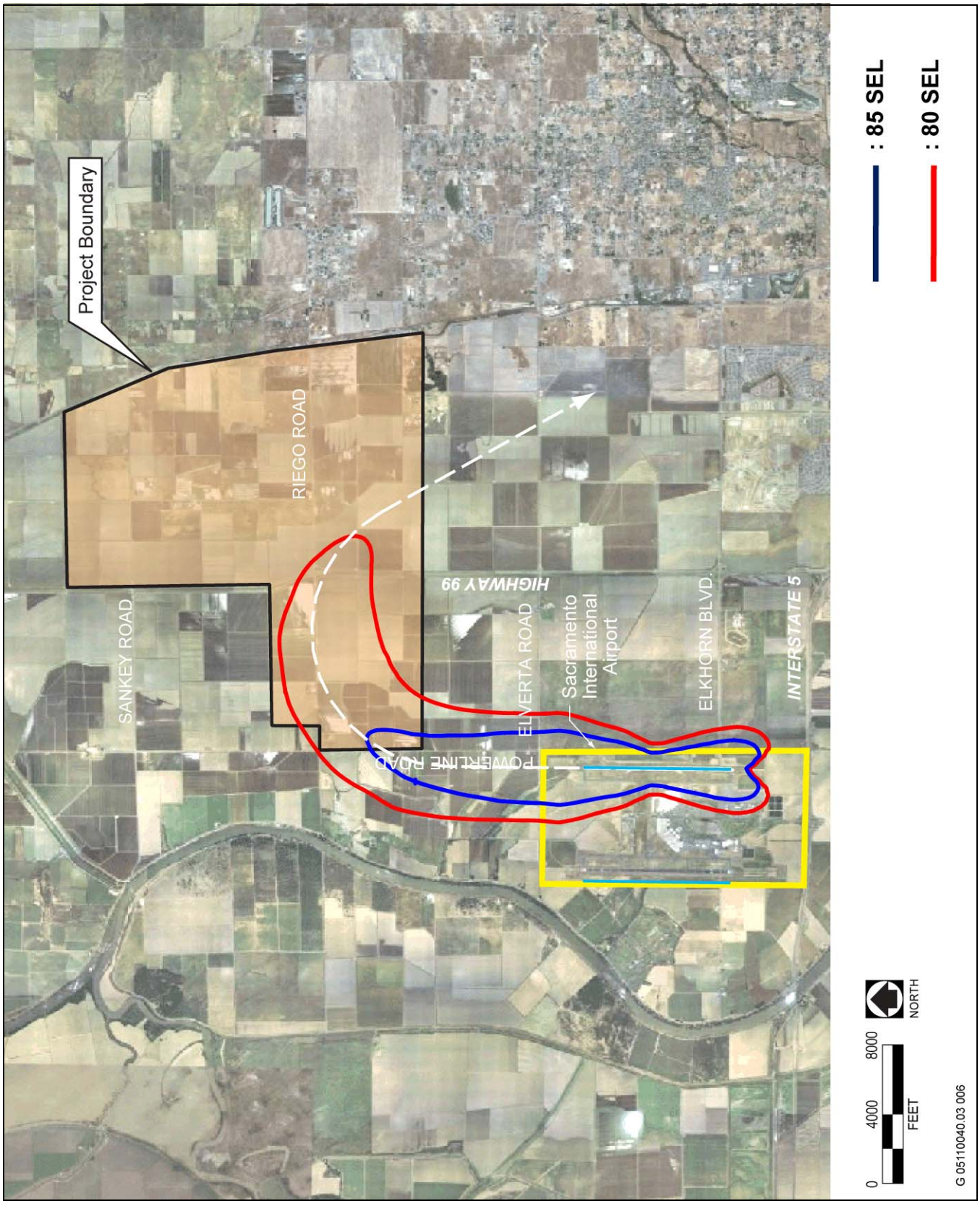
Single-event SEL noise levels are predicted to be below the project thresholds of significance at noise-sensitive areas during both north and south flow modes, including noise generated by heavier aircraft that could utilize the airport following the 2,400-foot all-north extension of runway 34R/16L as proposed in the SMF Master Plan. Furthermore, single-event noise levels associated with typical operation of military aircraft in the project vicinity are predicted to be below the project thresholds of significance at noise-sensitive areas on the project site. As a result, this impact would be **less than significant.**

The text edits shown above do not change the significance conclusions already contained in the DEIR.



Source: Bollard Acoustical Consultants with Integraded Noise Model (INM6.2); Adapted by EDAW 2008

Predicted Typical Single Event Noise Levels (SEL), North Flow Conditions **Exhibit 3.5-6**



Source: Bollard Acoustical Consultants with Integraded Noise Model (INM6.2); Adapted by EDAW 2008

Predicted Typical Single Event Noise Levels (SEL), North Flow Conditions **Exhibit 3.5-7**

SCAS-11

The commenter states that in addition to commercial aircraft that are included in the DEIR analysis, military aircraft such as the U.S. Air Force C-5 Galaxy along with the T-38 jet fighter aircraft utilize Sacramento International Airport for flight training. The commenter indicates that the Airport Noise Operations Monitoring System shows C-5 aircraft that would pass over areas of the project site identified for residential land uses, and recommends additional noise monitoring to assess the potential for associated impacts.

The impact analysis addressing exposure of noise-sensitive land uses to Community Noise Equivalent Levels from Sacramento International Airport is based on noise level contours as contained in the Compatibility Land Use Plan and the Sacramento International Airport Master Plan Final EIR, which considers military training operations in the calculation of contours. Additionally, the CNEL noise contours considered in this analysis also address future use of the proposed 2,400-foot northern extension of runway 34R/16L, and the potential flight track alterations and the generation of heavier aircraft that could utilize the airport following the northern extension of the existing runway. However, single event SEL noise level impacts associated with military operations in the vicinity of the project sight were not specifically evaluated.

In order to quantify noise levels associated with training operations and military aircraft overflights, additional short-term and continuous noise monitoring was conducted over a period of four days. During the additional monitoring periods, the airport was operating predominately using north flow flight procedures during daytime hours. During the monitoring periods, no noise level data was able to be identified in association with the operation or overflights by military aircraft. Subsequent to conducting the additional monitoring, it was discovered that Travis Air Force Base had temporarily restricted military flight training use of the Sacramento International Airport during the construction phase of the new Terminal B. Beale Air Force Base pilots continue to utilize Sacramento International Airport for military flight training, primarily "touch and goes;" however they do so in a limited manner as their preference is to use Mather Airport due to traffic issues at Sacramento International.

Due to the preclusion of specific noise measurement data at the project site, single event SEL noise levels generated by military aircraft overflights were modeled using the U.S. Air Force "Flyover Noise Calculator." Military aircraft flyover noise was evaluated for the most common aircraft in use for flight training in the project vicinity. Inputs to the model were derived based on recent military aircraft flight data provided by the SCAS Department of Planning and Environment.

As shown in FEIR Chapter 4, "Corrections and Revisions to the DEIR," the following text change is proposed to section 3.5.2 Environmental Setting (p. 3.5-21):

> In addition to commercial, cargo, and general aviation aircraft that are operated at Sacramento International Airport, the airport is used on a routine basis by the military for training purposes. Military aircraft most common to the airport include cargo aircraft (i.e., C-5A and C-130), and refueling and transport aircraft (i.e., KC-10 and KC -135), which originate primarily from Travis Air Force Base. Additionally, the supersonic jet trainer T-38, and the high altitude surveillance aircraft U-2, utilize the airport's facilities, originating from Beale Air Force Base. Sacramento County is a signatory to a Memorandum of Understanding (MOU) with the military stating that training operations will only be conducted from 7:00 a.m. to 7:00 p.m. Monday through Friday; however,

these restrictions are non-binding and the military can conduct additional flight operations as necessary to maintain combat readiness. Due to the nature of the military flight operations, such as their highly variable flight paths and operational altitude, along with the preclusion of military aircraft from the noise-related design criteria required of commercial aircraft , military aircraft usually generate louder SEL events. Travis Air Force Base has currently restricted its use of the Sacramento International Airport for training purposes during the construction phase of the new Terminal B (Taylor, pers. comm., 2009). Flight operations originating from Beale Air Force Base (i.e., T-38 and U-2) will use the Sacramento International Airport occasionally; however, Mather Airport is preferred due to traffic conditions at Sacramento International. As such, during the periods of aircraft noise monitoring conducted for this project, no specific operations of military aircraft were captured.

As shown in FEIR Chapter 4, "Corrections and Revisions to the DEIR," the following text change is proposed to Impact 3.5-2 (p. 3.5-27) and 3.5-12 (p. 3.5-40):

Military Operations

As previously noted, Sacramento International Airport is routinely utilized for military training purposes. Aircraft predominately conducting operations at the facilities include the C-5A, C-17, C-130, KC-10, and KC-135 out of Travis AFB and the T-38, and U-2 out of Beale AFB. Site-specific noise measurements of military aircraft conducting training operations were not able to be obtained during the aircraft noise monitoring conducted for this analysis. Therefore, the United States Air Force Flyover Noise Calculator was employed to determine SELs generated from military aircraft operations at Sacramento International Airport and over the project site. Based on information provided by SCAS Department of Planning and Environment, recent military aircraft operations were limited to T-38 jet training aircraft out of Beale AFB, which were conducting "touch and go" exercises at Sacramento International Airport. Aircraft overflights of the project site were generally associated with aircraft in route between Beale AFB and Sacramento International Airport. Aircraft altitude ranged from 2,100 feet to 3,400 feet with an average altitude associated with the overflights of approximately 3,000 feet. On comparison of predicted SEL noise levels to reference noise levels collected for commercial and military aircraft, the intermediate power profiles in the Flyover Noise Calculation model were found to provide the greatest correlation while remaining conservative. The results of the Flyover Noise Calculator for the typical military aircraft utilizing the Sacramento International Airport and respective ground level noise levels are presented in Table 3.5-19.

Based on the results of the military aircraft overflight noise modeling, as shown in Table 3.5-19, military aircraft overflights at the proposed residential areas of the Sutter Pointe Specific Plan project site would generate SEL noise levels ranging from 80 dB to 98 dB SEL under intermediate power levels, and 83 dB to 101 dB SEL under take-off power levels. Assuming standard residential construction would provide at least a 25-dB noise reduction with windows closed, an exterior SEL of approximately 101 dB would be reduced to 76 dB SEL within residences. This level is below the recommended 80 dB SEL interior sleep disturbance threshold of significance for noise impacts due to single events. Therefore, based on the measured SEL noise level, no adverse noise impacts are

identified in association with typical operations of military aircraft in the vicinity of the project site.

Table 3.5-19
Military Aircraft Sound Exposure Levels

Aircraft	Noise Level, dB SEL	
	3,000 feet AGL[1]	
	Intermediate Power[2]	Take-Off Power[3]
C-5A	98	101
C-17	82	92
C-130	80	83
KC-10	83	89
KC-135	81	83
T-38	80	92
U-2	85	97

[1]- Average altitude of military aircraft overflights at the project site.
[2]- USAF Flyover Noise Calculator aircraft power setting profile which provides best correlation with reference noise measurements of commercial and military aircraft.
[3]- USAF Flyover Noise Calculator aircraft power setting profile which provides most conservative analysis.
Notes: dB – A-Weighted decibel; SEL (Sound Exposure Level) - the cumulative acoustical energy of a single event normalized to a one second period.
Source: Data modeled by EDAW 2009

The information contained in these text edits does not change the significance conclusions already presented in the DEIR.

SCAS-12

The commenter restates an April 2007 comment describing aircraft operations at McClellan Airport, which observes that aircraft approaching and departing McClellan's main runway come very close to the proposed residential development in the proposed project.

The County notes that the APPA exhibit provided by SCAS indicates that the APPA for McClellan Airport does not overlap the project site. Nevertheless, the text changes proposed in response to comment SCAS-8 above address this concern. No further changes to the text of DEIR are required.

SMAQMD

SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT

Larry Greene
AIR POLLUTION CONTROL OFFICER

February 6, 2009

Doug Libby, AICP
Sutter County Community Services Department
1130 Civic Center Boulevard
Yuba City, CA 95993
DGLibby@co.sutter.ca.us

SUBJECT: Sutter Pointe Draft Environmental Impact Report

Dear Mr. Libby,

The Sacramento Metropolitan Air Quality Management District (the District) has received the Sutter Pointe Draft Program/First Tier Environmental Impact Report. The project is adjacent to the Sacramento Metropolitan Air Quality Management District and is part of an ozone non-attainment region that encompasses all of Sacramento County. The District is concerned that elements that should be present in a Programmatic/First Tier environmental document are being delayed to the project specific documents. This can result in a patchwork of mismatch mitigation measures instead of a cohesive plan for the area. The District is also recommending some changes to ease understanding of the potential impacts as well as the inclusion of specific mitigation measures to lessen the impacts of this project on the air basin. The District has the following comments: 1 2

Section ES.5.1 General Characteristics:

- In November 2004, Sutter County residents passed advisory Measure M regarding development in South Sutter County and in December 2004, the Board of the Sacramento Council of Governments unanimously adopted the 2050 Blueprint scenario, which is a guide to development within the greater Sacramento area. The environmental document states that "The proposed project has been designed to respond to several growth principles established by the Sacramento Area Council of Governments (SACOG) Blueprint plan, to the extent feasible under the restrictions of Measure M."[1] As an advisory measure, Measure M has no "restrictions" and the District would encourage Sutter County to adopt a specific plan that conforms to the most recent vision for the area, which was adopted unanimously by the SACOG board. 3

[1] Sutter Pointe Specific Plan DEIR, County of Sutter, Pg ES-3

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Table ES-1 Comparison of Significant Environmental Effects of the Alternatives to the Proposed Project[2]

- The table is confusing, using only the words "less, greater, and similar." Please revise to a qualitative numeric scale, perhaps with "zero" being no significant impacts and "five" being the most impacts. Another approach would be to use the No Project impacts as the baseline, and then having the three alternatives identify if their impacts are less, similar, or greater than the No Project baseline. 4

Section 3.1 Land Use

- The Blueprint calls for a low density mixed residential community adjacent to light industrial, commercial, and offices. Sutter Pointe has similar land designations, but the Blueprint low density mixed residential community represents an average density of 9 dwelling units per net acre (du/na) while the net acres devoted to residential uses divided by the maximum allowed units at Sutter Pointe nets less than 7 du/na. To meet the proposed blueprint density on the proposed residentially zone acreage, 22,815 homes need to be built in Sutter Pointe. The District recommends removing the maximum allowed residential units (17,500)[3] and that the County work with the applicant to allocate a minimum housing number across the three villages so that as development occurs, if the first few developers opt for quarter and fifth acre lots, the latter developers would be required to make up the slack with higher density housing to achieve an average of 9 du/ac. Failure to meet this minimum density will have a negative impact on future transit operations within Sutter Pointe. Another option would be to reduce the acreage devoted to residential units and increase open space within the project. 5

- To stay consistent with the "Sutter County General Plan Goals and Policies" Policy 1.E-3 (The County encourages industrial uses to be developed in contiguous or generally consolidated areas to reduce the potential for conflicts with surrounding uses), the District recommends that the North Employment Village be allocated in a linear strip where the greenbelt village is currently located. This would reduce residential/industrial conflicts as well as move sensitive receptors further from toxic air contaminants stemming from State Route 70/99. 6

- To help fulfill goal 1 of the SACOG blueprint "Transportation Choices," set a minimum Connectivity Index (Link-Node Ratio) and a maximum block length for residential projects within the development. The district recommends a minimum connectivity index of 1.3 and a maximum block length of 600 feet. Each development should also have a potential through street every 1,500 feet to be able to connect to future developments. This is especially true of the lands 7

[2] Ibid, Pg ES-8
[3] Ibid, Pg ES-3

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to the north and east of Sutter Pointe, which could develop after 2050. Additional through roads should be planned to connect Sutter Pointe with these future developments. In addition, local roads should be designed and designated to accommodate neighborhood electric vehicles. 7 Cont'd

Section 3.4 Air Quality:

- Page 3.4-32 states that individual Air Quality Mitigation Plans shall be developed for each development phase of the proposed project, as prescribed by the Sutter Pointe Master Plan Air Quality Master Plan (MAQMP) prepared in June 2008. The District strongly recommends that a specific emission reduction requirement be adopted in this EIR and the Sutter Pointe AQMP. When deciding on a requirement, the District compares a proposed project to the 2018 MTP, which is part of the SIP. The 2018 MTP calls for 444 acres of development in the Sutter Pointe area, while the project is proposing 2289 acres in phase 1 and phase A which is expected to be built out by 2017. As the project is not consistent with the 2018 MTP, the project is not consistent with the SIP and could jeopardize attainment status for the region. The District recommends 35 percent reduction of criteria air pollutants from "business as usual." This 35 percent reduction is consistent with our recommendations on projects that are being proposed in Sacramento County that are not consistent with the 2018 MTP. Measures to reach this reduction should be specific, enforceable and approved by the Feather River Air Quality Management District. Revise MM 3.4-2 to include specific, enforceable measures approved by the FRAQMD. 8

- With no-burn restrictions becoming more common in the basin due to PM-10 and PM-2.5 non-attainment, the District recommends banning all residential woodburning devices. This would be consistent with new development projects in Sacramento County. 9

- The project is proposing a Class I trail adjacent and parallel to State Route 99. The District is concerned that users of the facility would be exposed to toxic air contaminants. We applaud the inclusion of a bike trail that will enhance the bicycle connecting the region but recommend that particulate matter filtering vegetation be planted between SR-99 and the trail. 10

Section 3.17 Climate Change

- The District commends the County for its thoughtful discussion of Greenhouse Gas (GHG) thresholds as well as climate change impacts upon the project. Linking the thresholds to the existing regulatory framework (specifically AB 32) provides sound reasoning, and the idea of GHG emissions per service population has potential for future thresholds. Even the reference to the 25,000 metric tons of CO2 per year (mandatory reporting level for stationary sources) provides a 11

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useful "backstop" context. The District agrees with the County's significance determinations for the project's GHG impacts. 11 Cont'd

- The document states "This impact discussion will address the question of whether land uses developed under the proposed Specific Plan would achieve a 30% reduction in GHG emissions compared with business-as-usual emission levels projected for 2020.[4] However, if 30 percent reductions need to be achieved for all of California, new projects may have to achieve more than a 30 percent reduction to account for the existing built environment. This issue could be included in the discussion of thresholds. 12

- In Appendix F, GHG emissions from solid waste are not included in the analysis. Include these emissions. 13

- Construction mitigation: on page 3.17-13, the County asserts that "By reducing emissions of criteria air pollutants [through Mitigation Measure 3.4-1 for construction emissions], GHG emissions also would be reduced." This statement is not true for many construction mitigation measures. Running additional water trucks to reduce particular matter would increase GHG emissions and installing particulate-matter reducing retrofits on off-road equipment would do nothing to reduce GHG emissions. The District recommends revising the paragraph and mitigation measure 3.4-1 to reflect this. 14

- Operational mitigation: the DEIR does not offer up enforceable operational GHG mitigation. Instead, it refers to two mitigation measures. The first one, Mitigation Measure 3-4.2 is the Mitigation Measure created for operational emissions of ROG, NOX and PM10. That measure defers mitigation to the future by stating "each development phase of the proposed project shall develop and implement FRAQMD-Endorsed Air Quality Mitigation Plans to Reduce Operational Emissions." The document further states "Each individual AQMP shall prescribe a percent reduction target for emission of ozone precursors and PM10 as determined by Sutter County in consultation with FRAQMD."[5] The SMAQMD recommends that the County adopt clear standards **now** for the required reductions of criteria pollutants as well as standards for the reductions of GHG emissions. As stated above (air quality section), the District recommends a 15 percent reduction in NOX/ROG for Blueprint-compliant projects and a 35 percent reduction for non-Blueprint compliant projects. 15

- Relative to the required GHG reductions, the County could require at least a 30 percent minimum GHG reduction from the project, using SMAQMD "Recommended Guidance for Land Use Emission Reductions", or equivalent reductions from the Feather River Air Quality Management District. The County 16

[4] Ibid, Pg 3.17-10
[5] Ibid, pg 3.4-32

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could also adopt performance standards such as the draft California Air Resources Board Performance Thresholds. These approaches would give more needed assurances that an appropriate level of mitigation would be required of this very large project. 16

- The Sutter Pointe Master Air Quality Mitigation Plan, referenced in Mitigation Measure 3.4-2 is unusual in that it mixes strategies for dealing with NOX, ROG, PM and GHG. Because the measures are rather generally stated, it is important to assure that they will, indeed, be implemented throughout the Sutter Pointe project. For example, the establishment of a Community Facilities District[6] will guarantee the funding for the Transportation Management Association. That funding mechanism should be called out in a Mitigation Monitoring Plan which would be approved at the time of specific plan approval. 17

- In addition, the GHG measures in the Sutter Pointe Master Air Quality Mitigation Plan are weakly stated for the most part and should be strengthened. "*Sutter Pointe will require development to utilize energy efficient materials and incorporate energy efficient practices* ***whenever feasible***[7]" does not guarantee anything. "*Solar will be offered as a standard feature on a* ***pre-determined*** *percentage of homes for Phase I, and available as an upgrade on all homes during Phase I.*" also does not guarantee anything. What is the percentage? It should be called out now. The Plan also states "*Sutter Pointe will require installation of energy efficient furnaces."* However, it's unclear whether those furnaces will be required in all buildings or some subset of buildings. 18

- The DEIR offers up a second Mitigation Measure for the reduction of GHG: MM 3.17.1, "Additional Measures to Reduce GHG Emissions." Discussion of this measure references the Attorney General's list of suggested measures, CAPCOA's list of measures and a requirement to reduce GHG by 30% from business-as-usual emissions "if it is feasible to do so." Consideration of these measures is all pushed to the future when each "increment of new development requiring discretionary approval" comes forward. The District believes commitment to specific mitigation can be made now, especially for GHG mitigation for project A. The County could use the Attorney General's list of suggested mitigation, discussing why or why not the various measures could be incorporated into this project. The document has stated the GHG operational emissions are significant and it therefore needs to identify all feasible mitigation at this project level now. 19

SMAQMD staff thanks the County for the opportunity to present our comments and any questions may be addressed to Paul Philley (916-874-4882 | pphilley@airquality.org).

[6] Sutter Pointe Master Air Quality Mitigation Plan, Aug 25, 2008, pg. 11
[7] Ibid, pg 26

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Sincerely,

Larry Greene
Executive Director/Air Pollution Control Officer
Sacramento Metropolitan Air Quality Management District

C: David A. Valler, Jr. Feather River Air Quality Management District

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SMAQMD-1

The commenter states that "the project is adjacent to the Sacramento Metropolitan Air Quality Management District and is part of an ozone non-attainment region that encompasses Sacramento County"

The County agrees with the commenter's statement. DEIR Table 3.4-1 (page 3.4-2), indicates that Sutter County is nonattainment with respect to the California Ambient Air Quality Standard for ozone. In addition, DEIR page 3.4-5 also states that "the southern portion of Sutter County is also part of the Sacramento Federal Ozone Nonattainment Area (SFNA), which comprises all of Sacramento and Yolo Counties and portions of El Dorado, Placer, and Solano Counties." No changes to the DEIR text are required.

SMAQMD-2

The commenter expresses concern that elements that should be present in a programmatic environmental document are being delayed to project-specific documents. A more detailed and specific list of these concerns is provided by the commenter.

Please see responses to comments SMAQMD-3 through SMAQMD-19.

SMAQMD-3

The commenter reminds the County that Measure M is merely an advisory measure with no "restrictions" and encourages the County to adopt a specific plan that conforms to SACOG's Blueprint plan.

Please refer to Master Response 1, "Measure M." Additionally, the County has considered in its DEIR an alternative to the proposed Specific Plan that would strictly conform to the SACOG Blueprint Preferred Scenario. (See DEIR Chapter 4.0, "Alternatives", pages 4-19 through 4-28.) The Sutter County Board of Supervisors has the discretion to approve the SACOG Blueprint Preferred Scenario if it determines it is feasible and environmentally superior to the proposed project.

SMAQMD-4

The commenter suggests that Table ES-1 comparing the effect of the project alternatives should be revised to use a qualitative numeric scale, or to use the No Project Alternative as a baseline. With regards to the scale of comparison (i.e., similar, lesser, greater) used in Table ES-1, the County notes that this table merely contains a generalized, comparative summary of the environmental impacts analyzed in detail in DEIR Chapters 3, 4, 5, and 6. Thus, any comparative method could be used, and regardless of which comparative method were used, such method would require an artificial scale. The descriptors "similar, lesser, or greater" were derived from a comparison of the total number of less than significant, potentially significant, significant, and significant unavoidable impacts for each issue area for each alternative. CEQA does not mandate that any particular criteria or method be used to summarize the comparative impacts of alternatives, only that a matrix or table summarizing the comparison may be helpful. (See CEQA Guidelines Section 15126.6(d) ["A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison."].)

Pursuant to CEQA Guidelines Section 15125(a), the environmental conditions as they exist at the time the Notice of Preparation (NOP) is published will normally constitute the baseline conditions. As discussed in CEQA Guidelines Section 15126.6(e)(1), "the no

project alternative analysis is not the baseline for determining whether the proposed project's environmental impacts may be significant, unless it is identical to the existing environmental setting analysis which does establish that baseline." As described in DEIR Chapter 4.0, "Alternatives," the No Project Alternative entails a different scenario from the conditions that existed at the time the NOP was published. No changes to the DEIR are required.

SMAQMD-5 The commenter suggests removing the maximum allowed residential units proposed for the project (17,500 as per Measure M) and replacing it with an average density goal of 9 du/ac that the commenter states is consistent with the Blueprint.

The DEIR analyzed a Blueprint-consistent version of the specific plan in Chapter 4.0, "Alternatives" – the SACOG Blueprint Preferred Scenario Alternative. (See DEIR, pages 4-19 through 4-28.) The analysis of the Blueprint alternative concluded that the transit opportunities under such a plan would be less than for the proposed project because of the lower residential and employment density. To the extent the commenter is suggesting that the Blueprint alternative studied in the EIR needed to make different assumptions about land use patterns or development density, or analyze a different variation of the project to result in a different conclusion regarding the viability of future transit operations, please refer to Master Response 4, "Alternatives." The DEIR considered a reasonable range of alternatives as required by CEQA. No revision to the DEIR or Specific Plan is required in response to this comment.

SMAQMD-6 The commenter suggests changing the Sutter Pointe land use plan to locate the North Employment Village in a linear strip where the Greenbelt Village is proposed. The commenter suggests this will maintain consistency with the County General Plan policy encouraging industrial development to occur in a contiguous pattern or in consolidated areas to reduce potential conflicts with surrounding uses.

The County does not agree that the change to the land use plan proposed by the commenter would result in greater consistency with the referenced General Plan policy. The North Employment Village is already a consolidated area of employment (light and heavy industrial uses). The North Employment Village would still not be contiguous to the South Employment Village if relocated as suggested in the comment, but the change would result in the Greenbelt Village no longer being contiguous to the other residential villages and farther from necessary services, thereby requiring more vehicle trips. The Sutter Pointe Specific Plan land use plan was created to minimize potential conflicts between land uses. The location of the North Employment area is based partly on the existing uses in the area, which include Sysco and Holt Manufacturing along the east side of Pacific Avenue. Based on the location of these existing uses and the desire to have a contiguous residential community, the Greenbelt Village is located between SR 99/70 and Pacific Avenue. Therefore, no revisions to the proposed Specific Plan are necessary in response to this comment.

SMAQMD-7 The commenter recommends establishing a connectivity index and maximum block length.

See Response to Comment FRAQMD-26.

The commenter also recommends establishing through streets every 1,500 feet to connect to future developments north and east of Sutter Pointe.

Sutter Pointe is the only planned development in south Sutter County; a general plan amendment is proposed as part of the project to return surrounding areas to the north to an agricultural designation. Along the eastern property boundary, the presence of levees, the Natomas East Main Drainage Canal, and the main line of the Union Pacific Railroad (UPRR) make frequent roadway connections undesirable. Please refer to the UPRR's comments, which outline UPRR's concerns about conflict between traffic and pedestrians and train traffic. Furthermore, Sutter County does not support the construction of roadways to as-yet-unplanned areas. The Sutter Pointe area was identified in Measure M approved by the voters of Sutter County, and Sutter County does not support construction of roadways that would induce growth in areas not authorized by Measure M.

The commenter also recommends designating local roads for neighborhood electric vehicles.

Under the California Vehicle Code, a neighborhood electric vehicle can use any local road with a speed limit under 35 mph. (See Veh. Code Sec. 21260.) Sutter County does not support allowing such vehicles on roads with speed limits in excess of 35 mph, but will look favorably upon the use of such vehicles on roads within the Specific Plan area where the speed limit will be less than 35 mph. Until small lot tentative maps are proposed and processed, the location of such roads will not be known with certainty. At the current level of planning and environmental review (a specific plan analyzed with a program EIR), no special designation is required as recommended by the commenter to accommodate electric vehicles. No revisions to the DEIR or Specific Plan are required in response to this comment.

SMAQMD-8

The commenter cites to DEIR Mitigation Measure 3.4-2 (DEIR page 3.4-32), which requires preparation of individual AQMPs for each phase of development, and recommends that a specific emission reduction requirement be adopted now in the Sutter Pointe Specific Plan EIR. The commenter recommends a 35% reduction of criteria pollutants.

The County notes that the Sutter Pointe Specific Plan EIR is programmatic in nature (please refer to Master Response 2, "Programmatic Nature of EIR Analysis"). This EIR is not intended to provide project-level analysis for individual phases of development. For that reason, DEIR Mitigation Measure 3.4-2 requires an individual air quality mitigation plan to be developed with each phase of the proposed project and the percent emission reduction targets for emissions of ozone precursors and PM_{10} to be determined by the County in consultation with SMAQMD and FRAQMD at that time. Prior to each phase of development, the applicants for that phase will need to submit a phasing plan with the tentative map for the phase. As part of that approval process, the applicants will be required to submit an AQMP that has been prepared in consultation with SMAQMD and FRAQMD and that is to be approved by the County It is at that point that applicants and the County will have enough information to determine whether a specific phase of the project can meet a particular emission reductions standard imposed by the County in consultation with the air quality district.

The commenter also requests that DEIR Mitigation Measure 3.4-2 be revised to include "specific, enforceable measures" approved by the FRAQMD.

The County believes that the measures listed in Mitigation Measure 3.4-2 are specific. In fact, the four-page list of measures provided on DEIR pages 3.4-32 through -35 consist entirely of the exact language of the FRAQMD-recommended mitigation measures. The

County also believes that the measures listed in Mitigation Measure 3.4-2 are enforceable. As stated on DEIR page 3.4-32, "Individual AQMPs shall outline specific measures that reduce emissions of ozone precursors and PM_{10} to less-than-significant levels where feasible. These measures may include but would not be limited to those recommendations suggested by FRAQMD at the time each AQMP is prepared, and could also include measures suggested by the Sutter Pointe Master AQMP (HDR 2008), and others (e.g., industry standards or otherwise referenced measures). These potential measures are listed below." [DEIR presents a 4-page list of specific, detailed, FRAQMD measures on the following pages.] "Where implementation of on-site mitigation measures would not be sufficient to reach FRAQMD's prescribed reduction target, voluntary FRAQMD-approved off-site mitigation projects may also be employed. The list of measures included in each AQMP shall be agreed to by the project applicant and the County, in consultation with FRAQMD." For the reasons stated above, no changes to the text of the DEIR are required.

SMAQMD-9 The commenters propose that the specific plan prohibit the installation of all wood burning devices.

The County and the project applicants are willing to make the change suggested by the commenter. The following bulleted text item is added to the list of Additional Mitigation Measures on page 3.3-34, which are part of Mitigation Measure 3.4-2.

- Prohibit the installation and use of wood burning devices, including fireplaces and wood stoves, in all buildings.

SMAQMD-10 The commenter is concerned that users of the Class I trail would be exposed to toxic air contaminants and recommends that vegetation that would filter particulate matter be planted between SR 99/70 and the trail. The cross-section illustration for Class I trails on the proposed project (page 6-32 of the Sutter Pointe Specific Plan) shows that a 5 to 8 foot wide landscaped area, including trees and shrubs, would be located on both sides of each Class I trail.

SMAQMD-11 The commenter commends the County for its thoughtful discussion of GHG thresholds and climate change impacts upon the project, including linking thresholds to existing regulatory framework and GHG emissions per service population. The commenter expresses agreement with the County's significance determinations for the project's GHG impacts.

The County appreciates the commenter's acknowledgement of the County's and the applicants' efforts to reduce GHG emissions from the proposed project. No changes to the text of the DEIR are required.

SMAQMD-12 The commenter contends that the DEIR thresholds discussion should be revised to indicate that in the future, new projects may have to achieve more than a 30% reduction in GHG emissions to account for the existing built environment.

To the extent that the commenter is suggesting that new development may be required to mitigate more than its proportional share in order to address the effects of existing development approved prior to AB 32, such an approach would be legally problematic. Requiring new projects to achieve more than their fair share of mitigating an impact is prohibited under CEQA. See *Dolan v. City of Tigard*, 512 U.S. 687 (1994), and *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987). For the purposes of the proposed project, the County has determined that a 30% reduction in GHG emissions from baseline

conditions represents new development projects' fair share reduction required throughout the State. Thus, the mitigation required for this project will seek to achieve such a level of reduction to the extent feasible. It is not this project's obligation to make up for the contribution from past, present, and future projects. It is only reasonable that the proposed project attempt to mitigate its fair share. Notably, consistent with ARB's December 2008 Scoping Plan, GHG emissions reductions expected from major sources such as power plants and vehicle fuels between the present and 2020 may have the effect of reducing development projects' share to something less than 30%. The mitigation allows for Sutter County to account for such reductions over time as individual development proposals (e.g., small lot tentative maps) are brought forward for analysis and consideration.

On page 3.17-10, the DEIR discusses the commenter's point that "to accommodate future population and economic growth, the state would have to achieve an even lower rate of emissions per unit than it achieved in 1990." DEIR page 3.17-9 states that "no air district or other regulatory agency in California, including the Feather River Air Quality Management District (FRAQMD), the Sacramento Metropolitan Air Quality Management District, or the Placer County Air Pollution Control District, has identified a significance threshold for GHG emissions generated by a proposed project, or a uniform methodology for analyzing impacts related to GHG emissions or global climate change." Included in this statement is the fact that the California Air Resources Board (ARB) has not identified a significance threshold for GHG emissions. Moreover, no agency has determined that future land use development should achieve a percent greater reduction in greenhouse gas emissions than existing development. In fact, existing uses, most notably transportation and power generation, will be required under AB 32 to reduce GHG emissions. Thus, it is not reasonable that *all* GHG reductions would fall to new uses. As explained in the Environmental Setting on DEIR page 3.17-7, the California Air Resource Board's Climate Change Scoping Plan (Scoping Plan) functions as a roadmap of ARB's plans to achieve GHG reductions in California required by AB 32 through subsequently enacted regulations. The Scoping Plan also breaks down the amount of GHG emissions reductions ARB recommends for each emissions sector of the state's GHG inventory. Thus, it is known that ARB will expect different percent reductions from different emissions source sectors; however, it is not known what reduction percentage will be expected of existing land use development or future land use development. Therefore, because a complete picture of the future regulatory environment is unknown at this time the County determined that the percent reduction for the entire state, 30%, is an appropriate threshold for the proposed project.

SMAQMD-13 The commenter suggests that GHG emissions associated with solid waste should be included in Appendix F.

GHG emissions were calculated from construction, mobile, area, and indirect sources (associated with increased electricity and water consumption) associated with the proposed project. This is in accordance with the recommendations of the Governor's Office of Planning and Research (OPR) in its Technical Advisory: CEQA and Climate Change (OPR 2008), which directs lead agencies to quantify and evaluate GHG emissions associated with these sources.

There are currently no agency-adopted or -recommended emission factors, or methodologies for calculating GHG emissions from off-site waste disposal or for any other GHG emission source over the proposed project's life cycle. A discussion of life cycle assessment could be considered speculative under CEQA – i.e., from the milling of

trees for wood for framing materials to be used in the construction of homes in the project area to the manufacture and transport of goods that might be sold in stores in the retail areas within the project site to the solid waste disposal from the occupants of the project. Solid waste-related GHG emissions would fall into the category of "life cycle." Unfortunately, most of this information is simply not available for the proposed specific plan or indeed for any project subject to CEQA. Thus, any attempt to quantify emissions to the extent suggested by the commenter would include a great deal of speculation, and would be of little or no practical value (see CEQA Guidelines, Section 15145.)

Where the County could plausibly produce quantitative information in support of its analysis, the County has done so. The analysis contained in the DEIR includes an attempt to quantitatively include the non-speculative (direct and indirect) sources of emissions by using conservative assumptions and the best available emission factors and methods to report the direct GHG emissions that would occur from the proposed project. Given the very recent enactment of AB 32 (2006) and SB 97 (2007), there is no adopted methodology for quantification of CO_2 emissions from development projects. The County and its consultants, using their professional expertise and judgment, have therefore done their best to devise their own methodology, which is intentionally conservative because of the newness of the science at issue. The analysis in Section 3.17 of the DEIR represents a sophisticated, good faith attempt to quantify and disclose emissions using the information that is available.

Notably, although it is certainly true that some of the activities mentioned by the commenter indeed do result in GHG emissions, the quantities at issue would be minor relative to the operational emissions associated with the project.

In summary, although indirect, off-site emissions would occur as a result of the project, reliable quantification of such sources, beyond what has already been set forth in the DEIR, is simply not possible to obtain. It is true that crude and questionable assumptions could used in the kind of analysis the commenter is seeking, but the County believes it would not be meaningful to generate numbers solely for the sake of generating numbers, when the numbers might bear little or no relation to reality – to the extent that "reality" 20 years hence is even possible to ascertain with any accuracy in the present. The County has honestly and forthrightly concluded that, even with all feasible mitigation, GHG emissions would be significant and unavoidable. It is inconceivable that, even with the kind of (speculative) analysis demanded by the commenter, this bottom line conclusion would not change. Thus, it is very unlikely that any additional feasible mitigation would be derived from what the commenter regards as "missing analysis." No changes to the text of the DEIR are required.

SMAQMD-14 The commenter notes that some mitigation measures proposed in Mitigation Measure 3.17-1 (i.e., implement Mitigation Measure 3.4-1) could actually increase GHG emissions.

Paragraph 3, page 3.17-13 of the DEIR has been revised as follows:

> Implementing Mitigation Measure 3.4-1 (see Chapter 3.4, "Air Quality") would reduce construction vehicle emissions to the degree feasible, by requiring use of certain engines, following specific criteria, and other requirements. By reducing emissions of criteria air pollutants, GHG emissions also would be reduced, <u>with the exception of certain measures (e.g., dust control measures such as running water trucks could increase GHG emissions, and installation of PM filters on off-</u>

road equipment would provide no benefit toward reducing GHG emissions). However, these reductions would not be sufficient to fully reduce the construction-generated GHGs to the extent that they would not be cumulatively considerable. The regulatory changes that are likely under AB 32 and other legislation may result in additional, more substantial reductions in emissions through the use of low carbon fuels or off-road engine standards. No other feasible mitigation measures are available at the time of writing this DEIR. Because of the uncertainty with respect to GHG reductions from regulations that have not yet been developed, and because the GHGs generated by project-related construction activities are considerable, the proposed project's incremental contribution would be cumulatively considerable and **significant and unavoidable**.

SMAQMD-15 The commenter states that the DEIR does not offer enforceable GHG mitigation and does not provide specific percent reduction targets required for reductions of operational emissions of ozone precursors and PM10 and for operational GHG emissions.

The analysis of operational GHG emissions is conducted at the program-level, as stated in the discussion of Impact 3.17-2 on page 3.17-14. As a program-level analysis for the 30-year buildout of the project, the EIR discusses the evolving regulatory environment under the mandate of AB 32 and does not offer specific mitigation measures that must be implemented during each increment of new development on the project site. Instead, the EIR provides, as performance standards, a non-comprehensive list of possible design and operational measures that could be implemented to reduce operational GHG emissions. In order to ensure that mitigation is implemented to achieve the 30% target reductions to the extent feasible, Mitigation Measure 3.17-1 requires that the developer demonstrate why it believes any County-recommended measures are infeasible, subject to the County's review and approval.

FRAQMD has not provided a reduction target for operational emissions of ozone precursors, PM10, or GHGs based on whether a development complies with the Regional Blueprint. For this reason, Mitigation Measures 3.4-2 states that "Each individual AQMP shall prescribe a percent reduction target for emissions of ozone precursors and PM_{10} as determined by Sutter County in consultation with FRAQMD." This allows for the possibility for FRAQMD to develop a reduction target before new development is proposed and reviewed at the project level. No changes to the text of the DEIR are required.

SMAQMD-16 The commenter suggests that the County could require at least a 30% GHG emissions reduction target for the proposed project. The commenter also suggests that the County could adopt performance standards, such as the draft California Air Resources Board Performance Thresholds.

DEIR Mitigation Measure 3.17-1 requires a 30% reduction in GHG emissions. Performance standards to reduce GHG emissions are already incorporated into the DEIR; please see Mitigation Measure 3.17-1 and 3.4-2. No changes to the text of the DEIR are required. Because the California Air Resources Board Performance Thresholds referred to by the commenter are in draft form, and have not been adopted, the County does not believe it is appropriate to require them in this DEIR. Please see Master Response 7, "Greenhouse Gas Analysis and Mitigation," for further discussion as to why the County believes that the analysis and mitigation measures contained in the DEIR are appropriate.

See also Master Response 2, "Programmatic Nature of EIR Analysis." No changes to the text of the DEIR are required.

SMAQMD-17 The commenter states that the Sutter Pointe Master Air Quality Mitigation Plan mixes strategies for dealing with NO_x, ROG, PM, and GHG. The commenter expresses a belief that the measures in that plan are generally stated, and therefore there should be a mechanism to assure that the measures will, indeed be implemented throughout the proposed project.

The Sutter Pointe Master Air Quality Mitigation Plan (HDR/The Hoyt Company May 2008) is general in nature because the Specific Plan does not contain a level of detail sufficient to permit a project-level AQMP. Please see response to SMAQMD-8 above, for a discussion regarding (1) the programmatic nature of the evaluation contained in the DEIR; (2) the requirement for project-level AQMPs to be prepared for each phase of development as specified in Mitigation Measure 3.4-2, (3) the specific, enforceable nature of Mitigation Measure 3.4-2, and (4) the performance standards contained in Mitigation Measure 3.4-2. For these reasons, no changes to the text of the DEIR are required.

SMAQMD-18 The commenter cites three of the measures proposed to GHG emissions that are contained in the Sutter Pointe Master Air Quality Mitigation Plan and suggests that these measures are weak and should be strengthened.

The County notes that this comment pertains to an appendix to the Specific Plan, and not to the analysis contained in the DEIR. The extent to which the proposed mitigation measures are general in nature is simply a reflection of the fact that the proposed project is a long-range development plan proposed to be built out over a period of 20 years. This is particularly relevant for GHG reduction. Many of the potential measures will be more or less feasible depending on the continuation of tax incentives, regulatory changes, institutional acceptability, and technological advancement. Simply, this EIR cannot predict feasibility of certain measures in a dynamic atmosphere of so many changes. The specificity of a Draft EIR's discussion of mitigation measures should be proportionate to the specificity underlying the project. (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 376.) If the proposed specific plan is adopted, the County will have opportunities in the future, in processing future tentative subdivision maps, use permit applications, and similar entitlement requests, to translate some of the broadly framed programmatic-level mitigation measures into more detailed, site-specific measures when subsequent CEQA reviews are undertaken. The County will also have the opportunity, as the years pass, to keep abreast of the latest science on climate change as it considers future site-specific approvals, which is a form of adaptive management. In addition, as the statewide implementation of AB 32 progresses, it is very likely that development within the County, like development elsewhere in California, will be subject to new regulatory requirements and mandates developed by the Air Resources Board.

The commenter further quotes various sections of CEQA relating to the requirement to mitigate significant environmental impacts and then concludes that the *goals and policies* cited by the DEIR are not enforceable, mandatory, or effective. This comment apparently mixes considerations that may be germane to the General Plan (i.e., goals and policies) with those that may be relevant to the DEIR (i.e. proposed mitigation measures), making it difficult to discern which topics presented by the commenter are CEQA-related and which ones are not. With respect to the goals and policies cited by the DEIR, these goals and policies were listed in the DEIR as evidence of components of the proposed General

Plan that would tend to reduce GHG emissions in the County, and not as mitigation measures as required by CEQA.

SMAQMD-19

The commenter expresses concern that DEIR Mitigation Measure 3.17-1 requires a reduction of 30% "if feasible," and that consideration of measures to reduce the GHG emissions is "pushed to the future when 'each increment of new development requiring discretionary approval' is brought forward." The commenter suggests that the Attorney General's list of suggested mitigation measures should be used and that specific details of mitigation should be required now in this DEIR.

The County notes that this DEIR is not intended to contain a project-level evaluation of CEQA impacts; rather, the DEIR offers a programmatic level of evaluation. Further evaluation of CEQA impacts will be required as tentative maps and improvements plans are brought before the County for each of phase of development. Please see Master Response 2, "Programmatic Nature of EIR Analysis," and Master Response 3, "Deferred and/or Hortatory Mitigation," for further discussion of this issue. Please see also response to comment Coalition-95 and Master Response 7, " Greenhouse Gas Analysis and Mitigation," for detailed discussions as to why the County believes that Mitigation Measure 3.17-1 is appropriate for the programmatic nature of the analysis presented in the DEIR. No changes to the text of the DEIR are required.

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ROSEVILLE-B

CITY OF ROSEVILLE CALIFORNIA

Community Development
311 Vernon Street
Roseville, California 95678-2649

March 3, 2009

Sutter County Community Services Department
Attn: Doug Libby, Senior Planner
1130 Civic Center Boulevard
Yuba City CA 95993

Subject: ***Clarification of Traffic Comments on the draft EIR for the Sutter Pointe Specific Plan Project***

Dear Mr. Libby:

This letter is provided as follow up to our February 4, 2009 Sutter Pointe Specific Plan draft EIR comment letter and is intended to correct inaccuracies contained in that letter and clarify the City's understanding of issues surrounding the Sutter Pointe Specific Plan's draft EIR traffic analysis.

As explained in our February 4th letter, the City's April 30, 2007 NOP comment letter requested a meeting with Sutter County staff to discuss an approach to identifying potential traffic impacts on the City of Roseville's transportation system from the proposed Sutter Pointe Specific Plan (SPSP). Our February 4th letter also states that the City was never contacted by Sutter County Staff to discuss the approach for the EIR's traffic analysis. In fact the City was contacted by Sutter County Staff and a meeting was held on July 9, 2007. The meeting purpose was to initiate discussion concerning the approach for the EIR's traffic analysis. The City has since been provided with Richard Dowling's meeting summary email dated July 9, 2007. That email summary was originally sent to George Carpenter and David Robinson but was not shared with the City. 1

We appreciate the opportunity to review the meeting summary and agree that the meeting did take place at the City of Roseville on July 9, 2007 with City representation provided by Rob Jensen and Mark Morse. According to the email summary, George Carpenter, Dave Robinson, D.J. Smith, and Richard Dowling were also present. While we agree that the meeting took place, we disagree with the meeting summary's characterization of discussions surrounding the scope of the proposed traffic study area. According to the email summary, Mr. Jensen considered David Robinson's proposed Sutter Pointe EIR traffic study area focusing on intersections west of Wallerga/Fiddyment Road to be reasonable. 2

Our recollection of meeting discussion on this item is that Mr. Jensen indicated the proposed study area *may* be reasonable but would need to be confirmed based on results of traffic modeling to determine the geographic influence of the project's traffic 3

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impacts. City staff left the meeting with the understanding that additional City-County follow up would occur to review model results and then mutually determine the appropriate eastern study limit boundary for traffic analysis. The City's position at that time was depending on results of anticipated additional coordination, there could be the need to include City of Roseville intersections as part of the scope of EIR traffic analysis. City staff simply would not have arbitrarily agreed to limit the EIR's traffic study area to intersections west of Roseville absent supporting information; nor do we recollect agreeing to do so. 3 Cont'd

There was no additional contact between the City and the County or its traffic consultant following the July 9th meeting. As stated above the email meeting summary was not shared with the City and consequently we could not have known that parties left the meeting with a different understanding regarding how study area boundaries were to be addressed. 4

To move forward the City requests the opportunity to meet with the County's traffic consultant to review model results and determine if traffic modeling of City intersections is warranted. If the influence of project traffic impacts does not reach Roseville, no additional analysis or CEQA disclosure is required. However if it is determined that project traffic does impact Roseville intersections, additional analysis will be required and appropriate mitigation will need to be identified and included in a final EIR. 5 6

We apologize for failing to recognize the July 9, 2007 meeting in our draft EIR comment letter. We look forward to working with the County to ensure adequate CEQA review of potential traffic impacts to the City of Roseville. Please contact Rob Jensen at 774-5331 to arrange for a follow-up meeting as per the above. Should you have any questions concerning this letter, please don't hesitate to call either Rob (774-5331) or myself at (916) 774-5334.

Sincerely,

Mark Morse
Environmental Coordinator

cc: Rob Jensen, Public Works Director
John Sprague, Community Development Director

Roseville-B-1

The commenter ("City of Roseville" or "City" in this response) is clarifying their February 4, 2009 comment letter on the DEIR for the Sutter Pointe Specific Plan. The primary clarification in this supplemental letter is that the City now acknowledges that a Sutter Pointe EIR traffic scoping meeting did take place on July 9, 2007 at the City of Roseville.

The comment refers to an internal memorandum prepared on July 9, 2007 (the day of the meeting) by Richard Dowling to Al Sawyer (Sutter County Assistant Public Works Director), summarizing the meeting and conclusions reached regarding the scope of the traffic study.

This comment does not raise any environmental issues, and no response is required. The internal memorandum was not transmitted to the City of Roseville because there were no action items (such as follow-up meetings) identified during the meeting that would require coordination between Sutter County and the City.

Roseville-B-2

The commenter, while confirming that the meeting did take place, disagrees with the meeting summary's characterization of the scope of the proposed traffic study area. Specifically, the assertion that the City agreed that a traffic study area focused on locations west of Walerga/Fiddyment Road was reasonable for the traffic analysis.

The City's recollection of the substance of the meeting is inconsistent with the recollections of the other attendees of the meeting, the internal memorandum prepared by the County's traffic consultant, Richard Dowling (see Response to Roseville-B-1), and notes taken by the applicants' traffic consultant David Robinson during the meeting, which indicated that the City found the traffic analysis approach and study locations to be reasonable.

Roseville-B-3

The commenter further indicates its recollection of the July 9, 2007 Sutter Pointe EIR scoping meeting—specifically that the proposed study area ***may*** be reasonable but would need to be confirmed based on results of traffic modeling to determine the geographic influence of the project's traffic impacts. In addition, the City indicates that they left the meeting with understanding that additional City-County follow up would occur. Their recollection is not supported by the information reported in Richard Dowling's internal memorandum prepared on the day of the meeting or contemporaneous notes taken by David Robinson during the July 9, 2007 Sutter Pointe EIR scoping meeting. These sources did not include any action items related to additional analysis or follow-up meetings with the City. In the last sentence of this comment, the City indicates that they would not have arbitrarily agreed to limit the EIR's traffic study area.

The County did not follow up with the City because it was under the impression the City required no follow-up action. The City had the opportunity to follow up the meeting with additional requests for information, and did not do so.

Sutter County respectfully disagrees with the City's suggestion that the concurrence with the study area, as documented in Richard Dowling's internal memorandum, was arbitrary. To clarify, a substantial amount of information was shared at the July 9, 2007

Sutter Pointe EIR scoping meeting. The agenda included an overview of the Sutter Pointe Specific Plan, a regional-level discussion that addressed roadway network and land use input assumptions, a discussion of the analysis locations, and an overview of the analysis methodology. The discussion of the analysis locations included an overview of CEQA guidelines related to the analysis of transportation facilities (please see Master Response 5, "Scope of Traffic Analysis" for additional details) and review of an exhibit showing the five- and ten-mile buffers outlined in the CEQA guidelines (Pub. Resources Code Section 21092.4(b)).

Roseville-B-4 The commenter indicates that there was no additional contact between the City and Sutter County or its traffic consultant and they could not have known that the parties at the meeting had a different understanding regarding how study area boundaries were to be addressed because they did not receive a copy of Richard Dowling's internal memorandum. Please refer to responses to Roseville-B-1 through Roseville-B-3.

Roseville-B-5 The commenter requests a follow-up meeting with the County's traffic consultants to review the model results and determine of traffic modeling of the City's intersections is warranted.

Sutter County respectfully disagrees with the commenter's assertion that additional traffic review is necessary to determine if traffic modeling of City intersections is warranted. Please refer to Master Response 5, "Scope of Traffic Analysis" for a detailed discussion of how the scope of traffic analysis was developed, including the selection of intersections for modeling. Neither the City of Roseville nor other commenters have indicated which specific locations they believe require analysis. Absent this information, additional response is not possible.

Roseville-B-6 The commenter states that, if the influence of project traffic impacts does not reach the City of Roseville, no additional analysis or CEQA disclosure is required. Conversely, the commenter states that, if project traffic does impact Roseville intersections, additional traffic analysis will be required and appropriate mitigation included in the FEIR.

Please see Master Response 5, "Scope of Traffic Analysis." The DEIR analyzed transportation facilities based on modeling results and the required transportation facilities as defined by Public Resources Code Section 21092.4(b), which, at the time the NOP was published (i.e., the environmental baseline), identified major local arterials and public transit within five miles of the project site and freeways, highways, and rail transit service within 10 miles of the project site. The traffic engineer investigated the amount of traffic added by the project to major local arterials in the region, and did extend the study limits beyond those specified by the Public Resources Code where warranted by the modeling. For example, the study area extended eastward more than five miles from the project limit to the intersection of Fiddyment and Baseline Roads. Consequently, the geographic scope of the traffic analysis is considered sufficient to identify all significant traffic impacts on major local arterials. City of Roseville facilities were not analyzed since they are more than five miles from the project site. Also see Response to Comment 6 – Placer.

Cox

We encourage you to share your thoughts with us regarding the **Sutter Pointe Specific Plan** as well as the Draft Environmental Impact Report being circulated by the County.

Name

Connie Cox

530-656-2164

2100 Nicolaus Avenue, Nicolaus, CA 95659

Thank you for the wonderful "dream" presentation for Sutter Pointe. I feel that your timelines were overly optimistic and your cost proposal is way underestimated. While I think this "dream" will come to fruition in time and will offer an improvement for some residents. I do, however, feel that your plan should present at least 25% more industrial uses. If you are planning to create more jobs, you need to have the industrial base, if not, you are only creating another "bedroom" community for Sacramento. 1 2

On your presentation format: The slide for showing the different land uses should have more contrast in color.

SUTTER POINTE

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Cox-1 The commenter suggests the timeline is overly optimistic and the cost proposal is underestimated.

See response to comment Coalition–3 regarding the timing of development of the first phase of the proposed project. The exact build-out of the proposed project is unknown at the time of the DEIR, but the Urban Services Plan, Public Facilities Financing Plan, and Fiscal Impact Analysis used conservative assumptions to test the viability of the project. The cost estimates used in the Public Facilities Financing Plan are based on cost estimates prepared by civil engineers. The cost estimates have been reviewed by multiple sets of engineers. The costs used in the Urban Services Plan were modeled after cities with similar characteristics as the future Sutter Pointe community, which is a common approach in developing urban services and county-wide services cost estimates. The actual cost estimates would be updated with each phase as part of implementation of Sutter Pointe.

Cox-2 The commenter suggests that the plan area should have at least 25 percent more industrial land.

The mix of land uses was established by Measure M, and is intended to create a balanced mixed-use community, and not a "bedroom community." See Master Response 1, "Measure M."

Davine

We encourage you to share your thoughts with us regarding the **Sutter Pointe Specific Plan** as well as the Draft Environmental Impact Report being circulated by the County.

Name Davine

RECEIVED FEB 2 '11

Email

Phone

Address

Comments

Waste, what happens if Elk Grove does not accept or stops accepting Sutter Pointe's waste? Will Sutter County tax payers be responsible for these costs? What are the costs to undertake a new waste facility? This issue seems to be glossed over or NOT addressed? Also Environmental impacts of a new waste facility in South Sutter County.

1

2

SUTTER POINTE

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Davine-1

The commenter wonders about the potential burden on Sutter County taxpayers if the preferred waste (presumably wastewater/sewer) strategy is not implemented.

In the event that the preferred wastewater strategy is not implemented, development of Sutter Pointe would not proceed unless and until an alternative wastewater strategy is identified and undergoes environmental review. Under no scenario would Sutter County taxpayers be burdened with the costs of wastewater service to Sutter Pointe; rather, such costs would be borne by ratepayers within the project site. The backbone wastewater facilities needed for development to proceed include a wastewater pump station, wastewater storage tank, and force mains from the pump station to the point of connection with the Sacramento County Regional Sanitation District's Upper Northwest Interceptor. Construction of these backbone facilities by the developers would be a condition precedent to development proceeding. For further explanation, please refer to Master Response 8, "Wastewater Service to the Project Site." Additionally, Responses to Comment Friends-A-3 through Friends-A-5 address similar questions about the urban services plan for funding infrastructure.

Davine-2

The commenter wonders about the costs and environmental impacts of constructing a new wastewater facility.

Construction costs are not within the scope of environmental issues addressed under CEQA. But please see the draft Public Facilities Financing Plan (Appendix G-1 to the Sutter Pointe Specific Plan). The Plan and all related submittals are available to review during regular business hours at the Sutter County Planning Department. Regarding the environmental impacts of constructing a new wastewater treatment facility, please see Master Response 8, "Wastewater Service to the project Site."

Willey

February 4, 2009

Mr. Doug Libby
Sutter County Community Services Department
1130 Civic Center Boulevard, Suite E
Yuba City, CA 95993

RE: Sutter Pointe Specific Plan
Draft Environmental Impact Report

Dear Mr. Libby:

I own APN 201-0120-026 located in Sacramento County near the proposed Sutter Point Plan. This letter is written in regards to the draft environmental impact report prepared for the Sutter Pointe project by Sutter County. Here are my comments.

The water section of the draft report says that the Sutter Pointe project will get 52% of its water from groundwater. I use wells to irrigate my farm and I am concerned about the effects of the groundwater drawdown and what this will do to my existing wells when this project moves forward. I request that the report consider this issue and the project be required to install replacement wells if they become unusable. 1

The report shows that traffic from your project will be adding a new road straight down the middle of rice fields aimed at my farm. This farm is very small and cannot be made smaller by having my farm land taken for a roadway that is only needed because of the traffic created by your Sutter Pointe project. 2

Sincerely,

Edwin a. Willey

Edwin Willey
4455 Garden Highway
Sacramento, CA 95837

Willey-1

The commenter is concerned about the effects of drawdown from groundwater pumping by the proposed project, and its potential adverse impact on his existing well. The commenter requests a mitigation measure for installation of replacement wells if groundwater drawdown occurs.

As noted in response to comment Friends-A-18, the GSA prepared for Sutter Pointe DEIR (Appendix C) found that groundwater levels near the project site boundary would only be lowered approximately 10 feet as a result of groundwater pumping by the proposed project.

In the case of the commenter's well, the closest of the Sutter Pointe wells would be located approximately 4,000 feet north-northwesterly of the commenter's northwest property corner. This distance exceeds the 3,000 feet minimum spacing proposed for the Sutter Pointe groundwater system. Based on the GSA analysis, potential drawdown at the commenter's well is estimated to be less than 10 feet.

As noted in response to comment Friends-A-18, based on the data presented in the GSA, the DEIR analyzed the potential impact of groundwater depletion by the proposed project and concluded that both the on-site and off-site impacts would be less than significant. Therefore, the mitigation proposed by the commenter is not required.

Willey-2

The DEIR shows that the SPSP will create a new road through rice fields "aimed at my farm." The commenter states he owns a small farm and cannot afford to lose additional farm land for use as a new roadway that is needed only to serve the proposed project.

Roadways R and C provide north/south access internal to the project site but were not assumed to connect or extend south of the Specific Plan area and are not necessary for operation of project roadways at the levels of service identified in the Specific Plan. Roadways R and C were incorporated into the Specific Plan so that future parallel road alternatives to SR 99/70 are not precluded if needed or planned for by development south of the Specific Plan area in Sacramento County and the City of Sacramento. However, it is important to note that new connections are not currently identified in the Sacramento County or City of Sacramento general plan circulation elements, and the extension or widening of these roadways through Sacramento County is not a part of the proposed project. If no such roadways are ever planned, Roadways R, A, and C will be connected into the internal Sutter Pointe circulation system with minor east-west road connection near the Sutter County-Sacramento County line.

Road A is required as mitigation for the proposed project (see DEIR Mitigation Measure 3.3-20), and is intended to function as a frontage road that would provide connectivity from the project site to Elverta road. Road A would be constructed northeast of the commenter's property.

Because Roads R and C would end at the Sutter Pointe Specific Plan boundary, and because Road A would be located northeast of the commenter's property, there would be no impacts to the commenter's farm. See also Response to Comment Brookfield-10.

Brookfield

BROOKFIELD
LAND

February 5, 2009

Mr. Doug Libby AICP
Sutter County Community Services Department
1130 Civic Center Boulevard, Suite E
Yuba City, CA 95993
(530) 822-7400

RE: Sutter Pointe Specific Plan (SCH # 2007032157)
Draft Environmental Impact Report

Dear Mr. Libby:

Brookfield Land represents ownership interest for property located in Sacramento County south of the proposed project. I am writing this letter in regards to the draft environmental impact report prepared for the Sutter Pointe project by Sutter County. Although Brookfield Land and its ownership interests do not oppose the Sutter Pointe Plan, we have retained several consultants to review and analyze the draft report, and we are providing the following summary of comments.

Sewer

The sewer master plan indicates that sewer service will be provided by Sacramento County Regional Sanitation District (SRCSD) and will be conveyed south along the east side of the Natomas East Main Drain Canal. The SACOG blueprint, as well as the City of Sacramento and County of Sacramento have a memorandum of understanding authorized in 2003 intended to establish future growth areas cooperatively. This area, known as the Natomas Joint Vision Area, would be served by SRCSD as well. We suggest that Sutter County and Sacramento County coordinate to look at the wet weather buildout capacity of the Sacramento Regional Wastewater Treatment Plant and any potential cost effective alignments for sewer collection facilities and have these analyzed in the EIR. 1

Is the EIR intended to analyze the impacts associated with the annexation of the project to SRCSD for the purposed of CEQA? 2

Drainage/Flood

The drainage study proposes improvements to RD1000 facilities. The East Drainage Channel is proposed to be widened from 15' wide to 25' wide (at the base of the channel). Will this modification be accommodated within the existing right of way or will Sutter County/RD1000 be required to condemn property adjacent the channel. The improvements to the Channel are not required to accommodate additional flows, since the outfall discharge rate is not increasing; therefore, it appears the widening is to detain 3

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additional drainage flows prior to discharge. We believe that all drainage flows should be detained within the Sutter Pointe Specific Plan area and should not be pushed to other landowners who will be negatively impacted. We request that the East Drainage Channel not be modified as proposed in the EIR and the project flows be detained on site. 4

In reviewing the EIR and the drainage report, there appears to be a discrepancy in the maximum drainage discharge into RD1000 facilities. The DEIR refers to a 0.16 cfs/acre maximum while the drainage report refers to a 0.067 cfs/acre maximum (which is the current RD1000 standard). We believe the drainage report and the DEIR should reconcile the difference and use the 0.067 cfs/acre standard. 5

The master drainage plan and EIR need to address AB/SB 5 requirements which will be triggered within the development timeline of the Sutter Pointe project. 6

Community Separator/Agricultural Buffers

Brookfield Land currently owns property which abuts the Sutter/Sacramento County line and is farmed in rice. The proximity of the proposed land uses to our farming operations will significantly affect the continued viability of our farm. The application of seed, herbicides, pesticides, and fertilizer with a crop duster will not be possible unless adequate buffers (i.e. areas without people) are provided for these applications and associated operation of the aircraft. 7

Traffic/Roadways

We have reviewed the traffic study and DEIR and have determined that both reports neglect to include traffic counts for Road A and Road C. Additionally, it is unclear whether the traffic model contemplates the SACOG blueprint (including NJVA) in any cumulative condition. At the following intersections and roadways, the cumulative plus project analysis indicates a degradation of level of service to E/F **after** implementation of the proposed project mitigation thereby utilizing any and all roadway capacity for the project: 8 9

1. Highway 99 from Elkhorn to Sutter/Sacramento county line
2. Elverta from Hwy 99 to NEMDC

If, as we assume, the traffic model does not include the entire regional SACOG blueprint, then these level of service projections are severely understated.

The project and traffic model (it is assumed) contemplates the use of Roadways A, B, C to move traffic north/south without regard to several important factors:

1. Brookfield Land owns and is representing property south of the project area that would be affected by Roads A, B and C. By establishing these roadways across our properties, you split our farm into smaller parcels which result in reconfiguring of the farms to address to access and irrigation among other things. This will make farming these remnant parcels very difficult if not impossible due to the various constraints. 10
2. There has been considerable planning work completed on the area known as Natomas Joint Vision Area and the introduction of additional roads is not currently contemplated. Furthermore, the traffic being moved to Elverta and Elkhorn will require significant improvements to the capacities of these roadways. 11

3. The City of Sacramento and Sacramento County have never considered any connections such as Roadways A,B, C to Sutter County; therefore, have never adopted a general plan circulation plan or a capital facilities plan and financing program to accommodate Sutter Pointe Specific Plan traffic concerns. 12
4. The roadways travel through existing and future The Natomas Basin Conservancy (TNBC) habitat lands. There seems to be a huge impediment to creating roadways through an existing habitat preserve. 13
5. The DEIR fails to analyze the effect of widening highway 99, widening the RD 1000 East Drainage Channel, construction of a major 4-lane arterial (Road A), and the highway land uses along Road A on the movement of endangered species east to west, an acknowledged concern stated in the habitat conservation plan for TNBC. 14

Brookfield believes it prudent and beneficial to have the Sutter Pointe and Natomas Joint Vision Area ownerships coordinate a joint effort to solve drainage, sewer and traffic issues. 15

In conclusion, Brookfield Land does not oppose the Sutter Pointe Specific Plan; however, the Sutter Pointe project should be required to fully mitigate for its impacts within their own jurisdiction.

Sincerely,

John Norman
Chief Operating Officer
Brookfield Natomas LLC

Brookfield-1

The commenter states that the DEIR indicates sewer service would be provided by SRCSD, and that wastewater would be conveyed south along the east side of the Natomas East Main Drainage Canal.

The DEIR does identify SRCSD as the proposed provider of wastewater conveyance and treatment; however, please refer to DEIR Chapter 2.0, "Project Description," page 2-36 for a more detailed and accurate characterization of the proposed off-site wastewater conveyance line. Also, please see Master Response 8, "Wastewater Service to the Project Site."

The commenter then describes a memorandum of understanding between the City and County of Sacramento to consider future growth areas between the City of Sacramento's current northern boundary and the Sutter County line (Natomas Joint Vision Area) cooperatively, and suggests that Sutter and Sacramento counties coordinate on potential cost effective alignments for sewer collection facilities and wet weather buildout capacity of SRWTP.

As is the case for Sutter Pointe, the Natomas Joint Vision Area (NJVA) is outside of Sacramento County's current Urban Services Boundary. As such, these areas are not included in SRCSD's Interceptor System Master Plan 2000. In order for these areas to be served, SRCSD would need to determine if the extension of such service would have a probable affect on the ability of the SRCSD Contributing Agencies to make reasonable use, or future use, of SRCSD facilities or to provide local service to its present system users. In this respect, as was done in the case of Sutter Pointe, extensive studies would be required to determine if the extension of service to the NJVA would meet this test. The NJVA is not a currently proposed project; rather, the City and County of Sacramento are considering planning concepts for the area, but it has not advanced to a specific project proposal. Further, unlike the Sutter Pointe site, although the NJVA is located within the boundaries of the area covered by the Natomas Basin Habitat Conservation Plan (NBHCP), it does not have take coverage. Thus, there are a number of institutional barriers that the NJVA would need to work through before it would be at the stage in planning for potential development that Sutter Pointe finds itself.

The analysis prepared for Sutter Pointe, however, did include evaluation of the ability of the SRCSD Interceptor System to serve the NJVA. This analysis determined that sufficient average dry weather flow (ADWF) capacity exists within the SRCSD Interceptor System to serve the NJVA. Also, similar to the case for Sutter Pointe, this analysis found the SRCSD Interceptor System did not include sufficient peak wet weather flow (PWWF) capacity to serve the NJVA. Notwithstanding this finding, the results of this analysis determined that extension of service to both Sutter Pointe and the NJVA would not materially affect the ability of the SRCSD Contributing Agencies to make reasonable use, or future use, of SRCSD facilities or to provide local service to SRCSD member agencies if sufficient PWWF storage was provided within the two respective areas. Sutter Pointe has developed options for accommodating PWWF, and there is no reason that the NJVA area could not do the same, if it advances further in the planning process.

With regards to treatment and disposal, SRCSD's Regional Wastewater Treatment Plant has an existing permitted capacity of 181 mgd. The 2020 Master Plan, which was approved in 2004, provides for an expansion to a 218 mgd capacity based on growth rates expected to be achieved in the Sacramento County region. This projected capacity does not specifically include buildout of the proposed project (or the NJVA), but represents the amount of growth expected within SRCSD based on projections. Thus, if new development is approved before 2020, it is assumed that it would not change the rate of growth in the district; rather, it would change the potential location within SRCSD's service area where the growth would occur. Furthermore, flows to the SRWTP have been lower than historical flows, declining from 155 mgd to 131 mgd between 2000 and 2006, and increasing to 141 mgd in 2008. This rate of growth is far less than anticipated in the 2020 Master Plan, which forecasted that flows would increase from 155 mgd in 2000 to beyond its 181 mgd capacity by 2007. Instead, there is currently less flow than in 2000, indicating that users are far more efficient and that more development could be accommodated within the existing 181 mgd capacity and the proposed 218 mgd capacity than was considered in the Master Plan. Please see response to comment SRCSD-7 and -10.

Finally, it was determined that the most environmentally sensitive alignment for extension of wastewater conveyance facilities to Sutter Pointe was along existing roadways east of the Natomas East Main Drain Canal, and not through the NJVA. This conclusion was reached after considering many factors, not the least of which was the lack of coverage in the NBHCP for the NJVA. The proposed alignment of collection facilities to Sutter Pointe does not interfere or otherwise preclude the possible alignment opportunities available to the Natomas Joint Vision Area.

Brookfield-2 The Sutter Pointe EIR provides a programmatic analysis, as provided for in Section 15168 of the CEQA Guidelines, of the impacts of extending a sewer line to the site and conveying the wastewater from the site to the SRWTP for treatment and disposal. As lead agency, it is Sutter County's intent that this EIR would provide sufficient analysis to allow the Sacramento Regional County Sanitation District Board to agree, in some form, to provide sewer conveyance and treatment services to the site, if it is approved for development. The mechanism of the approval could be in the form of annexation or by a service contract.

Brookfield-3 The commenter notes that the East Drainage Channel is proposed to be widened from 15' wide to 25' wide (at the base of the channel) and asks whether this modification will be accommodated within the existing right of way or will Sutter County/RD 1000 be required to condemn property adjacent the channel. The Drainage Master Plan prepared as part of the Specific Plan is a conceptual plan that identifies certain drainage canal improvements, which include canal widening. No land surveying work was completed as part of the Drainage Master Plan. Detailed engineering plans and modeling (including surveying) will be done as part of project implementation. At that point, land surveying will be completed to determine whether canal improvements will fit within existing Reclamation District 1000 right-of-way or whether additional land will need to be acquired from the adjacent landowner. The County cannot answer whether condemnation will need to be exercised because the County does not know whether additional right-of-way will be needed, and if it is needed, whether the adjacent landowners will be willing to sell at the prices offered for acquisition of any needed land.

Brookfield-4 The commenter states that improvements to the East Main Drainage Channel are not required to accommodate additional flows, since the outfall discharge rate is not

increasing, and assumes that the widening is to detain additional drainage flows prior to discharge. The commenter requests that the East Drainage Channel not be modified as proposed in the EIR, and that the project flows be detained on site.

RD 1000 provides drainage and flood control service to the 55,000± acre Natomas Basin. The RD 1000 system consists of an extensive network of canals and a number of pump stations that lift drainage flows over the levee system surrounding the Natomas Basin for discharge into the Sacramento River and the Natomas East Main Drain Canal. This system was originally designed to serve the needs of the agricultural lands within the Natomas Basin. As such, the RD 1000 system was not designed to convey and discharge peak flows and depended on local flooding of agricultural lands within the Natomas Basin to store peak flows while the RD 1000 pump stations worked to discharge the accumulated runoff over time after cessation of each rainfall event.

Accordingly, the RD 1000 system was not originally designed to convey and discharge runoff from urbanized areas within the Natomas Basin. It is the goal of RD 1000 to require urbanizing areas to mitigate for the adverse impacts of urbanization. Over time, as urbanization has occurred, the RD 1000 system has been modified to handle the runoff from areas within the Natomas Basin. The longstanding standard practice of RD 1000 is to require a combination of on-site detention in urbanized areas and improvements of RD 1000 facilities to accommodate the increased drainage requirements that result from urbanization.

The general approach used by RD 1000 has been to reduce the discharge of local urbanized flows into the RD 1000 system to rates that can be reasonably conveyed through the RD 1000 system, with modifications as deemed appropriate, and to not increase the depth of flooding on the remaining agricultural lands within the Natomas Basin. In accordance with the provisions of the 2008 Agreement between RD 1000 and Sutter County, areas that are developed within the Sutter County portion of the Natomas Basin will be obligated, among other requirements, to make “reasonably necessary improvements to RD 1000’s system of drainage ditches, canals, and pumping plants to accommodate RD 1000’s disposal” of the flows resulting from urbanization. In the case of Sutter Pointe, a system of on-site detention basins, along with nominal drainage canal improvements to the RD 1000 system, have been proposed that would fulfill this requirement, and mitigate any adverse impacts to surrounding lands as required by RD 1000.

Brookfield-5 The commenter observes that although the drainage report refers to a 0.067cfs/acre maximum drainage discharge into RD 1000 facilities, the DEIR refers to a 0.16 cfs/acre maximum. The commenter proposes that the DEIR should use the 0.067 cfs/acre standard.

The commenter correctly observed an inconsistency in maximum drainage discharge rates into RD 1000 facilities. The maximum rate of runoff (0.16 cfs/acre) cited in Mitigation Measure 3.7-2c was incorrect. The Sutter Pointe Drainage Master Plan determined the rate of discharge from agricultural lands within the project site was approximately 0.16 cfs/acre, while the maximum rate of discharge after development would be in the magnitude of 0.067 cfs/acre, both rates being the result of a 100-year event. Please refer to the response to RD1000-3, which documents proposed text changes to Mitigation Measure 3.7-2c on page 3.7-55 of the DEIR in response to this inconsistency.

Brookfield-6 The commenter states that the master drainage plan and the EIR need to address AB/SB 5 requirements that will be triggered within the development timeline of the Sutter Pointe project.

Please see DEIR Section 3.7, "Hydrology and Water Quality," pages 3.7-8—3.7-12, 3.7-22—3.7-23, 3.7-29, and 3.7-32—3.7-59 where the applicable flood-related regulatory requirements, including SB 5, and flood-related impacts and mitigation measures are discussed. In particular, proposed Mitigation Measures 3.7-2a and 3.7-4 are aimed at ensuring that, by the time a 200-year level of flood protection takes effect pursuant to SB 5, the County will not be able to approve new development within areas designated as flood hazard zones until the County can confirm, consistent with SB 5, (i) that flood management agencies have provided the level of protection necessary to withstand a 200-year flood event, (ii) that the project will be developed with the necessary conditions ensuring that level of food protection, or (iii) that it is foreseeable that 200-year protection will be in place by 2025. Thus, the master drainage plan and the EIR have fully addressed SB 5, and if the County adopts the proposed mitigation measures, the County can ensure that all future development within the project will comply with the requirements of SB 5. Therefore, no changes to the text of the DEIR are required.

Brookfield-7 The commenter states that the proximity of the land uses within Sutter Pointe will "significantly affect" the continued viability of the commenter's farming operations on adjacent land.

DEIR Impact 3.11-3 (page 3.11-13 through -15) identifies the potential conflict with existing on-site and off-site agricultural operations. The impact is identified as direct and significant. The DEIR identified two mitigation measures to reduce this impact. Implementation of Mitigation Measures 3.11-3a and 3.11-3b would establish a buffer zone between the edge of residential or commercial development and adjacent productive agricultural land and notify prospective residents of potential land use conflicts associated with adjacent agricultural activities. Various chemicals that may have a level of toxicity to people but are used for agriculture, such as pesticides, have labels that restrict how they can be applied when in close proximity to a population. Therefore, the commenter is correct that the project could restrict certain practices. Thus, despite the implementation of these mitigation measures, which would lessen the impact, the impact would remain significant and unavoidable. (See DEIR pages 3.11-14 and -15.) Therefore, no changes to the text of the DEIR are required.

Brookfield-8 The commenter states that the DEIR neglects to include traffic counts for Road A and Road C.

Traffic volume forecasts for Road A and Road C are summarized in Table 3.3-19 of the DEIR. See also response to comment Willey-2. No changes to the text of the DEIR are required.

Brookfield-9 The commenter states that it is unclear whether the traffic model contemplates the SACOG Blueprint (including the Natomas Joint Vision Area) in any cumulative conditions and therefore may understate impacts to SR 70/99 and Elverta Road.

Pages 3.3-19 through 3.3-21 of the DEIR discuss the development of cumulative year traffic volume forecasts for the DEIR. Page 3.3-21 of the DEIR states the following related to cumulative year land use assumptions:

> For the cumulative year scenarios, the land use forecasts used for the SPSP analysis more closely match the General Plans currently in place in the region. Many jurisdictions are considering modifying/amending their general plans to consider higher density development that is consistent with SACOG's Blueprint planning framework.

The SACOG Blueprint was a long-range regional planning effort that evaluated and compared smart-growth land use and design concepts to business-as-usual development under 2050 conditions. The Blueprint is not an adopted regional land use plan, does not alter proposed general plans, does not approve land use changes and, therefore, it is not appropriate to be included as part of the cumulative traffic analysis. At the local level, implementation of the Blueprint concepts rests with counties and cities though their General Plans. Blueprint concepts have been included in the analysis through the actively planned development projects as much as the projects include these concepts.

The NJVA is designated as a special study area beyond the boundary of the recently approved City of Sacramento 2030 General Plan and was not assumed in the transportation impact analysis for the General Plan update. It was considered speculative for the purpose of cumulative conditions analysis in the Sutter Pointe Specific Plan DEIR. The NJVA has no environmental clearance and no proposed development plan. Please see response Brookfield-1. However, the NJVA (i.e., the City of Sacramento sphere of influence amendment area study area) was included in the "Super-Cumulative" analysis, which is discussed beginning on page 3.3-113 of the DEIR. The "Super-Cumulative" analysis represents potential conditions beyond 2035 and was provided for informational purposes only.

The commenter states that after implementation of proposed project mitigation, SR 99 from Elkhorn Boulevard to the Sutter/Sacramento county line and Elverta Road from SR 99 to the Natomas East Main Drainage Canal would operate at LOS E and F. Roadway, intersection, and freeway level of service results under cumulative conditions with proposed mitigation are summarized in DEIR Tables 3.3-25, 3.3-26, and 3.3-27, respectively. As documented, the segments referenced would operate at LOS E or better.

Brookfield-10 The commenter states that the project and traffic model contemplate the use of Roadways A, B, and C to move traffic north/south.

To clarify, Road B (as referenced) is an east/west roadway in the specific plan (south of Riego Road). Therefore, the County assumes the commenter is actually referring to Roadways A, R, and C in this comment. Roadways R and C provide north/south access internal to the SPSP area but were not assumed to connect/extend south of the Specific Plan area and are not necessary for operation of SPSP roadways at the levels of service identified in the SPSP. Roadways R and C were incorporated into the Specific Plan so that future parallel road alternatives to SR 99/70 are not precluded if needed or planned for by development south of the Specific Plan area in Sacramento County and the City of Sacramento even though new connections are not currently identified in the Sacramento County or City of Sacramento general plan circulation elements. If no such roadways are ever planned, Roadways Rand C will be connected into the internal Sutter Pointe circulation system with minor east-west road connection near the Sutter County-Sacramento County line. The discussion of the "Super Cumulative" analysis scenario on DEIR page 3.3-114 states the following:

> Opportunities may exist to provide more north-south capacity east and west of SR 70/99; however, existing and planned habitat conservation areas south of the Sutter County line may make continuous connection into Sutter County infeasible.

These roadways would not make any connections to the south unless urbanization occurs on the properties south of Sutter Pointe. Contrary to what the commenter suggests, there would be no impact from these roads in Sutter Pointe to farming operations on properties south of Sutter Pointe because no connections are proposed with the project. If future urbanization is proposed, alignments would be likely be selected based on various criteria, including which properties are proposed for development and which intend to remain in agriculture. These properties are outside the jurisdiction and land use control of Sutter County.

Road A is required as mitigation for the proposed project (see DEIR Mitigation Measure 3.3-20). The County does not believe that construction of this one off-site roadway on the commenter's property would preclude the commenter from continuing with any of his ongoing agricultural operations, because the presence of one roadway would not impede the commenter's ability to conduct his agricultural operations. As the commenter points out in the first paragraph of his letter, "Brookfield Land and its ownership interests do not oppose the Sutter Pointe Plan."

Brookfield-11 The commenter states that there has been considerable planning work for the Natomas Joint Vision Area and that introduction of additional roads is not currently contemplated. The commenter further states that traffic being moved to Elverta Road and Elkhorn Boulevard will require substantial improvements to the capacities of these roadways.

Please refer to responses to Brookfield- 9 and -10. The "Super Cumulative" analysis, which includes development in the NJVA, begins on DEIR page 3.3-113. That section discusses traffic operations on study area roadways in the year 2035. DEIR Table 3.3-29 summarizes the "Super Cumulative" scenario roadway segment analysis. The analysis and discussion identifies that intercity and intercommunity trips will occur on local arterials to a greater degree, causing operational problems on existing east-west roadways like Elverta Road and Elkhorn Boulevard. DEIR Mitigation Measure 3.3-1 requires the SPSP to address impacts in Sacramento County. Sutter County welcomes the opportunity to work with Sacramento County to address impacts from the SPSP on Sacramento County roadways. This will also provide the opportunity for Sacramento County to address Sacramento County impacts on Sutter County roadways and intersections, particularly at the SR 99/Riego Road intersection and along the Riego Road corridor.

Brookfield-12 The commenter states that the City and County of Sacramento have not considered any connections such as Roadways A, B, and C.

See response to Brookfield-10 above.

Brookfield-13 The commenter states that project roadways travel through existing and future habitat lands, and that there are impediments to creating roadways through existing habitat preserves.

The proposed Specific Plan is north and east of the Natomas Basin Conservancy's Central Basin and North Basin Reserve Units. (DEIR Section 3.13, "Biological Resources," Exhibit 3.13-2.) The Specific Plan proposes to accommodate vehicle trips generated by the Specific Plan and cumulative projects along existing roadways and rights-of-way. For example, the project proposes to pay its fair share to improve SR 99/70 and construct a parallel frontage road along the eastern boundary of the North Basin Reserve Unit and between portions of the Central Basin Reserve Unit south of the county line (DEIR, Chapter 2.0 "Project Description" at page 2-19 and Section 3.3, "Transportation and Circulation" at page 3.3-94). The Natomas Basin Habitat Conservation Plan's reserve design criteria acknowledged that areas designated for development—including specifically the Sutter Point Specific Plan area which is within Sutter County's Permit Area—would require infrastructure to serve those areas, including roadways. Impacts associated with off-site improvements, however, are expected to be minor "because most alignments would be along existing paved roadways" (including improvements along SR 99/70). (*See* DEIR Section 3.13, "Biological Resources," at page 3.13-29.) Consequently, the location of the Central and North Basin Reserve Units is not an impediment to the roadway improvements proposed in the Specific Plan and DEIR. (*See also* response to comment Brookfield-1 and -10 above, and -14, below.)

Brookfield-14

The commenter claims that the DEIR fails to discuss the impacts on the east-west movement of endangered species resulting from widening Highway 99 and the RD 1000 drainage canal, construction of "Road A," and planned land uses along "Road A."

The NBHCP established the development envelope authorized for take in Sutter County. The Sutter County Permit Area is contiguous with the Sutter Pointe Specific Plan area. The DEIR evaluates the effects of the Sutter Pointe Specific Plan project on movement of endangered species between the various habitats and specifically the Natomas Basin Conservancy's North Basin and Central Basin Reserve Units. (DEIR Section 3.13, "Biological Resources," at pages 3.13-30 and 3.13-52.) The widening of SR 99/70 and construction of the proposed frontage road are expected to have marginal effects on species movement between the Reserve Units as the work would be conducted along a major state highway and existing SR 99/70 right-of-way. (DEIR, at page 3.13-29.) And rather than having a negative effect on species movement, the East Drainage Channel would continue to provide habitat connectivity between the Reserve Units. (DEIR, at page 3.13-52.) As evaluated in the DEIR, the North and East Drainage Channels would "maintain connectivity between the North Basin and Central Basin Reserve Units and would not conflict with the NBHCP's overall objective to ensure that connectivity between reserve units remains attainable." (DEIR, at page 3.13-30.)

Finally, as noted in Response to Comment Brookfield-10, above, Road A is designed to provide north/south access internal to the SPSP area and is not assumed to connect/extend south of the SPSP area. Consequently, Road A would have no effect on the movement of endangered species east to west. Please refer to Response to Comment Broofield-10.

Brookfield-15

The commenter suggests that Sutter Pointe and the Natomas Joint Vision Area proponents should coordinate their efforts toward solving each other's drainage, sewer and traffic issues.

While the County agrees that it may make sense for Sutter Pointe and the Natomas Joint Vision Area to coordinate infrastructure planning at some point in the future, Sutter County cannot make any commitment to coordinate at this time, because planning for the

Natomas Joint Vision Area is substantially behind Sutter Pointe in the entitlement process, and coordination does not make sense at this point. Sutter Pointe is located in an area that has been designated for urban development in the Sutter County General Plan since 1996. The Sutter Pointe area was approved for the planning of a mixed-use community by an advisory Measure M in November 2004 for approximately 7,500 acres. The Sutter Pointe area also has an approved and court-tested Habitat Conservation Plan in place. The visioning process for the Natomas Joint Vision Planning area is in its early stages. Called the Broad Visioning Process, the City and County of Sacramento are holding a series of public workshops that will obtain broad public input in the development of an overall vision for the Joint Vision area. The series will conclude with workshops before the City and County Planning Commissions, the City Council, and the County Board of Supervisors in April 2009. The Broad Visioning Process is intended to lead to the creation of: (i) a set of fundamental principles to address the issues and guide subsequent planning efforts; (ii) a conceptual land use diagrams for urban development and open space; (iii) a project description with sufficient detail to proceed with subsequent planning phases. The Joint Vision Area will also need to adopt a new Habitat Conservation Plan and complete a number of other entitlement and planning efforts. Thus, at this point, because the Joint Vision proponents have not yet produced any planning principles, conceptual land use diagrams, or a project description, the County does not believe it is appropriate for the Sutter Pointe and the Natomas Joint Vision Area proponents to coordinate their efforts at this time.

The commenter then suggests that Sutter Pointe should be required to mitigate fully for its impacts within Sutter County.

To the extent feasible, the DEIR identifies mitigation measures that the County and the project applicants have agreed to implement as part of the proposed project. Implementation of these mitigation measures would reduce some impacts to a less-than-significant level. However, even after implementation of all feasible mitigation measures, some of the proposed project's impacts would remain significant and unavoidable. Please see Chapter ES, "Executive Summary," Table ES-2 for a listing of all project-related impacts and mitigation measures. Please see Chapter 6, "Other CEQA-Required Analyses" on pages 6-9 through 6-16 for a discussion of the project-related impacts that would remain significant and unavoidable.

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FRIENDS-A

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February 6, 2009

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Comments of Friends of the Swainson's Hawk and Habitat 2020 regarding the proposed Sutter Pointe Specific Plan, General Plan Amendments, DEIR, and related entitlements

Dear Mr. Libby,

The following comments are submitted on behalf of the Friends of the Swainson's Hawk, Environmental Council of Sacramento, and Habitat 2020 regarding the proposed Sutter Pointe Specific Plan, General Plan Amendments, DEIR, and related entitlements. These organizations must oppose approval of the Project in its present form. We reserve the right to submit additional comments and documents prior to final action by the Board of Supervisors.

1. Absence of proposed Development Agreement requires recirculation of the DEIR for the full public comment period when the proposed Development Agreement becomes available for public review.

The DEIR, pp. ES-1, -2, state that adoption of the Specific Plan requires approval of a list of entitlements, including "adoption of a development agreement between County and the Project applicant (including establishment of maintenance districts)". However, no proposed Development Agreement is presented for public review. A Development Agreement is a Project under CEQA, which requires environmental review.

If County intends that approval of the Specific Plan be contingent on execution of a Development Agreement, then the Development Agreement must be presented for the entire public review period so that the public can review and comment on its environmental impact, which remains unknown because the Development Agreement (if it exists) is unavailable to the public.

The DEIR makes a number of representations about mitigation measures, which will be funded by the master developer through a Development Agreement. Such representations are not supported by substantial evidence because such Development Agreement does not yet exist.

1

2. Consistency with Measure M (Impact 3.1-5)

a. The General Plan Consistency Analysis (DEIR Appendix D) misrepresents the Sutter County Measure M

The General Plan ("GP") Consistency Analysis discussion of GP Policy 1.A-3 incorrectly states that the "voters approved Measure M ***directing*** the Board of Supervisors to plan a new mixed-use master planned community in south Sutter County."

In fact, Measure M is only advisory, asking: "Do you approve of planning for commercial, industrial, and residential development . . . if the following planning standards are met?" The Sutter County Counsel's Analysis in the ballot booklet states that "because this measure is an advisory measure only, it is not binding. Therefore a "yes" vote on the question posed by this measure will not operate to obligate or require the county to take any particular action."

The GP Consistency Analysis proposes adding the following to GP Policy 1.A-3: ". . . unless such communities are master planned, support economic development, and ***are approved by voter initiative***.". 2

Is this proposed addition to GP Policy 1A-3 in the Consistency Analysis intended to mean that the proposed Specific Plan, General Plan Amendments, and other proposed entitlements would be subject to an election at a later date at which voters shall approve or disapprove the proposed Specific Plan, GP amendments, etc?

If this above-quoted proposed General Plan language is intended to mean that the Sutter Pointe Project was previously approved by Measure M, then that language is flat-out untrue, because Measure M is only an advisory measure which is not an approval of the proposed "community" or the detailed plan and entitlements which are proposed by the Specific Plan, etc.

b. The Project is inconsistent with Sutter County Measure M and the DEIR fails to address the environmental impacts of the inconsistency

GP Policy 3.A-3 provides that public services for new urban and suburban residential development " shall be provided by an entity other than Sutter County. The GP Consistency Analysis discussion of GP Policy 3.A-3 proposes that GP Policy 3A-3 be amended to state that

> ". . .the County may provide public facilities and services to new urban and suburban development on an ***interim*** basis through a County Service Area . . ." 3

The Draft Urban Services Plan, 12/15/08, at pages 14, 16, 23, and 24 and Table C-4 correctly point out that annual funding shortfalls in urban services provided by County during the initial phases of development are likely to occur even with the collection of Special Taxes and Assessments for services by County.

This is directly contrary to Measure M, which states in relevant part:

> "The finance plan would implement development fees and other similar measures to ensure that the required improvements are paid for by the development without cost to existing residents," and; "[T]he Board would adopt a detailed infrastructure, public services and finance plan that would require development to fully fund ***all*** necessary public facilities on an on-going basis. This would include all "municipal services" provided by County, such as fire protection, law enforcement, library, animal control, street maintenance and utilities (i.e., water, sewer, drainage), judicial, health, mental health, and social services."

Measure M does not authorize County to provide "interim" services costing in excess of current revenues generated by the Project until the Project can become financially self-sustaining or the area incorporates. Therefore the DEIR finding (Impact 3.1-5) that the Project is consistent with Measure M is not supported by substantial evidence.

The DEIR fails to disclose or analyze the environmental impact of this inconsistency. An obvious question, which is not answered in the DEIR or anywhere else, is the period of time covered by the term "interim" during which County would be liable to subsidize funding for services to the Project which exceed revenues to County generated by the Project.

Sutter County regards itself as an economically poor County with limited money available to fund County-wide services. It normally does not provide urban services to unincorporated communities.

What will be the effect on existing County services of the increased expense of providing County services to the Project site during the open-ended "interim" period?

3 Cont'd

Is there the possibility that County services to other areas of the County would be reduced so that County services can be made available to the Project area? If not, please explain why not.

4

If there is a reasonable probability that services to other areas of the County would be reduced so that services could be provided to the Project during the interim period, please explain what services would be reduced, and the physical and socio-economic effects of the reduction of services on an "interim" basis.

5

The Project documents state, at multiple places, that the developer may be required in the Development Agreement to advance fund the revenue shortfall for costs of providing urban services during the "interim" period. However, no such Development Agreement (if one exists) is provided for public review.

Please explain in detail the amount of funding which the developer will be required to provide, how it is calculated, and how payment of the promised advance funding of urban services by the developer will be ensured.

6

3. The Specific Plan is inconsistent with the Sutter County General Plan, thereby violating Government Code §65454

7

The section titled "Sutter Pointe General Plan Amendment consists of attachments 1 - 12. Attachment 2 consists of major amendments of Section 9 of the General Plan, under the heading of "The Following Amendments Apply to Section 9 of the Policy Document." Attachments 1 and 3 through 10 are proposed amended versions of existing General Plan charts and tables. Attachment 11 is the "Sutter Pointe General Plan Consistency Analysis", also reproduced as Appendix D of the DEIR.

The General Plan Consistency Analysis suggests that certain changes in General Plan Policies 1.A-3, 1.A-5, 1.C-1, 2.A-4, 3.A-2, 3.A-3, and 4.D-3 would make the Specific Plan consistent with the GP, if the GP were to be amended to incorporate the changes suggested by the GP Consistency Analysis. This is an explicit admission that the Specific Plan is inconsistent with these GP Policies unless the GP is amended. 7

Unlike the proposed Amendments to Section 9 of the GP (Attachment 2), the GP changes suggested in the Consistency Analysis are not presented as a part of the Project being considered for adoption, and are not a part of the Project description. Adoption of a Specific Plan which is inconsistent with the General Plan is prohibited by Government Code § 65454. If County intends that the suggested changes in GP Policies 1.A-3, 1.A-5, 1.C-1, 2.A-4, 3.A-2, 3.A-3, and 4.D-3 be a part of the Project, then the Project description must be revised accordingly and the proposed GP Amendments and DEIR must be recirculated for the full public comment period. 8

3. Biological Resources: substantial evidence does not support the DEIR's findings that implementation of Mitigation Measures 3.13-1a and 13.13-1b (Giant Garter Snake), 3.13-3a and 3.13b (Swainson's Hawk), 3.13-4a and 3.13-4b (certain other special status wildlife species), and 3.13-5a (special status plant species) by compliance with the 2003 Natomas Basin Habitat Conservation Plan ('NBHCP") would reduce impacts on these species to less than significant.

The Project site is covered by the Federal and State Incidental Take Permits issued to County under the 2003 NBHCP. The DEIR asserts that the above mitigation measures, which for the most part consist of implementing the requirements of the 2003 NBHCP, would reduce impacts upon species covered by the NBHCP to less than significant.

In approving the NBHCP, the USFWS found that compliance with the NBHCP would mitigate impacts of development within the Permit Areas to the maximum extent feasible and CDFG found that compliance with the NBHCP would fully mitigate for the impacts of development within the Permit Areas. 9

The 2003 NBHCP required that only 0.5 acre of mitigation habitat land be permanently preserved for each acre developed. In justifying that controversial minimal mitigation ratio, the NBHCP relied on the assumption that much of the remaining 29,000 acres of the Natomas Basin not covered by the NBHCP would continue to be actively farmed for the 50-year term of the Incidental Take Permits. At that time, and for many decades previously, the predominant agriculture in the Basin was rice farming which provided necessary marsh habitat for the aquatic GGS and row crops which provided foraging habitat for the Swainson's Hawk.

The NBHCP Final EIR, states

> With regard to habitat outside of the areas of Planned Development, there is no basis for assuming that these lands would not remain as habitat. (NBHCP FEIR, Responses, p. 180.)
>
> "Much of the Basin will continue to be used for agriculture over the life of the Permit . . . ." (NBHCP FEIR, Responses, p. 85.)
>
> "In Sacramento County, more than 10,000 acres are anticipated to provide available foraging opportunities ... " for Swainson's Hawks. (NBHCP FEIR, MAR 6:2954.) Foraging habitat [for SWH] will remain in undeveloped areas outside of the reserves. An estimated 12,862 acres ... is assumed to remain available to SWH." (NBHCP FEIR, Responses p. 141.)
>
> "In addition, large contiguous areas of agricultural fields will remain available. Outside of the area of Planned Development, there are about 13,000 acres of potential foraging habitat in the Natomas Basin." (NBHCP FEIR, Responses p. 175.)

Specifically, the NBHCP states that:

> "Substantial agricultural interests are anticipated to remain within Natomas Basin throughout the life of the permit(s)." (NBHCP p. VI-43.)
>
> "Agriculture, particularly rice cultivation has an anticipated long-term future in the Basin irrespective of the Plan's mitigation program, rice lands will continue to support wetland habitat for the giant garter snake, and other irrigated croplands will continue to provide foraging habitat for Swainson's Hawks in addition to such areas ... established within the reserve system." (NBHCP p. VII-3.)
>
> ". . . some portion of the Basin's agricultural lands - some of which represent suitable Swainson's Hawk foraging habitat- are expected to remain in agricultural production. Thus, the Basin's anticipated ongoing land use patterns, together with the NBHCP's specific measures . . . are expected to support long-term survival of the Swainson's Hawk within the Plan Area" (NBHCP p. VII-19, emphasis added.)
>
> "Although the Permittees are not relying on the Airport buffer lands [approx. 4000 acres] as mitigation . . . retaining these lands in agricultural uses will contribute to the overall success of the HBHCP conservation strategies for covered species." (NBHCP p. III-11, emphasis added.)
>
> "The best available baseline of agricultural land as used by crop type as determined by CH2MHill and field checked by May and Associates (2001) is used as the baseline for this HCP and related analysis." (NBHCP p. III-17, emphasis added.)
>
> "The NBHCP presents a conservation plan based upon the recent agricultural production .

9
Cont'd

1

as specifically noted in within Table II-1" (NBHCP p. III-17, emphasis added.)

After 2003, much of the 29,000 acres of Natomas Basin farmlands, especially in Sacramento County, which the NBHCP assumed would remain farmland, was converted to dense weed-fields, which provide no habitat at all for the GGS and little habitat value to Swainson's Hawk and other covered species. Landowners in the "Joint Vision" area of Sacramento County, north of Elkhorn and east of the Airport converted their rice farms to weeds or, in some cases, hay, in anticipation of urban development under the "Joint Vision" MOU. This amounted to a loss of approximately 8,000 acres of rice farming which was very important habitat for the aquatic Giant Garter Snake when the 2003 NBHCP was adopted. The Sacramento Airport did likewise with its 4000-acre County-owned Airport bufferlands area, which in 2003 was cultivated in rice and row crops. All 5700 acres of Airport property in Natomas are now managed to minimize habitat value to wildlife, and birds are actively hazed and sometimes shot. Most waterways on Airport property have been filled. Most rice farming in the Sacramento County part of Natomas Basin has now been eliminated, except for preserves of the Natomas Basin Conservancy and a few isolated farm fields. This is an especially devastating loss of Giant Garter Snake wetland habitat, which is essential to the survival of the GGS and was not anticipated in the formulation of the NBHCP.

Consequently, the underlying assumption of the NBHCP that the remainder of the Basin would remain in active farming, especially as to rice, is no longer true for much of the Basin. Consequently the NBHCP's conclusion that compliance with the NBHCP would fully mitigate for loss of yet more habitat due to development of the Sutter Pointe site is no longer supportable. A new analysis must be done in the EIR which fully discloses the changes that have occurred since adoption of the NBHCP; and addresses the issues of (1) what additional measures will be needed to assure that impacts to protected species will be mitigated to less than significant, and (2) whether the survival and recovery of the GGS and SWH may be jeopardized by the Project. Of particular concern is the status of the Giant Garter Snake. In a 1994 Biological Opinion, the USFWS found that the Natomas Basin had the largest remaining extant population of GGS, and that maintenance of a viable GGS population in Natomas Basin was essential to the continued existence of the GGS. The elimination of 8,000 – 10,000 acres of rice farming by "Joint Vision" landowners and the Airport after 2003 may well pushed the Basin's GGS population to the brink, and loss of another 7000 acres by development of Sutter Pointe may push the Natomas GGS population, and thus perhaps the species, over the edge.

9 Cont'd

4. **Financial: Substantial evidence does not support the core assumptions of the Specific Plan and DEIR that the costs of public facilities and provision of public services will be paid entirely by revenue generated by the Project; DEIR fails to disclose or analyze the potential environmental and socio-economic effects of possible shortfalls of Project-generated revenue to pay for public facilities and services which would mitigate for impacts of the Project.** 1

10

Please refer to the discussion above, Section 2.b, regarding inconsistency with Sutter County Measure M, specifically the County's providing of public services on an "interim" basis. " The Public Review Draft Report, Sutter Pointe Urban Services Plan, 12/15/08, p. 14, says:

> "The results of this Urban Services Plan indicate that, in the initial years of development, annual shortfalls in urban services funding likely will occur even with the collection of Special Taxes and Assessment for Services . . . because certain required service levels, such as fire and law enforcement, will need to be provided . . . before new development can generate sufficient General Fund and Special Tax/Assessment Revenues"

"Until the Project matures, service delivery levels may be phased based on available revenue and overall feasibility of the Project." (*Id.*, p. 7).

County's ability to impose additional assessment or taxes is restricted by law and requires a vote of the people. The Urban Services Plan suggests that "service delivery may need to be reduced."

10 Cont'd

The DEIR fails to disclose the environmental and socio-economic impacts of either (1) possible reduction of overall County services so that a sufficient level of service is provided to the Project; or (2) the effect of reducing urban services to the Project due to failure of funding. See also discussion of funding shortfalls for fire and law enforcement, pp. 16, 23, 24, of Urban Services Plan.

Specific Plan Policy 10.2-5 states that County revenue sources used to fund countywide services shall not fund urban services for Sutter Pointe. Policy 10.2-7 states that service costs shall not exceed a level that would jeopardize development economic feasibility nor impose unreasonable cost burdens on homeowners and other property owners. Again, the DEIR fails to disclose and analyze the possibility that the restrictions of Policies 10.2-5 and -7 (if honored) could lead to reduced levels of urban services for Sutter Pointe, nor he types of urban services which would be reduced, nor the environmental and socio-economic effects of such reduction of urban services. Such disclosure and analysis is required by CEQA.

11

The Specific Plan states, at p. 10-2, that "the fiscal structure of the planned Sutter Pointe community inherently depends upon revenues generated by employment and commercial activity to offset the service costs associated with the planned residential development."

There is no substantial evidence that employment and commercial activity sufficient to support the entire Project will decide to locate at Sutter Pointe. There are large blocks of vacant commercial land in North Natomas, and the entire 2000-acre MetroAirPark commercial - industrial area remains vacant.

Specific Plan Policy 10-2-3 states that the County shall support and encourage incorporation. The Specific Plan repeatedly asserts, at p. 10-2 and elsewhere that Sutter Pointe is assumed to incorporate as soon as fiscally feasible, thereby relieving County of the obligation to provide services.. There is no substantial evidence which supports that assumption. In addition, the DEIR fails to address the question of what will happen if Sutter Pointe residents and landowners choose not to incorporate; or the issue of what may happen - and the environmental and socio-economic effects - if Sutter Pointe does not obtain the level of commercial and employment activity needed to make incorporation financially feasible and attractive to its landowners and residents.

12

5. Wastewater: The DEIR fails to disclose or address the effects of contaminants in Project-generated wastewater which is discharged into the Sacramento River via SCRSD.

The DEIR analyzes three alternatives for wastewater treatment: (1) linking to the Sacramento Regional County Sanitation District (SRCSD) wastewater lines for SRCSD's secondary treatment plant at Elk Grove, if there is agreement with SRCSD; or (2) tertiary treatment in Sutter County and discharge into the Sacramento River (if permits can be obtained from the State of California); or (3) construction of 12-mile pipeline to the Roseville tertiary wastewater treatment plant and discharge within the terms of Roseville's permit, if there is agreement with Roseville. The Sutter Pointe Sewer Master Plan, pp. 25, 26, and 29 concludes that the only viable alternative would be linking to the SRCSD pipeline for treatment at the SRCSD plant at Elk Grove.

HOWEVER, there is not yet any agreement, or "Principles of Agreement" document between Sutter County and SRCSD. It is not known whether the parties would be able to reach agreement, which would need to be approved by the SRCSD Board. In addition, Sacramento and Sutter LAFCo's would need to approve expansion of the SRCSD service area to serve the Project area. Although SRCSD staff have said that SRCSD's treatment plant presently has capacity to accommodate secondary treatment of Sutter Pointe's wastewater, there is no evidence that the Board of SRCSD would actually approve use of some of its treatment capacity for Sutter Pointe; nor is there any evidence that Sacramento LAFCo would approve expansion of SRCSD's service area to include Sutter Pointe. If the SRCSD Board or Sacramento LAFCo perceived uncertainty as to SRCSD's capacity due to regulatory challenges (see below) or competing demands for service by hoped-for future Sacramento County development, it is entirely possible that the SCRSD Board or LAFCo would refuse to approve expansion of SRCSD service to encompass Sutter Pointe. 13

The DEIR fails to disclose that the SRCSD expansion Project ("2020 Master Plan") was successfully challenged in Sacramento County Superior Court by downstream urban users of Sacramento River water in a CEQA suit from increased loading of contaminants into Sacramento River by SRCSD's discharge of secondarily-treated sewage. (Contra Costa Water District v SRCSD, Sacramento County Superior Court No. 05CS00908). An appeal is pending in the California Court of Appeal, Third District. The DEIR must disclose and address the scientific issues raised in that litigation regarding possible contamination of Sacramento River by discharges from the SCRSD treatment plant because disposal of secondary treated wastewater from the Project will only increase the contaminant load in the Sacramento River. 14 15

The DEIR also fails to disclose that there is credible scientific information that ammonia is being discharged into the Sacramento River by SRCSD in volumes which are poisonous to fish, including protected species of fish. The issue is currently under review by the Central California Regional Water Quality Control Board. If it is found that secondary treatment by SRCSD is discharging deleterious amounts of ammonia or other toxic contaminants into the Sacramento River, then one possibility is that SRCSD's State discharge permit would be modified to prevent or greatly restrict its acceptance of further sewage volume or expansion of 16

its service area until SRCSD remedies the problem by converting to tertiary treatment, which is estimated to cost $1 billion or much more. This is information which should be disclosed in the DEIR so that the decision-makers and public are aware **(1)** of the possibility that the biological effects of ammonia and other contaminants in secondarily-treated wastewater to be discharged by SCRSD, and regulatory response thereto, could make it impossible for Sutter Pointe to discharge its wastewater to SRCSD and **(2)** of the possibility that, if Sutter Pointe becomes a customer of SRCSD, the County or CSA serving Sutter Pointe development may be required to pay its proportionate share of the very substantial rate increases needed to upgrade the SRCSD facility to tertiary treatment that would reduce discharge contaminates to an acceptable level. 16 Cont'd

The DEIR fails to analyze the effects of discharge of Sutter Pointe sewage to SRCSD, including the effect of increased discharge of ammonia and other wastewater contaminants by SRCSD into the Sacramento River as a result of the incremental wastewater generated by the Project. Such an analysis is required by CEQA in light of the credible scientific information that contaminants and ammonia discharged by SRCSD may be causing serious problems. See ATTACHMENTS 1 - 5 (Bay Delta Conservation Plan Steering Committee, 10/31/2008, Third Draft, Other Stressors Conservation Measures, pp. 1, 2, 22-26; Central Valley Water Quality Control Board, Study to Evaluate Potential Effects of Ammonia on Delta Smelt, Status Update, July 30, 2008), *Sacramento Bee* articles, "A half-million on spin, not science", 12/31/08; "Ammonia is a problem even if not the only one" 6/8/2008; "Ammonia from Sacramento waste could hurt Delta ecosystem," 6/1/08. 17

6. Water Supply

The Project proposes to draw local groundwater for 52% of the Project, especially in the earlier stages of development. A groundwater pump installed on a farm next to a habitat preserve of the Natomas Basin Conservancy next to the Sacramento-Sutter County line pumped so much water that the Conservancy's well went dry due to local groundwater decline. Consequently, the DEIR assumption that there would not be groundwater overdraft from the Project appears unfounded. 18

What measures will be taken to assure that groundwater pumping for the Project does not cause water table decline?

We respectfully suggest that the Project mitigate for possible groundwater overdraft by requiring that if groundwater pumping by the Project causes groundwater decline in other wells in the Basin or east of the Project site, the Project or its governing entity shall pay the cost of deepening wells of other landowners which are affected by Project pumping. 19

The DEIR fails to disclose and discuss the environmental effects of the alternatives proposed for diverting surface water from the Sacramento River to supply the Project. Such disclosure and analysis is required by CEQA. 20

7. Transportation and Circulation: (DEIR Section 3.3 and Mitigation Measures therein) 21

The DEIR discloses that traffic generated by the Project will have major unmitigated impacts on road service and circulation in Sutter County and especially in neighboring Placer and Sacramento Counties, which are likely to be the employment and retail destinations for many Sutter Pointe residents. A number of mitigation measures in Section 3.3 propose that the Project pay its "fair share" of the cost of improvements that would alleviate congestion, but states no dollar amounts or even a formula for computing the actual amount of the "fair share", which will be deferred to decisions and negotiations at a later date. Deferral of formulation of mitigation measures until a later time is not permitted by CEQA.

It is impossible for the public and decision-makers to determine from the DEIR the extent to which the Project would mitigate for its impacts on traffic or circulation and whether the Project would mitigate for its impacts on traffic and circulation to the maximum extent feasible.

What is meant by "fair share" and how would it be computed as to the mitigation measures which rely on "fair share" funding in Section 3.3 ?

The "method" for calculating "fair share" stated in MM 3.3 improperly defers the determination, and the method of determination, until agreement at a later date, which is unacceptable under CEQA.

21 Cont'd

8. Greenhouse gases: The Specific Plan fails to reduce to the maximum extent feasible the effects of greenhouse gases that would be generated by the Project

The Sutter Pointe Specific Plan area location is not contiguous, or even near to, existing urban development. The proposed land uses, if developed in the near future, are therefore likely to generate vehicle miles traveled (VMT), and associated greenhouse gas emissions and air quality impacts, significantly in excess of reasonable Project alternatives. This development is not appropriate to the proposed location until urban development has progressed there in contiguous sequence from existing urban development.

22

The DEIR correctly notes that the Sacramento Region is a non-attainment area for Federal air quality standards. In this context, it must specifically address the effects of the Project location's spatial separation from existing urban development. Due to the Project location, the proposed land uses are likely to generate VMT and associated greenhouse gas emissions and air quality impacts significantly in excess of reasonable Project alternatives.

23

One way to mitigate the Project's VMT, greenhouse gas emissions and air quality impacts would be to accommodate its circulation to non-motorized transportation. Its current circulation specifications are not fully supportive of alternative modes.

24

For example, local roadways should accommodate maximum speeds of 35 miles per hour. The Institute of Traffic Engineer's (ITE) publication *Context Sensitive Solutions* (2008) cites this speed as a maximum speed for bicycle-pedestrian friendly communities. The specific plan's street standards provide for local streets with a minimum 32-foot width, which is conducive to higher speeds, and does not support compact development. Please refer to the referenced ITE

25

publication for feasible, tested street standards that support alternative modes safety and compact development. 25 Cont'd

Additionally, to allow for distances conducive to alternative modes trips, the street standards should include connectivity standards, with block sizes that support direct routes between destinations. To provide for connectivity to future development, the specific plan should also include a thorough delineation of through streets from the proposed development to the vacant territories surrounding it. Please refer to the referenced ITE publication for feasible, tested block size and other connectivity standards. 26

9. <u>SACOG Blueprint:</u> The Project is inconsistent with the SACOG Blueprint

The Blueprint Preferred Scenario Map slates some development for the Project location. However, the Blueprint also incorporates principles of infill and compact development. This would oblige a contiguous sequence of development progressing from existing urban areas. Instead, the Sutter Pointe Specific Plan proposes development that would be spatially separated from existing urban areas. The nearest urban development, North Natomas, Sacramento, is 3.5 miles distant, separated from Sutter Pointe by prime farmland. The County seat, Yuba City, is over 30 miles distant. Despite the wishful thinking of Sacramento County landowners between Sutter County and Elkhorn Blvd (a.k.a. the "Joint Vision" area), the possibility of new urban development between the Sutter County line and North Natomas is highly speculative, and would need to overcome very substantial biological and regulatory issues under the Endangered Species Act and economic realities which are likely to preclude significant urban development in that area for a very long time. 27

The <u>DEIR fails to address</u> or disclose and analyze the environmental effects of locating such massive urban development in the midst of farmlands several miles from the nearest urban area. These effects include disclosure and analysis of the effects of increased fuel consumption (and resultant greenhouse gas emissions), and increased infrastructure needs resulting from the isolation of the site from the nearest urban area and major employment centers. 28

Thank you for the opportunity to comment.

Respectfully submitted,

James P. Pachl

Attachments included in mailed letter.

Friends-A-1

The commenter states that the fact that the anticipated development agreement was not provided for public review concurrently with the DEIR warrants recirculation of the DEIR once the agreement is made available. The commenter further asserts that the mitigation measures that will be funded through the development agreement cannot be assumed to be enforceable because the development agreement does not exist yet.

The commenter is mistaken about the requirements of CEQA with respect to the development agreement and its role in the environmental review process. CEQA does not require that the development agreement be made available for public review at the same time as the DEIR, nor must it be analyzed in the DEIR. (*Native Sun/Lyon Communities v. City of Escondido* (1993) 15 Cal.App.4th 892, 909-910 [EIR not defective for failing to analyze development agreement included in list of approvals in project description].)

At this time, the County and the project proponents expect the development agreements disclosed in the project description in the DEIR will merely set forth the financial obligations and future process mechanisms to which the project applicants will be bound, consistent with, and for the purpose of implementing, the mitigation measures ultimately approved by the County. (See DEIR, page 2-6.) The development agreements are not expected to entail any changes to the project that would warrant recirculation of the DEIR to analyze any new, unexamined physical effects arising from any changes. In other words, the development agreements are anticipated merely to serve as a set of binding enforcement tools for the County and other public agencies to ensure that approved development and mitigation are implemented as intended, not to substantively change the project description in a manner that might trigger the obligation to recirculate new impact analysis.

The project description further explains that public hearings will be held on the development agreements before any actions are taken to approve the Specific Plan. Thus, CEQA does not require the development agreements to be circulated for public review alongside the DEIR, and the County has already disclosed its intent to subject the development agreements to public scrutiny via its public hearing process prior to approval of the Specific Plan.

Friends-A-2

The commenter states that Measure M is only advisory and therefore the proposed general plan amendment language regarding approval by voter initiative is incorrect. Measure M is, in fact, advisory, as stated in the comment. Please refer to Master Response 1, "Measure M.

Friends-A-3

The commenter states that the project is inconsistent with Measure M because the Draft Urban Services Plan states there will be an interim shortfall of revenues to cover all urban services, Measure M does not allow the County to provide interim services costing in excess of current revenues generated by the Project, and the DEIR does not analyze the impacts of this interim shortfall.

While the commenter is technically correct that the Urban Services Plan indicates there will be a shortfall, the comment is misleading. The Urban Services Plan ("USP") indicates a shortfall could exist, but the USP also identifies that the shortfall will need to

be covered, and proposes alternatives for how the shortfall may be covered. (See USP, page 14 and table C-4.) This was also explained by Mr. Tim Youmans, of Economic & Planning Systems, Inc., the financing consultant for the project proponents, at the Joint Planning Commission and Board of Supervisors Study Session on March 2, 2009. He explained if an interim shortfall in tax and assessment revenue occurred, it will be supplemented by other funding sources to ensure that the County does not have to pay the difference out of its general fund. The likely source of such funding would be an urban services shortfall fee or a special/tax assessment on undeveloped land. With these additional funding sources provided by the project proponents, the County will ensure that the project remains consistent with the intent of the voters when they approved Measure M. The DEIR did not need to analyze the impacts of any "inconsistency" with Measure M because there is no such conflict. There will be no increased expense to the County associated with providing County services to the project site at any time because the project proponents will make up the interim shortfall with supplemental funding sources. However, before such additional fees are necessary, the County will first determine if a shortfall truly exists. There seems to be a misunderstanding by the commenter that the draft USP is the actual budget for urban services revenue and spending once development of the community commences. That is not the case. The USP is a tool to determine the feasibility of providing urban services to the new community.

> The purpose of the Urban Services Plan is to describe the service levels and financing strategy to fund an urban level of public services that will be provided to the Project's future residents, businesses, and employees. It estimates annual urban services cash flow during the period of primarily residential development when service delivery is more likely to generate shortfalls and tracks the need for supplemental financing mechanisms to cover shortfalls. The Urban Services Plan is based on an annual absorption schedule that straight-lines the development of residential units through build-out and non-residential square footage anticipated to be developed during that time. (USP, page 1.)

The costs to provide urban services in the USP were t based on projections of costs to provide such services. The proposed project is a specific plan that requires additional entitlements before development can actually occur. It is not a project-level entitlement. It is impossible for the County to know the exact future costs for such services at this time. Instead, the County developed preliminary cost estimates based on average per capita costs for similar services in budgets by the cities of Woodland and Folsom. (See the USP, page 11 for an explanation of why Woodland and Folsom were used.) At the bottom of page 10 of the USP, in bold, it states, "All costs in the Urban Services Plan will be updated before the formation of a CSA." As explained in the Specific Plan and as explained to the Board of Supervisors on February 11, 2009, an updated Urban Services Plan will need to be approved by the County as part of the project-level entitlements for the first phase of development and each subsequent phase of the proposed project. (Specific Plan page 10-6.) The updated USP may find that no such shortfall exists when the actual costs of services and the rate of absorption are determined at a more refined level. The approval of the updated USP will need to comply with the policies in the Specific Plan. Specific Plan Policy 10.2-4 states, "New development within Sutter Pointe should generate the revenue necessary to fund urban services." Also, Policy 10.2-7 states, "Service costs shall not exceed a level that would jeopardize development economic feasibility nor impose unreasonable cost burdens on homeowners and other property owners." With these policies in place, the proposed project is required to fund fully all urban services while at the same time funding such services at a sustainable level. The

developers' obligation to cover any funding shortfalls will be set forth in the development agreement, as identified in the USP (page 16).

Friends-A-4 The commenter asks whether County services to other areas of the County would be reduced so that County services could be provided to the project area. Please see Response to Comment Friends-A-3 above. There will be no adverse impact on the County's ability to serve other areas of the County because there will be no unfunded interim shortfall.

Friends-A-5 The commenter asks whether, if the premise in Comments 3 and 4 above is correct, which services will be affected and the physical and socio-economic effects of a reduction in services on an interim basis. As explained above in Response to Comment Friends-A-3 above, the interim shortfall will be filled with supplemental sources of funding by the project proponent. Thus, there will be no adverse impacts to services elsewhere in the County as a result of serving the project area.

Friends-A-6 The commenter states that no development agreement requiring the developer to advance funding for the interim revenue shortfall was provided for public review. The commenter further requests detailed information regarding the amount of funding the developer will be required to provide, methods of calculation, and enforcement of payment promises. Please see Responses to Comments Friends-A-1 and Friends-A-3 above. Additionally, please refer to the Draft Urban Services Plan ("USP"), which is attached as Appendix F-1 to the draft Specific Plan. Table C-4 describes the amount of interim funding shortfall that would be needed under the scenario studied in the USP. The methods for calculating the amounts are described in the USP. (Pages 10-11.)

Friends-A-7 The commenter asserts that the attachments to the draft Specific Plan that reference General Plan amendments are an explicit admission that the Specific Plan is inconsistent with certain General Plan policies unless the General Plan is amended. The commenter is correct that certain amendments are requested to the General Plan in order to make the Specific Plan and General Plan completely consistent, as they are required to be by law. The County has the discretion to amend its own General Plan if it so chooses to make the two plans consistent.

Friends-A-8 The commenter states that not all of the General Plan changes noted as necessary in the Consistency Analysis in the draft Specific Plan were listed in the project description portion of the DEIR. While the commenter is correct that the project description does not list every General Plan policy revision individually, it did not need to do so in order to be adequately inform the public of the nature of the changes sought. Each of the necessary General Plan policy revisions cited by the commenter are listed in Appendix D of the DEIR, which, as the commenter notes, reproduces the General Plan Consistency Analysis from the draft Sutter Pointe Specific Plan. The project description referred readers to Appendix D for the full listing of the changes sought for every policy. (DEIR, page 2-5.) Thus, the project description in the DEIR did not fail to provide the public with the necessary information to determine which General Plan policies are proposed to be amended. CEQA's implementing regulations do not require the project description to contain "extensive detail beyond that needed for evaluation and review of the environmental impact." (CEQA Guidelines, § 15124.) All of the policy changes sought are intended to accommodate the Specific Plan, so any impacts associated with the necessary revisions are already assessed as part of the DEIR's analysis of the Specific Plan's impacts.

Additionally, commenter asserts that the list of General Plan policies included in the General Plan Consistency Analysis requires certain changes, including Policy 3.A-2. The General Plan Consistency Analysis states that the Specific Plan is already consistent with Policy 3.A-2; no revision to that policy is requested by the project proponents.

There is one addition to Appendix D that is now included in the FEIR. Attachment 12 to Appendix D was unintentionally omitted from Appendix D when it was circulated with the DEIR. Please refer to Appendix XXX to the FEIR, which includes the entire General Plan Amendment, including Attachment 12.

Friends-A-9

The commenter suggests that there is no substantial evidence that project mitigation—specifically Mitigation Measures 3.13-1a and 13.13-1b, 3.13-3a and 3.13b, 3.13-4a and 3.13-4b, and 3.13-5a—would reduce impacts to giant garter snake, Swainson's hawk, other wildlife species, and plant species, to a less-than-significant level. The commenter notes that, in justifying the mitigation ratio of 0.5 acres for permanently preserved habitat land, the NBHCP relied on the assumption that much of the remaining 29,000 acres of the Natomas Basin not covered by the NBHCP (including areas outside of Planned Development) would continue to be actively farmed for the 50-year term of the Incidental Take Permits, thereby continuing to provide aquatic habitat for giant garter snake and foraging habitat for Swainson's hawk.

The commenter also notes the loss of approximately 8,000 acres of rice farming within the "Joint Vision" area in Sacramento County and another 4,000 acres of rice and row crops within the County-owned Airport bufferlands area. The commenter states that, as a consequence of this loss, the underlying assumption of the NBHCP that the remainder of the Basin would remain in active farming, especially as to rice, is no longer true for much of the Basin and that the NBHCP's conclusion that compliance with the NBHCP would fully mitigate for loss of yet more habitat due to development of the Sutter Pointe site is no longer supportable.

The commenter concludes by suggesting that a new analysis must be performed in the SPSP EIR concerning additional measures that may be necessary to assure that impacts to protected species will be mitigated to a less-than-significant level.

The NBHCP established the amount of development authorized for take within the Permit Areas for Sutter and Sacramento Counties. Sutter County is authorized to convert up to 7,467 acres to urban uses, even in the face of changed circumstances elsewhere in the Natomas Basin (e.g., changes in surrounding land uses or a decision by the City of Sacramento not to participate in the program). The NBHCP, as well as the NBHCP Environmental Impact Report/Environmental Impact Statement (EIR/EIS) adopted under CEQA and its federal counterpart the National Environmental Policy Act (NEPA), evaluated the impacts of development within the Sutter County and Sacramento Permit Areas on sensitive species and regional habitats in the Natomas Basin. The SPSP is consistent with the NBHCP such that the SPSP DEIR concluded that the proposed project would result in no new impacts to covered species.

Moreover, after evaluating project-specific and cumulative impacts to sensitive plant, bird, and animal species, including impacts to giant garter snake and Swainson's hawk, the DEIR concludes that with the SPSP applicants' implementation of avoidance and minimization measures, as well as replacement mitigation for lost habitat at a 0.5-to-1.0 ratio in accordance with the NBHCP, the proposed project's impacts on sensitive species would remain less than significant. (DEIR Section 3.13, "Biological Resources," pages

3.13-29 through 3.13-49.) The DEIR cites substantial evidence, including facts and data and agency information and analysis, to support this conclusion, including the relatively marginal quality of species habitat, a lack of habitat for some sensitive species (e.g., valley elderberry longhorn beetle), and the substantial avoidance, minimization, and mitigation measures required for each species with the potential to occur in the area.

Additional evidence in the appended biological reports and the NBHCP itself supports the same conclusion. (*See, e.g.*, DEIR, Appendices I, J, and K, describing much of the project site as "marginal" or "unsuitable" for giant garter snake.) For example, the NBHCP at pages IV-13 and -14 and Table IV-2 outlines the substantial nesting and foraging habitat that will remain available to the Swainson's hawk despite the level of development authorized to occur in the Natomas Basin. The NBHCP also justifies its adopted 0.5-to-1.0 mitigation ratio with additional evidence (NBHCP, at pages IV-6 and -7):

> This mitigation strategy will result in 8,750 acres of habitat reserves to be established and managed by TNBC. It should be noted that the effective habitat reserve ratio is actually higher than the 0.5 to 1 ratio, because not all lands to be developed under the NBHCP Permits are of high value to the Covered Species as habitat. Because portions of the Natomas Basin currently have marginal value as habitat, and because all land to be developed in the Basin will be subject to mitigation fees, in some cases the 0.5-to-1 mitigation ratio will result in a substantial increase in overall habitat value.

Based on the abundance of remaining habitat for the Swainson's hawk cited in the NBHCP, as well as the substantial "avoidance, minimization and mitigation measures" required, the NBHCP and its EIR/EIS concluded that the level of development contemplated under the NBHCP would have a less-than-significant impact on Swainson's hawk and that impacts to Swainson's hawk would be *fully mitigated*. The same is true for all species covered under the NBHCP. In light of this evidence, the SPSP DEIR properly concludes that the impacts to sensitive species would remain less-than-significant.

Further, nothing in the NBHCP, NBHCP EIR/EIS, or the U.S. Fish & Wildlife Service's biological opinions suggests that the changes in crop patterns in the Natomas Joint Vision Area and airport bufferland areas would jeopardize the survival and recovery of giant garter snake, Swainson's hawk, or any other sensitive species protected under the NBHCP. (*See, e.g.*, Intra-Service Biological and Conference Opinion on Issuance of a Section 10(a)(1)(B) Incidental Take Permit to the City of Sacramento and Sutter County for Urban Development in the Natomas Basin, Sacramento and Sutter Counties, California (Biological Opinion) (June 24, 2003).) Instead, "so long as the City and Sutter limit urban development to their respective Permit Areas and continue to meet their respective obligations under the NBHCP, the Operating Conservation Program and associated permits will remain valid for each Permittee's Covered Activities." (Findings & Recommendations for the Issuance of Section 10(a)(1)(B) Incidental Take Permits Associated with the Natomas Basin Habitat Conservation Program (June 27, 2003), at 7.) Indeed, the NBHCP acknowledged throughout that agricultural lands outside of the Sutter County and City of Sacramento permit areas would continue to see changes in land-use patterns generally, as well as in the airport bufferlands specifically:

- "[I]t is possible that changes in the existing land uses outside the Permit Areas and within the Basin could occur over time that could impact foraging habitat anticipated under the NBHCP Operating Conservation Program." (NBHCP, at page IV-13.)

- "Because the Natomas Basin is partially urbanized, individual property owners of farm lands make decisions regarding types of crops, and in the case of rice, whether to fallow or drain fields fairly frequently. Thus, the acreage of agriculture by crop type, is often changing. The best available baseline of agricultural land uses by crop type as determined by CH_2MHill and field checked by May and Associates (2001) is used as the baseline for this HCP and related analysis. It is significant to note that total acres of cultivation and types of crops grown can vary significantly from year to year based on various factors, including market conditions and soil capability." (NBHCP, at page III-17.)

- "The [Sacramento International Airport Wildlife Hazard Management Plan] addresses a range of on-site management actions to be undertaken by the airport to reduce attractiveness of the airport lands to birds and to disperse birds that occur. Birds are attracted by open water, including ponded rainwater, and food from crops or recently tilled lands. Birds are dispersed by 'hazing' (frightening birds with loud noises or recorded distress calls). One component of the WHMP calls for reducing open water in drainage ditches, which could reduce GGS habitat. Another component calls for elimination of hawk roost trees near the runway and could marginally affect Swainson's hawk habitat." (NBHCP, at page III-10.)

Thus, while maintaining lands in agricultural production may be "beneficial" to sensitive species or otherwise "contribute to the overall success" of the NBHCP, agricultural production is not a precondition to the ongoing effectiveness of the NBHCP for the Sutter Pointe Specific Plan and other covered activities.

If development occurs outside of the Sutter County and Sacramento permit areas that would result in the conversion of additional agricultural lands to industrial, commercial, or other urban uses—including development that is currently envisioned but not officially proposed in the Natomas Joint Vision Plan area—the new development would trigger the need to evaluate its impact on the effectiveness of the NBHCP. Likewise, any development outside of the Sutter and Sacramento permit areas would need to mitigate that development's impact on sensitive species, as well as that development's impact on the effectiveness of the NBHCP.

The NBHCP also contains an adaptive management component that allows the Conservancy to adjust its acquisition and management program and ultimate reserve composition to respond to changes in agricultural land-use patterns in the Natomas Basin. For example, if agricultural production patterns change over time in a way that reduces wetland habitats but increases upland habitats, the Conservancy can focus more of its acquisition and management on managed wetlands. (*See, e.g.*, NBHCP, at pages IV-13 and -14 (outlining available adaptive management measures resulting from "independent program reviews" available to address changes in baseline habitat types); NBHCP, at page I-35 (explaining that through the NBHCP's adaptive management program, "the conservation plan will be reviewed and adjusted as determined appropriate to ensure a balance between types of habitat impacted by Authorized Development and types of habitat preserved by TNBC.").) Thus, the adaptive management program will ensure that the conservation strategy continues to "adequately mitigate for the impacts of Authorized Development" in the Natomas Basin. (NBHCP, at page I-35.) Consequently, the

fallowing of rice and row crops in Sacramento County does not require a new analysis in the SPSP EIR to ensure that the proposed project's impacts on protected species would be mitigated to a less-than-significant level.

Friends-A-10 The commenter states that because the public facilities and urban services will not be entirely paid for by project revenue, the DEIR fails to disclose impacts from: (i) a reduction of County services so that a sufficient level of service can be provided to the proposed project, or (ii) the effect of reducing urban services to the proposed project due to a failure of funding.

The County disagrees with the commenter's premise. As explained in response to comment Friends A-3 and Friends A-4, no shortfall will be incurred by the County. The County will require any shortfall in funding for services to be covered by the developers through one of the methods identified in the Urban Services Plan, most likely a vacant parcel tax or a special developer tax. These methods for funding any shortfalls would be in place before development is allowed to occur to insure the County is able to collect the necessary amount of revenue to fund public facilities and urban services. No changes to the text of the DEIR are necessary.

The commenter also states that the DEIR fails to disclose the environmental and socio-economic impacts of either a possible reduction of overall County services or the effect of reducing urban services to the proposed project due to failure of funding.

Because any potential shortfall in interim funding would be addressed as explained above, there would be no environmental or socio-economic impacts as suggested by the commenter. Therefore, no revisions to the text of the DEIR are necessary.

Friends A-11 The commenter again relies on the assumption that there will be funding shortfalls for county-wide and urban services.

See response to comments Friends A-3, Friends A-4, and Friends A-10.

Friends A-12 The commenter states that the DEIR fails to address the question of what will happen if future Sutter Pointe residents and landowners choose not to incorporate or if Sutter Pointe does not obtain the level of commercial and employment activity to support incorporation.

Such additional analysis is unnecessary because the Sutter Pointe Urban Services Plan and Fiscal Impact Analysis already consider operation of the Sutter Pointe area under a scenario where services are provided by a county service area or community services district in lieu of a city. Thus, even if the area never incorporates into a new city, public services would continue to be provided through another mechanism. Therefore, no changes to the DEIR are necessary.

Friends-A-13 The commenter describes DEIR and Sutter Pointe Sewer Master Plan text discussing wastewater treatment options for the proposed project. The commenter then observes that there is not yet any agreement between the County and SRCSD to provide sewage disposal for the proposed project. The commenter then speculates that if the SRCSD board or Sacramento LAFCO perceived uncertainty as to SRCSD's capacity, it is possible that necessary approvals for expansion of SRCSD service to Sutter Pointe would not be granted. The County recognizes that provision of sewage treatment and disposal by SRCSD is not assured, and has identified the alternatives discussed on DEIR page 2-36 and in Master Response 8, "Wastewater Service to the Project Site." Nevertheless, the

project proposal is to connect to the SRCSD. Furthermore, the DEIR concludes that the impacts of increased demand for wastewater conveyance and treatment plan facilities are potentially significant (pages 3.10-11 through 3.10-18), and Mitigation Measures 3.10-1a and 3.10-2 (pages 3.10-15 and 3.10-18) require that the availability of wastewater conveyance and disposal capacity be demonstrated prior to the approval of final maps or building permits. See also response to comments SRCSD-7 and SRCSC-10, which show that the District has the ability to accommodate substantially more development within its available (181 mgd) and planned (218 mgd) than previously thought.

Friends-A-14

The commenter alleges that the DER fails to disclose that SRCSD's SRWTP 2020 Master Plan EIR was successfully challenged in Superior Court. The commenter is mistaken; the DEIR clearly describes the legal situation surrounding the SRWTP 2020 Master Plan EIR (see pages 3.10-16 and -17 of the DEIR). See also response to comment Friends-A-15 and Coalition-38.

Friends-A-15

The commenter alleges that the DEIR fails to disclose that SRCSD's SRWTP 2020 Master Plan EIR was successfully challenged in Superior Court. The commenter is mistaken; the DEIR clearly describes the legal situation surrounding the SRWTP 2020 Master Plan EIR (see pages 3.10-16 and -17 of the DEIR). See also response to comment Coalition-38 and Master Response 8, "Wastewater Service to the Project Site."

As to scientific issues addressed in the litigation, the commenter is asking Sutter County to substitute its knowledge with the expertise of the SRCSD, the agency that operates the SRWTP. Although the EIR addressing the expansion of SRWTP from 181 mgd to 218 mgd was found to be inadequate by the Superior Court, the SRCSD believed the ruling was not correct and has appealed it, as described in the Sutter Pointe DEIR. In filing its appeal, the SRCSD believes its EIR fully evaluates the impacts of the SRWTP on water quality in the Sacramento River, and that its conclusions are based on substantial evidence. The Sutter Pointe DEIR summarizes the conclusions of the SCRSD EIR regarding water quality effects from expansion of the SRWTP, and discloses that there are other water quality impacts that could be disclosed if the EIR is found inadequate and the water quality effects are re-analyzed. This is a reasonable conclusion and disclosure of known and potential impacts associated with the SRWTP in consideration that this EIR is a programmatic EIR for a development project, and is one of many that will rely on treatment at the SRWTP. The SCRSD is the appropriate agency for fully assessing and disclosing the impacts of the operations of its wastewater treatment plan, and it is Sutter County's appropriate role to rely on the SCRSD's work, which appears both reasonable and well substantiated.

The commenter specifically states that there is "credible scientific information that ammonia is being discharged into the Sacramento River by SRCSD in volumes which are poisonous to fish…" The commenter does not include information to substantiate this conclusion. This is a very complex issue and is currently undergoing extensive scientific study. The most recent information on this subject was published by CALFED, a collaborative organization with the mission to improve California's water supply and the health of the San Francisco Bay/Sacramento-San Joaquin River Delta (the Delta). CALFED assembled a scientific panel of national experts to address the role of ammonia in the ecosystem of the Delta, and specifically in the decline of delta smelt, longfin smelt, threadfin shad, and striped bass, collectively referred to as the pelagic organism decline, or POD. On April 13, 2009 the panel released *A Framework for Research Addressing the Role of Ammonia/Ammonium in the Sacramento-San Joaquin Delta and the San Francisco Bay Estuary Ecosystem*. The Framework states:

Based on presentations and discussions at the workshop, we perceive two major concerns related to ammonia/um in the Bay-Delta ecosystem. First, the precipitous POD might be caused directly by toxicity of ammonia/um to the four fish species. Second, the Bay-Delta ecosystem is progressing through major food web shifts that include undesirable changes in community structure and productivity of the primary producers (phytoplankton and aquatic macrophytes) and intermediate consumers (e.g., zooplankton, larval fish). Those changes might be caused by ammonia/um and might be altering nutrient cycling, food web dynamics, and habitat conditions in the Delta, with concomitant but different ramifications downstream in Suisun Bay. Alternatively, ammonia/um enrichment might not be as important as other drivers of nutrient cycling, production, and food web changes (e.g., climate, hydrology, grazing). Underlying these major concerns are several human activities that have received considerable attention: 1) upstream discharges of ammonia/um-containing municipal wastewater [e.g., from Sacramento Wastewater Treatment Plant (SacWWTP) into the Sacramento River], and 2) large-scale pumping of water from the Delta (including entrainment of POD species and their food supply; and increased predation in the Clifton Court Forebay, from which the water is pumped). However, many other potential stressors also are present in the Bay-Delta system, including urbanization, stormwater runoff, residential and agricultural pesticide use, nutrient inputs, channelization, dredging, diking, and invasive species.

Conceptually, these two major concerns related to ammonia/um (the POD and the food web changes) are different yet possibly interrelated issues. For example, alternate hypotheses include: 1) current ammonia/um concentrations might not cause toxicity to any of the POD organisms, but ammonia/um-induced changes in phytoplankton community structure and productivity might be a major cause of the POD through cascading trophic interactions; 2) conversely, ammonia/um might not directly alter the structure and productivity of the phytoplankton community, but ammonia/um might be toxic to food organisms (e.g., invertebrates) on which POD organisms depend during at least part of their lives; or 3) ammonium enrichment is not a prime factor responsible for the trophic and biogeochemical changes.

In addition to ammonia/um, numerous other anthropogenic contaminants (e.g., pesticides, metals) known to be present in the Bay-Delta estuary and "natural" toxins (e.g., cyanobacterial exudates released by expanding Microcystis blooms) might directly affect POD organisms and/or decrease phytoplankton and/or zooplankton productivity. Furthermore, invasions of alien herbivores [e.g., overbite clam (*Corbula amurensis*) and Asian clam (*Corbicula fluminea*)] during the past several decades and/or expansion of invasive aquatic macrophytes [e.g., Brazilian waterweed (*Egeria densa*)] might be the major cause of declining standing stocks of phytoplankton. Finally, export of Delta water (including high quality seston that are food for larval stages of POD fishes), altered hydrologic conditions, temperature increases accompanying recent climate changes, and increased herbivory might be additional factors controlling the Bay-Delta estuarine communities (including populations of the POD fishes).

Based on presentations at the workshop and the background material provided to us, it does not currently appear possible to conclusively reject

> any of the proposed explanations for the POD and the food web changes. In fact, the multiplicity of diverse potential drivers in this ecosystem needs to be placed into a conceptual framework that could help guide research in the Bay-Delta ecosystem and eventually lead to well-grounded management decisions about ammonia/um. (Framework pages 2 and 3)

In summary, ammonia is suspected as a potential contributor to the POD. Many other factors appear to contribute to the POD, and the role of ammonia, if it has a role, is not currently known. Further study is needed and will be conducted. Given the current state of evolving science on this issue, it is not possible for Sutter County to draw any further conclusions on the role of ammonia in the health of the ecosystem of the Delta, and the extent to which effluent from the project that is treated and released at the SRWTP would contribute to any ecosystem effects. It is likely that the scientific understanding of this issue will evolve as more study is conducted, and more definitive information may be available for consideration in any subsequent CEQA documents prepared to consider service extensions of sewerage from the SRCSD to the site. No changes in the Sutter Pointe DEIR are warranted.

Friends-A-16

The commenter asserts that "the DEIR fails to disclose that there is credible scientific information that ammonia is being discharged into the Sacramento River by SRCSD in volumes which are poisonous to fish, including protected species of fish." (This issue is currently under review by the Central California Regional Water Quality Control Board.) The commenter then speculates that if SRCSD were found to be discharging deleterious amounts of ammonia or other toxic contaminants into the river, then SRCSD may not be able to expand its WWTP capacity without expending $1 billion or more to provide tertiary treatment. The commenter then asserts that the DEIR should disclose this information because it could affect the ability of the SRCSD to serve the proposed project and Sutter Pointe would have to pay its proportionate share of such improvements to the WWTP. The County respectfully disagrees; it is not appropriate for the DEIR to speculate on the possible outcome of RWQCB review. Please refer to the response to Friends-A-15 for a more detailed discussion of how this issue is addressed in the DEIR. The DEIR clearly acknowledges that sewer conveyance and treatment by SRCSD is not assured. In light of the uncertainty over the litigation, the DEIR identifies potential alternatives for provision of sewer on page 2-36, as acknowledged by the commenter. Please refer to Master Response 8, "Wastewater Service to the Project Site," for a detailed analysis of the sewer alternatives identified in the DEIR. With respect to potential future costs that might be passed on to SRCSD ratepayers, it would be inappropriate for the DEIR to speculate about what costs might be incurred, at what point, or how these costs might or might not be apportioned to potential future ratepayers in the County.

Friends-A-17

The commenter asserts the DEIR fails to analyze the effects of discharge of Sutter Pointe sewage to SRCSD, including the effect of increased discharge of ammonia and other wastewater contaminants by SRCSD into the Sacramento River as a result of the incremental wastewater generated by the proposed project, and alleges that such an analysis is required under CEQA "in light of credible scientific information that contaminants and ammonia discharged by SRCSD may be causing serious problems." The DEIR acknowledges the legal situation surrounding the SRWTP 2020 Master Plan EIR in a discussion of the legal history of that EIR on pages 3.10-16 and 3.10-17. The DEIR further acknowledges on page 3.10-17 that "because there is a relationship between the proposed project and the need for expansion of the SRWTP, implementation of the proposed project would contribute indirectly and incrementally to the related impacts."

The DEIR also acknowledges on page 3.10-17 that "in addition to these impacts, there is a potential that new significant impacts to water quality could be identified if the EIR for the SRTWP is found inadequate and impacts are re-analyzed. It is speculative to draw any such conclusion at this point since additional studies would be required to substantiate any new significant impacts." This is a highly complex issue, and as noted in the comment, the Regional Water Board is reviewing information pertaining to ammonia; the Board—the State's appointed water quality expert agency—has not drawn conclusions on whether ammonia from the SRWTP or other plants is "poisonous" to fish. The County therefore disagrees that additional discussion is necessary of the impacts related to SRWTP's proposed expansion beyond that already provided in the DEIR.

Friends-A-18

The commenter states that the findings in the DEIR that the proposed project will not cause groundwater overdraft are unfounded. The commenter bases this conclusion on information that a well owned by the Natomas Basin Conservancy (NBC) next to the Sacramento-Sutter County line pumped so much water that the Conservancy's well went dry due to local groundwater decline.

Conversations with John Roberts, Executive Director of the Natomas Basin Conservancy (Roberts, pers. comm., 2009), have confirmed that one of NBC's wells, the House Well, located near the southern boundary of NBC's flagship Betts, Kismat, and Silva preserve ("BKS Tract"), went dry apparently due to pumping of a nearby agricultural well. The neighboring agricultural well, the DeWit Well, is located approximately 170 feet southeasterly of NBC's House Well on NBC's BKS Tract.

In addition to the close proximity of the subject well, Mr. Roberts stated that the affected House Well was very shallow (approximately 88 feet in depth). Further, Mr. Roberts reported that NBC replaced the affected House Well by rehabilitating an older well, the Betts Well, located northeasterly of the DeWit Well. A third well on NBC's BKS Tract, the Silva Well, is located approximately 1,400 feet west of the Betts well. The Betts and Silva Wells are located approximately 1,100 feet and 800 feet from the DeWit Well, respectively.

Mr. Roberts indicated that the Betts and Silva Wells are deeper than the House Well, (e.g., the Silva Well is approximately 185 to 250 feet deep). Finally, Mr. Roberts stated that the DeWit Well is operated principally during the rice flood up season (late spring), while the Betts and Sylvia Wells are principally utilized at other times of the year. In the two years since the Betts Well was rehabilitated, Mr. Roberts reported that neither it nor NBC's other on-site well, the Silva Well, have experienced lowered water levels due to pumping of the DeWit Well. Mr. Roberts, however, did not know what impacts the DeWit Well would have on the Betts and Silva Wells if all three wells were operated at the same time.

Based on this information, it appears that the failure of the House Well is a direct result of well interference. Well interference occurs when two or more closely spaced wells pumping from the same or interconnected water bearing zones experience drawdown due to pumping of the other well(s).

The proposed locations of the Sutter Pointe groundwater supply wells are designed to minimize lowered water levels in the vicinity of the project site. The proposed Sutter Pointe wells are planned to produce groundwater from a greater depth (approximately 400 feet below ground surface) than most of the wells in the vicinity of the Project. The Groundwater Supply Assessment (GSA) prepared for the DEIR included extensive

analysis and testing of the aquifer underlying Sutter Pointe (DEIR Appendix C). The GSA analysis determined that the well spacing needed to be a minimum of 3,000 feet to reduce well interference between project wells to acceptable levels. Additionally, the GSA determined that local groundwater levels in the immediate vicinity of the proposed project wells would be lowered by approximately 10 feet, which is considered an insignificant change in local groundwater levels.

Lastly, the final location of the proposed Sutter Pointe wells would be chosen, in part, based on the location of existing wells in the area. In the case of NBC's wells on the BKS Tract, the closest of the Sutter Pointe wells would be approximately 2.3 miles west of the Silva Well. This distance exceeds the 3,000-foot minimum spacing proposed for the Sutter Pointe water supply wells.

The DEIR analyzed the potential impact of groundwater depletion by the proposed project (Impact 3.7-6, beginning on page 3.7-62) and concluded that both the on-site and off-site impacts would be less than significant.

While this incident occurred as reported by the commenter, the incident occurred because wells were placed too close together; therefore, it is not reasonable to conclude that the groundwater overdraft findings of the DEIR are unfounded. On the contrary, the GSA prepared for the DEIR determined the proposed Sutter Pointe groundwater system was adequately designed to prevent groundwater overdraft from occurring. The commenter incorrectly uses the term "overdraft" when the impact referred to is actually a localized lowering of groundwater levels due to well interference.

Friends-A-19

The commenter asks what measures will be taken to assure that groundwater pumping for the Sutter Pointe Project does not cause water table decline, and suggests that mitigation measures be required if groundwater pumping by the proposed project causes groundwater decline.

As explained above in Response to comment Friends-A-18, the GSA prepared for the Sutter Pointe DEIR found that groundwater overdraft would not occur as a result of groundwater pumping by the proposed project. The GSA found that local groundwater levels are estimated to be lowered by approximately 10 feet near the Sutter Pointe Project boundary due to Project pumping. At a distance of about one mile from the Project, groundwater levels are estimated to be lowered approximately five feet due to Project pumping. These water level declines are considered to be small especially since groundwater levels are currently very high. There is no basis to conclude that substantial drawdowns would occur as a result of pumping that would occur as part of the proposed project. As noted in response to comment Friends-A #18, based on the GSA, the DEIR analyzed the potential impact of groundwater depletion by the proposed project and concluded that both the on-site and off-site impacts would be less than significant. Therefore, the mitigation proposed by the commenter is not required.

Friends-A-20

The commenter asserts that the DEIR fails to disclose and discuss the environmental effects of the alternatives proposed for diverting surface water from the Sacramento River to supply the project, which the commenter states are required by CEQA. It is unclear from the comment whether the commenter is referring to the three water supply options analyzed in the DEIR at pages 3.9-18 through 3.9-24 (the Proposed Water Supply Program, Alternate "A" Revised Water Supply Program, and Alternate "B" Winter Diversion Water Supply Program), or the potential alternatives to the long-term water supply, analyzed at DEIR pages 3.9-27 through 3.9-34. The County believes that these

sections of the DEIR referenced above demonstrate that the DEIR discloses and discusses the environmental effects of all options for supplying water to the project, consistent with the recent California Supreme Court pronouncements regarding adequate water supply analyses under CEQA in the Vineyard decision.

Friends-A-21

The commenter restates conclusions in the DEIR regarding traffic impacts that will remain significant and unavoidable even after mitigation. The commenter then alleges that mitigation measures contained in Section 3.3 (Mitigation Measure 3.3[a]) of the Draft EIR are deferral of mitigation and not allowed under CEQA because the actual formula for calculating the fair share contribution for roadway improvements will be determined at a later date.

The commenter mischaracterizes Mitigation Measure 3.3-1(a) as not containing a formula to calculate the fair share payment. Furthermore, that mitigation is not deferral of mitigation as claimed by the commenter. This measure states the following: "In cases where the Project's fair share contribution is identified, the share will be based on the Project's relative contribution to traffic growth under 'cumulative plus project conditions.'"

This approach is consistent with the policies and exceptions set forth in the Transportation and Circulation Element of the 1994 Sutter County General Plan. Table 2-2 of the Public Facilities Financing Plan ("PFFP"), which is Appendix G1 to the Specific Plan, identifies the total estimated costs for all off-site road improvements, Sutter Pointe's estimated share of those off-site improvements, and the potential sources of funds for the non-Sutter Pointe shares. On page 2-6, the PFFP also includes the methodology for how those costs and shares were calculated. First, the traffic analysis zones were divided into two districts: the proposed project and all other areas (e.g. outlying counties, City of Sacramento, Yuba City). Then, the traffic model was used to determine the origin and destination of trips using the off-site facilities of the district. Finally, the share of trips by district was calculated. One trip was assigned to a district if a trip using a shared facility had an origin and destination in the same district (e.g., a trip from the east side of Sutter Pointe to the west side). For a trip with an origin and destination in different districts, half the trip was assigned to the origin district and half to the destination district. The trips percentages were then calculated based on the proportion of the Sutter Pointe trips to all of the trips. The other areas were then each assigned their percentages based on the same calculation. Pages A-14 and A-15 of Appendix A of the PFFP identify the Sutter Pointe's proposed shares of each of the off-site facilities identified in DEIR Mitigation Measure 3.3-1(a).

Friends-A-22

The commenter asserts that the proposed development is not appropriate in this location until contiguous urban development grows adjacent, because the vehicle miles traveled and associated greenhouse gas emissions and air quality impacts would be unreasonable. This comment fails to recognize that the Sutter County Board of Supervisors has previously designated the project area for future urban development and thus, the question of whether urban development is appropriate for this area was settled long ago. As explained in Section 1.4 of the DEIR, the County first applied an urban development designation to the Sutter Pointe Specific Plan area in 1996, through its Comprehensive General Plan Revision process. A 10,500-acre area was designated as Industrial/Commercial Reserve to accommodate future employment-related uses. In 2005, the County reduced the size of the area to 9,500 acres.

In November 2004, the voters of Sutter County approved Measure M, an advisory measure proposing a specific mix of commercial, industrial, residential, public-serving, infrastructure, and open space uses. The project proponents have developed the draft Specific Plan with these prior land use designations and advisory guidance in mind.

The proposed design, mixing, and placement of employment and residential uses in close proximity to one another is intended to reduce vehicle miles traveled and associated greenhouse gas emissions and air quality impacts overall to a greater extent than would otherwise be the case if no residential component were included in the plan, thus potentially requiring future employees within the Specific Plan area to commute longer distances from Yuba City, Marysville, Sacramento, or other communities. In addition, the Sacramento Area Council of Governments (SACOG) Blueprint Preferred Scenario and accompanying map recommend that the project area be designated for a mixture of employment and housing due its proximity to existing employment areas and services within core of the Sacramento region, potentially reducing vehicle miles traveled and greenhouse gas emissions compared to similar development that might occur in outlying areas of the region.

Friends-A-23 The commenter claims that the project's location and land uses are likely to generate VMT and greenhouse gas/air quality impacts in excess of project alternatives. This statement is not supported by any substantial evidence, so additional response is difficult. The VMT associated with the project is a factor of several complex issues, including the mix of land uses, the location of current residences that commute from the north of the site and through to jobs in Sacramento County (many of the commuters will be captured in employment opportunities at the site, shortening their commute), etc. Without specific data supporting the claims of this comment, no additional response is possible.

Friends-A-24 The commenter asserts that the current circulation specifications of the draft Specific Plan are not fully supportive of alternative modes of non-motorized transportation. As is further discussed in subsequent responses below, the circulation and infrastructure plans are actually designed specifically to promote and support alternative modes of transportation, including walking, biking, and public transit.

Friends-A-25 The commenter claims that the minimum street width required by the Specific Plan is conducive to higher speeds, would not support compact development, and would not support bicycle-pedestrian friendly communities according to guidelines contained in the Institute of Traffic Engineer's (ITE) publication *Context Sensitive Solutions* (2008).

Support of compact development is not an environmental threshold of significance and is not, therefore, a CEQA issue evaluated in the Draft EIR, However, the DEIR does contain an environmental threshold of significance for bicycle and pedestrian facilities (page 3.3-64), and that may be relevant to this comment:

> *"Create an inconsistency with bikeway or pedestrian policies or standard of plans adopted by the jurisdiction within the study area."*

The DEIR does not identify any conflicts with adopted policies or plans intended to encourage pedestrian and bicycle mobility. In fact, as noted in the DEIR, the proposed Specific Plan includes pedestrian and bicycle facilities such as sidewalks, bicycle lanes, and multi-use trails to accommodate non-motorized travel demand. Even with these facilities, the DEIR identifies potentially significant impacts from potential bicycle and pedestrian conflicts with autos in Impacts 3.3-19 and 3.3-40 and concludes that, even

with design and operational changes intended to mitigate these impacts, these potential conflicts will remain significant and unavoidable.

The referenced ITE document includes guidance for sizing local/collector roadways that allow for pavement width ranging from 30 to 50 feet. Therefore, the standards contained in the Specific Plan for residential minor street cross-section, which has a pavement width of 32 feet, is consistent with the recommendations in the referenced document. This street standard would not disrupt or interfere with existing or planned bicycle or pedestrian facilities or create an inconsistency with adopted County plans. The comment regarding minimum street width pertains to the Specific Plan and not the adequacy of the Draft EIR.

Friends-A-26 The commenter requests that the Specific Plan include connectivity standards with block sizes that support direct routes between destinations.

The Traditional Village (the residential area south of Riego Road) is envisioned to have traditional neighborhood design built around grid street patterns with walkable, tree-lined neighborhoods, porches, and street front amenities. The design of the Traditional Village is planned to extend into the Town Center, through common landscape and streetscape improvements. See Sutter Pointe Specific Plan Exhibit 6.4 for an example of a typical traditional neighborhood design layout with short blocks that might occur within the Traditional Neighborhood. The County does not agree that block sizes need to be changed to improve connectivity within the Specific Plan. Sutter Pointe already places an emphasis on ensuring connectivity between uses and providing linkages to existing regional transportation systems. The Specific Plan has policies that require connectivity of alternative modes of transportation, especially bicycle and pedestrian movement (see Specific Plan policies 6.2.1, 6.2.2, and 6.6.1 through 6.6.10). Riego Road is the most substantial barrier to pedestrian movements between the north part of the Specific Plan area and the Town Center and the Great Park. To facilitate safe pedestrian movement across this barrier, the Specific Plan identifies three pedestrian-enhanced intersections. These intersections represent an important means for connecting residents of the Greenbelt and Recreational Villages to amenities of the Town Center and Great Park. The commenter also suggests that the Specific Plan should also include a thorough delineation of through streets to vacant surrounding territories. Riego Road and State Route 99/70 have been identified as major transportation corridors to adjacent surrounding territories. The Specific Plan also supports construction of the Placer Parkway. No revisions to the Specific Plan are necessary.

Friends-A-27 The commenter asserts that, although the Blueprint Preferred Scenario Map slates some development for the project location, the Blueprint also incorporates principles of infill and compact development which oblige a contiguous sequence of development progressing from existing urban areas. Based on this interpretation, the commenter asserts that the project is inconsistent with these principles. SACOG's listing of Blueprint Principles (available online at http://www.sacregionblueprint.org/sacregionblueprint/the_project/principles.pdf), identifies transportation choices, mixed-use developments, compact development, housing choice and diversity, use of existing assets, quality design, and natural resource conservation. Discussion of infill in the Blueprint Principles occurs in the context of maximizing the assets of already-developed areas. Despite the fact that the project site is not contiguous with existing urban development, the proposed project offers a compact mix of uses which is proposed to be served by multiple transportation nodes, which is consistent with the Blueprint Principles. In fact, the SACOG Blueprint Preferred Scenario and accompanying map recommend

that the proposed project site be designated for a mixture of employment and housing due its proximity to existing employment areas and services within core of the Sacramento region.

Friends-A-28

The commenter asserts that the DEIR did not disclose or analyze the environmental effects from increased fuel consumption and resultant GHG emissions associated with "the isolation of the site from the nearest urban area and major employment centers."

The County disagrees with the commenter's assertion. Mobile-source emissions of GHG emissions from fuel-consuming motor vehicles associated with proposed project operations are discussed in DEIR Impact 3.17-2, which begins on page 3.17-13, and an estimate of the mobile-source GHG emissions is provided in Table 3.17-2 on page 3.17-4.

The commenter further asserts that the DEIR did not disclose or analyze the environmental effects from increased infrastructure needs associated with "the isolation of the site from the nearest urban area and major employment centers."

The County notes that it has been planning for development of the Sutter Pointe Specific Plan site since 1996. As further discussed in DEIR Chapter 1.0, "Introduction" on pages 3.1-3 and -4: "In November 2004, Measure M was put before the voters, and was overwhelmingly approved as a strategic plan for the region. The text of Measure M contained the following requirements for any future development of the area: … all necessary road, bridge, water, drainage, sewer, and other improvements would be paid for by the development…" The County believes that the DEIR fully identifies and evaluates the infrastructure needs of the proposed project at a programmatic level throughout DEIR Chapters 2.0 through 6.0.

No changes to the text of the DEIR are required.

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FRIENDS-B

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February 6, 2009

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Supplemental letter commenting on Sutter Pointe Specific Plan, etc

Dear Mr. Libby,

Earlier today I e-mailed to you, and also mailed first class, comment by me on behalf of Friends of Swainson's Hawk, ECOS, and Habitat 2020. Thereafter I discovered that I had omitted some discussion regarding the Sutter Pointe Specific Plan Public Facilities Financing Plan and its potential impact on the feasibility of mitigation measures which would require the construction of public facilities serving the Specific Plan Area. These comments are as follows:

What is the identity of the Master Developer which is mentioned throughout the Finance Plan and other Plan and DEIR documents? 1

The Financing Plan states that during Phase 1 of the Project, there will be fee revenue shortfalls of $78.7 million for construction of drainage facilities, $2.2 million to construct the agricultural irrigation component, $3.3 million to construct the dry utilities, $14.8 million for fire facilities, and unknown shortfalls for construction of parks, trails, transit facilities, sheriff facilities, and County corporation yard; and that the master developer will advance fund and construct these facilities and finance the cost of initial shortfalls until adequate fee revenues are collected. 2

Who is the master developer and has the master developer in fact committed to these expenditures, including those that will not be repaid until adequate fee revenues have been collected?

In the event that the master developer proves unable to pay expenditures incurred in the construction of the above-listed public facilities, would the County be legally immune for unpaid bills incurred by the master developer in facilities for the project? If so, please explain why the County would be legally immune from financial liability for unpaid debts incurred by the master developer to construct public facilities? 3

The Public Facilities Finance Plan includes issuance of Mello-Roos bonds by CFD's as a means of financing public infrastructure. In the event of default on the bonds, would the County be immune from liability for repayment? If so, please explain how. 4

Table 21-4 of the Public Facilities Finance Plan, p. 21-6, "Infrastructure Cost Burden per Residential Unit", shows the cost burden as a percentage of home price of 18% per unit for low density housing priced at $500,000, 18% per unit for medium density housing priced at $370,000, and 14% per unit for high density housing priced at $235,000.

The 18% cost burdens for high and medium density housing places the Project within the "may be feasible" category shown on Table 21-4. If in fact the actual costs are somewhat higher, or the sale prices somewhat lower, than assumed by the Public Facilities Financing Plan, the cost burden would exceed 20% of the sale prices, which would either (1) make the project infeasible or (2) make the construction of needed infrastructure partially or completely infeasible. If the project moved forward despite cost burdens exceeding 20%, the likely result (such as occurred in North Natomas) would be that necessary public infrastructure would be constructed to a lesser standard or deferred to an unknown later date. Given the closeness of the 18% infrastructure burden to the 20% infeasibility threshold, the DEIR must disclose and analyze the potential environmental and socio-economic consequences of the possibility that high costs relative to sale prices may cause the deferral of certain infrastructure or the construction of necessary public infrastructure to a lesser standard than needed to mitigate for the environmental impacts of the Project. 5

Please disclose the calculation that led EPS to conclude that the price of low density, medium density, and high density homes would be as stated in Table 21-4. Are these estimated sale prices based on real-world comparable sales in the region? If so, please disclose that data and the year and location of the comparable sales. This information must be disclosed in the Financing Plan or DEIR so that the reader and decision-makers can evaluate the financial feasibility of constructing the public infrastructure that the DEIR asserts will mitigate for various impacts of the project, and the likelihood that construction of promised facilities needed to mitigate for environmental impacts may or may not actually occur. 6

Respectfully submitted,

James P. Pachl

Friends-B-1

The commenter asks for the identity of the master developer referenced throughout the Finance Plan and other Specific Plan and DEIR documents. The Sutter Pointe Specific Plan was proposed by the Measure M Group. The Measure M Group consists of a group of landowners and developers that proposed Measure M in 2004 as a way to bring jobs to south Sutter County. The Measure M Group then entered into a funding agreement with the County in May 2005 to pay for all of the costs related to the County's review of the specific plan application, its related studies and plans, and the environmental impact report for the proposed project. In January 2006, the Sutter County Board of Supervisors accepted for processing a general plan amendment submitted by the Measure M Group. In July 2006, the Measure M Group submitted the draft Sutter Pointe Specific Plan. The principal members of the Measure M Group are AKT Investments, LNR Properties, Inc., Lennar Communities, Inc., Winn Communities, Inc., Al Montna, and Axel Karlshoej.

The Measure M Group is the intended master developer. However, members of the Measure M Group may sell a portion or all of their holdings before they develop the property. Their obligations to fund costs and shortfalls and satisfy conditions of approval run with the land. These obligations are identified in the project Specific Plan, master plans, development agreement, and EIR mitigation measures. The County will ensure these project conditions and obligations are satisfied before allowing development to proceed.

Friends-B-2

Please see Responses to Comments Friends-B-1 and Friends-A-3.

Friends-B-3

The commenter asks if the County would be legally immune from debt incurred by developers in constructing public facilities and if so, why they would be legally immune. The County would have no obligation to pay for the public facilities constructed by the master developer. The master developer will construct these facilities through private agreements between the developer and the contractor. The master developer's obligation to construct the facilities is a condition precedent to the developer being issued building permits for on-site building construction. To the extent public facilities are constructed and then dedicated to the County, the County will require the facilities to be dedicated free from any monetary liens and encumbrances.

Friends-B-4

The commenter asks about the issuance of Mello-Roos bonds through a community facilities district and if there was a default on the bonds, would the County have an obligation for repayment. Mello-Roos bonds are repaid through a special tax on the property that is served by the facilities financed through the bonds (with properties owned by local agencies exempt from the tax, Government Code section 53340 (c)). The obligation to pay the special tax is a debt secured by a lien on the property. A delinquency in payment of the special tax is treated in the same way as an ad valorem property tax and subject to the same penalties and the same procedure, sale, and lien priority in case of a default. (See Government Code section 53340 (e).) The County will not have any obligation for repayment of the bonds. Instead, the property would be sold and the proceeds used to satisfy the debt.

Friends-B-5

The commenter states that the DEIR must disclose and analyze the potential environmental and socio-economic consequences of the possibility that high development

costs relative to home sale prices may cause the deferral of certain public infrastructure. The commenter's suggestion that the County must analyze the socio-economic consequences of any shortfall in the provision of infrastructure is not an entirely correct or complete characterization of CEQA's requirements. While the County would have to disclose and analyze the environmental effects of any such shortfall in services, it is not required to analyze socio-economic effects generally. By themselves, economic and social impacts of a project "shall not be treated as significant effects on the environment. (CEQA Guidelines, §§ 15131, subd. (a), 15382.) "An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. . . . The focus of the analysis shall be on the physical changes." (*Ibid.*) The magnitude of the economic and social consequences may be relevant in determining whether the physical impacts are significant, but there must be an associated physical change before an agency is required to evaluate economic and social effects in an EIR. Thus, a proposed project's incidental effects on public services and facilities do not necessitate discussion in an EIR unless such effects are "related to or caused by physical change." (*Ibid.*) In any event, as explained below, there is no such risk that the proposed project will result in impacts relating to inadequate or deferred infrastructure.

The master plans prepared for the proposed project have identified the improvements necessary to provide service. The master plans also have identified the costs anticipated with construction of the necessary improvements. The Sutter Pointe Specific Plan requires the preparation of a phasing plan with each increment of development (see Specific Plan pages 10-5 through 10-6.) The Specific Plan includes the following policies that address this particular issue:

> Policy 10.3-4: The infrastructure and community facility requirements for each phase or sub-phase will include all backbone and offsite facilities necessary for such phase or subphase to proceed.
>
> Policy 10.3-5: Development shall occur by phase or identified sub-phases in sequential order. Phasing boundaries may change and/or parcels may move forward out of sequence, subject to review and approval of the County, provided that the improvements necessary to adequately serve the developing portion of the project will be provided in a timely manner and will be sufficient if no further development occurs.
>
> Policy 10.3-6: For each phase or sub-phase in which a proposal is inconsistent with the phasing plan, developers shall prepare a Phasing Study to demonstrate that adequate road and infrastructure improvements and public facilities are constructed to serve the phase or sub-phase being proposed for construction, as well as the balance of the project.

The foregoing policies require that each phase or sub-phase must have all the necessary facilities to support that increment of development and that those facilities will be sufficient if no further development occurs. To demonstrate that such facilities and improvements are planned for and constructed, applicants for development are required to submit one or more phasing studies to demonstrate that adequate road and infrastructure improvements and public facilities are constructed when needed. This will prevent the scenario about which the commenter is concerned, where inadequate facilities are provided or crucial infrastructure is deferred.

Friends-B-6

The commenter asks for the data used to determine the prices for homes within the Project. The following information was pulled in November 2008 from the Gregory Group survey of new home prices. As noted on Table FRIENDS-B-1, EPS included new development projects in Placer County, the Natomas area of Sacramento County, Yuba City, and the Plumas Lakes area of Yuba County. This resulted in a substantial range of prices for residential units of similar density. The estimates used for low-density and medium-density approximate the survey average. The estimate used for high density was adjusted from the noted average for three reasons: 1) too few data points; 2) the Yuba City project is substantially below the two Natomas projects; and, 3) the price differential between medium-density and high-density was far more substantial than should be anticipated.

Table Friends-B-1
Sutter Point Specific Plan Gregory Group Home Prices

Item	Region	Density	Price
Low Density			
The Estates at Morgan Creek	Roseville (Placer County)	2.0	$939,900
Willow Creek	Roseville (Placer County)	2.0	$522,627
Waterstone	Roseville (Placer County)	2.2	$606,900
Terra Vista at Stoneridge	Roseville (Placer County)	3.8	$531,450
Countryside	Linda (Yuba County)	4.1	$248,790
Montrose	Linda (Yuba County)	4.1	$302,990
Estancia Estates	Plumas Lake (Yuba County)	4.3	$322,200
Average Low Density		**3.2**	**$496,421**
Medium-Density			
Ironcrest	Roseville (Placer County)	5.9	$430,750
Laureate at WestPark	Roseville (Placer County)	5.9	$423,450
Amberly Place: the Estates and The Classics	Roseville (Placer County)	6.1	$408,847
Cresleigh Meadows	Plumas Lake (Yuba County)	6.8	$284,950
Trails at Westshore	Natomas (Sacramento County)	6.9	$400,040
Teal Hollow	Yuba City (Sutter County)	7.3	$318,990
The Regency Series at Orchard	Linda (Yuba County)	7.3	$298,323
Average Medium-Density		**6.6**	**$366,479**
High-Density			
Lincoln Villages Townhomes	Linda (Yuba County)	14.5	$119,900
Mystique	Natomas (Sacramento County)	16.1	$221,490
Serenate at Regency Park	Natomas (Sacramento County)	18.4	$196,000
Average High-Density		**16.3**	**$179,130**

Source: Gregory Group – November 2008 and EPS.

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February 6, 2009

VIA ELECTRONIC MAIL

Doug Libby, Principal Planner
Sutter County Planning Commission
1130 Civic Center Blvd.
Yuba City, CA 95993

RE: Comments on the Draft Environmental Impact Report for Sutter Pointe Specific Plan

Dear Mr. Libby:

On behalf of our clients, American States Water Company ("ASWC") and Golden State Water Company ("GSWC"), we appreciate the opportunity to provide comments to the Sutter County Planning Commission ("Commission") on the Sutter Pointe Specific Plan Draft Environmental Impact Report ("DEIR"), State Clearinghouse No. 2007032157. These comments are submitted to ensure that the agency decision makers comply with the provisions of the California Environmental Quality Act[1] ("CEQA"), the CEQA Guidelines[2] and applicable case law.

ASWC is a California corporation and a public utility holding company. GSWC is a wholly-owned subsidiary of ASWC, a California corporation and a public utility regulated by the California Public Utilities Commission ("CPUC"). GSWC owns and operates 41 water utility systems located in 10 counties and 75 communities throughout California. ASWC and GSWC are interested in the Sutter Pointe Specific Plan because GSWC is currently prosecuting an application before the CPUC for a certificate of public convenience and necessity for GSWC to provide water utility service to the Sutter Pointe development. Additionally, ASWC entered into a Water Transfer Agreement with Natomas Central Mutual Water Company ("Natomas") dated February 4, 2005, which requires Natomas to transfer up to 30,000 acre-feet per year from its Sacramento River water supplies to GSWC for municipal and industrial purposes within the Sutter Pointe area. 1

The DEIR is a draft program environmental impact report for buildout of Sutter Pointe over a 20- to 30-year period.[3] The environmental impact report ("EIR") constitutes the "heart of CEQA."[4] 2

[1] Cal. Pub. Res. Code §§ 21000 *et seq*.
[2] 14 Cal. Code Regs. §§ 15000 *et seq*.
[3] *See* DEIR at ES-1.
[4] *Laurel Heights Improvements Association v. Regents of University of California*, 47 Cal.3d 376, 392 (1988) ("*Laurel Heights I*").

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It "is an environmental 'alarm bell' whose purpose is to alert the public and its responsible officials to environmental changes before they result in ecological consequences. Because the EIR must be certified or rejected by public officials, it is a document of accountability."[5]

As a result of the DEIR's serious inadequacies regarding the availability of water for the Sutter Pointe development, there can be no meaningful public review of the project. For that reason, GSWC requests that the County of Sutter ("County") address these deficiencies and remedy them through the completion of its environmental review process in compliance with CEQA, which could include recirculation. 2 Cont'd

I. SUMMARY OF COMMENTS

As set forth in greater detail below, GSWC's comments focus on the specific deficiencies with the DEIR and WSA as follows: (1) the DEIR and WSA are deficient because they fail to identify an effective mechanism for the County to gain access to necessary surface water supplies from Natomas;[6] (2) the proposed mitigation for the water supply is inadequate because transferring interests from Natomas to the County is not related to reducing any environmental impact of the project, as well as being speculative;[7] (3) the DEIR fails to include or analyze GSWC as an alternative water provider;[8] and (4) the document fails to adequately analyze the impacts on agricultural resources.[9] Overall, the DEIR is flawed because it makes unsupportable assumptions with respect to the basis of how to obtain future water supply, thus its reliability is in question. 3 4 5 6 7

II. FACTUAL BACKGROUND

A. Natomas Central Mutual Water Company

The proposed Sutter Pointe development would occupy 7527.6 acres in south Sutter County. That area has traditionally been agricultural in nature, and includes very little municipal or industrial development. Many public services have been non-existent in the area.[10] In contrast, agricultural water demands caused the early formation of private irrigation companies to develop water and water rights from the Sacramento River and build extensive canals for the purpose of serving the irrigation needs of their shareholders. In 1921, several of these companies were joined together to form Natomas, which since that time has expanded to serve an area of approximately 55,000 acres straddling Sacramento and Sutter Counties, based upon several mergers with other mutual water companies. Natomas's service territory includes the proposed project. 8

[5] *Id.* (citations omitted).
[6] *See infra* at pages 5-13.
[7] *See infra* at pages 14-16.
[8] *See infra* at pages 16-17.
[9] *See infra* at pages 17-21.
[10] *See*, *e.g.*, DEIR at 2-7 ("Sutter County provides largely rural levels of public service that are not appropriate for the density and scale of the proposed project"), 2-25 ("Presently, there are no public water supply facilities on the project site") and 3.9-3.

Over the years, Natomas has formed or acquired a number of water rights on the Sacramento River, including six licenses and one permit issued by the State Water Resources Control Board ("SWRCB"). Natomas has constructed five points of diversion connected to miles of irrigation canals and numerous pump stations delivering water to shareholder lands within its corporate boundaries. Thus, the company has made significant investments in its water rights and water distribution system.

Natomas delivers water only to its shareholders.[11] Currently, there are approximately 31,652 shares outstanding, each of which is appurtenant to an acre of land within the Natomas corporate boundaries.[12] Approximately two-thirds of the Sutter Pointe lands have appurtenant Natomas shares (5009.3 acres), while the remaining one-third of Sutter Pointe lands do not have appurtenant Natomas shares (2518.3 acres).[13] The non-appurtenant lands are generally located on the eastern edge of the Sutter Pointe area. Shares of a mutual water company that are appurtenant to land may not be sold or transferred apart from the land, and no person may claim an interest in the shares other than the owner of the land.[14] An attempted transfer of appurtenant shares to a person other than the landowner will be ineffective, with a mutual water company normally refusing to change the shareholder of record in the corporate ledger.[15]

8 Cont'd

As a corporation, Natomas is empowered to act by the State of California, based on the terms of its articles of incorporation and bylaws.[16] Natomas is managed by its board of directors, which is elected by the shareholders.[17] All water rights are held by Natomas itself, and then utilized to distribute water to shareholders according to rules and regulations established by the board of directors. The company's water rights are not allocated among the shareholders, and no shareholder has any direct or indirect entitlement to any particular quantity of water or any other asset owned by Natomas.

B. Agreement with ASWC and GSWC

Beginning in approximately 2000, Natomas began discussions with ASWC and GSWC, resulting in a series of strategic agreements between the companies. On July 1, 2004, Natomas and American States Utility Services, Inc. ("ASUS"), a wholly-owned subsidiary of ASWC, entered into a Master Agreement and Operating Agreement, which contemplated that Natomas would begin offering municipal and industrial water service to its shareholders within the Sutter Pointe area with the assistance of ASUS. During the second half of 2004, in parallel with the campaign

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[11] *See* Cal. Pub. Util. Code § 2705. *See also Consolidated Peoples Ditch Co. v. Foothill Ditch Co.*, 205 Cal. 54, 63 (1928); *City of Glendale v. Crescenta Water Co.*, 135 Cal.App.2d 784 (1955).
[12] *See* Natomas Articles, Art. SECOND; Natomas Bylaws, Art. IX, § 2.
[13] *See* DEIR at 2-26, 3.9-4, 3.9-7; WSA at 2, 20; Appendix A to Appendix C, "Sutter Pointe Specific Plan Water Supply Master Plan," at 1 (hereinafter "WSMP").
[14] *See Wheat v. Thomas*, 209 Cal. 306, 287 P. 102 (1930); *Palo Verde Land and Water Co. v. Edwards*, 82 Cal.App. 52, 57 (1927). *See also* Cal. Corp. Code § 14300.
[15] *See Adaman Mutual Water Co. v. United States*, 278 F.2d 842, 844 (9th Cir. 1960); *Locke v. Yorba Irrigation Co.*, 35 Cal. 2d 205 (1950).
[16] *See* Cal. Corp. Code §§ 206, 207, 212.
[17] *See* Cal. Corp. Code § 300.

for the November 2004 Measure M advisory vote in Sutter County, Natomas decided that rather than providing municipal and industrial water service itself, the company preferred to transfer the water to ASWC, which would then provide municipal and industrial water service to Sutter Pointe through GSWC, its regulated subsidiary.

On February 4, 2005, approximately four years prior to the release of this DEIR, Natomas and ASWC executed the Water Transfer Agreement, according to which ASWC and GSWC agreed to apply to the CPUC for a certificate of public convenience and necessity to serve the Sutter Pointe development with municipal and industrial water. Natomas agreed to transfer up to 30,000 acre-feet per year of water to GSWC, based on Natomas's Sacramento River water rights and potential development of local groundwater supplies. In exchange for the transferred water, ASWC agreed to pay Natomas reasonable compensation, which reflects the economic value of such water. Pursuant to the Water Transfer Agreement, GSWC filed an application with the CPUC on May 31, 2006 and an amended application on August 29, 2008. GSWC is diligently prosecuting that application with the CPUC, including the preparation of a Master Infrastructure Advance Planning Study ("MIAPS") and environmental review.

9 Cont'd

C. Sutter County

After Natomas and ASWC executed the Water Transfer Agreement, those companies reached out to coordinate with the County regarding their provision of municipal and industrial water service to the proposed Sutter Pointe development. It soon became apparent, however, that the County intended to create its own plan, under which the County or another public agency designated by it would be the municipal and industrial water provider for Sutter Pointe. Essentially, the County's plan set forth in the DEIR relies on seizing Natomas's Sacramento River water rights for its own use. Natomas and GSWC have continually objected to the County's eminent domain-like scheme.

To date, the County has not reached any agreement with Natomas, ASWC or GSWC regarding the water supplies owned by Natomas and pledged to ASWC and GSWC through the Water Transfer Agreement. Thus, the County has no legal basis to claim any right or interest in the Sacramento River water supplies owned by Natomas. Instead, the County DEIR speculates that the County will be able to seize Natomas's water supplies by requiring the Sutter Pointe developers to assign their Natomas shares to the County through this DEIR process, and then later assert a claim to a portion of Natomas's water supplies needed to serve Sutter Pointe.

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The specific assumptions are included in the DEIR and relied upon for the Water Supply Assessment ("WSA") attached as Appendix C to the DEIR. As explained below, the WSA and DEIR are insufficient and do not meet applicable legal standards because they rely on the County's unfounded and speculative scheme to seize Natomas water supplies. Worse than the infamous "paper water" supplies, the County does not possess any contractual or other legal entitlement to water from Natomas and cannot meet the legal requirements of the WSA and DEIR.

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III. BASIC LEGAL REQUIREMENTS

A. Legal Requirements for the DEIR

CEQA defines an EIR as primarily "an informational document."[18] Its main purpose is to "inform public agency decision makers and the public generally of the significant environmental effect of a project, identify possible ways to minimize the significant effect, and describe reasonable alternatives to the project."[19]

An accurate, stable and finite project description is the *sine qua non* of an adequate EIR.[20] Under CEQA, the "project" is generally defined as the whole of an action having the potential to result in either a direct or reasonably foreseeable indirect physical change in the environment.[21] A clear and comprehensive description of the project being proposed for approval is critical to meaningful public review. A project description that omits integral components of the project may result in an EIR that fails to disclose all of the impacts of the project.[22] While extensive detail is unnecessary, an EIR is required to describe a project with sufficient detail and accuracy to permit informed decision-making.[23] As explained below, the DEIR fails to meet this basic threshold. 12

Once the project has been defined, an EIR must identify and describe the project's significant environmental effects, including direct, indirect and long-term effects.[24] An EIR must also briefly set forth the reasons that possible significant environmental impacts were found to be insignificant and thus are not discussed in detail in the EIR; this statement may be included in the EIR or in an attached copy of an initial study prepared for the project.[25]

B. Legal Requirements for the WSA

Senate Bills 901 (1995) and 610 (2001) established the primary legal standards for assessing the sufficiency of water supplies for new development projects.[26] Affected land developments are those that meet certain size thresholds. Those thresholds are met for developments that include more than 500 residential dwelling units, or industrial, manufacturing or processing plants, or an industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area.[27] The Sutter Pointe development, as 13

[18] Cal. Pub. Res. Code § 21061.
[19] CEQA Guidelines § 15121(a).
[20] *County of Inyo v. City of Los Angeles*, 71 Cal.App.3d 185, 193 (1977).
[21] CEQA Guidelines § 15378(a).
[22] *City of Santee v. County of San Diego*, 214 Cal.App.3d 1438, 1450 (1989); *Santiago County Water Dist. v. County of Orange*, 118 Cal.App.3d 818, 829 (1981).
[23] CEQA Guidelines § 15124.
[24] Cal. Pub. Res. Code § 21100(b)(1); CEQA Guidelines § 15126.2(a).
[25] CEQA Guidelines § 15128.
[26] *See* Cal. Water Code §§ 10910-10914.
[27] Cal. Water Code § 10912(a).

described in the DEIR, would exceed the size threshold for preparation of a water supply assessment.

These statutes require that as part of the environmental review conducted for a qualifying project pursuant to CEQA, the relevant public water supplier must prepare a "water supply assessment" of the reliability of water supplies, considering normal, single dry and multiple dry years, analyzed over a 20-year horizon. If no public water supplier is identified, then the water supply assessment is prepared by the local land use agency. The city, county or other land use agency considering land use approval must then analyze the environmental impacts of providing water to the project based upon the public water supplier's analysis and any other relevant considerations.

The basic requirement is that a water supply assessment must "include a discussion with regard to whether the public water system's total projected water supplies available during normal, single dry, and multiple dry water years during a 20-year projection will meet the projected water demand associated with the proposed project, in addition to the public water system's existing and planned future uses, including agricultural and manufacturing uses."[28] An assessment must identify the water supply entitlements, water rights or water service contracts related to the planned water supplies for the project, as demonstrated by written contracts, capital financing plans, federal, state and local permits for construction of infrastructure and regulatory approvals required to be able to convey or deliver the water supplies.[29] If the water demand for a proposed project is accounted for in an adopted urban water management plan, the public water system may incorporate the plan information into the assessment, in whole or in part, into the evidentiary record.[30] If there is no current urban water management plan, such as is the case here, the water supply assessment must be based on the available evidentiary record.[31]

13 Cont'd

Upon the water provider's adoption of the water supply assessment, that document must be forwarded to the lead agency and incorporated into the CEQA document being prepared for the project and the lead agency must determine, based on the entire record, whether projected water supplies will be sufficient to satisfy demands for the project, in addition to existing and future uses.[32]

In addition to the statutory requirements discussed above, the California Supreme Court has set forth several general principles for analyzing the sufficiency of water supplies for new development.[33] First, an environmental review document cannot simply ignore or assume a solution to any water supply constraint or limitation. Second, a review document for a large project to be built over a period of years cannot limit its analysis to water supplies needed for the first stage or first few years, but must assume the entire project will be built and analyze the

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[28] Cal. Water Code § 10910(c)(3).
[29] *See* Cal. Water Code § 10910(d)(2).
[30] *See* Cal. Water Code § 10910(c)(2).
[31] *See* Cal. Water Code § 10910(c)(3).
[32] Cal. Water Code § 10911(b), (c).
[33] *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal.4th 412, 430-32 (2007).

impacts of supplying water to the entire project. Third, future water supplies must bear a likelihood of actually proving available; speculative sources and unrealistic allocations are generally insufficient. An environmental review document must include a reasoned analysis of the circumstances affecting the likelihood of availability for each water supply source. Finally, CEQA requires some analysis of the environmental impacts of possible alternative supplies that may be needed to supplement any uncertainty that may exist. Nonetheless, an analysis of alternative supplies is not necessary if it is clear that future water supplies will likely be available. The review document may not simply provide that if the primary future water supply fails, the development will not proceed.

14 Cont'd

One recent California Court of Appeal decision has applied the principles set forth above in its analysis of a water supply assessment for a proposed mixed residential and commercial development.[34] In doing so, the court held that the environmental impact report at issue in the case satisfied the third principle because the "record contains substantial evidence demonstrating a reasonable likelihood that [the challenged water supply] will be available for the project's near- and long-term needs."[35] The court also held that "some legal uncertainty"—in that case, uncertainty involving the pendency of litigation related to the water supply—did not trigger the requirement of analyzing possible alternative supplies under the fourth principle, since the degree of uncertainty was insubstantial.[36] Therefore, the water supply analysis was found to be legally adequate. Further, the court clarified that the fourth principle above, which requires the analysis of a replacement or alternative water source, is only required if it is "impossible to confidently determine" that anticipated future water sources will be available."[37]

15

IV. THE PROPOSED SURFACE WATER PLAN IN THE DEIR AND WSA IS DEFICIENT AND CANNOT SUPPORT THE PROJECT

A. Description of the Surface Water Plan

The DEIR describes the water supplies for the Sutter Pointe development project as a combination of surface water from the Sacramento River and local groundwater.[38] Surface water diversions are based on use of the water rights of Natomas during the irrigation season[39] and a new winter diversion permit to be obtained by the water utility provider from the SWRCB.[40] The DEIR describes three alternative water supply programs, including the "Proposed Water Supply Program" which would utilize approximately 12,128 acre-feet per year of Natomas surface water supplies to meet 48.1 percent of total water demands,[41] the "Alternate A Revised Water Supply Program" which would utilize 15,638 acre-feet per year of Natomas surface water

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[34] *Santa Clarita Organization for Planning the Environment v. County of Los Angeles*, 157 Cal.App.4th 149 (2007).
[35] *Id.* at 162.
[36] *Id.* at 162-163.
[37] *Id.* at 162-163.
[38] DEIR at 2-25 through 2-35; WSA at 3.
[39] *See* DEIR at 2-26 through 2-29, 3.9-26; WSA at 5; WSMP at 2.
[40] *See* DEIR at 2-29; WSA at 4, 25, 28, 69.
[41] *See* DEIR at 2-28 through 2-29, 3.9-20; WSA at 4, 30-32, 67.

supplies to meet 62.1 percent of total water demands,[42] and the "Alternate B Winter Diversion Water Supply Program" which would utilize 13,126 acre-feet per year of Natomas surface water supplies to meet 52.1 percent of total water demands.[43]

16 Cont'd

Under each of the water supply alternatives identified by the DEIR, the Natomas water supplies are required to meet between 48 and 62 percent of the Sutter Pointe water demands at buildout. The DEIR does not identify any potential alternative source of surface water during the irrigation season other than Natomas. Thus, for purposes of the DEIR and this comment letter, the Sutter Pointe project must have access to the Natomas surface water supplies.[44]

17

The DEIR states that the County intends to set up itself or another public agency as the municipal and industrial water provider for Sutter Pointe.[45] In that role, the County must gain access to the Natomas surface water supplies, or else it will fail to describe a feasible project, as noted in the previous paragraph. In the DEIR, the County appears to claim two alternative mechanisms by which it proposes to gain access to the Natomas water supplies. First, the DEIR claims that the County will be able to access water supplies from Natomas as a shareholder of that company.[46] Second, the DEIR asserts that "Sutter County plans to enter into an agreement with [Natomas] to act as the urban wholesale distributor of surface water."[47] Each of these proposed mechanisms is described below.

18

B. Inadequacy of First Mechanism: Natomas Shareholder

The first claimed mechanism for the County to gain access to Natomas surface water supplies is as a shareholder. The County proposes to require the Sutter Pointe developers to assign to the County (or other public agency water provider set up by the County) all Natomas shares that are appurtenant to the Sutter Pointe lands, i.e., approximately 5,009 shares in total.[48] The DEIR then asserts that as the holder of those shares, the County will have the right to delivery of sufficient water supplies to meet the demands of any of the three alternative water supply programs described above.[49]

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The DEIR quantifies the alleged claim to Natomas water supplies in three ways: (1) the surface water demands of the Sutter Pointe development as a percentage of total demands for surface water within the Natomas corporate boundaries, equaling roughly 30,050 acre-feet per normal year and 22,538 acre-feet per critically dry year;[50] (2) historical irrigation water deliveries to the

[42] *See* DEIR at 2-28 through 2-29, 3.9-20 through 3.9-22; WSA at 4, 33-34, 67.
[43] *See* DEIR at 2-28 through 2-29, 3.9-22 through 3.9-24; WSA at 4, 35-36, 68.
[44] *See* WSA at 17.
[45] *See* DEIR at 2-25, 3.9-3, 3.9-39; WSA at 5, 67.
[46] *See* DEIR at 2-26 through 2-27; WSMP at 70.
[47] DEIR at 2-25.
[48] *See* DEIR at ES-65 through ES-67. The Natomas corporate documents do not allow fractional shares, and acreage is rounded to the nearest whole number to determine the number of shares to be issued for certain lands. Natomas Bylaws § IV.3.
[49] *See* DEIR at 2-27.
[50] *See* DEIR at 2-26, 3.9-8; WSA at 22-23; WSMP at 19.

Sutter Pointe lands, equaling roughly 30,000 acre-feet per year;[51] and (3) the percentage of shares appurtenant to the Sutter Pointe lands (15.83 percent) compared to total shares outstanding in Natomas.[52] The DEIR asserts that:

> Regardless of whether [Natomas] supplies available to the proposed project are based on historical use (30,000 afy), historical diversions (22,000 afy), or the shareholder's percent ownership of [Natomas's] shares (13,930 afy), the shareholder lands on the project site would have a minimum entitlement of 13,930 afy of surface water during normal years and 10,448 afy during critically dry years.[53]

19 Cont'd

This first mechanism as described in the DEIR is deficient because it has no legal or institutional basis within Natomas.

No Assigment of Shares. As an initial matter, the developers cannot assign their shares in Natomas to the County, because of the appurtenancy of those shares. As described above, Natomas shares are appurtenant to the land, so they may not be assigned to any person other than the landowner.[54] Within Sutter Pointe, the landowners will be the developers, followed by individual residential or business property owners. Thus, the Natomas shares appurtenant to those lands cannot effectively be assigned to the County.

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The appurtenancy of the Natomas shares is determined by the company's articles of incorporation and bylaws and cannot be changed without an amendment to those documents. In order to achieve such amendment, the County would need to obtain two-thirds approval of all the shareholders of Natomas[55] during a time when—prior to the amendment, as a non-shareholder—the County itself would not possess any voting rights and could not propose an amendment to the corporation and its shareholders. In order for the DEIR and WSA to adequately describe and analyze the project and its water supplies as required under CEQA, SB901 and SB610, inclusion of the County's plan to amend the Natomas articles and bylaws must be discussed in order for both the public and County decision makers to understand the full impacts of the project, specifically the reliability of its proposed water supply and its environmental impact.

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Not only do the DEIR and WSA fail to discuss the required amendment of Natomas's articles and bylaws, but any such discussion should find the County's scheme to be at best hopeful conjecture. The speculativeness of a shareholder vote requiring two-thirds approval, when the

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[51] *See* DEIR at 2-26 through 2-27, 3.9-8; WSA at 22; WSMP at 18-19.
[52] *See* DEIR at 2-27, 3.9-8; WSA at 23; WSMP at 19.
[53] DEIR at 2-27, 3.9-9.
[54] *See* Natomas Articles, Art. SECOND; Natomas Bylaws, Art. IX, § 2. *See also* DEIR at ES-65 through ES-66 (requiring assignment of Natomas "shares…that are appurtenant to the land" in Sutter Pointe).
[55] *See* Cal. Corp. Code §§ 152, 902, 903 (two-thirds vote required for amending articles); Natomas Articles, Art. SEVENTH (two-thirds vote required for amending bylaws); Natomas Bylaws, Art. XI, § 1 (two-thirds vote required for amending bylaws).

developers would control at most 15.83 percent of the voting shares of Natomas, indicates that the County's mechanism to receive water from Natomas cannot meet the requirements of certainty in the water supply context for an EIR or water supply assessment. For this reason, the DEIR and WSA are both deficient and must be modified substantially in order to be made adequate, likely requiring recirculation of the DEIR. 22 Cont'd

No Allocation of Water to Shareholders. Even if the County were to hold all shares of Natomas that are appurtenant to the Sutter Pointe lands, it would not possess any entitlement to receive water other than according to the Natomas articles, bylaws and rules established by the board of directors. The DEIR discusses three ways in which water could potentially be allocated by a mutual water company—*viz.*, by proportional water demands, historical deliveries, or number of shares—, but the DEIR omits any discussion of which of these ways Natomas in fact has adopted or is likely to adopt in the future. The DEIR merely states that there would be sufficient surface water supplies available to the County "regardless" of which way its allocation might be determined.[56] In order for the DEIR and WSA to adequately describe and analyze the project, they must specify which allocation method or methods would actually be relied upon by the County to obtain water for Sutter Pointe. 23

This omission from the DEIR and WSA discussions takes on more significance based on the reality that to date Natomas has not allocated water among its shareholders, but holds all water rights and supplies in gross. Water deliveries to each shareholder in any given year or day are determined according to an application system, and no shareholder is entitled to any particular amount of water. Thus, the discussion contained in the DEIR and WSA is inadequate because it makes the incorrect assumption that the County, if it becomes a shareholder, would have an entitlement to water based upon one of the three methods discussed above. In fact, the County would not be entitled to any particular amount of water, and the County's surface water plan is infeasible. 24

There is a statement in both the DEIR and WSA that "[u]nder the terms of [Natomas's] Bylaws, then, the project area is entitled to receive up to 15.83% of [Natomas's] total diversions."[57] The DEIR and WSA fail to cite any specific provision of the Natomas bylaws for this proposition. In order to clear up any confusion, the DEIR and WSA need to be clear: *there is no citation for such a provision in the Natomas governing documents because neither the Natomas articles of incorporation nor its bylaws nor any action by the Natomas board of directors has allocated that company's water supplies among its shares or the lands within its corporate boundaries*. Thus, the statement in the DEIR and WSA is factually incorrect, and since both documents rely on that false assumption as written, their conclusions regarding the availability of Natomas surface water supplies are not justified. 25

In addition, the Water Supply Master Plan, which is Appendix A to the WSA, states that: "With regards to the surface water, it is clear that the [Natomas] shareholder lands within the SPSP 26

[56] *See* DEIR at 2-27, 3.9-9, 3.9-27, 3.9-33; WSA at 23; WSMP at 20.
[57] DEIR at 3.9-7; WSA at 20.

planning area have a legal right to the beneficial use to their prorata share of the existing surface waters held by [Natomas]. After all, the [Natomas] shareholder lands within the SPSP planning area are the real parties that benefit from the water rights held by [Natomas]."[58] As explained in this comment letter, that statement is factually and legally incorrect, and an owner of Natomas shares appurtenant to the Sutter Pointe lands does not possess the right to Natomas water supplies other than pursuant to that company's articles, bylaws and board of director decisions. None of the Water Supply Master Plan, WSA or DEIR analyzes how the County's water supply scheme will overcome the difficulties described in this comment letter, and those documents are legally deficient without such analysis. 26 Cont'd

The County might claim that it is entitled to have Natomas allocate water between its shareholders in the future, even though Natomas has not yet made any such allocation. That argument would likely rely upon the basic concept that shares in a mutual water company represent the right to receive water.[59] However, such an argument would not create a right for the County to receive water from Natomas outside the ordinary channels established by the board of directors. A shareholder in a mutual water company is only entitled to receive water according to the rules and regulations established by the company's board of directors. As the California Supreme Court has held, "neither one nor any number of such stockholders would or could possess the legal right to take or to receive the amount of water to which such stockholder or stockholders may be entitled by another manner or means than those supplied by the corporation itself in the exercise of its full and legal control over the reception and distribution of" the company's water supplies.[60] Here, the Natomas board has not allocated water among the shareholders, and the County must live with that decision. 27

Furthermore, even if the County were to obtain Natomas shares for the Sutter Pointe lands, that would not give the County any substantial control over the Natomas board so that it could direct the company to allocate water supplies among the various shareholders. Under the County's proposed scheme it would control at most only 15.83 percent of the Natomas shares. With this relatively small percentage of shares, the County would not be able to control the board to allocate Natomas's water supplies among the shareholders and implement the County's plan. 28

The DEIR and WSA are inadequate in that they do not address any of the legal and institutional factors described above.

No Deliveries of Municipal and Industrial Water. There is a further institutional barrier to the County gaining access to the Natomas surface water supplies based on forcing the Sutter Pointe developers to assign their Natomas shares to the County. The Natomas articles and bylaws both provide that Natomas does not possess the authority to deliver water to its shareholders for municipal and industrial purposes, but is limited to delivering water to shareholders for irrigation 29

[58] WSMP at 71.
[59] *See Locke v. Yorba Irrigation Co.*, 35 Cal.2d 205, 209 (1950); *Erwin v. Gage Canal Co.*, 226 Cal.App.2d 189, 193-194 (1964).
[60] *Consolidated Peoples Ditch Co. v. Foothill Ditch Co.*, 205 Cal. 54, 64 (1928).

use only.[61] Thus, the County could not simply request the delivery of water from Natomas to serve Sutter Pointe. 29 Cont'd

The only method by which Natomas has the corporate authority to provide water to any shareholder for municipal and industrial use is pursuant to the Bylaws, Article III(g), which states that "the Corporation, in the discretion of the Board of Directors, shall be permitted to engage in the business of wholesaling raw water to shareholders for non-agricultural purposes for use within the service area of the Corporation." However, on its face, that provision requires the approval of such an arrangement by the board of directors. The DEIR and WSA do not analyze how the County might go about getting the Natomas board to approve such a wholesale arrangement, or the likelihood that it might be able to obtain such board approval. 30

In fact, in 2004 and 2005 the Natomas board evaluated its alternatives and deliberately rejected the County's proposed plan in favor of working with ASWC and GSWC pursuant to the Water Transfer Agreement. The Natomas board informed the County of its opposition to the latter's proposed scheme in a letter dated June 6, 2006, in which it stated unequivocally that "on behalf of our farmer-shareholders who have worked this land for decades, we strongly and respectfully request that the Sutter County Water Agency does not pass the proposed Resolution of Intent" to provide water service to Sutter Pointe. In light of the Natomas board actions executing the Water Transfer Agreement with ASWC and GSWC and opposing the County's provision of water service, the likelihood of the County gaining approval of a wholesale agreement with Natomas should be seen as slight. At a minimum, the DEIR and WSA must analyze for themselves the likelihood of the County persuading the Natomas board to deliver municipal and industrial water to it according to a wholesale agreement. 31

C. Inadequacy of Second Mechanism: Agreement with Natomas

As noted above, the DEIR also describes a second mechanism to gain access to surface water from Natomas, that "Sutter County plans to enter into an agreement with [Natomas] to act as the urban wholesale distributor of surface water."[62] It is unclear from the DEIR how this statement fits with or is different from the first mechanism, that the County will obtain surface water by being a shareholder of Natomas. This vagueness makes it impossible for ASWC, GSWC and other reviewers of the DEIR and WSA to understand the project description and proposed water supplies and necessitates clarification and recirculation of the documents. 32

The timing of an agreement is also speculative. The Water Supply Master Plan, Appendix A to the WSA, regarding the timing of an agreement states only that: "While it may take some time to finalize an agreement between [Natomas] and Sutter County, the development can progress using groundwater for several years (to nearly 52%± build out, if required) before surface water is actually needed. Sufficient time exists to finalize an agreement with [Natomas] since the underlying right to the water is not in question."[63] This is exactly the type of avoiding or 33

[61] *See* Natomas Articles, Art. SECOND; Natomas Bylaws, Art. III(a).
[62] DEIR at 2-25.
[63] WSMP at 71.

ignoring a water supply problem that is not allowed under CEQA, SB901 and SB610.[64] It fails to offer any real analysis of the timing or likelihood of obtaining an agreement between Natomas and the County, but simply assumes that an agreement would happen because "sufficient time exists" to work out the details. In addition, it relies upon a false assumption that an agreement will happen "since the underlying right to the water is not in question," when in fact, as described above, there is significant doubt regarding the existence and contours of any such right. 33 Cont'd

As discussed in the previous section, there is a mechanism under the Natomas bylaws whereby the company may deliver municipal and industrial water to a shareholder pursuant to a wholesale agreement, as approved by the board of directors. However, the County has not analyzed the likelihood that it could successfully reach such an agreement with Natomas, and in light of past actions of the Natomas board of directors, this mechanism appears to be speculative. It does not meet the relatively stringent standard for demonstrating reliable water supplies, that those supplies are "reasonably likely" to be available to the project." Thus, the DEIR and WSA are deficient to the extent that they rely upon this second mechanism. 34

D. Conclusions Regarding Adequacy of WSA

As noted in Section III.B above, an EIR or water supply assessment cannot simply ignore or assume a solution to any water supply constraint or limitation. Rather, the documents must provide a reasoned analysis of the likelihood of water supplies being available, based on substantial evidence. Here, the DEIR and WSA are insufficient because they do not address the likelihood of surface water supplies being available from Natomas, but simply assume that such supplies will be available even in the face of substantial evidence that suggests the opposite is true. 35

Because there is no current municipal and industrial development in the Sutter Pointe area, all the water supplies must be considered to be "future" supplies subject to the requirement that they bear a likelihood of actually proving available, rather than being based on speculative sources or unrealistic allocations. As discussed above, the whole of the legal and institutional circumstances surrounding the Natomas surface water supplies supports a conclusion that that source likely will not be available to the County to serve Sutter Pointe. Instead, the DEIR and WSA rely on precisely the type of speculative source and unrealistic allocation that CEQA, SB901 and SB610 prohibit. 36

The substantial legal uncertainties facing the County's ability to access the Natomas surface water supplies mean that in order to be adequate, the DEIR and WSA would need to analyze an alternative water supply. The documents as currently written, however, contain no discussion of any alternative supply and thus are legally deficient. 37

[64] *See supra* note 33 and accompanying text.

V. THE PROPOSED MITIGATION MEASURES FOR WATER SUPPLY ARE INSUFFICIENT

A. Legal Requirements for Mitigation Measures

A fundamental purpose of an EIR is to identify ways in which a proposed project's significant environmental impacts can be mitigated or avoided.[65] To implement this statutory purpose, an EIR must describe fully enforceable and feasible mitigation measures that can minimize the project's significant environmental effects.[66] An EIR should focus on mitigation measures that are feasible, practical and effective, and not unresponsive to the potential environmental effects at issue in the project.[67]

A public agency may not approve a project as proposed if feasible mitigation measure or feasible alternatives are available that would substantially lessen or avoid the project's significant environmental effects.[68] Feasibility is a function of several factors, including the size of the project, the severity of its likely environmental impacts and the geographic scope of the project.[69] Essentially, mitigation measures should avoid an impact altogether by not taking a certain action or portion of an action, minimize impacts by limiting the degree or magnitude of the action and its implementation, rectify an impact by repairing, rehabilitating or restoring the impacted environment, or reduce or eliminate the impact over time by preserving and maintaining certain operations during the life of the action.[70] In other words, CEQA requires that an EIR discuss mitigation measures that can minimize the project's significant environmental effects.[71] 38

Lead agencies should avoid vague, incomplete, or untested mitigation measures. Mitigation measures must not be remote and speculative.[72] A mitigation measure identified in an EIR may be legally inadequate if it is so undefined that it is impossible to gauge its effectiveness.[73] Lead agencies also should not use vague or incomplete mitigation measures as a means to avoid evaluating and disclosing project impacts.[74]

In the DEIR, the County has proposed Mitigation Measure 3.9-1 in order to gain access to the Natomas surface water supplies as described in the preceding section of this comment letter. As 39

[65] Cal. Pub. Res. Code §§ 21002.1(a), 21061.
[66] CEQA Guidelines §§ 15121(a), 15126.4(a).
[67] *Napa Citizens for Honest Gov't v. Napa County Bd. of Supervisors*, 91 Cal.App.4th 342, 365 (2001); *Concerned Citizens of S. Cent. Los Angeles v. Los Angeles Unified Sch. Dist.*, 24 Cal.App.4th 826, 841 (1994).
[68] Cal. Pub. Res. Code § 21002.
[69] CEQA Guidelines §§ 15151, 15204.
[70] CEQA Guidelines § 15370.
[71] *See* Cal. Pub. Res. Code §§ 21002, 21002.1(a), 21100(b)(3), 21151; CEQA Guidelines § 15126.4.
[72] *Federation of Hillside & Canyon Ass'ns v City of Los Angeles*, 83 Cal.App.4th 1252 (2000).
[73] *See Kings County Farm Bureau v City of Hanford*, 221 Cal.App.3d 692 (1990) (mitigation agreement that called for purchases of replacement groundwater supplies without specifying whether water was available was inadequate measure for mitigating project's effect on groundwater supplies); *San Franciscans for Reasonable Growth v City & County of San Francisco*, 151 Cal.App.3d 61, 79 (1984).
[74] *See Stanislaus Natural Heritage Project v County of Stanislaus*, 48 Cal.App.4th 182, 195 (1996) (EIR was inadequate because it did not evaluate impact of supplying water to large new development project and instead included mitigation measure that development would not proceed if adequate water was not available).

described in this section, however, the County's proposed mitigation measure regarding water supplies is infeasible, and is vague, incomplete and untested in a way that suggests the County is trying to avoid evaluating the true availability of water supplies for the County to be the water supplier to Sutter Pointe. 39 Cont'd

B. Mitigation Measure 3.9-1

The DEIR recognizes that the surface water supplies the County needs to serve Sutter Pointe are currently owned by Natomas. In order to overcome that legal and institutional barrier, the County has proposed Mitigation Measure 3.9-1, which requires that developers convey their Natomas shares to the County or secure an agreement between Natomas and the County for the delivery of water for purposes of the Sutter Pointe development.[75] That measure provides specifically that:

> b. In approving a small-lot tentative subdivision map pursuant to paragraph (a), the County shall impose conditions accomplishing the following: (i) *requiring, prior to final map recordation, either the conveyance to the County, or to any other public entity responsible for providing wholesale or retail surface water to the affected property (e.g., a County Service Area), all shares the affected landowner(s) may hold in the Natomas Central Mutual Water Company that are appurtenant to the land subject to the tentative subdivision map or, in lieu thereof, a contract with Natomas Central Mutual Water Company providing a water supply equivalent to that available through such shares*; and (ii) disallowing non-agricultural development in the area subject to the map absent such conveyance or agreement or, alternatively, absent the conveyance or agreement, proof of a right to use an alternate surface water source that is of sufficient quantity to serve the area and is as reliable as the surface water the Natomas Central Mutual Water Company uses pursuant to its water rights and consistent with its settlement agreement with the United States Bureau of Reclamation. 40
>
> c. Prior to recordation of each final subdivision map, or prior to County approval of any similar project-specific discretionary approval or entitlement required for nonresidential uses, the project applicant(s) of that project phase or activity shall demonstrate the availability of a reliable and sufficient water supply from a public water system for the amount of development that would be authorized by the final subdivision map or project-specific discretionary nonresidential approval or entitlement. Such a

[75] *See* DEIR at ES-65 through 67, 3.9-34 through 35; WSA at 19, 69.

> demonstration shall consist of information showing that both existing sources are available or needed supplies and improvements will be in place prior to occupancy. *Where a landowner seeking a project-specific non-residential discretionary approval or entitlement has shares in the Natomas Mutual Water Company but has not conveyed them or provided an agreement achieving the practical equivalent of such conveyance, or has not been required to convey them, pursuant to paragraph (b), the County shall condition the non-residential approval or entitlement so as to disallow nonagricultural development in the area subject to the map absent such conveyance or agreement* or, alternatively, absent the conveyance to the County, or to any other public entity responsible for providing wholesale or retail surface water to the affected property, of the right to use an alternate surface water source that is of sufficient quantity to serve the area and is as reliable as the surface water the Natomas Mutual Water Company uses pursuant to its water rights and consistent with its settlement agreement with the United States Bureau of Reclamation.[76]

40 Cont'd

Accordingly, the County is rendering project approvals contingent on the developers conveying their shares in Natomas to the County, as the means of obtaining access to Natomas's surface water supplies. As described in prior sections, however, such a mitigation measure cannot be implemented. The Sutter Pointe developers may not be forced to convey their Natomas shares to the County because those shares are appurtenant to certain of the Sutter Pointe lands and cannot effectively be conveyed apart from those lands. Thus, as written in the DEIR, Mitigation Measure 3.9-1 is infeasible and therefore deficient.

Additionally, even if the shares were conveyed to the County, that would not grant the County access to Natomas's surface water supplies. Thus, Mitigation Measure 3.9-1 would be ineffective at mitigating the impact on water supplies from the Sutter Pointe Specific Plan, since that mitigation measure would not ensure that needed surface water supplies would be available to serve the development. Accordingly, the DEIR is deficient.

41

VI. THE DEIR IS DEFICIENT BECAUSE IT FAILS TO ANALYZE GSWC AS AN ALTERNATIVE WATER SERVICE PROVIDER

An EIR must respond to specific suggestions for mitigating a significant impact unless the suggested mitigation is "facially infeasible." In *Los Angeles Unified School District v. City of Los Angeles*,[77] the EIR for a specific plan predicted that air pollution from vehicle emissions and stationary sources under the proposed plan would be significantly greater than under existing conditions. The school district suggested that installation of air conditioning and filtration at two

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[76] DEIR at 3.9-34 through 35 (emphasis added).
[77] 58 Cal.App.4th 1019, 1029 (1997).

schools might prove a feasible means of reducing the impact of increased air pollution on the schools. The EIR did not directly respond to the school district's suggestion, stating that a detailed analysis of the potential health effects of emissions was not required in an EIR at the specific plan stage and could be deferred. The court disagreed, noting that an EIR must respond to specific suggestions for mitigating a significant impact unless the suggested mitigation is facially infeasible.[78]

42 Cont'd

In this case, GSWC has suggested a feasible alternative to the County's proposed scheme for acquiring surface water supplies from Natomas, by which GSWC will serve the Sutter Pointe development pursuant to its Water Transfer Agreement with Natomas. GSWC raised this proposed solution to the water supply deficiencies of the County's scheme in an April 30, 2007 comment letter on the Notice of Preparation for the DEIR.[79] The current DEIR has failed to adequately respond to this suggestion.

43

As described above, Natomas has entered into the Water Transfer Agreement with ASWC, by which Natomas agreed to transfer up to 30,000 acre-feet of its Sacramento River water supplies to GSWC for that company's provision of municipal and industrial water service to Sutter Pointe. The execution of the Water Transfer Agreement by the Natomas board of directors manifested an intent by the company not to deliver water to the County or adopt an allocation scheme as described in the DEIR. Natomas executed the Water Transfer Agreement in 2005, and since that agreement is a binding contract that Natomas could not obviate even if it desired to do so, the only possible way for the County to receive water from Natomas would be for Natomas to breach its existing obligations to GSWC under the Water Transfer Agreement.

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While the DEIR acknowledges the existence of the Water Transfer Agreement and GSWC's intent to be the water utility service provider, it completely discounts GSWC's legal right to do so within the document.[80] In addition, it fails to include GSWC as a true alternative method for the provision of water service to Sutter Pointe, and that failure to include GSWC as a feasible alternative causes the DEIR to be deficient. We are sure that this failure is particularly disappointing to the residents of Sutter County, and the Sutter Pointe developers themselves, who would like to be able to choose a water purveyor based on demonstrated cooperation with Natomas and other local stakeholders, and a defensible water supply plan.

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VII. THE DEIR IS DEFICIENT IN ANALYZING IMPACTS TO AGRICULTURAL RESOURCES

A. Analysis in the DEIR

The DEIR analyzes impacts to agricultural resources in Section 3.11. It identifies several policies that support the preservation of high quality agricultural land for agricultural purposes, including the Williamson Act,[81] the Natomas Basin Habitat Conservation Plan[82] and the Sutter

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[78] *See also Napa Citizens for Honest Gov't*, 91 Cal.App.4th at 363.
[79] This letter is included in Appendix B to the DEIR.
[80] *See* DEIR at 2-25 through 2-26, 3.9-4; WSA at 5-6.
[81] *See* DEIR at 3.11-3.

County General Plan Agricultural Resources Element, Goal 6.A.[83] In recognition of these policies, the DEIR states that:

> An agricultural resources impact is considered significant if implementation of the proposed project would do any of the following: convert Important Farmland (i.e., Prime Farmland, Unique Farmland, or Farmland of Statewide Importance) as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to nonagricultural use; … [or] involve other changes in the existing environment which, due to their location or nature, could result in conversion of Important Farmland to nonagricultural use.[84]

47 Cont'd

Section 3.11 includes analysis of agricultural resources impacts on the Sutter Pointe site[85] and from construction of off-site infrastructure.[86] It includes analysis of the impacts in Sacramento County only related to construction of physical infrastructure in Sacramento County.[87] It concludes that there will be no impact to agricultural lands subject to Williamson Act contracts.[88] The DEIR fails, however, to analyze the impact on agricultural resources from the proposed water supply plan described in the DEIR and WSA, in both Sutter and Sacramento Counties.

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B. Importance of Agriculture

Agriculture is the primary land use in the Natomas Basin with approximately 42,800 acres in agricultural production in 1997.[89] Sutter County began participating in the Williamson Act program in 2000, and as of February 2002 there were 2,076 acres of land within Sutter County's portion of the Natomas Basin under Williamson Act contracts. Primary crops grown in the Natomas Basin include rice, safflower, wheat, barley, alfalfa, corn, pasture land, tomatoes and fruit trees. The top five crops in Sutter County as of 2007 were rice, walnuts, peaches, tomatoes, and dried plums. The estimated total value of these crop productions in 2007 was $377,941,000.

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The *Natomas Basin Habitat Conservation Plan* detailed the vital role agriculture plays in the Natomas Basin. In addition to providing important habitat for target species, agriculture within the Natomas Basin "contributes to economies of scale for the use of resources such as water, thereby lowering the costs for operating the agricultural reserves, and non-rice farming within the Natomas Basin increases the long term habitat opportunities … by allowing rice farms to rotate to other crops when the cost of rice is down, rather than letting the farm go fallow, losing

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[82] *See* DEIR at 3.11-4.
[83] *See* DEIR at 3.11-5.
[84] DEIR at 3.11-10.
[85] *See* DEIR at 3.11-5 through 3.11-8 and 3.11-10 through 3.11-18.
[86] *See* DEIR at 3.11-9, 3.11-11 through 3.11-13 and 3.11-15 through 3.11-16.
[87] *See id.*
[88] *See* DEIR at 3.11-12 through 3-11.13.
[89] *Final Natomas Basin Habitat Conservation Plan* at III-3 (April 2003).

the water supply, and creating significant start-up costs to return the acreage to habitat."[90] The loss of continued agricultural land thus poses a significant obstacle to achieving the conservation objectives in the basin as set out in the *Natomas Basin Habitat Conservation Plan*.

50 Cont'd

Urban development is disproportionately targeting the state's best farmland and is very inefficient, consuming an acre of land for every 9.4 people. In the state's most important agricultural regions, a larger percentage of high quality farmland is being developed, and development is less efficient, than in the state as a whole. Though development efficiency is increasing, it is not happening fast enough to prevent the conversion of 2.1 million more acres of California land – much of it farmland – by 2050.[91] The rapid decline of agriculture in Sutter County will be fueled by a loss of revenue for agriculture, loss of interest in agriculture by a high majority of the public, de-emphasis of agriculture in education, and the increased influence by big business and big government in agricultural policy.[92] Statewide, there were about 3.4 million acres of urban land in 2004. If development continues for as much land per person as during 1990-2004, California will urbanize close to another 2.1 million acres of land by 2050, not counting additional land lost to ranchettes.[93] This is clearly a significant trend in California, and any cumulative contributions to it should be carefully examined and mitigated to the extent possible.

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C. Damages to Natomas and Agricultural Resources

As noted above, one of the primary reasons why Natomas entered into the Water Transfer Agreement with ASWC and GSWC was to preserve agricultural use of Natomas shareholder lands within south Sutter County and north Sacramento County. That intention was also reflected later in Natomas Resolution No. 2006-1-02, which stated that:

> WHEREAS, Natomas Central Mutual Water Company ("Natomas") is attempting to obtain revenue to help offset ongoing fixed costs and to ensure the continuing reasonable and beneficial use of water pursuant to its valuable water rights;
>
> ....
>
> WHEREAS the reasonable and beneficial use of water by [GSWC] will provide further economic benefits to Natomas shareholders and Sutter County residents in the form of economic investment and protection of agricultural values by stabilizing long-term water supply costs for Natomas.

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[90] *Id.*
[91] American Farmland Trust, *Paving Paradise: A New Perspective on California Farmland Conversion* at 6 (November 2007).
[92] Southeast Farm Press, "Land Grant Death Spiral Mirrors Problems of Modern Day Farmers" (Apr. 19, 2006).
[93] American Farmland Trust, *Paving Paradise: A New Perspective on California Farmland Conversion* at 6 (November 2007).

A fundamental problem facing Natomas and its agricultural shareholders, absent the Water Transfer Agreement, was the increasing cost of irrigation water supplies based on the urbanization of formerly agricultural lands in north Sacramento County and south Sutter County. This increasing cost was due to the nature of Natomas's financial structure, as well as general inflationary trends. In a nutshell, most of Natomas's expenses were, and are, fixed by their nature and do not vary according to the shareholder acreage to which irrigation water is delivered. Thus, when an acre of land is converted from agricultural to urban use, and the Natomas share that was appurtenant to that acre of land is cancelled, there is an increase in the financial burden per acre for remaining shareholders. This phenomenon is often called the "death spiral" due to the fact that once it starts, it is self-reinforcing by making agricultural operations incrementally more expensive each time lands go out of agricultural production, in turn making agriculture less financially attractive and creating incentives to convert additional lands to nonagricultural use.

During the late 1990s and early 2000s, Natomas experienced significant financial impacts from the death spiral. In fact, the increased financial burden on remaining Natomas shareholders was already significant in 2005 at the time of executing the Water Transfer Agreement, based on the conversion of agricultural lands in north Sacramento County to urban uses, and the corresponding cancellation of the appurtenant Natomas shares. 52 Cont'd

In order to halt, and to the extent possible reverse, the death spiral for agricultural lands in south Sutter County, Natomas negotiated as part of the Water Transfer Agreement that GSWC will pay reasonable compensation, which reflects the economic value of water, and is generally expected to be a higher price for each acre-foot of water than would be paid for agricultural irrigation water. This infusion of revenue from GSWC will allow Natomas to maintain agricultural irrigation water rates that do not disincentivize continued agricultural operations in south Sutter County.

In contrast, the proposed water supply plan contained in the DEIR and WSA does not provide for any additional revenue to Natomas to either halt or reverse the death spiral. As noted above, the proposed water supply plan involves the County seizing Natomas's surface water supplies. The DEIR contains no discussion of payments to be made by the County or its designated public agency to Natomas that might avoid or mitigate the economic death spiral facing agricultural operations on the lands of Natomas shareholders. Without such payments, the proposed water supply plan will have a significant indirect off-site impact on agricultural resources, by contributing to a financial environment that makes continued agricultural operations on Natomas shareholder lands in south Sutter County unprofitable, and therefore untenable.[94] The DEIR is insufficient because it fails to analyze and offers no mitigation for this significant impact. 53

[94] The DEIR acknowledges the financial pressures that are expected to burden farmers from climate change, but dismisses them based on the ability of farmers to "adapt." *See* DEIR at 3.17-40. The DEIR does not consider the cumulative impact of multiple financial pressures being imposed on farmers at the same time based on climate change and the County's seizing of Natomas water supplies without provision for adequate compensation.

In addition to the general protection of agricultural lands in south Sutter County, many of which are likely to be Important Farmland, there is the potential that without mitigation, the death spiral will cause the conversion of agricultural lands subject to Williamson Act contracts off-site. Once again, the DEIR does not include any analysis of this issue of potential significance. These impacts based on the death spiral would potentially increase the magnitude of the significant and unavoidable loss of Important Farmland identified in the DEIR.[95] 54

VIII. THE DEIR DOES NOT SATISFY THE INTENTIONS OF MEASURE M

The DEIR states that Objective 13 of the Sutter Pointe Specific Plan is to "[p]romote a balance in the type and phasing of land uses that supports a strong tax base and generates financial resources to pay for public services and infrastructure *without financial burden to existing Sutter County residents*."[96] Additionally, Objective 16 is for the development to comply with the Measure M advisory initiative approved by Sutter County voters in November 2004, which provided that "all necessary on- and off-site … water … and other improvements would be paid for by project development."[97]

As described in the DEIR, however, the Project fails to meet those objectives, because as the proposed water provider, the County intends to subsidize its provision of water service to Sutter Pointe through the transfer of funds generated by local taxpayers. The County's intention to potentially rely on general funds of the County, such as tax revenues, to fund water service was stated clearly in the protest it filed with the CPUC against GSWC's application: 55

Sutter County will be able to utilize the financial and managerial resources of the County itself in providing water to the Measure M lands. Through its governmental authority to raise revenue, Sutter County has ample financial resources to provide water service to the Measure M lands.[98]

IX. CONCLUSION

Based on the points raised in this comment letter, it is clear that the DEIR and WSA as written are deficient in describing and analyzing the surface water supplies for the Sutter Pointe development. In addition, the DEIR fails to adequately analyze impacts to agricultural resources and fails to satisfy the intentions of Measure M. Also, as set forth in this letter, we believe that all those deficiencies can be corrected by the County simply considering GSWC as an alternative water supplier for Sutter Pointe. We sincerely hope that the County corrects the DEIR and WSA to allow the Sutter Pointe development to proceed with delays. 56

[95] *See* DEIR at 3.11-18.
[96] DEIR at ES-2, 1-5 (emphasis added).
[97] DEIR at ES-3, 1-5.
[98] Protest of County of Sutter and Sutter County Water Agency to Application 08-08-022 of Golden State Water Company at 7 (Filed October 3, 2008).

Thank you for considering our comments. If you have any questions, please feel free to contact me.

Sincerely,

C. Wesley Strickland

CWS:gml

Golden State
Water Company
A Subsidiary of American States Water Company

March 4, 2009

Supervisor Stan Cleveland
Vice Chairman
Sutter County Supervisor
1160 Civic Center Boulevard
Yuba City, CA 95993

Dear Supervisor Cleveland:

On behalf of Golden State Water Company (GSWC), I am writing to follow up on the February 23, 2009 study session regarding the Draft Environmental Impact Report (DEIR) for the Sutter Pointe Specific Plan. GSWC appreciated being invited to the study session of the Sutter County Board of Supervisors, and we are grateful for the opportunity to provide constructive input that will benefit the Sutter Pointe project, Sutter County and its residents.

During the study session, a participant asked whether the DEIR for the Sutter Pointe Specific Plan should have contained a discussion of GSWC as an alternative water service provider. Sutter Pointe representative, Mr. George Carpenter, suggested that there was no need to include a GSWC alternative, and that issues surrounding the identity of the Sutter Pointe water provider could be worked out following certification of a final environmental impact report (FEIR) for the project.

We respectfully disagree, and request that GSWC be specifically included in the DEIR.

Mr. Carpenter said that the water supply plans of both GSWC and Sutter County rely upon the same combination of local groundwater and surface water diverted from the Sacramento River pursuant to water rights held by the Natomas Central Mutual Water Company ("Natomas"). While that is largely true, there is a legal requirement that the proposed water supply for a new development be institutionally as well as physically available to the proposed water provider. *See* Cal. Water Code § 10910(c)(3). *See also Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal.4th 412, 430-32 (2007). In order for the FEIR to be legally sufficient, it must include an alternative water supplier to which the Natomas water rights are legally available. This issue cannot be worked out at a later date, if the FEIR is to withstand legal challenge.

GSWC and Natomas have affirmed publicly on numerous occasions that the legal right to use Natomas's Sacramento River water rights for the Sutter Pointe development is held exclusively

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by Natomas which by unanimous Board vote has been transferred exclusively to GSWC pursuant to the Water Transfer Agreement. This agreement was crafted specifically to ensure that development within the Natomas service territory was of the highest standard while at the same time protecting the agricultural farming interests that have sustained this region for generations. Only GSWC possesses an entitlement to use Natomas's water rights. Natomas bylaws do not grant shareholders specific rights to transfer water to any entity; only Natomas has the right to do so.

Indeed, the Natomas/GSWC agreement is critical to the future of Sutter County's agricultural economy which, as you know, is vital to the region's prosperity. The proposed taking of water rights without compensating Natomas' shareholders equitably would cause the water company to enter a "death spiral," in which fewer and fewer agricultural shareholders would bear the burden of mostly fixed infrastructure costs, making continued agricultural operations financially difficult within southern Sutter County.

One of GSWC's primary goals is to ensure that Sutter County and Sutter Pointe have the best possible water service to accommodate Sutter Pointe's residents and businesses while at the same time, protecting local farming families and preserving the local agricultural economy. Accordingly, we ask that the DEIR be amended to include GSWC.

Sincerely,

Roland Tanner

cc: Larry Combs
George Carpenter
Doug Libby

GSWC-1

The commenter describes the GSWC and its operations. So noted.

The commenter then describes a water transfer agreement with the Natomas Central Mutual Water Company (NCMWC). The County recognizes that GSWC and the NCMWC entered into an agreement on February 1, 2005, which, subject to several conditions, could result in NCMWC providing water to GSWC that could only be used for retail water service to the Sutter Pointe Specific Plan area. While the County does not believe that this agreement is legally valid, the County does view this agreement, in combination with Article III, Section (g), of the Natomas Bylaws, as evidence that Natomas acknowledges it has the authority to provide municipal water supplies to the project site and that Natomas is willing to provide such water on a wholesale basis to the entity that is ultimately authorized to provide retail water service to the area. The nature of the retail provider as a regulated public utility or a public agency does not appear to result in any differential environmental impacts that have not been evaluated, provided that any entity providing water service use the infrastructure plan currently under consideration and addressed in the EIR. Any change in the current infrastructure plan, however, would require additional environmental review to determine any associated impacts.

GSWC-2

The first portion of this comment is a recital of CEQA provisions derived from the statute, its Guidelines, and case law. So noted.

The commenter then states that there are serious inadequacies regarding the availability of the water, that in light of these purported inadequacies "there can be no meaningful public review of the project," and that the County may have to recirculate the EIR in order to remedy the purported inadequacies.

As more fully set out in responses to comments GSWC-8 through -56 below, the County does not agree that there are any inadequacies related to the DEIR analysis of availability of water for the proposed project, that meaningful public review has not occurred, or that recirculation is necessary. Rather, the issues raised by commenter seem to be more related to the manner in which the water will be acquired from Natomas and who will provide retail service. Therefore, the County does not believe that any text changes to the DEIR are necessary.

GSWC-3–7

The commenter summarizes its view that the EIR and WSA are deficient because: 1) they fail to identify an effective mechanism for the County to gain access to necessary surface water supplies from NCMWC, 2) the proposed mitigation for the water supply is inadequate because transferring interests from Natomas to the County is not related to reducing any environmental impact of the project, as well as being speculative, 3) the DEIR fails to include or analyze GSWC as an alternative water provider, and 4) the document fails to adequately analyze the impacts on agricultural resources. The commenter concludes its summary with a general statement that the DEIR is flawed because it makes "unsupportable assumptions with respect to the basis of how to obtain future water supply."

This summary is consistent with the County's understanding of the commenter's legal position. It is clear that Natomas has water that could be made available for the Sutter Pointe Specific Plan, as Natomas has been providing water to the area for many years. The questions raised by commenter relate to whether Natomas would provide wholesale water to Sutter Pointe if the retail provider is not the commenter and instead is some other entity. These and other specific concerns raised by the commenter are addressed in greater detail in responses to comments GSWC-8 through 56. The County believes that the DEIR contains a thorough analysis of the availability of water to supply the proposed project and that no text changes are necessary.

GSWC-8

The commenter provides a description of the history and authority of NCMWC ("Natomas"), for which no reply is needed. Some elements, however, require clarification or expansion.

a. The first sentence of the third paragraph states: "Natomas delivers water only to its shareholders." A supporting citation for this sentence refers to California Public Utilities Code Section 2705, which establishes the requirements under which mutual water companies must operate if they wish to avoid regulation by the California Public Utilities Commission (PUC). That statute also authorizes mutual water companies to deliver water to "any city, county, school district, or other public district, or to any other mutual water company, at cost…" without becoming subject to PUC jurisdiction. Sutter County, a subdivision of Sutter County, or a public district formed within Sutter County would, therefore, be eligible under California law to contract with Natomas for wholesale water supplies without subjecting the company to PUC regulation, whether or not the County holds shares of stock in the company.

b. This comment also includes a brief discussion of mutual water company shares and their relation to the lands that are served with water. However, the discussion omits citations to and a description of other relevant authorities that sanction alternative ways that shares may be held for the benefit of the shareholding lands. Article XVI, Section 17, of the California Constitution authorizes the State, cities, counties, and other local agencies to hold shares of stock in mutual water companies:

> when the stock is so acquired or held for the purpose of furnishing a supply of water for public, municipal or governmental purposes; and the holding of the stock shall entitle the holder thereof to all of the rights, powers and privileges, and shall subject the holder to the obligations and liabilities conferred or imposed by law upon other holders of stock in the mutual water company or corporation in which the stock is so held.

Thus, legal title to mutual water company stock may rest in a public agency while the beneficial and equitable owners thereof are the landowners within that public agency whose funds have purchased the stock. This concept was articulated in *Lindsay Strathmore Irrigation District v. Wutchumna Water Company* (1931) 111 Cal.App. 688, where an irrigation district owned mutual water company shares and served water to the lands of owners who had previously held the shares. The court stated: "In distributing the water to the land owners within its boundaries, the respondent will be applying the water upon lands owned by the real owners of the stock in question. Under these circumstances, we think that such lands are owned or possessed by the 'stockholders' of appellant 'or one or more of them' within the meaning of the clause referred to."

c. This comment also states that "the Company's water rights are not allocated among the shareholders, and no shareholder has any direct or indirect entitlement to any particular quantity of water or any other asset owned by Natomas." While Natomas, like virtually all water purveyors, does not allocate water at times when a surplus exists, the quoted passage is misleading. Natomas does allocate water if there are competing demands for a limited supply. Article XII, Section 7, of the Natomas Bylaws states:

> The quantity of water to which any shareholder shall be entitled shall not exceed the quantity necessary for use within the services area of the Corporation, and shall be such proportionate quantity of water of all the water available for distribution, at the time water delivery is requested, among all the shareholders of the Corporation desiring to be supplied with water, as the number of shares owned by him shall bear to the whole number of shares owned by the shareholders desiring to be supplied with water[1].

This Bylaw provision follows established California law that mutual water companies are usually formed such that shares of stock represent rights to specific quantities of water, and the stockholder's right to a supply rests upon the stock and not upon any status as a member of the public.

As set forth in Mitigation Measure 3.9-1 of the DEIR, the County, a subdivision of the County, or a public district formed within the County has the means to acquire water derived from Natomas water rights and federal water supply contracts as a condition of approval of this development project. Water would be allocated in the manner described in the Natomas bylaws and that process provides an appropriate basis for estimating the quantity that would be allocated to the Sutter Pointe properties.

GSWC-9 The commenter sets forth a historical description of the contractual relationship between commenter and Natomas.

Other than having no direct knowledge of the underlying reasons for such agreements, the County has no reason to doubt the accuracy of the history. The DEIR recognized the existence of the referenced agreements (DEIR Section 3.9, "Water Supply," pages 3.9-3 through 3.9-9), though the County disputes their legal validity.

GSWC-10 The commenter states that the County proposes to use an "eminent domain-like scheme" to obtain the wholesale raw surface water that would be used to serve water to the Sutter Pointe properties.

This characterization is inaccurate. The Sutter Pointe lands are currently receiving water from Natomas for agricultural purposes and the shareholders are paying for that water pursuant to the Bylaws and other rules adopted by Natomas. The DEIR proposes that such water service continue, but with a change in purpose of use from agricultural to municipal and industrial (M&I), consistent with the aspirations of those landowners and shareholders who are proponents of development pursuant to the proposed Specific Plan. The Natomas Bylaws recognize that existing agricultural water uses may be converted to M&I uses (Bylaws Article III, Section G) and require that such change be carried out in a

[1] This language is complemented by the last sentence of Bylaws Article III, Section (g), which states: "Notwithstanding any other provision of these Bylaws, where the Board of Directors approves the wholesaling of raw water to shareholders for non-agricultural purposes, such non-agricultural water shall be allocated based on the principle of equal priority as between agricultural and non-agricultural uses."

manner that does not adversely affect the reliability of agricultural water supplies. The procedures set out in the DEIR would continue the historic flow of funds to Natomas and would leave all water rights and contracts in Natomas' name. Under Mitigation Measure 3.9-1, as set forth in the DEIR, no landowner/shareholder would be required to convey its entitlement to receive water to the public agency water supplier unless the landowner/shareholder seeks to convert its agricultural property to urban uses through a proposal for a small-lot tentative subdivision map, which is a purely voluntary undertaking. As a mutual water company, Natomas must provide water at cost to avoid PUC regulation and can only transfer water that is surplus to the needs of its shareholders, including, in this case, the needs of the Sutter Pointe shareholders. The shareholders and landowners proposing development on the project site seek to use the same amount of water, on the same land, as they historically have used. The difference would be the use of this water for M&I rather than agricultural use.

GSWC-11 The commenter questions the existence of County rights to water from Natomas.

The DEIR is not premised on existing County rights to water from Natomas. As is often the case when a WSA is prepared, the legal rights to water are held by landowners who, to obtain development approvals, must ensure that those rights can be exercised by a public or private retail water provider for the benefit of the proposed project. The Sutter Pointe landowners/shareholders have substantial legal rights to water from Natomas and the DEIR establishes conditions/mitigation measures to ensure that those rights are available to provide a reliable water supply for the project. The project landowner's rights to water are also described in response to comment GSWC-8, above.

GSWC-12 Most of this comment is a recital of CEQA provisions derived from the statute, its Guidelines, and case law regarding a project description. As such, no response is required. The commenter states that the DEIR fails to meet the requirements of CEQA for an adequate project description. As more fully set out in responses to comments GSWC-16 through 54 below, the County does not agree that the project description fails to comply with CEQA's requirements.

GSWC-13 Most of this comment is a recital of Water Code provisions pertaining to the size thresholds set forth in Senate Bills 901 and 610 for requiring water supply assessments and the required contents and process for such assessments. As such, no response is required. The commenter notes that the Sutter Pointe project, as described in the DEIR, would exceed the threshold for triggering the obligation to prepare a water supply assessment. As the DEIR notes, a water supply assessment was prepared for the project and was attached as Appendix C to the DEIR. (DEIR, page 3.9-1.)

GSWC-14 This comment is a recital of the principles set forth by the Supreme Court in the *Vineyard* decision regarding how to analyze water supplies for large-scale, long-term land use plans under CEQA. So noted.

GSWC-15 This comment is a recital of the holding in the recent case of *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2007) 157 Cal.App.4th 149, applying the principles announced in the *Vineyard* decision to a proposed development. So noted.

GSWC-16 The commenter restates calculations in the DEIR. The calculations set forth in this comment are accurate and require no response.

GSWC-17 The commenter states that, under each of the water supply alternatives identified by the DEIR, the Natomas water supplies are required to meet between 48 and 62 percent of the Sutter Pointe water demands at buildout. So noted. The commenter then states that the DEIR does not identify an alternative source of surface water during the irrigation season other than Natomas and concludes that for purposes of the DEIR, the Sutter Pointe project must have access to the Natomas surface water supplies.

As described in Chapter 2.0, "Project Description," on page 2-2 in Alternative "B" (Winter Diversion Water Supply Program), the County would apply to the State Water Resources Control Board (SWRCB) for a new diversion water right from the Sacramento River of 6,000 afy during winter months (October 1 – March 31) for approximately 5,496 afy of surface water during normal years and 4,182 afy of surface water during dry years. These new surface water rights would be acquired in addition to Natomas' current water rights. DEIR Section 3.9, "Water Supply," pages 3.9-27 – 3.9-32, also analyzes three other potential sources of water ("Alternatives to Long-Term Water Supply") in the event sufficient surface water is not available to serve the proposed project through surface water from Natomas. These alternatives would include a combination of groundwater and surface water from other sources. The alternatives analyzed in the DEIR are: 1) additional groundwater pumping, 2) acquisition of treated water from the Placer County Water Agency, and 3) acquisition of treated water from the City of Sacramento. This analysis also provides conclusions about the County's reasonable certainty about whether sufficient water might become available under any or all of these additional alternatives.

GSWC-18 The commenter summarizes two alternative means described in the DEIR by which the County or a separate local governmental agency could provide treated water derived from the Natomas supply to the proposed project.

For reasons explained in the DEIR on pages 2-25, 3.9-3, and 3.9-39 and in the Water Supply Assessment at pages 5 and 67, the County believes that it can obtain access to the surface water supplies currently controlled by Natomas through either of the two means identified by the commenter. The County recognizes that there are alternative means of providing retail water service to the project, including using a third party such as the commenter to provide some or all of the water service functions. The County acknowledges that its Board of Supervisors could elect to contract with or otherwise utilize the commenter or some other private water company to provide the water service for the project site, although this is not the County's current intention. If the County Board of Supervisors did choose an alternative water provider, that provider would need to secure adequate water supplies and a full analysis of the impacts associated with that means of supplying water to the proposed project would need to be made. Further, depending on the method proposed for providing the water by the company or entity chosen as an alternative water service provider, it is possible that additional environmental analysis would be required. The County also notes that it has concluded that the commenter's proposal to provide water service to the project area under its contract with Natomas is legally infeasible at this time because the agreement for Natomas to transfer water to the commenter is invalid.

GSWC-19 The commenter outlines a portion of the DEIR that described the mechanism by which the County would gain access to Natomas surface water. So noted. The commenter then states that this mechanism is deficient because it has no legal or institutional basis within Natomas.

The County does not agree with the assertion that the mechanism is deficient. Please see response to comment GSWC-20, below.

GSWC-20–22 The commenter makes three main points:

1. Developers cannot assign their shares in Natomas to the County, because of the appurtenancy of those shares—the shares may not be assigned to any person other than the landowner.

2. The appurtenancy of the Natomas shares is determined by the company's Articles of Incorporation and Bylaws and cannot be changed without an amendment to those documents, which can only occur through a 2/3 vote of the shareholder/landowners (of which the County is not one).

3. The DEIR and WSA should find the County's scheme to be at best "hopeful conjecture" because of the speculative nature of a shareholder vote requiring 2/3 approval when the developers would control at most 15.83 percent of the voting shares of Natomas. For this reason, the commenter asserts that the County's mechanism to receive water from Natomas cannot meet the requirements of certainty in the water supply context for an EIR or water supply assessment.

The method described in the EIR for stock ownership by a public agency is consistent with Article XVI, Section 17, of the California Constitution and the judicial decisions related to public agency ownership of mutual water company stock. The landowners would remain the beneficial owners of the shares, with the public entity holding the shares in a manner similar to a trust relationship. This is consistent with State law and with the Natomas Articles of Incorporation and Bylaws as they currently read. The Bylaws do not restrict shareholdings by entities such as trusts, security holders, and other organizations representing the landowners' interests. This manner of shareholding is also consistent with underlying purpose for having appurtenant shares, and only those lands which now benefit from the shares would benefit from the Natomas water supply once the proposed project is developed. See also parts (a) and (b) of response to comment GSWC-8.

GSWC-23–28 The commenter reiterates its previously stated position that the DEIR and WSA do not adequately address the institutional and legal factors that would pose a barrier to the County acquiring surface water from Natomas, specifically:

1. That the discussion in the DEIR of the proposed mechanisms by which water may be allocated to lands in Sutter Pointe omits any discussion of which of these ways Natomas has adopted or is likely to adopt in the future. The commenter also states that the DEIR and WSA must specify which allocation method or methods would be relied upon by the County to obtain water for Sutter Pointe.

2. That Natomas has not allocated water among its shareholders and that no shareholder is entitled to any particular amount of water. Thus, the discussion contained in the DEIR and WSA is inadequate because it assumes that the County, if it becomes a shareholder, would have an entitlement to water when, according to the commenter, the County would not be entitled to any particular amount of water.

3. Even if the County could argue that holding shares in a mutual water company represents the right to receive water, such an argument would not create a right for

> the County to receive water from Natomas except according to the rules and regulations established by the company's board of directors.

The commenter is incorrect as to (i) the approach that should be taken in a water supply assessment (WSA) to estimate the amount of water that is expected to be reliably available to a proposed development and (ii) the content of the Natomas Bylaws with respect to allocation of water supplies. The Natomas Bylaws contain explicit provisions that govern the amounts of water that shareholders are entitled to receive. At times when supply is sufficient to meet all demands, "the quantity of water to which any shareholder shall be entitled shall not exceed the quantity necessary for use within the service area of the Corporation." In times of shortage, the water provided "shall be such proportionate quantity of all the water available for distribution, at the time water delivery is requested, among all the shareholders of the Corporation desiring to be supplied with water, as the number of shares owned by him shall bear to the whole number of shares owned by the shareholders desiring to be supplied with water." This clear directive enables the WSA to estimate the water available to the project lands in drier years by first calculating the share percentage within the project site based on the total number of shares outstanding and then applying that percentage to the amount of water available to Natomas through the USBR contract in years when no shortages are imposed and in years when a 25% shortage is applied pursuant to the contract. In the wetter years, the amount of water available will be "the quantity necessary for use within the service area." Use of this procedure is not just supported by the Bylaw provision, but also by the very nature of mutual water companies and the fact that the right to a proportional water supply is "an inseparable adjunct" of membership in the company.[2] To the extent that Natomas has not allocated water as described in the DEIR, this response, and in its Bylaws, it is essentially because its water supply has been sufficient to meet all historic shareholder demands, as is evident from information contained in the Water Supply Assessment, rather than, as suggested by the commenter, because Natomas lacks a procedure that would be followed in case of future shortages. See also part (c) of response to comment GSWC-8.

GSWC-29

The commenter states that "the Natomas articles and bylaws both provide that Natomas does not possess the authority to deliver to its shareholders for municipal and industrial uses...."

This statement is incorrect. Article III(g) of the Natomas Bylaws specifically authorizes such service. In addition, at the time it renewed its USBR water supply contract in 2005, Natomas requested and received inclusion of special language (Article 7(a)), which reads as follows:

> The parties anticipate that, during the term of this Settlement Contract, a gradual change in the purpose of use of water will occur within the place of water use shown in Exhibit B from predominantly agricultural purposes to a mixture of municipal and industrial, wildlife habitat and agricultural purposes, and the parties agree to work cooperatively to accommodate and facilitate such change. Project water furnished to the Contractor pursuant to this Settlement Contract may be delivered or furnished by the Contractor for agricultural or municipal and industrial purposes; provided, however, that the Contractor shall not deliver or furnish Project Water for municipal purposes outside those areas delineated on Exhibit B, as approved for such purposes by the Contracting Officer, without the written consent of the Contracting

[2] See *Wutchumna*, *supra*, at p. 693 (citing *Miller v. Imperial Water Company No. 8* (1908) 156 Cal. 27)

> Officer. Such consent will not be unreasonably withheld and a decision will be provided in a timely manner following completion of any environmental review required under applicable law.

Clearly, Natomas recognizes that its water supply will, in the future, shift from largely agricultural to a mix of uses, including the types of uses proposed for the Sutter Pointe project.

GSWC-30 The commenter points out that the Natomas Bylaws state that the company's Board of Directors has the "discretion" to provide non-agricultural wholesale water service and then asks that the DEIR "analyze how the County might go about getting the Natomas board to approve such a wholesale arrangement."

The comment seems to assume that this discretion is unconstrained, and, therefore, there is no basis for believing that Natomas would provide such water service for the proposed project if the commenter does not receive PUC authority to serve the project site. The Natomas Board's discretion, however, is limited and a refusal to provide water service to lands within its service area must be based on legitimate determinations that providing such water service would cause injury to other shareholders or the water rights of the Company.[3] A review of the facts does not indicate that any such injury would occur. The amount of water being requested for the proposed project is well within historic deliveries to the property, is less than its pro rata share of the water based on shares held, and would be provided on an equal priority basis with water provided by Natomas for agricultural purposes. Further, any USBR or State Water Resources Control Board approvals needed for a public agency to provide the M&I water to the project lands would be identical to the approvals that the commenter would be required to obtain if it is authorized by the PUC to provide water to the project site. Under these circumstances, the EIR's assumption that the water can feasibly be provided from the existing Natomas supply appears to be factually and legally based.

GSWC-31 The commenter states that Natomas has, in the past, rejected the County's proposed plan to serve the Sutter Pointe project and that the DEIR and WSA must analyze the likelihood of the County persuading the Natomas board to deliver municipal and industrial water according to a wholesale agreement.

The County is aware of the letter transmitted to the Sutter County Water Agency in support of Natomas' agreement with commenter. The letter does not, however, modify the rights and obligations of Natomas to provide water service to the project property if commenter is not the selected retail service provider. As noted in the response to comment GSWC-18, the County has rejected the commenter's suggestion that it can provide retail water service to the proposed project. The County believes that the agreement for Natomas to transfer water to the commenter is invalid and thus does not

[3] See *Wutchumna*, *supra*, at p. 693, where the court commented on a mutual water company's refusal to provide water service as follows: "[We] have the case of a member of a corporation who is improperly precluded by the corporation from participating in the only practical right resulting from such membership, that of having water available for the purpose furnished at cost upon his land, in proportion to the amount of stock held by him. He is seeking to enforce a plain right based entirely upon his membership in a mutual water company, deprivation of which right would practically exclude him for the time from all privileges of membership...." See also *Remillard Brick Co. v. Remillard-Dandini* [109 Cal.App.2d 405, 419 (1952)]: "It is Hornbook law that directors, while not strictly trustees, are fiduciaries, and bear a fiduciary relationship to the corporation, and to all the stockholders. They owe a duty to all stockholders, including the minority stockholders, and must administer their duties for the common benefit. The concept that a corporation is an entity cannot operate so as to lessen the duties owed to all of the stockholders. Directors owe a duty of highest good faith to the corporation and to its stockholders."

constitute a barrier to the County gaining access to the Natomas surface water supplies.[4] For this same reason, the commenter is not able to demonstrate that it has adequate water supplies available to serve the proposed project.

GSWC-32 The commenter notes that the DEIR also describes an option for Sutter County enter into an agreement with Natomas to act as the urban wholesale distributor of surface water. The commenter then states that the DEIR is unclear whether and how this option is different than the option of obtaining water as a shareholder of Natomas. The commenter asserts that this vagueness necessitates clarification and recirculation of the documents.

Natomas may contract with public agencies that are not shareholders to deliver water at cost without becoming subject to PUC regulation. In addition, as noted in responses to comments GSWC-8 and 20 through 28, above, Natomas can enter into agreements with shareholders to provide M&I water service. Thus, either approach is available to provide water for the proposed project. The approach selected would not alter the environmental impacts or adequacy of the water supply and thus would not require recirculation of the DEIR. See also part (a) of response to comment GSWC-8, above.

GSWC-33 The commenter states that the timing of an agreement between the County and Natomas is speculative and the County is therefore ignoring a water supply problem that is not allowed under CEQA, SB 901, and SB 610. The commenter further states that DEIR and WSA fail to offer any real analysis of the timing or likelihood of obtaining an agreement between Natomas and the County and rely on a false assumption that an agreement will happen when, in fact, there is "significant doubt" regarding the existence and contours of any such right.

The County disagrees that its candid acknowledgement in the DEIR that time will be required to work out a surface water supply in any way violates CEQA, SB 901, or SB 610. (The Water Code provisions created by SB 901 in 1995 were superseded in 2001 by the enactment of SB 610, so the commenter's reference to SB 901 may have been in error.) Notably, nothing in SB 610 requires that, prior to approving a land use plan such as the proposed specific plan, a county must have "existing water supply entitlements, water rights, or water service contracts" sufficient to serve the plan at build-out (*see* Water Code, Section 10910, subd. (d).). Rather, a water provider lacking such an existing supply may need to identify "additional" water supplies needed for the project and other planned development as well as the steps needed to obtain such additional supplies. (Water Code, Section 10911, subd. (a).) In approving such a land use plan, a county has the option of determining that "water supplies will not be sufficient," provided that the county "include[s] that determination in its findings for the project." (*Id*., subd. (c).) Similarly, under the California Supreme Court's CEQA decision in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 438, "an EIR for a specific plan need not demonstrate certainty regarding the project's future water supplies." Rather, "even without a showing that water from the identified source is likely to be sufficient, an EIR may satisfy CEQA by fully disclosing the uncertainty, the other possible outcomes, their impacts and appropriate mitigation measures." (*Id*. at p. 446.) Stated another way, "[i]f the uncertainties inherent in long-term land use and water planning make it impossible to confidently identify the future water sources, an EIR may satisfy CEQA if it acknowledges the degree of uncertainty

[4] Moreover, the legal status of the commenter's contract with Natomas does not affect the adequacy of this EIR since, as pointed out throughout these responses, the identity of the retail water service provider will not change the physical impacts of the project as long as the infrastructure currently proposed is implemented.

involved, discusses the reasonably foreseeable alternatives—including alternative water sources and the option of curtailing the development if sufficient water is not available for later phases—and discloses the significant foreseeable environmental effects of each alternative, as well as mitigation measures to minimize each adverse impact." (*Id*. at p. 434.)

Here, the Draft EIR for the Sutter Pointe Specific Plan satisfies all of these requirements. It does not treat a surface supply from Natomas as "reasonably likely" within the meaning of the *Vineyard* decision but instead candidly acknowledges that certain regulatory approvals will be required before water now used for irrigating agriculture in the project area can be used instead for municipal and industrial uses. (*See, e.g*., DEIR, pp. 3.9-26 – 3.9-34.) As stated on page 3.9-33,

> Although it is reasonably certain as a physical matter that the surface supplies in question would be delivered in the amounts needed to serve the proposed project at buildout[,] [t]here is no similar reasonable certainty from a legal and regulatory standpoint, as additional actions by the Bureau of Reclamation, SWRCB, and NCMWC would be necessary.

Notably, regardless of the timing of the resolution of the outstanding issues relating to surface water supplies, the physical impacts of delivering surface water to the project site with the infrastructure currently proposed would be the same as those analyzed in this EIR regardless of the identity of the water provider. See also response to comment GSWC-30.

GSWC-34 The commenter repeats and summarizes previous statements about the likelihood of the County reaching an agreement with Natomas and gaining access to its surface water rights. See response to comment GSWC-30.

GSWC-35 The commenter asserts that the DEIR and WSA are insufficient because they simply assume surface water supplies will be available from Natomas, while the commenter believes the opposite is true. The County disagrees with the commenter's assertion. The DEIR and WSA did not ignore the issue of the likelihood of water being made available to serve the project area from Natomas. In fact, the DEIR concludes that there is no "reasonable certainty" of the availability of the Natomas supplies, due to the legal and regulatory issues surrounding the provision of that water to the project area. (DEIR, page 3.9-27.) Thus, the DEIR explored alternative water supply options as required under *Vineyard.* (DEIR, pages 3.9-27—3.9-32.)

GSWC-36 The commenter asserts that the DEIR and WSA should have concluded that the Natomas surface water supplies are not likely to be available to serve Sutter Pointe. For all of the reasons articulated elsewhere in the responses to this commenter's letter, the County disagrees with this assertion and believes that the Natomas surface water supplies are the most likely source of surface water available to serve the project area. However, as required under *Vineyard*, the County properly concluded that it cannot "confidently determine" that these supplies will be available, and that there is no "reasonable certainty" of the availability of the Natomas supplies, due to the legal and regulatory issues surrounding the provision of that water to the project area. (DEIR, page 3.9-27.)

GSWC-37 The commenter asserts that the DEIR and WSA fail to provide any discussion of any alternative water supplies as required. The commenter is incorrect. Please refer to pages 3.9-27 through 3.9-32 of the DEIR.

GSWC-38 This comment is a recital of CEQA provisions derived from the statute, its Guidelines, and case law regarding the requirements for mitigation measures. As such, no response is required.

GSWC-39 The commenter reiterates the DEIR's description in Mitigation Measure 3.9-1 of the proposed mechanism for gaining access to Natomas surface water and reiterates its opinion that the proposed mechanism is infeasible, vague, incomplete, and untested. The commenter also suggests that the County is trying to avoid evaluating the true availability of water supplies to Sutter Pointe.

The County disagrees with this statement. Mitigation Measure 3.9-1 was carefully drafted to ensure that water supplies would be both physically and legally available to serve the proposed project, as required by law. If the proposed project proceeds, the developer will be required to comply with Mitigation Measure 3.9-1 to ensure adequate water supplies for the proposed project. The County has determined that this mitigation measure is feasible, and it would be implemented as a condition of approval of the development.

GSWC-40–41 The commenter restates Mitigation Measure 3.9-1, which requires that developers convey their Natomas shares to the County or secure an agreement between Natomas and the County for the delivery of water for purposes of the Sutter Pointe development. The commenter then states that Mitigation Measure 3.9-1 is infeasible, ineffective, and therefore deficient for reasons previously stated.

The County disagrees with this statement. See responses to comments GSWC-8, GSWC-11, GSWC-20, GSWC-23, GSWC-29, and GSWC-30.

GSWC-42–43 The commenter suggests that a decision by the County to embrace the commenter as the water provider for the proposed project would somehow mitigate a significant environmental effect that would otherwise go unmitigated. The commenter then states that it suggested a feasible alternative to the County's proposed scheme in its April 30, 2007 comment letter on the Notice of Preparation (NOP) for the DEIR but that the DEIR failed to adequately respond to this suggestion.

The County has considered all of the comments and recommendations submitted to it through the EIR scoping process, including comments and suggestions submitted by the commenter, and has carefully considered which environmental issues and recommendations to evaluate and include as mitigation in the DEIR. CEQA encourages early consultation with private individuals and organizations concerned with the environmental effects of a project. The primary mechanisms by which to achieve early consultation are: 1) the issuance of a NOP and the consideration of comments submitted as a result of the NOP (CEQA Guidelines Section15082), and 2) early public consultation to determine the scope of an EIR (CEQA Guidelines Section 15083). The CEQA Guidelines do not require that any particular recommendation from private individuals and organizations for addressing a specific environmental concern be incorporated as mitigation in an EIR.

There does not appear to be any evidence to support the assertion that selection of the commenter as the water provider to the project will mitigate a significant impact that would otherwise go unmitigated. The County does not believe that the identity of the retail water purveyor creates any different environmental impacts that would require mitigation, provided that the water service infrastructure to be built tracks the current plans analyzed in this EIR. Regardless of whether water is supplied by the commenter or

some other entity, the water source would be the same, as would be the physical impacts on the environment associated with water service. Furthermore, suggested mitigation measures need only be considered if they are needed to address an identified significant unavoidable impact. That is not the case here, and the authority cited by the commenter is not relevant.

Even so, the County acknowledges that the commenter or some other private water company could be an alternative water service provider to the project site. Such a scenario would not occur until after the Specific Plan is approved and could occur only if (i) the County Board of Supervisors made a decision to allow such water service and (ii) the diversion, treatment, and distribution infrastructure are the same as those described in the Water Supply Master Plan, Water Supply Assessment, and this EIR. At this time, however, it is not the County's intention to proceed in this manner. If the Board selects the commenter or some other private water company to provide water service, additional environmental review would be required if the diversion, treatment, and distribution facilities differed from those being proposed currently and analyzed in this EIR. Assuming that the water supply source is the same, however, the environmental impacts of such a scenario on aquatic resources, water quality, and similar in-stream resources would be the same as those of a scenario in which surface water is supplied by the County, a subdivision of the County, or a public district formed within the County.

GSWC-44 The commenter reiterates the Natomas Water Transfer Agreement with ASWC and the intent of that agreement not to deliver water to the County or adopt an allocation scheme as described in the DEIR.

The County is aware of the agreement between Natomas and commenter. The County disputes the validity of that agreement and disagrees with the commenter's assertion that the agreement is a "binding contract." Furthermore, the agreement is conditioned on approval by the PUC of commenter's request to be certified as the water retailer for the proposed project, an action that has not yet occurred and has been opposed by the County. The agreement does not manifest an intent by Natomas to breach its obligation to provide water service to the shareholders within the project site. The proposed transfer is not of water that is surplus to the needs of the Natomas shareholders; in fact, it involves the very water required for continued water service to the Sutter Pointe lands. Thus, the agreement is invalid because it ignores Natomas' obligation to provide water service "at cost" to certain shareholder/water users (as required to maintain its exemption from PUC regulation). Under the agreement Natomas' water sale to commenter would allow Natomas to profit so it could provide water to some of its agricultural shareholder/water users at a reduced cost, but the applicable laws do not permit a mutual water company (or any other directors of a corporation) to subsidize some shareholders at the expense of others (see footnote below), particularly when Natomas has not obtained the consent of its shareholders to this transaction.[5]

[5] In a letter to the County dated March 4, 2009, commenter states its position with respect the agreement in slightly different terms: "[T]he legal right to use Natomas's Sacramento River water rights for the Sutter Pointe Development is held exclusively by Natomas, which by unanimous Board vote has been transferred to GSWC pursuant to the Water Transfer Agreement." This characterization, though not provided in the formal comment letter, raises questions related to the comments. Public Utilities Code section 2706(b) and (c) read as follows:

(b) Any person, firm, or corporation with water that is not being used to supply water to a public water system, or that is not otherwise dedicated to public use, that sells, leases, transfers, or otherwise delivers the water at wholesale to any public agency or to a water corporation providing water utility service, is not a public utility within the meaning of this chapter.

(c) This section does not apply to mutual water companies.

GSWC-45–46 The commenter restates its belief that the DEIR discounts GSWC's position that it has a legal right to be the water provider to Sutter Pointe within the terms of the Water Transfer Agreement and that the DEIR fails to include GSWC as an alternative for the provision of water service to Sutter Pointe.

The commenter is incorrect in characterizing the DEIR as not treating the commenter as an alternative water provider. As explained earlier, the County acknowledges that the commenter takes that position and that the commenter has commenced PUC proceedings, which are pending, but the County disputes the validity of the Natomas contract on which the commenter relies. See also responses to GSWC-18 and GSWC-44.

GSWC-47 This comment recites the DEIR's threshold of significance for determining an impact to agricultural resources, and notes that the DEIR provided analysis of agricultural impacts on the Sutter Pointe site and resulting from construction of off-site infrastructure in Sutter and Sacramento Counties. No response is required.

GSWC-48 The commenter asserts that the DEIR fails to analyze the impact on agricultural resources in Sutter and Sacramento Counties resulting from the proposed water supply plan described in the DEIR and WSA. The County disagrees with this assertion for the reasons explained further in responses to comments GSWC-52 through -54 below.

GSWC-49 The commenter notes that agriculture is the primary land use in the Natomas Basin and recites the history of Sutter County's participation in the Williamson Act. The commenter further reports on the number of acres of land in the Natomas Basin in Williamson Act contracts and the primary types of crops grown in the Basin. So noted.

GSWC-50 The commenter states that the NBHCP detailed the vital role that agriculture plays in the Natomas Basin, and that the continued loss of agricultural land poses a significant obstacle to achieving the conservation objectives in the basin. However, the conversion of agriculture to urban uses within the Specific Plan area (i.e., the Sutter County Permit Area) was specifically authorized under the NBHCP and it was found that the conversion of this area to urban uses would be fully mitigated and would not appreciably reduce the likelihood of species' survival and recovery in the region. (*See, e.g.*, Implementation Agreement for the Natomas Basin Habitat Conservation Plan, at 11; U.S. Fish and Wildlife Service, Biological Opinion (June 24, 2003), at pages 205-206; Findings & Recommendations for the Issuance of Section 10(a)(1)(B) Incidental Take Permits Associated with the Natomas Basin Habitat Conservation Program (June 27, 2003), at page 32.

Notably, moreover, CEQA Guidelines section 15065, subdivision (b)(2), authorizes a lead agency to conclude that impacts to threatened or endangered species and their habitats will be less than significant if a project complies with mitigation requirements created by a habitat conservation plan for which an environmental impact statement was prepared, provided that the mitigation requirements "preserve, restore, or enhance sufficient habitat to mitigate the reduction of habitat and the number of the affected species to below a level of significance." That is the case here.

GSWC-51 The commenter notes statewide trends regarding the conversion of agricultural land to urban uses, and asserts that these trends should be carefully considered in evaluating

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Given the exclusion of mutual water companies in subsection (c), and since commenter is not a public agency of the type described in Public Utilities Code section 2705, this characterization of the agreement would seem to possibly subject Natomas to PUC jurisdiction, which would be contrary to the express terms of the Water Transfer Agreement.

cumulative impacts of the project on agricultural land. The DEIR acknowledged the cumulatively considerable contribution of related projects to the significant and unavoidable impact of the loss of agricultural land and the proposed project's cumulatively significant incremental contribution to this impact (DEIR, pages 5-25 through 5-26). The DEIR notes that implementation of proposed Mitigation Measure 3.11-1 would facilitate the purchase of conservation easements that will assist in easing development pressures on agricultural land. The DEIR also notes that participation in the NBHCP will partially offset agricultural land losses within the project area. (DEIR, page 5-26.) It is also worth noting that, notwithstanding the loss of agricultural lands through urban development in Sutter Pointe, the SACOG Blueprint Vision recommends the development of a major industrial and employment center with adjacent medium density residential uses in the location of a portion of Sutter Pointe to reduce urban growth pressures farther on the fringes of the region that could increase VMT, air quality, and GHG impacts while also resulting in the loss of agricultural lands.

GSWC-52–54 The commenter refers to a "death spiral" for agricultural production that is caused by increases in the fixed cost per acre for water service that occur when land is urbanized, withdraws from the mutual water company, and discontinues using that source of water.

This potential situation is not applicable to the Sutter Pointe project, as it specifically intends to obtain wholesale water service from Natomas and continue to bear its fair share of the fixed costs of operating the water system. The issue that is raised by commenter is whether that process should include the commenter as the retail water provider, not whether the project would cause an increase in the fixed costs per acre for the Natomas service area as a whole. Instead, this comment seems to be arguing that, because other, prior urbanization projects gave up their shares and found alternate sources of water, Natomas and commenter should be able to carry out an "economic value of water" transaction to make up for income lost from these other, prior projects, by imposing higher than "at cost" water to the Sutter Pointe lands within the Natomas service area. This does not appear to be mitigation for any impacts caused by the project under consideration and is a questionable operation under the laws governing the unregulated operation of mutual water companies.

The commenter then states that the proposed water supply plan contained in the DEIR and WSA does not provide for any additional revenue to Natomas to either halt or reverse the supposed "death spiral." The commenter claims that, without these payments, the proposed water supply plan will have a significant indirect off-site impact on agricultural resources by contributing to a financial environment that makes continued agricultural operations on Natomas shareholder lands in south Sutter County unprofitable and therefore untenable.

The County is not "seiz[ing] Natomas's surface water supplies." Rather, the County's strategy, as embodied in part in portions of Mitigation Measure 3.9-1, is to require those landowners who want to subdivide and thus develop their properties to take steps intended to ensure the efficient and reliable delivery of water as needed for such development. Since a landowner will be acting voluntarily in deciding to forego continuing agricultural use of its property in favor of the (presumably) more lucrative use of the property for development, compliance with the pertinent portions of Mitigation Measure 3.9-1 cannot be fairly characterized as coercive. In addition, for reasons explained earlier, the County believes that its preferred approach to water service is more consistent with the rights of the Natomas shareholders than is the approach taken by the commenter.

The commenter concludes by stating that there is the potential that without mitigation, the "death spiral" will cause the conversion of agricultural lands subject to Williamson Act contracts off-site. The commenter states that the DEIR does not include any analysis of this issue of potential significance.

As noted above, the proposed Specific Plan and preferred surface water strategy will not contribute to any "death spiral" for agricultural lands within the NCWMC service area. The notion that this strategy would force off-site properties out of agriculture is therefore purely speculative and thus need not be addressed by the EIR.

GSWC-55

The commenter states that "the County intends to subsidize its provision of water service to Sutter Pointe through the transfer of funds generated by local taxpayers," citing as support for this contention a general statement in the County's Protest to the GSWC Application before the CPUC that, "Sutter County will be able to utilize the financial and managerial resources of the County itself in providing water to the Measure M lands. Through its governmental authority to raise revenue, Sutter County has ample financial resources to provide water service to the Measure M lands."

The commenter has misconstrued the meaning of the County's statement in the Protest. The statement in question merely demonstrates that the County is financially sound, which is an obvious prerequisite for developing and managing a municipal water utility. The statement does not indicate that the County would pay for water or water service facilities from its general funds, nor does it indicate that County residents would subsidize the cost of providing water service in the Measure M lands. Indeed, in its Protest, the County did not make any direct reference to the retail water rates that would be charged to future water users in the development, or how those rates might be calculated, other than to state that a municipal water district would not have to charge its customers to recover taxes and a rate of return, as would be the case if the commenter were the water service provider. The County does not intend to subsidize retail water rates for Sutter Pointe water users with County funds.

The commenter's erroneous interpretation of the language in the Protest is further illustrated by the fact that the County states, on page 8 of the Protest, in its discussion of the cost of a proposed new water system provided by the County, "It is anticipated that Sutter County will require that Measure M developers incur the cost of building the new water supply and conveyance infrastructure." Thus, the commenter's statement was based on a mischaracterization of the County's statements and intentions as set forth in the Protest, and the proposed project is consistent with the objectives stated in the DEIR.

GSWC-56

The commenter concludes by restating and summarizing its claims that the DEIR is deficient in describing and analyzing the surface water supplies for Sutter Pointe, impacts to agricultural resources, and the intentions of Measure M. The commenter restates its position that these deficiencies can be corrected by the County considering GSWC as an alternative water supplier for Sutter Pointe.

As noted in responses to comments GSWC-18 and GSWC-43, the County has acknowledged that the commenter or some other private water company could be an alternative water provider to the project site, if (i) the County Board of Supervisors made a decision to allow such service, (ii) the diversion, treatment and distribution infrastructure are the same as those described in the Water Supply Master Plan, Water Supply Assessment, and this EIR, and (iii) all other legal requirements are met. The County appreciates the commenter's statement that "all those [alleged] deficiencies [in

the EIR] can be corrected by the County simply considering GSWC as an alternative water supplier for Sutter Pointe." Based on the clarifications provided in the responses to the various comments made by GSWC, the County assumes that the commenter will no longer maintain that the EIR violates CEQA, SB 610, or any other applicable law.

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SUTTER

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February 6, 2009

Mr. Doug Libby
Principal Planner
Sutter County Community Services
1130 Civic Center Blvd
Yuba City, CA 95993

RE: COMMENT TO DRAFT SUTTER POINTE DRAFT ENVIORNMENTAL IMPACT REPORT

Dear Mr. Libby;

Thank you for allowing this opportunity to present written comments on the Sutter Pointe Specific Plan Draft Environmental Impact Report. My comments are provided below:

My first set of comments relate to the following three sections of the DEIR:

- **Section 3.1.1 Regulatory Background – Measure M** (Page 3.1-9) which states:
  "Under Measure M the development would adhere to the following requirements: (bullet 1) *At least 6,000 acres would be provided for commercial and industrial parks to create new jobs in Sutter County as a condition of having residential units approved,* (bullet 2) *At least 1,000 acres of would be provided for schools, parks, open space, libraries, retail areas, and other community facilities paid for by the development,* and (bullet 3) *No more than 2,900 acres would be available for residential on land protected, at a minimum, from a 100 year flood event"* – and –
  "Measure M proposed this mix be contained on 7,500 acres of the original 10,500 acre Sutter County Industrial-Commercial Reserve area(in 2005, the County reduced the size of the Industrial-Commercial Reserve area to 9,500 acres)"
- **Project Objective 16** (page ES-2) which states:
  "Develop a project that complies with Measure M advisory initiative as approved by Sutter County voters in 2004"
- **ES.6 Alternatives** (page ES-5) which states:
  "The State CEQA Guidelines (Section 15126) requires an EIR describe a range of reasonable alternatives to the project that could feasibly attain the basic objectives of the project"

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- My Comment: One of the project alternatives should be required to analyze a project that *feasibly attains the basic objectives of the project* within the entire 9,500 acre Sutter County Industrial-Commercial Reserve area to determine if it would be a more environmentally superior.

1 Cont'd

My final set of comments relate to the following two sections of the DEIR:

- **Project Objective 2** (page ES-2) which states:
  "Accommodate regional growth in a location adjacent to .... major employment centers"
- **Proposed Development Phasing Plan Map** (page 2.59 Figure 2-16) which illustrates:
  The proposed first phase of residential uses would be constructed in the central portion of the subject site east of Highway 99. The first phase employment village would be west of Highway 99 near Riego Road and the second employment village phase is the existing 80-acre major employment village (Sysco, A&N Auto Repair, A&R Readymix and Holt Tractor Manufacturing) that resides there today.

- My Comment: The proposed phasing of the project is in direct conflict with Project Objective 2. According to the Proposed Development Phasing Plan Map, the existing 80-acre employment center is immediately adjacent to (and therefore easily serviceable by public utilities and services) the first residential phase and should be analyzed to determine if this phasing would reduce impacts.

2

Again, thank you for the opportunity to provide comments.

Sincerely,

L. J. Sutter Partners
1680 Dell Avenue
Campbell, CA 95008
(408) 371-1734

Sutter-1

The commenter recommends analysis of another alternative within the 9,500-acre Industrial-Commercial Reserve area that attains the basic objectives of the project to determine if it would be more environmentally superior.

The commenter does not suggest how such an alternative would reduce or avoid alternatives in a manner or scale that is different than the range of project alternatives already examined in the DEIR. For further response, please see Master Response 4, "Alternatives."

Sutter-2

The commenter suggests that the proposed phasing of the project, in which the first phase of residential uses would be constructed in the central portion of the subject site east of Highway 99, the first phase employment village would be west of Highway 99 near Riego Road, and the second employment village would be the existing 80-acre major employment village occupied by Sysco, A&N Auto Repair, A&R Readymix and Holt Tractor Manufacturing, is inconsistent with Project Objective 2, which states: "Accommodate regional growth in a location adjacent to . . . major employment centers."

The commenter appears to be suggesting that the existing businesses constitute a "major employment center." However, Sysco, Holt, and the other existing businesses within the boundaries of Sutter Pointe do not constitute major employment centers. They are relatively large employers, but are not on the same scale of what is ultimately envisioned in the Specific Plan. Sutter Pointe envisions large employment villages that can accommodate approximately 4 million square feet of office, 4 million square feet of retail space and 41 million square feet of buildings (see draft Fiscal Impact Analysis Table A-3). The first phase of the employment-generating development needs to have high visibility from State Route 99/70 and have good regional access. With the anticipated construction of the SR 99/70-Riego Road Interchange, the best place for the first phase of employment village should be in the area where proposed along SR 99/70 adjacent to the proposed interchange. The first phase of residential development should be built near the first phase of employment uses.

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Pacific Gas and Electric Company®

PG&E

2730 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833

February 6, 2009

Mr. Doug Libby, AICP
Principal Planner
Sutter County Community Services Department
1130 Civic Center Boulevard
Yuba City, CA 95993
dglibby@co.sutter.ca.us

RE: Pacific Gas and Electric Company Comments on the Sutter Pointe Specific Plan and Draft Environmental Impact Report (SCH#2007032157)

Dear Mr. Libby:

Thank you for the opportunity to comment on the Sutter Pointe Specific Plan (Plan) and Draft Environmental Impact Report (DEIR). I am writing to provide you with additional information concerning the impacts of the Plan and DEIR on electric and natural gas utility services in the area. As you know, the California Environmental Quality Act (CEQA) requires the County, as lead agency, to evaluate the "whole of the action," including the potential environmental impacts of any reasonably anticipated future projects. See, e.g., CEQA Guidelines, sections 15378(a), 15130.) As the County's DEIR for the Plan acknowledges, approval of the Plan will result in the need for PG&E to construct new electric and natural gas facilities to serve the Sutter Pointe development. In order to assist the County in its efforts to comply with CEQA, Pacific Gas and Electric Company (PG&E) herein provides additional details concerning natural gas and electrical facilities in the Sutter Pointe vicinity, as well as their potential environmental effects. For the reasons discussed below, construction, maintenance and operation of these facilities will not result in any significant immitigable environmental impacts. PG&E respectfully requests that the information provided herein be included in the County's EIR and added to the administrative record in support of the County's approval of the Plan. We also request that your approach on electric and magnetic fields (EMF) be revised consistent with the legal precedent discussed below. 1

Electric and Magnetic Fields (EMF)

The California Public Utilities Commission (CPUC) has exclusive discretionary permitting authority over the siting and design of PG&E's electrical utility facilities. See Cal. Const., art. XII, § 5; *Pacific Tel & Tel. v. Eshleman* (1913) 166 Cal. 640, 652-660; CPUC Decision 94-06-014 (1994) 55 Cal.P.U.C.2d 87, 95. Moreover, not only do local authorities lack the authority to impose conditions on PG&E's utility facilities, but EMF conditions are inappropriate as CEQA mitigation in any event. The CPUC has repeatedly recognized that EMF is not an environmental impact to be analyzed in the context of CEQA for two reasons. First, there is no agreement among scientists that EMF does create a potential health risk, and second, there are no defined or adopted CEQA standards for defining health risks from EMF. Please see, e.g., CPUC Decision No. 04-07-027 (Jul. 16, 2004); Delta DPA Capacity Increase Substation Project Final MND and Supporting Initial Study (November 2006), A.05-06-022, section B.1.14.1, page B-31, adopted in D.07-03-009 (March 1, 2007). 2

Recognizing that EMF is nevertheless a public concern, PG&E suggests that you include the enclosed EMF information in an appendix to the FEIR. In accordance with CPUC Decision 06-01-042 and Pacific Gas and Electric Company's "EMF Design Guidelines for Electrical Facilities," PG&E will employ "no cost" and specified "low cost" measures to reduce public exposure to EMF.

ELECTRIC FACILITIES

1. DEIR, page 2-39, Electricity

PG&E suggests that the following language be added to correctly identify the PG&E electric facilities that are being planned to serve the area.

> In order to accommodate the development being proposed in the Plan, PG&E will need to upgrade the existing Catlett Substation located on Fifield Road at Natomas Road. Substation upgrades may include new or additional transformers and other equipment and may require the physical expansion of the substation. In addition, PG&E will need to upgrade the existing overhead distribution pole lines from Catlett Substation south into the Plan boundaries. Distribution pole line upgrades may include new electrical conductor, new poles, which may be taller, as well as new equipment installed on the poles. Because PG&E's electrical system is interconnected and regional in nature, improvements required to serve the new load for the Plan area may be required outside of the Plan area boundaries.

3

2. DEIR, page 3.12-17, Electromagnetic Fields (EMF)

4

For the reasons stated in the EMF discussion above and in the attached information. Please remove Impacts 3.12-7, 3.12-17 and 3.12-18 and Mitigation Measures 3.12-7 and 15.

3. Specific Plan, page 9-18, Policy 9.5-3

PG&E recommends that Policy 9.5-3 be modified to clarify the focus on electric distribution facilities.

> The CPUC has exclusive jurisdiction over the design and construction of electric distribution facilities. To the extent that local policies are considered by the CPUC in locating such facilities, such facilities may be located in any land use designation and shall be located in easements or rights of way that permit access for maintenance with minimal disruption of surrounding properties.

5

4. Specific Plan, page 9-18, Policy 9.5-4

PG&E recommends that Policy 9.5-4 be modified t clarify the focus on electric transmission facilities.

> The CPUC has exclusive jurisdiction over the design and construction of electric transmission facilities. To the extent that local policies are considered by the CPUC in locating such facilities, such facilities may be located in any land use designation and shall be located in easements or rights of way that permit access for maintenance with minimal disruption of surrounding properties.

6

5. Specific Plan, page 9-18, Policy 9.5-5

PG&E recommends that Policy 9.5-5 be modified to reflect the CPUC's exclusive jurisdiction for siting utility facilities.

> The CPUC has exclusive jurisdiction over the design and construction of new electric transmission lines constructed by public utilities. To the extent that local policies are considered by the CPUC in locating such facilities, and to the extent consistent with CPUC rules and regulations, such facilities shall be located in a manner that minimizes visual and environmental impacts, including impacts to viewsheds where practicable.

7

6. Specific Plan, page 9-18, Policy 9.5-7

PG&E recommends that Policy 9.5-7 be modified to reflect the CPUC's exclusive jurisdiction over substation design and construction, as well as the need for greater access to substations for maintenance and operations, and security concerns related to complete enclosures.

> The CPUC has exclusive jurisdiction over the design and construction of new electric transmission lines constructed by public utilities. To the extent that local policies are considered by the CPUC in designing such facilities, substations shall be partially enclosed with a masonry block wall with a landscaped setback along all perimeters of the substation as appropriate. Landscaping shall be included in the substation design.

8

NATURAL GAS FACILITIES

1. Specific Plan Section 9.5, Dry Utilities

There appears to be some confusion regarding the pipeline facilities that are referenced in the Specific Plan. PG&E offers the following background information to enable the County to clarify its Specific Plan by using terminology that is consistent with state and federal regulations.

The CPUC has exclusive jurisdiction over the design and construction of PG&E natural gas facilities. PG&E must comply with the design, construction, maintenance and operating requirements imposed by the CPUC's General Order (GO) 112E. GO 112E incorporates by reference the Department of Transportation (DOT) Title 49 of the Code of Federal Regulations (CFR) Section 192 in its entirety. 49 CFR Section 192.3 defines the terms "distribution line," high pressure distribution system," and "transmission line." PG&E will install both transmission and distribution facilities to serve the project site. PG&E recommends referring to larger diameter (10 to 30 inches), higher pressure (above 60 psig), supply pipelines as transmission lines and smaller diameter, lower pressure pipelines as distribution lines.

9

2. Specific Plan Policy 9.5-8, Pipeline Routing

PG&E recommends that Policy Statement 9.5-8 be modified as follows to: (1) clarify that it is intended to apply to gas transmission facilities;[1] and (2) to recognize CPUC exclusive jurisdiction over the design and construction of gas transmission facilities regulations regarding gas

10

[1] PG&E's distribution system (60 psig and less Maximum Allowable Operating Pressure (MAOP)) will be installed in joint trench with other dry utilities. This joint trench must be located in franchise or an adjacent public utility easement in order to serve the businesses and residences throughout the project.

transmission facilities, and (3) to ensure consistency with current plans pending before the California State Lands Commission.

> The CPUC has exclusive jurisdiction over the design and construction of natural gas transmission facilities. To the extent that local policies are considered by the CPUC in locating such facilities, where practicable, new natural gas transmission facilities shall be located adjacent to railway and electric transmission corridors, along major arterial roads, and where practicable, within existing easements. If not feasible these gas transmission facilities shall be placed as close to existing easements as possible.

10 Cont'd

The proposed route for PG&E's transmission pipeline project supplying gas to the distribution system is pending approval by the California State Lands Commission, the lead agency conducting the environmental review under CEQA. The proposed route is along the north side of Riego and Baseline Roads. PG&E has been working with Sutter Pointe's civil designer, MacKay and Somps, to coordinate the location of PG&E's pipeline with the road improvements required for the project. It is expected that the pipeline will be installed prior to the road developments. Therefore, PG&E will arrange for a 50-ft wide private easement in a location that will be adjacent to the northern most traveled lane of the Riego and Baseline road improvements. The changes to Policy State 9.5-8 proposed above will ensure consistency with the transmission infrastructure necessary to serve the area.

3. Specific Plan Policy 9.5-9, Pipeline Design

As noted above, the CPUC has jurisdiction over pipeline design, maintenance, and operations. CPUC General Order 112E incorporates by reference regulations adopted by the U.S. Department of Transportation, which are set forth in 49 CFR section 192. Together, these regulations provide a comprehensive set of requirements designed to protect public health and safety. PG&E recommends that this policy statement be revised as follows to ensure consistency with these state and federal requirements.

11

> The design of all new natural gas pipelines shall comply with applicable state and federal regulations governing pipeline design, maintenance, and operations to protect the health and safety of the public from the threat of explosion and fire from gas pipeline rupture.

4. Specific Plan Policy 9.5-10, School Sites

PG&E recommends that this policy statement be revised as follows to: (1) clarify that it is intended to apply to natural gas pipeline facilities as defined by federal regulations; and (2) ensure consistency with California statutes and regulations regarding natural gas pipelines located near school sites.

12

> If new gas transmission pipelines are located within 1,500 feet of any existing or proposed school site (other than pipelines used to supply gas to the school or neighborhood), a risk analysis study must be conducted by a competent professional to identify appropriate safety measures prior to construction

Section 17213 of the California Education Code allows school districts to acquire school sites that contain natural gas pipelines if the pipeline is used to supply natural gas to that school or neighborhood. See also Public Resources Code section 21151.8, which uses the same language with reference to environmental reviews under CEQA.

It is PG&E's understanding that this Plan proposes land uses designated for schools within 1500 feet of our L406/407 Project. Because you are in the planning stages of this development and in order to avoid the need for the school district to perform a risk analysis and any resulting mitigation measures, PG&E requests that you move land use designations for schools at least 1500 feet from the L406/407 Project alignment.

12 Cont'd

5. Specific Plan Policy 9.5-11, Residential Areas

PG&E recommends that this policy statement be revised as follows to: (1) clarify that it is intended to apply to transmission facilities as defined by federal regulations; and (2) ensure consistency with California statutes and regulations regarding natural gas pipelines located near residential areas.

> The design of all new gas transmission pipelines within 500 feet of any existing or proposed residential land uses shall be designed in accordance with applicable state and federal regulations governing pipeline design.

13

As previously mentioned, the CPUC regulates gas transmission pipelines, and federal regulations govern pipeline design. In 2004, new regulations were adopted to address "Integrity Management in High Consequence Areas." (See 49 CFR section 192, subpart O.) These regulations require pipeline operators perform an assessment of all threats posed to a covered pipeline segment and to develop an integrity management plan to address the identified threats. Furthermore, the effectiveness of the integrity management plan must be assessed periodically. As set forth in 49 CFR section 192.903, the definition of "High Consequence Area" is determined by population density within a calculated impact radius based upon pipeline properties and operating conditions. PG&E will monitor its pipeline pursuant to these regulations and will comply with all requirements if an area becomes a "High Consequence Area".

6. Specific Plan page 9-20, Exhibit 9-7

PG&E recommends that the legend in this exhibit specify that Joint Trenches include gas distribution facilities. PG&E is not able to specify the location of the two distribution regulator stations that will be required to serve the Plan area at this time. The locations will be determined based on the manner in which the development is built-out.

14

7. Specific Plan page 9-21, Exhibit 9-8

To ensure consistency with the DEIR, PG&E recommends that this exhibit be replaced with Exhibit 2-11 on page 2-41 of the DEIR. PG&E's recommendations for changes to that exhibit are addressed below.

15

8. DEIR page 2-40, Exhibit 2-10

PG&E recommends that the legend in this exhibit specify that Joint Trenches include gas distribution facilities. PG&E is not able to specify the location of the two distribution regulator stations that will be required to serve the Plan area at this time. The locations will be determined based on the manner in which the development is built-out.

16

9. DEIR page 2-41, Exhibit 2-11

PG&E recommends the following modifications to this exhibit to clarify the type of natural gas facilities:

- Delete the dashed-blue line from the map and associated label in the Legend which refers to a "Proposed extension of natural gas service from Roseville". 17
- Rename the Label for the dashed-yellow line on the map from "Existing gas facilities" to "Existing gas transmission facilities".
- Rename the Label for the yellow circle on the map from "PG&E natural gas distribution point of connection" to "PG&E natural gas transmission point of connection".

10. DEIR page 2-42, Project Description, Natural Gas

PG&E suggests that the two paragraphs under the Natural Gas heading in the Project Description be revised as shown below to correctly reflect the plans for natural gas infrastructure:

> PG&E is the local purveyor of natural gas in the vicinity of the project site, and PG&E would extend lines and construct facilities to serve the site. The nearest gas main is approximately 2 miles southeast of the project site in the northern portion of the community of Rio Linda. PG&E's facility in this location, however, does not have the capacity to serve the project site. PG&E proposes to extend natural gas service to the site from the future new transmission Line 407 pipeline (Line 407 East) which is part of PG&E's Line 406/407 project to be installed west along Riego Road (Base Line Road in Placer County) from an existing transmission main in Roseville. The proposed alignment of this new transmission main is along the north side of Riego Road through the entire project site. The applicant has indicated that PG&E intends to extend natural gas service onto the project site from the proposed transmission main, which will operate at a Maximum Allowable Operating Pressure (MAOP) of 975 psig, through two distribution regulator stations located within the project boundaries and an underground distribution system which will operate at a MAOP of 60 psig. The gas distribution regulator stations will be constructed within 20 foot by 80 foot easements that have 24 hour all weather access for maintenance and operations. As part of the project approval process, the project applicant would coordinate with and meet the requirements of PG&E regarding the extension and locations of on-site infrastructure. 18
>
> A notice of preparation (State Clearinghouse number 2007062091) for PG&E's L407/407 project was prepared by the California State Lands Commission (the lead agency under CEQA) and circulated for public review in June 2007. It is anticipated that a DEIR for the project will be released in Spring 2009. The pipeline project is currently scheduled to begin construction of Line 406 in 2009 and Line 407 East in 2010.

11. DEIR page 3.10-8, Natural Gas

PG&E recommends a correction in the use of the engineering unit "mcf." The term mcf is generally understood to refer to thousand cubic feet, while the term "mmcf" refers to million cubic feet. The text in this section should be corrected accordingly. 19

12. DEIR page 3.10-9, PG&E Line 406/407 Project

PG&E suggests minor edits to this section as shown below to correctly reflect the plans for natural gas infrastructure:

> According to PG&E, the existing transmission system in the Sacramento Valley region would require additional transmission facilities to provide reliable natural gas service to existing customers or to extend service to future planned development in the area. PG&E anticipates that customer reliability could be at risk as early as 2009. As a result, PG&E is planning to construct the Line 406 and Line 407 Pipeline Project in Yolo, Sutter, Sacramento, and Placer Counties. PG&E anticipates that the Line 406/407 project would provide greater capacity and service reliability to the existing natural gas transmission and distribution pipeline system and would extend natural gas service to planned residential and commercial developments in Placer, Sutter, and Sacramento Counties. This natural gas pipeline project involves a new 30-inch transmission pipeline that would operate at a Maximum Allowable Operating Pressure (MAOP) of 975 psig and be approximately 40 miles long (identified as Line 406 and Line 407 East and Line 407 West) and a new distribution feeder main at Powerline Road operating at a MAOP of 500 psig. Line 406 is proposed to be constructed in 2009.
>
> Current projections are that Line 407 East and the Powerline Road distribution feeder main would be required in 2010. However, the pipelines may be installed prior to road improvements associated with developments along Riego and Baseline Roads. Line 407 West is projected to be required in 2012, but may be required earlier depending upon load growth in the area. 12
>
> The proposed Sutter Pointe development would be served by the Line 407 East Pipeline. Line 407 East would consist of approximately 12 miles of 30-inch-diameter pipeline designed to operate at a MAOP of 975 psig transmission pressure. The transmission pipeline route would extend east from the junction the new Powerline Road distribution feeder main and follow Riego and Baseline Roads. The route would connect with an existing transmission pipeline operating at a MAOP of 500 psig at the intersection of Baseline and Fiddyment Roads in Placer County.
>
> A notice of preparation (NOP) (SCH # 2007062091) for the proposed Line 406/407 project was prepared and circulated for public review in June 2007. The California State Lands Commission is the lead agency under CEQA and is preparing the EIR. It is anticipated that the DEIR for the Line 406/407 project will be circulated for public review in mid 2009. The Line 406 and Line 407 East project is anticipated to be constructed in 2009 and 2010 respectively.
>
> Potential impacts of the PG&E Line 406/407 project identified in the project description of the NOP include greenhouse gas emissions from construction vehicles; potential risks from release of natural gas; disturbance of habitat and special status plant and animal species, specifically the Swainson's hawk, giant garter snake, and valley elderberry longhorn beetle; disturbance of possible archaeological sites; disturbance of unknown paleontological resources; possible exposure of construction crews and the public to hazardous materials used in construction or present in excavated soils; short term effects on agriculture;

possible frac-out of water bodies crossed by the pipeline; temporary noise and or ground vibration that would exceed ambient noise levels; and traffic congestion where the pipeline crosses roads through trenching (PG&E 2007).

20 Cont'd

13. DEIR pages 3.10-21 through 22, Increased Demand for Natural Gas and Infrastructure

PG&E recommends revisions to this section as shown below to correctly reflect the plans for natural gas infrastructure:

Implementation of the proposed project would increase natural gas demand on the project site. Natural gas consumption for housing units averages 221 cubic feet of natural gas per day per dwelling unit (South Coast Air Quality Management District 1993). Commercial and office energy consumption varies depending on specific uses, building materials, and space configurations. In general, commercial and office uses average approximately 0.097 cubic feet of natural gas per square foot per day (South Coast Air Quality Management District 1993). The proposed dwelling units would require 3.9 mmcf per day (17,500 dwelling unit × 221 cubic feet per day), and commercial and industrial uses would require 4.8 mmcf per day (49,706,000 square feet × 0.097 cubic feet per day). Based on these rates, the proposed project would increase natural gas demands by 8.7 mmcf per day.

Natural gas service in Sutter County is provided by PG&E through portions of PG&E's 46,000 miles of natural gas distribution pipelines. In 2006, PG&E delivered approximately 828,000 mmcf of natural gas throughout its service area. In 2006, the county produced roughly 25 mmcf of natural gas. This represents nearly 3% of the total natural gas production in the state.

21

PG&E does not currently have gas service infrastructure on the project site. The nearest gas service is approximately 2 miles southeast of the project site, in the northern portions of the community of Rio Linda. PG&E's facility in this location, however, does not have the capacity to serve the project site. Instead, PG&E proposes to extend natural gas service from the planned Line 407 East Pipeline. Line 407 East would consist of approximately 12 miles of 30-inch-diameter pipeline designed to operate at a MAOP of 975 psig transmission pressure. The transmission pipeline route would extend east from the junction of the new Powerline Road distribution feeder main along the north side of Riego and Baseline Roads through the entire project site (see Exhibits 2-10 and 2-11 in Chapter 2, "Project Description"). The route would connect with an existing transmission pipeline operating at a MAOP of 500 psig at the intersection of Baseline and Fiddyment Roads in Placer County. PG&E intends to extend natural gas service onto the project site from the proposed transmission main, which will operate at a Maximum Allowable Operating Pressure (MAOP) of 975 psig, through two distribution regulator stations located within the project boundaries and an underground distribution system which will operate at a MAOP of 60 psig. The gas distribution regulator stations will be constructed within 20 foot by 80 foot easements that have 24 hour all weather access for maintenance and operations.

The on-site service lines would be sized to meet the demands of the proposed project, and public utility easements would be dedicated for all underground facilities. PG&E would extend lines and construct facilities to serve the project

site concurrently with development phases, and the location of this infrastructure would be identified in the final project design. As part of the project approval process, the project applicant would coordinate with and meet the requirements of PG&E regarding the extension and locations of on-site infrastructure.

An NOP (SCH # 2007062091) for the Line 406/407 project was prepared and circulated for public review in June 2007, and potential impacts for construction of the proposed PG&E Pipeline 406/407 project are identified in the NOP are summarized above in the "Environmental Setting." An EIR is currently being prepared to identify analyze specific impacts of the proposed pipeline project and identify any required mitigation measures. According to PG&E, a DEIR for the Line 406/407 project may be released in late 2008. The pipeline project is anticipated to be constructed in 2009 and 2010. Since PG&E is planning to construct the Line 406 and Line 407 Pipeline Project to provide greater capacity and service reliability to the existing natural gas transmission and distribution pipeline system and serve the overall projected customer load growth in Placer, Sutter, and Sacramento Counties, the proposed project would not contribute to impacts associated with the construction of the proposed PG&E Line 406/407 project. PG&E will be able to provide natural gas and associated infrastructure to the project site from the planned Line 406/407 Project, and the direct impact is less than significant. No indirect impacts would occur. 21 Cont'd

Off-Site Elements

Off-site natural gas infrastructure necessary to serve the proposed project would extend into Placer County. The off-site elements are related to the provision of utilities to the project site and would not involve construction of new urban uses (e.g., residential or commercial land uses) and thus would not increase the demand for natural gas and infrastructure. Therefore, implementing these elements is a direct, less-than-significant impact. No indirect impacts would occur.

14. DEIR page 3.12-18, Natural Gas Transmission Lines

Please add the following sentence. This portion of the PG&E natural gas transmission line 406/407 is scheduled to be constructed in 2010. Natural gas distribution facilities will be constructed as development occurs. 22

15. DEIR page 3.3-1, Transportation and Circulation

PG&E has been working with the civil designer, MacKay and Somps, to coordinate the location of the future pipeline with the road improvements required for the project. It is expected that the pipeline will be installed prior to the road developments. Therefore, PG&E will arrange for a 50-ft wide private easement in a location that will be adjacent to the northern most traveled lane of the Riego and Baseline road improvements. Continued coordination will be required to ensure that the proposed pipeline is designed in concert with the extensive road improvements planned for the project. 23

SUMMARY

PG&E is dedicated to providing safe and reliable electric and natural gas service to meet the Sutter Pointe Specific Plan area's needs. In addition, PG&E is available to review and comment on specific development details for the purpose of protecting these vital utility easements and facilities. If you have any questions regarding the above information or have additional questions please do not hesitate to contact me at 530-896-4257.

Sincerely,

Chris Ellis for

Donald W. Chambers
PG&E Land Agent

Attachment

cc: Ms. Crystal Spurr
California State Lands Commission

PG&E

Electric and Magnetic Fields

The California Public Utilities Commission (CPUC) and the California Department of Health Services (CDHS) have not concluded that exposure to magnetic fields from utility electric facilities is a health hazard. Many reports have concluded that the potential for health effects associated with electric and magnetic field (EMF) exposure is too speculative to allow the evaluation of impacts or the preparation of mitigation measures.

EMF is a term used to describe electric and magnetic fields that are created by electric voltage (electric field) and electric current (magnetic field). Power frequency EMF is a natural consequence of electrical circuits, and can be either directly measured using the appropriate measuring instruments or calculated using appropriate information.

Electric Fields

Electric fields are present whenever voltage exists on a wire, and are not dependent on current. The magnitude of the electric field is primarily a function of the configuration and operating voltage of the line and decreases with the distance from the source (line). The electric field can be shielded (i.e., the strength can be reduced) by any conducting surface, such as trees, fences, walls, buildings, and most types of structures. The strength of an electric field is measured in volts per meter (V/m) or kilovolts per meter (kV/m).

Magnetic Fields

Magnetic fields are present whenever current flows in a conductor, and are not dependent on the voltage present on the conductor. The strength of these fields also decreases with distance from the source. However, unlike electric fields, most common materials have little shielding effect on magnetic fields.

The magnetic field strength is a function of both the current on the conductor and the design of the system. Magnetic fields are measured in units called Gauss. However, for the low levels normally encountered near power systems, the field strength is expressed in a much smaller unit, the milligauss (mG), which is one thousandth of a Gauss.

Power frequency EMF is present where electricity is used. This includes not only utility transmission lines, distribution lines, and substations, but also the building wiring in homes, offices, and schools, and in the appliances and machinery used in these locations. Typical magnetic fields from these sources can range from below 1 mG to above 1,000 mG (1 Gauss).

Magnetic field strengths diminish with distance. Fields from compact sources (i.e., those containing coils such as small appliances and transformers) decrease in inverse proportion to

the distance from the source cubed. For three-phase power lines with balanced currents, the magnetic field strength drops off inversely proportional to the distance from the line squared. Fields from unbalanced currents, which flow in paths such as neutral or ground conductors, fall off inversely proportional to the distance from the source. Conductor spacing and configuration also affect the rate at which the magnetic field strength decreases.

The magnetic field levels of PG&E's overhead and underground transmission lines will vary depending upon customer power usage. Magnetic field strengths for typical PG&E transmission line loadings at the edge of rights-of-way are approximately 10 to 90 mG. Under peak load conditions, the magnetic fields at the edge of the right-of-way would not likely exceed 150 mG. There are no long-term, health-based state or federal government EMF exposure standards. State regulations for magnetic fields have been developed in New York and Florida (150 mG and 200 mG at the edge of the right-of-way). However, these are based on limiting exposure from new facilities to levels no greater than existing facilities.

The strongest magnetic fields around the outside of a substation come from the power lines entering and leaving the station. The strength of the magnetic fields from transformers and other equipment decreases quickly with distance. Beyond the substation fence, the magnetic fields produced by the equipment within the station are typically indistinguishable from background levels.

Possible Health Effects

The possible effects of EMF on human health have come under scientific scrutiny. Concern about EMF originally focused on electric fields; however, much of the recent research has focused on magnetic fields. Uncertainty exists as to what characteristics of magnetic field exposure need to be considered to assess human exposure effects. Among the characteristics considered are field intensity, transients, harmonics, and changes in intensity over time. These characteristics may vary from power lines to appliances to home wiring, and this may create different types of exposures. The exposure most often considered is intensity or magnitude of the field.

There is a consensus among the medical and scientific communities that there is insufficient evidence to conclude that EMF causes adverse health effects. Neither the medical nor scientific communities have been able to provide any foundation upon which regulatory bodies could establish a standard or level of exposure that is known to be either safe or harmful. Laboratory experiments have shown that magnetic fields can cause biologic changes in living cells, but scientists are not sure whether any risk to human health can be associated with them. Some studies have suggested an association between surrogate measures of magnetic fields and certain cancers while others have not.

PG&E

California Public Utilities Commission Decision Summary

Background

On January 15, 1991, the CPUC initiated an investigation to consider its role in mitigating the health effects, if any, of electric and magnetic fields from utility facilities and power lines. A working group of interested parties, called the California EMF Consensus Group, was created by the CPUC to advise it on this issue. It consisted of 17 stakeholders representing citizens groups, consumer groups, environmental groups, state agencies, unions, and utilities. The Consensus Group's fact-finding process was open to the public, and its report incorporated concerns expressed by the public. Its recommendations were filed with the Commission in March 1992.

In August 2004 the CPUC began a proceeding known as a "rulemaking" (R.04-08-020) to explore whether changes should be made to existing CPUC policies and rules concerning EMF from electric transmission lines and other utility facilities.

Through a series of hearings and conferences, the Commission evaluated the results of its existing EMF mitigation policies and addressed possible improvements in implementation of these policies. The CPUC also explored whether new policies are warranted in light of recent scientific findings on the possible health effects of EMF exposure.

The CPUC completed the EMF rulemaking in January 2006 and presented these conclusions in Decision D.06-01-042:

- The CPUC affirmed its existing policy of requiring no-cost and low-cost mitigation measures to reduce EMF levels from new utility transmission lines and substation projects.

- The CPUC adopted rules and policies to improve utility design guidelines for reducing EMF, and provides for a utility workshop to implement these policies and standardize design guidelines.

- Despite numerous studies, including one ordered by the Commission and conducted by the California Department of Health Services, the CPUC stated "we are unable to determine whether there is a significant scientifically verifiable relationship between EMF exposure and negative health consequences."

- The CPUC said it will "remain vigilant" regarding new scientific studies on EMF, and if these studies indicate negative EMF health impacts, the Commission will reconsider its EMF policies and open a new rulemaking if necessary.

In response to a situation of scientific uncertainty and public concern, the decision specifically requires PG&E to consider "no-cost" and "low-cost" measures, where feasible, to reduce exposure from new or upgraded utility facilities. It directs that no-cost mitigation measures be undertaken, and that low-cost options, when they meet certain guidelines for field reduction and cost, be adopted through the project certification process. PG&E was directed to develop, submit and follow EMF guidelines to implement the CPUC decision. Four percent of total project budgeted cost is the benchmark in implementing EMF mitigation, and mitigation measures should achieve incremental magnetic field reductions of at least 15%.

Reviews of EMF Studies

Hundreds of EMF studies have been conducted over the last 20 years in the areas of epidemiology, animal research, cellular studies, and exposure assessment. A number of nationally recognized multi-discipline panels have performed comprehensive reviews of the body of scientific knowledge on EMF. These panels' ability to bring experts from a variety of disciplines together to review the research gives their reports recognized credibility. It is standard practice in risk assessment and policymaking to rely on the findings and consensus opinions of these distinguished panels. None of these groups have concluded that EMF causes adverse health effects or that the development of standards were appropriate or would have a scientific basis.

Reports by the National Research Council/National Academy of Sciences, American Medical Association, American Cancer Society, National Institute of Environmental Health Sciences, World Health Organization, International Agency for Research on Cancer, and California Department of Health Services conclude that insufficient scientific evidence exists to warrant the adoption of specific health-based EMF mitigation measures. The potential for adverse health effects associated with EMF exposure is too speculative to allow the evaluation of impacts or the preparation of mitigation measures.

National Institute of Environmental Health Sciences

In June of 1999, the federal government completed a $60-million EMF research program managed by the National Institute of Environmental Health Sciences (NIEHS) and the Department of Energy (DOE). Known as the EMF RAPID (Research And Public Information Dissemination) Program. In their report to the U.S. Congress, the NIEHS concluded that:

> The NIEHS believes that the probability that ELF-EMF exposure is truly a health hazard is currently small. The weak epidemiological associations and lack of any laboratory support for these associations provide only marginal, scientific support that exposure to this agent is causing any degree of harm.

The NIEHS report also included the following conclusions:

> The National Toxicology Program routinely examines environmental exposures to determine the degree to which they constitute a human cancer risk and produces the 'Report on Carcinogens' listing agents that are 'known human carcinogens' or 'reasonably anticipated to be human carcinogens.' It is our opinion that based on evidence to date, ELF-EMF exposure would not be listed in the 'Report on Carcinogens' as an agent 'reasonably anticipated to be a human carcinogen.' This is based on the limited epidemiological evidence and the findings from the EMF-RAPID Program that did not indicate an effect of ELF-EMF exposure in experimental animals or a mechanistic basis for carcinogenicity.
>
> The NIEHS agrees that the associations reported for childhood leukemia and adult chronic lymphocytic leukemia cannot be dismissed easily as random or negative findings. The lack of positive findings in animals or in mechanistic studies weakens the belief that this association is actually due to ELF-EMF, but cannot completely discount the finding. The NIEHS also agrees with the conclusion that no other cancers or non-cancer health outcomes provide sufficient evidence of a risk to warrant concern.
>
> Epidemiological studies have serious limitations in their ability to demonstrate a cause and effect relationship whereas laboratory studies, by design, can clearly show that cause and effect are possible. Virtually all of the laboratory evidence in animals and humans and most of the mechanistic work done in cells fail to support a causal relationship between exposure to ELF-EMF at environmental levels and changes in biological function or disease status. The lack of consistent, positive findings in animal or mechanistic studies weakens the belief that this association is actually due to ELF-EMF, but it cannot completely discount the epidemiological findings.
>
> The NIEHS suggests that the level and strength of evidence supporting ELF-EMF exposure as a human health hazard are insufficient to warrant aggressive regulatory actions; thus, we do not recommend actions such as stringent standards on electric appliances and a national program to bury all transmission and distribution lines. Instead, the evidence suggests passive measures such as a continued emphasis on educating both the public and the regulated community on means aimed at reducing exposures. NIEHS suggests that the power industry continue its current practice of siting power lines to reduce exposures and continue to explore ways to reduce the creation of magnetic fields around transmission and distribution lines without creating new hazards. We also encourage technologies that lower exposures from neighborhood distribution lines provided that they do not increase other risks, such as those from accidental electrocution or fire.

U.S. National Research Council/ National Academy of Sciences

In May 1999, the National Research Council/ National Academy of Sciences, an independent scientific agency responsible for advising the federal government on science, technology, and medicine, released its evaluation of the scientific and technical content of research projects conducted under the U.S. EMF RAPID Program, concluding that:

> The results of the EMF-RAPID program do not support the contention that the use of electricity poses a major unrecognized public-health danger. Basic research on the effects of power-frequency magnetic fields on cells and animals should continue, but a special research-funding effort is not required. Investigators should compete for funding through traditional research-funding mechanisms. If future research on this subject is funded through such mechanisms, it should be limited to tests of well-defined mechanistic hypotheses or replications of reported positive effects. If carefully performed, such experiments will have value even if their results are negative. Special efforts should be made to communicate the conclusions of this effort to the general public effectively.

The following specific recommendations are made by the committee:

1. The committee recommends that no further special research program focused on possible health effects of power-frequency magnetic fields be funded. Basic research on the effects of power-frequency magnetic fields on cells and animals should continue but investigators should compete for funding through traditional research funding mechanisms.

2. If, however, Congress determines that another time-limited, focused research program on the health effects of power-frequency magnetic fields is warranted, the committee recommends that emphasis be placed on replications of studies that have yielded scientifically promising claims of effects and that have been reported in peer-reviewed journals. Such a program would benefit from the use of a contract-funding mechanism with a requirement for complete reports and/or peer-reviewed publications at program's end.

3. The engineering studies were initiated without the guidance of a clearly established biologic effect. The committee recommends that no further engineering studies be funded unless a biologic effect that can be used to plan the engineering studies has been determined.

4. Much of the information from the EMF-RAPID biology program has not been published in peer-reviewed journals. NIEHS should collect all future peer-reviewed information resulting from the EMF-RAPID biology projects and publish a summary report of such information periodically on the NIEHS Web site.

5. The communication effort initiated by EMF-RAPID is reasonable. The two booklets and the telephone information line are useful, as is the EMF-RAPID Internet site. There are two limitations to the effort. First, it is largely passive, responding to inquiries and

providing information, rather than being active. Second, much of the information produced is in a scientific format not readily understandable by the public. The committee recommends that further material produced to disseminate information on power-frequency magnetic fields be written for the general public in a clear fashion. The Web site should be made more user-friendly. The booklet *Questions and Answers about EMF* should be updated periodically and made available to the public.

World Health Organization

The World Health Organization (WHO) established the International EMF Project in 1996 to investigate potential health risks associated with exposure to electric and magnetic fields (EMF). A WHO Task Group recently concluded a review of the health implications of extremely low frequency (ELF) EMF.

A Task Group of scientific experts was convened in 2005 to assess any risks to health that might exist from exposure to ELF electric and magnetic fields. Previously in 2002, the International Agency for Research on Cancer (IARC) examined the evidence regarding cancer; this Task Group reviewed evidence for a number of health effects, and updated the evidence regarding cancer. The conclusions and recommendations of the Task Group are presented in a WHO report titled: "Extremely Low Frequency Fields Environmental Health Criteria Monograph No.238" and Factsheet No 322.

> "New human, animal and in vitro studies, published since the 2002 IARC monograph, do not change the overall classification of ELF magnetic fields as a possible human carcinogen."
>
> "A number of other diseases have been investigated for possible association with ELF magnetic field exposure. These include cancers in both children and adults, depression, suicide, reproductive dysfunction, developmental disorders, immunological modifications and neurological disease. The scientific evidence supporting a linkage between ELF magnetic fields and any of these diseases is much weaker than for childhood leukaemia and in some cases (for example, for cardiovascular disease or breast cancer) the evidence is sufficient to give confidence that magnetic fields do not cause the disease."
>
> "the epidemiological evidence is weakened by methodological problems, such as potential selection bias. In addition, there are no accepted biophysical mechanisms that would suggest that low-level exposures are involved in cancer development. Thus, if there were any effects from exposures to these low-level fields, it would have to be through a biological mechanism that is as yet unknown. Additionally, animal studies have been largely negative. Thus, on balance, the evidence related to childhood leukaemia is not strong enough to be considered causal."
>
> "Policy-makers should establish an ELF EMF protection programme that includes measurements of fields from all sources to ensure that the exposure limits are not exceeded either for the general public or workers."

"Government and industry should monitor science and promote research programmes to further reduce the uncertainty of the scientific evidence on the health effects of ELF field exposure."

"Policy-makers, community planners and manufacturers should implement very low-cost measures when constructing new facilities and designing new equipment including appliances."

"Changes to engineering practice to reduce ELF exposure from equipment or devices should be considered, provided that they yield other additional benefits, such as greater safety, or little or no cost."

"When changes to existing ELF sources are contemplated, ELF field reduction should be considered alongside safety, reliability and economic aspects."

International Agency for Research on Cancer

In June of 2001, the International Agency for Research on Cancer (IARC), a branch of the World Health Organization (WHO), evaluated the carcinogenic risk to humans of static and extremely low-frequency EMF. In October of 2001, the WHO published a Fact Sheet that summarized the IARC findings. Below is an excerpt from the fact sheet:

In June 2001, an expert scientific working group of IARC reviewed studies related to the carcinogenicity of static and ELF electric and magnetic fields. Using the standard IARC classification that weighs human, animal and laboratory evidence, ELF magnetic fields were classified as possibly carcinogenic to humans based on epidemiological studies of childhood leukaemia. Evidence for all other cancers in children and adults, as well as other types of exposures (i.e. static fields and ELF electric fields) was considered not classifiable either due to insufficient or inconsistent scientific information.

"Possibly carcinogenic to humans" is a classification used to denote an agent for which there is limited evidence of carcinogenicity in humans and less than sufficient evidence for carcinogenicity in experimental animals.

This classification is the weakest of three categories ("is carcinogenic to humans", "probably carcinogenic to humans" and "possibly carcinogenic to humans") used by IARC to classify potential carcinogens based on published scientific evidence. Some examples of well-known agents that have been classified by IARC are listed below:

Classification	Examples of Agents
Carcinogenic to humans (usually based on strong evidence of carcinogenicity in humans)	Asbestos Mustard gas Tobacco (smoked and smokeless) Gamma radiation
Probably carcinogenic to humans (usually based on strong evidence of carcinogenicity in animals)	Diesel engine exhaust Sun lamps UV radiation Formaldehyde
Possibly carcinogenic to humans (usually based on evidence in humans which is considered credible, but for which other explanations could not be ruled out)	Coffee Styrene Gasoline engine exhaust Pickled Vegetables ELF magnetic fields

DO ELF FIELDS CAUSE CANCER?

ELF fields are known to interact with tissues by inducing electric fields and currents in them. This is the only established mechanism of action of these fields. However, the electric currents induced by ELF fields commonly found in our environment are normally much lower than the strongest electric currents naturally occurring in the body such as those that control the beating of the heart.

Since 1979 when epidemiological studies first raised a concern about exposures to power line frequency magnetic fields and childhood cancer, a large number of studies have been conducted to determine if measured ELF exposure can influence cancer development, especially leukaemia in children.

There is no consistent evidence that exposure to ELF fields experienced in our living environment causes direct damage to biological molecules, including DNA. Since it seems unlikely that ELF fields could initiate cancer, a large number of investigations have been conducted to determine if ELF exposure can influence cancer promotion or co-promotion. Results from animal studies conducted so far suggest that ELF fields do not initiate or promote cancer.

However, two recent pooled analyses of epidemiological studies provide insight into the epidemiological evidence that played a pivotal role in the IARC evaluation. These studies suggest that, in a population exposed to average magnetic fields in excess of 0.3 to 0.4 μT, twice as many children might develop leukaemia compared to a population with lower exposures. In spite of the large number data base, some uncertainty remains as to whether magnetic field exposure or some other factor(s) might have accounted for the increased leukaemia incidence.

Childhood leukaemia is a rare disease with 4 out of 100,000 children between the age of 0 to 14 diagnosed every year. Also average magnetic field exposures above 0.3 or 0.4 μT in residences are rare. It can be estimated from the epidemiological study results that less than 1% of populations using 240 volt power supplies are exposed to these levels, although this may be higher in countries using 120 volt supplies.

The IARC review addresses the issue of whether it is feasible that ELF-EMF pose a cancer risk. The next step in the process is to estimate the likelihood of cancers in the general population from the usual exposures and to evaluate evidence for other (non-cancer) diseases. This part of the risk assessment should be finished by WHO in the next 18 months.

American Cancer Society

In the journal, *A Cancer Journal for Clinicians*, the American Cancer Society (ACS) reviewed EMF residential and occupational epidemiologic research in an article written by Dr. Clark W. Heath, Jr., ACS's vice president of epidemiology and surveillance research. Dr. Heath reviews 13 residential epidemiologic studies of adult and childhood cancer. Dr. Heath wrote:

> Evidence suggesting that exposure to EMF may or may not promote human carcinogenesis is mostly based on...epidemiologic observations.... While those observations may suggest such a relationship for leukemia and brain cancer in particular, the findings are weak, inconsistent, and inconclusive.... The weakness and inconsistent nature of epidemiologic data, combined with the continued dearth of coherent and reproducible findings from experimental laboratory research, leave one uncertain and rather doubtful that any real biologic link exists between EMF exposure and carcinogenicity.

American Medical Association

The AMA adopted recommendations of its Council on Scientific Affairs (CSA) regarding EMF health effects. The report was prepared as a result of a resolution passed by AMA's membership at its 1993 annual meeting. The following recommendations are based on the CSA's review of EMF epidemiologic and laboratory studies to date, as well as on several major literature reviews:

- Although no scientifically documented health risk has been associated with the usually occurring levels of electromagnetic fields, the AMA should continue to monitor developments and issues related to the subject.

- The AMA should encourage research efforts sponsored by agencies such as the National Institutes of Health, the U.S. Department of Energy, and the National Science Foundation. Continuing research should include study of exposures to EMF and its effects, average public exposures, occupational exposures, and the effects of field surges and harmonics.

- The AMA should support the meeting of an authoritative, multidisciplinary committee under the auspices of the National Academy of Sciences or the National Council on Radiation Protection and Measurements to make recommendations about exposure levels of the public and workers to EMF and radiation.

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PG&E

Pacific Gas and Electric Company®

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April 17, 2009

Mr. Doug Libby, AICP
Principal Planner
Sutter County Community Services Department
1130 Civic Center Boulevard
Yuba City, CA 95993

Re: Sutter Pointe Specific Plan DEIR (SCH# 2007032157)

Dear Mr. Libby,

The intent of this letter to clarify the contents of our February 6, 2009 comment letter submitted on the above referenced project, and to provide additional information regarding the nature, location and construction timing of PG&E's facilities that will be used to serve the electrical and natural gas demands of this project.

1. Line 406/407 Natural Gas Transmission Pipeline Project
    a. PG&E's written comments to the Sutter Pointe DIER were not intended to leave readers with the impression that the development of Sutter Pointe was the sole trigger for the need for the Line 406/407 pipeline. The Line 406/407 pipeline has been in the planning stages for several years and is intended to both reinforce the existing system serving existing customers and extend new facilities to serve planned growth in the Sacramento, Sutter, and Placer County areas. More specifically, the Line 406/407 pipeline project is not being built to serve a single particular project alone. In the absence of the L406/407 pipeline project, an alternative transmission pipeline extension would be required from the existing local transmission system to the Sutter Pointe project to provide sufficient capacity to serve the project beyond the initial phase of development.
    b. Service to Sutter Pointe will be provided by the 406/407 pipeline, or, until the 406/407 pipeline is built, by an extension of the distribution system from western Roseville westerly along Baseline Road (Riego Road in Sutter County). PG&E's distribution pipeline system would not have the capacity to serve Sutter Pointe beyond the initial phase of development.

2. Initial Electrical Service (Catlett Substation upgrades and reconductoring)

    PG&E's written comments to the Sutter Pointe DIER were not intended to leave readers with the impression that electrical service for Sutter Pointe will come

solely from the Catlett Substation, assuming various capacity upgrades occur at this location to handle the additional demand. PG&E intends to provide electrical service to Sutter Pointe initially from the Catlett Substation, and, eventually, as demand within Sutter Pointe grows over time, by construction of a new substation within Sutter Pointe.

The required upgrades to the Catlett Substation to provide initial electrical service to Sutter Pointe will consist of the installation of larger transformers and switching gear within the boundaries of the existing substation property. Based on our preliminary review of the new demands created by development within Sutter Pointe, the Catlett Substation upgrades will likely not disturb areas outside of the existing substation property lines.

Initial electric service to Sutter Pointe will also require reconductoring of the overhead power lines between Catlett Substation and the Sutter Pointe project area. This reconductoring will replace existing wires and equipment with newly upgraded wires and equipment, and will also require replacing many existing poles with new structures.

3. New Electrical Substation

As described above, PG&E intends to serve the initial electrical demands of the Sutter Pointe project from the Catlett Substation and intends to construct a new substation (as already shown on various Sutter Pointe EIR maps) within Sutter Pointe as electrical demand increases over time. The proposed new substation location is along the eastern boundary of Sutter Pointe and is in close proximity to an existing PG&E electric transmission line.

We trust that this letter sufficiently clarifies PG&E's earlier comments. Please advise us if you need any additional explanation of our plans to provide electrical and natural gas service to the Sutter Pointe project.

Sincerely,

Chris Ellis, AICP
Principal Planner

Cc: Mr. Ken Giberson, MacKay and Somps
Ms. Crystal Spurr, California State Lands Commission

PG&E-1 The commenter notes that its letter provides additional details concerning natural gas and electrical facilities in the Sutter Pointe vicinity and their potential environmental effects. The commenter further observes that for the reasons discussed in his letter, construction, maintenance, and operation of these facilities will not result in any significant immitigable environmental impacts. Comment noted; no response is required.

PG&E-2 The commenter states that the California Public Utilities Commission (CPUC) has exclusive discretionary permitting authority over the siting and design of PG&E's electrical utility facilities. The commenter further states that the CPUC has recognized that the presence of electric and magnetic fields (EMF) is not an environmental impact to be analyzed in the context of CEQA, that local authorities lack the authority to impose conditions on PG&E's electrical utility facilities, and that there are no defined or adopted CEQA thresholds for defining health risks from EMF. The County agrees that the CPUC has discretionary permitting authority over the siting and design of PG&E's electrical utility facilities. With regards to the CPUC's decision regarding analysis of environmental impacts related to EMFs, the comment is noted. The County is the lead agency for the Sutter Pointe Specific Plan EIR, and CEQA grants broad discretionary authority to lead agencies in determining what thresholds should be set. The threshold used in the Sutter Pointe Specific Plan DEIR has a basis in fact, as it is adapted from the California Department of Education requirements for the distance of school sites from electrical transmission lines. The County agrees that local authorities lack authority to impose conditions on PG&E's electrical facilities, and no such conditions are being proposed; instead, DEIR Mitigation Measure 3.12-7 imposes a condition on the project applicants in terms of the placement of residential housing at a distance of 100 feet from the 115-Kv electrical transmission line easement.

PG&E-3 The commenter suggests that language be added to page 2-39 of the DEIR to identify the PG&E electric facilities that are planned to serve the project site.

The language proposed by PG&E in its first letter has been modified based on the contents of a second letter sent by PG&E (please see responses to PG&E-B-4 through PG&E-B-7 for additional information). As shown in Chapter 4 of this FEIR, "Corrections and Revisions to the DEIR," the following text has been added to Objective 11 on page 2-39 of the DEIR:

> **Electricity**
>
> Pacific Gas and Electric Company (PG&E) is the local purveyor of electricity on the project site and in the vicinity. PG&E has a major 115-kilovolt (kV) overhead transmission line abutting the eastern boundary of the project site. On the project site, PG&E serves the few existing scattered homes and businesses, as well as the various existing agricultural customers. For the most part, the facilities on the project site are not suitable to support the proposed development.
>
> <u>In order to accommodate the development of the proposed project, PG&E would upgrade the existing Catlett Substation located on Fifield Road at</u>

Natomas Road. Substation upgrades may include new or additional transformers and other equipment, which would be constructed within the footprint of the existing substation. PG&E would also need to upgrade the existing overhead distribution pole lines from Catlett Substation south onto the project site. Distribution pole line upgrades may include new electrical conductor, new (potentially taller) poles, and new equipment installed on the poles. Because PG&E's electrical system is interconnected and regional in nature, improvements required to serve the new load for the proposed project may be required outside of the project site's boundaries. The Catlett Substation upgrades and transmission line reconductoring are expected to have less than significant environmental impacts based on (1) prior disturbance and lack of habitat or cultural resources within the existing substation, (2) the low level of short-term construction-related air and noise that would be generated, and (3) the fact that the line reconductoring improvements would be constructed overhead.

PG&E proposes to construct a primary community substation along the eastern border of the project site, just north of Riego Road. The substation would connect to the existing 115-kv transmission line abutting the eastern boundary of the site. A drop from the existing overhead line to the new substation would be constructed. The substation site would require an area approximately 350 feet by 400 feet in size. All development within the project site has been evaluated at a programmatic level in the DEIR. Impacts and mitigation measures for project-related development (including construction of necessary on-site infrastructure) are discussed in Sections 3.1 through 3.17 of the DEIR.

PG&E-4 Based on commenter discussion in PG&E 2, commenter requests that Impacts 3.12-7 and 3.2-15, as well as associated Mitigation Measure 3.12-7 and setting discussion on pages 3.12-17 and 3.12-18 be removed from the DEIR. Please refer to the response for PG&E 2; no revision of the DEIR text is proposed.

PG&E-5 The commenter proposes a change to policies 9.5-3 through 9.5-5 of the Sutter Pointe Specific Plan. This proposed change notes the CPUC's exclusive jurisdiction over siting of regulated utility facilities, but that the CPUC may also consider local siting policies. The County acknowledges the CPUC's authority over the siting of regulated utility facilities. As noted in section 1.6.2 of the Introduction to the DEIR (page 1-6), this document is a program-level EIR intended to serve as an analytical structure for subsequent, more detailed analyses of individual projects at the subdivision map or improvement plan level. The siting/alignment details of PG&E's electrical and natural gas facilities needed to serve the Specific Plan have not been established, except as shown in DEIR Exhibit 2-10 and 2-11 (pages 2-40 and 2-41) for an electrical substation and a natural gas transmission line and point of connection. PG&E is in the process of conducting its own environmental review under CEQA for its Line 406/407 project. Additional environmental review under CEQA for the expansion of existing and/or the construction of future on-site PG&E facilities would be undertaken at the time they are proposed, as required. No changes to the DEIR are proposed, therefore, in response to these comments.

PG&E-6 See response to PG&E-5.

PG&E-7 See response to PG&E-5.

PG&E-8 The commenter proposes a change to Policy 9.5-7 of the Sutter Pointe Specific Plan. This proposed text change notes the CPUC's exclusive jurisdiction over substation design and construction, the need for greater access to substations for maintenance and operations, and security concerns related to complete enclosures. The County acknowledges the CPUC's authority over the design and construction of PG&E substations. The specific design and construction details of PG&E electrical facilities needed to serve the Specific Plan have not been established, except as shown in DEIR Exhibit 2-10 and 2-11 (pages 2-40 and 2-41) for an electrical substation and a natural gas transmission line and point of connection. PG&E is in the process of conducting its own environmental review under CEQA for its Line 406/407 project. Additional environmental review under CEQA for the expansion of existing and/or the construction of future on-site PG&E facilities would be undertaken at the time they are proposed, as required. No changes to the DEIR are proposed, therefore, in response to this comment.

PG&E-9 The commenter provides background information for the Specific Plan regarding jurisdiction over design and construction of natural gas facilities. Any changes to the Sutter Pointe Specific Plan made in response to this comment would not affect the analysis of environmental impacts presented in the DEIR. No changes to the text of the DEIR are required.

PG&E-10 The commenter proposes a change to Policies 9.5-8 and 9.5-9 of the Sutter Pointe Specific Plan. This proposed change notes the CPUC's exclusive jurisdiction over design and construction of gas transmission facilities. The County acknowledges the CPUC's authority over the design and construction of PG&E gas transmission facilities. No changes to the text of the DEIR are required.

PG&E-11 See response to PG&E-10.

PG&E-12 The commenter makes three points:

First, the commenter recommends that Specific Plan policy 9.5-10 relating to school sites be revised to apply to natural gas pipeline facilities and to ensure consistency with California statutes and regulations regarding gas pipelines near school sites (5 CCR §154010[h]). Specifically, state Department of Education regulations require that a risk analysis study be prepared prior to construction of a school if a new gas transmission pipeline is located within 1,500 of an existing or proposed school site (except where a pipeline is used to supply natural gas to that school or neighborhood).

The County appreciates this recommendation. This recommendation relates to the Specific Plan and not to a specific environmental threshold used to evaluate potential impacts in the DEIR. Further, it restates a requirement already in state law, and thus would not alter the analysis of impacts in the EIR.

Second, the commenter refers the County to Public Resources Code section 21151.8 related to the location of schools in proximity to potential hazards. Paragraph (a)(1)(C) of this code section requires that, before an environmental impact report or negative declaration may be approved for a project involving the purchase of a school site or the construction of new elementary or secondary school, the environmental document must include information needed to determine whether, among things, the school site contains one or more pipelines that carries hazardous substances or acutely hazardous wastes (excluding natural gas pipelines used only to supply the school, the neighborhood, or nearby schools).

So noted. The Specific Plan does not propose to locate schools on sites containing hazardous substances pipelines. Any potential impacts related to the location of future natural gas pipelines on the construction of schools would be evaluated in subsequent environmental documents prepared for such school construction projects, and such reviews would be required to comply with existing state law, including CEQA, which already provides for this consideration.

Third, the commenter states its understanding that the Specific Plan proposes land uses designated for schools within 1,500 feet of the proposed alignment of the PG&E Line 406/407 natural gas transmission pipeline. Further, the commenter recommends that the County move land use designations for schools at least 1,500 feet from this transmission pipeline to avoid the need for the school district to perform a risk analysis and any resulting mitigation measures.

The County appreciates the commenter's recommendation. The proposed alignment of PG&E's Line 406/407 pipeline could result in a proposed school site (K-8 Site 5) being within 1,500 feet of that alignment (the northern boundary of one school site appears to be within a few hundred feet of the 1,500-foot boundary). However, there is some flexibility within the plan to shift the location of the school by a few hundred feet to avoid falling within the 1,500 foot boundary. As noted on page 8-10 of the Specific Plan:

> The precise location of school sites may change based on discussions and agreements with the school districts, but shall comply with the Specific Plan's stated policies…The School Facilities Master Plan shall address the site design and amenities of each K-8 school…and shall include a detailed development plan for each school site.

Implementation of these specific plan provisions would ensure that the precise locations of future schools comply with state requirements for siting of schools in proximity to natural gas transmission pipelines. In addition, the construction of schools would be evaluated in subsequent environmental documents to ensure that any potential impacts related to the proximity of natural gas transmission pipelines are identified and addressed.

PG&E-13 The commenter proposes a change to Policy 9.5-11 of the Sutter Pointe Specific Plan. This proposed change, clarifying that a proposed policy is intended to apply to transmission facilities as defined by federal regulations and ensure consistency with California statutes and regulations, would not affect the analysis of environmental impacts presented in the DEIR. No changes to the text of the DEIR are required.

PG&E-14 The commenter proposes a change to the legend of Exhibit 9-7 of the Sutter Pointe Specific Plan. This change would not affect the analysis of environmental impacts presented in the DEIR. No changes to the text of the DEIR are required

PG&E-15 The commenter proposes that Exhibit 9-8 of the Sutter Pointe Specific Plan be replaced with Exhibit 2-11 from the DEIR. The proposed change would not affect the analysis of environmental impacts presented in the DEIR. No changes to the text of the DEIR are required

PG&E-16 The commenter proposes that the legend in Exhibit 2-10 be modified to specify that joint trenches include gas distribution facilities. Joint trenches presented on this exhibit are for all proposed dry utilities, including gas distribution facilities. Therefore, no changes to the text of Exhibit 2-10 are required. The commenter further notes that PG&E is not able to specify the location of two distribution regulator stations that will be required to serve

the proposed project. The proposed change would not affect the analysis of environmental impacts presented in the DEIR. No changes to the text of the DEIR are required.

PG&E-17 The commenter proposes changes to Exhibit 2-11 of the DEIR. As shown in FEIR Chapter 4, "Corrections and Revisions to the DEIR," the following edits have been made to Exhibit 2-11 on page 2-41 of the Project Description:

> The legend of the exhibit will be modified to reflect "Existing gas transmission facilities," and "PG&E natural gas ~~distribution~~ transmission point of connection."

PG&E-18 The commenter proposes revised text for discussion of natural gas infrastructure plans on p. 2-42.

As shown in FEIR Chapter 4 "Corrections and Revisions to the DEIR," the following text edits have been made on page 2-42 of the Project Description:

> PG&E is the local purveyor of natural gas in the vicinity of the project site, and PG&E would extend lines and construct facilities to serve the site. The nearest gas service is approximately 2 miles southeast of the project site, in the northern portion of the community of Rio Linda. PG&E's facility in this location, however, does not have the capacity to serve the project site. PG&E proposes to extend natural gas service west along Riego Road (Base Line Road in Placer County) from an existing transmission main at Fiddyment Road in Roseville ~~to serve the project site~~. PG&E's preferred method of service provision is from the proposed Line 407 East pipeline. However, in the event that the larger Line 406/407 project is delayed, natural gas service could be provided to the initial project phases through a distribution line extension along Riego Road through the project site from the same location in Roseville. In the absence of the Line 406/407 project, extension of a transmission line along the same Riego Road alignment would be required to serve project buildout. Please refer to Exhibit 2-11 for an illustration of the Line 406/407 alignment, as well as the alignment for the potential distribution or transmission line extension from Roseville. ~~The proposed alignment of this new transmission is along the north side of Riego Road through the entire project site. The applicant has indicated that PG&E intends to extend natural gas service onto the project site~~ Two distribution regulator stations located within the project boundaries would feed ~~through~~ an underground distribution system. As part of the project approval process, the project applicant would coordinate with and meet the requirements of PG&E regarding the extension and locations of on-site infrastructure.
>
> ~~Alternatively, if timing allows, PG&E proposes to serve this development from the new Line 407 East pipeline, which is proposed as part of PG&E's Line 406/407 Project.~~ A notice of preparation (State Clearinghouse number 2007062091) for the Line 406/407 project was prepared by the California State Lands Commission (the lead agency under CEQA) and circulated for public review in June 2007. It is anticipated that a DEIR for the project will be released in ~~late 2008~~mid-2009. The ~~pipeline~~ Line 406/407 project is currently scheduled to begin construction of Line 406 in 2009 and Line 407 East in 2010 ~~anticipated to be constructed in 2009 and 2010~~.

PG&E-19 The commenter recommends a correction in use of the term "mcf" to "mmcf" in the DEIR.

As shown in FEIR Chapter 4, "Corrections and Revisions to the DEIR," The following revisions have been made to page 3.10-8 under "Natural Gas" in Section 3.10, "Public Utilities."

> Natural gas service in Sutter County is provided by PG&E through portions of PG&E's 46,000 miles of natural gas distribution pipelines. In 2006, PG&E delivered approximately 828,000 million cubic feet (mmcf) of natural gas throughout its service area. In 2006, the county produced roughly 25 mmcf of natural gas. This represents nearly 3% of the total natural gas production in the state (Sutter County 2008).

PG&E-20 The commenter proposes specific edits to the DEIR's description of the PG&E Line 406/407 project. The County is now in receipt of a second letter from PG&E, which clarifies the plans for natural gas service to the project site. Based on the contents of this second letter, the changes proposed by PG&E in this comment are not required, although an edit is proposed to update the expected circulation date for the DEIR for the Line 406/407 project. Please refer to the response to PG&E-B-2 and PG&E-B-3 for additional information. As shown in FEIR Chapter 4, "Corrections and Revisions to the DEIR," The following revisions have been made to page 3.10-9 under "Natural Gas" in Section 3.10, "Public Utilities:"

> According to PG&E, the existing transmission system in the Sacramento Valley region would require additional transmission facilities to provide reliable natural gas service to existing customers or to extend service to future planned development in the area. PG&E anticipates that customer reliability could be at risk as early as 2009. As a result, PG&E is planning to construct the Line 406 and Line 407 Pipeline Project in Yolo, Sutter, Sacramento, and Placer Counties. PG&E anticipates that the Line 406/407 project would provide greater capacity and service reliability to the existing natural gas transmission and distribution pipeline system and would extend natural gas service to planned residential and commercial developments in Placer, Sutter, and Sacramento Counties. This natural gas pipeline project involves a new 30-inch transmission pipeline (identified as Line 406 and Line 407 East and Line 407 West) that would be approximately 40 miles long ~~(identified as Line 406 and Line 407 East and Line 407 West)~~ and a new distribution feeder main at Powerline Road. Line 406 would be constructed in 2009 (PG&E 2007).
>
> Current projections are that Line 407 East and the Powerline Road distribution feeder main would be required in 2010. However, the pipelines may be installed prior to road improvements associated with developments along Riego and Baseline Roads. Line 407 West is projected to be required in 2012, but may be required earlier depending upon load growth in the area (PG&E 2007).
>
> ~~If timing allows, the proposed project would be served by the Line 407 East Pipeline. Line 407 East would consist of approximately 12 miles of 30-inch-diameter pipeline.~~ PG&E's preferred method of service provision is from the proposed Line 407 East pipeline. The transmission pipeline route would extend east from the junction the new Powerline Road distribution feeder

main and follow Riego and Baseline Roads. The route would connect with an existing pipeline at the intersection of Baseline and Fiddyment Roads in Placer County. However, in the event that the larger Line 406/407 project is delayed, natural gas service could be provided to the initial project phases through a distribution line extension along Riego Road through the project site from the same location in Roseville. In the absence of the Line 406/407 project, extension of a transmission line along the same Riego Road alignment would be required to serve project buildout. Please refer to Exhibit 2-11 for an illustration of the Line 406/407 alignment, as well as the alignment for the potential distribution or transmission line extension from Roseville.

A notice of preparation (NOP) (SCH # 2007062091) for the proposed Line 406/407 project was prepared and circulated for public review in June 2007. The California State Lands Commission will be the lead agency under CEQA and will prepare the EIR. It is anticipated that the DEIR for the Line 406/407 project could be circulated for public review in ~~late 2008~~ mid-2009 (Spurr, pers. comm., 2008). The project is anticipated to be constructed in 2009 and 2010, respectively.

Potential impacts of the PG&E Line 406/407 project identified in the project description of the NOP include greenhouse gas emissions from construction vehicles; potential risks from release of natural gas; disturbance of habitat and special status plant and animal species, specifically the Swainson's hawk, giant garter snake, and valley elderberry longhorn beetle; disturbance of possible archaeological sites; disturbance of unknown paleontological resources; possible exposure of construction crews and the public to hazardous materials used in construction or present in excavated soils; short term effects on agriculture; possible frac-out of water bodies crossed by the pipeline; temporary noise and or ground vibration that would exceed ambient noise levels; and traffic congestion where the pipeline crosses roads through trenching (PG&E 2007).

PG&E-21 The commenter proposes specific edits to DEIR Impact 3.10-6 related to increased demand for natural gas and infrastructure.

As shown in FEIR Chapter 4, "Corrections and Revisions to the DEIR," the following revisions have been made to Impact 3.10-6, "Increased Demand for Natural Gas and Infrastructure," on pages 3.10-21 and 3.10-22 in Section 3.10, "Public Utilities."

On-Site Elements

Implementation of the proposed project would increase natural gas demand on the project site. Natural gas consumption for housing units averages 221 cubic feet of natural gas per day per dwelling unit (South Coast Air Quality Management District 1993). Commercial and office energy consumption varies depending on specific uses, building materials, and space configurations. In general, commercial and office uses average approximately 0.097 cubic feet of natural gas per square foot per day (South Coast Air Quality Management District 1993). The proposed dwelling units would require 3.9 mmcf per day (17,500 dwelling unit × 221 cubic feet per day), and commercial and industrial uses would require 4.8 mmcf per day

(49,706,000 square feet × 0.097 cubic feet per day). Based on these rates, the proposed project would increase natural gas demands by 8.7 mmcf per day.

Natural gas service in Sutter County is provided by PG&E through portions of PG&E's 46,000 miles of natural gas distribution pipelines. In 2006, PG&E delivered approximately 828,000 mmcf of natural gas throughout its service area. In 2006, the county produced roughly 25 mmcf of natural gas. This represents nearly 3% of the total natural gas production in the state.

PG&E does not currently have gas service infrastructure on the project site. The nearest gas service is approximately 2 miles southeast of the project site, in the northern portions of the community of Rio Linda. PG&E's facility in this location, however, does not have the capacity to serve the project site. Instead, PG&E proposes to extend natural gas service west along Riego Road (Baseline Road in Placer County) from Roseville to an existing pipeline at the intersection of Baseline and Fiddyment Roads in Roseville. This initial extension would consist of an 8-inch-diameter distribution line. When service from the proposed Line 407 East Pipeline is available, the proposed project would be served by this 30-inch-diameter pipeline. In either case, ~~The proposed alignment of this new distribution line is~~ the transmission pipeline route would extend east from Powerline Road along the north side of Riego and Baseline Roads through the entire project site and to the intersection of Fiddyment and Baseline Roads (see Exhibits 2-10 and 2-11 in Chapter 2, "Project Description"). The route would connect with an existing transmission pipeline at the intersection of Baseline and Fiddyment Roads in Placer County. In the absence of the Line 406/407 project, extension of a transmission line along the same Riego Road alignment would be required to serve project buildout. Please refer to Exhibit 2-11 for an illustration of the Line 406/407 alignment, as well as the alignment for the potential distribution or transmission line extension from Roseville.

PG&E intends to distribute natural gas service onto the project site through an underground ~~distribution~~ system. Following completion of the Line 406/407 transmission line, gas would be distributed onto the project site from the proposed transmission line through two distribution regulator stations located within the project site boundaries and an underground distribution system. The gas distribution regulator stations would be constructed within a 20-foot by 80-foot easement that would have 24-hour all weather access for maintenance and operations.

The on-site service lines would be sized to meet the demands of the proposed project, and public utility easements would be dedicated for all underground facilities. PG&E would extend lines and construct facilities to serve the project site concurrently with development phases, and the location of this infrastructure would be identified in the final project design. As part of the project approval process, the project applicant would coordinate with and meet the requirements of PG&E regarding the extension and locations of on-site infrastructure.

~~Alternatively, if timing allows, PG&E may serve the proposed project from the new Line 407 East pipeline, which is proposed as part of PG&E's Line 406/407 project. The pipeline would consist of approximately 12 miles of 30-inch-diameter pipeline and would extend east from the junction the new~~

~~Powerline Road distribution feeder main and follow Riego and Baseline Roads. The route would connect with an existing pipeline at the intersection of Baseline and Fiddyment Roads in Roseville.~~ An NOP (SCH # 2007062091) for the Line 406/407 project was prepared and circulated for public review in June 2007, and potential impacts for construction of the proposed PG&E Pipeline 406/407 project are identified in the NOP are summarized above in the "Environmental Setting." An EIR is currently being prepared to identify analyze specific impacts of the proposed pipeline project and identify any required mitigation measures. According to PG&E, a DEIR for the Line 406/407 project may be released in ~~late 2008~~ mid-2009. The pipeline project is anticipated to be constructed in 2009 and 2010. ~~However, PG&E has indicated that it has adequate natural gas supplies and infrastructure to support the proposed project at buildout and is not reliant on the Line 407 East Pipeline to provide reliable natural gas service to the project.~~ PG&E is planning to construct the Line 406/407 Pipeline Project to provide greater capacity and service reliability to the existing natural gas transmission and distribution system and serve the overall projected customer load growth in Placer, Sutter, and Sacramento Counties. In the absence of the Line 406/407 project, the proposed project would be served by extension of the existing local transmission system in Roseville along Fiddyment/Riego Roads as evaluated in the Sutter Pointe DEIR. PG&E has stated that the Line 406/407 Project is not required specifically to serve Sutter Pointe; rather, the new line is necessary to serve regional development. As stated previously, PG&E is currently preparing an EIR to analyze specific impacts of the proposed 406/407 pipeline project and identify any required mitigation measures. Therefore, because PG&E has stated that it has the ability to provide necessary natural gas service to the project site, this ~~Therefore, the proposed project would not contribute to impacts associated with the construction of the proposed PG&E Line 406/407 project. Because PG&E is able to~~ would provide natural gas and associated infrastructure to the project site ~~from the proposed Line 406/407 Pipeline Project, this~~ and the **direct** impact is **less than significant**. **No indirect** impacts would occur.

PG&E-22 The commenter provides supplementary language to be added to the description of the proposed gas transmission line in the DEIR.

As shown in FEIR Chapter 4, "Corrections and Revisions to the DEIR," the following addition has been made to page 3.12-18 under "Natural Gas Transmission Lines" in Section 3.12-2, "Public Health"

> "PG&E proposes to construct natural gas transmission line 406/407 across the project site in 2010. This natural gas transmission line is currently undergoing separate environmental review."

PG&E-23 The commenter notes that PG&E has been working with the civil designer for the proposed project to coordinate the location of the future pipeline with road improvements required for the project. It is expected that the pipeline will be installed prior to road construction, and PG&E will arrange for a 50-foot-wide private easement in a location adjacent to the northern-most traveled lane of the Riego Road improvements. The commenter notes that continued coordination will be required.

Thank you for your comment. No changes to DEIR text are required.

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Re: Comments on the Draft Environmental Impact Report for the Sutter Pointe Specific Plan

Dear Mr. Libby:

We are writing on behalf of the Sutter Coalition for Responsible Development[1] ("Coalition") to provide comments on the December 19, 2008 Draft Environmental Impact Report ("DEIR") for the Sutter Pointe Specific Plan ("Specific Plan" or "Project"). The Project is a massive undertaking involving the construction of 17,500 residential units and nearly 50 million square feet of non-residential use on 7,528 acres of agricultural lands, in addition to the construction of off-site infrastructure improvements. As explained in detail below, the DEIR for the Project fails to comply with the requirements of the California Environmental Quality Act ("CEQA"). The County may not approve the Project until the errors in the DEIR are corrected and a revised document is recirculated for public review and comment. 1

[1] The Sutter Coalition for Responsible Development is comprised of Sutter County residents including John Coots, Danny Fennel, Ian Trotti, Jerrick Upton, Derek West, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry ("UA") Local 228, UA Local 447, International Brotherhood of Electrical Workers Local 340, Sheet Metal Workers International Association Local 162 and their members and their families, and other individuals that live and/or work in Sutter County.

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The members of the Coalition have a strong interest in enforcing environmental laws such as CEQA. The Coalition's members reside and work in Sutter County, and the creation of a city with over 40,000 residents in this area will radically transform their lives. Many of the individual members of the Coalition will work on the various phases of the Project. The individual members who work on the Project will be the first in line to be exposed to any contaminated soils that have not been adequately tested, identified and remediated, and will also be directly exposed to any other unmitigated safety hazards that may exist on the site.

The individual Coalition members who live, work and raise their families in Sutter County will be exposed to construction emissions and public health and safety hazards identified in these comments, and will be directly affected by increased traffic impacts in an area that is already dangerously congested. Coalition members also live in and use areas that have suffered the cumulative impacts of other environmentally detrimental and poorly planned projects in this rapidly developing region. For all these reasons, Coalition members will be directly and disproportionally affected by the environmental impacts of the Project.

1 Cont'd

The Coalition supports environmentally sustainable land use and development in Sutter County. The scope and manner of development in the proposed Specific Plan area will result in significant impacts on public health, safety and the environment which must be carefully considered. Environmentally unsound development will jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live here. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities. In particular, poor air quality has already harmed the economy of the region. Finally, Coalition members are concerned about projects that carry serious environmental risks and public service infrastructure demands without providing countervailing employment and economic benefits to local workers and communities.

The Notice of Availability for the Specific Plan DEIR ("DEIR Notice") specifies a February 3, 2009 comment deadline. The California Environmental Quality Act ("CEQA") requires that copies of the DEIR and "*all documents referenced in the draft environmental impact report*" be available for public review when the DEIR notice is issued. (Pub. Res. Code § 21092 (emphasis added); 14 Cal. Code Regs. "CEQA Guidelines" § 15087).) However, because a considerable volume

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of documents that were referenced in the DEIR were not made available to us until January 23, 2009, we requested a reasonable extension of the comment period on that date. Our request for an extension was granted and a February 6, 2009 deadline imposed. However, we reserve the right to supplement these comments on the DEIR. (CEQA Guidelines § 15105.) 1 Cont'd

We reviewed the DEIR with the help of technical expert Dr. Petra Pless. Dr. Pless' comments and qualifications are attached as Exhibit A. Please note that Dr. Pless' comments are in addition to the comments summarized below and must be addressed separately.

I. INTRODUCTION

A notice of preparation ("NOP") for the Specific Plan DEIR was issued on March 29, 2007. The NOP described the Project as consisting of the "proposed specific plan development [and] construction of an on and offsite sewer interceptor and a variety of other off-site infrastructure improvements."[2] The Project described in the NOP included the Sacramento Regional County Sanitation District's ("Sanitation District") "approval and construction of the sewer interceptor, service, and ultimate connection to the Sacramento Regional Wastewater Treatment Plant."[3]

The DEIR Notice for the Project was issued on December 19, 2008. It describes the Project as anticipated to cause significant environmental impacts in the following 17 areas: 2

Land Use;
Population, Employment and Housing;
Transportation and Circulation;
Air Quality;
Noise;
Geology, Soils, and Mineral Resources;
Hydrology and Water Quality;
Public Services;
Water Supply;
Public Utilities;

[2] NOP, p. 1.
[3] *Id.*
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Agricultural Resources;
Public Health and Hazards;
Biological Resources;
Parks and Open Space;
Cultural Resources;
Visual Resources; and
Climate Change.[4]

The DEIR itself describes only 10 of these 17 areas as significant impacts. Although the DEIR Notice states that the respective categories of Land Use and Population are significant impacts, the DEIR concludes that these impacts are not significant and do not require mitigation.[5] Of the remaining 15 significant impacts delineated in the DEIR Notice, the DEIR concludes that 5 of these impacts will not, in fact, be significant with mitigation, and that each of the remaining 10 significant impacts will be mitigated to the maximum extent feasible.[6] However, as these comments will demonstrate, these conclusions in the DEIR are not supported by substantial evidence and are in violation of CEQA.

2 Cont'd

CEQA requires that a DEIR "provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment" and "list ways in which the significant effects of such a project might be minimized." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391 ("*Laurel Heights*").) As explained in more detail below, the DEIR for the Specific Plan wholly fails to meet this standard.

The DEIR fails to meet the information and disclosure requirements of CEQA, fails to adequately describe the Project, and fails to provide an accurate description of the environmental baseline for the area the Specific Plan will impact. It fails to accurately identify and analyze the significant environmental impacts of the Project, fails to impose all feasible mitigation measures, and fails to define or mitigate cumulative impacts to the extent feasible. The DEIR's analysis of feasible Project alternatives is results-oriented and unsupported by the evidence. The County may not approve the Specific Plan until these errors in the DEIR are

[4] DEIR Notice, p. 1.
[5] DEIR, pp. ES-10 – ES-13.
[6] *Id.* at ES-13 – ES-102.
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corrected and a revised document is recirculated for public review and comment. (Pub. Res. Code § 21091.1; CEQA Guidelines § 15088.5.)

II. THE DEIR FAILS TO MEET THE INFORMATION AND DISCLOSURE REQUIREMENTS OF CEQA

CEQA has two basic purposes. First, CEQA is designed to inform decisionmakers and the public about the potential, significant environmental effects of a project. (CEQA Guidelines § 15002(a)(1).) The "primary means" by which the legislative goals of CEQA are achieved is the preparation of an EIR. (*Laurel Heights*, *supra*, 47 Cal.3d at 392; Pub. Res. Code §§ 21080(d), 21100, 21151; CEQA Guidelines §15080.) The EIR is an "environmental 'alarm bell' whose purpose is to alert the public and its responsible officials to environmental changes *before* they have reached ecological points of no return." (*County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810 ("*County of Inyo*") (emphasis added).) An EIR is intended to serve as "an environmental full disclosure statement." (*Rural Land Owners Assn. v. City Council of Lodi* (1983) 143 Cal.App.3d 1013, 1020 ("*Rural Land Owners*").) Thus, an EIR "protects not only the environment but also informed self-government." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 ("*Goleta Valley*").) 3

An EIR's purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. "Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental costs…" (*County of Inyo, supra,* 71 Cal.App.3d at 192-193.) However, under the guise of a self-described program or tiered environmental review,[7] the DEIR obfuscates which environmental impacts are actually being decided in this analysis, and which specific impacts will subsequently be reviewed at the project level. Moreover, because the DEIR addresses only a small part of a larger infrastructure project, it is impossible for the public to discern precisely what is under environmental review here, and what is under review in other, ongoing EIRs and federal environmental impact statements ("EISs") that address the environmental impacts of this larger infrastructure project.

Such a piecemeal analysis submerges larger environmental considerations by "chopping a large project into many little ones" and is prohibited under CEQA.

[7] DEIR, p. ES-1.

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(*City of Antioch, supra,* 187 Cal.App.3d at 1333.) A "project" is defined under CEQA as the "whole of an action;" the term "refers to the activity which….may be subject to several discretionary approvals by governmental agencies [and] *does not mean each separate governmental approval*." (CEQA Guidelines §§ 15378(a)(c)(emphasis added).) Despite CEQA's mandate that all discretionary approvals and the "whole of an action" be reviewed, the DEIR wrongly analyzes only those larger infrastructure pieces which are subject to review by one agency – Sutter County.

CEQA's full disclosure directive also prohibits deferring the analysis of specific impacts under the guise of "tiering." CEQA requires an analysis of a project's impacts at the "*earliest possible stage*, even though more detailed environmental review may be necessary later." (*McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136, 1147 ("*McQueen*") (emphasis added).) This requirement holds regardless of any intention to undertake site-specific environmental review for future project phases. (*Stanislaus Nat'l Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 199 ("*Stanislaus*").) The DEIR improperly tiers its analysis of impacts for Phase I-A of the Project, even though construction of this phase is planned to begin in only *one year*.[8] The "earliest possible stage" for analyzing project specific Phase I-A impacts has long since passed; any further deferral of these impacts is prohibited under CEQA. 3 Cont'd

The second purpose of CEQA is to require public agencies to "regulate such activities so that major consideration is given to preventing environmental damage." (*Laurel Heights, supra,* 47 Cal.3d at 390; Pub. Res. Code § 21000(g).) Agencies must avoid or reduce environmental damage to the extent possible by imposing all feasible mitigation measures and considering environmentally superior alternatives. (CEQA Guidelines § 15002(a)(2-3); *see also*, *Berkeley Keep Jets Over the Bay Committee v. Bd. of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1354; *Laurel Heights, supra,* 47 Cal.3d at 400.) Where an EIR identifies significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts. (Pub. Res. Code §§ 21002.1(a), 21100(b)(3).) This analysis of feasible mitigation measures and a reasonable range of alternatives is crucial to CEQA's substantive mandate that significant environmental damage be substantially lessened or avoided where feasible. (Pub. Res. Code §§ 21002, 21081, 21100; CEQA Guidelines § 15002(a)(2) and (3).)

[8] DEIR, p. 2-56.
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The DEIR fails to meet the second of these two fundamental purposes of CEQA. The DEIR fails to disclose and evaluate all of the Project's potentially significant environmental impacts. It concludes, without adequate analysis, that mitigation will reduce several significant impacts to less than significant levels. For those impacts that the DEIR describes as significant, it fails to define and analyze numerous feasible mitigation measures that would reduce these impacts. Additionally, many of the mitigation measures that are proposed are improperly deferred and deprive the public of the opportunity to understand the environmental consequences of decisions *before* they are made. (*County of Inyo, supra,* 71 Cal.App.3d at 192-193.) 3

As is explained below in detail, the DEIR fails to satisfy either of CEQA's overriding purposes. In its role as lead agency, the Sutter County Community Services Department ("Sutter County") has failed to inform either itself or the public as to the significant environmental effects of the Project. Far from meeting CEQA's full disclosure requirements, the DEIR is improperly piecemealed, inappropriately tiered, and devoid of any meaningful analysis aimed at preventing the considerable environmental damage the Project will create.

III. THE DEIR FAILS TO ADEQUATELY DESCRIBE THE PROJECT

The courts have repeatedly held that "an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document]." (*County of Inyo, supra,* 71 Cal.App.3d at 193 (*"County of Inyo"*).) CEQA requires that a project be described with enough particularity that its impacts can be assessed. (*Id.* at 192.) It is impossible for the public to make informed comments on a project of unknown or ever-changing proportions. "A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental costs . . . ." (*Id.* at 192-193.) "A curtailed, enigmatic or unstable project description draws a red herring across the path of public input." (*Id.* at 197-198.) Without a complete project description, the environmental analysis under CEQA is impermissibly narrow, thus minimizing the project's impacts and undercutting public review. (*See, e.g., Laurel Heights, supra,* 47 Cal.3d at 376.) 4

This deferral of information and analysis completely deprives both the public and governmental decisionmakers of their right to review the environmental

impacts of the Project. Environmental problems should be considered at a point in the planning process "where genuine flexibility remains." (*Mount Sutro Defense Committee v. Regents of University of California* (1978) (*"Mount Sutro"*) 77 Cal.App.3d 20, 34 [143 Cal.Rptr. 365].) "A study conducted after approval of a project will inevitably have a diminished influence on decision making. Even if the study is subject to administrative approval, it is analogous to the sort of *post hoc* rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA." (*Sundstrom*, *supra,* 202 Cal.App.3d at 307 [248 Cal.Rptr. at 358].) Thus, Sutter County must provide a complete description and evaluation of the Project during the environmental review process. The DEIR fails to meet this legal standard. 4 Cont'd

The DEIR contains an inadequate and truncated project description that is piecemealed from the larger action under environmental review. Further, it improperly defers analysis of environmental impacts under the guise of tiering and unsupported claims that mitigation measures are unavailable at this stage. All environmental impacts of a project are required to be considered before a decision with environmental consequences is made. (*County of Inyo, supra,* 71 Cal.App.3d at 192-193.) Sutter County's failure to adequately describe the project is not minor; the project description is so curtailed that it stultifies the objectives of the reporting process. (*Id*. at 192-193, 197-198.)

A. The DEIR Notice Ambiguously Describes the Project's Scope and Misidentifies the Project's Significant Impacts

When the NOP for the DEIR was issued in 2007, the Project was described under the heading of "Project Description" as the "proposed specific plan development [and] construction of an on and offsite sewer interceptor and a variety of other off-site infrastructure improvements."[9] Specifically, this included the Sanitation District's "approval and construction of the [6.1-mile] sewer interceptor, service, and ultimate connection to the Sacramento Regional Wastewater Treatment Plant."[10] The December 19, 2008 DEIR Notice, in contrast, states: 5

> "[The] applicant, the Measure M Group, is seeking approval of the Sutter Pointe Specific Plan….Project development would also include off-site infrastructure improvements, such as a sewer interceptor

[9] NOP, p. 1.
[10] *Id.*
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> connection to Sacramento Regional County Sanitation District's Upper Northwest Interceptor in Rio Linda, and drainage, potable water, and dry utilities improvements."[11]

The DEIR Notice makes it altogether unclear whether the Project now under environmental review is the same as the project specified in the NOP. The sewer interceptor and other off-site infrastructure improvements were clearly part of the project specified in the NOP, but the DEIR Notice does not specify whether the Project analyzed by the DEIR includes "project development" of the sewer interceptor and other, unspecified "off-site infrastructure improvements." The public is simply left to guess. Such an enigmatic project description stymies the public's ability to obtain accurate notice of the project under review and is prohibited by CEQA. (*County of Inyo, supra,* 71 Cal.App.3d at 192-193.)

What's worse, whatever guess a member of the public might have made as to whether the environmental impacts of "project development" described in the DEIR Notice are analyzed in the DEIR would have been mistaken. An examination of the DEIR reveals that *some* infrastructure improvements denoted in the DEIR Notice by the phrase "project development" *are* under review in this DEIR, while other infrastructure improvements, such as the sewer interceptor, are not. As the DEIR describes, 5 Cont'd

> "[o]ff-site roadway and infrastructure facilities are proposed to serve project development and *are addressed* in this DEIR. These facilities include road widening, extension, and improvements; sewer force mains, pump stations, and monitoring stations; water transmission pipelines, distribution facilities, and pump stations; drainage facilities and pump stations; and electrical, communications facilities/infrastructure, and natural gas transmission lines and extensions."[12]

It is simply impossible for the public to discern from the DEIR Notice just what infrastructure elements are reviewed in the DEIR. For this reason alone, CEQA requires that the ambiguous DEIR Notice be corrected and recirculated.

[11] DEIR Notice, p. 1.
[12] DEIR, p. 1-2 (emphasis added).
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The DEIR Notice describes 17 categories of significant environmental impacts from the Project.[13] Yet, as described above, the DEIR flatly contradicts this statement in the DEIR Notice. The DEIR describes 10 – not 17 – significant impacts.[14] Although the DEIR Notice states that the respective categories of Land Use and Population are significant impacts, the DEIR concludes that these impacts are not significant and do not require any mitigation.[15] Of the remaining 15 significant impacts delineated in the DEIR Notice, the DEIR concludes that 5 of these impacts will not, in fact, be significant with mitigation, and that each of the remaining 10 significant impacts will be mitigated to the maximum extent feasible.[16] 5 Cont'd

By misrepresenting the DEIR's conclusions as to the significant impacts of the Project, the DEIR Notice is in violation of CEQA. Far from sounding an "environmental 'alarm bell' whose purpose is to alert the public and its responsible officials to environmental changes before" decisions have been made, the DEIR Notice quells the "alarm" by representing that certain environmental effects are analyzed in the DEIR as significant – when they are not. (*County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810 (*County of Inyo*, supra, 32 Cal.App.3d at 810.)

Not only is the DEIR Notice's description of the Project's scope ambiguous and its listing of environmental impacts inaccurate, but its delineation of the entitlements needed for the Project is incomplete. The DEIR Notice describes the Project as requiring the following entitlements:

> "[A]pproval of the specific plan, approval of a general plan amendment, approval of zoning code and map amendments, adoption of an urban services plan, adoption of a public facilities/infrastructure financing plan, adoption of a public facilities/infrastructure phasing plan, and adoption of a development agreement, *among others*.[17] 6

What "among other" entitlements means is, apparently, for the public to guess. But the public could not have even ventured such a guess, given the project description's lack of clarity as to which infrastructure improvements are analyzed in the DEIR.

[13] DEIR Notice, p. 1.
[14] DEIR, pp. ES-13 – ES-102.
[15] DEIR, pp. ES-10 – ES-13.
[16] *Id*. at ES-13 – ES-102.
[17] DEIR Notice, p. 1.
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Moreover, the DEIR Notice lists only those entitlements that will be issued by Sutter County. No other entitlements are mentioned, even though a "project" is defined under CEQA as the "whole of an action….subject to several discretionary approvals by [several] governmental agencies." (CEQA Guidelines §§ 15378(a)(c).) A project description should not be mere fodder for guessing games as to what environmental impacts the DEIR actually analyzes. 6 Cont'd

B. This "Program" DEIR is Improperly Piecemealed from the Larger Infrastructure Project

The DEIR Notice fails to describe the DEIR as either a program EIR or a tiered EIR. This oversight is not surprising: the DEIR cannot decide what kind of environmental review document it is. As the DEIR states, it can be "characterized either as a 'Program EIR'….or as a 'First Tier EIR'."[18] The DEIR then asserts that "[t]hese labels are complementary, not mutually exclusive….[r]egardless of the title."[19] Contrary to the DEIR's claim, titles do matter; the CEQA Guidelines specify the limited circumstances in which a program EIR is permissible, and the DEIR for the Project does not meet these criteria.

The CEQA Guidelines for the preparation of a program EIR state:

> Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the Lead Agency shall prepare a *single program EIR* for the ultimate project as described in Section 15168. 7

(CEQA Guidelines § 15165 (emphasis added).) The Specific Plan is a phased project that, with other "individual projects," is a component of a "total undertaking compris[ing] a project with significant environmental effect." Thus, a *single EIR* for the "ultimate project" is required. However, the DEIR is merely one of many EIRs for the "total undertaking" comprising the larger project. It is therefore in violation of CEQA.

The CEQA Guidelines permit multiple program EIRs only when a project is one of "several similar projects" that are "not deemed a part of a larger undertaking or a larger project." (CEQA Guidelines § 15165.) Even then, the CEQA Guidelines

[18] DEIR, p. ES-1.
[19] *Id.*
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encourage the lead agency to prepare "one EIR for all projects." (*Id.*) In all cases, where there is *one* "total undertaking" or "project," it must be reviewed in a *single* program EIR. A "project" is defined as the "whole of [the] action….subject to several discretionary approvals by governmental agencies." (CEQA Guidelines §§ 15378(a)(c)(emphasis added).)

Here, the "whole of the action" is nothing short of the building of an entire city with a resident population that will exceed 40,000, and all of the infrastructure approvals that are prerequisite for that city to be built. While this "total undertaking" or "project" may well lend itself to a program EIR, it must be a *single* program EIR followed by project-specific, phased development within that larger framework. The DEIR's fails to meet this standard and, in so doing, violates CEQA's prohibition against piecemealing a project's environmental review.

CEQA prohibits piecemeal analysis because it submerges larger environmental considerations by "chopping a large project into many little ones." (*City of Antioch, supra,* 187 Cal.App.3d at 1333.) The project at issue here – the building of an entire city and its support infrastructure – has been piecemealed into several discrete environmental reviews, any of which calls the entire Specific Plan into question. Among the environmental reviews for this "total undertaking" are: 7 Cont'd

1) The Highway 99/70 interchange;
2) Levy improvement;
3) Construction of a natural gas pipeline;
4) The Public Utility Commission's ("PUC") Golden State Water Company proceeding;
5) Construction of a natural gas pipeline;
6) Expansion of the Sanitation District's wastewater treatment plant ("WWTP");
7) Construction of a sewer main, including Sutter County and the Sanitation District's entry into a wastewater services agreement, Sutter and Sacramento County LAFCO approvals, and RWQCB approval;
8) Sutter County General Plan update;
9) Sacramento International Airport Land Use Commission ("ALUC") finding of consistency with its land use plan, or a 2/3 override from the County;
10) Placer Parkway; and
11) State Water Resources Control Board ("SWRCB") approval for groundwater "change of use."

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This list of environmental reviews, albeit incomplete, alone demonstrates why CEQA requires that a *single* program EIR be prepared for the "total undertaking" comprising the larger project. (CEQA Guidelines § 15165.) All of these environmental reviews are associated with the larger project of building a city and providing it with necessary infrastructure; they cannot subsequently be reviewed in concert with the development phases provided for in the Specific Plan.

Remarkably, this program DEIR does not even encompass all *Sutter County approvals* required for adoption of the Specific Plan. Sutter County's entry into a wastewater services agreement with the Sanitation District, and the related construction of a sewer line, have been improperly excluded from the DEIR's analysis of environmental impacts – even though this action was part of the NOP's original project description.[20] Sutter County is also required to obtain a finding of consistency from ALUC for the Specific Plan and, if a consistency finding is not granted, must override an inconsistency finding with a 2/3 vote.[21] This override vote would be subject to yet another environmental review under CEQA, serving to further muddy the waters of an already piecemeal-shredded environmental impact analysis.

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Cont'd

Several ongoing environmental reviews for the larger city-building project have already been tainted by Sutter County's truncated project description and piecemeal analysis of the Specific Plan. As just one example, Caltrans, acting through its delegated National Environmental Policy Act ("NEPA") authority, last month issued a categorical exclusion ("CE") for its construction of the Highway 99/70 interchange. However, as the proposed Sutter Pointe Specific Plan ("SPSP") describes, Phase I-A of the Project is "centered around a proposed interchange at Riego Road and SR 99/70."[22] The Federal Highway Administration's NEPA regulations, which Caltrans is charged with implementing, prohibit issuance of a CE for any project that "induce[s] significant impacts to planned growth or land use for the area."[23] Under the delegated NEPA program, the State of California has waived its sovereign immunity and Caltrans is subject to suit in federal court.[24] Should such a federal lawsuit be brought, Caltrans' improper issuance of a CE for the interchange would almost certainly be overturned. (*West v. Sec. of the Dept. of*

[20] NOP, p. 1.
[21] Pub. Util. Code § 21675.1(d).
[22] SPSP, p. 1-10.
[23] 23 CFR § 771.117.
[24] Assembly Bill 2650 (2008).
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Transportation, 206 F.3d 920 (9th Cir. 2000) (overturning CE for interchange on grounds of induced growth).)

The Specific Plan could never be implemented without the 99/70 interchange. Nor could it ever be implemented without a "change of use" designation from the SWRCB that would allow groundwater for irrigation to be used for residential purposes; the building of a natural gas pipeline; the building of a sewer main; the expansion of the Sanitation District's WWTP; or the improvement of levees in this severely flood-prone area. Where, as here, a project analyzed in an environmental review document has no "independent utility" absent the granting of other discretionary approvals, illegal piecemealing under CEQA has occurred. (*Del Mar Terrace Conservancy, Inc. v. City Council of the City of San Diego* (1992) 10 Cal.App. 4th 712, 732-733 ("*Del Mar*").) 7 Cont'd

The DEIR's inadequate, piecemeal review of this larger infrastructure project is fatally flawed. Sutter County should withdraw the DEIR, coordinate with other agencies with discretionary approval authority over the "total undertaking" comprising the larger project, and issue a combined DEIR/DEIS that appropriately addresses all environmental impacts related to the "whole of the action."

C. CEQA Requires that Phase I-A of the Specific Plan be Analyzed in this DEIR

The DEIR improperly tiers its analysis of impacts for Phase I-A of the Project, and defers consideration of these impacts to a future, project-level environmental review. This deferral of consideration of Phase I-A environmental impacts is an impermissible use of tiering under CEQA. An analysis of any project's environmental impacts must occur at the "*earliest possible stage*, even though more detailed environmental review may be necessary later." (*McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136, 1147 ("*McQueen*") (emphasis added).) This requirement of CEQA holds regardless of any intention to undertake site-specific environmental review for future project phases. (*Stanislaus, supra,* 48 Cal.App.4th at 199.) The DEIR states that construction of Phase I-A of the Specific Plan is scheduled to begin in only *one year*.[25] Accordingly, it is axiomatic that the "earliest possible stage" for analyzing project specific Phase I-A impacts has long since passed. 8

[25] DEIR, p. 2-56.

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Moreover, "in preparing an EIR for a specific plan with several phases of development, an environmental impact issue is *ripe for consideration when there is sufficient reliable data* to permit preparation of a meaningful and accurate report on the impact." (*Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1028 ("*Los Angeles Unified*"); *citing Laurel Heights, supra*, 47 Cal3d at 395 (emphasis added).) The DEIR for the multi-phased Specific Plan repeatedly refers to data and studies concerning the environmental impact of Phase I-A of the Project. This apparent availability of "sufficient reliable data" demonstrates that the environmental impacts of Phase I-A of the Project are "ripe for consideration," must be included in the project description, and must be analyzed in this environmental review document.

8 Cont'd

A lead agency's failure to analyze specific plan impacts for which sufficient data exists is particularly egregious where, as in this case, the lead agency has prepared the environmental review document for its *own project*. (*Id.*) When this occurs, there is a danger that the lead agency will use tiering to generate "bureaucratic and financial momentum [and] provid[e] a strong incentive to ignore environmental concerns that could be dealt with more easily at an early stage of the project." (*Id.*) An EIR's purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. (*County of Inyo, supra,* 71 Cal.App.3d at 192-193.) The DEIR's failure to analyze the project-level environmental impacts of Phase I-A, when this phase of the Specific Plan is scheduled to commence construction in only *one year*, is in blatant violation of CEQA's mandate.

D. The DEIR Fails to Adequately Describe and Analyze "Measure M"

The "Project Description" chapter of the DEIR describes the Project as the implementation of "voter-approved Measure M, an *advisory initiative*…."[26] Despite this acknowledgement that Measure M is merely *advisory*, throughout the DEIR Measure M is treated as a directive for which compliance is mandated. The DEIR states that the Project is "designed….under the *restrictions* of Measure M."[27] Similarly, the SPSP itself states that "[t]he Sutter Pointe Specific Plan and associated entitlements are the planning tools that respond to the *requirements* set

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[26] DEIR, p. 2-1 (emphasis added).
[27] DEIR, p. 2-8 (emphasis added).
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forth by Measure M."[28] However, no such "restrictions" or "requirements" of Measure M exist. This misguided treatment of Measure M as a mandate taints Sutter County's entire analysis of environmental impacts and project alternatives throughout the DEIR.

The DEIR Notice fails to describe the Project as the implementation of Measure M, and, for that matter, fails to describe Measure M at all. It references only the "Measure M Group" as the "applicant," wrongly implying that comprehensive planning, including specific plans and general plan amendments, stems from an application reflecting a developer's wish list.[29] Contrary to the DEIR Notice, this is Sutter County's own project; it belongs to no "applicant." Once Measure M is recognized as the advisory measure that it is, and once it is recognized that the Project under review can be defined neither by Measure M nor a particular applicant, the DEIR's project description must be redefined to reflect Sutter County's apparent goal of fostering environmentally sustainable development throughout the larger 9,500-acre Sutter County Industrial-Commercial Reserve ("I-C Reserve") – not the portion of that area controlled by development interests with the self-appellation of the "Measure M Group." 9 Cont'd

Not only does the DEIR wrongly treat Measure M as a mandate throughout its environmental analysis, but it wrongly describes the Project as consistent with this advisory measure. Measure M states that planning within the existing I-C Reserve can begin "*if* the following planning standards are met."[30] Among these planning standards are that residential construction must be "protected, at a minimum, from a 100-year flood event."[31] Thus, 100-year flood protection must be provided for *before* planning consistent with Measure M can even commence. 10

Only last month, the Project area was designated by FEMA as an AE zone, which provides for only *30-year* flood protection.[32] The AE zone requires that all new construction must be elevated *above* mapped flood levels.[33] Yet, the DEIR concedes that 100-year flood protection will not be provided for the Project area until significant levy improvements are completed.[34] Measure M's "planning

[28] SPSP, p. 1-7.
[29] DEIR Notice, p. 1.
[30] Measure M Sample Ballot, p. 2.
[31] Measure M Sample Ballot, p. 2.
[32] DEIR, p. 3.7-13.
[33] *Id.*
[34] *Id.* at 3.7-56.
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standards" for this flood protection have not remotely been met: the levy construction has not even been approved. In fact, levy improvements planned by the Sacramento Area Flood Control Agency ("SAFCA") are still undergoing environmental review.[35] 10 Cont'd

Furthermore, Sutter County is required to comply with AB 162's newly imposed requirements for flood hazard planning *before* the General Plan is amended by the Specific Plan. Before any substantial amendments to a general plan are adopted, AB 162 states that the planning agency "shall refer the proposed action" to the Central Valley Flood Protection Board ("CVFPD") for review and comment.[36] Despite this legal mandate, the DEIR makes no mention of AB 162, and this required referral to the CVFPD has not been made. Meanwhile, while the Specific Plan is a substantial amendment to Sutter County's 1996 General Plan, Sutter County is simultaneously undergoing an update to that same General Plan – from which the Specific Plan DEIR is improperly piecemealed. AB 162 requires updated general plans to "identify and annually review those areas covered by the plan that are subject to flooding identified by flood plain mapping prepared by [FEMA]."[37] It also states that the "conservation element shall identify rivers, creeks, streams, flood corridors, riparian habitats, and land that may accommodate floodwater for purposes of groundwater recharge and stormwater management."[38] Thus, the piecemealing of the Specific Plan from the simultaneously occurring General Plan update is a transparent circumvention of AB 162's most stringent flood planning requirements and their environmental review under CEQA. 11

E. The DEIR Fails to Place the Public on Notice that Thousands of Acres of Agricultural Lands and Wetlands will be Destroyed

Neither the DEIR Notice nor the extensive "Project Description" chapter in the EIR once mention the term "wetlands." Given that the Project site contains 66 *linear* acres of federally-constructed canals and *6,000 acres* of rice fields, all of which are converted wetlands, this oversight is remarkable.[39] No wetland delineation was even conducted for the "off-site improvement areas" that are included in the project description.[40] The public has not been placed on notice that, at minimum, hundreds 12

[35] DEIR, p. 3.7-23.
[36] AB 162, § 4 (amending Government Code).
[37] *Id*. at § 1.5.
[38] *Id*.
[39] DEIR, p. 3.13-33.
[40] *Id*.
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– and potentially *thousands* – of wetland acres will be filled by the Project. What's worse, the public is left to simply guess what the environmental impact on wetlands will be. To this date, it is unknown whether dozens, hundreds, or even thousands of federal wetland acres occupy the Project site. It is not the public's responsibility under CEQA to engage in a guessing game of wetlands impacts.

This guessing game could easily have been avoided by seeking an "approved jurisdictional determination" ("approved JD") from the United States Army Corps of Engineers ("Army Corps") as to the extent of federal wetlands on the site.[41] The DEIR contains no evidence that such an approved JD was sought, presumably out of fear as to what the answer might be. Instead, the DEIR states that a consultant's wetlands delineation was sent to the Army Corps two years ago, in 2007, but that no "verification" of that delineation has been obtained.[42] However, this statement in the DEIR falls nothing short of prevarication. The Measure M Group had the option of obtaining from the Army Corps either a "preliminary jurisdictional determination" ("preliminary JD"), which is a purely advisory document that states whether there "may be" wetlands on a parcel, or an approved JD, which would require federal wetlands permits for the area to be developed.[43] As the Army Corps' regulatory guidance for jurisdictional determinations states, its goal is to "process both preliminary JDs and approved JDs *within 60 days*."[44] Given this typical 60-day time frame, it is apparent that obtaining an approved JD for the Project area would have been feasible.

12 Cont'd

Irrespective of the Measure M Group's failure to obtain an approved JD that would potentially reveal hundreds of acres of federal wetlands on the Project site, an approved JD must be obtained from the Army Corps before the Project's environmental impacts can be assessed. To be sure, should an approved JD reveal the existence of several hundred jurisdictional wetland acres on site, the entire Specific Plan would necessarily be called into doubt. But that is the precise reason why CEQA prohibits Sutter County from piecemealing federal wetlands impacts from its environmental review of the Specific Plan. (*Del Mar, supra*, 10 Cal.App. at 732-733.)

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[41] 33 CFR § 331.2.
[42] DEIR, p. 3.13-33.
[43] 33 CFR § 331.2.
[44] Army Corps, Regulatory Guidance Letter 08-02, p. 3 (emphasis added).
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The DEIR Notice also fails to inform the public that nearly 2,000 acres of Prime Farmland and over 5,000 additional acres of Farmland of Statewide importance will be destroyed by the Project.[45] This flouting of CEQA's fundamental disclosure requirements deprives the opportunity for the public to meaningfully comment on this environmental impact. (*County of Inyo, supra,* 71 Cal.App.3d at 192-193.) It can nowhere be gleaned from the DEIR Notice that the Project will be developed on an existing agricultural greenfield; such a truncated project description violates the public disclosure mandate of CEQA. (*Rural Land Owners, supra,* 143 Cal.App.3d at 1020.) 14

F. The DEIR Fails to Place the Public on Notice that the Project is Inconsistent with the Habitat Conservation Plan

The DEIR Notice makes no mention that the Project is located within the area of the Natomas Basin Habitat Conservation Plan ("HCP"). This fails to put members of the public on notice that the Project is located within a sensitive wildlife area, and fails to alert those individuals who have an interest in overseeing the HCP's ongoing implementation. The DEIR fails to identify which components of the Project are within the HCP area, and which Project components are not within the HCP area. 15 16

The 7,528 acres planned for development under the Specific Plan do not include "off-site infrastructure improvements to support project development."[46] However, nowhere does the DEIR specify just how many acres of development these off-site improvements will require, and what portion of that development will be within the HCP area. The DEIR only states that most "off-site infrastructure improvements are not within the area covered" by the HCP, and will therefore require an incidental take permit under the Endangered Species Act ("ESA").[47] 17

Absent any description of the off-site acreage to be developed by the Project, it is impossible to discern the environmental impact of the Project on wildlife species, and it is impossible to discern the extent to which this development is inconsistent with the HCP. The portion of the HCP within Sutter County provides a general ESA permit for up to 7,467 acres of development that is consistent with

[45] DEIR, p. 5-26.
[46] DEIR, p. 1-6.
[47] DEIR, p. 3-13.1.
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the HCP's mitigation measures.[48] However, the United States Fish and Wildlife Service's ("FWS") Findings Statement for approving the HCP states that these 7,467 acres include "infrastructure improvements in Sacramento County."[49] RD 1000 drainage channel improvements south of the Sutter-Sacramento County line are "*considered part of Sutter's 7,467 acres of authorized development.*"[50] The Project includes these same RD 1000 improvements to the "East Drainage Canal and Montna Canal."[51] Thus, although the DEIR makes it impossible to discern how many hundreds of acres the Project exceeds the maximum acreage allotment under the HCP, there can be no question that the Specific Plan exceeds this 7,647 acre allotment. 17 Cont'd

The consequences of Sutter County's approval of development that exceeds the HCP's 7,647 acre limit are significant. As the HCP states,

> "approval by Sutter County of development within the Natomas Basin beyond the authorized 7,467 acres or outside of the Sutter County Permit Area would constitute a significant departure from the Plan's OCP and would *trigger a reevaluation of the Plan, a new effects analysis, potential amendments and/or revisions to the Plan and Permits, a separate conservation strategy and issuance of Incidental Take Permits to the permittee for that additional urban development, and/or possible suspension or revocation of the County's Permits* in the event the County were to violate such limitations without having completed the required reevaluation, amendments or revisions."[52] 18

The DEIR wholly fails to analyze the Project's inconsistency with the HCP, even though the Project would, by the HCP's own terms, "trigger a reevaluation of the plan" and require a new environmental review under both NEPA and CEQA; HCP amendments and revisions; and the "suspension or revocation" of Sutter County's permits.

While wholly failing to address the off-site infrastructure improvements that must be counted towards the HCP's 7,467 acre allotment, the DEIR claims that the Project's 7,528 acre area exceeds this allotment by 61 acres due to pre-existing 19

[48] HCP, p. I-7.
[49] FWS Findings Statement, p. 8.
[50] *Id.* (emphasis added).
[51] DEIR, p. 3-13.1.
[52] HCP, p. I-3 (emphasis added).
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development that is not subject to the HCP.[53] This is incorrect. The HCP explicitly incorporates the "SYSCO warehouse facility that occupies approximately 50 acres" within its 7,467 acre allotment.[54] 19 Cont'd

Moreover, as the HCP explains, there exist only 8,573 acres within Sutter County's I-C Reserve that lie outside of the Swainson's Hawk Zone.[55] Inexplicably, the Specific Plan area does not encompass all of these 8,573 acres. However, the remaining approximately 1,000 acres within the I-C Reserve and within the HCP area must be included in the project description and analyzed in the DEIR. Sutter County is prohibited from piecemealing the Specific Plan area from the larger I-C Reserve, and *de facto* allotting all HCP development rights to the Specific Plan area. If the remaining 1,000 acres within the I-C Reserve will not be developed as a result of the Specific Plan, the DEIR must assess this impact. 20

G. The DEIR Fails to Place the Public on Notice that the Project is within the ALUC Planning Area

The DEIR Notice makes no reference to the Project's proximity to the Sacramento International Airport ("Sacramento Airport"), even though the Project is located within the ALUC planning area and Sutter County is required to obtain a determination of consistency with ALUC's comprehensive land use plan ("CLUP"). ALUC's consistency determination must be obtained before the environmental review for the Project is completed. If ALUC finds the Specific Plan to be incompatible with the CLUP, Sutter County can only override this determination with a 2/3 vote "*if* it makes specific findings."[56] Specifically, the County would have to demonstrate, subject to judicial review, that the "public's exposure to excessive noise and safety hazards within areas around public airports" is "minimized."[57] "At least 45 days" before Sutter County were to undertake such an override vote, it would be required to provide ALUC and the State Aeronautics Division with a proposed decision, and allow 30 days for these agencies to provide comments; these comments would then be included in the record of the decision.[58] 21

[53] DEIR, p. 6-3.
[54] HCP, p. III-16.
[55] *Id*.
[56] Pub. Util. Code § 21675.1(d)(emphasis added).
[57] *Id*. at 21670(a)(2).
[58] *Id*. at 21676(b).
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ALUC's review of the Specific Plan cannot be piecemealed from this environmental review; the environmental impacts associated with the CLUP must be considered at the "*earliest possible stage*" in the environmental review process. (*McQueen, supra,* 202 Cal.App.3d at 1147 (emphasis added).) The DEIR acknowledges that the Project requires an ALUC consistency determination, but conclusively presumes that it "would not conflict with the Sacramento International Airport CLUP."[59] However, this is a determination for ALUC to make – not the Measure M Group's consultant. Once that determination is made, it will inform the environmental review of the Specific Plan and may result in changed mitigation measures or an otherwise altered project. For that reason, CEQA requires that the environmental impact of the Project on the CLUP be analyzed *before* a decision is made. (*County of Inyo, supra,* 32 Cal.App.3d at 810.) 21 Cont'd

Moreover, independent of the requirement that the Project comply with the CLUP, Sutter County is under an independent obligation to ensure that land use within the vicinity of the Sacramento Airport is compatible with the area's predominant aviation use. The Federal Aviation Administration ("FAA") imposes grant assurances on all recipients of airport funding; Grant Assurance 21, "Compatible Land Use," requires

> the airport sponsor to "take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft."[60]

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The DEIR contains no discussion whatsoever of Sutter County's grant assurance obligation, or what the implications may be of potentially losing FAA airport funding. However, Sutter County's approval of a megadevelopment for over 40,000 residents could hardly be construed as taking "appropriate action….to restrict the use of land" in the airport's vicinity.[61]

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[59] DEIR, p. 3.1-29.
[60] Airport Sponsor Assurances, available at http://www.faa.gov/airports_airtraffic/airports/aip/grant_assurances/media/airport_sponsor_assurances.pdf
[61] *Id.*
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IV. THE DEIR FAILS TO PROVIDE AN ACCURATE DESCRIPTION OF THE ENVIRONMENTAL BASELINE

The importance of having a stable, finite, and fixed environmental baseline for purposes of an environmental impact analysis was recognized decades ago. (*County of Inyo, supra,* 71 Cal.App.3d 185.) "Environment" means the physical conditions which exist within the area which will be affected by a proposed project. (Pub. Res. Code § 21060.5.) "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in the environment. (Pub. Res. Code § 21068.) Thus, without an accurate baseline description of the "environment," it is impossible to determine whether the Project's impacts on that environment will be significant. (CEQA Guidelines § 15125(a).)

An environmental review document must focus on impacts to the *existing* environment, not on future environmental conditions. (*County of Amador vs. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 954.) "[T]he impacts of the project must be measured against the 'real conditions on the ground.'" (*Save Our Peninsula Committee v. Monterey Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 121 ("*Save Our Peninsula*"), *citing*, *City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 246). A lead agency's failure to accurately describe the environmental baseline "precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." (*Berkeley Keep Jets Over the Bay Committee v. Bd. of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1355 [111 Cal.Rptr.2d 598].) 23

The DEIR fails to define or accurately describe the existing environmental baseline for the Project with respect to several environmental impacts. Meanwhile, the DEIR does not use the *existing* environmental baseline as the basis of its significance determinations. Rather, it describes some future world where infrastructure improvements that have not been approved – or even undergone environmental review – have somehow been built. Ironically, these are the same infrastructure projects that have been improperly piecemealed from this environmental review. Not only does the DEIR avoid analyzing these impacts, but it assumes they could not be significant by defining them as the environmental baseline for the Project. However, CEQA requires that the environmental baseline be the *existing* environment; the impact of these future projects and the Specific Plan on the existing environmental baseline must be assessed in this environmental review. (*Save Our Peninsula, supra,* 87 Cal.App.4th at 121.)

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A. The DEIR Fails to Adequately Describe and Analyze the Existing Environment

An "inadequate description of the environmental setting for the project [makes] a proper analysis of project impacts….impossible." (*Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1122.) Yet the DEIR's description of existing environmental conditions is either incomplete, vague, or outright inaccurate. Moreover, the DEIR does not even specify the area for which an environmental baseline must be described. While "[o]ff-site roadway and infrastructure facilities are proposed to serve project development and are addressed in this DEIR,"[62] a description of the environmental baseline for all of these off-site infrastructure areas in nowhere to be found. 24

The DEIR fails to describe whether federal jurisdictional wetlands are located in the Project site. The "wetlands delineation" to which the DEIR refers is merely one, preliminary step in the Army Corps' process of determining the size and location of jurisdictional wetlands.[63] An actual, approved JD will map the location and extent of wetlands that are located within or are otherwise hydrologically connected to the Project site.[64] No such map exists. A lead agency is not "allowed to hide behind its own failure to gather relevant data….CEQA places the burden of environmental investigation on government rather than the public." (*Gentry v. City of Murietta* (1995) 36 Cal.App.4th 1359, 1378-1379 ("*Gentry*"), *citing, Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.) 25

As the DEIR describes, the Project site is within a FEMA-designated AE flood zone.[65] The Natomas Levee Improvement Project Environmental Impact Statement ("NLIP EIS") for Sutter County's levee improvements was issued by the Army Corps in December 2008. The NLIP EIS describes the severe implications of an AE zone classification: 26

> "FEMA defines AE zones as areas with a 1% annual chance of flooding. The designation would result in the requirement that the bottom floor of all new buildings be constructed at or above the base flood elevation—as little as 3 feet in some of Natomas but up to 20 feet above the ground level in much of the basin. It is therefore anticipated

[62] DEIR, p. 1-2.
[63] DEIR, p. 3.13-33.
[64] 33 CFR § 331.2.
[65] DEIR, p. 3.7-13.
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> that this designation *would effectively stop any projects that are not issued building permits by the time the new Flood Insurance Rate Map takes effect*."[66]

Because the AE flood is now in effect, the *existing* environmental baseline for flood control in the Project area effectively prohibits any development. "[T]he impacts of the project must be measured against the 'real conditions on the ground.'" (*Save Our Peninsula, supra,* 87 Cal.App.4th at 121.) Given this existing environmental baseline, the Specific Plan's provision for a city with over 40,000 residents obviously would present a potential for significant environmental effects that must be assessed in the DEIR. 26 Cont'd

Although the Specific Plan calls for the development of a city with over 40,000 inhabitants, the DEIR fails to identify the existing environmental baseline for population growth. As the DEIR describes,

> "population estimates from the County's General Plan extend only to 2015. Because planned residential growth figures between 2015 and the proposed project's expected buildout of 15–20 years are not available, *it cannot be determined if the proposed project would generate population growth that exceeds estimates for the County as identified in the General Plan*, and the project could potentially result in unplanned population growth in the area."[67]

The Specific Plan and amendments to the General Plan are supposed to be under review in *this* DEIR. Despite this, the DEIR relies on an outdated, pre-amendment population projection from the *existing* General Plan as the reason why no population projection exists for this proposed General Plan amendment. However, the only reason the DEIR states that projected population growth "cannot be determined" is because Sutter County has failed to obtain updated population data. It is axiomatic that an environmental review for a Specific Plan involving the construction of a city with over 40,000 inhabitants requires a baseline for projected population growth, and any failure to obtain that information is a *per se* violation of CEQA. Sutter County cannot "hide behind its own failure to gather relevant data," particularly when the very premise of the Specific Plan is to accommodate population growth within the region. (*Gentry, supra,* 36 Cal.App.4th at 1378-1379.) 27

[66] Natomas Levee Improvement Project, Final EIS, Dec. 2008 ("NLIP EIS"), p. ES-6 – ES-7 (emphasis added).
[67] DEIR, p. 5-12.
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The DEIR provides only a partial environmental baseline for hazardous materials in the Specific Plan area. While several Phase I environmental assessments were conducted for properties within the Project area, no Phase Is were conducted for the areas of greatest potential hazard: the Holt manufacturing facility and the Farm Service Flying Service site.[68] Thus, over 1,300 of the potentially *most contaminated* acres within the Specific Plan area have undergone no environmental assessment whatsoever.[69] As "mitigation," the DEIR proposes that Phase I environmental assessments be conducted before construction begins within this uninvestigated, 1,300 acre potentially contaminated area.[70] However, such a deferral of environmental impact analysis to post-approval studies is impermissible under CEQA. (CEQA Guidelines § 15126.4(a)(1)(B); *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308 ("*Sundstrom*").) 28

Of the 7 Phase Is that were conducted for the less contaminated areas, 2 of these found a recognized environmental condition requiring a Phase II environmental assessment. The first of these, by the consulting firm Geomatrix, concluded that historic pesticide use in the area required a Phase II environmental assessment. Apparently dissatisfied with Geomatrix's conclusion that historic pesticide use required further testing within the Specific Plan area, another consulting firm, WKA, was hired to "reinterpret" Geomatrix's results. Not surprisingly, "WKA did not recommend additional environmental investigation."[71] Notably, Geomatrix's 2003 Phase I environmental assessment was the first conducted for the entire Project area.[72] Geomatrix was not given the chance to conduct any other Phase I assessments; almost all remaining assessments were conducted by WKA, the same firm that "corrected" Geomatrix's earlier results.[73] 29

The DEIR's conclusion that there exists no need for a Phase II environmental assessment to investigate decades of pesticide use throughout the project area is not supported by substantial evidence. WKA's environmental assessments and its reinterpretation of Geomatrix's conclusion are results-oriented and based on pure speculation. The DEIR states that "agricultural chemicals….are not *believed* to 30

[68] DEIR, p. 3.12-11.
[69] DEIR, p. 3.12-12.
[70] DEIR, p. 3.12-25.
[71] DEIR, p. 3.12-14.
[72] DEIR, p. 3.12-18.
[73] *Id.*
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persist in site soils."[74] Belief is not enough here. No testing of arsenic levels in any of these soils has actually been conducted; this testing is required under CEQA to reconcile the conflicting "beliefs" of experts and to accurately analyze the "real conditions on the ground." (*Save Our Peninsula, supra,* 87 Cal.App.4th at 121.) 30 Cont'd

The second recommended Phase II for the Project site concerns Area G. A portion of Area G contains "stained surface soils….on an 'island' in rice fields on the property," and another portion contains stained soils "beneath a diesel aboveground storage tank."[75] Inexplicably, WKA did not recommend that a Phase II be conducted to analyze these soils. Rather, a Phase II was recommended only for that small portion of Area G where a former slaughterhouse and hog farming operation was located, and which contained "at least eight ASTs, dozens of 55-gallon drums, and several burn areas."[76] The recommended Phase II has not been conducted. However, CEQA requires that both the recommended Phase II, and a Phase II that contains an analysis of the stained soil areas, be conducted *before* environmental review is completed – at the "earliest possible stage" in the decision-making process. (*McQueen, supra,* 202 Cal.App.3d at 1147.) 31

The DEIR either fails to define the environmental baseline – or misstates what the environmental baseline is – for several other environmental conditions. The environmental baseline for noise is not adequately described for the Specific Plan area, even though its immediate proximity to the Sacramento Airport, and its location within a Sacramento Airport noise contour,[77] necessitate a detailed and intensive investigation of the Project's impact on background noise levels. The DEIR concedes that a portion of the Project site is within the 60-65 decibel ("dB") noise contour established by the Sacramento Airport's Comprehensive Land Use Plan.[78] The DEIR claims that the "large-scale industrial campuses, technological parks….and higher intensity industrial manufacturing uses planned for this area" are compatible with this noise contour.[79] However, these noise contours were established in 1994; they do not represent *existing* background noise levels. The DEIR itself states that the CLUP is "more than 11 years old; in the time since publication of the CLUP, the level of growth in the region and expansion of 32 33

[74] DEIR, p. 3.12-21 (emphasis added).
[75] DEIR, p. 3.12-12.
[76] *Id.*
[77] DEIR, p. 3.1-29.
[78] DEIR, p. 3.1-29.
[79] *Id.*
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operations at the airport has indicated the need for an update to the plan."[80] 33 Cont'd

CEQA requires that the DEIR examine environmental impacts based on present conditions. (*Save Our Peninsula, supra,* 87 Cal.App.4th at 121.) The very limited acoustical survey conducted for this environmental review does not describe with sufficient detail what those conditions are. Nonetheless, it does make clear that the background noise levels may be far worse than described in the CLUP. Based on a sample size of only 6 aircraft at each of 3 locations, this brief survey concluded that the average, single-event dB levels at 2 of these locations exceeded 85 dB, and exceeded 65 dB at the other location; this indicates that background noise levels may be much higher than indicated in the CLUP.[81] Despite the results of this limited study, the DEIR based its significance determination wholly on the background noise levels provided in the CLUP, which the DEIR itself categorizes as outdated.[82] A more detailed, updated noise study is needed to determine existing background noise levels from aircraft within the Project area. Absent such an accurate baseline of background noise conditions, it is impossible to determine the significance of the Project's impact on noise. (CEQA Guidelines § 15125(a).) 34

The DEIR misstates or omits information necessary to determine the respective environmental baseline for wildlife and waste disposal. The recent conversion of buffer lands located north of Sacramento Airport from rice cultivation to fallow land is not incorporated in the DEIR's description of the environmental baseline for wildlife.[83] These lands provided important habitat for wildlife, but the threat of bird strikes to airplanes necessitated their removal from cultivation.

In its environmental review for the levee improvement project, SAFCA prepared a supplemental DEIR to address the "change in the baseline at Sacramento International Airport north bufferlands from active rice cultivation to idle conditions."[84] Given that the habitat from the former airport rice fields must now be replaced under the Natomas HCP, and given that the destruction of over 6,000 acres of active rice cultivation is the hallmark of the Specific Plan, the DEIR's failure to properly identify this environmental baseline is a clear violation of CEQA. 35

[80] DEIR, p. 3.1-6.
[81] DEIR, p. 3.5-21.
[82] *Id.*
[83] *See, e.g.*, Natomas Joint Vision Area, Existing Conditions, November 12, 2008, p. 22, available at http://www.cityofsacramento.org/planning/projects/natomas-joint-vision/documents/NJV_Background_Report.pdf
[84] NLIP, Phase II supplemental DEIR, p. ES-1.
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With respect to waste disposal, the DEIR provides inaccurate information concerning the amount of tonnage allowed under the landfill's current waste disposal permit. The DEIR states that

> "[u]nrecyclable solid waste would be disposed of at the Ostrom Road Sanitary Landfill, which is permitted to accept 3,000 maximum tpd of solid waste. The estimated 330.6 tpd of solid waste generated by the proposed project would be approximately 11% of the 3,000 maximum tpd that could be received at the landfill. Therefore, this landfill has sufficient permitted capacity to accommodate solid-waste disposal needs for the proposed project.[85]

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In fact, the tonnage limit under the Ostrom Road Sanitary Landfill's permit is a maximum average of 1,900 per day.[86] Thus, any given day in which 3,000 tons of waste are disposed at the landfill must be counterbalanced by a day in which only 800 tons are disposed. The DEIR's analysis of waste permit capacity must be revised to reflect this actual condition of the permit.

B. The DEIR's Formulation of a Hypothetical Environmental Baseline Violates CEQA

An environmental review document must focus on impacts to the existing environment, not on hypothetical scenarios. (*County of Amador, supra,* 76 Cal.App.4th at 954.) Yet, despite CEQA's mandate that the environmental baseline be based on "real conditions on the ground," the DEIR analyzes the environmental baseline of some future projected conditions. (*Save Our Peninsula, supra,* 87 Cal.App.4th at 121.)

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Although the environmental review for the Sanitation District's expansion of the WWTP has been overturned in court, the DEIR assumes a future scenario in which this decision has been reversed on appeal. In making this assumption, the DEIR explains that the "legal effect of the pending appeal is to stay the Superior Court's determination of legal deficiency."[87] However, this is a blatant mischaracterization of the law: the decision overturning the environmental review for the WWTP expansion had immediate legal effect, and the fact that the decision

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[85] DEIR, p. 3.10-20.
[86] Permit information available at http://www.ciwmb.ca.gov/SWIS/58-AA-0011/Detail/
[87] DEIR, p. 3.10-16 – 3.10-17.
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may now be under appeal is immaterial. Thus, the environmental baseline the DEIR is required to analyze is the WWTP's *existing* capacity – a capacity that will not be sufficient to accommodate the Project in concert with other planned growth in the region. Given this lack of existing wastewater treatment capacity, mitigation of this significant environmental impact to the extent feasible would require the construction of a new WWTP within the Specific Plan area. However, the DEIR contains no discussion of this need for a new WWTP. 38 Cont'd

The DEIR treats an A99 FEMA flood zone designation as the environmental baseline for the Project, even though the site is within an existing AE flood zone. Contrary to the DEIR's assumption, a change of flood zone designation from AE to A99 is not automatic and cannot be assumed.[88] An A99 designation may only be obtained

> "where it can be shown that an area with a 1% annual chance of flooding will be protected by a Federal flood control system where construction has reached specified legal requirements. The main requirements are that 100% of the cost of the flood protection system restoration project must be authorized, 60% must be appropriated, 50% must be expended, and 'critical features' must be under construction and 50% completed."[89]

Furthermore, as FEMA concluded in its September 27, 2007 letter denying A99 zone classification for the Natomas area, more than 50% of the construction of increased levee heights and more than 50% of the construction to protect against underseepage must be completed before A99 status can even be considered.[90] 39

Moreover, while the EIS for SAFCA's planned levy improvements addresses the 2008 construction phase in detail, it addresses the "2009 and 2010 construction phases addressed at a more general, programmatic level."[91] These later construction phases involve those same construction activities that must be more than 50% completed before FEMA would even consider granting A99 status.[92] They will be subject to subsequent project-level environmental review, the hypothetical outcome of which cannot be assumed as part of the environmental baseline for the

[88] DEIR, p. 3.7-22.
[89] NLIP EIS, p. 3-9.
[90] Letter Denying A99 Designation, FEMA, September 17, 2007, p. 2.
[91] NLIP EIS, p. 2-9.
[92] NLIP EIS, p. ES-2.
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Project. (*County of Amador, supra,* 76 Cal.App.4th at 954.) Likewise, FEMA's future decision whether to exercise its discretion to grant A99 or any other flood zone status cannot be assumed under CEQA. 39 Cont'd

The DEIR wrongly treats several other infrastructure improvements as the existing environmental baseline. This laundry list includes RD 1000 drainage improvements, and an accompanying drainage improvement agreement with Sutter County; construction of the Placer Parkway; construction of the 99/70 interchange, despite obvious deficiencies in Caltrans' environmental review of the project; construction of a sewer line to the Sanitation District's WWTP, and entry into an accompanying wastewater services agreement; the California Lands Commission's approval for the construction of a natural gas pipeline; the highly speculative construction of light rail to the Sacramento Airport, and then to the Specific Plan area; PUC's approval of Golden State Water Company's application to provide water to the Project area, without the imposition of any environmental conditions; and SWRCB's entirely speculative grant of a change of use designation that will allow irrigation water to be used for domestic purposes. 40 41 42 43 44 45 46

These infrastructure improvements and approvals may or may not occur in the future. Any determination as to what infrastructure will be built, or as to what approval will be granted, will necessarily be a product of environmental review under CEQA. The environmental review of the Specific Plan should have been conducted in concert with the environmental review of several of these projects. Sutter County's improper peacemealing of its environmental review does not entitle it to assume a future environmental baseline where these projects have undergone environmental review and been approved. 37 Cont'd

V. THE DEIR FAILS TO ACCURATELY IDENTIFY AND ADEQUATELY ANALYZE ALL POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS OF THE PROJECT

An EIR must identify and analyze all direct and indirect potentially significant environmental impacts of a project. (Pub. Res. Code § 21100(b)(1); CEQA Guidelines § 15126.2(a).) A significant environmental effect is "a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance." (CEQA Guidelines § 15382.) In preparing an EIR, a lead agency is required to 47

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> "analyze the relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human uses of land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality and public services. The EIR [must] also analyze any significant environmental effects the project might cause by bringing development and people into the area affected."

47 Cont'd

(*Id.* at § 15126.2(a).) The CEQA statute, its Guidelines, and the cases interpreting them are crystal clear: although a lead agency need not engage in blind speculation regarding impacts, it must nevertheless undertake a "thorough investigation" in a good faith effort to identify all of the reasonably foreseeable direct and indirect environmental impacts which might result from a project. "[A]n agency must use its best efforts to find out and disclose all that it reasonably can." (CEQA Guidelines § 15144.)

The primary function of an EIR is to "inform the public and responsible officials of the environmental consequences of their decisions before they are made." (*Laurel Heights, supra,* 6 Cal.4th at1123.) To fulfill this function, an EIR must be detailed, complete, and must "reflect a good faith effort at full disclosure." (CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.) An adequate EIR must also contain facts and analysis, not just an agency's conclusions. (*Goleta Valley, supra,* 52 Cal.3d at 568.) However, the DEIR fails to meet this overriding purpose of CEQA through its improper use of a program and tiered environmental review mechanism for the Project.

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As explained above, when a phased project is under environmental review that, with other "individual projects," is a component of a "total undertaking compris[ing] a project with significant environmental effect," the lead agency "shall prepare a *single program EIR* for the ultimate project." (CEQA Guidelines § 15165 (emphasis added).) Moreover, the environmental review for a multi-phased project can only be tiered if all of a project's environmental impacts are described at the "*earliest possible stage*." (*McQueen, supra,* 202 Cal.App.3d at 1147 (emphasis added).) In "preparing an EIR for a specific plan with several phases of

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development," this earliest possible stage occurs *"when there is sufficient reliable data* to permit preparation of a meaningful and accurate report on the impact." (*Los Angeles Unified, supra,* 58 Cal.App.4th at 1028 (emphasis added).)

48 Cont'd

Far from representing a single program EIR, the Specific Plan is a piecemeal review of a larger infrastructure project. Meanwhile, under the guise of tiering, the DEIR avoids any project-level review of Phase I-A of the Project, even though construction of this phase is scheduled to commence in only one year and there exists more than sufficient reliable data to analyze its environmental impact. Sutter County's improper use of these program and tiered environmental review mechanisms skews its entire analysis of significant environmental impacts in the DEIR. As explained in detail below, the DEIR fails to accurately identify and adequately analyze many of the significant environmental impacts that will be caused by the Project. These legal deficiencies must be addressed and corrected in a revised DEIR that is recirculated for public review and comment.

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A. The DEIR Fails to Adequately Describe and Analyze the Project's Significant Air Quality Impacts

The DEIR concludes that construction air emissions from the Project will be significant. While this significance determination is undoubtedly correct for a project this scale, the DEIR's description of the construction emission impacts from the several off-site infrastructure improvements that are defined as part of the Project is both inadequate and misleading.

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Dr. Pless summarizes the DEIR's analysis of air impacts as "superficial at best." (Exhibit A, p. 3.) No project-level analysis of Phase I-A air impacts is provided in the DEIR, even though sufficient data is already available for evaluating these impacts. Even the data underlying the limited analysis of air impacts that does appear in the DEIR is not properly disclosed. The DEIR models a "representative" year for construction air emissions, but does not provide the URBEMIS modeling runs that would allow for an independent evaluation of these results. (Exhibit A, p. 3.)

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The DEIR's analysis of the air impacts from off-site infrastructure improvements is entirely based on its assessment of an off-site infrastructure project that is not even included in the Specific Plan. As the DEIR explains,

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> "[t]o determine the approximate level of impact that could result from development of the off-site infrastructure, the proposed sewer force main that would connect the project site to the [Sanitation District] system was chosen for modeling purposes."[93]

The DEIR models the construction emissions of one off-site infrastructure project impact, and uses this as a proxy for calculating all off-site infrastructure impacts of the Project. However, this analysis has one, glaring problem: *the sewer interceptor is not a part of the Project.*[94] Ironically, the DEIR has improperly piecemealed the sewer interceptor from the project description, only to import environmental data on this sewer interceptor when necessary to fill a gap in the DEIR's analysis. This gap can only be filled by modeling an off-site infrastructure improvement that is actually a part of the Project, and using those results to inform the significance determination of this impact. Sutter County will "not be allowed to hide behind its own failure to gather relevant data….CEQA places the burden of environmental investigation on government rather than the public." (*Gentry, supra,* 36 Cal.App.4th at 1378-1379.) 52

The DEIR wrongly concludes that mobile source emissions from Project operation will not have a significant environmental impact on the achievement of ambient air quality standards.[95] This conclusion is premised on the DEIR's use of a traffic measure, Level of Service ("LOS"), as the significance threshold for determining air traffic impacts. According to the DEIR,

> "several signalized intersections would operate at an unacceptable LOS with and without project implementation…. [b]ecause these intersections would operate at an unacceptable LOS with or without the proposed project, it is not anticipated that the additional vehicles associated with the proposed project would result in or substantially contribute to a violation of the [ambient air quality standards] at these locations."[96] 53

Stated differently, because traffic conditions in the Specific Plan area would be terrible even without the Project, the additional traffic delay the Project will cause cannot cause a significant *air impact*. This argument defies logic: the fact that

[93] DEIR, p. 3.4-26.
[94] DEIR, p. 1-2.
[95] DEIR, p. 3.4-35.
[96] DEIR, p. 3.4-36.
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traffic engineers have yet to come up with a "worse than terrible" classification has nothing to do with the increased air emission impacts caused by increased traffic delay at these intersections. 53

Moreover, "the fact that a particular environmental effect meets a particular threshold cannot be used as an automatic determinant that the effect is or is not significant." *(Protect The Historic Amador Waterways v. Amador Water District* (2004), 116 Cal.App.4th 1099, 1109 ("*Historic Amador*").) CEQA requires that *any* worsening of already environmentally degraded conditions must be analyzed in detail. (*Los Angeles Unified*, *supra*, 58 Cal.App.4th at 1024.) The DEIR contains no analysis of how much the Project will worsen these already degraded environmental conditions. 54

The DEIR engages in no impact analysis whatsoever of potentially hazardous air emissions from the Sacramento Airport. According to the DEIR, "any conclusions regarding health risks associated with the airport would be speculative."[97] However, EPA Region 9 ("Region 9"), which has jurisdiction over Sutter County, flatly rejects this same argument. As Region 9 states in a 2006 regulatory letter commenting on a federal EIS for an airport, it

> "*does not agree*….with statements in the FEIS regarding the inability to quantify potential impacts from HAPs [hazardous air pollutants] in a meaningful way, given the limitations of existing modeling tools and critical input data, including HAP speciation profiles for commercial jet aircraft engines."[98] 55

Like Region 9, CEQA requires a health assessment of potentially toxic emissions from the Sacramento Airport. Because such an analysis would provide meaningful and critical data on airport emissions impacts, Sutter County is not "allowed to hide behind its own failure to gather [this] relevant data." (*Gentry, supra,* 36 Cal.App.4th at 1378-1379.) Under CEQA, a lead agency "must use its best efforts to find out and disclose all that it reasonably can." (CEQA Guidelines § 15144.)

The DEIR's significance analysis of greenhouse gas ("GHG") emissions is also deficient under CEQA. While the DEIR finds GHG impacts to be cumulatively significant and calculates the GHG emissions that Phase I-A of the Project will 56

[97] DEIR, p. 3.4-39.
[98] EPA, Comment on FEIS for Phoenix Sky Harbor International Airport, March 13, 2006 (emphasis added), available at http://www.epa.gov/region09/nepa/letters/sky-harbor-feis.pdf
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create, it does so only for the purposes of description – not for engaging in meaningful impact analysis. As explained by Dr. Pless in her comments, even this descriptive calculation of GHG impacts for Phase I-A is flawed because it fails to include stationary source emissions. (Exhibit A, p. 3.) Had stationary sources been included in the DEIR's analysis, the average GHG "rate would be considerably higher." (Exhibit A, p. 9.) 56 Cont'd

The DEIR quantifies GHG impacts for Phase I-A of the Project only; refuses to quantify the impact of subsequent project phases; and claims that the exorbitant numbers for Phase I-A, while undoubtedly significant, cannot be further evaluated because there exists no significance threshold by which such an analysis could be informed.[99] This analysis of GHG impacts lacks validity and unlawfully abdicates Sutter County's responsibilities under CEQA. 57

Nothing in CEQA or its regulations requires the establishment of a regulatory threshold in order to assess the significance of an environmental impact. As the Attorney General has clearly stated in comments and filings, the "lack of a threshold does *not* mean lack of significance. An agency may argue lack of significance for any project, but that argument would have to be carried forth on a case-by-case, project specific basis."[100] In its technical advisory, *CEQA and Climate Change*, the Governor's Office of Planning and Research states that, 58

> "[a]s with any environmental impact, lead agencies must determine what constitutes a significant impact. In the absence of regulatory standards for GHG emissions....individual lead agencies may undertake a project-by-project analysis, consistent with available guidance and current CEQA practice.[101]

Thus, if there are no established thresholds of significance, one is developed by the lead agency during the course of environmental review; any standard of significance for which a reasonable basis exists may be used. In short, the lead agency makes a

[99] DEIR, p. 3.17-9.
[100] California Air Pollution Control Officers Association ("CAPCOA"), CEQA and Climate Change: Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act, January 2008, p. 24 ("CEQA and Climate Change") (emphasis in original).
[101] Governor's Office of Planning and Research, Technical Advisory, *CEQA and Climate Change* June 19, 2008, p. 6.
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policy judgment drawing the line between substantial and less than substantial environmental impacts. (CEQA Guidelines § 15064(b).)

Sutter County has failed to make the policy judgment required under CEQA to establish a significance threshold for GHG impacts. The basis of the DEIR's determination that GHG impacts will be significant is not any significance threshold established by Sutter County or by any other agency. Rather, it stems from a recognition that categorizing GHG impacts as anything other than substantial, for a project involving the creation of an entirely new city on agricultural land, does not pass the straight face test in this post-AB 32 world. 58

The DEIR must be revised to reflect an actual significance threshold for GHG impacts by which the Project can be meaningfully evaluated. Moreover, Sutter County must evaluate and calculate the GHG impacts of *all* Project phases – not merely the first phase. A lead agency "must use its best efforts to find out and disclose *all that it reasonably can*;" Sutter County can easily obtain and provide a calculation of the GHG impacts for all subsequent Project phases. (CEQA Guidelines § 15144 (emphasis added).) 57 Cont'd

B. The DEIR Fails to Adequately Describe and Analyze the Project's Significant Impact on Farmland

The Project involves the destruction of nearly *7,000 acres* of Prime Farmland and Farmland of Statewide Importance.[102] This does not even include the potential loss of farmland from off-site infrastructure improvement areas. Since these off-site areas are not even disclosed, it is impossible to scrutinize the DEIR's claim that the construction of these improvements "within road rights-of-way and along existing property boundaries" will not cause *any* "temporary or long-term impacts on agricultural resources."[103] Elsewhere in the DEIR, it is contradictorily revealed that off-site detention basins may require the disturbance of another 800 acres of Important Farmland[104] – for a total disturbance of nearly 8,000 acres, or *12.5 square miles of critical farmland*, within the State's prime agricultural region. The DEIR must be revised to correct these inconsistencies in the description and analysis of the Project's off-site infrastructure impacts on farmland. 59

[102] DEIR, p. 3.11-6.
[103] DEIR, p. 3.11-9.
[104] DEIR, p. 3.11-11.
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Moreover, the DEIR concedes, as it must, that the Project's impact on farmland is significant, but its analysis obfuscates and minimizes the shocking extent of this impact. The DEIR dismisses the import of this impact by stating that the Project would "convert approximately 1.1% of Prime Farmland and 4.7% of Farmland of Statewide Importance in Sutter County."[105] According to the American Farmland Trust, since the Gold Rush nearly 700,000 acres of the Central Valley have been developed for urban use; almost one hundred thousand acres of this were paved over in the 1990's alone.[106] Within just the next generation, close to a million more acres of farmland could vanish, putting additional pressure on the ability of the region's farmers to continue producing food for the State, the nation and the world.[107] The DEIR wholly fails to evaluate the significance of the Project's bulldozing of 8,000 acres of critical agricultural resources in this pivotal context. 60

C. The DEIR Fails to Adequately Describe and Analyze the Project's Significant Impact on Wetlands

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No wetland delineation was ever conducted for the Project's unspecified off-site improvement areas, and it is therefore impossible to evaluate the DEIR's significance determination for the evaluation of larger wetlands impacts.[108] Likewise, the wetlands delineation that was conducted for the Specific Plan area cannot serve as the basis for Sutter County's significance determination as to the extent of federal jurisdictional wetlands on the property. An approved jurisdictional determination to inform this environmental review could easily have been obtained from the Army Corps.[109] As lead agency, Sutter County is not "allowed to hide behind its own failure to gather [this] relevant data." (*Gentry, supra,* 36 Cal.App.4th at 1378-1379.) 62

CEQA requires an approved jurisdictional determination from the Army Corps for the Specific Plan area, and all off-site improvement areas, because the Project site alone contains 66 acres of federally-constructed canals and over 6,000 acres of rice fields, all of which are converted wetlands.[110] The Specific Plan area contains 15 *miles* of canals and 22 *miles* of "larger canals and ditches," and an 63

[105] DEIR, p. 3.11-10.
[106] American Farmland Trust, "The Future is Now: Central Valley Farmland at the Tipping Point?" (2006), available at http://www.farmland.org/programs/states/futureisnow/default.asp
[107] *Id.*
[108] *Id.*
[109] 33 CFR § 331.2.
[110] DEIR, p. 3.13-33.
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unspecified acreage of smaller ditches.[111] The wetland delineation conducted for the Project site concludes that *none* of the 66 acres of irrigation canals or their buffers contain jurisdictional wetlands; it also concludes that *none* of the "5,203 acres of active rice fields and the 863 acres of fallow rice fields….meet the [Army Corps] criteria for jurisdictional wetlands."[112] This wetlands delineation is pure fancy. 63 Cont'd

The Army Corps strives to issue approved JDs within 60 days;[113] two years have now passed and, for obvious reasons, the Measure M Group has not sought an approved JD for the Specific Plan based on this fanciful wetlands delineation.[114] 64

D. The DEIR Fails to Adequately Describe and Analyze the Project's Significant Impact on Water Supply

The DEIR's significance evaluation of water supply does not meet the requirements of CEQA. These requirements were clearly articulated by the California Supreme Court in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412 ("*Vineyard*"). The Court in *Vineyard* addressed "what level of uncertainty regarding the availability of water supplies can be tolerated in an EIR for a land use plan." (*Id*. at 428.) As the Court held, an "EIR for a land use project must address the impacts of *likely* future water sources, and the EIR's discussion must include a reasoned analysis of the circumstances affecting the likelihood of the waters availability." (*Id*. at 432 (emphasis in original).) Thus, if "it is impossible to confidently 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." (*Id*.) However, it is impermissible for such a discussion to include a mitigation provision that a "project's future phases will not be built" in the event that water becomes unavailable. (*Id*. at 429.) 65 66

The DEIR's entire analysis is premised on obtaining surface water from the Natomas-Central Mutual Water Company ("NCMWC") for approximately 50% of the Project's water supply. NCMWC provides water within the Specific Plan area *only for irrigation purposes*; for it to provide water for residential purposes, a 67

[111] DEIR, p. 3.13-15.
[112] DEIR, p. 3.13-33.
[113] Army Corps, Regulatory Guidance Letter 08-02, p. 3.
[114] DEIR, p. 3.13-33.
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"change of use" designation must be obtained from the State Water Resource Control Board ("SWRCB"). SWRCB's granting a change of use designation to NCMWC cannot be considered "likely" under the legal standard articulated in *Vineyard*. The Water Code requires a full adjudicative process for SWRCB to grant a petition for a change of purpose of use; this includes a likely hearing, extensive public review period, and several substantive evidentiary requirements, including a demonstration that no other water users will be impacted by the petitioned change of use.[115] Thus, under the legal standard of *Vineyard*, it cannot be "confidently determined" that SWRCB will grant a change of use permit to supply all necessary surface water for an entire city that will exceed 40,000 in population, contain a high concentration of water intensive industrial use, and be constructed on prime irrigated agricultural land. 67 Cont'd

No real alternative for obtaining surface water supply from another source is discussed in the DEIR – let alone the environmental impacts of that alternative. A water supply analysis that fails to meaningfully examine replacement water sources can only meet the requirements of CEQA if the future water source is *likely* and can be confidently determined. (*Vineyard, supra*, 40 Cal.4th at 432 (emphasis added).) Moreover, the EIR must include a "reasoned analysis of the circumstances affecting [this] likelihood." (*Id.*) The only real discussion of water supply alternatives contained in the DEIR is a description of three water supply programs that are "identified as options for providing water to the project site."[116] These alternatives involve varying seasonal uses of groundwater and surface water for different Project phases. However, *all* of these alternatives require that water be obtained from NCMWC and that SWRCB grant a change of use designation. 68

Another section of the DEIR purports to examine three dubious "alternatives" for surface water provision: obtaining all water supply needs from groundwater; obtaining all water from the Project from the Placer County Water Agency; and obtaining all water from the City of Sacramento. However, in its description of each of these respective "alternatives," the DEIR concedes, in almost identical statements, that these are not really alternatives: 69

> "It cannot be determined without additional groundwater modeling if the increase in groundwater pumping under this alternative would be adequate to serve the needs of the proposed project at buildout

[115] Water Code, §§ 1700 *et. seq.*
[116] DEIR, p. 3.9-18.
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> without adversely affecting the North American Subbasin in the future."[117] [Alternative 1]
>
> "It cannot be determined without additional study if these water supplies would be adequate to serve the needs of the proposed project."[118] [Alternative 2]
>
> "It cannot be determined without additional study if these water supplies would be adequate to serve the needs of the project."[119] [Alternative 3]

69 Cont'd

Moreover, even if these were actual alternatives under CEQA, which they clearly are not, *Vineyard* requires a discussion of their "environmental consequences." (*Vineyard, supra*, 40 Cal.4th at 432.) Similarly, even if obtaining a change of use permit from SWRCB could be considered likely, which it could not, *Vineyard* requires the DEIR to include a discussion and reasoned analysis examining the circumstances of this likelihood. (*Vineyard, supra*, 40 Cal.4th at 432.) The DEIR contains neither of these two necessary elements required by *Vineyard* for an environmental review.

70

Assuming that NCMWC ever obtains approval from SWRCB to provide surface water for the Project, retail water service will be provided either by Golden State Water Company ("Golden State") or by Sutter County itself, through an agreement with NCMWC. Golden State already has an agreement with NCMWC, and has applied to the Public Utilities Commission for a permit to construct and operate a water system within the Specific Plan area.[120] The DEIR claims that,

> "[r]egardless of the entity that provides the service, though, the same sources of water supply would be used, therefore the analysis of the physical water availability would not change depending on which entity prevails."[121]

71

The DEIR's statement that the pending proceeding before the PUC has no bearing on this environmental review is simply incorrect. The PUC has already rejected

[117] DEIR, p. 3.9-28.
[118] DEIR, p. 3.9-29.
[119] DEIR, p. 3.9-31.
[120] Application for a CPCN to Construct and Operate a Water System in Sutter County, A.08-08-022, Filed August 29, 2008.
[121] DEIR, p. 3.9-4.
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this same argument that Sutter County makes in the DEIR, namely, that Golden State's application presents no environmental impacts to be reviewed under CEQA. The PUC *dismissed* Golden State's original application because of its failure to analyze the environmental impacts of its construction and operation of a water system.[122]

Under CEQA, the PUC has the authority to impose environmental mitigation on Golden State's application, conditions which may necessitate a change in the Specific Plan. Absent the construction of the necessary water infrastructure within the Specific Plan area, the Project could not go forward. Because the Project has no independent utility absent this water infrastructure, CEQA prohibits the piecemealing of the environmental review for the Specific Plan from this ongoing PUC proceeding. (*Del Mar, supra,* 10 Cal.App. 4th at 732-733.) The DEIR must be withdrawn and Sutter County's environmental review for the Project coordinated with the PUC's ongoing environmental assessment. 71 Cont'd

E. The DEIR Fails to Adequately Describe and Analyze the Project's Significant Impact on Wildlife

Recent news events have increased public awareness of the dire safety threat posed by airplane bird strikes nationally, and the even more elevated threat posed by bird strikes in the vicinity of Sacramento Airport. The Sacramento Airport – "which lies directly in the Pacific Flyway bird migration path – has *the most bird strikes of any airport in the West*, and sixth most in the country."[123] The magnitude of this threat cannot be overstated: eleven bird strikes occurred at Sacramento Airport during the first week of December 2008 alone.[124] Accordingly, the Sacramento Airport Wildlife Hazard Management Plan ("WHMP") was adopted in 1996 to "address a recurring pattern of wildlife strikes"[125] and to "avoid creating wildlife attractants within five miles of the airport."[126] Because rice fields are such an attractant, the Sacramento Airport has removed all buffer lands north of the 72

[122] Administrative Law Judge's Ruling Delaying Filing of Protests until a Proponent's Environmental Assessment is Filed, A.06-05-034, Filed May 31, 2006.
[123] Sacramento Bee, "Sacramento Airport Seeks Bird-Kill Law for Air Safety," January 16, 2009, p. 13A.
[124] *Id.*
[125] WHMP Draft, March 2007, p. 1-1.
[126] *Id.* at 3-6.
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airport from rice cultivation.[127] Detention ponds are another wildlife attractant that are inconsistent with the WHMP.[128]

The Project proposes to construct several detention ponds in the immediate vicinity of the Sacramento airport. The DEIR's evaluation of the significance of wildlife hazard impacts concludes that the environmental impact of these detention ponds will not, with mitigation, be significant.[129] The DEIR's significance determination is based on its conclusion that, while detention ponds are a wildlife attractant, so are the rice fields the Project will replace. Thus, the Project will not "introduce a new hazard."[130] However, in making this argument, the DEIR fails to apply a significance threshold that is mandated by CEQA. 72 Cont'd

The Project's inconsistency with the WHMP and the Natomas HCP must be applied as a significance threshold. None of these plans differentiate between new and old impacts: any wildlife attractant is inconsistent with these plans.[131] The existing rice fields in the Sacramento Airport's vicinity are incompatible with these plans, and so are the detention ponds in this area that are proposed for the Project. Whether a wildlife attractant in the airport's vicinity is new or old has nothing to do with the tremendous safety threat that bird strikes create. To be consistent with these plans, the Project is prohibited from constructing a wildlife attractant in the Sacramento Airport's vicinity. The WHMP was adopted to "*avoid creating* wildlife attractants within five miles of the airport."[132] 73

The CLUP has designated a safety zone to minimize the threat to human life posed by airline crashes from bird strikes and other causes. This overflight safety zone is roughly consistent with the CLUP's noise contour, and includes a similar portion of the Project site. The DEIR fails to identify or describe the inconsistency of its proposed land use within this safety zone. The CLUP prohibits uses within the overflight zone that result in a "large concentration of people," which is "defined as…..an average density of greater than 25 persons per acre per hour during any 24 74

[127] *See, e.g.*, Natomas Joint Vision Area, Existing Conditions, November 12, 2008, p. 22, available at http://www.cityofsacramento.org/planning/projects/natomas-joint-vision/documents/NJV_Background_Report.pdf
[128] WHMP Draft, March 2007, p. 2-2.
[129] DEIR, p. 3.12-30.
[130] DEIR, p. 2-2.
[131] *See* WHMP Draft, March 2007, p. 3-6; HCP, p. 3-10.
[132] WHMP Draft, March 2007, p. 3-6 (emphasis added).
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hour period."[133] For this area, the Specific Plan proposes "large-scale industrial campuses, technological parks….and higher intensity industrial manufacturing uses."[134] These uses are wholly incompatible with the 25 person per acre density required for this safety zone. The DEIR has failed to properly evaluate this significant impact. 74 Cont'd

The DEIR uses compliance with the HCP as a significance threshold, but wrongly concludes that the environmental impact of the Project is less than significant.[135] Contrary to Sutter County's conclusion in the DEIR, the Project is inconsistent with the HCP and requires that it be amended. The HCP was premised on the Sacramento Airport buffer lands remaining in cultivation; that is no longer the case, and an equivalent habitat area must now be created within the HCP. As the HCP states,

> Although the Permittees are not relying on the Airport buffer lands as mitigation for effects within the Natomas Basin, retaining these lands in agricultural uses will contribute to the overall success of [HCS] conservation strategies for the Covered Species."[136]

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Thus, any "[d]evelopment of these buffer lands….will be considered a significant change in the HCP."[137] The HCP also requires amendment because, as explained above, the HCP does not permit greater than 7,467 acres of development within the Specific Plan Area.[138] The Project's 7,528 acres of development, coupled with the off-site RD 1000 infrastructure improvements included in Sutter County's portion of the HCP, far exceed this 7,467 allotment.[139] This is true irrespective of the very limited portion of the Project site that was not included in the HCP. Sutter County's approval of development beyond the 7,467 acre allotment would be a "significant departure" from the HCP and "trigger [its] reevalauation, a new effects analysis [and] potential amendments."[140]

Moreover, the DEIR does not specify the size or location of the acreage the Project will disturb for the construction of off-site infrastructure improvements. 76

[133] CLUP, p. 36.
[134] *Id*.
[135] DEIR, p. 3.13-52.
[136] HCP, p. III-11.
[137] *Id*.
[138] HCP, p. I-7.
[139] FWS Findings Statement, p. 8.
[140] HCP, p. I-3 (emphasis added).
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This distorts Sutter County's significance evaluation and makes it impossible to independently analyze these unspecified environmental impacts. All of these deficiencies in Sutter County's review of wildlife impacts must be corrected and a revised DEIR recirculated for public comment. 76 Cont'd

F. The DEIR Fails to Adequately Describe and Analyze the Project's Significant Impact on Wastewater

The sewer interceptor necessary to connect the Project to the Sanitation District's WWTP, which was part of the NOP's original project description,[141] was improperly piecemealed from the environmental review of the Specific Plan in the DEIR. The DEIR's significance evaluation of wastewater impacts is premised on the existence of this sewer line, and premised on the assumption that the capacity of the WWTP will be expanded. These faulty assumptions taint the DEIR's entire significance evaluation of wastewater impacts. 77

The Sanitation District's plans for the expansion of WWTP capacity have, as explained above, been overturned in court. Without engaging in any meaningful analysis, the DEIR states that the WWTP "could *potentially treat more future development* within its existing permitted capacity than what was originally anticipated."[142] However, the DEIR's assertion that the WWTP could "potentially treat more development" without expanding its capacity flies in the face of the obvious reality that the Sanitation District has sought an expansion of its treatment capacity because it has determined that the WWTP *needs to expand*. Moreover, even if the WWTP could accommodate *some* more development, that does not mean it can or will accommodate the Project's plans for an entirely new city with over 40,000 residents. The DEIR's vague statement implying that no WWTP expansion is "potentially" needed for the Project is hopelessly optimistic and unsupported by substantial evidence in the record. 78

For the Project to obtain service from the Sanitation District, a sewer line must be constructed; Sutter County must enter into a wastewater services agreement with the Sanitation District; approval must be also obtained from the Sutter County as well as Sanitation District annexation approval from the Sacramento County Local Agency Formation Commission ("LAFCO"); and the 77 Cont'd

[141] NOP, p. 1.
[142] DEIR, p. 3.10-5 (emphasis added).
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Sanitation District must obtain approval for an annexation.[143] Because the Project has no independent utility absent this wastewater service, the DEIR's piecemeal review of the Specific Plan apart from these approvals is prohibited under CEQA. (*Del Mar, supra,* 10 Cal.App. 4th at 732-733.) 77 Cont'd

VI. THE DEIR IMPROPERLY DEFERS OR IMPOSES INADEQUATE MITIGATION MEASURES

CEQA requires that "[e]ach public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so." (Pub. Res. Code § 21002.1(b).) An EIR must propose and describe mitigation measures sufficient to minimize the significant environmental impacts it has identified. (Pub. Res. Code §§ 21002.1(a), 21100(b)(3); CEQA Guidelines § 15126.4.) Where several mitigation measures are available to mitigate an impact, each must be discussed and the basis for selecting a particular measure must be provided. (CEQA Guidelines § 15126.4(a)(1)(B).) All mitigation measures must be designed to minimize, reduce or avoid an identified environmental impact or to rectify or compensate for that impact. (CEQA Guidelines § 15370.)

A lead agency is prohibited from making CEQA findings that rely on mitigation measures of uncertain efficacy or feasibility. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727-728.) Mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments. (CEQA Guidelines § 15126.4(a)(2).) This approach helps "insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug." (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) Cal.3d 929, 935.) 79

Deferral of the formulation of mitigation measures to some future time is generally impermissible under CEQA. (*Sundstrom, supra,* 202 Cal.App.3d at 308-309; CEQA Guidelines § 15126.4(a)(1)(B).) Environmental problems must be considered at a point in the planning process "where genuine flexibility remains." (*Mount Sutro, supra,* 77 Cal.App.3d at 34.) An agency may only defer the formulation of mitigation measures when it "recognizes the significance of the potential environmental effect, commits itself to mitigating its impact, and articulates specific performance criteria for the future mitigation." (*Gentry*, *supra*,

[143] DEIR, p. 3.10-4.

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36 Cal.App.4th at 1411.) "A study conducted after approval of a project will inevitably have a diminished influence on decision making. Even if the study is subject to administrative approval, it is analogous to the sort of *post hoc* rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA." (*Sundstrom*, *supra*, 202 Cal.App.3d at 307.)

The DEIR improperly defers the identification of specific mitigation measures until future studies are completed and future actions are undertaken by Sutter County and other government agencies. The DEIR relies on these and other inadequate mitigation measures to reclassify significant Project impacts as less than significant with mitigation. Of those impacts which the DEIR concludes remain significant, the DEIR has failed mitigate these impacts to the extent feasible. 79 Cont'd

A. The DEIR Improperly Defers the Identification of Mitigation Measures

A lead agency must identify mitigation measures for significant impacts *before* it issues a draft EIR for public review. (Pub. Res. Code § 21061.) Despite this requirement, the DEIR proposes deferring the development of mitigation measures for a number of environmental impacts. However, CEQA prohibits Sutter County from using a program environmental review as a mechanism to avoid identifying all feasible mitigation measures. (*Stanislaus, supra,* 48 Cal.App.4th at 199.) Moreover, the DEIR is improperly tiered: Phase I-A of the Project is required to be analyzed in this environmental review document because it is scheduled to begin construction in only *one year*, and extensive data on this phase of the Specific Plan is already available. CEQA requires an analysis of a impacts at the "earliest possible stage, even though more detailed environmental review may be necessary later." (*McQueen, supra,* 202 Cal.App.3d at 1147.) 80

The DEIR defers almost all meaningful analysis of the Project's air impacts. Project-level review for Phase I-A air impacts is improperly excluded from the DEIR; all project phases are deferred to future studies and analyses. As the DEIR states, 81

> "An individual air quality mitigation plan (AQMP) shall be developed for each development phase of the proposed project, as prescribed by the Sutter Pointe Master AQMP prepared in June 2008 (as stated in HDR 2008), which offers a programmatic review of emission reduction

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> measures. Each individual AQMP shall prescribe a percent reduction target for emissions of ozone precursors and PM10 as *determined by Sutter County* in consultation with FRAQMD. Individual AQMPs shall outline specific measures that reduce emissions of ozone precursors and PM10 to less-than-significant levels *where feasible*."[144]

The mitigation measures contained in these future air quality management plans will be "determined by Sutter County" and its assessment of what is "feasible." Meanwhile, the program nature of the DEIR is intended to foreclose future environmental review of air and other impacts by means of compliance with a "checklist."[145] Thus, by sleight of hand, individual air impacts have not been analyzed in this DEIR, nor will they be analyzed in subsequent project phases to the extent that the checklist derived from the DEIR has been complied with. For air impacts, compliance with this checklist would require preparation of an air quality management plan, the contents of which would be decided by Sutter County *at that future time*.

This deferral of mitigation impacts is wholly incompatible with CEQA because no detailed review of air impacts will *ever* occur. As Dr. Pless describes in her comments,

81 Cont'd

> The Draft EIR should be either revised to include a project-level analysis for Phase I and Phase A with a project-level mitigation monitoring and reporting plan or require a separate project-level analysis for public review before construction begins in 2011. This analysis must analyze all sources and require all feasible mitigation, including the most stringent emission standards for stationary sources. In addition, the Draft EIR should specifically require a project-level analysis for all future Project phases or subphases (if sufficient detail is not available for analysis for the entire Project phase). *This should be required to avoid that future environmental documents simply refer to the program-level EIR* and claim that all impacts were appropriately analyzed and that no additional mitigation measures are required beyond those required in the Draft EIR."

(Exhibit A, p. 4 (emphasis added).)

[144] DEIR, p. 3.4-32 (emphasis added).
[145] DEIR, p. 1-7.
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The DEIR improperly defers the analysis of mitigation measures for several other impacts. Had an approved jurisdictional determination been obtained from the Army Corps for the Specific Plan, it would be known whether dozens, hundreds, or even *thousands* of federal jurisdictional wetlands are located within the Specific Plan area. The DEIR misclassifies its provision for Army Corps permits to be obtained during the development of the Project as a mitigation measure[146]; it is instead a *legal requirement*. The mitigation for wetlands impacts that is actually required for the Project must be analyzed and identified now. Indeed, without such an identification of mitigation measures, it is impossible to determine whether mitigation in the form of a major revision of the Specific Plan is necessary under CEQA. 82

As a mitigation measure, the DEIR proposes to complete all Phase I assessments for those portions of the Specific Plan area that have not been previously assessed, and proposes to complete one Phase II for the area.[147] However, all of these assessments should already have been completed and scrutinized in this DEIR. The DEIR also fails to analyze the toxic air contaminants caused by traffic for an area that the Specific Plan designates for residential use. As mitigation, the DEIR proposes that a health risk assessment be conducted before construction commences.[148] Similarly, even though the Project will require an amendment to the HCP and is inconsistent with the Sacramento Airport's Wildlife Hazard Management Plan, the DEIR proposes to mitigate wildlife impacts by requiring a management plan for all water features within the Specific Plan Area.[149] This repeated deferral of mitigation measures throughout the DEIR is in violation of CEQA; it denies the public the opportunity to comment on a project that has already been modified to mitigate impacts to the maximum extent feasible. (*Gentry, supra,* 36 Cal.App.4th at 1393.) 83 84 85 79 Cont'd

B. The DEIR Relies on Inadequate Mitigation Measures to Reduce Significant Impacts to a Less Than Significant Level

CEQA requires that environmental impacts be analyzed at the earliest possible time. Despite this mandate, the DEIR unduly defers meaningful impact analysis and relies on future mitigation to make speculative and overly optimistic significance determinations with respect to impacts on flooding, wetlands, and 86

[146] DEIR, p. 3.13-34.
[147] DEIR, p. 3.12-22.
[148] DEIR, p. 3.4-45.
[149] DEIR, p. 3.12-29.
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hazardous materials. According to the DEIR, the Project's environmental impact in these areas will, with mitigation, be less than significant. The DEIR has improperly made these significance determinations by presupposing the outcome of future studies or analyses on these same impacts – an outcome that remains unknown. 86 Cont'd

Having assumed a future in which unapproved levee improvements will be constructed, and having assumed a future in which FEMA will designate the Project site an A99 flood zone, the DEIR concludes that the Project's impact on flood protection will be less than significant with mitigation.[150] However, the DEIR's assumptions are pure speculation; such mitigation cannot be assumed and the Project's impact on flooding remains significant. 87

With respect to wetlands, the acreage of federal wetlands on within the Specific Plan area – and the extent to which these wetlands will be filled by the Project – remains completely unknown. On this tenuous basis, the DEIR concludes that the Project's impacts on wetlands will be less than significant.[151] The DEIR similarly assumes the outcome of Phase I and Phase II environmental assessments for the Project's most contaminated areas. Based on these future studies, the DEIR optimistically concludes that the Project's impact on these listed hazardous waste sites will not be significant.[152] The Specific Plan's impacts on both wetlands and hazardous waste remain significant, however, and the DEIR's reliance on the outcome of unknown future events is improper. 88 89

C. The DEIR Wrongly Concludes that No Further Mitigation Exists for the Project's Significant Environmental Impacts

Sutter County is required to consider all feasible mitigation and alternatives that would lessen or eliminate the Project's significant impacts. (Pub. Res. Code § 21002; CEQA Guidelines §§ 15126.4(a), 15126.6 (b).) The DEIR fails to meet this mandate of CEQA. First, a project of reduced scale would be feasible and mitigate all of the Specific Plan's significant impacts. Second, the DEIR has failed to adopt several feasible mitigation measures for reducing the Specific Plan's significant impacts on air quality. 90 91

[150] DEIR, p. 3.7-56.
[151] DEIR, p. 3.13-35.
[152] DEIR, p. 3.12-24.
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1) The DEIR Wrongly Fails to Consider a Smaller Project as a Feasible Mitigation Measure

Before finding any impact to be significant and unavoidable, Sutter County must implement all feasible mitigation measures. (Pub. Res. Code § 21002; *Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41.) The overriding mitigation measure that should have been imposed for all significant impacts identified in the DEIR is a reduction in the Project's scale. All of the significant environmental impacts the Project will cause would be lessened if the mammoth scale of the Specific Plan were simply reduced. Not as many wetlands would be filled, not as much traffic congestion would be generated, less farmland would be lost, less habitat would be harmed, and less air pollution caused. However, the DEIR did not seriously consider this obvious mitigation measure, nor, as explained in the discussion of alternatives below, did it seriously consider any reduced-scale alternative.

90 Cont'd

The reason given in the DEIR for not seriously considering reduced-scale mitigation is that it would not be "feasible." CEQA defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors." (CEQA Guidelines § 15364.) The DEIR has not explained its reasoning why a reduced-scale alternative might not be economically feasible, and Measure M is advisory only and not a legal mandate. Nor has the DEIR discussed any social and technological factors that would otherwise make reduced-scale mitigation infeasible. CEQA requires that the basis for any conclusions in the DEIR be provided; it is not the public's duty to guess those reasons. (*County of Inyo, supra,* 71 Cal.App.3d at 192-193.) Because a reduced scale project is feasible on its face, and because no explanation is provided as to how a reduced scale project is not feasible, the DEIR's failure to impose reduced-scale mitigation is a violation of CEQA.

2) The DEIR Fails to Impose All Feasible Mitigation Measures for Significant Air Impacts

The DEIR is required to minimize the Specific Plan's impacts on air pollution to the maximum extent feasible. (Pub. Res. Code § 21002; CEQA Guidelines §§ 15126.4(a), 15126.6 (b).) As explained in greater detail in Dr. Pless' comments, the DEIR falls far short of meeting this standard. There are several feasible

91 Cont'd

mitigation measures that would reduce the Project's impact on air emissions which the DEIR has failed to impose. 91 Cont'd

With respect to air emissions from construction, emissions for each project phase should be addressed in a separate CEQA document and analyzed using the Feather River Air Quality Management District's ("FRAQMD") "most recent thresholds of significance at the time of determination." (Exhibit A, p. 5.) Furthermore, the DEIR should require an "off-site mitigation plan," based on FRAQMD's listing of approved off-site mitigation projects. (*Id*.) Alternately, the DEIR may impose a fee to fund off-site mitigation projects to countervail the Project's significant environmental impact. (*Id*.) When NOx emissions cannot be mitigated on-site to less than significant levels, the Sacramento Municipal Air Quality Management District imposes such an off-site mitigation fee. (*Id*.) Accordingly, the DEIR should require either a fee or off-site mitigation for the Project. 92

Furthermore, there exist several other feasible mitigation measures to reduce on-site construction emissions. While the DEIR addresses best management practices, "these plans should require implementation of the most stringent emissions control technologies for construction equipment engine exhaust available at the time to reduce emissions of diesel particulate matter." (Exhibit A, p. 7.) Dr. Pless has provided an Attachment to her comments that lists the extensive mitigation measures that are currently available for reducing diesel particulate matter; these mitigation measures are feasible and should be required by the DEIR. (*Id*.) 93

As mitigation for operational emissions, the Project proposes an individual air quality mitigation plan for each project phase and provides examples of mitigation that "may" or "could" be implemented.[153] These air quality management plans should not be optional; the DEIR should require FRAQMD's review and approval of these plans for each Project phase. (Exhibit A, p. 8.) Moreover, as is the case with construction emissions, the DEIR should impose off-site mitigation measures if on-site emissions cannot be reduced to a less than significant level. These may include funding of projects such as "solar panels, LED lights, cogeneration projects [and] retrofits." (*Id*.) 94

[153] DEIR, p. 3.4-27.

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With respect to GHG emissions, the DEIR requires a 30% reduction of GHGs from what it describes as business-as-usual levels, but only if it is "feasible to do so.[154] The determination of feasibility is left to Sutter County and, as Dr. Pless describes, is "entirely inadequate to adequately reduce the Project's future contribution to global climate change." (Exhibit A, p. 9.) Moreover, there is no question that any effort to reduce greenhouse gas emissions must address residential and commercial development. As the California Air Resources Board states in its Scoping Plan, 95

> Collectively, energy use and related activities by buildings are the second largest contributor to California's greenhouse gas emissions. Almost one-quarter of California's greenhouse gas emissions can be attributed to buildings. As the Governor recognized in his Green Building Initiative (Executive Order S-20-04), significant reductions in greenhouse gas emissions can be achieved through the design and construction of new green buildings as well as the sustainable operation, retrofitting, and renovation of existing buildings.[155] 96

The DEIR should require the highest standards for environmentally sustainable buildings, including the Leadership in Energy and Environmental Design ("LEED") Green Building Rating System, and the "Build It Green" system.[156] (Exhibit A, p. 10.)

As Dr. Pless' comments demonstrate, the DEIR should be revised to include these and other feasible mitigation measures for air emissions and recirculated for public review. 97

VII. THE DEIR FAILS TO DESCRIBE OR MITIGATE CUMULATIVE IMPACTS TO THE EXTENT FEASIBLE

An EIR must discuss significant "cumulative impacts." (CEQA Guidelines § 15130(a).) This requirement flows from CEQA section 21083, which requires a finding that a project may have a significant effect on the environment if 98

> the possible effects of a project are individually limited but cumulatively considerable.…'Cumulatively considerable' means that

[154] DEIR, p. 3.17-16.
[155] CARB, *Climate Change Proposed Scoping Plan* (Oct. 2008) at p. 57.
[156] *See* Build it Green, www.builditgreen.org/greenpointrated.

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> the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(Pub. Res. Code § 21083.) Cumulative impacts are defined as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." (CEQA Guidelines § 15355(a).) "[I]ndividual effects may be changes resulting from a single project or a number of separate projects." (*Id.*)

"The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." (*Communities for a Better Environment,* 103 Cal.App.4th 98, 117.) A legally adequate "cumulative impacts analysis" views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable probable future projects whose impacts might compound or interrelate with those of the project at hand. "Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." (CEQA Guidelines § 15355(b).) 98 Cont'd

As the court stated in *Communities for a Better Environment, supra,* 103 Cal.App.4th 98, 114:

> Cumulative impact analysis is necessary because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.

An EIR must discuss a cumulative impact if the project's incremental effect combined with the effects of other projects is "cumulatively considerable." (CEQA Guidelines § 15130(a).) This determination should be based on an assessment of the project's incremental effects "viewed in connection with the effects of past

projects, the effects of other current projects, and the effects of probable future projects." (*Id.* at § 15065(c).) The purpose of the cumulative impacts analysis is to avoid considering projects in a vacuum, because piecemeal approval of several projects with related impacts could lead to severe environmental harm. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 720.) The California Supreme Court has described the cumulative impacts analysis of a project's regional impacts as a "vital provision" of CEQA. (*Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283.) 98 Cont'd

In this case, the DEIR has failed to identify and analyze several cumulative impacts. It contains no consideration of the impact of the approximately 1,000 acres within the I-C Reserve and within the HCP area that are not part of the Specific Plan.[157] Because the Project itself exceeds the amount of acreage that can be developed under the HCP, for which an amendment to the HCP will be required, it will be extremely difficult to develop the remaining 1,000 acres within the I-C zone under the constraints of the ESA. The DEIR contains no discussion whatsoever of this cumulative impact. 99

The DEIR also fails to analyze the Project's cumulative wildlife impact in concert with the Sacramento Airport's recent conversion of northern buffer lands from rice cultivation to fallow land.[158] This alone requires an amendment to the HCP and undermines the DEIR's conclusion that the Project will not cause any significant wildlife impacts. 100

The DEIR fails to address or discuss the cumulative impacts of the Project on federal funding for the Sacramento Airport. The ongoing Sacramento Airport expansion, the need for a required amendment to the HCP, and the Project's incompatibility with the CLUP may jeopardize both Sutter County and Sacramento County's grant assurance obligation to ensure compatible land use in the vicinity of Sacramento Airport and other regional airfields."[159] This would have a potentially devastating impact on the regional economy. 101

The DEIR wholly fails to discuss the Project's cumulative environmental impact in concert with the several other ongoing infrastructure projects in the area, 102

[157] *Id.*
[158] *See, e.g.*, Natomas Joint Vision Area, Existing Conditions, November 12, 2008, p. 22, available at http://www.cityofsacramento.org/planning/projects/natomas-joint-vision/documents/NJV_Background_Report.pdf
[159] Airport Sponsor Assurances, available at http://www.faa.gov/airports_airtraffic/airports/aip/grant_assurances/media/airport_sponsor_assurances.pdf
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many of which are now undergoing their own, discrete environmental review. A program EIR is intended to incorporate this same cumulative impact analysis into *one* document. (CEQA Guidelines § 15165.) Instead, the building of an entire city and its support infrastructure has been piecemealed into several discrete environmental reviews, any of which calls the entire Specific Plan into question. Meanwhile, for purposes of cumulative impact analysis, the DEIR treats these infrastructure projects as if they did not exist. 102 Cont'd

The DEIR's analysis of cumulative impacts on schools is also severely flawed. No evidence in the record supports the conclusion that the Project will support 3,000 senior units;[160] no housing demand analysis was conducted for the DEIR. Absent such an analysis, no substantial evidence exists to conclude that the Project has provided for sufficient school capacity. Based on its unsupported analysis that the housing mix for the Project will include 3,000 senior units – and no schoolchildren – the DEIR estimates that the Project will generate the need for "6,228 new elementary school students (grades K–8) and an estimated 1,887 new high school students (grades 9–12)."[161] The *one* high school proposed for the Specific Plan has a capacity of only 2,000 students.[162] A lower proportion of senior units, in concert with the cumulative impact of other area development, will require that an additional high school be constructed. Nowhere in the DEIR is this potentially significant cumulative impact analyzed. 103

All of these cumulative impact deficiencies in the DEIR must be corrected and a revised DEIR recirculated for public review and comment. 104

VIII. THE DEIR FAILS TO ADEQUATELY ANALYZE FEASIBLE ALTERNATIVES

Under CEQA, a DEIR must analyze "a range of reasonable alternatives to the project, or to the location of the 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 evaluate the comparative merits of the alternatives," focusing on alternatives that would "avoid or substantially lessen any significant effects of the project, *even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly*." (CEQA 105

[160] DEIR, p. 3.8-15.
[161] *Id.*
[162] *Id.*
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Guidelines § 15126.6(a-b)(emphasis added); *Citizens for Quality Growth v. City of Mount Shasta*, 198 Cal.App.3d 433, 443-445 (1988).) A "feasible" alternative is one that is "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors." (CEQA Guidelines § 15364.) A determination that an alternative is not economically feasible must be supported by evidence and analysis showing that it cannot reasonably be implemented due to economic constraints. (*King County Farm Bureau v. City of Hanford* (1990) 221 CalApp.3d 692, 737.) "The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible."[163]

105 Cont'd

Here, just as with its analysis of feasible mitigation measures, the DEIR fails to analyze a range of reasonable alternatives that includes any meaningful and accurate analysis of a reduced-scale project. The DEIR's self-described "reduced-scale" alternative is a artificial alternative involving a "25% reduction in proposed development *on the same footprint*."[164] This is not a reduced-scale alternative: scale refers to *both* the intensity and the footprint of the development.
The only somewhat reduced-scale project that the DEIR analyzes is the Sacramento Council of Governments' Blueprint Plan ("Blueprint Plan"), the environmental impact analysis of which the DEIR severely distorts.

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Although the DEIR does not classify it as such, the Blueprint Plan is the environmentally superior built alternative. The DEIR's selects the "Sankey" alternative as the environmentally superior alternative, but this alternative is nothing but a "straw man" because it contains no residential component whatsoever.[165] The Blueprint Plan involves the construction of approximately one-half the housing as the Specific Plan, but with a similar amount of industrial-commercial space on a significantly reduced footprint.[166] The DEIR dismisses the Blueprint Plan on grounds that it does not meet the housing element of Measure M and because a portion of the Blueprint Plan is not within the HCP territory.[167] Both of these grounds for rejecting the Blueprint Plan are baseless. Measure M, like the Blueprint Plan, is *advisory*. Meanwhile, the Specific Plan is incompatible with the HCP and will require its amendment – and the Blueprint Plan will not.

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[163] *Id.*
[164] DEIR, p. 4-28 (emphasis added).
[165] DEIR, p. 4-42.
[166] DEIR, p. 4-19.
[167] DEIR, p. 4-42.
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Remarkably, the DEIR also analyzes *this Project* as an alternative, based on the tiny differences between the Project analyzed in the DEIR and that originally described in the NOP.[168] An alternatives analysis requires an assessment of the environmental impacts of different projects. If the project originally described in the NOP is indeed a different project,[169] then *this* DEIR has failed to comply with the notice requirements of CEQA.

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IX. CONCLUSION

For all of the above reasons, the DEIR fails to adequately identify and analyze the environmental impacts of the Specific Plan, the deficiencies in the DEIR must be corrected, and a revised DEIR must be recirculated for public review and comment.

Sincerely,

/s/

Paul F. Foley

PFF:bh
Attachments

[168] DEIR, p. 4-7.
[169] NOP, p. 1.
1658-013a

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Coalition

February 5, 2009

Paul F. Foley
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

Re: Review of Draft Environmental Impact Report for Sutter Pointe Specific Plan, CA

Dear Mr. Foley,

Per your request, I have reviewed the Draft Environmental Impact Report ("Draft EIR") for the Sutter Pointe Specific Plan[1] ("the Project") prepared by Sutter County ("the County") as the lead agency pursuant to the California Environmental Quality Act ("CEQA"). Below are my comments on potential environmental impacts on air quality and global climate change associated with the Project.

My qualifications as an environmental expert include a doctorate in Environmental Science and Engineering ("D. Env.") from the University of California Los Angeles. My resume is attached to this letter.

Background

The Project envisions the creation of an eventual new town in south Sutter County featuring a diverse mix of land uses, including employment centers, many different housing types, retail shopping villages, recreation amenities, community services, supporting on- and off-site infrastructure and roadway improvements. The Sutter Pointe Specific Plan area ("the Project site") encompasses approximately 7,528 acres in south Sutter County, immediately north of the Sutter/Sacramento County line. It is located approximately 12 miles north of downtown Sacramento, 2 miles northeast of Sacramento International Airport, and 1 mile east of the Sacramento River. The Project site is presently in agricultural and industrial use. The Project would implement the provisions of voter-approved Measure M, an advisory initiative that identified potential development caps for the Project site.[2]

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[1] Sutter County, Draft Environmental Impact Report, Emerson Property, SCH #2007032157, December 2008.

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The proposed Project includes a maximum of 17,500 residential dwelling units (in three residential categories and one mixed-use category) on approximately 2,900 acres; approximately 49.7 million square feet of employment-generating uses and nonresidential planned building uses on approximately 3,600 acres; elementary ("K–8") and high schools and other community buildings on approximately 1,000 acres; institutional uses; local commercial uses; parks, recreational areas, open space, and detention basins; and major roads.[3] Buildout of the Project is anticipated to occur in four phases of construction over 20 to 30 years.[4] Current uses consist of agriculture and industrial facilities, characterized primarily by rice fields but also a 50-acre Sysco Corporation warehouse and distribution center, a Holt Tractor manufacturing facility, and an approximately 30-acre area occupied by A&N Auto Repair and AR Readymix.[5]

109 Cont'd

I. The Program-level EIR for the Project Is Inadequate to Serve As a Project-level EIR for Phases I and II

The Draft EIR for the Sutter Pointe Specific Plan can be characterized as a so-called program-level EIR pursuant to State CEQA Guidelines Section 15168 or as a first-tier EIR prepared pursuant to State CEQA Guidelines Section 15152.[6] The Draft EIR states that "the document is intended to act as an analytical superstructure for subsequent, more detailed analyses associated with individual project applications." According to the CEQA Guidelines Section 15168(d)(2), later environmental documents (EIRs, mitigated negative declarations, or negative declarations) that tier from the program-level EIR can incorporate by reference materials from the program EIR regarding regional influences, secondary impacts, cumulative impacts, broad alternatives, and other factors. CEQA Guidelines Section 15168(d)(3) specify that these later documents need only focus on new impacts that have not been considered before.

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The County recognizes that "the Draft EIR for the Specific Plan does not include the level of detail necessary to qualify as a project EIR." Yet, the Draft EIR appears to preempt the requirement for future project-level analyses for Phase I and Phase A of the Project:

> "In some instances (*e.g.*, with respect to agricultural resources; visual resources; cultural resources; geology, soils, and paleontological resources; parks and recreation; air quality; land use; traffic and transportation; and noise issues in connection with Phase 1 and Phase A of the Specific Plan), *the County's expectation, at least at present, is that the written checklists will conclude that no further analysis beyond that found in this program EIR will be necessary*. Thus, the new

[3] Draft EIR, p. 1-2.

[4] Draft EIR, p. 2-54.

[5] Draft EIR, p. 2-1.

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analyses for these site-specific actions will focus on issues and impacts regarding which this program EIR lacks detailed site-specific information."[7] 110 Cont'd

At least for the air quality section of Phases I/A, preparation of a checklist is inadequate. The Draft EIR contains by no means a project-level analysis that adequately analyzes the potential adverse impacts on air quality associated with Phase I/A construction and operation. The analysis contained in the air quality chapter is superficial at best and concludes that impacts on air quality would be significant and unavoidable without requiring all feasible mitigation. For example, for the analysis of construction emissions the Draft EIR admits that "[e]xact project-specific data (*e.g.*, construction equipment types and quantities, maximum daily acreage disturbed, schedule) were not available at the time of this analysis." In the absence of project-specific data, the Draft EIR relies on a number of assumptions to model a "representative worst-case year." The assumptions "for the sake of this analysis" include, amongst others that "up to 25% construction of Phase I and Phase A could occur in a single year (with 2011 being the earliest full year)," and "[u]p to 75 acres would be graded on any single day."[8] The Draft EIR concludes that emissions would remain significant and unavoidable after implementation of standard and best available mitigation measures required by the Feather River Air Quality Management District ("FRAQMD").[9] This level of analysis does not represent a project-level analysis and, as further discussed in Comment II, does not ensure that all feasible mitigation is required. For example, the Draft EIR makes no attempt to assess the feasibility of mitigation beyond the FRAQMD's recommended mitigation measures to further reduce the significant impacts. Also, the URBEMIS modeling runs, typically provided in a project-level EIR to permit independent review, are not supplied. Instead, the Draft EIR provides a number of summary tables for input values for URBEMIS modeling and summary tables for results. 111 112

Similarly, the Draft EIR's quantitative analysis of Phases I/A operational emissions does not include emissions from stationary source. These sources, which would be required to obtain permits to operate from the FRAQMD, could include "diesel engine or gas turbine generators for emergency power generation; central heating boilers for commercial, industrial, or large residential buildings; process equipment for light industrial uses; kitchen equipment at restaurants and schools; service station equipment; and dry cleaning equipment." The Draft EIR simply states that the permit process for these sources would require that "these sources be equipped with the required emission controls and that, individually, these sources would not cause a significant environmental impact."[10] This analysis is inadequate. Emissions from these sources should be analyzed at the project-level once sufficient detail becomes 113

[7] Draft EIR, p. 1-7, *emphasis* added.

[8] Draft EIR, p. 3.4-48.

[9] Draft EIR, p. 3.4-50.

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available for Phases I/A. Further, to assure that Project-related emissions are mitigated to the fullest extent, it is necessary to require that these sources be mitigated beyond what would be required for individual projects. Mitigation for these sources must be addressed in the larger context of the Project. For example, an individual generator may only be required by the FRAQMD to comply with EPA Tier 2 emission standards due to its individually less-than-significant impact, yet, in the context of the entire Sutter Pointe Specific Plan, such generators should be required to comply with the most stringent emission standards, currently Tier 3, to reduce the Project's significant emissions. 114

Further, the County's conclusion that "no further analysis beyond that found in this program EIR will be necessary" is contradicted by information contained elsewhere in the Draft EIR. For example, the Draft EIR states that potential impacts due to exposure of sensitive receptors to temporary, long-term emissions of toxic air contaminants would have to be evaluated in a health risk assessment. 115

Finally, the Draft EIR improperly defers the identification of feasible mitigation measures for both construction and operational emissions associated with Phases I/A. The proposed mitigation measures for construction and operational emissions for Phases I/A require applicant(s) to comply with the same mitigation measures proposed for the program-level analysis for the entire Specific Plan, *i.e.* to develop and implement FRAQMD-endorsed air quality mitigation plans for all phases of construction and to reduce operational emissions.[11] This improperly defers development of adequate mitigation measures to a future date and effectively prevents public review. If the Draft EIR truly presented a project-level review for Phases I/A, it would provide detailed estimates of <u>all</u> emissions sources including stationary sources and a mitigation and monitoring plan for public review. As presented, the Draft EIR provides a cursory estimate sufficient for a program-level review but inadequate for a project–level review. 116

The Draft EIR should be either revised to include a project-level analysis for Phase I and Phase A with a project-level mitigation monitoring and reporting plan or require a separate project-level analysis for public review before construction begins in 2011. This analysis must analyze all sources and require all feasible mitigation, including the most stringent emission standards for stationary sources. In addition, the Draft EIR should specifically require a project-level analysis for all future Project phases or subphases (if sufficient detail is not available for analysis for the entire Project phase). This should be required to avoid that future environmental documents simply refer to the program-level EIR and claim that all impacts were appropriately analyzed and that no additional mitigation measures are required beyond those required in the Draft EIR. Because program-level General Plan EIRs or other EIRs for large-scale developments frequently provide only vague guidance for future review and mitigation, it has become a frequent consequence of program-level EIRs that individual sub-projects under these 117 118

[11] *See* Mitigation measures for Phases I/A construction-related emissions: "Implement Mitigation Measure 3.4-1." Draft EIR, p. 3.4-50; mitigation measures for Phases I/A operation-related emissions:

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EIRs, *e.g.*, residential subdivisions within Specific Plans, are not subjected to the same level of scrutiny during their CEQA review and are not required to implement as stringent mitigation as projects that do not belong to a larger program-level plan or project. The Draft EIR for the Project should be revised to prevent such problems. 118 Cont'd

II. Offsite Mitigation of Significant Construction Emissions Is Feasible Should Be Required

The Draft EIR finds significant impacts on air quality due to emissions of reactive organic gases ("ROG") and nitrogen oxides ("NOx"), which are both ozone precursors, and particulate matter smaller than 10 micrometers ("PM10") from construction of the projected 20 to 30-year buildout of the four Project phases. To reduce these significant emissions, the Draft EIR proposes that project applicant(s) of all Project phases require their construction contractors, at the time construction is performed, to implement those construction mitigation measures that are required by the respective air district that has jurisdiction over the area in which construction activity would occur. For all construction activity on the Project site, this includes implementation of both Standard Mitigation Measures and Best Available Mitigation Measures developed by the Feather River Air Quality Management District ("FRAQMD").[12] The Draft EIR finds that construction emissions would remain significant and unavoidable after implementation of this mitigation measure. 119

Given the scale and extended buildout period of the Project and its significant emissions during the 20 to 30-year buildout period, the County should require that the Project analyze construction emissions for each Project phase in a separate CEQA document and determine their significance against the FRAQMD's most recent thresholds of significance at the time of determination. 120

In addition to the above proposed mitigation, the County should require developing an offsite mitigation plan for those emissions that cannot mitigated to less than significance by the FRAQMD's Standard and Best Available Mitigation Measures for on-site construction activities. This could include off-site mitigation projects (the FRAQMD maintains a list of approved off-site mitigation projects[13]) and/or payment of a fee for funding air district off-site mitigation projects, approaches the FRAQMD currently recommends on a voluntary basis only.[14] Given that the majority of California's construction equipment (an estimated 70 percent in 2006) is currently not covered by federal or state regulations because it is too old this approach would contribute to an accelerated cleanup of the 121 122

[12] Draft EIR, pp. ES-33 – ES-34.

[13] Feather River Air Quality Management District, Approved Offsite Mitigation Projects; http://www.fraqmd.org/OffsiteMitigationApproved.htm, accessed February 4, 2009.

[14] Feather River Air Quality Management District, Interim Procedure for Submitting a Voluntary Offsite Mitigation Project Funding Proposal;

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statewide construction fleet and compensate for smaller projects that are not required to or are unable to implement stringent mitigation measures.[15]

Payment of an off-site mitigation fee is a feasible approach to mitigating construction emissions in excess of significance thresholds after all on-site mitigation measures have been exhausted. This approach is currently implemented by the Sacramento Municipal Air Quality Management District ("SMAQMD") for all construction equipment NOx emissions that cannot be mitigated to less than significance by on-site mitigation measures. The SMAQMD's offset fees are currently primarily used to fund SMAQMD's Heavy Duty Incentive Program through which select owners of heavy duty equipment in Sacramento County can repower or retrofit their old and uncontrolled engines with cleaner engines or technologies.[16,17] For example, the SMAMQD required a payment into the district's off-site construction mitigation fund of $2.6 million for the 577-acre mixed use Greenbriar Project.[18] For the 244-acre Sacramento Downtown Railyards Specific Plan for which determining an emissions-based mitigation fee was challenging due to the projected 20-year buildout period and unforeseeable construction timelines of the individual sub-projects, the SMAQMD has recently negotiated an agreement with developers and the lead agency that requires as a key component that the lead agency institute a process which will not allow grading, building or improvement permits to be granted to the applicant(s) unless the lead agency receives a "fee compliance letter" regarding each activity from the SMAQMD.[19,20] Such agreements are equally feasible for this Project, particularly considering its scale (7,528 acres) and should be required by the County as part of the CEQA process in order to mitigate its significant impacts on air quality due to construction emissions.

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Cont'd

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[15] Los Angeles Times, Dire Health Effects of Pollution Reported, Diesel Soot from Construction Equipment Is Blamed for Illnesses and Premature Deaths, December 6, 2006; http://www.distributedworkplace.com/DW/News/California/Dire_health_effects_of_pollution_reported.doc, accessed February 2, 2009.

[16] Sacramento Metropolitan Air Quality Management District, Construction Emissions Mitigation; http://www.airquality.org/ceqa/mitigation.shtml#MitFees, accessed February 3, 2009.

[17] Sacramento Metropolitan Air Quality Management District, Construction Air Quality Mitigation Plan Protocol, v. 4.1, July 7, 2008; http://www.airquality.org/ceqa/ConstructionMitigationProtocol.pdf, accessed February 3, 2009.

[18] Jeanne Borkenhagen, Sacramento Metropolitan Air Quality Management District, Letter to Tom Buford, City of Sacramento, Re: FEIR, Greenbriar Project File # P05-069, SAC 200400304M, September 19, 2007; http://www.airquality.org/lutran/projects/SACGreenbriar200400304M.pdf, accessed February 4, 2009.

[19] Peter Christensen, Sacramento Metropolitan Air Quality Management District, Letter to L.E. Buford, City of Sacramento, Re: Sacramento Downtown Railyards #P05-97, SMAQMD # SAC200500788F, November 19, 2007; http://airquality.org/lutran/projects/SACrailyards200500788F.pdf, accessed February 4, 2009.

[20] Larry Greene, Sacramento Metropolitan Air Quality Management District, Letter to L.E. Buford, City of Sacramento, Re: Sacramento Downtown Railyards #P05-97, SMAQMD # SAC200500788G, December 3

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III. Toxic Air Contaminant Emissions Associated with Construction Activities

The Draft EIR finds that construction of the Project would result in potentially significant emissions of diesel particulate matter from construction equipment engine exhaust. Diesel particulate matter has been recognized as a carcinogen and contains more than 40 toxic air contaminants ("TACs").[21] To mitigate these potentially significant emissions of diesel particulate matter, the Draft EIR requires that the project applicant(s) of all Project phases develop plans to reduce the exposure of sensitive receptors to TACs for submittal to the County for review and approval before the approval of any grading plans. As potential measures to be included in these plans, the Draft EIR proposes "scheduling activities when the residences are the least likely to be occupied, requiring equipment to be shut off when not in use, and prohibiting heavy trucks from idling.[22] This requirement is too non-specific and likely would not result in a successful mitigation strategy. 123

First, these "plans" should additionally be submitted to the FRAQMD for review and approval to ensure that the applicant(s) will implement the most up-to-date mitigation available at the time of construction. Second, in addition to the Draft EIR's proposed potential mitigation measures, which address best management practices, these plans should require implementation of the most stringent emissions control technologies for construction equipment engine exhaust available at the time to reduce emissions of diesel particulate matter.

At present, there are a number of options available to cost-effectively and substantially reduce diesel particulate matter emissions from construction equipment engine exhaust. Options for controlling emissions from construction equipment include requiring the use of new or newer equipment. Emissions from existing older construction equipment can be dramatically reduced following the five "Rs" of emissions reduction, *i.e* refuel, replace, rebuild, repower, and retrofit. Both the CARB and the U.S. EPA maintain lists of recommended diesel retrofit alternatives and alternative fuels. Alternative fuels in combination with retrofit technologies or in new construction equipment can achieve emission reductions of up to 89 percent diesel particulate matter, 90 percent carbon monoxide ("CO"), 93 percent ROG, and 40 percent NOx depending on the engine type of on-road or off-road equipment.[23,24] A combination of these options provides the greatest benefit and is frequently required as CEQA mitigation for other development projects. A list of currently available mitigation is attached as Attachment 1. 124

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[21] Draft EIR, p. 3.4-37.

[22] Draft EIR, p. 3.4-43.

[23] U.S. Environmental Protection Agency, Voluntary Diesel Retrofit Program, Verified Products; http://www.epa.gov/otaq/retrofit/verif-list.htm, accessed February 2, 2009.

[24] California Air Resources Board, Currently Verified Technologies

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IV. Operational Emissions of Criteria Pollutant Emissions

The Draft EIR finds significant impacts on air quality due to criteria pollutant emissions during the Project's operational phase resulting in or substantially contributing to pollutant concentrations that exceed ambient air quality standards. In addition, the Draft EIR finds that because of the large emissions increase and the fact that the Project site is not within an already approved air quality plan, Project implementation could conflict with air quality planning efforts. To mitigate these significant emissions, the Draft EIR requires development of individual air quality mitigation plans ("AQMPs") for each development phase of the Project that "prescribe a percent reduction target for emissions of ozone precursors and PM10 as determined by Sutter County in consultation with the FRAQMD" and outline measures that reduce emissions of these pollutants "to less-than-significant levels where feasible."[25] The Draft EIR presents a list of mitigation measures that "may" or "could" be implemented in individual AQMPs. The Draft EIR states where implementation of on-site mitigation measures would not be sufficient to reach FRAQMD's prescribed reduction target, voluntary FRAQMD-approved off-site mitigation projects "may" also be employed. The Draft EIR finds that while this approach would reduce (regional) emissions of ROG, NOx, and PM10, impacts on air quality would remain significant and unavoidable.[26] 125

The Draft EIR's approach to mitigation of criteria pollutant emissions associated with Project operations is inadequate. First, the proposed language of "where feasible," "may" or "could" is too vague and fails to ensure that all feasible mitigation would, in fact, be required. The Draft EIR should be revised to provide more specific language. 126

Analogously to the above discussion of construction emissions mitigation, the County should aim to reduce emissions from the entire Specific Plan to a level below significance, if necessary through off-site mitigation; *e.g.*, through funding off-site projects such as solar panels, LED lights, cogeneration projects, retrofits, etc. Further, the County should require that each Project phase be evaluated in a separate CEQA document that analyzes emissions, compares them to the applicable thresholds of significance at the time, and requires all feasible mitigation measures including off-site mitigation to reduce the Project's substantial emissions below levels of significance. 127 128

In order to ensure implementation of all mitigation measures, the endorsed AMQP for each incremental project should be specified as a condition of approval. This would create an enforceable mechanism for ensuring the AQMP's implementation throughout the project's operation. 129

V. Operational Emissions of Greenhouse Gases

The Draft EIR finds that the Project would result in a cumulatively considerable contribution to a significant cumulative impact related to long-term operational 130

[25] Draft EIR, p. 3.4-27.

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generation of greenhouse gas ("GHG") emissions.[27] The Draft EIR determines an annual average efficiency rate for Phases I/A as annual GHG emissions per service population ("SP"), where SP is the number of residents accommodated by the project plus the number of jobs supported by the Project. The Draft EIR finds that the average annual efficiency rate would be 10.0 metric tons of carbon dioxide-equivalents per service population per year ("metric tons CO_2-e/SP/year") more than twice the efficiency rate of 4.3 CO_2-e/SP/year required to meet AB-32 targets.[28] The Draft EIR explains that in many respects this value is representative of a business-as-usual scenario and is considerably higher than would actually occur because it does not account for a number of reductions that would occur due to implementation of certain standards and regulations. However, regardless of these future reductions, the Project's actual efficiency rate would be considerably higher than calculated by the Draft EIR for Phases I/A because emissions from stationary sources must be included.

130 Cont'd

As mitigation, the Draft EIR proposes the following language for a greenhouse gas mitigation measure:

> "For each increment of new development within the project site requiring a discretionary approval (*e.g.*, proposed tentative subdivision map, conditional use permit), the County shall impose mitigation measures that reduce GHG emissions to the extent feasible and to the extent appropriate with respect to the state's progress at the time toward meeting GHG emissions reductions required by the California Global Warming Solutions Act of 2006 (AB 32).
>
> The County shall require feasible reduction measures that, in combination with existing and future regulatory measures developed under AB 32, will reduce GHG emissions associated with the operation of developments and supporting infrastructure that are part of the proposed project by 30% from business-as-usual emissions levels projected for 2020, *if it is feasible to do so.*
>
> For each increment of new development, the County shall submit to the developer a list of potentially feasible GHG reduction measures to be considered in the development design. The County's list of potentially feasible GHG reduction measures shall reflect the current state of the regulatory environment, which will continuously evolve under the mandate of AB 32. The developer shall then submit to the County a mitigation report that contains an analysis demonstrating which GHG reduction measures are feasible and the associated reduction in GHG emissions. The report shall also demonstrate why measures not selected are considered infeasible. The County must review and approve the mitigation report for the applicable increment of development to receive its discretionary approval."[29]

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This proposed mitigation language is entirely inadequate to adequately reduce the Project's future contribution to global climate change. First, the Draft EIR only requires a reduction of GHG emissions 30% from business-as-usual levels "*if it is feasible to do so.*" Second, the Draft EIR leaves it to the County to decide whether the developer's demonstration of "not feasible" for certain mitigation measures is adequate. This approach precludes public review of future proposed mitigation measures. Third, the

[27] Draft EIR, p. 3.17-16.

[28] Draft EIR, Table 3.17-2, p. 3.17-14.

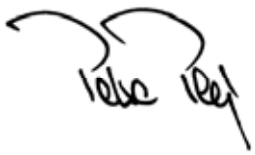
Coalition

Draft EIR provides no benchmark against which the proposed "30% reduction from business-as-usual emissions levels projected for 2020" should be compared. The Draft EIR does not require that a quantitative GHG emissions analysis be prepared for each increment of future development, nor does it specify how the County would determine whether the GHG emission reduction goal is met. Further, the language of the proposed mitigation measure itself is vague and non-binding. Instead, the City should formulate specific and binding mitigation measures. In addition, the Draft EIR should include monitoring and reporting requirements to ensure that mitigation measures would be implemented and effective. 132

Most importantly, however, the Draft EIR fails in one important aspect: *i.e.* rather than developing an overall program-level conceptual approach for the Project that addresses future GHG emissions in the context of building an entire new city under the Specific Plan, the Draft EIR improperly defers GHG mitigation to future sub-projects in a piece-meal approach. Individual projects may not be able to comply with the stated goal of a 30 percent reduction in GHG emissions by 2020 compared to business-as-usual; however, the overall structure of the Specific Plan could provide for a balance of different land uses and make sure that the 30 percent goal will be achieved for the entire Project. As written, the Draft EIR fails to provide the County with such an approach. 133

The Project would allow for substantial new development to occur over the next 20 to 30 years and would remain in place for many decades. Thus, the groundwork for a community that minimizes GHG emissions must be set in the Draft EIR or the County will irrevocably lose the ability to reduce GHG emissions in the future. Instead of the currently proposed piece-meal approach, the County should seize this extraordinary opportunity of developing an entire new town and design this town as an exemplary model for other developments requiring state-of-the art approaches to building design, infrastructure, public transportation, and so forth. For example, the County could require that all buildings comply with standards for environmentally sustainable building design and construction such as the Leadership in Energy and Environmental Design ("LEED") Green Building Rating System, developed by the U.S. Green Building Council ("USBGC") and the "Build It Green" system.[30] The County should develop a Greenhouse Gas Reduction Plan for the entire Project that specifies unambiguous performance standards and requires frequent evaluation of progress and adaptive management provisions. 134

Regards,



Dr. Petra Pless

Attachment 1:
Feasible Mitigation Measures to Reduce Engine Exhaust Emissions from Construction Equipment

At present, there are a number of options available to cost-effectively reduce emissions, including diesel particulate matter emissions, from construction equipment that could substantially reduce exhaust emissions. Options for controlling emissions from construction equipment include requiring the use of best practices in construction management and the use of new or newer equipment. Emissions from existing older construction equipment can be dramatically reduced following the five "Rs" of emissions reduction, *i.e* refuel, replace, rebuild, repower, and retrofit. Both the California Air Resources Board ("CARB") and the U.S. Environmental Protection Agency ("U.S. EPA") maintain lists of recommended diesel retrofit alternatives and alternative fuels. Alternative fuels in combination with retrofit technologies or in new construction equipment can achieve emission reductions of up to 89 percent PM10, 90 percent CO, 93 percent ROG, and 40 percent NOx depending on the engine type of on-road or off-road equipment.[31,32] A combination of these options provides the greatest benefit and is frequently required as CEQA mitigation. Feasible mitigation measures include:

- Require the contractor to use only newer construction equipment or equipment that is retrofitted to meet Tier 2 or higher emission standards set by the U.S. EPA.
- Require the contractor to submit a comprehensive inventory (*i.e.* make, model, year, emission rating) of all heavy-duty off-road equipment (50 horsepower or greater) that will be used an aggregate of 40 hours or more for the construction project. Require the contractor to provide a plan for approval demonstrating that the heavy-duty (>50 horsepower) off-road vehicles to be used in the construction project, including owned, leased and subcontractor vehicles, will achieve a project-wide fleet average 40 percent NOx reduction and 45 percent particulate reduction compared to the most recent CARB fleet average.
- Require the use of construction equipment meeting the Tier 2 California Emission Standards for Off-Road Compression-Ignition Engines as specified in California Code of Regulations, Title 13, §2423(b)(1) unless such engine is not available for a particular item of equipment. Require construction equipment engines to meet Tier 1 California standards if equipment with engines that meet Tier 2 standards are not available, unless such engine is not available for a particular item of equipment. Require that the construction

[31] U.S. Environmental Protection Agency, Voluntary Diesel Retrofit Program, Verified Products; http://www.epa.gov/otaq/retrofit/verif-list.htm, accessed February 2, 2009.

[32] California Air Resources Board, Currently Verified Technologies

company keep documentation if the required Tier 2 or Tier 1 equipment is not available within the area or within a reasonable timeframe.

- Require that construction equipment that does not meet, at a minimum, Tier 1 standards, be retrofitted with one or a combination of the following post-combustion controls: (If retrofitting pre-Tier 1 equipment is not feasible, require that the contractor document why retrofitting is not feasible.)
  a. Diesel particulate filters
  b. Diesel oxidation catalysts
  c. Selective catalytic reduction
  d. Lean NOx catalysts
  e. Exhaust gas recirculation
- For pre-Tier 1 equipment which cannot be reasonably retrofitted, use alternative power, alternative fuels, and/or fuel additives instead, such as:
  a. Emulsified (aqueous) diesel fuel
  b. Fuel borne-catalysts
  c. Compressed natural gas or liquefied natural gas
  d. Propane, ethanol, and methanol
  e. Electric power
- Instead of a diesel-powered generator, provide for on-site electrical service for hand tools such as saws, drills, and compressors.
- Limit idling time to 3 minutes for all construction equipment and haul trucks.
- Provide for on-site meals for construction workers by arranging a lunch wagon to visit the construction site.
- Suspend use of all construction equipment operations during second stage smog alerts.
- Prohibit open burning of removed vegetation. Vegetative material shall be chipped or delivered to waste or energy facilities.
- Require that the engine size of construction equipment shall be the minimum practical size to support the required scope of work for the equipment.
- Require construction company to document that all workers will carpool to the greatest extent feasible.
- Locate construction equipment away from sensitive receptors such as fresh air intakes to buildings, air conditioners and operable windows.
- Require the contractor to document that all construction equipment has been properly maintained with all maintenance repairs completed at an off-site location, including proper tuning and timing of internal combustion engines.
- Ensure that emissions from all off-road diesel powered equipment used on the project site do not exceed 20 percent opacity for more than three minutes in any one hour.

— Require an on-site construction manager. Duties of the construction mitigation manager typically include but are not limited to implementing a comprehensive communications strategy including establishment of a construction mitigation hotline; creating construction surveys and monitoring plans to control dust, vibrations, work hours, and noise as well as issues such as preventing contractor parking on residential streets; implement a procedure to address complaints in a timely and effective manner; providing transportation plans for truck routes and queuing.

Coalition

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Dr. Pless has over 10 years of experience in environmental consulting conducting and managing interdisciplinary environmental research projects and preparing and reviewing environmental permits and other documents for U.S. and European stakeholder groups. This broad-based experience includes air quality and air pollution control; water quality, water supply, and water pollution control; biology; public health and safety; and noise studies. National Environmental Policy Act ("NEPA"), California Environmental Quality Act ("CEQA"), and Clean Air Act ("CAA") review; industrial ecology and risk assessment; and use of a wide range of environmental software.

EDUCATION

Doctorate in Environmental Science and Engineering (D.Env.), University of California, Los Angeles, 2001

Master of Science in Biology, Technical University of Munich, Germany, 1991

PROFESSIONAL HISTORY

Pless Environmental Consulting, Principal, 2008–present

Environmental consultant, Sole Proprietor, 2006–2008

Leson & Associates (previously Leson Environmental Consulting), Kensington, CA, Environmental Scientist/Project Manager, 1997–2005

University of California Los Angeles, Graduate Research Assistant/Teaching Assistant, 1994–1996

ECON Research and Development, Environmental Scientist, Ingelheim, Germany, 1992–1993

Biocontrol, Environmental Projects Manager, Ingelheim, Germany, 1991–1992

REPRESENTATIVE EXPERIENCE

Air Quality and Pollution Control

Projects include CEQA/NEPA review; attainment and non-attainment new source review ("NSR"), prevention of significant deterioration ("PSD") and Title V permitting; control technology analyses (BACT, LAER, RACT, BARCT, MACT); technology evaluations and cost-effectiveness analyses; criteria and toxic pollutant emission inventories; emission offsets; ambient

and source monitoring; analysis of emissions estimates and ambient air pollutant concentration modeling. Some typical projects include:

- Critically reviewed and prepared technical comments on the air quality, biology, noise, water quality, and public health and safety sections of CEQA/NEPA documents for numerous commercial, residential, and industrial projects (*e.g.*, power plants, airports, residential developments, retail developments, hospitals, refineries, slaughterhouses, food processing facilities, printing facilities, quarries, and mines).
- Critically reviewed and prepared technical comments on the air quality and public health sections of the Los Angeles Airport Master Plan (Draft, Supplement, and Final Environmental Impact Statement/Environmental Impact Report) for the City of El Segundo. Provided technical comments on the Draft and Final General Conformity Determination for the preferred alternative submitted to the Federal Aviation Administration.
- For several California refineries, evaluated compliance of fired sources with Bay Area Air Quality Management District Rule 9-10. This required evaluation and review of hundreds of source tests to determine if refinery-wide emission caps and compliance monitoring provisions were being met.
- Critically reviewed and prepared technical comments on Draft Title V permits for several refineries and other industrial facilities in California.
- Evaluated the public health impacts of locating big-box retail developments in densely populated areas in California and Hawaii. Monitored and evaluated impacts of diesel exhaust emissions and noise on surrounding residential communities.
- In conjunction with the permitting of several residential and commercial developments, conducted studies to determine baseline concentrations of diesel exhaust particulate matter using an aethalometer.
- For an Indiana steel mill, evaluated technology to control NOx and CO emissions from fired sources, including electric arc furnaces and reheat furnaces, to establish BACT. This required a comprehensive review of U.S. and European operating experience. The lowest emission levels were being achieved by steel mills using selective catalytic reduction ("SCR") and selective non-catalytic reduction ("SNCR") in Sweden and The Netherlands.
- For a California petroleum coke calciner, evaluated technology to control NOx, CO, VOCs, and PM10 emissions from the kiln and pyroscrubbers to establish BACT and LAER. This required a review of state and federal clearinghouses, working with regulatory agencies and pollution control vendors, and obtaining and reviewing permits and emissions data from other similar facilities. The best-controlled facilities were located in the South Coast Air Quality Management District.
- For a Kentucky coal-fired power plant, identified the lowest NOx levels that had been permitted and demonstrated in practice to establish BACT. Reviewed operating experience of European, Japanese, and U.S. facilities and evaluated continuous emission monitoring data. The lowest NOx levels had been permitted and achieved in Denmark and in the U.S. in Texas and New York.
- In support of efforts to lower the CO BACT level for power plant emissions, evaluated the contribution of CO emissions to tropospheric ozone formation and co-authored report on same.

- Critically reviewed and prepared technical comments on applications for certification ("AFCs") for numerous natural-gas fired, solar, and geothermal power plants in California permitted by the California Energy Commission. The comments addressed construction and operational emissions inventories and dispersion modeling, BACT determinations for combustion turbine generators, etc.
- Critically reviewed and prepared technical comments on draft PSD permits for several natural gas-fired power plants in California, Indiana, and Oregon. The comments addressed emission inventories, greenhouse gas emissions, BACT, case-by-case MACT, compliance monitoring, cost-effectiveness analyses, and enforceability of permit limits.
- For a California refinery, evaluated technology to control NOx and CO emissions from CO Boilers to establish RACT/BARCT to comply with BAAQMD Rule 9-10. This required a review of BACT/RACT/LAER clearinghouses, working with regulatory agencies across the U.S., and reviewing federal and state regulations and State Implementation Plans ("SIPs"). The lowest levels were required in a South Coast Air Quality Management rule and in the Texas SIP.
- In support of several federal lawsuits filed under the Clean Air Act, prepared cost-effectiveness analyses for SCR and oxidation catalysts for simple cycle gas turbines and evaluated opacity data.
- Critically reviewed draft permits for several ethanol plants in California, Indiana, Ohio, and Illinois and prepared technical comments.
- Reviewed state-wide average emissions, state-of-the-art control devices, and emissions standards for construction equipment and developed recommendations for mitigation measures for numerous large construction projects.
- Researched sustainable building concepts and alternative energy and determined their feasibility for residential and commercial developments, *e.g.*, regional shopping malls and hospitals.
- Provided comprehensive environmental and regulatory services for an industrial laundry chain. Facilitated permit process with the South Coast Air Quality Management District. Developed test protocol for VOC emissions, conducted field tests, and used mass balance methods to estimate emissions. Reduced disposal costs for solvent-containing waste streams by identifying alternative disposal options. Performed health risk screening for air toxics emissions. Provided permitting support. Renegotiated sewer surcharges with wastewater treatment plant. Identified new customers for shop-towel recycling services.
- Designed computer model to predict performance of biological air pollution control (biofilters) as part of a collaborative technology assessment project, co-funded by several major chemical manufacturers. Experience using a wide range of environmental software, including air dispersion models, air emission modeling software, database programs, and geographic information systems ("GIS").

Water Quality and Pollution Control

Experience in water quality and pollution control, including surface water and ground water quality and supply studies, evaluating water and wastewater treatment technologies, and identifying, evaluating and implementing pollution controls. Some typical projects include:

- Evaluated impacts of on-shore oil drilling activities on large-scale coastal erosion in Nigeria.
- For a 500-MW combined-cycle power plant, prepared a study to evaluate the impact of proposed groundwater pumping on local water quality and supply, including a nearby stream, springs, and a spring-fed waterfall. The study was docketed with the California Energy Commission.
- For a 500-MW combined-cycle power plant, identified and evaluated methods to reduce water use and water quality impacts. These included the use of zero-liquid-discharge systems and alternative cooling technologies, including dry and parallel wet-dry cooling. Prepared cost analyses and evaluated impact of options on water resources. This work led to a settlement in which parallel wet dry cooling and a crystallizer were selected, replacing 100 percent groundwater pumping and wastewater disposal to evaporation ponds.
- For a homeowner's association, reviewed a California Coastal Commission staff report on the replacement of 12,000 linear feet of wooden bulkhead with PVC sheet pile armor. Researched and evaluated impact of proposed project on lagoon water quality, including sediment resuspension, potential leaching of additives and sealants, and long-term stability. Summarized results in technical report.

Applied Ecology, Industrial Ecology and Risk Assessment

Experience in applied ecology, industrial ecology and risk assessment, including human and ecological risk assessments, life cycle assessment, evaluation and licensing of new chemicals, and fate and transport studies of contaminants. Experienced in botanical, phytoplankton, and intertidal species identification and water chemistry analyses. Some typical projects include:

- For the California Coastal Conservancy, San Francisco Estuary Institute, Invasive Spartina Project, evaluated the potential use of a new aquatic pesticide for eradication of non-native, invasive cordgrass (*Spartina spp.*) species in the San Francisco Estuary with respect to water quality, biological resources, and human health and safety. Assisted staff in preparing an amendment to the Final EIR.
- Evaluated likelihood that measured organochlorine pesticide concentrations at a U.S. naval air station are residuals from past applications of these pesticides consistent with manufacturers' recommendations. Retained as expert witness in legal proceedings.
- Prepared human health risk assessments of air pollutant emissions from several industrial and commercial establishments, including power plants, refineries, and commercial laundries.
- Managed and conducted studies to license new pesticides. This work included the evaluation of the adequacy and identification of deficiencies in existing physical/chemical and health effects data sets, initiating and supervising studies to fill data gaps, conducting environmental fate and transport studies, and QA/QC compliance at subcontractor laboratories. Prepared licensing applications and coordinated the registration process with German licensing

agencies. This work led to regulatory approval of several pesticide applications in less than six months.

- Designed and implemented database on physical/chemical properties, environmental fate, and health impacts of pesticides for a major European pesticide manufacturer.
- Designed and managed toxicological study on potential interference of delta-9-tetrahydro-cannabinol in food products with U.S. employee drug testing; co-authored peer-reviewed publication.
- Critically reviewed and prepared technical comments on applications for certification for several natural-gas fired, solar, and geothermal power plants and transmission lines in California permitted by the California Energy Commission. The comments addressed avian collisions and electrocution, construction and operational noise impacts on wildlife, risks from brine ponds, and impacts on endangered species.
- For a 180-MW geothermal power plant, evaluated the impacts of plant construction and operation on the fragile desert ecosystem in the Salton Sea area. This work included baseline noise monitoring and assessing the impact of noise, brine handling and disposal, and air emissions on local biota, public health, and welfare.
- Designed research protocols for a coastal ecological inventory; developed sampling methodologies, coordinated field sampling, determined species abundance and distribution in intertidal zone, and analyzed data.
- Designed and conducted limnological study on effects of physical/chemical parameters on phytoplankton succession; performed water chemistry analyses and identified phytoplankton species; co-authored two journal articles on results.
- Conducted technical, ecological, and economic assessments of product lines from agricultural fiber crops for European equipment manufacturer; co-authored proprietary client reports.
- Developed life cycle assessment methodology for industrial products, including agricultural fiber crops and mineral fibers; analyzed technical feasibility and markets for thermal insulation materials from plant fibers and conducted comparative life cycle assessments.
- Conducted and organized underwater surveying and mapping of plant species in several lakes and rivers in Sweden and Germany as ecological indicators for the health of limnological ecosystems.

PRO BONO ACTIVITIES

Founding member of "SecondAid," a non-profit organization providing tsunami relief for the recovery of small family businesses in Sri Lanka. (www.secondaid.org.)

PROFESSIONAL AFFILIATIONS

Association of Environmental Professionals

SELECTED PUBLICATIONS

Leson G. and Pless P., Hemp seeds and hemp oil, in: Grotenhermen F. and Russo E. (Eds.), Cannabis und Cannabinoids, Pharmacology, Toxicology, and Therapeutic Potential, The Haworth Integrative Healing Press, New York, 2002.

Leson G., Pless P., Grotenhermen F., Kalant H., and ElSohly M., Evaluating the impact of hemp food consumption on workplace drug tests, Journal of Analytical Toxicology, Vol. 25, No. 11/12, pp. 1-8, 2001.

Leson G. and Pless P., Assessing the impact of THC uptake from hemp oil cosmetics on workplace drug testing, Report to the Agricultural Research and Development Initiative, Morris, MB, 2001.

Pless P., Technical and environmental assessment of thermal insulation materials from fiber crops, doctoral dissertation in Environmental Science and Engineering, University of California, Los Angeles, 2001.

Center for Waste Reduction Technologies in the American Institute of Chemical Engineers, Collaborative Biofilter Project, Technical Report, co-author with Leson G. of sections 'Compound Database,' 'Design Manual,' and 'Literature Database,' 1998.

Hantke B., Domany I., Fleischer P., Koch M., Pless P., Wiendl M., and Melzer M., Depth profiles of the kinetics of phosphatase activity in hardwater lakes of different trophic level, Archives Hydrobiologia, vol. 135, pp. 451–471, 1996.

Hantke B., Fleischer P., Domany I., Koch M., Pless P., Wiendl M., and Melzer M., P-release from DOP by phosphatase activity in comparison to P-excretion by zooplankton: studies in hardwater lakes of different trophic level, Hydrobiologia, vol. 317, pp. 151–162, 1996.

Pless P., Untersuchungen zur Phytoplanktonentwicklung im Herrensee (investigations on phytoplankton succession in an oligotrophic hardwater lake), Master of Science thesis in biology with focus on botany/ecology/limnology, Technical University of Munich, Germany, 1991; graduated with first class honors.

Coalition-1

The commenter makes a number of general, introductory statements about the Coalition, its environmental concerns, and the project, with more specific comments to follow.

Comment noted; no response is required.

The commenter then states that documents referenced in the DEIR were not made available until January 23, 2009 and that an extended comment deadline of February 6, 2009 was "imposed" by the County.

The way the commenter has explained this sequence of events could lead to an erroneous assumption that the County did not work cooperatively with the commenter in resolving the issue of its difficulty in obtaining the reference documents or in granting a reasonable extension of the comment deadline. Thus, the County believes it is necessary to correct the public record with respect to its interaction with the commenter on this issue. On January 30, 3009, Deputy County Counsel Janet Bender faxed and mailed a letter to the commenter, Mr. Paul Foley, which stated:

> *This letter will confirm our telephone conversation on January 30, 2009, in which I informed you that Sutter County has extended the comment period for the Draft Environmental Impact Report ("DEIR") for the proposed Sutter Pointe Specific Plan to February 6, 2009, at 5:00 p.m. In your letter of January 23, 2009, to Sutter County Principal Planner Doug Libby, you requested a "reasonable extension of the comment period."*
>
> *You agreed in our telephone conversation on January 30, 2009, that you do not object to the County's determination that the extension to February 6 is a reasonable extension of the comment period.*

The commenter further states that he reserves the right to supplement his comments on the DEIR.

To the extent that the commenter is asserting that he may unilaterally extend the DEIR comment period despite having freely agreed to an extension offered by the County that he considered reasonable, there is no such "right" under CEQA. The Deputy County Counsel's correspondence with Mr. Foley confirmed that he accepted the extension to February 6 as reasonable. Any person is free to submit additional correspondence to the County on whatever subject he or she might wish to express as long as the administrative record on the project remains open. The County is under no legal obligation, however, to respond to any later filed comments.

Coalition-2

The commenter states generally that the DEIR does not comply with CEQA in several respects.

The County respectfully disagrees with the commenter's assertions, as is further explained in the responses to the commenter's more specific comments set forth below and elsewhere in this FEIR.

Coalition-3

The commenter states that the County has impermissibly "piecemealed" the analysis of the project by analyzing only those larger infrastructure pieces that are subject to review by Sutter County with the result that the public could be confused about what components are under review in this EIR and which components are being or will be reviewed in other documents. The commenter further asserts that the County may not use "tiering" to defer analysis of future, site-specific components of the larger project to a later time. The commenter appears to misunderstand the fundamental programmatic review and tiering provisions of CEQA as they apply to this project, and more generally, how large-scale planning and review is routinely conducted in California.

Please refer to Master Response 2. "Programmatic Nature of EIR Analysis."

The commenter further alleges that the project-specific review of the first phases of development within the Specific Plan, Phase 1-A, may not be deferred, but must be analyzed now, given the estimate for the initiation of construction of that phase.

Regardless of when the project developer may intend to begin construction, the County is obligated under CEQA to make its own determination of whether the analysis in this or any subsequent environmental review is sufficiently specific and detailed to provide adequate coverage of the site-specific impacts of any future development proposals. At page 2-56 of the DEIR, it correctly notes that the build out of Phase 1-A will take approximately seven years. It identifies 2010 as the start time in a parenthetical reference. At the time of drafting the project description more than a year ago, it was thought that the near-term site-specific components of Phase 1-A might be able to start construction in 2010. However, in light of the status of the levee improvements and the depressed economy, it now appears more likely that the soonest Phase 1-A could start to develop is at least 2012 or 2013. SAFCA is currently working on construction of 100-year protection for the levees surrounding the Natomas Basin. One-hundred-year protection is necessary for development to begin. The anticipated date for completion of that work is 2011, with certification of the levees with 100-year protection in 2012. The currently depressed state of the economy, particularly for residential uses, lends further uncertainty to the estimated start date for the first phases of the proposed project. The DEIR project description (Chapter 2.0) expressly noted that the timing of development was uncertain, as it was "influenced by the economy, the rate of growth of other regional projects, and changes in regional infrastructure and public facility conditions and needs." (DEIR, page 2-54.) If and when the developer submits a complete application for site-specific development, the County will assess at that time the scope of additional site-specific review, consistent with the tiering and streamlining provisions of CEQA. The commenter will have an opportunity to submit comments on future environmental review documents for individual entitlement applications in the Specific Plan area, including those relating to Phase 1-A.

Coalition-4

The commenter states that the DEIR's project description is inadequate and truncated and that it is piecemealed from the larger action under environmental review. The commenter further asserts that the DEIR improperly defers analysis of environmental impacts under the guise of tiering and fails to provide mitigation measures at this stage.

The County respectfully disagrees with the commenter's position that the DEIR or the project description are flawed in the manner described by the commenter. The project description is written at the appropriate level of detail given the programmatic level of review, which is signaled at numerous places throughout the DEIR. Please refer to Master Response 2, "Programmatic Nature of EIR Analysis."

Coalition-5

The commenter asserts that the DEIR Notice of Availability is not exactly the same as the Notice of Preparation issued in 2007 with respect to its description of the sewer interceptor and off-site infrastructure improvements. The commenter purports to be confused by the discrepancies between the two notices as to exactly which infrastructure improvements are studied in the DEIR.

Notice of Preparation

CEQA requires that the lead agency provide the responsible and trustee agencies, the Office of Planning and Research, and any person who has filed a written request for such notices with sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response." (CEQA Guidelines, Section 15082, subd. a)(1); Pub. Resources Code, Section 21092.2.) At a minimum, the information shall include: (1) a description of the project, (2) location of the project, and (3) probable environmental effects of the project. (CEQA Guidelines, Section 15082, subd. (a)(1).) Substantial compliance is the governing test for determining whether statutory requirements are met. (*National Parks & Conservation Assn. v. County of Riverside* (1996) 42 Cal.App.4th 1505, 1522.) Mere technical imperfections of form or variations in mode of expression do not constitute noncompliance. (*Ibid.*) Sutter County substantially complied with the notice requirements of CEQA Guidelines Section 15082, subdivision (a)(1). The NOP was required to and did provide a full project description and outlined the significant impacts that were anticipated at that time. By noting that an off-site sewer interceptor and connection were anticipated at that time, the NOP provided adequate notice to alert interested agencies and persons to this element of the project and to encourage their public participation.

Notice of Availability of a DEIR

CEQA requires that the lead agency "provide public notice of the availability of the DEIR." (CEQA Guidelines, Section 15087, subd. (a).) The public notice is required to disclose (1) a *brief* description of the project and its location, (2) the review period, (3) any scheduled public meetings or hearings, (4) a list of significant environmental effects anticipated, (5) where copies of the EIR are available for review, and (6) information regarding the presence of hazardous waste sites listed pursuant to Section 65962.5 of the Government Code. (Pub. Resources Code, Section 21092, subd. (b)(1); Cal. Code Regs., tit. 14, § 15087, subd. (c).)

Sutter County complied with the notice requirements of Section 21092. Each of the disclosures required by CEQA is provided in the Notice of Availability for the Specific Plan DEIR ("DEIR Notice"). Specifically, the DEIR Notice was required to and did disclose the basic components of the project ("brief description") and the significant impacts that were anticipated at that time. Thus, the DEIR Notice substantially complied with the requirements of the statute. The commenter has focused on a "variation in the mode of expression" between the NOP and DEIR Notice that does not rise to the level of non-compliance. In fact, the commenter clearly was alerted well enough by the DEIR Notice to obtain and review the DEIR carefully, as its 58-page comment letter illustrates. Based on its submittal of comments, the commenter apparently had an adequate opportunity to review the DEIR and comment on numerous topics, including the project's off-site infrastructure components.

DEIR Project Description

The notices required by CEQA are intended to serve exactly that purpose – notice. They should be substantially consistent with the information contained in the DEIR, but they are not required to be as detailed as the DEIR itself; ultimately, it is the DEIR's project description that controls, not the description found in the notice.

The commenter appears to be concerned that the NOP and DEIR's project descriptions do not perfectly match. Nothing in the law, however, requires such a perfect match; and any such requirement, if it existed, would be counter-productive as a matter of public policy. CEQA contemplates that a project description will evolve over time, in response to further study and better information about project impacts and feasible mitigation measures or alternatives. "The CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736-737 [quoting *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199]; see also *River Valley Preservation Project v. Metropolitan Transit Development Bd.* (1995) 37 Cal.App.4th 154, 168, fn. 11.) "'CEQA compels an interactive process of assessment of environmental impacts and responsive project modification which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge from the process.' [Citation.] In short, a project must be open for public discussion and subject to agency modification during the CEQA process." (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 936.)

CEQA regulations require the project description to contain the following information, but they do not require "extensive detail beyond that needed for evaluation and review of the environmental impact": (1) the precise location and boundaries of the proposed project, (2) a statement of objectives, (3) description of the project's technical, economic, and environmental characteristics, and (4) the intended uses of the EIR. (CEQA Guidelines, Section 15124.) The project description must contain sufficient specific information about the project to allow evaluation and review of impacts. (*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 36.) A project description cannot omit integral components of the project that might result in actual impacts. (*Id*. at page 26.) Also, "[it] cannot minimize the scope of environmental review or minimize the project's impacts on the environment." (Id. at page 36.) Procedural or substantive requirements beyond those explicitly required in the statutes or guidelines should not be imposed. (*Ibid*.)

The project description for the Sutter Pointe Specific Plan contains all of the required components. It provides "sufficient specific" information about the proposed project to determine, evaluate and review physical environmental impacts in subsequent sections. No integral components of the proposed project are omitted.

Section 2.3, Project Site and Vicinity, of the DEIR describes the location of the site, current uses on and around the site, its location within the NBHCP, and on-site easements for irrigation and drainage ditches. The text and maps in the Project Description (DEIR Chapter 2.0) thoroughly describe and depict the proposed development and associated improvements, both on-site and off-site, that comprise the project. Table 2-4 identifies all off-site infrastructure improvements needed to support the proposed project and states

whether CEQA coverage has been obtained for each. The DEIR analyzes the impacts of all off-site improvements that have not already been approved through the CEQA process, though in some instances programmatic level analysis is all that is feasible and more CEQA review will follow later for project-level approvals. There is no omission or discrepancy between the DEIR's full description and the abbreviated description in the Notice of Availability. All of this information establishes a basis for reviewing and evaluating environmental effects associated with proposed off-site infrastructure, as required by CEQA.

The commenter further focuses on perceived discrepancies in the number of significant environmental impacts identified between the DEIR Notice and the DEIR itself. The commenter boils down to an assertion that the Notice overstates the number of potentially significant impacts (before mitigation) by two. The County does not view this discrepancy as a substantial instance of non-compliance. The discrepancy is not prejudicial to the overall function under CEQA of alerting the public to the fact that the proposed project has several significant environmental impacts in many categories – the "alarm bell" function of an EIR so frequently noted by the courts. As noted above, the DEIR itself controls regarding the precise nature of the impacts and proposed mitigation. The commenter was apparently not hampered in its ability to undertake a thorough review of the impacts disclosed in the DEIR, based on the number and nature of the comments it submitted.

Coalition-6 The commenter asserts that the list of entitlements needed for the project provided in the DEIR Notice is incomplete and vague.

Please refer to Response to Comment Coalition-5 above. As explained above, CEQA provides that the description of the project in the DEIR Notice shall be "brief." (CEQA Guidelines, Section 15087, subd. (c)(1).) The DEIR project description controls, and it provides all of the necessary detail required by law. (See DEIR Chapter 2.0, "Project Description," Section 2.3 & Table 2-4.)

Coalition-7 The commenter states that the DEIR's characterization as both a programmatic EIR and a "first-tier" EIR is an incorrect application of the CEQA provisions and principles governing those types of documents.

The commenter appears to be making the broad point that the County may not use the tiering provisions of CEQA for this project, that it must instead comprehensively analyze every other related project even tangentially associated with the project, even if those projects would have separate utility independent of this project. This assertion is a gross mischaracterization of the programmatic and tiering provisions of CEQA. Please refer to Master Response 2, "Programmatic Nature of EIR Analysis." The commenter's view of CEQA, if adopted, would obliterate the tiering provisions of CEQA and does not recognize the practical reality of planning or the division of labor amongst various governmental agencies in processing large-scale, long-term projects such as this one. The commenter's position that the County should undertake comprehensive project-specific analysis for the several related components of the proposed project that are under the jurisdiction of other agencies, including state agencies, or for separate projects with independent utility that will also happen to serve the proposed project, does not comport with the statutory provisions or long-standing planning practices of state and local agencies under CEQA. Realistically, the County can only provide programmatic analysis of some of the related and separate components listed by the commenter.

The commenter makes the more specific point that he believes CEQA Guidelines section 15165's reference to "a single program EIR" precludes the County from being able to use the program EIR and tiering provisions of CEQA. The commenter is incorrect. Section 15165 merely defines "project" for the purposes of programmatic treatment. It does not disallow tiering from such a document thereafter. A well-established rule of statutory and regulatory construction provides that generalities in statutes and regulations do not trump more specific language, here, the language in CEQA favoring tiering. Nor can language in a *regulation* (e.g., CEQA Guidelines section 15165) trump language found in *statute* (e.g., Public Resources Code sections 21093 and 21094). Because of the efficiencies allowed by tiering, the Legislature has declared that "*environmental impact reports shall be tiered whenever feasible*, as determined by the lead agency." (Pub. Resources Code, Section 21093, subd. (b) (emphasis added).) The use of tiering is intended to allow agencies to avoid repetitiveness, wasted time, and unnecessary premature speculation by preparing a series of EIRs (or an EIR and later EIRs and/or negative declarations) on related projects. (Pub. Resources Code, Sections 21068.5, 21093, subd. (a); CEQA Guidelines, Section 15152.)

Regarding commenter's point about Sutter County's contemplated wastewater services agreement with the Sanitation District, please see Master Response 8, "Wastewater Service to the Project Site." The County has not, as the commenter asserts, "improperly excluded" analysis of the wastewater services agreement; rather, the County recognizes that it cannot reasonably and feasibly provide all of the analysis that will ultimately be required because the details of the agreement and future service have not yet been worked out. Future components of the project that will rely on wastewater infrastructure may not be allowed to move forward until more specific analysis of the wastewater services details is feasible.

Regarding commenter's points about Caltrans' Highway 99/70 interchange review, the comments do not accurately or fully explain the relevant history of Caltrans' review. There are no "obvious deficiencies" in Caltrans' environmental review of the SR 99/70 interchange project. The original draft Project Report for the interchange project was signed by Caltrans on November 7, 2002. On November 7, 2002, Sutter County prepared an Initial Study and Mitigated Negative Declaration for the SR 99/70/Riego Road Interchange project. Sutter County filed a Notice of Determination for the Mitigation Negative Declaration on March 7, 2003. In August 2006, Caltrans determined that the interchange project was categorically excluded from review under the National Environmental Policy Act ("NEPA"). On September 6, 2006, the Federal Highway Administration agreed with Caltrans that the project was properly classified as categorically excluded. With approval of Measure M and the preparation of traffic studies for the SPSP, there was a need to amend the original Project Report. As part of the updated Project Report completed in November 2007, Sutter County and Caltrans prepared a NEPA/CEQA Re-Validation Form. The Re-Validation Form concluded that only minor technical changes were necessary for the updated Project Report. An addendum was prepared and attached to the Re-Validation Form, which was signed by Caltrans on October 30, 2007 as complying with NEPA. The Re-Validation Form was also signed by Sutter County as complying with CEQA. This was a thorough public review process that included a public open house. At no time were there any challenges to the adequacy of the environmental review for the interchange project. The County is unaware of any currently pending legal challenges to any of these previous reviews as of the time of publication of this FEIR. It would be too speculative to assume that a federal lawsuit *might* be filed and that such lawsuit would be successful in overturning Caltrans'

review. Thus, the County reasonably relied on the validity of the several previous reviews undertaken by Caltrans for the 99/70 interchange.

Coalition-8 The commenter states that because the initial estimate of near-term development for Phase 1-A in the project description of the DEIR stated that development could begin as soon as 2010, the DEIR should have analyzed all of the project-specific impacts of development in Phase 1-A as part of this EIR.

Please see Response to Comment Coalition-3 above. Additionally, while some data and studies were available to assist in the description of the Phase 1-A stages of the project, there was not sufficient site-specific data to provide complete project-level coverage for Phase 1-A. Thus, the DEIR correctly acknowledged that "this document does not include the level of detail necessary to qualify as a project EIR." (DEIR, page 1-7.) In light of the delays in levee improvements and the current depressed state of the economy, it appears virtually certain that Phase 1-A will not commence construction in 2010 as originally envisioned. If and when the developer submits a complete application for any site-specific development in Phase 1-A, the County will assess at that time the scope of additional site-specific review, consistent with the tiering and streamlining provisions of CEQA.

Coalition-9 The commenter asserts that the DEIR fails to adequately describe and analyze Measure M. Please see Master Response 1, "Measure M."

Coalition-10 The commenter urges a strict and unworkable reading of the language of Measure M, stating that planning within the Industrial-Commercial Reserve can begin if certain planning standards are met.

The commenter interprets the cited language of Measure M to mean that no *planning* for development within Measure M can begin until all planned infrastructure upgrades, such as levee improvements to achieve 100-year protection, are physically in place. This is an impractical reading of the operative language of Measure M, which, in the previous comment, the commenter reminded the County, was merely advisory. As explained in Master Response 1, "Measure M," the County and the project applicants have strived to develop a project description that follows the direction contained within Measure M to the greatest extent possible, because Measure M reflects the popular will of the voters of the County regarding whether and how the Specific Plan area should develop. However, because Measure M is merely advisory, the County acts within its discretion to apply a reasonable and practicable interpretation to Measure M's directives. There is no compelling reason to withhold planning efforts until all infrastructure improvements are in place. As explained in the DEIR, no physical development that would place residents and plan-area employees in danger of flood risks can proceed until such improvements are in place.

Coalition-11 The commenter asserts that Sutter County comply with the new requirements for flood hazard planning in connection with this project approval, before the County's General Plan is amended by the Specific Plan.

The commenter is mistaken about the timing of the requirements of AB 162. While the Specific Plan is indeed a substantial amendment to the General Plan, AB 162 triggers updates to flood hazard planning for only specific kinds of General Plan amendments, which are not included or required for the Specific Plan application package.

AB 162 made a number of revisions to the Planning & Zoning Law. The bill required that upon the next revision of the County's Housing Element, on or after Jan. 1, 2009, the Safety Element of the General Plan must also be revised to identify flood hazards and set goals and policies for preventing unreasonable risks from flooding. Thus, whenever a city or county is contemplating an amendment or revision of its housing element, it must also determine whether there is new information relating to flood risks that was not available at the previous time the safety element was updated, and it must then update its safety element with that new information. (Gov. Code, Section 65302, subd. (g)(2).)

If a city or county is located within the boundaries of the Sacramento or San Joaquin Drainage District, it must submit the draft safety element or draft amendment to the safety element to the CVFPB and every local agency that provides flood protection to territory within the city or county at least 90 days prior to adoption of or amendment to the safety element. The CVFPB and local flood protection agency must review and provide their comments and recommendations on the safety element within 60 days of receiving the draft. The Board of Supervisors must make explicit findings if it rejects any recommendations it receives from the CVFPB or local flood protection agency. (Gov. Code, Section 65302.7.)

The project applicants are not proposing revisions to the County's Housing Element. The General Plan Consistency Table contained in the December 2008 draft General Plan Amendment shows the Specific Plan to be consistent with all of the goals and policies of the County's Housing Element.

As the commenter notes, the County is currently undertaking an update to its General Plan, presumably including the Housing Element. Thus, the County will likely update its Safety Element in compliance with AB 162 as part of its pending General Plan Update process.

Moreover, the proposed mitigation set forth in the DEIR to address flood hazard impacts requires that prior to discretionary approval of each increment of new development, the County shall confirm the area to be developed either already has or shall have prior to issuance of building permits the minimum level of flood protection required at the time of the development approval by federal or state law. (MM 3.7-2a [DEIR, page 3.7-49].) If the proposed mitigation is adopted and implemented, there is no danger that future residents and employees would be subject to significant flood hazard risks, consistent with the goals of AB 162.

Coalition-12

The commenter asserts that neither the DEIR Notice of Availability nor the DEIR project description reveals the fact that the project will impact wetlands. The commenter further states that the project proponent should have obtained a jurisdictional determination as to the extent of federal wetlands on the site to inform the public regarding the true scope and amount of affected wetlands.

Notice of Availability

CEQA requires that the lead agency "provide public notice of the availability of the DEIR." (CEQA Guidelines, § 15087, subd. (a).) The public notice is required to disclose (1) a brief description of the project and its location, (2) the review period, (3) any scheduled public meetings or hearings, (4) a list of significant environmental effects anticipated, (5) where copies of the EIR are available for review, and (6) information regarding the presence of sites listed pursuant to Section 659625 of the Government

Code. (Pub. Resources Code, § 21092, subd. (b)(1); Cal. Code Regs., tit. 14, § 15087, subd. (c).) Substantial compliance is the governing test for determining whether statutory requirements are met. (*National Parks & Conservation Assn. v. County of Riverside* (1996) 42 Cal.App.4th 1505, 1522.) Mere technical imperfections of form or variations in mode of expression do not constitute noncompliance. (*Ibid.*)

Sutter County substantially complied with the notice requirements of Section 21092. Each of the disclosures required by CEQA is provided in the Notice of Availability for the Specific Plan DEIR ("DEIR Notice"). Specifically, the DEIR Notice was required to and did disclose the significant impacts anticipated. As published, it listed those significant environmental effects anticipated in seventeen separate categories, including Land Use; Geology, Soils and Mineral Resources; Hydrology and Water Quality; and Biological Resources. On this basis, it systematically identified the significant effects of the proposed project that will be considered by Sutter County in the decision-making process. Thus, the DEIR Notice substantially complied with the requirements of the statute.

CEQA does not require specific mention of the term "wetlands." By listing those categories within which wetlands and impacts to wetlands were discussed, the DEIR Notice provided adequate notice to alert interested persons and to encourage their public participation. The commenter has focused on a "variation in the mode of expression" that does not rise to the level of non-compliance. In fact, the Coalition was adequately alerted by the DEIR Notice. Based on its submittal of comments, it apparently had an adequate opportunity to review the DEIR and comment on numerous topics, including the project's proposed impacts to wetlands.

Project Description

CEQA regulations require the project description to contain the following information, but they do not require "extensive detail beyond that needed for evaluation and review of the environmental impact": (1) the precise location and boundaries of the proposed project, (2) a statement of objectives, (3) description of the project's technical, economic, and environmental characteristics, and (4) the intended uses of the EIR. (CEQA Guidelines, § 15124.) The project description must contain sufficient specific information about the project to allow evaluation and review of impacts. (*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 36.) A project description cannot omit integral components of the project that might result in actual impacts. (*Id.* at p. 26.) Also, "[it] cannot minimize the scope of environmental review or minimize the project's impacts on the environment." (*Id.* at p. 36.) Procedural or substantive requirements beyond those explicitly required in the statutes or guidelines should not be imposed. (*Ibid.*)

CEQA does not require the description of aquatic features on the site, or wetlands in particular, in the project description. The project description for the Sutter Pointe Specific Plan contains all of the required components. It provides "sufficient specific" information about the proposed project to determine, evaluate, and review physical environmental impacts in subsequent sections. No integral components of the project are omitted.

Section 2.3, Project Site and Vicinity, of the DEIR describes the location of the site, current uses on and around the site, its location within the NBHCP, and on-site easements for irrigation and drainage ditches. The text and maps in the Project Description thoroughly describe and depict the proposed development and associated improvements,

both on-site and off-site, that comprise the project. Table 2-4 identifies all off-site infrastructure improvements needed to support the proposed project and whether CEQA coverage has been obtained for each. The DEIR analyzes the impacts of all off-site improvements that have not already been approved through the CEQA process. There is no oversight. All of this information establishes a basis for reviewing and evaluating environmental effects to such resources as the canals and rice fields. The DEIR appropriately identifies, describes, considers and discusses the impacts of the project as proposed in the Project Description to aquatic features, including wetlands, in the Biological Resources section and other sections as required by CEQA.

Delineation of Off-Site Improvements

CEQA requires that "[d]irect and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and the long-term effects." (CEQA Guidelines, § 15162.2, subd. (a).) Significant effects are to be discussed "with emphasis in their proportion to their severity and probability of occurrence." (CEQA Guidelines, § 15143.) CEQA does not require that a wetland delineation be prepared, just so long as the environmental impacts associated with the project, including to wetlands, are adequately evaluated in the EIR. Procedural or substantive requirements beyond those explicitly required in the statutes or guidelines should not be imposed. (*Dry Creek Citizens Coalition*, *supra*, 70 Cal.App.4th 20, 36.)

The DEIR clearly identifies and describes the direct and indirect significant effects of the project on wetlands. The Biological Resources section of the DEIR describes all aquatic features likely to be affected by proposed on-site and off-site improvements. The DEIR also identifies which aquatic resources will be filled and permanently affected. Exhibit 3.13-4 (page 3.13-11) shows the location of off-site aquatic features and where the off-site infrastructure is likely to affect these habitat types.

On page 3.13-15, off-site irrigational canals and ditches, and seasonal wetlands, are described. The DEIR states that the proposed sewer force main alignment will cross the Natomas East Drainage Canal. This is shown on Exhibit 3.13-6 (page 3.13-26). In addition, the DEIR states that canals and ditches are present along Pleasant Grove Road and Baseline Road. Pleasant Grove Road (labeled) and Baseline Road (unlabeled) are shown on Exhibit 3.13-4 overlain with the proposed sewer alignment.

The location of impacts to off-site seasonal wetlands off-site is shown on Exhibit 3.13-4 along the RD 1000 canal. The description on pages 3.13-15 to 3.13-16 provides information regarding the hydrology, soils, and vegetation present at the site. On page 3.13-16, off-site freshwater emergent wetlands are described. They occur along Pleasant Grove Road and Baseline Road.

The location of impacts to freshwater emergent wetlands are also shown along the RD 1000 canal on Exhibit 3.13-4. The text, exhibits, and tables clearly identify and describe the effects of off-site aquatic features, including wetlands, consistent with CEQA requirements. On pages 3.13-33 to 3.13-35, the DEIR states that there will be significant direct and indirect impacts to wetlands. Also, it explains how direct and indirect impacts will be mitigated to ensure no net loss of wetland functions and values.

No formal delineation has been prepared and submitted to federal or state agencies as noted on page 3.13-34. Requiring that a formal delineation be prepared and submitted to

federal and state agencies prior to analyzing the impact in the DEIR would improperly add a procedural requirement to CEQA. All aquatic resources that might be directly or indirectly affected by the project have been identified by the project proponents and the county and described in the EIR as required by CEQA to ensure that the public and agency decision-makers can review and evaluate significant effects. No guessing game is required.

Coalition-13 The commenter states that a jurisdictional delineation is required to be obtained before impacts on wetlands can be assessed.

Extent of Federal Jurisdictional Waters

CEQA requires that the DEIR clearly identify and describe the significant effects of the project on the environment. (CEQA Guidelines, § 15162.2, subd. (a).) CEQA does not require that an approved jurisdictional determination be obtained from the U.S. Army Corps of Engineers (USACE). Rather, CEQA requires substantial evidence from trained experts regarding the extent of biological impacts of proposed projects. Thus, CEQA lead agencies need not follow any particular analytical protocols developed for specific state or federal laws other than CEQA, such as the Endangered Species Act. (See, e.g, *Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383 (court upholds biological analysis for dairy project impacts on endangered kit fox despite biologist's failure to use U.S. Fish and Wildlife Service protocol required under Endangered Species Act).) The legal characterization of aquatic resources does not affect how the project would impact environmental resources. (*Fort Mojave Indian Tribe v. Cal. Dept. of Health Services* (1995) 38 Cal.App.4th 1574, 1603.) Federal jurisdiction is a legal characterization that has no import on the project's impacts.

CEQA defines wetlands only in a limited context. To qualify for exemption, housing projects cannot contain wetlands on the proposed site. (Pub. Resources Code, § 21159.21, subd. (d).) To the extent that CEQA defines "wetlands" for that subdivision, it makes reference to USACE's regulatory definition at Section 328.2 of Title 33 of the Code of Federal Regulations. (*Ibid*.) "Wetlands" are defined as:

> *those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. (33 C.F.R. § 328.3.)*

The DEIR satisfied the CEQA requirement that resources be clearly identified and described. Based on studies prepared by experienced biological consultants, the DEIR identifies aquatic resources at the site. In fact, the commenter cites facts in its letter regarding the acreage of canals and rice fields from the DEIR descriptions. The DEIR describes the extent of canals on page 3.13-15 and rice fields, both wet and fallow, on pages 3.13-9 to -13. (Other aquatic resources are addressed in Response to Comment Coalition-12 above.)

The man-made hydrology of rice fields is described on page 3.13-9. Figure 3.13-3 (page 3.13-10) shows the location of rice fields on the project site. The project description makes clear that entire site will be affected by the proposed project. The on-site impacts to rice are quantified in Table 3.13-1 (page 3.13-13). Impacts to rice fields off-site from

the widening of RD 1000 and water pipeline are shown on Exhibit 3.13-4 (page 3.13-11) and are quantified in Table 3.13-2 (page 3.13-13).

The DEIR states that ECORP, a consulting firm with many years of experience in characterizing wetlands, identified in its delineation 67 acres of irrigation canals, extending 15 miles, on the project site. Drainages on the site extend approximately 22 miles. The major canals and drainages are depicted on Exhibit 3.13-6 (page 3.13-26). The text, exhibits, and tables clearly identify and describe the effects to on-site rice fields and canals consistent with CEQA requirements.

The DEIR addresses impacts to all aquatic resources on-site and off-site. These resources include any wetlands that the USACE is likely to deem jurisdictional. The delineation prepared by ECORP identifies those aquatic resources likely to be deemed jurisdictional waters by the USACE, including jurisdictional wetlands. Regardless, whether a wetland is regulated by USACE has no import on the determination of whether the project affects that wetland. Instead of limiting its review and evaluation of significant effects to jurisdictional wetlands, the DEIR considers impacts to all aquatic resources regardless of legal characterization.

However, in anticipation of a comment along these lines, the DEIR provided information regarding the status of the process of determining federal jurisdiction over aquatic resources on the site. The DEIR states that the delineation prepared by ECORP (attached as Appendix H to the DEIR) was submitted to the USACE for verification in 2007. As noted in the DEIR, USACE has not verified the delineation. It has chosen not to issue a jurisdictional determination at this time.

The DEIR does not piecemeal the project with regard to wetland impacts. It discloses complete and accurate information regarding existing aquatic features and the proposed impacts to those features. The extent of federal jurisdiction is not known at this time; however, it is not relevant to the EIR's function. The DEIR proposes measures requiring mitigation to ensure no net loss of wetland functions and values. To ensure that this standard is met, project applicants will be required to obtain permits and authorizations pursuant to Sections 401 and 404 of the Clean Water Act, Section 1602 of the California Fish & Game Code, the California Endangered Species Act, and the Porter-Cologne Act, and to comply with the mitigation requirements of the NBHCP. These mitigation measures address the project's wetlands impacts.

60-Day Jurisdictional Determination

USACE's Regulatory Guidance Letters (RGLs) are non-binding on the agency or on permit applicants. (*Northwest Bypass Group v. U.S. Army Corps of Eng'rs* (D. N.H. 2007) 470 F.Supp.2d 30, 51.) USACE issues regulatory guidance letters without notice and comment and, therefore, they do not and are not intended to change Section 404 regulations (*Ibid*.; compare with *United States v. Alameda Gateway Ltd.* (9th Cir. 2000) 213 F.3d 1161, 1168 (discussing regulatory guidance issued for Section 10 of Rivers and Harbors Act.) Further, RGLs lack the force of law. (*Ibid*.)

The USACE's 60-day goal for issuing jurisdictional determinations is established in Regulatory Letter No. 08-02, Jurisdictional Determinations (RGL 08-02). USACE set a laudable goal. Unfortunately, it is often missed. When it misses this deadline, there is no recourse. RGLs do not carry the force of law. Neither the Clean Water Act nor USACE

regulations require the USACE to issue a jurisdictional determination within this specified time period.

Also, RGL 08-02 became effective June 26, 2008, more than six months after the Sutter Pointe delineation was submitted to USACE. It does not state that its goals and policies will be applied retroactively. RGL 08-02 is not applicable to USACE's processing of the Sutter Pointe delineation.

The project proponents have used their best efforts to obtain a jurisdictional determination. However, neither Sutter County nor the proponents can force USACE to issue a determination within a specified period of time. The project proponents have met with, emailed, or called USACE on multiple occasions through 2008 and 2009 to request a determination of the federal jurisdictional wetlands on the site. On each occasion, the project proponents have expressly requested a jurisdictional determination. There are no further steps the proponents can take to force any action on the part of USACE.

Piecemealing

"Piecemealing" is the splitting of a project into two or more segments such that the full picture of environmental considerations becomes submerged. (*Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592.) The DEIR accurately and completely describes the entire project. As discussed above, a jurisdictional determination from USACE is not required by CEQA and has no import on the evaluation and review of a project's impacts. It results in no change to the physical impacts of a project. Therefore, the jurisdictional determination cannot be considered a segmentation of a project. The DEIR discloses complete and accurate information regarding existing aquatic features and the proposed impacts to those features.

The extent of federal jurisdiction is not known at this time; however, it is not required. The DEIR includes measures requiring mitigation to ensure no net loss of wetland functions and values, regardless of the final agreed amount of wetlands affected. To ensure that this standard is met, any project applicant within the plan area is required to obtain permits and authorizations pursuant to Sections 401 and 404 of the Clean Water Act, Section 1602 of the California Fish & Game Code, the California Endangered Species Act, and the Porter-Cologne Act, and to comply with the mitigation requirements of the NBHCP. These mitigation measures address the project's impacts.

Coalition-14 The commenter asserts that the DEIR Notice of Availability fails to inform the public that substantial acreage of Prime Farmland and Farmland of Statewide Importance will be affected by the project. Please see Response to Comment Coalition-12 above. The DEIR Notice was required to and did disclose the significant impacts anticipated. As published, it listed those significant environmental effects anticipated in seventeen separate categories, including Agriculture. On this basis, it systematically identified the significant effects of the proposed project that will be considered by Sutter County in the decision-making process. Thus, the DEIR Notice substantially complied with the requirements of the statute. The Notice is not intended to take the place of the DEIR, which fully discloses, in detail, the impacts of the project.

Additionally, CEQA does not require the description of agricultural uses on the site in the project description. The project description for the Sutter Pointe Specific Plan contains all of the required components. It provides "sufficient specific" information about the

proposed project to determine, evaluate, and review physical environmental impacts in subsequent sections. No integral components of the project are omitted.

Coalition-15

The commenter states that the DEIR Notice of Availability does not mention that the project is within the NBHCP, and claims that therefore the County has failed to provide adequate public notice that the project is located in a sensitive wildlife area.

CEQA requires that the lead agency "provide public notice of the availability of the DEIR." (CEQA Guidelines, Section 15087, subd. (a).) The public notice is required to disclose (1) a brief description of the project and its location, (2) the review period, (3) any scheduled public meetings or hearings, (4) a list of significant environmental effects anticipated, (5) where copies of the EIR are available for review, and (6) information regarding the presence of hazardous waste sites listed pursuant to Section 65962.5 of the Government Code. (Pub. Resources Code, Section 21092, subd. (b)(1); Cal. Code Regs., tit. 14, Section 15087, subd. (c).)

Sutter County complied with the notice requirements of Section 21092. Each of the disclosures required by CEQA is provided in the Notice of Availability for the Specific Plan DEIR ("DEIR Notice"). Specifically, the DEIR Notice was required to and did disclose the basic components of the project ("brief description") and the significant impacts that were anticipated at that time, including impacts on biological resources. Thus, the DEIR Notice substantially complied with the requirements of the statute. In fact, the commenter clearly was alerted well enough by the DEIR Notice to obtain and review the DEIR carefully. Based on its submittal of comments, the commenter apparently had an adequate opportunity to review the DEIR and comment on numerous topics, including the project's potential impacts related to its location within the NBHCP. Finally, contrary to the comment, the DEIR concluded that the project is consistent with the NBHCP.

Coalition-16

The commenter alleges that the DEIR Notice of Availability fails to identify which components of the project are within the HCP area and which components are not. As explained in Response to Coalition-12, the information required to be provided is limited by CEQA Guidelines Section 15087(c). CEQA does not require the information asserted by the commenter as missing to be included in a notice of availability. The information sought by the commenter is provided in the DEIR itself. As shown on Exhibit 3.13.1 of the DEIR, the entire project site is located within the NBHCP Sutter Permit Area. As noted on Page 3.13-33 of the DEIR, impacts covered under the NBHCP ITP include those resulting from development of the project site and off-site drainage improvements associated with expansion of the East Drainage Canal. Impacts of some off-site infrastructure improvements, which are analyzed at a program level in this DEIR, are not covered under the NBHCP ITP. These off-site improvements are summarized in Table 2-4 on p. 2-19 and 2-20 of the DEIR, and include road improvements, drainage improvements, water lines and facilities, and sewer improvements, as well as dry utility improvements to serve the proposed project. With the exception of off-site sewer improvements, the natural gas line extension, and some drainage improvements, all off-site infrastructure improvements are located within the 53,537-acre NBHCP Plan Area, which generally includes the entire Natomas Basin.

Coalition-17

The commenter states that the DEIR does not specify the acreage of off-site improvements or what portion of those improvements is within the NBHCP. Absent a description of off-site acreage to be developed by the proposed project, the comment posits that it is impossible to discern the extent to which the proposed project is

inconsistent with the NBHCP. According to the comment, the proposed project exceeds Sutter County's 7,467 acres permitted for development under the NBHCP by hundreds of acres, but the commenter does not support this assertion with specific data.

The DEIR and Specific Plan describe the off-site infrastructure that is identified in the Specific Plan. (See, e.g., DEIR, at pages 2-18 through 2-64; Specific Plan, at pages 9-6 through -23.)

The DEIR concludes that the project is consistent with the NBHCP and would have a less-than-significant impact on covered species with the required avoidance, minimization, and mitigation measures incorporated (DEIR, at pages 3.13-27 through -52). See also Response to Comment Sacramento - 2. Off-site improvements anticipated as infrastructure that may be needed to serve the project include:

- Roadway Improvements (e.g., SR 99/70);
- Wet Utilities (drainage, flood control, sewer, and water); and
- Dry Utilities (cable, electricity, natural gas, refuse, and communications).

(DEIR, at pages 2-18 through 2-64.) Because the DEIR is a programmatic document, precise acreage calculations for many of these off-site improvements are not only impractical, but are impossible to discern at this early stage in the development process. Nonetheless, most of the off-site infrastructure improvements—water, sewer, and dry utilities—are proposed to occur within existing paved roadways as explained in the DEIR (Page 3.13-28), and thus are not anticipated to affect the impact acreage calculations for the Specific Plan. And for all of these potential off-site impacts, the DEIR proposes feasible mitigation to avoid or reduce those impacts. (See DEIR Mitigation Measures 3.13-1b, -3b, and -5b.)

For these same reasons, those improvements are not anticipated to have any significant effects on covered species or species habitat (DEIR at pages 3.13-29 through -52). (Id.) Likewise, some of those improvements have already been accounted for under the NBHCP, and therefore would not affect the NBHCP's acreage calculations with respect to the covered activities or amount of take authorized under the NBHCP. (See, e.g., Implementation Agreement for the Natomas Basin Habitat Conservation Plan, at 29 [16.5 acres of proposed drainage channel improvements located within Sacramento County included and authorized under the NBHCP as part of Sutter County's 7,467 acres].)

Sutter County's permit authorization is limited to its "permit area" and to activities that are identified as "covered activities" under the NBHCP. The NBHCP, however, does not preclude other public agencies – e.g., Caltrans, Sacramento County, or the Sacramento Area Flood Control Authority (SAFCA) – from independently seeking incidental take authorizations for public infrastructure projects in the region. The Specific Plan would depend on some off-site infrastructure and roadway improvements that also are intended to address the impacts of cumulative projects that are not within Sutter County's jurisdiction and are to be carried out by these other non-permitted public agencies. If those activities would result in "take" or "adverse effects" on listed species or designated critical habitat, those activities would be required to obtain incidental take authorizations separately under Sections 7 or 10(a) of the federal Endangered Species Act. (See, e.g., NBHCP, at I-9 and -10, stating that if RD 1000 proposes to increase the footprint of its facilities within the Natomas Basin at a later time, "the potential impacts on state and federal listed species would be reviewed subject to the provisions of CESA and ESA and permits, as determined appropriate, would be required.")

To ensure that the project-related off-site improvements are consistent with the NBHCP and Sutter County's Incidental Take Permit, the DEIR requires the applicants to avoid, minimize, and mitigate any potentially significant impacts on NBHCP-covered species consistent with the NBHCP's conservation strategy. (See, e.g., Mitigation Measure 3.13-1b, requiring a conservation strategy "consistent with the NBHCP's strategy" and which "meets the performance standard of no net loss in function and value"). Implementation of Mitigation Measures 3.13-1b (page 3.13-32) and 3.13-6 (page 3.13.-52) would help ensure that the Specific Plan and all related off-site infrastructure remains consistent with the NBHCP's conservation strategy and mitigates to a level of less-than-significant any project impacts on NBHC-covered species.

Coalition-18

The commenter states that the DEIR fails to analyze the proposed project's inconsistency with the NBHCP because the project exceeds the acreage allowable under the NBHCP. The commenter further states that, because the DEIR fails to analyze the proposed project's inconsistency with the HCP, the project would, according to the terms of the HCP, "trigger a reevaluation of the plan" and require a new environmental review under both NEPA and CEQA.

As outlined in Response to Comment 2 – Sacramento, the Specific Plan does not exceed the acreage allowable under the NBHCP. (See also Response to Comment 17 – Coalition.) The footprint of the proposed project is within Sutter County's Permit Area (the effects of which were already evaluated as part of the 2003 NBHCP EIR/EIS). As evaluated in Impact 3.13-6, the Specific Plan is consistent with and covered by the NBHCP. The DEIR evaluates at a programmatic level the proposed project's impacts on covered species, as well as potential impacts on species outside the HCP for the off-site improvements (DEIR at pages 3.13-29 through -52). Further, the text of the Specific Plan has been revised to require acreage accounting at the time of each phase of project development to ensure that all project phases remain within the County's acreage limit in the NBHCP.

Coalition-19

The commenter states that the DEIR, while wholly failing to address the off-site infrastructure improvements that must be counted towards the 7,467 acres allotted to Sutter County under the NBHCP, is incorrect in claiming that the project's 7,528-acre area exceeds its allotted acreage due to pre-existing development that is not subject to the NBHCP. The commenter points out that the SYSCO warehouse facility – a pre-existing development within Sutter County's Permit Area – is explicitly incorporated in Sutter County's 7,467-acre allotment under the NBHCP.

The comment is correct in stating that the 50-acre SYSCO warehouse facility, a facility approved prior to adoption of the NBHCP, is already incorporated within Sutter County's 7,467-acre allotment. (NBHCP, at page I-7.) To clarify, the SYSCO warehouse facility counts against Sutter County's allowable development acreage under the NBHCP, and it is already considered in the DEIR as part of the 7,467 acres. As set forth in Response to Comment Sacramento-2, there other existing developed properties within Sutter County that, unlike the SYSCO warehouse facility, are exempt from the NBHCP. According to the NBHCP, 146 acres of urban development and 291 acres of roads and highways—a total of approximately 431 acres—were developed in Sutter County prior to 1997 and are considered "exempt" from the NBHCP. (NBHCP, at pages III-2 and III-16.) Exhibit C to the NBHCP Implementing Agreement (referred to as the "Sutter County Baseline Map") further identifies several developments within the Sutter County Permit Area that are "Exempt Lands," including existing road rights-of-way. The Specific Plan Area is approximately 7,528 acres, and incorporates both Exempt Lands (up to about 431 acres)

and lands subject to Sutter County's 7,467-acre allotment under the NBHCP. Consequently, the Specific Plan is well within the acreage limit set forth in the NBHCP. Further, the text of the Specific Plan has been revised to require acreage accounting at the time of each phase of project development to ensure that all project phases remain within the County's acreage limit in the NBHCP.

The comment also suggests that off-site infrastructure must be counted against Sutter County's 7,467-acre allotment, but this is not necessarily the case. Under the NBHCP, while it is true that public projects and infrastructure constructed by Sutter County are covered by the NBHCP and count towards the County's 7,467-acre allotment:

> In addition to review and approval of private urban development proposals, Sutter County will construct public projects and infrastructure that shall also be covered by the NBHCP. These Public projects are included in the 7,467 acres of Authorized Development allocated to Sutter County.

(NBHCP, at page I-7.), as explained in Response to Comment 17 – Coalition, the NBHCP does not preclude other public agencies in the Basin from independently seeking incidental take authorizations for public infrastructure projects (e.g., improvements to SR 99/70 to address traffic from the Specific Plan and other cumulative projects in neighboring counties). The Specific Plan would depend on some off-site infrastructure and roadway improvements that are intended to address the impacts of other cumulative projects that are not within Sutter County's jurisdiction and would not be approved or otherwise constructed by Sutter County. Consequently, those off-site improvements are not covered under the NBHCP and would not necessarily count against Sutter County's 7,467-acre allotment. Nonetheless, off-site improvements carried out or approved by other public agencies would be required to obtain incidental take authority separately under Sections 7 or 10(a) of the federal Endangered Species Act, and demonstrate that there would be no adverse impacts on the effectiveness of the NBHCP.

See also Response to Comment –Sacramento-2 and Responses to Comments Colition-17 and -18.

Coalition-20

The commenter notes that the Specific Plan does not encompass all of the 8,573 acres within Sutter County's I-C Reserve that is outside of the Swainson's Hawk Zone and is authorized for development. There is an additional 1,000 acres remaining within the I-C Reserve and within the NBHCP area that must be included in the project description and analyzed in the DEIR. According to the commenter, if the remaining 1,000 acres will not be developed as a result of the Specific Plan, the DEIR must assess the impact.

Under CEQA, an EIR must evaluate the cumulative effects of the proposed project, which includes an assessment of the effects of the project "in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (CEQA Guidelines, Section 15065(a)(3).) To be considered in an EIR's cumulative effects analysis, probable future projects must be "reasonably foreseeable" (id., Section 15355(b)), and not speculative or uncertain. However, even though the remaining 1,000 acres within the I-C Reserve was included in Sutter County's Permit Area under the NBHCP, there are no current plans or proposals to develop that property. Consequently, it need not be evaluated in the Specific Plan EIR's cumulative effects analysis.

If development is ever proposed in that area of the I-C Reserve, a project-specific and cumulative effects analysis would have to be completed and, under the NBHCP, the development would be limited to whatever remaining acreage that can be developed within Sutter County's 7,467-acre allotment. For these reasons, the 1,000 acres remaining within the I-C Reserve are not part of the proposed Sutter Pointe project and need not be evaluated in this EIR.

Coalition-21

The commenter asserts that the DEIR Notice makes no reference to the project's proximity to the Sacramento Airport and the need for a consistency determination from the Airport Land Use Commission (ALUC) regarding the Sacramento International Airport Comprehensive Airport Land Use Plan (CLUP).

Please see Response to Comment Coalition-5 above regarding the scope of information required to be included in a DEIR Notice. CEQA does not specifically or implicitly require that the DEIR Notice provide information about the proximity of a project to an airport. The DEIR makes several references to the proximity of the airport, for example, in the Land Use chapter (DEIR Section 3.1, "Land Use," pages 3.1-18, 3.1-28—3.1-29 [where the requirement of a consistency determination from the ALUC for the CLUP is discussed], Noise chapter (DEIR Section 3.5, pages 3.5-19—3.5-21), and Public Health and Hazards chapter (DEIR Section 3.12, pages 3.12-14—3.12-15).

As stated in DEIR Chapter 3.1, "Land Use," the requirement for a consistency determination from the ALUC for the CLUP was acknowledged by the County. Between the publication of the DEIR and the preparation of the FEIR, consultation with the ALUC has occurred, and the ALUC made a positive determination of consistency on March 18, 2009. Pursuant to the State Aeronautics Act (Pub. Utilities Code, Section 21001 et seq.), the Sacramento Area Council of Governments (SACOG) is designated to serve as the ALUC for the Sacramento, Sutter, Yolo and Yuba Counties. ALUC's (SACOG's) March 18, 2009 letter concludes:

> *Overall, the draft Specific Plan provides general land use categories of potential development. These general categories in most cases are considered compatible. However, the details of each particular site specific project will need to be further reviewed when an actual development proposal is submitted for the affected areas described above. The ALUC has determined that this specific plan is compatible at the plan-level but further site-specific development applications will need a project-level review by the ALUC before any specific development proposal is determined to be compatible.*

Thus, the consultation and consistency determination requirement noted by the commenter has been met.

Coalition-22

The commenter states that Sutter County is under an independent obligation to ensure that land uses within the vicinity of the Sacramento Airport are compatible with the area's predominant aviation use.

The language cited by the commenter describing the FAA's grant assurances appears to impose the duty on Sacramento County Airport System (SCAS), not Sutter County. (See Comments submitted by SCAS.) Moreover, as the ALUC's March 18, 2009, letter (discussed above in Response to Comment Coalition-21) demonstrates, the ALUC believes the plan is compatible with the CLUP, viewed at the programmatic level. Even

though ALUC's determination of consistency confirms that the potential land use impact identified in the DEIR (Impact 3.1-3, DEIR, pages 3.1-28—3.1-29) is less than significant and thus, no mitigation is required, the County will comply with the ALUC's request to allow project-level reviews for consistency for future site-specific developments within the Specific Plan area, enforceable through Mitigation Measure 3.12-4, which applies to the "Approach – Departure Zone" and the "Overflight Zone," as illustrated in Exhibit 3.1-2 of the DEIR.

Coalition-23 The commenter asserts that the DEIR fails to define or accurately describe the existing environmental baseline for the project and that the DEIR improperly relies on future, unapproved infrastructure improvements as the baseline for its significance determinations.

The County respectfully disagrees with the commenter that the DEIR fails to use the correct baseline. The DEIR uses the existing environmental conditions present at the time the NOP was published as the baseline, as suggested by the CEQA Guidelines. The commenter fails to provide any specific examples of the alleged reliance on unapproved future infrastructure improvements, so no further response is required.

Coalition-24 The commenter asserts that the DEIR fails to provide a description of the environmental baseline for the off-site roadway and infrastructure facilities that are proposed to serve the project.

The commenter is incorrect, as is further explained in responses to the commenter's more specific comments below.

Coalition-25 The commenter states that the DEIR does not describe whether jurisdictional wetlands are included in the project site. As discussed in Response to Comment Coalition-13 above, USACE has not yet issued a jurisdictional determination based on the verification submitted by ECORP on behalf of the project proponents in 2007. Submittal of the wetlands delineation is the only step in the determination process under the proponents' control. As explained in Response to Comment Coalition-13, diligent efforts have been made to obtain a jurisdictional determination. The absence of a jurisdictional determination is not due to a failure of the lead agency or the project proponents. Regardless, CEQA does not require a USACE jurisdictional determination prior to preparing a DEIR.

Coalition-26 The commenter asserts that the existing baseline with respect to potential flooding impacts is the current FEMA-designated AE flood zone status for the Specific Plan area and that it effectively prohibits any development.

The area's flood zone status is acknowledged in DEIR Section 3.7, "Hydrology & Water Quality." (See Exhibit 3.7-1: Existing Conditions [showing existing FEMA 100-year floodplain], DEIR, page 3.7-9; and Section 3.7.2: Environmental Setting, subsections Regional Hydrology and Local Surface Water Hydrology [describing the region's propensity for flooding and status of levees], DEIR, pages 3.7-20—3.7-23.) The DEIR's analysis also squarely acknowledges that the risk of flooding is significant if 100-year protection is not provided, or if it is provided but not improved to 200-year flood protection by 2015-2025 as required by SB 5. (DEIR, page 3.7-49.)

Coalition-27 The commenter alleges that the DEIR fails to identify the existing environmental baseline for population growth, citing an excerpt from the DEIR's cumulative impacts analysis regarding population growth (in Chapter 5).

The commenter is referred to DEIR Section 3.2, "Population, Employment, and Housing," Section 3.2.2 (the Environmental Setting) (DEIR, page 3.2-3) and Section 3.2.3, describing the Analysis Methodology for assessing population growth impacts (DEIR, page 3.2-5.) Those sections describe the several sources used by the County and EIR consultant in determining the best baseline population estimates.

Coalition-28

The commenter notes that some portions of the project site were not investigated using the Phase I Environmental Site Assessment (ESA) process, and asserts that Mitigation Measure 3.12-2 (requiring that ESAs be conducted for areas of the project site that have not previously been investigated through the ESA process) is improper deferral of analysis and mitigation. The commenter cites no authority for the view that Phase I ESAs must be prepared for all properties within a project area prior to undergoing programmatic review under CEQA. In fact, CEQA caselaw holds that where, as here, a program EIR for a plan-level decision functions as a "first tier" document, it is permissible and reasonable to defer to later, "second-tier" environmental documents much of the detailed analysis required before an agency can grant project-specific approvals. (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 373.) The DEIR explained that the environmental baseline assumptions about potential existing on-site hazardous materials used in the analysis were based on the information contained in existing Phase I ESAs for the project site and the best available information available for areas that have not undergone Phase I ESAs. Mitigation Measure 3.12-2 is an enforceable measure which not only requires that these ESAs be completed, but identifies performance standards describing how any recommendations for further environmental investigation shall be followed. The measure describes in detail how additional investigation and/or remediation of potential issues raised by the ESAs shall be addressed, with reference to specific processes and statutory requirements which will be followed (please refer to p. 3.12-22 to 3.12-24 of the DEIR for the detailed text of this mitigation measure). The commenter also asserts that the Holt Manufacturing facility and the Farm Air Flying Services sites have undergone no environmental assessment whatsoever. As described on p. 3.12-13 of the DEIR, both of these sites have undergone assessment and remediation activities outside of the ESA process. The Farm Air Flying Service site has undergone investigation of gasoline-contaminated groundwater and remediation of a toxic pit. The Holt of California site has undergone soil and groundwater investigation related to separation ponds and leaking underground storage tanks. Furthermore, Mitigation Measure 3.12-3 requires that a licensed professional be retained prior to excavation or construction activities to investigate the environmental status of the contaminated groundwater plume, contaminated soils, and any remediation activities at the Holt Tractor and Farm Air Service Sites, and implement all remedial measures, as necessary. Thus, the DEIR did not improperly defer any analysis required to properly disclose the baseline, nor the development of site-specific mitigation.

Coalition-29

The commenter notes that an ESA conducted by Geomatrix in 2003 recommended a Phase II investigation based on the potential for residual pesticides in soils, while a later ESA (conducted by Wallace Kuhl Associates [WKA]) reviewed Geomatrix's report and source data and concluded that the potential for residual pesticide use should not be considered a recognized environmental condition (REC). The commenter seems to suggest that WKA's findings are not valid, and that Geomatrix was not hired to conduct later ESAs because of this recommendation. Geomatrix's recommendation was based on the fact that pesticides had been applied to the property within the past two years, as shown in the Sutter County Agricultural Commissioner's records. WKA reviewed the agricultural commissioner's reports, and concluded that the application of the identified pesticides was not likely to result in accumulation in soil; as WKA observes, modern

agricultural chemicals, formulated and applied correctly, are not typically persistent in soils. For the purposes of the EIR, discussion of potential impacts of the project was based on the most recent (and, in the County's view, the most credible) information available. In light of WKA's review of the earlier assessment, the DEIR text discloses the differing recommendations, and follows the more recent recommendation, which was based on more detailed analysis of the source data.

Coalition-30 The commenter asserts that the DEIR's conclusion that no Phase II ESA is required to investigate surface soil at the site is not supported by substantial evidence. As described in the response to comment Coalition 29, the DEIR's conclusion that no Phase II ESA is categorically required because of historical pesticide application on the project site is based on the findings of the referenced ESAs. Contrary to commenter's assertion, WKA's conclusions are not based on mere "belief" as the commenter characterizes it, but rather, the most recent and scientifically sound information. These circumstances do not warrant the additional testing urged by commenter. The case cited by commenter, *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 121, does not stand for the proposition that anytime there are conflicting "beliefs" of experts, they must be resolved through further analysis. The flaw in the agency's EIR in that case was that the EIR presented competing methodologies for determining a baseline of groundwater use and invited the agency to select among them at the end of the process, rather than making a determination of the proper methodology at the outset. In other words, the EIR failed to comply with CEQA by pushing the determination of baseline data to the end, rather than the outset, of the review process. The DEIR for this project did not take the same approach criticized in *Save Our Peninsula*; rather, the County proper determined at the outset of the environmental review process that WKA's reasoning for determining no Phase II ESA was required was based on the most credible information.

Coalition-31 The commenter asserts that a Phase II ESA recommended for Area G of the project site (p. 3.12-14) and analysis of stained soil areas (not recommended by the ESAs) is required before environmental review may be completed. As noted in the response to Coalition 28, Mitigation Measure 3.12-2 applies performance standards for what future environmental investigation (and remediation if necessary) of the site will be required. As further noted in the response to Coalition 28, commenter is incorrect in stating that CEQA requires that a Phase II environmental assessment be conducted before environmental review may be completed. The case cited by commenter, *McQueen v. Board of Directors of the Mid-Peninsula Regional Open Space District* (1988) 202 Cal.App.3d 1136, 1147, does not stand for this proposition. That case held that an agency's acquisition of a former military facility was not exempt from CEQA as claimed by the agency, but rather, had to undergo environmental review due to the fact that the project was not mere acquisition of property, but also the maintenance, storage and disposal of on-site hazardous wastes. The page from the court's opinion that commenter cites shows that the court was noting generally that environmental review under CEQA must occur early, and may not be deferred to some later date. The commenter's citation to the *McQueen* court's conclusion that review must occur at the "earliest possible stage" does not stand for the proposition that site-specific Phase II environmental assessments must be conducted before an EIR is prepared.

Coalition-32 The commenter states that the DEIR does not adequately define the environmental baseline as it relates to the existing noise environment in the project vicinity, and more specifically, pertaining to the proposed project's location relative to the Sacramento International Airport aircraft noise contours. The commenter's statement is based on the

conclusion that the location of the proposed project in relation to the Sacramento International Airport aircraft noise contours was determined from the current CLUP, and that the noise contours were established in 1994, and therefore do not represent the existing conditions at the present time.

The Sacramento International Airport (Sacramento Metropolitan Airport) CLUP was originally established in October of 1984, and has indeed been amended several times, with the most current amendment publishing January 1994. The responsibility for maintaining and updating CLUPs or ALUCPs falls to the agency established as the Airport Land Use Commission, which in the Sacramento region is the Sacramento Area Council of Governments (SACOG). The aircraft noise contours contained in the CLUP originated from a previous Master Plan for the Sacramento International Airport, and therefore predate the publishing of the 1994 CLUP amendment. The analysis for the Sutter Pointe Specific Plan was based in part on the current Sacramento International Airport CLUP; however, evaluation of potential impacts related to the proposed project and the location relative to aircraft noise contours were evaluated based on the most current aircraft noise contours available for Sacramento International Airport. The most current aircraft noise contours were initially drafted in 2003 with final refinements completed in 2005, prepared for the recently adopted Sacramento International Airport Master Plan Final EIR. Additionally, the analysis in the DEIR further evaluates the future proposed project impacts based on runway configuration changes that were proposed in the Master Plan and were adopted in August 2007. No changes to the text of the DEIR are required in response to this comment.

Coalition-33 The commenter reiterates the age of the current Sacramento International Airport CLUP, and expresses concern over the use of the document as basis for the existing baseline.

Please see the response to comment Coalition-32. No changes to the text of the DEIR are required in response to this comment.

Coalition-34 The commenter expresses concern over noise monitoring data conducted for characterization of background noise levels, stating that the analysis did not provide an adequate sample size for evaluating the impact from aircraft noise at the project site. The commenter further questions the reliance on background aircraft noise levels as outlined in the CLUP.

Upon further analysis of noise measurements used to describe the background noise environment and for the single event Sound Exposure Level impact analysis, the measurements were found to only consider south flow operational flight procedures occurring at the project site. A penetration gate analysis provided by Sacramento County Airport Systems shows that a greater number of flights occur over the project site, at lower altitudes and higher power levels, during north flow conditions.

The original noise monitoring that was the basis for the single event SEL impact analysis was conducted on August 22, 2007, on which date the airport was operating in south flow flight procedures. The DEIR states that during north flow conditions, single event noise levels would be higher at the project site due to power levels and the substantial number of planes executing course reversal turns directly over the project site. However, it is important to note that south flow conditions are the predominant flight procedure in place for approximately 75% of the year due to prevailing winds in the area. Additionally, the main intent for analyzing single event SEL noise levels is to evaluate the potential for sleep disturbance during nighttime periods; nighttime departures from Sacramento

International Airport occur infrequently, and as such, the potential for sleep disturbance is statistically very low.

However, despite the low probability of nighttime departures over the project site, and resulting sleep disturbance, the analysis of SEL values resulting from north flow flight procedures was evaluated based on additional aircraft noise monitoring and computer analysis of aircraft SEL levels.

As shown in FEIR Chapter 4.0, "Corrections and Revisions to the DEIR," the following text change is proposed to Section 3.5.2 Environmental Setting (p. 3.5-21):

> Although the majority of the project site is unaffected by the aircraft noise contours shown on Exhibit 3.5-2, BAC conducted SEL measurements at 4 locations within the project site on August 22, 2007. Furthermore, EDAW conducted short-term and continuous noise monitoring and SEL measurements at 2 locations from April 11, 2009 to April 14, 2009. The SEL measurements were ~~for~~ subsequently analyzed~~sis~~ ~~of~~for potential impacts associated with speech interference and sleep disturbance due to aircraft arrivals, departures and overflights. The Sacramento International Airport operates in two modes, north flow and south flow. The mode of operation is dependent primarily on wind direction and meteorological conditions, as interpreted by air traffic control tower and the tower manager. During the August 22, 2007 measurement period the airport was operated in south flow. During the April 11, 2009 through April 14, 2009 measurement period the airport operated in both north and south flow. A flight track and penetration gate analysis conducted by the Sacramento County Airport System Aircraft Noise Information Office indicates that a greater number of aircraft operating under high power settings would occur over the proposed noise-sensitive areas during north flow conditions resulting in more substantial aircraft noise levels on the project site. This is attributed to a large number of departures executing course reversal turns over the project area and the lower altitudes which are inherent to northern departures. As such, the subsequent noise monitoring conducted during April 2009 focuses on north flow airport operations. The noise measurement locations are shown on Exhibit 3.5-3, and ~~the~~ a summary of the monitoring results are provided in Tables 3.5-17 and 3.5-18, for south and north flow conditions respectively.

The text edits shown above do not change the significance conclusions already contained in the DEIR.

Coalition-35

The commenter alleges that the DEIR misstates or omits information necessary to determine the environmental baseline for wildlife because the DEIR does not describe the recent conversion of northern bufferlands in the vicinity of the Sacramento International Airport from rice cultivation to fallow land.

The commenter asserts that "…SAFCA prepared a supplemental DEIR to address the 'change in the baseline at Sacramento International Airport north bufferlands from active rice cultivation to idle conditions,'" citing the SAFCA NLIP, Phase II Supplemental DEIR, p. ES-1. The commenter takes this statement out of context. SAFCA prepared a supplemental DEIR because the lead agency made substantial changes to its proposed

project as originally evaluated; thus it was necessary to prepare a supplemental DEIR to evaluate the potential impacts relating to the proposed project changes. That, in turn, necessitated the circulation of a new Notice of Preparation (NOP) on the supplemental EIR. At the time that NOP was published, the baseline conditions had changed, and it was known to SAFCA that the rice fields were going to be changed from active rice cultivation to fallow land. Thus, those changed conditions present at the time the NOP was published were properly evaluated in the SAFCA Phase II Supplemental DEIR.

However, in the instance of the Sutter Pointe DEIR, the changes noted by the commenter occurred after the issuance of the NOP for the Sutter Pointe EIR (March 29, 2007). As discussed in Section 15125(a) of the CEQA guidelines, the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, will normally constitute the baseline conditions against which impacts would be evaluated. The "Discussion" following CEQA Guidelines Section 15125 as amended in 1998 (the "legislative history" of the Resources Agency's promulgation of the regulations) notes that subsection (a) is intended to give "the lead agency greater certainty regarding the setting which must be described." The Resources Agency's discussion imposes a practical solution to the difficulty of completing a Draft EIR if the setting were not allowed to be determined upon a fixed date. The setting would be a constantly moving target as physical conditions change. Thus, contrary to the commenter's assertion, CEQA Guidelines Section 15125(a) makes it unequivocally clear that the Sutter Pointe DEIR used the proper environmental baseline and is not required to revise its analysis to discuss changes in the physical environment that occurred after the NOP was published.

As further noted in the response to Coalition-75, the NBHCP recognizes that it is the conversion of open space lands to urban development outside of the 17,500-acre Permit Areas (e.g., through a change in zoning) that would potentially affect the operating conservation plan included in the NBHCP. Thus, for example, the Sacramento Airport buffer lands are not proposed for development at this time and the zoning and land use designations for that area have not changed since the approval of the NBHCP. Consequently, there is no "significant change" requiring further investigation under the NBHCP or in the DEIR.

Coalition-36

The commenter alleges that the DEIR provides inaccurate information concerning the amount of tonnage allowed under Ostrom Road landfill's current waste disposal permit and provides a suggested revision.

As shown in FEIR Chapter 4, "Corrections and Revisions to the DEIR," the following revisions have been made to page 3.10-8 under "Ostrom Road Landfill" in Section 3.10, "Public Utilities."

> In March 2002, the Yuba County Board of Supervisors granted YSDI an amendment to its existing permit to allow more tonnage to be accepted at the Ostrom Road Landfill. At present, the Ostrom Road Sanitary Landfill is permitted to accept ~~3,000~~ 1,900 maximum tpd of solid waste Beginning in 2011, the permitted capacity would increase to 2,700 maximum tpd. After 2030, the permitted capacity would increase to 3,000 maximum tpd of solid waste. The landfill has a total capacity of 42 million cubic yards, and a remaining capacity of 41 million cubic yards. Currently, the landfill has a closure date of 2066 (NorCal Waste Systems, Inc. 2006, CIWMB 2007d).

As shown in FEIR Chapter 4, "Corrections and Revisions to the DEIR," the following revisions have been made to the last paragraph on 3.10-19 and the first paragraph on page 3.10-20 under Impact 3.10-4, "Increased Generation of Solid Waste," in Section 3.10, "Public Utilities."

> Unrecyclable solid waste would be disposed of at the Ostrom Road Landfill~~,~~. ~~which is~~ It is anticipated that solid waste disposal services would be required after initiation of the proposed project in 2011. At that time, the Ostrom Road Landfill would be permitted to accept 2,700 tpd of solid waste. The estimated 330.6 tpd of solid waste generated by the proposed project at buildout would be approximately ~~11%~~ 12% of the ~~3,000~~ 2,700 maximum tpd that could be received at the landfill. After 2030, the permitted capacity would increase to 3,000 maximum tpd of solid waste and ~~Therefore,~~ this landfill ~~has~~ would continue to have sufficient permitted capacity to accommodate solid-waste disposal needs for the proposed project.

Coalition-37 The commenter asserts that the DEIR uses a baseline based on some future project conditions, instead of the existing environment.

The commenter is incorrect. The DEIR based its analysis of impacts on the existing baseline, not hypothetical future conditions. In places, the EIR discusses future anticipated events, such as an upgrade of the flood zone status for the area, and other planned, foreseeable improvements. But it is incorrect to assert that the EIR used future, uncertain improvements in its baseline assumptions. As explained below in responses to the commenter's specific statements regarding various subject areas, the environmental baseline used for the impact analysis was existing conditions (present at the time the NOP was published, as suggested by the CEQA Guidelines), not assumed future improvements. The commenter confuses the DEIR's acknowledgement and discussion of the likelihood of future improvements in the course of discussions of the impacts for improper reliance on these future improvements as the baseline.

Coalition-38 The commenter makes several assertions. First, the commenter claims that the DEIR assumes a future scenario in which the SRCSD wastewater treatment plant (WWTP) DEIR appeal has been upheld, The commenter is mistaken; the DEIR clearly describes the legal situation surrounding the SRWTP 2020 Master Plan EIR (pages 3.10-16 and -17 of the DEIR) and notes that the Court of Appeal could uphold or overturn the Superior Court's determination in whole or in part. The DEIR clearly states that the Superior Court decision could be upheld on appeal and does not assume that decision will be overturned. Furthermore, regardless of questions about SRCSD treatment capacity, the DEIR acknowledges that additional approvals would be required before SRCSD could begin service to the project site, and offers several alternate sewer systems (DEIR pages 2-36 and 3.10-5, and 3.10-16) which may be implemented as a means of providing sewer service to the proposed project. The DEIR further acknowledges the fact that there would be no assurances that the SRWTP would have adequate capacity for new wastewater flows for project development after 2020 (page 3.10-17). Because of the uncertainty surrounding treatment availability and capacity, the impact of increased demand for wastewater treatment plant facilities is found by the DEIR to be potentially significant (DEIR page 3.10-17). The DEIR requires that proof of adequate wastewater treatment capacity be demonstrated prior to approval of final maps and building permits (Mitigation Measure 3.10-2, page 3.10-18). Second, the commenter states that the environmental baseline the DEIR is required to analyze is the WWTP's existing capacity – a capacity

that the commenter claims will not be sufficient to accommodate the proposed Sutter Pointe Specific Plan. The DEIR presents both the existing WWTP capacity (as of 2006) and the proposed capacity under the Sacramento Regional Wastewater Treatment Plant 2020 Master Plan (DEIR pages 3.10-5 and 3.10-17). The commenter's claim is based on his assertion that the Court of Appeal's decision to review the Superior Court's determination does not stay that decision as stated in the DEIR (DEIR page 3.10-17). In fact, the commenter alleges that the DEIR's assessment that "legal effect of the pending appeal is to stay the Superior Court's determination of legal deficiency" is a "blatant mischaracterization of the law." The County disagrees with this assertion that the DEIR mischaracterizes the legal effect of the Court of Appeal's review of the Superior Court's determination.

Based on the alleged lack of existing capacity to accommodate the proposed project in concert with other planned growth in the region, the commenter finally asserts that mitigation for the lack of sewer service must be to construct a new WWTP within the project site, and observes that the DEIR does not contain such a requirement. The commenter is mistaken that the mitigation for the lack of sewer service would require construction of a new WWTP within the project site. Please refer to DEIR Chapter 2.0, "Project Description," page 2-36 and Master Response 8, "Wastewater Service to the Project Site," for a discussion of other alternatives for provision of wastewater treatment to the proposed project. Connection to SRCSD's collection system and the SRWTP is considered the preferred means to provide sewer service to the proposed project, but, as the DEIR clearly identifies, approval for this service has not yet been granted. Mitigation Measures 3.10-1a (page 3.10-15) and 3.10-2 (page 3.10-18) require that proof of sewer service and sewage treatment capacity be provided prior to approval of final maps or building permits. If sewage collection and treatment cannot or would not be provided by SRCSD for any reason, any of the alternatives described on DEIR page 2-36 and in Master Response 8, "Wastewater Service to the Project Site," could be pursued to provide sewer service to the project site, and in the event that no sewer service can be provided, Mitigation Measures 3.10-1a and 3.10-2 would preclude the proposed project from moving forward.

Also, please see Response to Comment SRCSD-7 and -10; as described, the SRWTP is currently operating at a capacity of 141 mgd, whereas it was projected in the SRCSD 2020 Master Plan that it would exceed its permitted capacity of 181 mgd by 2007; in fact, flows have decreased (from 155 mgd) since the time the EIR for the Master Plan was prepared, suggesting that substantially more development can be accommodated in the existing capacity than previously thought. The plant currently has 40 mgd of available capacity within its current permit. The plan to add permitted capacity at the SRWTP would have increased capacity by 37 mgd (from 181 to 218 mgd). Thus, under current conditions, there is more available capacity at the plant than the increment of capacity that would be available between the current permitted capacity of 181 mgd and the 218 mgd provided for in the Master Plan.

Coalition-39 The commenter asserts that the DEIR treats an A99 FEMA flood zone designation as the environmental baseline, even though the site is within an existing AE flood zone.

The section cited by the commenter (DEIR page 3.7-22) refers to an explanation of the Natomas Levee Improvement Program currently under construction by the Sacramento Area Flood Control Agency. Nowhere in the referenced section or elsewhere in the DEIR is the A99 FEMA flood zone designation relied on as the environmental baseline. See also Responses to Comment Coalition-26, Coalition-37 and Coalition-87.

Coalition-40

The commenter asserts that the DEIR wrongly treats several other infrastructure improvements as the existing baseline, including RD 1000 drainage improvements and an accompanying drainage improvement agreement with Sutter County.

The commenter mischaracterizes the treatment of the RD 1000 drainage improvements in the DEIR. Chapter 2.0, "Project Description," Table 2-4 provides descriptions of required project-related off-site infrastructure improvements, and states that "All off-site infrastructure needed to support the proposed project is analyzed in this EIR at a program level unless CEQA clearance already has been obtained or in process." The proposed RD 1000 drainage improvements are shown on Exhibit 2-4, and are discussed on page 2-23. RD 1000 drainage improvements are listed as project-related improvements; thus, they have not been used as the environmental baseline.

With regards to the drainage improvement agreement that is needed with Sutter County, as stated on page 3.7-49 of DEIR Section 3.7, "Hydrology and Water Quality," "Sutter County and RD 1000 have entered into a Drainage Improvement Agreement that provides for, among other things, preparation of a Drainage Plan that provides for the orderly construction and installation of drainage improvement with each phase of project development according to RD 1000 standards." That agreement was entered into and signed in October 2000 (DEIR, page 3.7-8). The original 2000 agreement will be replaced by a new agreement executed in December 2008, which would take effect upon approval of the proposed project. The new agreement requires development of a "drainage plan." Because such a plan has been drafted, but not finalized, the DEIR contains Mitigation Measures 3.7-2a and 3.7-2c, which would ensure that appropriate final drainage plans be prepared and approved, and that said plans must be in compliance with the agreement signed in October 2000. Therefore, the County believes that the DEIR has appropriately identified the executed agreement between RD 1000 and the County, and has included appropriate feasible mitigation measures to ensure that the terms and conditions of the agreement would be carried out. No changes to the text of the DEIR are necessary.

Coalition-41

The commenter states that the DEIR wrongly treats several infrastructure improvements as the existing environmental baseline, including Placer Parkway and the SR 99/70 interchange, citing "obvious deficiencies in Caltrans' environmaental review of the project."

According to CEQA Guidelines Sections 15002(g), 15126(a), 15126.2(a), and 15130, the EIR should analyze the project against the existing physical conditions present on the site at the time the Notice of Preparation is published (i.e., the environmental baseline) and under cumulative conditions. As a result, the EIR contains an existing plus project scenario and a cumulative plus project scenario. Due to Placer Parkway funding constraints, Placer Parkway, which includes an interchange at SR 99/70, is not assumed in the environmental baseline. Instead, the EIR contains a cumulative plus project scenario which does include Placer Parkway. The commenter does not specify which deficiencies in Caltrans' review of the SR 99/70 interchange project are at issue. The original draft Project Report for the interchange project was signed by Caltrans on November 7, 2002. On November 7, 2002, Sutter County prepared an Initial Study and Mitigated Negative Declaration for the SR 99/70/Riego Road Interchange project. Sutter County filed a Notice of Determination for the Mitigation Negative Declaration on March 7, 2003. In August 2006, Caltrans determined that the interchange project was categorically excluded from review under the National Environmental Policy Act ("NEPA"). On September 6, 2006, the Federal Highway Administration agreed with

Caltrans that the project was properly classified as categorically excluded. With approval of Measure M and the preparation of traffic studies for the SPSP, there was a need to amend the original Project Report. As part of the updated Project Report completed in November 2007, Sutter County and Caltrans prepared a NEPA/CEQA Re-Validation Form. The Re-Validation Form concluded that only minor technical changes were necessary for the updated Project Report. An addendum was prepared and attached to the Re-Validation Form, which was signed by Caltrans on October 30, 2007 as complying with NEPA. The Re-Validation Form was also signed by Sutter County as complying with CEQA. This was a thorough public review process that included a public open house. At no time were there any challenges to the adequacy of the environmental review for the interchange project.

Coalition-42 The commenter asserts that the DEIR wrongly treats the construction of a sewer line connection to the SRCSD system and entry into a wastewater services agreement with SRCSD as a part of the environmental baseline. The commenter mischaracterizes the treatment of this sewer connection in the DEIR; the sewer line connection to the SRCSD system at the Upper Northwest Interceptor is identified as part of the proposed project, and is analyzed at a program level as part of the project. Please refer to Table 2-4 on p. 2-19 of the DEIR for a complete list of off-site infrastructure components which are included as part of the proposed project. The "Sanitary Sewer" discussion in Section 2.4, "Description of the Proposed Project" (beginning on p. 2-35) clearly identifies the fact that project implementation would require construction of on- and off-site collection and conveyance facilities, and that regulatory approvals, including entry into a wastewater services agreement with SRCSD, would also be required.

Coalition-43 The commenter asserts that the DEIR wrongly treats the construction of a natural gas pipeline to serve the project site as a part of the environmental baseline. The commenter mischaracterizes the treatment of the natural gas pipeline connection in the DEIR; this connection is discussed in Section 2.4, "Description of the Proposed Project" on p. 2-42. This text states that an extension of natural gas service west along Base Line Road/Riego Road from an existing facility in Roseville is necessary to serve the proposed project. In response to comments received from PG&E, text changes are proposed to this description to reflect service to the site from PG&E's Line 406/407 project, which is currently undergoing environmental review, but which will follow the same alignment identified in the project description. Please refer to the response to PG&E 18 for additional information on these proposed changes.

Coalition-44 The commenter states that the DEIR wrongly treats several infrastructure improvements as the existing environmental baseline, including the construction of light rail to the Sacramento Airport.

Please refer to Response to Coalition Comment 41. The Downtown-Natomas-Airport LRT corridor was assumed under cumulative conditions since it is a Tier 1 improvement in the 2006 MTP. The Tier 1 MTP improvements are those expected to be constructed by 2027 based on reasonably assured funding sources. Therefore, an extension of LRT service to the proposed project was not assumed under existing or cumulative conditions.

Coalition-45 The commenter includes PUC's approval of Golden State Water Company's (GSWC's) application to provide water to the project area in the list of future infrastructure improvements it alleges were wrongfully assumed for purposes of the environmental baseline in the DEIR.

The commenter is incorrect in asserting that the PUC's approval of GSWC's application was assumed for the environmental baseline. As explained in DEIR Section 3.9 "Water Supply," subsection 3.9.3 (Environmental Setting), "[p]resently, there are no public water supply facilities on the project site." (DEIR, page 3.9-3.) This is the baseline that was used for the water supply impact analysis. The DEIR expressly acknowledged that, "[a]t this time, it is uncertain that GSWC will gain the necessary PUC approvals to serve the development. Regardless of the entity that provides the service, though, the same sources of water supply would be used, therefore the analysis of the physical water availability would not change depending on which entity [GSWC or Natomas Central Mutual Water Company] prevails." (DEIR, page 3.9-4.) The DEIR further noted existing water supplies available to the project area, existing water diversion and distribution facilities, and existing levels of groundwater and pumping. (DEIR, pages 3.9-7—3.9-12.) This information, not the alleged assumed PUC approval of GSWC's application, makes up the baseline used for the water supply impact analysis. With respect to the commenter's assertion that the environmental review for this Specific Plan should have been conducted in concert with the review of several of the future projects noted by the commenter, please see Master Response 2, "Programmatic Nature of EIR Analysis," and Response to Comment Coalition-7 above.

Coalition-46

The commenter includes SWRCB's "entirely speculative" grant of a change of land use designation that will allow irrigation water to be used for domestic purposes in the list of future infrastructure improvements it alleges were wrongfully assumed for purposes of the environmental baseline in the DEIR.

The commenter is incorrect in his assertion. The DEIR does not assume that SWRCB will grant a change of land use designation to allow irrigation water to be used for domestic purposes. Rather, DEIR Section 3.9, "Water Supply," Impact 3.9-1 properly identifies on pages 3.9-20 and 3.9-22 that NCMWC would need to obtain approval from SWRCB for the use of water for domestic and M&I purposes, and the process necessary to obtain that approval is described on page 3.9-23. Therefore, the necessary SWRCB approval is not assumed as part of the baseline. Please see also Response to Comment Coalition-45 above and Coalition-67 below.

Coalition-47

The commenter recites portions of the CEQA statute and Guidelines pertaining to identification and investigation of impacts.

The County agrees that CEQA requires a good faith effort to identify impacts. No further response is necessary.

Coalition-48

The commenter states the DEIR fails to meet the informational function of CEQA by improperly applying the programmatic review and tiering provisions of CEQA to the project.

Please refer to Responses to Comments Coalition-7 and Coalition-8 above.

Coalition-49

The commenter reiterates his previous assertion that the DEIR is an impermissible piecemealed review of a larger infrastructure project.

Please refer to Responses to Comments Coalition-7 and Coalition-8 above. The County respectfully disagrees with the assertion that the DEIR's analysis is inadequate or that recirculation of a revised DEIR is required.

Coalition-50

While the commenter agrees with the DEIR's conclusion that construction-related air quality impacts would be significant, the commenter believes that the description of construction emission impacts from project-related off-site infrastructure is inadequate and misleading.

The only justification the commenter appears to offer for his statement that the impacts from project-related off-site infrastructure are "inadequate and misleading" is the claim in comment Coalition-52 that the sewer interceptor used for analysis of off-site infrastructure air emissions in the DEIR is not part of the proposed project. The commenter is mistaken. See response to comment Coalition-52, in which the County explains that the sewer interceptor analyzed on DEIR page 3.4-26 is part of the proposed project. No changes to the text of the DEIR are required.

Coalition-51

The commenter states that "the DEIR models a 'representative' year for construction air emissions, but does not provide the URBEMIS modeling runs that would allow for an independent evaluation of these results."

The commenter's statement is incorrect. DEIR Impact 3.3-1 on page 3.4-48 states that "a representative worst-case year was modeled" and then presents the assumptions on which the representative worst-case year was based. A "representative worst-case year" involves more intense levels of construction activity and associated emissions than a "representative year," and it was chosen for this project as the most conservative approach to ensure that the maximum amount of construction emissions would be analyzed. Detailed information about the parameters used in the URBEMIS modeling are included in DEIR Appendix F, including summaries of the output provided by multiple URBEMIS model runs for construction-, area-, and mobile-source emissions of criteria air pollutants and greenhouse gases. The actual output files from the URBEMIS model runs will be added to Appendix F as part of this FEIR.

Also, please see Response to Comment Coalition-3 regarding Phase 1A and the programmatic nature of this EIR.

Coalition-52

The commenter claims that the DEIR's analysis of off-site infrastructure-related air impacts is flawed, because it is based on a piece of sewer infrastructure that is not part of the proposed project.

The commenter first claims, in many instances, that the EIR "piecemeals" its analysis. The commenter than criticizes the EIR's analysis for being too inclusive of all components of the project and the infrastructure that will serve it. As in other comments of this nature, the commenter is mistaken. The off-site sewer infrastructure evaluated in DEIR Impact 3.4-1 (pages 3.4-26 through -27) is part of the proposed project. Please see DEIR Chapter 2.0, "Project Description," Table 2-4 which lists the "Sutter Pointe Off-Site Sewer Force Mains" and Exhibit 2-9, "Off-Site Sewer Plan" which shows the sewer force main route evaluated in Impact 3.4-1. No changes to the DEIR text are required.

Coalition-53–54

The commenter asserts that the DEIR wrongly concludes that mobile source emissions from the proposed project's operational activities will not have a significant environmental impact on the achievement of ambient air quality standards, because the DEIR incorrectly uses the traffic Level of Service as the air quality threshold.

The County disagrees. The methodology used in the analysis of intersection-level CO hot spots is explained in the first two paragraphs of DEIR Impact 3.4-3 on pages 3.4-35 and 3.4-36 of the DEIR. The level of service (LOS) is used as a screening threshold, rather

than the threshold of significance, to determine whether CO emissions at intersections would have the potential to exceed the ambient air quality standard for CO. The analysis explains that some intersections would not have passed this screening methodology if it were not for mitigation imposed by the traffic impact analysis in DEIR Section 3.3, "Transportation and Circulation." Therefore, the County believes that the methodology use for the analysis of local mobile-source CO emissions is appropriate, and therefore no changes to the text of the DEIR are required.

Coalition-55

The commenter asserts that the DEIR should include an impact analysis of potentially hazardous air emissions (a.k.a, toxic air contaminants [TACs]) from Sacramento International Airport (SMF) based on comments by the U.S. EPA on the Final Environmental Impact Statement (FEIS) for Phoenix Sky Harbor International Airport (PHX), Maricopa County, Arizona.

The County disagrees with the comparison of SMF and PHX. The analysis of TACs associated with PHX concerned off-site sensitive land uses located within 1,000 feet of the airport. The proposed project would be located more than 2 miles from SMF. However, please see Response to Comment SCAS-7, which more fully explains that health risks at the site from exposure to emissions at SMF would not be expected to be significant. The Response to Comment SCAS-7 is based on information in the EIR for expansion of SMF, and is therefore based on substantial evidence. Therefore, the analysis requested by the commenter is not appropriate for the proposed project, and no changes to the text of the DEIR are necessary.

Coalition-56

The commenter asserts that while the DEIR calls the impacts of GHG emissions significant, it does so only for the "purposes of description" and does not engage in a meaningful impact analysis. The commenter further alleges the project's GHG emissions for Phase 1 and Phase A are understated because the analysis does not include stationary-source emissions.

The County disagrees with the commenter's assertions. DEIR Section 3.17, "Climate Change." contains a detailed, specific discussion of GHG methodology and thresholds, including a summary of the current state of the science and projected policy changes, along with a thorough, well reasoned, quantitative analysis of project-related GHG emissions in Impacts 3.17-1 and 3.17-2, plus associated mitigation measures. In fact, the analysis in the DEIR provides 10 pages of state-of-the art GHG assessment. Specific evidence that the analysis is not sufficient is lacking in the comment. Furthermore, the analysis of GHG emissions contained in Impacts 3.17-1 and 3.17-2 does include stationary-source emissions. The County further notes that GHG emissions associated with on-site stationary sources (e.g., portable equipment such as diesel-fueled emergency back-up generators) would be nominal in comparison to GHG emissions generated by mobile sources and other sources also evaluated in DEIR Section 3.17 and summarized in Table 3.17-2.

The County also notes that this DEIR provides an analysis of impacts at a programmatic level. Having knowledge of more detailed emissions estimates would not change the manner in which the analysis was conducted, the mitigation proposed, or the conclusions pre- and post-mitigation in the DEIR, particularly in light of the global nature of the impact and the statewide focus of AB 32. Thus, the nominal estimate of on-site stationary-source GHG emissions is not necessary to support the impact conclusions contained in Section 3.17 of the DEIR, and does not deprive the public or decision makers of the information needed to support those conclusions. Here, the County has

made a good-faith, reasoned effort, based on available information, to identify the levels of GHG emissions that would be generated by the proposed project.

An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. (Cal.Admin.Code, tit. 14, § 15151; *San Francisco Ecology Center v. City and County of San Francisco (1975) 48 Cal.App.3d 584, 594, 122 Cal.Rptr. 100*.) An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible.... The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." Cited in *Citizens to Preserve the Ojai v. County of Ventura*, 176 Cal.App.3d 421, 429 (1985).

Coalition-57

The commenter asserts that the DEIR quantifies GHG impacts only for Phase 1-A of the project and does not quantify GHG impacts for other project phases. The commenter also claims that the DEIR states that the "exorbitant" numbers of GHG emissions for Phase 1-A, while significant, cannot be further evaluated because there exists no threshold by which an analysis could be "informed."

The DEIR quantifies GHG emissions for Phase 1-A and not for any of the subsequent phases. As explained in the DEIR, the regulatory environment surrounding GHG emissions is expected to radically change the amount of GHG emissions from development over the next several years, and Phase 1 and Phase A emissions are a "proxy for evaluating GHG emissions associated with operation of the entire Sutter Point Specific Plan." (DEIR page 3.17-14.) Phase 1 and Phase A represent roughly one-third of the development that would occur in Sutter Pointe, and if GHG emissions continue at a proportionate rate as calculated for Phase 1 and A (and emissions will not follow this pattern; they will become for more efficient, or less, per unit of development as regulations kick in), total direct and indirect emissions would exceed 1 million metric tons per year. However, compliance with AB 32 and the significance thresholds used in the DEIR is not tied to gross quantities of emissions; rather, it is tied to the efficiency (30% reduction in emissions compared to business-as-usual; see page 3.17-10). This is consistent with the regulatory framework of AB 32, which specifically notes that growth in California is expected, but, through this acknowledgement, recognizes that the rates of emissions per unit of growth must be reduced if we are to achieve the targets specified in the legislation, and necessary for California to do its fair share to avoid dangerous climate change effects. See the discussion below. Individual phases of the project will be required to undergo more detailed, project-level CEQA review as tentative maps and improvement plans are submitted.

The commenter misstates the DEIR text when he claims that the DEIR says that GHG emissions cannot be evaluated because no threshold exists. In fact, DEIR pages 3.17-9 through 3.17-11 contain an exhaustive discussion of the issue of GHG thresholds. That discussion informs the reader that while there are no currently adopted GHG emissions reductions thresholds, by adopting AB 32 and SB 97, however, the State of California has established GHG reduction targets (in AB 32) and has determined that GHG emissions, as they relate to global climate change, are a source of adverse environmental impacts in California that should be addressed under CEQA (in SB 97) (See DEIR page 3.17-9.) That discussion goes on to note that as an interim step toward development of required guidelines, OPR recently released a technical advisory recommending, among other things, that CEQA documents consider the impacts of GHGs, quantify the emissions where feasible, and develop measures to mitigate impacts when significant (OPR 2008).

DEIR page 3.17-9 goes on to state that in addition to quantifying and disclosing the mass level of GHG emissions associated with the proposed project, as recommended by OPR (2008), the analysis also attempts to present those mass emission levels in a framework that demonstrates their connection to the reduction goals of AB 32. A detailed discussion follows over the next two pages of the DEIR explaining what standards were used, and how they were used, in the GHG emissions analysis performed for the SPSP. DEIR Impacts 3.17-1 and 3.17-2 present the detailed GHG analysis performed for the SPSP (short-term and long-term) and both impacts identify the generation of GHG emissions as significant. Mitigation Measures 3.4-1, 3.4-2, and 3.17-1 contain feasible mitigation measures that would help to reduce the project's GHG emissions, but the DEIR concludes that the proposed project's incremental contribution to both short-term and long-term operational GHG emissions is cumulatively considerable and significant and unavoidable. The County therefore believes that the GHG emissions analysis contained in the DEIR is appropriate and no changes to the text are necessary.

See also Comment 11 from the Sacramento Metropolitan Air Quality Management District (SMAQMD), in which SMAQMD commends the County on the thresholds used for the GHG emissions analysis in the DEIR and agrees with the DEIR's significance conclusions in that regard.

Coalition-58

The commenter claims the County has not established a significance threshold for GHG impacts. The comment is not correct; a significance threshold is provided on DEIR page 3.17-10:

> "A qualitative analysis has been employed to determine whether the GHG emissions associated with the proposed project would be cumulatively considerable (significant). This impact discussion will address the question of whether land uses developed under the proposed Specific Plan would achieve a 30% reduction in GHG emissions compared to business-as-usual emission levels projected for 2020."

The rationale for establishing this threshold is provided on pages 3.17-9 through 3.17-11. The DEIR acknowledges that no air district, in California, nor the California Air Resources Board, have adopted any thresholds of significance for GHG emissions. Given that the agencies with expertise over this issue have not adopted any thresholds, it falls to local lead agencies to do their best to develop reasonable thresholds, based on substantial evidence, and here Sutter County has done this.

Coalition-59

The commenter alleges that the DEIR must be revised to correct inconsistencies in the description and analysis of the project's off-site infrastructure impacts on farmland. The commenter claims that the DEIR fails to disclose the loss of farmland from construction of off-site infrastructure. The commenter further suggests that DEIR page 3.11-9 states that off-site infrastructure improvements will be within road rights-of-way and along existing boundaries, but then in contradiction the DEIR supposedly states that 800 acres of off-site detention basins will be disturbed, for a total project-related loss of 8.000 acres of "critical" farmland.

The commenter's characterization misstates the DEIR. The description of off-site elements at DEIR page 3.11-9 refers to those improvements that would actually be constructed in existing rights-of-way and along property lines, and is intended solely to provide an explanation to the reader as to why additional setting detail is not provided related to those infrastructure improvements within road right-of-ways. The DEIR clearly

identifies the loss of farmland from off-site infrastructure in Impact 3.11-1 on page 3.11-11. The County notes that the very next sentence following that cited by the commenter on page 3.11-9 discusses the proposed off-site detention basin (300 acres in the drainage alternative east of the project site and the 800 acres for off-site detention west of the project site). As is further stated in Impact 3.11-1, the total amount of Important Farmland that would be lost through project-related construction (both on-site and off-site) is 7,735 acres of permanent conversion.

The conversion of this land has been identified as a direct and significant impact. Implementation of Mitigation Measure 3.11-1 would reduce the level of impact, but not to a less-than-significant level. Therefore, even after implementation of all feasible mitigation, the impact would remain significant and unavoidable (DEIR page 3.11-12).

Coalition-60 The commenter asserts that the DEIR obfuscates and fails to evaluate the "shocking" extent of the project's impact on farmland, and provides statistics concerning farmland conversion in the Central Valley of California. The DEIR identifies the conversion of 6,935 acres of important farmland to nonagricultural urban uses as a significant impact (Impact 3.11-1 on p. 3.11-10) and notes that even following implementation of Mitigation Measure 3.11-1 (described on p. 3-12), this impact would be significant and unavoidable. In Section 5.7.11 (p. 5-25 of the DEIR), the cumulative impacts to agricultural resources are described, and the project is found to result in a cumulatively significant incremental contribution to this cumulatively significant and unavoidable impact. The most "shocking" finding that an EIR can make is that an impact is significant and unavoidable…in other words, the impact cannot be reduced, through all feasible means, to the extent it is not significant. The County has done its job of informing decision makers and the public of the extent and significance of project impacts to agricultural resources.

Coalition-61 The commenter asserts that a wetlands delineation is required for analysis of off-site improvements. Please see Response to Comment Coalition-12 above, which addresses impacts to aquatic resources from off-site improvements.

Coalition-62 The commenter states that a jurisdictional determination from the U.S. Army Corps of Engineers is required for an assessment of impacts to wetlands under CEQA. Please see Responses to Comments Coalition-13 and Coalition-25 above, which fully respond to comments claiming a need for a jurisdictional determination from USACE.

Coalition-63 The commenter states that the conclusion that none of the rice fields or canals and ditches are jurisdictional is "pure fancy." The delineation prepared by ECORP (attached to the DEIR as Appendix H) presents the environmental data compiled and explains how this conclusion was reached by applying existing federal law and policy under Section 404 of the Clean Water Act. The commenter does not provide specific information regarding why it rejects the conclusion reached regarding federal jurisdiction. Therefore, Sutter County is unable to specifically address the commenter's allegation regarding the analysis or conclusions in the delineation.

Coalition-64 The commenter states that the USACE strives to verify delineations within 60 days, not two years, and that project applicants have not sought to obtain verification of the existing delineation. Please see Responses to Comments Coalition-13 and Coalition-25 above, which explain that the project proponents have been diligent in seeking a jurisdictional determination of the ECORP delineation, but that neither the county nor the

project proponents have any control over USACE's schedule in issuing a jurisdictional determination.

Coalition-65–66 The commenter asserts that the DEIR's significance evaluation of water supply does not meet the requirements of CEQA.

The commenter cites portions of the California Supreme Court's relevant decision in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412. However, the commenter appears to misunderstand the holding in that case. The commenter draws an incorrect conclusion from that decision, stating that the case holds that "it is impermissible for such a discussion [of water supply impacts, replacement sources, and alternatives] to include a mitigation provision that a 'project's future phases will not be built' in the event that water becomes available." This statement is not the position taken by the Supreme Court. The Court actually held that:

> where even a full discussion leaves some uncertainty regarding actual availability of the anticipated future water sources, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies. [] The law's informational demands may not be met, in this context, simply by providing that future development will not proceed if the anticipated water supply fails to materialize. *But when an EIR makes a sincere and reasoned attempt to analyze the water sources the project is likely to use, but acknowledges the remaining uncertainty, a measure for curtailing development if the intended sources fail to materialize may play a role in the impact analysis. []*

(*Vineyard*, supra, 40 Cal.4th at p. 432, citations omitted, italics added.) The Court's decision is understood to mean that a mitigation measure curtailing future project phases is indeed appropriate, as long as the EIR's water supply analysis complies with the rest of the Court's guidance regarding what constitutes an adequate water supply analysis for large-scale, long-term planning projects.

Coalition-67 The commenter states that under the legal standard of Vineyard, it cannot be "confidently determined" that SWRCB will grant a change of use permit to NCMWC.

The County agrees with this statement. The DEIR included a section exploring the "Reasonable Likelihood of Water Supplies to Meet Project Demands." (DEIR, pages 3.9-24-3.9-25.) The DEIR acknowledged that although there were adequate surface water supplies from a physical availability standpoint, "there is no similar reasonable certainty from a legal and regulatory standpoint, since additional actions by the Bureau of Reclamation, SWRCB, and NCMWC would be necessary." (DEIR, page 3.9-27.) Thus, "in case the surface water supplies do not become available because of the required regulatory and legal approvals, an analysis of alternative sources of water other than what has been identified previously" was provided as required under the Vineyard decision. (Ibid.)

Coalition-68 The commenter states that "no real alternative for obtaining surface water supply from another source" was discussed in the DEIR.

The commenter is incorrect. Please refer to DEIR Section 3.9, "Water Supply," pages 3.9-28—3.9-32 of the DEIR. The DEIR meets the exacting standards articulated by the Vineyard Court. It fully analyzes the most likely and preferred water supplies – the initial

reliance on groundwater and later reliance on NCMWC's surface water supplies – and discusses at length the legal and regulatory factors that lend uncertainty to the surface water component of that plan. The DEIR explores potential alternative water supplies as required under Vineyard, which the commenter criticizes as being unpromising for many of the same reasons that make the primary water supply option uncertain. The Vineyard decision does not require that the proposed project nail down an assured water supply at this stage of project planning, as commenter appears to believe. (Vineyard, supra, 40 Cal.4th at p. 432 ["CEQA should not be understood to require assurances of certainty regarding long-term future water supplies at an early phase of planning for large land development projects."].) The reality of water planning in a drought-prone and semi-arid State is that the preferred option analyzed in an EIR is likely to be the best and most likely source, even if it cannot be confidently determined to be available, and secondary options (Vineyard water supply alternatives) are likely to be less feasible (or they would presumably be the preferred option of the water and land use planning agencies).

Coalition-69 The commenter asserts that the alternatives examined in the DEIR's water supply section are dubious and that the DEIR concedes they are not really "alternatives."

Please see Response to Comment Coalition-68. The alternatives examined in the DEIR's water supply section were developed and described to comply with the direction from the Supreme Court in the Vineyard decision, which requires other water supply options to be discussed if the primary water supply(ies) identified to serve the project cannot be determined to be "reasonably likely" under the Court's standards. The water supply "alternatives" are not intended or required to fulfill the same function or meet all of the same criteria as project alternatives, which are defined in CEQA Guidelines section 15126.6.

Coalition-70 The commenter asserts that the DEIR fails to include a discussion of the "environmental consequences" of the water supply alternatives and an analysis of the likelihood of obtaining a change of use permit from SWRCB.

The commenter is incorrect. Please see DEIR Section 3.9, "Water Supply," pages 3.9-27 through -34 for a discussion of the potentially significant impacts resulting from implementation of each of the three water supply alternatives and several acknowledgments of the uncertainty regarding the SWRCB's issuance of a change of use permit.

Coalition-71 The commenter asserts that the DEIR improperly piecemealed the environmental review for the Specific Plan because it did not combine this analysis with that which will be undertaken by the PUC to examine Golden State Water Company's application to construct and operate a water system in the Specific Plan area.

As in other comments by this commenter, the commenter appears to be alleging that the County should have combined its review with that of all other independent regulatory bodies with jurisdiction over the infrastructure and resources that will serve the project area. Please see Master Response 2, "Programmatic Nature of EIR Analysis." Please also refer to Responses to Comments GSWC-18, -33, and -42.

Coalition-72 In Coalition 72, commenter asserts that the DEIR fails to apply a significance threshold mandated by CEQA in that it determines that the impact on airspace safety hazards associated with project water features is less than significant after mitigation. Impact 3.12-5, "Potential for airspace safety hazards associated with project water features" is

considered to be significant, but mitigated to a less-than-significant level by preparation and implementation of a design and management plan for the proposed water features. Implementation of this mitigation measure will reduce the safety hazards related to hazardous wildlife attractants below the level of existing conditions.

Coalition-73

In Coalition 73, commenter asserts that consistency with the Sacramento International Airport Wildlife Hazard Management Plan (WHMP) and the Natomas Basin Habitat Conservation Plan (HCP) must be applied as a significance threshold, and states that creation of any wildlife attractant as part of the project would be inconsistent with these plans.

The commenter mischaracterizes the purpose of the WHMP, which is the Sacramento County Airport System (SCAS) plan for actions it will take to reduce the risk of wildlife strike hazards at Sacramento International Airport (SMF). This plan is not intended to provide specific guidance or regulations for other organizations with respect to their activities in the airport's planning area. As stated on p. 1-6 of the WHMP, "SCAS reviews and comments on the proposed habitat management and development plans of privately and publicly owned properties within the General Zone. SCAS also strives to work cooperatively with adjacent property owners to discourage land-use practices that might increase wildlife hazards at SMF." Similarly, the text in the HCP referenced in Coalition 73 describes concerns related to the potential for habitat preserves or existing habitat to attract wildlife which could provide a hazard at SMF, but does not prescribe thresholds for addressing those attractions.

As stated on p. 3.12-2 of the DEIR, the Federal Aviation Administration (FAA) recommends that land uses having the potential to attract hazardous wildlife to or in the vicinity of public use airports be separated from the airport by a distance of 5 statute miles where the attractant may cause hazardous wildlife movement into or across the approach or departure airspace. This recommendation was used as the threshold for Impact 3.12-5, as described on p. 3.12-20 and 3.12-28 through 3.12-29 of the DEIR. As described above and in the discussion of Impact 3.12-5, this impact was found to be significant, and Mitigation Measure 3.12-5 is imposed in order to address the impact. Mitigation Measure 3.12-5 requires preparation and implementation of a Design and Management Plan for the proposed water features. Plan contents are specified in the implementation measure, and include specific design measures to minimize wildlife-related safety hazards, such as allowing grass to grow up to 20 centimeters in height, preventing growth of cattails and aquatic plants, installing barriers between lakes and nearby vegetated areas, removing nesting materials, and hazing birds. The plan is specified to include information sufficient to satisfy requirements for preparation of a wildlife hazard management plan, and long term management/perpetual monitoring are also required as a part of this mitigation measures. Implementation of this mitigation measure would reduce potential aircraft safety hazards associated with the potential for on-site project water features to attract hazardous wildlife to a level below the existing conditions on the project site, in a manner consistent with FAA guidelines.

Coalition-74

The commenter asserts that the proposed land use designations with the Overflight Zone would draw an average density in excess of 25 people per acre per hour over a 24 hour period, and would therefore be incompatible with the CLUP. Two land use classifications are applied to lands within the Overflight Zone: Employment-2 (E-2) and Industrial Drainage Basin (IDB). IDB areas are designated for the temporary detention of stormwater following precipitation events, with no developed use permitted. Permitted uses in the E-2 zone include primarily industrial and manufacturing uses. Use tables on

page B-44 through B-46 the Land Use and Development Code (provided as Appendix B to the Specific Plan) identify permitted uses in the E-2 zone. Although industrial and manufacturing uses are the primary uses intended for the E-2 zone, other, more intense land uses (such as convenience stores, vocational schools, and libraries or museums) would also be permitted. Although industrial land uses would not be expected to draw an average of more than 25 people per acre per hour over a 24-hour period, these more intensive land uses would have the potential for drawing densities which would not be compatible with the CLUP. The County appreciates commenter's notice of this concern.

In light of this broader range of potential uses, the following text changes are proposed to Impact 3.12-4 on p. 3.12-27 of the DEIR as shown in FEIR Chapter 3, "Corrections and Revisions to the DEIR":

> The proposed project appropriately designates Employment 2 and Industrial Drainage Basins as the only land uses proposed within airport safety zones. The Sacramento International Airport Master Plan identifies the extension of the existing east runway as a possible future project. This runway extension would increase the area of the project site within the airport safety zones, but the entire potentially affected area lies within the Employment 2 and Industrial Drainage Basin land use designations. ~~These land uses are compatible with the overflight zone. However, many~~ Some specific types of ~~manufacturing and commercial~~ uses which would be permitted in the Employment 2 designation are not compatible in the overflight or approach-departure zone. The specific types of ~~manufacturing and commercial~~ uses that would be developed as part of the proposed project are not known at this time. Therefore, additional restrictions (relating to, among others, number of people per hour per acre, lights of certain colors, reflection of sunlight, generation of smoke, electrical interference, and hazardous material use and storage) may be required for those future manufacturing and commercial land uses. Therefore, this direct impact is potentially significant. No indirect impacts would occur.

The following text changes are proposed to Mitigation Measure 2.12-4 on p. 3.12-27 of the DEIR:

> Mitigation Measure 3.12-4: Evaluate Compatibility of Future On-Site Land Uses in the Sacramento International Airport's Approach-Departure and Overflight Zones and Implement Any Required Restrictions on Land Uses by the Airport.
>
> **On-Site Elements**
>
> Where required by state law, the County shall consult with the Airport Land Use Commission to obtain a determination as to whether proposed land uses are consistent with the Sacramento International Airport Comprehensive Land Use Plan. In no event shall the Board of Supervisors approve any land use that the Board determines is inconsistent with the purposes of the State Aeronautics Act. In addition, prior to County approval of improvement plans for any individual development proposal that includes land within the overflight or approach-departure zones, the County shall consult with the Sacramento International Airport. Any feasible restrictions on land uses recommended by the Sacramento International Airport (e.g., number of people per hour per acre, lights of certain colors, building materials to reduce

reflection of sunlight, requirements for hazardous material use and storage) shall be implemented by the project applicant(s).

These text changes address the concern identified in Coalition 74, and would ensure that impact 3.12-4 would be mitigated to a less-than-significant level by requiring consultation with Sacramento International Airport and observing restrictions proposed by the airport within safety zones, including the overflight zone.

Coalition-75

The commenter claims that the DEIR uses compliance with the NBHCP as a threshold, but wrongly concludes that the environmental impact is less than significant. The commenter further states that the project is inconsistent with the NBHCP, and the NBHCP must be amended. According to the commenter, the NBHCP was premised on the Sacramento buffer lands remaining in cultivation, which is no longer the case, and the commenter claims that the proposed project exceeds Sutter County's acreage allotment under the NBHCP.

Please see Responses to Comments Coalition-17, -18, and -19, Friends-A-9, GSWC-50, and Sacramento-2 and -3, as to the DEIR's conclusions on less-than-significant environmental impacts, consistency with the NBHCP, and the Sacramento Airport buffer lands and agricultural uses generally.

The comment is correct that the DEIR uses compliance with the NBHCP as a threshold, and that it concludes the proposed project would have a less-than-significant effect in this regard. Specifically, the DEIR states that a "biological resources impact is considered significant if implementation of the proposed project would . . . conflict with the provisions of an adopted habitat conservation plan; natural communities conservation plan; or other approved local, regional, or state habitat conservation plan." (DEIR, at pages 3.13-28 and -29.) While DEIR Section 3.13, "Biological Resources," address NBHCP consistency throughout (particularly as to NBHCP mitigation measures), the DEIR specifically addresses this threshold at page 3.13-52 and concludes that the proposed project would have a less-than-significant impact on the NBHCP because the proposed project and mitigation are consistent with the NBHCP and its conservation strategy. As explained above in Responses to Comments Coalition-17, -18, and -19, the Specific Plan is within the footprint and acreage approved for development under the NBHCP, and thus the project site already was proposed for and obtained incidental take authorization under the NBHCP. Moreover, approval of the Specific Plan within the Sutter County Permit Area is exactly the level of development and one of the type of covered activities that are contemplated under the NBHCP and incidental take permits. In addition, the Specific Plan and DEIR adopt all of the avoidance, minimization, and mitigation measures imposed by the NBHCP. Thus, the finding that the Specific Plan would have a less-than-significant impact on implementation of the NBHCP is accurate. Approval of the Specific Plan would not trigger an "amendment" to Sutter County's incidental take permit for the reasons set forth in the 2003 NBHCP and Implementation Agreement, nor is a "new effects analysis" required under the NBHCP.

Concerning the Sacramento Airport buffer lands, the commenter states that the NBHCP was "premised" on the Sacramento Airport buffer lands remaining in cultivation. This is incorrect. While generally the airport buffer lands were considered part of the baseline agricultural use in the Natomas Basin, the NBHCP and Sutter County's Incidental Take Permit is not dependent on the airport buffer lands remaining in cultivation. The fact remains that the designated zoning and land uses for the buffer lands has not changed since approval of the NBHCP. Moreover, the NBHCP acknowledged that patterns of

agricultural production would change over time. As explained in Response to Comment Friends-A-9, while maintaining lands in agricultural production may be "beneficial" to sensitive species or otherwise "contribute to the overall success" of the NBHCP, continued agricultural production in the buffer lands is not essential to the ongoing effectiveness of the NBHCP and Sutter County's Incidental Take Permit.

The comment also cites page III-11 of the NBHCP for the premise that "development of [the Airport buffer lands] . . . will be considered a significant change in the HCP." While that might be true as a general matter, the NBHCP recognizes that it is the conversion of open space lands to urban development outside of the 17,500-acre Permit Areas (e.g., through a change in zoning) that would potentially affect the operating conservation plan included in the NBHCP. Thus, for example, the Sacramento Airport buffer lands are not proposed for development at this time and the zoning and land-use designations for that area have not changed since approval of the NBHCP. Consequently, there is no "significant change" requiring further evaluation under the NBHCP or the Specific Plan DEIR as requested by the commenter.

Coalition-76

The commenter claims that the DEIR does not specify the size or location of the acreage of lands that will be disturbed by construction of off-site infrastructure improvements, and thus makes it impossible to independently analyze unspecified environmental impacts. The commenter suggests that the DEIR must be corrected with this information and recirculated for public comment.

See Responses to Comments Coalition-17 and -19. Infrastructure for the proposed project is described in detail and depicted in various figures within the Specific Plan and DEIR (see DEIR Chapter 2.0, "Project Description" and Section 3.13, "Biological Resources." The impact analyses for various species, particularly the giant garter snake and Swainson's hawk, describe and evaluate both on and off-site impacts associated with the proposed project. (See, e.g., DEIR, at pages 3.13-29, -30, -36, -37.) As a programmatic document, precise acreage calculations for much of these improvements are not only impractical, but are impossible to discern at this early stage in the development process. Nonetheless, much of these off-site infrastructure improvements—water, sewer, and dry utilities—are proposed to occur within existing paved roadways, and thus are not anticipated to have any significant effects on covered species or species habitat. (DEIR, at pages 3.13-28 and -37.) For example, as to Swainson's hawk, the DEIR states that "alignments for proposed off-site improvements are generally along roadways, therefore, impacts are generally anticipated to be limited, temporary, short-term disturbance to potential nesting and foraging habitat." (DEIR, at pages 3.13-37.) And for all of these potential off-site impacts, the DEIR proposes mitigation to avoid or reduce those impacts. (See DEIR Mitigation Measures 3.13-1b, -3b, and -5b.)

Because this information is already included within the Specific Plan and DEIR, there is no "significant new information" necessitating the recirculation of the Biological Resources chapter of the DEIR as suggested by the commenter. (See CEQA Guidelines, Section 15088.5, for the general rules governing recirculation.)

Coalition-77

The commenter asserts that the DEIR's significance evaluation of wastewater impacts is improperly premised on the existence of a new sewer interceptor connection to the Sanitation District's WWTP. The commenter further asserts that the DEIR has improperly piecemealed the analysis that will be necessary for the provision of wastewater service to the site because a number of approvals and entitlements may be

needed from other agencies, such as the Sanitation District and Sacramento County Local Agency Formation Commission (LAFCo).

The commenter overstates the certainty of the wastewater plans when it states that the "Sanitation District *must* obtain approval for an annexation." (Coalition Letter, page 46, citing DEIR, page 3.10-4.) The cited page from the DEIR does not say that the Sanitation District *must* do anything. It notes instead that annexation *may* be required. As the Public Utilities Chapter of the DEIR and the Master Response 8, "Wastewater Service to the Project Site," explain, there are a variety of options for handling wastewater service to the project area, none of which have been finalized and set in stone yet. While the approach evaluated in detail in the DEIR that would have SRCSD provide wastewater service to the site is the preferred approach, there are alternatives. The commenter's assertions on this point, as above for several other comments, reveal a misunderstanding of the broad nature of programmatic review. It is not impermissible "piecemealing" to defer project-specific review for components of the proposed project that are not yet finalized. These components are identified and discussed at a programmatic level of review, which is appropriate for a program EIR such as this one. When wastewater service plans firm up, additional project-specific review relating to such service plans will be necessary. Please see Response to Comment Coalition-38. Please also see Master Response 2, "Programmatic Nature of EIR Analysis.".

Coalition-78

The commenter first asserts that SRCSD's plans for the expansion of capacity at the SRWTP (WWTP) have been overturned in court. Please refer to Master Response 8, "Wastewater Service to the Project Site," and Coalition-38 for a discussion of the status of the SRWTP 2020 Master Plan EIR. The commenter then observes that the DEIR states that the SRWTP could potentially treat more future development within its existing permitted capacity than that which was originally anticipated and claims that, even if the SRWTP could accommodate some development, this does not mean that it can accommodate the 40,000 residents proposed in the Specific Plan. The commenter finally asserts that the DEIR statement is unsupported by substantial evidence in the record.

The commenter mischaracterizes the DEIR's impact analysis and conclusions. Regardless of whether the SRWTP's treatment capacity is the existing/permitted capacity (181 mgd as of 2006) or the proposed capacity under the 2020 Master Plan (218 mgd), the DEIR statement on page 3.10-16 that the SRWTP "could potentially provide treatment capacity beyond what was originally anticipated" is correct. The DEIR does not claim that all 40,000 residents would be accommodated within the existing capacity or proposed capacity of the SRWTP under the 2020 Master Plan. In fact, the DEIR concludes that the increased demand for wastewater treatment capacity is a potentially significant impact of the proposed project and that future SRWTP capacity to serve the proposed project beyond 12 years (2020) is speculative (DEIR, page 3.10-17). See also response to Coalition 38 and Master Response 8, "Wastewater Service to the Project Site" which discuss several alternative methods for sewer treatment and disposal.

Coalition-79

As the commenter notes, generally, deferral of identification of mitigation measures to a future date is disallowed under CEQA.

However, the courts and the statute and Guidelines also recognize, that it may not always be practical or possible to identify at the time the EIR is written the site-specific actions that must be taken to reduce or avoid a significant impact, particularly with large-scale, long-term planning projects. Thus, CEQA allows "deferred mitigation" if certain conditions are met, namely the identification of the significant impact and adoption of

performance criteria that future, specific measures must meet. See, further, Master Response 3, "Deferred and/or Hortatory Mitigation."

In a recently published Third District Court of Appeal decision, the court added to the jurisprudence regarding the propriety of deferred mitigation. In *California Native Plant Society [CNPS] v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603 (pet. for review filed April 30, 2009), the court considered whether wetlands mitigation adopted for a large-scale planning project complied with CEQA when it adopted a ratio for wetlands preservation and replacement, but did not identify certain other details, such as the location of the future wetlands preservation or rehabilitation projects. The court confirmed the two long-standing guiding principles governing deferred mitigation: (1) on the one hand, it is improper for an agency to defer the formulation of mitigation measures until after project approval; (2) on the other hand, when an agency has evaluated the potentially significant impacts of a project and has identified measures that would mitigate those impacts, the agency does not have to commit to any particular mitigation measure in the EIR, as long as it commits to mitigating the significant impacts of the project. The details of exactly how mitigation will be achieved under the identified measures can be deferred pending completion of a future study. The court clarified that, in the example of the wetlands mitigation before the court, CEQA does not require an agency to identify any particular proposed mitigation site. The mitigation proposed in the EIR for this project complies with the well-established standards for mitigation as articulated by the court in *CNPS v. City of Rancho Cordova*.

Coalition-80

The commenter states that the DEIR is improperly tiered and that Phase I-A of the project must be analyzed in this DEIR because construction is scheduled to begin in one year and because "extensive data" on this phase of the Specific Plan is already available.

Regardless of when the project developer may intend to begin construction, the County is obligated under CEQA to make its own determination of whether the analysis in this or any subsequent environmental review is sufficiently specific and detailed to provide adequate coverage of the site-specific impacts of any future development proposals. At page 2-56 of the DEIR, it correctly notes that the build out of Phase 1-A will take approximately seven years. It identifies 2010 as the start time in a parenthetical reference. At the time of drafting the project description more than a year ago, it was thought that the near-term site-specific components of Phase 1-A might be able to start construction in 2010. However, in light of the status of the levee improvements and the depressed economy, it now appears more likely that the soonest Phase 1-A could start to develop is at least 2012 or 2013. SAFCA is currently working on construction of 100-year protection for the levees surrounding the Natomas Basin. One-hundred-year protection is necessary for development to begin. The anticipated date for completion of that work is 2011, with certification of the levees with 100-year protection in 2012. The currently depressed state of the economy, particularly for residential uses, lends further uncertainty to the estimated start date for the first phases of the proposed project. The DEIR project description (Chapter 2.0) expressly noted that the timing of development was uncertain, as it was "influenced by the economy, the rate of growth of other regional projects, and changes in regional infrastructure and public facility conditions and needs." (DEIR, page 2-54.) If and when the developer submits a complete application for site-specific development, the County will assess at that time the scope of additional site-specific review, consistent with the tiering and streamlining provisions of CEQA. The commenter will have an opportunity to submit comments on future environmental review documents for individual entitlement applications in the Specific Plan area, including those relating to Phase 1-A.

Coalition-81 The commenter asserts that the DEIR defers "almost all" meaningful analysis of the project's air impact. The commenter further opines that project-level review for Phase 1/A air impacts is improperly excluded from the DEIR, and deferred to future studies and analyses.

Please refer to Master Response 7, "Greenhouse Gas Analysis and Mitigation," for a discussion of program level analysis and mitigation measures as they pertain to air quality analysis and mitigation measures. In this comment, the commenter alleges that individual air impacts "have not been analyzed in this DIER, nor will they be analyzed in subsequent project phases to the extent that the checklist derived from the DEIR has been complied with." The commenter further suggests that this is deferral of mitigation, and quotes a portion of a later comment which states that the DEIR "should specifically require a project-level analysis for all future project phases or subphases (if sufficient detail is not available for analysis for the entire project phase)." As noted in the above-referenced Master Response, the program-level analysis provided in this document, for both air quality and climate change impacts, will not replace later project-level analysis as more detailed project information becomes available at each project phase. The commenter's note that project level analysis should be required for future phases or subphases implicitly acknowledges that this project level analysis can only be conducted as more detailed information becomes available. Contrary to the commenter's assertion, the program level analysis provided in the DEIR, including the program-level mitigation checklist, will not preclude the requirement for additional project level analysis of individual project phases. A program Air Quality Management Plan (AQMP) has been prepared for the proposed project. The program-level AQMP provides guidance and requirements with respect for land planning, land use, and transportation elements of the project (multimodal transportation, mix of land uses, etc.). Many of the mitigation measures that will be required to reduce the project's air quality impacts are specific to tentative maps and improvement plans and other details that are not available at this time. As individual project phases move forward, project-level AQMPs will be required, and these individual AQMPs will require design-level mitigation measures (such as built energy efficiency measures) that cannot be established until sufficient, project-level design information is available to judge which measures are feasible and effective in reducing air emissions. Therefore, no changes to DEIR text are required.

Coalition-82 The commenter states that an approved jurisdictional determination is necessary now for adequate analysis and identification of mitigation for wetlands impacts. Please see Responses to Comments Coalition-13 and Coalition-25 above, which fully respond to comments claiming a need for a jurisdictional determination from USACE and the scope of mitigation required to be implemented.

Coalition-83 This comment restates Coalition 28. Please see the response to comment Coalition 28, above.

Coalition-84 The commenter asserts that the DEIR fails to analyze the toxic air contaminants caused by traffic for an area the Specific Plan designates for residential use.

The commenter is mistaken. A discussion of the TACs generated by traffic on SR 70/99 occurs under the heading "Off-Site Mobile-Source Emissions" on pages 3.4-39 through 3.4-43 of the DEIR.

The commenter observes that as mitigation, the DEIR proposes that a health risk assessment be conducted before construction commences, and alleges that this constitutes deferral of mitigation.

This DEIR contains a programmatic level of analysis. A health risk assessment cannot be performed until the specific project-level tentative maps and improvement plans are submitted to the County, which would contain the details necessary in order for a health risk assessment to be performed. Subsequent CEQA review will be required at that time. Therefore, the County believes that DEIR Mitigation Measure 3.4-4b, which requires a health risk assessment, does not constitute deferral of mitigation and is appropriate. No changes to DEIR text are necessary.

Coalition-85 The commenter asserts that Mitigation Measure 3.12-5 (preparation of a design and management plan for proposed water features) is improper deferral. However, this mitigation measure specifies the contents of the plan in detail, and identifies control techniques which may be imposed in order to meet the standards of this mitigation measure, and does not defer identification of potential impacts of the project. Thus, Mitigation Measure 3.12-5 complies with CEQA by providing specific performance criteria against which more specific mitigation for later, project-specific phases may be assessed.

Coalition-86 The commenter asserts generally that the DEIR defers meaningful impact analysis and relies on future mitigation to make speculative and overly optimistic significance determinations with respect to flooding, wetlands, and hazardous materials.

As explained in Responses to Comments Coalition-87, Coalition-88, and Coalition-89, there is no evidence to suggest that the future improvements and cleanup will not occur. The timing of completion of the assumed improvements may be uncertain; thus, the language of the proposed mitigation measures in these impact categories ensures that no development can proceed without a demonstration that the assumed improvements have indeed been constructed or carried out.

Coalition-87 The commenter alleges that the planned levee improvements are too speculative to be assumed for the purpose of making a determination that the flood impacts will be less than significant with mitigation.

The proposed mitigation set forth in the DEIR to address flood hazard impacts requires that prior to discretionary approval of each increment of new development, the County shall confirm the area to be developed either already has or shall have, prior to issuance of building permits, the minimum level of flood protection required at the time of the development approval by federal or state law. (MM 3.7-2a [DEIR, page 3.7-49].) Following implementation of this mitigation measure, future residents and employees would be subject to a less-than-significant risk of flooding, consistent with the goals of AB 162 and SB 5. The mitigation as written provides that if the area to be developed does not yet have the minimum level of flood protection (i.e., levee improvements and upgraded status from FEMA or other project-area improvements to address flood hazard), then the development may not occur until such time as the legally required level of flood protection is in place or is foreseeable within the meaning of SB 5 (i.e., that a 200-year level of protection will be in place by 2025). The proposed mitigation ensures that future project residents and employees would not be subjected to unacceptable flood risk; thus, the significance conclusion for this impact is correct. Because the required level of flood protection is a performance standard that must be satisfied before actual development can

proceed, the fact that the levee improvements and other physical activities needed to meet either the 100-year or the 200-year flood protection standard are not yet in place is not fatal to the mitigation strategy. (See CEQA Guidelines, Section 15126.4, subd. (a)(1)(B).)

In any event, the County does not agree with the commenter that the planned levee improvements are too speculative to be considered for the purposes of determining the level of significance of the potential impact after mitigation. Although, like almost any anticipated future event, the County is not absolutely certain that the improvements will occur as scheduled, the improvements are nevertheless reasonably foreseeable. Sutter County is a member of the Sacramento Area Flood Control Agency ("SAFCA"). Since July 2006, SAFCA has been aggressively working to bring 100-year levee protection to the entire Natomas Basin where Sutter Pointe is located. The Natomas Levee Improvement Program ("NLIP") is an important public safety improvement effort by SAFCA to improve deficiencies in the 46 miles of levees that surround the Natomas Basin and protect the Sacramento Airport and the estimated 70,000 residents living in North Natomas. The goal is to provide the entire basin with 100-year protection as soon as possible, and 200-year protection will be provided over time. The total cost of the NLIP is estimated to be $618 million. Funding will come from multiple sources that have been identified for these improvements. Under SB 276 (Steinberg) enacted in October 2007, the state has a 70/30 (state/SAFCA) cost share for the entire 200-year flood protection program, of which the NLIP is a part. Sources of state money include bond funding from Proposition 1E and Proposition 84 approved by the voters in 2006. Sources for the local share include the Consolidated Capital Assessment District formed in April 2007 and SAFCA's developer impact fee program adopted in May 2008. Federal funding is also anticipated to play a role. The federal government, through the US Army Corps of Engineers, is completing a General Re-Evaluation Report ("GRR") for the Natomas Basin. This effort will allow Congress to expand the American River Common Features Project to include the NLIP. In the absence of the GRR, which is not anticipated for completion until late 2010, SAFCA is also working to secure federal authorization under section 104 of the Water Resources Development Act. Congresswoman Doris Matsui is assisting with this effort. Congresswoman Matsui has also introduced the Natomas Basin Flood Project Improvements Act of 2009, which would fully authorize the NLIP at a cost-sharing ratio of 75/25 (federal/non-federal) shares. The NLIP is planned to be constructed in four phases. The Phase 1 improvements were evaluated in the EIR on Local Funding Mechanisms for Comprehensive Flood Control Improvements for the Sacramento Area (State Clearinghouse # 2006072098). Volume II of that EIR contained a project-level evaluation of the Natomas Cross Canal South Levee Phase 1 Improvements (Phase 1 Project). In 2007, SAFCA prepared the EIR on the NLIP Landside Improvements Project (2007 Landside EIR, State Clearinghouse # 2007062016), which covers the three additional phases of landside improvements to the levees protecting the Natomas Basin in Sacramento and Sutter Counties, including the Phase 2 Project, Phase 3 Project, and Phase 4 Project. The Phase 2 Project was analyzed at a project level and the remainder of the Landside Improvement Project (Phase 3 and Phase 4 Projects) was analyzed at a program level in the 2007 Landside EIR. On November 29, 2007, the SAFCA Board of Directors certified the EIR and approved implementation of the Phase 2 Project. Following completion of the Landside EIR, USACE prepared an EIS to meet USACE's NEPA requirements to support USACE's decisions on the permissions and permitting under Sections 408 and 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act . A Record of Decision was signed by USACE in January 2009. The USACE EIS also contained a project-level analysis of the Phase 2 Project and a program-level analysis of the Phase 3 and Phase 4 Projects. Since certification of the 2007 Landside EIR, SAFCA has made modifications

and refinements to the design of the Phase 2 Project. A supplemental EIR (SEIR) was prepared by SAFCA to evaluate these modifications, which the SAFCA Board of Directors certified in January 2009, at which time the Board also approved the modifications to the Phase 2 Project. The Phase 2 Project is expected to be carried out under two separate construction contracts. SAFCA anticipates awarding the first part of the Phase 2 contract on April 2, 2009, and the second part of Phase 2 would be awarded on April 30, 2009, with construction starting immediately thereafter. The Phase 3 Project was analyzed at a project-level in the EIS/EIR on the NLIP Phase 3 Landside Improvements Project (Phase 3 EIS/EIR, State Clearinghouse # 2008072060), which was released for public review on February 13, 2009. The comment period ended on April 6, 2009. On March 27, 2009, SAFCA issued a Notice of Preparation for the EIS/EIR on the NLIP, Phase 4A Landside Improvements Project. The EIS/EIR to be prepared for the Phase 4a Project will evaluate the environmental impacts of the Phase 4a Project at a project level. The Phase 4a Project is one of three sub-phases of the overall Phase 4 Project that was analyzed in the 2007 Landside EIR. The Phase 4 Project was divided into sub-phases to provide the flexibility to construct this phase over more than one construction season. The Phase 4b and Phase 4c Projects will be the subject of future, separate EIS/EIRs and are not going to be analyzed in the Phase 4a Project EIS/EIR. With these funding sources identified and the extent of work that has been done to date as described above, Sutter County believes the Natomas levee improvements to be reasonably foreseeable and in fact, very likely.

Coalition-88 The commenter states that the acreage of federal wetlands within the Specific Plan area and the extent of any fill remains unknown. Please see Responses to Comments Coalition-13 and Coalition-25 above, which fully respond to comments claiming a need for a jurisdictional determination from USACE and the scope of mitigation required to be implemented.

Coalition-89 The commenter asserts that the DEIR assumes that impacts related to potential human health hazards from exposure to existing on-site hazardous material and project development on a known hazardous materials site will be less than significant in the absence of ESA coverage. The commenter considers this to be an improper reliance on the outcome of unknown future events. As noted above in the Response to Comment Coalition 28, the DEIR discloses available information on the environmental conditions on the project site, including past investigations of the Holt and Farm Air Flying Service sites. Mitigation Measure 3.12-2 states that environmental assessment of remaining areas of the project site must be conducted prior to construction or ground disturbance in these areas, and requires that the investigation and remediation recommended by these assessments be conducted, identifying the specific regulatory requirements and components of these investigations. Because the mitigation measure specifies particular actions which must be taken, and identifies the performance standards which must be met before construction or ground disturbance can take place, the DEIR's conclusion that these impacts will be less-than-significant following mitigation is appropriate.

Coalition-90 The commenter states that a project of reduced scale would be feasible and mitigate all of the Specific Plan's significant impacts and thus, should have been considered as a mitigation measure.

Despite labeling a different-scale project as "mitigation," the County assumes the commenter means to suggest that a reduced scale project should have been considered as an alternative. In fact, the DEIR did consider a reasonable range of potentially feasible alternatives that would reduce or avoid one or more significant impacts as required by

CEQA, including two that contemplate a "reduced-scale" of development. The SACOG Blueprint Preferred Scenario Alternative would include approximately half as many residential units on half as much acreage as the proposed plan. (DEIR, page 4-19.) The Reduced Intensity Development Alternative includes approximately 4,500 fewer residential units and 12.4 million fewer square feet of non-residential development than the proposed project. (DEIR, p. 4-28.) Please also refer to Master Response 4, "Alternatives," and Master Response 1, "Measure M," for further explanation of the principles guiding the County's selection of the alternatives carried forward in the EIR for full analysis.

Coalition-91, 97

The commenter asserts that the DEIR fails to propose all feasible mitigation measures to further reduce the impact of air pollutant emissions.

CEQA does not require analysis of every *imaginable* alternative or mitigation measure; its concern is with *feasible* means of reducing environmental effects. (*Concerned Citizens of South Central Los Angeles v. Los Angeles Unified School Dist.* (1994) 24 Cal.App.4th 826, 841.) The County believes that the mitigation measures proposed to reduce the proposed project's air quality impacts are appropriate, feasible, and enforceable, and therefore no changes to the text of the DEIR are required.

Coalition-92

The commenter suggests that emissions associated with each project phase be analyzed in a separate CEQA document and analyzed using FRAQMD's "most recent thresholds of significance at the time of the determination"

The County notes that this DEIR is programmatic is nature, and is not intended to evaluate the project-level impacts of each phase of development. In fact, the DEIR already contains mitigation that would require exactly what the commenter is requesting. Please see Mitigation Measure 3.4-2 which requires a separate analysis and preparation of an AQMP for each phase of development once the tentative maps and improvements plans are submitted to the County for review.

Coalition-93

The commenter states that there exist several other feasible mitigation measures to reduce on-site construction emissions. The commenter provides a list of construction mitigation measures, many of which are duplicative to those contained in the DEIR. The commenter includes some sources of information for additional suggested mitigation measures to reduce heavy-duty construction equipment emissions.

The County need not undertake the burden of analyzing why the policies and programs already included in the DEIR are insufficient compared to those contained in the documents cited by the commenter when the commenter has provided no specific examples or assertions as to why some or all of these mitigation measures are feasible to reduce the climate change effects of the project, or why the measures already included in the DEIR are insufficient compared to those contained in the documents cited by the commenter. Furthermore, the mitigation measures proposed in Mitigation Measure 3.4-1 were developed in coordination with FRAQMD, are specific to the proposed project, clearly identify timing and responsibility, and would be feasible to implement. Therefore, no changes to the text of the DEIR are required. See also response to comment "Coalition-91, 97."

Coalition-94

The commenter states that as mitigation, the DEIR proposes preparation of an individual air quality mitigation plan (AQMP) for each project phase, and that the DEIR provides examples of mitigation that "may" or "could" be implemented. The commenter asserts

that these individual AQMPs should not be optional; that FRAQMD's review and approval of these plans for each project phase should be required by the DEIR.

The commenter is correct that DEIR Mitigation Measure 3.4-2 requires the preparation of individual AQMPs for each phase of project development. With regards to the components of the AQMPs, as stated in the DEIR, "These measures may include but would not be limited to those recommendations suggested by FRAQMD at the time each AQMP is prepared, and could also include measures suggested by the Sutter Pointe Master AQMP (HDR 2008), and others (e.g., industry standards or otherwise referenced measures). These potential measures are listed below [a 4-page list of measures follows this text, on pages 3.4-32 through 3.4-35]. Where implementation of on-site mitigation measures would not be sufficient to reach FRAQMD's prescribed reduction target, voluntary FRAQMD-approved off-site mitigation projects may also be employed. The list of measures included in each AQMP shall be agreed to by the project applicant and the County, in consultation with FRAQMD." Contrary to the commenter's assertion, Mitigation Measure 3.4-2 does not constitute deferral of mitigation. The DEIR provides an analysis at a programmatic level of the specific plan as a whole. It is not possible for the applicant to enter into AQMPs specifying the performance of development when that development is not yet designed. Once the tentative maps and improvement plans are submitted to the County, additional CEQA review will be required, and it will be possible to determine the exact components of the AQMPs, in consultation with FRAQMD. Furthermore, Mitigation Measure 3.4-2 appropriately provides a 4-page list of performance standards, any of which could be included in the AQMP following project-level consultation with FRAQMD. The commenter also fails to consider that the SPSP would be built out over a 30-year period. During that time, industry standards are likely to change and new technologies are expected to be developed making it possible to achieve greater emissions reductions than are possible now. Thus, by specifying the specific contents of the AQMPs now with the current technologies, the County could be placing a barrier to greater emissions reduction that may be possible in the future. Finally, contrary to the commenter's statement, FRAQMD review and approval of each AQMP is already required in DEIR Mitigation Measure 3.4-2. For all the foregoing reasons, the County believes that Mitigation Measure 3.4-2 is appropriate, does not constitute deferral, and no text changes to the DEIR are required.

Coalition-95

The commenter states that the DEIR requires a 30% reduction of GHG emission levels, "but only if it feasible to do so," and the determination of feasibility is left solely to Sutter County (the lead agency). The commenter states that Mitigation Measure 3.17-1 is "entirely inadequate to adequately reduce the Projects' future contribution to global climate change" as elaborated further in Comment-132.

CEQA leaves the determination of feasibility of mitigation to the lead agency. (Cal.Admin.Code, tit. 14, Section 15364; cf. Pub.Res.Code, Section 21061.1.) "'Feasible' means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." Determination of feasibility of the GHG mitigation measures is left to Sutter County and to the moment in the future when that determination will be needed in recognition that both the regulatory environment and technology continue to evolve under the mandate of AB 32. Please see also response to comment Coalition-132.

Coalition-96–97

The commenter states that efforts to reduce GHG emissions must address residential and commercial development, and that the DEIR should require the highest standards for

environmentally sustainable buildings, including the Leadership in Energy and Environmental Design (LEED) Green Building Rating system.

DEIR Mitigation Measure 3.17-1, pages 3.17-17 and 3.17-18 includes the following measures to be implemented as feasible:

- Include clean alternative energy features to promote energy self-sufficiency (e.g., photovoltaic cells, solar thermal electricity systems, small wind turbines).
- Design buildings to meet CEC Tier II requirements (e.g., exceeding the requirements of the Title 24 (as of 2007) by 35%).
- Site buildings to take advantage of shade and prevailing winds and design landscaping and sun screens to reduce energy use.
- Install efficient lighting in all buildings (including residential). Also install lighting control systems, where practical. Use daylight as an integral part of lighting systems in all buildings.
- Install light-colored "cool" pavements, and strategically located shade trees along all bicycle and pedestrian routes.

Notably, the DEIR's mitigation measures are strikingly consistent with components of LEED. The County's mitigation measures substantially track what has been recommended by the commenter. The commenter has not provided evidence to suggest that LEED certification would be more effective at reducing climate change impacts of the proposed project than the extremely aggressive energy efficiency measures proposed by the County (i.e., Exceed Title 24 requirements by 35%). Thus, the County believes that all feasible mitigation has already been required in the DEIR and would be effective to mitigate climate change impacts of the proposed project in compliance with CEQA.

Coalition-97 Please refer to Response to Comments Coalition-91 and Coalition-96.

Coalition-98 The commenter recites the CEQA statute and Guidelines and case law regarding cumulative impacts.

The commenter makes no references to the DEIR or the Specific Plan. No further response is necessary.

Coalition-99–100 According to the commenter, the DEIR fails to identify and analyze the proposed project's cumulative impacts associated with developing the additional 1,000 acres within the I-C Reserve and the fallowing of Sacramento Airport buffer lands. The commenter claims that the fallowing of the airport buffer lands requires an amendment to the NBHCP and undermines the DEIR's conclusion that the proposed project's wildlife impacts will be less than significant.

Please see Response to Comment Friends-A-9, GSWC-50, and Coalition-20 and -75.

Under CEQA, an EIR must evaluate the cumulative effects of the proposed project, which includes an assessment of the effects of the project "in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (CEQA Guidelines, Section 15065(a)(3).) To be considered in an EIR's cumulative effects analysis, in addition to existing and approved projects, probable future

projects must be "reasonably foreseeable" (id., Section 15355(b)), and not speculative or uncertain. Here, even though the remaining 1,000 acres within the I-C Reserve was included in Sutter County's Permit Area under the NBHCP, there are no current plans or proposals to develop that property. Consequently, it need not be evaluated in the SPSP EIR's cumulative effects analysis.

Regarding the airport buffer lands, these lands are already part of the environmental baseline and do not constitute probable future projects under CEQA. As stated in Response to Comment Coalition-75, the NBHCP anticipated that changes in agricultural patterns and practices would occur over time outside the Permit Area, and that the airport buffer lands would be subject to management activities necessary to avoid conflicts between wildlife and airport operations. The NBHCP's reserve acquisition and management program, in turn, is designed to adapt to changes in land use patterns throughout the Basin without affecting Sutter County's Incidental Take Permit. There is no new development proposed for the airport buffer lands or surrounding areas that was not already considered in the DEIR and the EIR/EIS for the NBHCP. Moreover, the changes in cultivation patterns at the buffer lands does not require an amendment to the NBHCP, nor does it affect the DEIR's conclusions concerning the proposed project's impacts on wildlife. The fact remains that the proposed project's impacts on wildlife covered under the NBHCP would be mitigated to a less-than-significant level.

Coalition-101 The commenter states that the DEIR fails to address or discuss the cumulative effects of the project on federal funding for the Sacramento Airport, in light of the ongoing Airport expansion, a possible amendment to the Habitat Conservation Plan, and consistency with the CLUP.

Please refer to Responses to Comments Coalition-21 and Coalition-22, which explain that the ALUC has confirmed that the project is consistent with the CLUP and that the Sutter County does not have the FAA grant assurance obligation alleged by the commenter. Nonetheless, the County has and will work cooperatively with the Sacramento County Airport System to ensure that the uses under Sutter County's control do not jeopardize the Airport's viability. See Response to Comments SCAS-2. Please also refer to Responses to Comment Coalition-99 regarding commenter's allegation that the HCP will require amendment.

Coalition-102 The commenter asserts that the cumulative impacts analysis failed to note or discuss the several ongoing infrastructure projects in the area, many of which are undergoing their own environmental review.

The commenter appears to state that this program EIR should have incorporated all of those other reviews into one document, or else impermissible piecemealing has occurred. The commenter does not note specific projects that he believes are missing from the analysis. Please refer to Master Response 2, "Programmatic Nature of EIR Analysis."

The commenter then asserts that these infrastructure projects must be included in the cumulative analysis.

The specific infrastructure projects that the commenter believes should be included in the cumulative analysis are not identified in the comment. Because the commenter refers to "the building of an entire city and its support infrastructure" in its description of this alleged deficiency, we conclude that the commenter is referring to the off-site infrastructure improvements that are necessary to serve the proposed project. As noted in

response to Coalition 42 and Coalition 43, a listing of all off-site infrastructure components that are included in the proposed project is provided in Table 2-4 on p. 2-19 of the DEIR. As noted on p. 2-19, "All off-site infrastructure needed to support the proposed project is analyzed in this EIR at a program level unless CEQA coverage already has been obtained…"

Coalition-103 The commenter asserts that no evidence in the DEIR supports the proposal for 3,000 senior units in the Specific Plan and that as a result, the generation rates used to determine school capacity could be flawed.

There is no requirement under CEQA that project applicants prove any particular component of a proposed project is supported by market demand. The number of senior units (age-restricted housing) proposed for the project is based on the experience of the project applicants in assessing long-term population and demographic trends and in developing this type of housing. It reflects the desire of the applicants to attract and serve this rapidly expanding segment of the market. Before and at the time of certifying the Final EIR and taking action with respect to the project, County decision makers will have to review carefully the proposed plan's details, and it is within their discretion to determine whether this aspect of the project is desirable, necessary, or feasible.

The student generation rates used to determine the school capacity needed to serve the development are not applied to age-restricted housing. The generation rates are only applied to unrestricted housing. Therefore, the absorption rate of the age-restricted housing does not affect the school capacity calculations.

If, in the long run, the speculative scenario posed by the commenter turns out to be correct and the age-restricted housing is slow to absorb, there is no effect on the school capacity required for the proposed project or the mitigation provided.

Any speculative future change to the proposed mix of uses within the proposed project could not occur without the discretionary approval of the County and compliance with the applicable requirements of CEQA and other provisions of state law governing mitigation for environmental effects relating to school facilities.

Coalition-104 The commenter alleges that the cumulative impacts analysis is so flawed that the DEIR must be revised and recirculated.

The County respectfully disagrees that the DEIR is inadequate in the manner asserted by the commenter and that no recirculation is required.

Coalition-105 The commenter recites CEQA Guidelines and case law regarding the selection of alternatives for analysis in an EIR, focusing on certain cases dealing with the determination of feasibility of alternatives. The commenter asserts that "a determination that an alternative is not economically feasible must be supported by evidence and analysis showing that it cannot reasonably be implemented due to economic constraints," citing *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 6921, 737.

To the extent that the commenter relies on *Kings County* for the proposition that an EIR must set forth detailed evidence supporting a conclusion that an alternative is economically infeasible, the commenter is mistaken as to what the law requires. *Kings County* dealt with unusual facts surrounding a proposed coal-fired cogeneration power plant, where the applicant had entered into a 20-year contract for coal fuel prior to completing the CEQA and entitlements process and thus asserted that it was not feasible

to consider another method of fueling the plant. *Kings County* is by no means the leading or latest case to address this issue of whether EIRs must grapple with the feasibility of alternatives in substantial detail. More recent case law expressly holds that evidence relating to feasibility is *not* required to be presented within the EIR (*San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 689 [EIR's purpose is to present *environmental* information, not to make ultimate determinations of economic feasibility]; *Assn. of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1400-1401 [CEQA Guidelines section 15131 provides that economic data is not required to be included in an EIR; finding of infeasibility of reduced-size project may be based on evidence anywhere in the record, not just the EIR]; *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1504-1505 [EIR not required to analyze the economic feasibility of the identified alternatives to the project].) These cases confirm it is the role of the findings to grapple with any extrinsic facts bearing on the actual feasibility of any of the alternatives presented in the EIR. The EIR needs only to analyze alternatives that appear *potentially feasible*. (CEQA Guidelines, Section 15126.6, subd. (a).) This EIR has met that burden with the range of alternatives selected for review against the proposed project.

Coalition-106

The commenter asserts that the DEIR fails to meaningfully analyze a reduced-scale alternative in that the reduced scale alternative analyzed in the DEIR does not meet the criteria the commenter believes constitutes a proper reduced-scale alternative. The commenter asserts that a reduced-scale alternative should reduce both the intensity and footprint or spatial area of the project.

The commenter provides no authority for this proffered definition of a "reduced-scale" alternative. The County is aware of no published case law or statutory definition mandating a lead agency to use the commenter's preferred definition. The objective constraints and other reasons that formed the basis for the development of the alternatives considered in the DEIR are explained at length in Chapter 4 of the DEIR. Additionally please see Master Response 4, "Alternatives."

Coalition-107

The commenter asserts that the SACOG Blueprint Preferred Scenario should have been determined to be the environmentally superior project alternative and that the "Permanent On-Site Sankey Gap Overflow Storage Alternative" is not a legitimate alternative because it does not contain any residential component.

CEQA does not specify any mandatory components of project alternatives considered in an EIR, other than that an alternative should feasibly attain most of the basic objectives of the proposed project and avoid or substantially lessen one or more of the significant impacts identified for the proposed project. Case law provides that a lead agency has substantial discretion regarding the scope and formulation of alternatives for any particular project. "Each case must be evaluated on its own facts, which in turn must be reviewed in light of the statutory purpose." (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 566.) The DEIR did not dismiss or reject any of the project alternatives that were fully analyzed in the DEIR, as asserted by the commenter. The DEIR instead explained how the relevant planning context, project objectives, and other considerations might affect the ultimate feasibility determination for the project alternatives, but did not usurp the ultimate decision-making role reserved to the County Board of Supervisors. For a further response, please refer to Master Response 1, "Measure M," and Master Response 4, "Alternatives."

Coalition-108 The commenter asserts that the DEIR analyzes the proposed project as an alternative, citing page 4-7 of the DEIR as evidence.

The page cited by the commenter discusses the 2007 Draft Specific Plan Alternative, which was an earlier version of the proposed project. The commenter is incorrect that the DEIR analyzes this alternative as a true project alternative. This alternative is included in the list of alternatives initially considered, but rejected for further consideration and not carried forward for the same level of detailed analysis as provided for the project objectives. (See DEIR, page 4-1, 4-3; see also CEQA Guidelines, Section 15126.6, subd.(c).)

The commenter also repeats a previous assertion that because the project analyzed in the DEIR has been revised such that it is different than the project described in the NOP, the DEIR has failed to comply with the notice requirements of CEQA.

Please see Response to Comment Coalition-5. The changes to the project description between the NOP and the proposed project analyzed in the DEIR are normal and expected as part of the CEQA process.

Coalition-109 The commenter restates a portion of the project description. Comment noted; this is not a comment on the environmental impacts of the project, so no response is required.

Coalition-110 The commenter asserts that the DEIR appears to preempt the requirement for future project-level analyses for Phase 1/A of the project, and quotes text from p. 1-7 of the DEIR. This text states that in some instances, the County's expectation is that written checklists will conclude that no further analysis beyond that found in this program EIR will be necessary.

The commenter misinterprets the meaning of this text. The County's intent on page 1-7 of the DEIR is to explain that a subsequent Initial Study or similar checklist may find in some instances that the data and analysis contained in the DEIR is sufficiently detailed to address some project-level environmental issues (with examples provided in parentheses on page 1-7) for some site specific approvals. This statement does not imply a blanket preemption of further project-level environmental analysis or that no further analysis will be required. Throughout the DEIR, wherever an additional level of analysis was conducted for Phase 1/A, these analyses are provided in separate impact discussions. For instance, Impact 3.12-1 describes the program-level analysis of impacts related to routine transport, use, or disposal of hazardous materials. An additional level of detail is then provided for Phase 1 and Phase A in Impact 3.12-9. The DEIR does not make the claim that this additional level of detail constitutes project-level analysis. Where additional analysis is provided, it is not intended to "preempt" the requirement for project-level analyses, but rather to provide data that may be relied up on in preparing those project-level analyses. If the data provided in the DEIR are sufficiently detailed, then later project-level review may conclude that additional analysis is not required. However, where sufficiently detailed data are not available, project-level review will be required. Therefore, no changes to the DEIR text are required.

Coalition-111 The commenter states that "for the air quality sections of Phase 1 and Phase A, the preparation of a checklist is inadequate" and that the DEIR does not contain a project-level analysis that adequately analyzes the potential adverse impacts on air quality from Phase 1 and Phase A.

The DEIR does not claim to provide a project-level analysis of air quality impacts. As described in the response to Coalition-110, the DEIR provides additional detail to be used in simplifying and streamlining project level analysis that will occur at a later date, after tentative maps and improvement plans are submitted to the County. Please see Master Response 2, "Programmatic Nature of EIR Analysis," for further discussion of this issue. No changes to the DEIR text are required.

Coalition-112

The commenter asserts that the DEIR's air quality analysis of Phase 1/A impacts is "superficial at best," and concludes that air quality impacts would be significant and unavoidable without requiring all feasible mitigation. The commenter provides example of the assumptions made in the air quality analysis for construction emissions, and asserts that this level of analysis does not represent a project-level analysis. The commenter further asserts that the analysis does not require that all feasible mitigation be implemented; the commenter notes that the DEIR does not assess the feasibility of mitigation beyond the FRAQMD-recommended mitigation measures.

As noted in the responses to Coalition-110 and Coalition-111, the DEIR does not claim to provide project-level analysis. Please see the responses to Coalition 113 through 134, and Master Response 2, "Programmatic Nature of EIR Analysis," for more detailed responses as to the feasibility of mitigation measures.

Coalition-113–114

The commenter states that the quantitative analysis of operational emissions should include emissions generated by stationary sources, that the analysis in the DEIR is inadequate in this regard, and that emissions from stationary sources should be analyzed at the project level once sufficient detail becomes known. The commenter further suggests that the impacts of these stationary sources should be mitigated beyond the level normally required for individual projects, given the large size of the Sutter Pointe Specific Plan.

As explained under "Analysis Methodology" in DEIR Section 3.4, "Air Quality," (page 3.4-24), long-term stationary-source emissions were qualitatively assessed in accordance with FRAQMD-recommended methodologies. FRAQM's guidance explains that stationary-source emissions typically fall under air district rules and regulations requiring an Authority to Construct and Permit to Operate, prior to installation and operation, and mandatory emission control technologies, emission offsets, and operating limitations, and therefore, are not evaluated against the District's Indirect Source Thresholds of Significance (as they are not indirect sources); they are simply reported in the CEQA review process for disclosure purposes. Because the number and type of stationary sources associated with operation of Phase 1/A is not known at this time, these sources were discussed but their emissions of criteria air pollutants (CAPs), precursors, and GHGs were not quantified. A detailed review of CAP and precursor emissions generated by stationary sources would occur when a permit for each source is submitted to FRAQMD and the appropriate level of emissions controls would be determined by FRAQMD at that time. Furthermore, it is not anticipated that the proposed land uses would have a disproportionally high number of on-site stationary sources (e.g., back up diesel generators), relative to similar land uses in the region. Back up diesel generators are typical used a few hours each month for testing and, therefore, are not part of regular operations. Therefore, the County believes that the analysis contained in the DEIR is appropriate, and no changes to the text of the DEIR are necessary.

Coalition-115

The commenter states that the County's conclusion that "no further analysis beyond that found in the program EIR will be necessary" is contradicted by information contained elsewhere in the DEIR.

As discussed above in the response to Coalition 110, this is not an accurate characterization of the DEIR's description of the level of analysis provided in the DEIR and the need for subsequent analysis for specific development projects under the Specific Plan.

The commenter observes that the DEIR states that potential impacts due to exposure of sensitive receptors to temporary, long-term emissions of toxic air contaminants would have to be evaluated in a health risk assessment.

As noted in the response to Coalition 110, project-level analysis must still be conducted for each component or phase of the proposed project. Mitigation Measure 3.4-4b requires that a health risk assessment be performed for sensitive receptors (i.e., residences, schools, overnight medical facilities) that would be located within a certain setback distance from various types of TAC emitters, as specified in the DEIR. The County believes that Mitigation Measure 3.4-4b is appropriate, and no changes to the DEIR text are necessary.

Coalition-116

The commenter asserts that the DEIR improperly defers the identification of feasible mitigation measures for both construction and operational emissions associated with Phases 1 and A.

The County disagrees with the commenter's assertion. DEIR Mitigation Measures 3.4-1 and 3.4-2 (also required for Phases 1 and A) require the applicants to develop and implement FRAQMD-endorsed air quality mitigation plans for all phases of construction and to reduce operational emissions. The DEIR does not provide a project level of analysis; rather, the analysis is at a program level. Please see response to comment Coalition-94 for further discussion of this issue.

The commenter asserts that this improperly defers development of adequate mitigation measures to a future date and effectively prevents public review.

As stated above, this DEIR is not intended to contain a "project level" of analysis. Mitigation Measure 3.4-1 (p. 3.4-28 of the DEIR) clearly identifies the components and performance standards that will be applied by the air quality mitigation plans – for instance, construction equipment exhaust emissions shall not exceed FRAQMD Regulation III, Rule 3.0, Visible Emissions Limitations. The use of performance-standard based mitigation does not constitute deferral of analysis or mitigation. Please refer to Master Response 2, "Programmatic Nature of EIR Analysis," for a more detailed discussion of this issue. See also response to comment Coalition-94.

The commenter further asserts that if the DEIR truly presented a project-level review for Phase 1 and Phase A, it would provide detailed estimates of all emissions sources, including stationary sources, and a mitigation and monitoring plan for public review.

As noted in the response to Coalition 110 and elsewhere, the DEIR does not claim to present a project-level analysis of air quality impacts.

Coalition-117 The commenter asserts that the DEIR should either provide a project-level analysis for Phase 1 and Phase A, or require a separate project-level analysis before construction begins.

As noted in the response to Coalition 110, the DEIR neither provides a project-level of analysis, nor preempts the requirement for project-level analysis of project phases and components.

The commenter further asserts that the project-level analysis must analyze all sources and require all feasible mitigation, including the most stringent emissions standards for stationary sources.

CEQA and FRAQMD requirements will dictate the required emissions sources analyzed at the time project-level CEQA review is prepared, and will guide the County's determination of which mitigation measures are feasible for project components.

Coalition-118 The commenter asserts that the DEIR should specifically require that a project-level analysis be conducted for all future project phases or sub phases, to avoid having future documents simply refer to the program EIR. The commenter asserts that it has become a frequent consequence of program-level EIRs that individual sub-projects under these EIRs are not subjected to the same level of scrutiny during their CEQA review.

As noted in the response to Coalition-110 and Coalition-117, project-level analysis will be required for individual project phases. No changes to the DEIR are needed to dictate that future project phases must comply with CEQA.

Coalition-119 The commenter restates the DEIR's impact statement for ozone precursors and PM_{10} from construction of the project phases, and associated mitigation measures.

This comment noted and does not address the impacts of the project; no further response is required.

Coalition-120 The commenter recommends that the construction emissions for each project phase of the overall project be subjected to separate analysis under CEQA and the latest FRAQMD thresholds of significance be applied to each phase.

In fact, the mitigation proposed in the DEIR takes exactly the same approach recommended by the commenter. As explained in the DEIR, the County will require detailed, site-specific analyses of future phases of development within the project area, pursuant to the applicable tiering and streamlining provisions of CEQA. (DEIR, pages 1-6 through 1-8.) Proposed Mitigation Measure 3.17-1 requires that each increment of new development within the project site be assessed against existing and future regulatory measures imposed under AB 32, with which FRAQMD, as the air pollution control agency with jurisdiction over the project area, will presumably keep current. (See DEIR, pages 3.17-16 and -17.) This adaptive approach to mitigating greenhouse gas emissions would ensure that future project phases are subject to analysis with the best available science at the time and mitigation consistent the evolving state and local regulatory requirements. Please also refer to Master Response 7, "Greenhouse Gas Analysis and Mitigation."

Coalition-121–122 The commenter states that the County should require an off-site mitigation plan for those emissions that cannot be mitigated to a less-than-significant level by the FRAQMD's standard and best available mitigation measures for on-site construction activities. The

commenter further advocates payment of an off-site mitigation fee as a mitigation measure.

FRAQMD does not currently have an established off-site mitigation fee program with a track record of fulfilling off-site mitigation requirements as does SMAQMD's program. Fair-share contributions to defined fee-based mitigation program is considered adequate mitigation under CEQA only if it is "part of reasonable plan of actual mitigation that the relevant agency commits itself to implementing." *Anderson First Coalition v. City of Anderson*, 130 Cal.App.4th 1173 (2005). Payment of mitigation fees to FRAQMD would not qualify as such a plan, and therefore, would not necessarily result in the implementation of equivalent, off-site mitigation within a reasonable amount of time. Therefore, the County does not believe that the commenter's suggested off-site mitigation is appropriate; furthermore, there is no guarantee that FRAQMD would agree to implement a fee-based mitigation program, and thus the responsibility for implementing this mitigation measure would fall outside the lead agency's jurisdiction.

Coalition-123–124 The commenter requests that, in Mitigation Measure 3.4-4a, review and approval of the plans to reduce the exposure of sensitive receptors to toxic air contaminants during project construction be performed by FRAMQD in addition to the County.

The following text changes are proposed to Mitigation Measure 3.4-4a:

> The project applicant(s) of all project phases shall develop a plan to reduce the exposure of sensitive receptors to TACs from project construction. The plan shall be submitted to the County and the FRAQMD for review and approval before the approval of any grading plans.
>
> **Enforcement:** Sutter County Community Services Department, and ~~with input from~~ the Feather River Air Quality Management District

In Mitigation Measure 3.4-4a, the County purposely does not state what the individual measures should be for the30-year buildout of the proposed project in recognition that new fuel technologies and emission control technologies will likely emerge during the buildout period, especially in recognition of regulatory requirements that will result from AB 32. The County also recognizes that different types of construction activity (and construction equipment) may be used for different phases, thereby warranting a different tailored set of emission control measures. No additional changes to the text of the DEIR are required to address the commenter claim that "the most stringent emission control technologies for construction equipment exhaust available at the time to reduce emissions of diesel particulate matter." CEQA requires that all feasible mitigation be implemented rather than "the most stringent mitigation." The County also recognizes that the feasibility of various exhaust emission controls may change over the 30-year buildout of the proposed project.

Coalition-125 The commenter restates the DEIR's impact statement for operational criteria pollutant emissions, and associated mitigation measures.

Comment noted; no text changes to the DEIR are required.

Coalition-126

The commenter asserts that the DEIR's approach to mitigation of criteria pollutant emissions associated with project operations is inadequate. The commenter considers the proposed language (e.g., "where feasible," "might," "could") to be too vague to ensure that all feasible mitigation would in fact be required, but does not specify where in the DEIR the commenter objects to use of these terms. The commenter asserts that the DEIR should be revised to provide more specific language.

As stated in Mitigation Measures 3.4-1 and 3.4-2, air quality mitigation plans shall be prepared according to the requirements of the applicable air district. Specific mitigation requirements imposed by these air districts (such as FRAQMD) are quite specific and mandatory (except in instances in which a project proponent may implement an alternative method of compliance). Please refer to Master Response 7, "Greenhouse Gas Analysis and Mitigation," for a discussion of the desirability of requiring specific mitigation measures at this time. See also response to comment Coalition 94. No text changes to the DEIR are necessary.

Coalition-127

The commenter claims that the DEIR's approach to mitigation of criteria pollutant emissions associated with the proposed project is inadequate because the County should reduce air quality impacts from the entire Sutter Pointe Specific Plan to a less-than-significant level through a requirement for off-site mitigation.

As a matter of policy, the County notes that CEQA does not require that all significant environmental impacts of a project be reduced to a less-than-significant level. Rather, CEQA requires that all feasible mitigation measures be implemented to reduce the level of impact to the maximum extent practicable. Where impacts remains significant and unavoidable (i.e., significant even after implementation of all feasible mitigation measures) a lead agency may still choose to move forward with a project by adopting a statement of overriding considerations that explains why the benefits of the project outweigh its significant environmental impacts. Please see response to Coalition-121 for a discussion of why the County does not believe the commenter's suggestion for off-site mitigation of air quality impacts would be implementable, and therefore why it would not be appropriate for the proposed project. No changes to the text of the DEIR are required.

Coalition-128

The commenter asserts that the County should require each project phase to be evaluated in a separate CEQA document that analyzes emissions, compares them to the applicable thresholds of significance, and requires all feasible mitigation measures, including off-site mitigation, to reduce the projects substantial impacts below the level of significance.

The County agrees that each project phase or component should and will be analyzed and the appropriate level of environmental review as required by CEQA. As noted in the response to Coalition 110, the DEIR provides program level analysis, and additional analysis to aid in later project-level analyses. Project-level analysis of individual project phases, including Phase 1 and Phase A, is required by CEQA, and will be conducted as detailed information on the individual phases and components becomes available. As required by CEQA, all mitigation measures which are determined to be feasible by the County will be required to reduce impacts below the level of significance. The particular mitigation measures that will be required will be determined by the County at the time of project-level analysis. Please see Master Response 2, "Programmatic Nature of EIR Analysis" and Master Response 7, "Greenhouse Gas Analysis and Mitigation." No changes to the DEIR text are required.

Coalition-129 The commenter asserts that the endorsed AQMP for each incremental project should be specified as a condition of approval in order to create an enforceable mechanism for ensuring the AQMP's implementation throughout the project's operation.

As stated in Mitigation Measure 3.4-1 (pages 3.4-28 through 3.4-30), the DEIR requires that AQMPs be prepared and approved by the County in consultation with the respective air district for each construction phase. Mitigation Measure 3.4-2 (pages 3.4-32 through 3.4-35 of the DEIR) requires that AQMPs be prepared and approved by the County in consultation with FRAQMD. Thus, the County believes that the DEIR mitigation measures are specific and enforceable, and no changes to the text of the DEIR are necessary.

Coalition-130 Please see Response to Comment Coalition-56.

Coalition-131 The commenter alleges that DEIR Mitigation Measure 3.17-1 is inadequate because it only requires a reduction of 30% of GHGs "if feasible," because the County is responsible for implementing this mitigation measure, and because the DEIR provides no benchmark against which the 30% reduction can be compared.

Please see response to comment Coalition-95 and Master Response 7, " Greenhouse Gas Analysis and Mitigation," and Master Response 3, "Deferred and/or Hortatory Mitigation," for detailed discussions as to why the County believes that Mitigation Measure 3.17-1 is appropriate, why the County as lead agency should be responsible for its implementation, and how the thresholds of significance for evaluation of GHG emissions were developed. No changes to the text of the DEIR are required.

Coalition-132 The commenter suggests that the DEIR is deficient because it does not require that a quantitative GHG emissions analysis be performed for each increment of project development, nor does it specify how the County would determine whether the GHG reduction goal is met.

Recognizing that methodologies for estimating, reducing, and tracking GHG emissions will continue to evolve over the 30-year buildout of the project, the County purposely does not specify how the GHG reduction measures for each phase of development should be formulated; however, the DEIR appropriately provides performance standards that contain examples of the types of specific measures that may be implemented. Please see Master Response 7, " Greenhouse Gas Analysis and Mitigation," and Master Response 3, "Deferred and/or Hortatory Mitigation," for detailed discussions as to why the County believes that Mitigation Measures 3.17-1 and 3.17-2 are appropriate for the programmatic nature of the analysis presented in the DEIR. No changes to the text of the DEIR are required.

Coalition-133 The commenter asserts that the Draft EIR fails to develop a program-level approach to mitigating GHG emissions across the entire plan area, and instead proposes a piecemeal approach of imposing GHG mitigation on individual projects as they are proposed.

The commenter's points appear to conflict in some respects with her earlier recommendations at Coalition (Pless)-120 above, where the commenter requests an adaptive mitigation strategy that would be applied to individual projects at each future phase to stay current with the latest regulatory requirements for GHG emissions. As noted in Response to Coalition (Pless)-120, the adaptive strategy proposed in Mitigation Measure 3.17-1 would require each future development application to be analyzed against the latest regulatory thresholds and mitigation strategies. To the extent the

commenter is asserting that the County should impose a programmatic, plan-wide mitigation strategy for all future development in the plan area, that is exactly what the County has done in Mitigation Measure 3.17-1 by including a lengthy list of potential measures that the County shall consider applying to each project, depending on feasibility. Please also refer to Master Response 7, "Greenhouse Gas Analysis and Mitigation."

Coalition-134

The commenter suggests that because of the large size of the proposed project, the County must set the groundwork for a community that minimizes GHG emissions or the County will "irrevocably lose" its ability to reduce GHG emissions in the future. The commenter claims the DEIR takes a piece-mealed approach to reduction of GHG emissions. The commenter requests that LEED building standards be incorporated into the proposed project, and that comprehensive GHG reduction plan be developed now that specifies "unambiguous performance standards and requires frequent evaluation of progress and adaptive management provisions."

First, the County does not believe that its ability to reduce GHG emissions will be in any way "lost" as suggested by the commenter. The County recognizes that the Sutter Pointe Specific Plan contains numerous design features that will substantially reduce GHG emissions, and because future CEQA analysis will be required for subsequent phases of project development, the County believes it will have ample opportunity to ensure that GHG emissions are appropriately reduced. Second, the County disagrees with the commenter's claim that the DEIR takes a piece-mealed approach to GHG reduction. This DEIR appropriately provides a programmatic level of analysis on the entire Sutter Pointe Specific Plan. Please see Master Response 3, "Deferred and/or Hortatory Mitigation." The County's believes that Mitigation Measures 3.17-1 and 3.17-2, which specify performance standards, take the correct approach to requiring subsequent detailed measures as technology changes over the 30-year buildout period of the proposed project. With regards to the commenter's request that the proposed project include LEED building standards, please see response to comment Coalition-96 and -97 where the County notes that the DEIR's mitigation measures are consistent with the components of LEED. Finally, the County does not believe that the performance standards contained in Mitigation Measure 3.7-1, 3.7-2, or 3.4-1 are ambiguous. It is simply not possible at this time to provide details regarding specific times for progress evaluations and to specify exactly which adaptive management strategies will be implemented given the programmatic nature of this DEIR. Please see Master Response 2, "Programmatic Nature of EIR Analysis," for further discussion of this issue. Please see also response to comment Coalition-95 and Master Response 7, "Greenhouse Gas Analysis and Mitigation," for detailed discussions as to why the County believes that the GHG mitigation measures included in the DEIR are appropriate for the programmatic nature of the analysis presented. No changes to the text of the DEIR are required.

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February 6, 2009

BY E-MAIL (dglibby@co.sutter.ca.us) AND U.S. MAIL

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Re: Union Pacific Railroad Company's Comments on the Draft Environmental Impact Report for the Sutter Pointe Specific Plan Project, SCH #2007032157

Dear Mr. Libby:

We represent Union Pacific Railroad Company ("UP"). By this letter, UP presents its comments in response to Sutter County's Draft Environmental Impact Report ("Draft EIR") for the Sutter Pointe Specific Plan Project (the "Project").

The Project encompasses approximately 7,500 acres located in South Sutter County, approximately 2 miles northeast of the Sacramento International Airport. State Route ("SR") 99/70 serves as the western boundary of the northern portion of the Project site and divides the southern portion of the site. The existing land uses on the site consist predominately of agriculture (primarily rice production) with limited industrial facilities, including A&N Auto Repair, AR Readymix, Sysco Corporation warehousing and distribution center, and a Holt Tractor Manufacturing Facility. The Project envisions the creation of an eventual new town that will feature a diverse mix of land uses, the development of which is anticipated to be completed in four phases over the next 20 to 30 years.

1

The Project's eastern boarder along Natomas Road lies immediately adjacent to the track and right-of-way of UP's Sacramento Subdivision main line (the "Main Line"). While the physical boundaries do not appear to include the Main Line, the Project proposes to substantially increase the population and to introduce new land uses, including housing, schools, parks and commercial buildings, in close physical proximity to UP's active rail line. Notably, two key regional roadways – Riego/Baseline Road ("Riego Road") and Sankey Road – that are partially located within the Project site cross the Main Line at-grade between Natomas Road and Pleasant Grove Road (the "Riego Road Crossing" and the "Sankey Road Crossing").

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By this letter, UP brings to the County's attention a number of concerns regarding traffic, safety, noise, vibration and mechanical odors. Based on our comments below, UP respectfully requests that the County analyze these impacts associated with the Project's location near the Main Line and set forth adequate mitigation measures that reduce those impacts. 1 Cont'd

1. Background on UP

Many people know about UP's distinguished history. UP played a prominent role in the development of the first transcontinental railroad in the late 1860's. What many people do not know is that today, UP remains a significant owner of railroad property and a major freight transporter in the western two-thirds of the United States. In fact, UP is the largest railroad company in North America.

Of particular relevance to the Project, UP owns a railroad track and right-of-way in and through Sutter County (the aforementioned Sacramento Subdivision main line) that very roughly parallels Natomas Road in close proximity to the east. At present, approximately 18 freight trains and two Amtrak passenger trains use the Main Line on a daily basis. The maximum locomotive speed is 70 miles per hour. 2

Given UP's significant presence throughout Sutter County, UP takes great interest in the County's growth and improvement. It is with this perspective that UP respectfully submits the comments in this letter.

2. Sutter County and UP

Before addressing the Project specifically, we thought it might be helpful to comment, more generally, on the relationship between Sutter County and UP. Given the apparent strong support for development in the County (especially the southern area), as shown by the passage of Measure M in November 2004 and surrounding development projects, more and more people, cars, and trains will travel into and out of the County everyday over the coming decades. Accordingly, freeways and streets will experience more traffic over time, and we can expect that, as a result, increasing numbers of businesses and people will rely on rail services to bypass congested roadways. Thus, it would seem to be in the County's best interest to take affirmative steps now that will protect and enhance those rail lines and services, so that they will continue to serve the County, its residents, and its economy effectively and efficiently in the near and distant future. 3

At the risk of stating the obvious, development near the UP Main Line in Sutter County can negatively impact rail services and create unintended consequences that are in neither UP's nor the County's best interests. New offices, retail establishments, housing, and other land uses predictably will attract more cars and pedestrians to the areas around the UP track. Cars and

pedestrians must cross the UP lines at-grade crossings, and people may trespass onto the railroad right-of-way as well. In addition to the obvious safety concerns of which UP remains vigilantly aware, these factors also have the result that trains may be forced to proceed more slowly through the County, and/or to make more frequent emergency stops, which makes rail service less effective and efficient. In the event of train slow-downs or stoppages, train cars may be forced to block at-grade roadway intersections, causing traffic disruptions. Moreover, the interaction of people and trains may make people all the more aware of the natural and unavoidable features of rail service, including noise, mechanical odors and vibration. 3 Cont'd

Ever realistic, UP recognizes that as Sutter County continues to grow and thrive, new development and redevelopment is likely to continue to occur on sites near the UP Main Line. In general, UP requests that the County mitigate the impacts of new development on UP's rail services by requiring appropriate and adequate mitigation measures. Those measures will, necessarily, vary depending upon the nature of each proposed project. Possible mitigation measures include, for example, requiring grade-separated roadway bridges and sidewalks where it is necessary for vehicles and people to cross the UP lines, sound walls, fences and other barriers, and public education. UP would welcome the opportunity to work collaboratively with County officials and staff to develop long-range public policies to help guide new development near the UP lines, with the goal of avoiding or reducing negative impacts. 4

3. Traffic

Many of the concerns specific to this Project, including, but not limited to, a concern about traffic, arise from the associated increase in population within the close proximity of the UP Main Line. The Project proposes to develop on the 7,500-acre site, which currently consists primarily of agricultural and industrial uses, a maximum of 17,500 residential dwelling units, up to 49.706 million square feet of commercial/industrial space, and a number of schools (six K-8 schools and one high school), parks, open space, and other community facilities. As noted, the UP Main Line runs just outside the Project's eastern boarder of Natomas Road. This new development therefore necessarily will result in a significant increase in population within the vicinity of the UP tracks. A natural consequence of the increased population will be an increase in traffic volumes not only on Natomas Road, but also through the existing at-grade rail crossings at Riego and Sankey Roads. Additional vehicle trips and traffic congestion could also negatively impact at-grade rail crossings in the area by increasing the chance of train-vehicular conflicts, thereby raising an obvious safety issue. 5

In addition to impacts on traffic caused by this Project, there are likely to be cumulative traffic impacts in this area due to other nearby planned or approved developments, including Greenbriar Specific Plan project to the southwest, Placer Vineyards Specific Plan ("Placer Vineyards Project") and Rio Linda/Elverta Specific Plan projects to the east, and the proposed 6

Natomas Joint Vision project to the immediate south. Specifically, the Placer Vineyards Project is bounded on the north by Baseline Road (a continuation of Riego Road). As recognized in the Draft EIR, Riego Road is also the primary east-west corridor providing access from the Placer County/Roseville area, crossing through the site and connecting to SR 99/70. (*See* Draft EIR, p. 2-4.) A natural consequence of the increased population will be an increase in traffic volumes within the vicinity generally and, in particular, across the existing at-grade crossing of Riego Road, in order for people to travel between the project areas and to access SR 99/70. 6 Cont'd

UP appreciates the County's analysis of the Project's impacts on traffic along the portions of Riego and Sankey Roads that cross the UP's track and right-of-way, both with and without the proposed Placer Parkway Corridor Preservation Project ("Placer Parkway"). As described in the Draft EIR, the Placer Parkway is an unfunded, regional transportation project that proposes to connect the rapidly growing areas of western Placer County at SR 65 to planned development within the Project area at SR 70/99. (*See id.*, p 3.3-4.) Two alignment alternatives for the Placer Parkway currently under environmental review are along Riego and Sankey Roads, both of which include a grade-separated roadway crossing of UP's track and right-of-way. (*See id.*, pp. 3.3-22, 3.3-23.) 7

In regards to the County's traffic analysis of the Riego Road Crossing, the Draft EIR concludes that the traffic impacts are unacceptable. Proposed as a mitigation measure is the requirement that the applicant widen Riego Road from two to four or six lanes and contribute its fair share towards the construction of a six-lane grade separated crossing of UP's track and right-of-way. (*See, e.g., id.*, p. 3.3-44, Mitigation Measures 3.3-2, 3.3-10, 3.3-24, 3.3-28.) Because full funding for the grade separated crossing is dependent upon fair share contributions by other applicants of surrounding development projects (including the Placer Vineyards Project), the Draft EIR contemplates the possibility of widening Riego Road at the railroad crossing as an at-grade crossing. Accordingly, the Draft EIR states that if the California Public Utilities Commission declines to approve the necessary permits for widening Riego Road at the railroad crossing at-grade, then mitigation measures would still require the applicant to contribute its fair share towards future grade separation at the railroad crossing. (*See, e.g., id.*, Mitigation Measures 3.3-2, 3.3-24, 3.3-28.) 8

In regards to the County's traffic analysis of the Sankey Road Crossing, the Draft EIR appears to conclude that the traffic impacts are not significant. Accordingly, no grade-separated crossing is included as a mitigation measure.

UP's operations must not be affected by greater traffic and potential congestion at at-grade crossings, and, thus, adequate mitigations should be implemented, including, most importantly, a grade separation at the Riego and Sankey Road Crossings. Although various Mitigation Measures require the applicant to pay its fair share toward a grade separation at Riego

Road, UP strongly urges the County to require the construction of a grade-separated crossing at this location in relation to this Project. UP also urges the County to continue to analyze the Project's impacts on traffic at the Sankey Road Crossing in subsequent EIRs tiered off of this Draft EIR and to adopt a mitigation measure requiring the construction of a grade separation crossing at Sankey Road. Further, any contemplated improvements encroaching onto UP's track and right-of-way (either at-grade or aerial) would require approval by UP and, even if so approved, such improvements must be constructed within UP guidelines so as not to interfere with train operations. Adequate land also needs to be reserved to provide the right-of-way for the separation, and, thus, the County should require that such a reservation of adequate land for the grade separation be included as an additional mitigation measure.

8 Cont'd

4. Pedestrian and Bicycle Safety; Trespassing

The addition of this large, new residential population near the UP Main Line creates concerns not only about traffic, but also about safety and potential trespassing. As noted, the UP Main Line is located immediately adjacent to the eastern boarder of the site, running along Natomas Road and crossing Riego and Sankey Roads at grade. According to the Draft EIR, there are approximately 20 rural residences and mobile homes and associated agricultural outbuildings currently located on the eastern boundary of the Project site south of Sankey Road and west of Natomas Road. (*See* Draft EIR, p. 3.2-7.) The existing industrial facilities on the Project site also employ approximately 660 people. (*See id.* at p. 3.2-4.) The Project, however, is estimated to generate 46,818 new residents over approximately 18 to 20 years and involves the development of approximately 17,500 low-, medium, and high-density residential units, many of which are located in tracts of land immediately adjacent to the Main Line. (*See id.* at pp. 1-2, 3.2-8.) The Project also proposes to construct bicycle and pedestrian trails, parks and K-8 schools adjacent to or near the railroad tracks. (*See id.* at Exhibits 2-9, 2-12, and 2-14.) Consequently, residents living on the site, visiting the parks, and using the trails can be expected regularly to come within close proximity of the track and traverse the at-grade crossings.

9

Although some employees are already present on the neighboring commercial and industrial sites (as well as some rural residents), the substantial increase in residents within close proximity to the Main Line is a significant change from existing conditions. Residents differ significantly from employees both in terms of their habits and the times of days when they are present. Residents, more than employees, tend to walk in the neighborhoods in which they live. They tend to stroll, walk their dogs, and go jogging—activities in which current employees are far less likely to engage in the rice fields and industrial facilities surrounding their workplaces. Residents walk and jog not only during weekdays, but also at night and on weekends. In addition, because seniors and children spend more time at home than most adults, and because they are less likely to have the ability to drive or have access to a car, seniors and children would be expected to make up a large proportion of the pedestrians in the Project area.

The anticipated increase in residential population and pedestrian/bicycle traffic brings the increased risk to safety and trespassing onto UP's right-of-way. The development of housing, parks and trails for public use near the right-of-way can result in more individuals, particularly children, walking onto the track or engaging in mischief that could pose serious safety concerns and interfere with rail service. Some residents could decide to trespass onto the right-of-way, either to access other land uses across the tracks or for the purpose of extending their walks or jogs. 9 Cont'd

UP generally disfavors the location of pedestrian and bicycle trails adjacent to its tracks. Therefore, any trails or pedestrian uses adjacent to or in close proximity of UP's tracks should be highly discouraged. 10

The County should closely analyze pedestrian safety and set forth appropriate mitigation measures. Specifically, the County should consider requiring the applicant to install grade-separated pedestrian walkways or an entire grade-separated roadway across the Main Line. Other possible mitigation measures include relocating residential land uses far away from the tracks where possible, setbacks and buffers, the installation of solid barriers along the full lengths of the right-of-way (for example, walls, as opposed to fencing, to manage pedestrians and vehicles), pedestrian gates, "no trespassing" signs, railroad safety education programs, and planning for safe transportation routes to schools, entertainment, shopping, and recreational facilities. 11

5. Noise

It is well-known that UP's rail operations generate the noise one would expect from an active railway. Given that the Project is located approximately 2 miles from the Sacramento International Airport, aircraft departing from and arriving at this Airport is also likely to generate noise. Other noise generating activities within the Project area include those associated with seasonal agricultural activities, local industry and busy roadways. The Project is therefore likely to expose new residents to these existing noise conditions. 12

UP appreciates the County's analysis of noise generated from various sources, including railroad pass-bys. As noted under Impact 3.5-3, noise from the Main Line is significant within approximately 600 feet from the tracks at locations beyond 1/4 mile from at-grade crossings, and approximately 1,200 feet from the tracks at locations within 1/4 mile of an at-grade crossing. The Draft EIR explains that the different impacts based on various distances is attributable to the requirements that trains sound their horns when approaching at-grade crossings, and the area of impact of the horns is effectively 1/4 mile.

UP further appreciates the County's proposed mitigation measures for the existing noise levels naturally associated with UP's long-standing railroad uses adjacent to the Project. Such mitigation measures include recorded deed notices in the areas affected by railroad pass-bys to ensure that initial and subsequent buyers, lessees and renters of the property are informed of the noise conditions associated with exposure to UP's track and right-of-way. Mitigation Measure 3.5-3 also requires the project applicant to prepare an acoustical analysis for any residential uses, and to ensure that adequate noise insulation features are included in the project design to reduce exterior noise levels at primary outdoor activity areas and interior noise levels within habitable rooms. While the Draft EIR recognizes that detailed recommendations for mitigations measures cannot be provided until more detailed site and grading plans are available, UP suggests that the County continue to consider as possible mitigation measures the construction of sound barrier walls or landscape buffers, and/or use of sound-proofing materials and techniques in the Project. 13

6. Vibration

It is well-known that UP's rail operations, as well as passenger trains, generate vibration normally associated with an active railway. Given that the Project is located within a relatively short distance from Sacramento International Airport, aircraft departing from and arriving at this Airport is also likely to generate vibration. The Project is therefore likely to expose new residents to existing vibration.

UP appreciates the County's analysis of vibration generated from various sources, including railroad pass-bys. The Draft EIR states that the nearest residences in the Project site are to be located more than 110 feet from the tracks and that the measured vibration levels during passage of freight trains were well below the threshold of significances for residential uses. (*See* Draft EIR, p. 3.5-19.) Accordingly, the County is not requiring any mitigation measures for the exposure of residential uses to vibration levels associated with railroad pass-bys. 14

Despite the conclusions reached from the vibration study, UP urges the County, out of an abundance of caution, to require the project applicant to disclose to the general public this pre-existing and predictably-occurring vibration associated with an active railway, preferably within the recorded deed notices that are already required to disclose the naturally occurring noise levels. 15

Further, UP urges the County to continue to analyze the railroad vibrations and their impacts on land uses near the tracks in subsequent EIRs tiered off of this Draft EIR and to adopt any appropriate mitigation measures. Possible mitigation measures include a condition of approval that requires the applicant to disclose to the general public this pre-existing and predictably-occurring vibration, as well as construction and design techniques (*e.g.*, trenching and/or floating floors) that absorb and/or minimize interior vibration. 16

7. Mechanical Odor

It is well known that train locomotives not only generate noise and vibration, but also may emit mechanical odors. Other existing land uses in and around the site include industry and commerce, which are also typically associated with mechanical odors, thereby potentially resulting in cumulative impacts that some people in the area may notice. The County should therefore analyze these potential impacts in the Draft EIR and implement adequate mitigation measures. 17

8. Project Description

UP appreciates the County's efforts to analyze the Project's impacts related to rail safety and operations along the Main Line within the Draft EIR. Notably, however, there is no reference to the existing Main Line in the Draft EIR's description of the "Project Site and Vicinity" (Section 2.3) and in the Draft EIR's description of the "Adjacent Land Uses" of the "Environmental Setting" (Section 3.1.2). UP respectfully requests that the County correct this oversight by referencing the Main Line in these sections. 18

9. Subsequent Tiered EIRs

UP recognizes that the County anticipates that the details of the Project will be addressed in subsequent environmental reviews tiered off of this Draft EIR. UP urges the County to continue to analyze the Project's impacts on traffic, safety, noise, vibration and mechanical odor in subsequent tiered EIRs inasmuch as they relate to rail safety and operations along the lengths of the right-of-way, including Natomas Road, and traffic flow at at-grade railroad crossings, including at Riego and Sankey Roads. 19

*****

UP appreciates this opportunity to comment on the Draft EIR for this Project and hopes that the County, as lead agency, gives due consideration to the above concerns. On UP's behalf, we would welcome the opportunity to sit down together with County officials and staff to discuss this Project as it progresses, as well as any other project that may relate to UP's property or operations in or near Sutter County. Such a discussion would afford UP and the County the opportunity to work in collaboration, to ensure that the Project and all future development near UP lines are compatible with the rail services that will continue to serve the County and State for years to come.

manatt
manatt | phelps | phillips

Please give notice to UP of all future developments with respect to this Project and any proposed transportation improvements in the vicinity as follows:

Mr. Terrel Anderson
Manager of Industry and Public Projects
Union Pacific Railroad Company
10031 Foothills Boulevard
Roseville, California 95747-7101

With a copy to:

Andrew Bassak, Esq.
Shirley Jackson, Esq.
Manatt, Phelps & Phillips, LLP
One Embarcadero Center, 30th Floor
San Francisco, California 94111

Please do not hesitate to contact our office if you would like to schedule a meeting with UP or have any questions. UP will monitor this project with interest.

Sincerely,

Shirley E. Jackson

Shirley E. Jackson

cc: Andrew Bassak, Esq.
Mr. Terrel Anderson

UPRR-1 The commenter notes that the proposed project would increase population and introduce new land uses near an active rail line. The County agrees. The commenter provides a general outline of his concerns, each of which are addressed in detail in the subsequent responses to UPRR comments below.

UPRR-2 The commenter provides a description of Union Pacific (UP) and identifies the location of the Sacramento Subdivision main line near Natomas Road along the eastern project site boundary. Comment noted; no response is required.

UPRR-3 The commenter notes that development near the main line can negatively impact rail services and create unintended consequences. The commenter notes that it is in the County's interest to take affirmative steps to protect and enhance existing rail lines and services. The County agrees that safety issues near active rail lines are a concern.

UPRR-4 The commenter recognizes that, as Sutter County continues to grow, new development and redevelopment is likely to continue to occur near the UP Main Line and requests that the County mitigate the impacts of such new development on UP's rail services. The commenter welcomes the opportunity to work collaboratively with the County on long-range policies to guide new development near UP lines to avoid or reduce negative impacts. The County appreciates the commenter's offer to work collaboratively and directs the commenter to responses to other comments in UPRR's letter (specifically, comments 5 – 17) on how impacts related to traffic, pedestrian and bicycle safety, noise, vibration, and mechanical odor are addressed in the Specific Plan and Draft EIR.

UPRR-5 The commenter makes a general statement that development under the Specific Plan will result in significant population increase within the vicinity of the UP tracks, which in turn will increase traffic volumes and congestion that could negatively impact at-grade rail crossings and increase the chance of train-vehicular conflicts. Please see responses to comments 6-8 below regarding specific traffic issues raised by the commenter.

UPRR-6 The commenter states that cumulative traffic impacts are likely to be caused by the project due to other nearby planned or approved developments. The commenter specifically expresses concerns about traffic volumes at the existing at-grade Riego Road crossing. Impacts to the UPRR east of the proposed project were evaluated in the DEIR in Section 3.3, "Transportation and Circulation." In addition, DEIR Mitigation 3.3-10A.1 includes the construction of a six-lane grade-separated crossing of the UPRR between Natomas Road and Pleasant Grove Road (N) based on the cumulative conditions. Cumulative land use inputs used to develop the cumulative condition traffic volume forecasts are discussed in the DEIR on page 3.3-20 and summarized in Table 3.3-9.

UPRR-7 The commenter expresses appreciation for the analysis of the project's impact on traffic along the portions of Riego and Sankey Roads that cross the UP's track and right-of-way, both with and without the proposed Placer Parkway Corridor Preservation Project. Comment noted; no response is required.

UPRR-8 In the first paragraph of this comment, the commenter summarizes the mitigation in the DEIR related to the UPRR crossing of Riego Road between Natomas Road and Pleasant

Grove Road (N) and asserts that the DEIR contemplates the possibility of an at-grade crossing because full funding for the grade-separated crossing is dependent on funding from other area development outside Sutter County. This assertion is incorrect. At-grade crossing improvements were identified to address an unacceptable level of service under "existing plus project" conditions because the forecasted traffic volumes did not satisfy FHWA crossing exposure criteria, which is discussed on Page 3.3-44 of the DEIR, not because of the availability of funding. The following discussion clarifies the mitigation proposed in the DEIR related to improvements of the UPRR crossing on Riego Road.

Mitigation Measure 3.3-2 on page 3.3-78 of the DEIR identifies that the project applicant shall widen (i.e., construct) Riego Road (in Sutter County) from two to four lanes between Natomas Road and Pleasant Grove Road (S) to address unacceptable level of service under "existing plus project" conditions. This improvement would require at-grade improvements to the UPRR crossing. The forecasted traffic volumes would not cause the crossing exposure criteria to be met; therefore, a grade-separated crossing of the UPRR was not identified as part of the mitigation. Furthermore, Mitigation Measure 3.3-2 goes on to clarify that if the California PUC declines to approve the necessary permits for widening Riego Road at its railroad crossing then the project shall widen the segment of Riego Road (excluding the UPRR crossing) and contribute its fair share towards the future (buildout) grade separation at the UPRR crossing as defined in Mitigation Measure 3.3-1. This discussion also applies to Mitigation Measure 3.3-24 as identified in the comment.

Mitigation Measure 3.3-10 on Page 3.3-86 of the DEIR identifies that the project applicant shall pay its fair share of the costs for widening Riego Road (in Sutter County) from two to four lanes between Natomas Road and Pleasant Grove Road (S), including a six-lane grade-separated crossing of the UPRR, to address unacceptable level of service under "cumulative plus project" conditions. The forecasted traffic volumes would cause the crossing exposure criteria to be met; therefore, a grade-separated crossing of the UPRR was identified as part of the mitigation. This discussion also applies to Mitigation Measure 3.3-28 as identified in the comment.

In the second paragraph of this comment, the commenter indicates that grade-separated crossing is not included as mitigation for the UPRR crossing of Sankey Road. The commenter is correct. The addition of the Sutter Pointe Specific Plan under either existing or cumulative conditions did not affect Sankey Road between Natomas Road and Locust Road. Therefore, no mitigation was required. In addition, the forecasted traffic volumes did not satisfy FHWA crossing exposure criteria. Please see the response to CPUC-RR-2.

In the third paragraph of this comment, the commenter notes that Union Pacific's railroad operations must not be affected by greater traffic and congestion. The commenter requests that the County continue to analyze the project's impacts on traffic at the Sankey Road crossing in subsequent EIRs and to adopt mitigation measures requiring: 1) the reservation of adequate land needed for construction, and 2) construction of a grade-separated crossing at Sankey Road. With regard to Sankey Road, there is an existing at-grade crossing. The level of service analysis performed for Draft EIR addressed both project-related and cumulative traffic impacts and did not identify the need to construct a grade-separated crossing at Sankey Road.

UPRR-9 The commenter raises two concerns related to pedestrian and bicycle safety: 1) safety at grade crossings of the UP Main Line along Reigo and Sankey Roads; and 2) pedestrian

safety from trespassing on UP property given the distances between the eastern boundary of the Specific Plan and the UP Main Line and potential access to UP property from the specific plan area.

The commenter states that the addition of a large, new residential population near the UP Main Line, in conjunction with the proposed construction of bicycle and pedestrian trails, parks, and K-8 schools adjacent to or near the railroad tracks will result in substantial increase in residents within close proximity to the main line, constituting a substantial change from existing conditions. The commenter correctly notes that implementation of the Specific Plan could result in the construction of 17,500 new residences with a population of 46,818 and that one elementary school site is proposed along the eastern boundary of the specific plan area. (See section 2.4-2 of the Draft EIR [Project Description] beginning on page 2-7; Exhibit 2-3 on page 2-9; Table 2-1 on page 2-13; and Table 3.2-2 on page 3.2-8, which show proposed land uses, estimated acreages of each use, estimated numbers of dwelling units by type, and estimated population.) The County agrees that the Specific Plan provides for substantial numbers of new residences and a substantial increase in population compared to existing conditions. However, the commenter suggests that the Specific Plan, as proposed, would include bicycle and pedestrian trails, parks, and K-8 schools "adjacent or near the railroad tracks." While the commenter is correct that the Specific Plan provides for low and medium density residential development, and an elementary school, along the eastern boundary of the specific plan area, the eastern boundary is located at least 200 feet, and as far as 2,000 feet, from UP property. The County cannot speculate on whether 200 feet represents "near" according to the commenter, since the commenter does not provide a quantifiable standard. However, the vast majority of residents, pedestrians, bicyclists, and children attending schools would be located more than 2,000 feet from UP property.

The commenter further states that the anticipated increase in residential population and pedestrian/bicycle traffic brings "the increased risk to safety and trespassing onto UP's right-of-way." The railroad is separated from the eastern edge of the project site by a major flood protection levee varying in height from 5 feet to 16 feet, Natomas Road (a small road along the top of the levee), and the Natomas East Main Drainage Canal (Steelhead Creek). As shown in Exhibit 6-17 of the Specific Plan (page 6-31), the closest proposed bicycle and pedestrian path roughly follows the eastern boundary of the Specific Plan area and would be at least 200 feet from UP property. While the project may result in an increase in residents, bicyclists, and pedestrians within the project area, the buffer between the UPRR main line and the project site, consisting of the elevated levee and the drainage canal, as well as the absence of ready access, improved or otherwise, between the project site and the main line would make it less attractive for individuals, particularly children, to walk onto the track or engage in activities that could pose serious safety concerns and interfere with rail service. The Specific Plan does not provide for a means of pedestrian access across the UP tracks. The only access to the UP main line from the project site would be via Sankey Road and Riego Road, neither of which provides for pedestrian access.

Notwithstanding the distance of the main line from the eastern Specific Plan area boundary, the commenter's request for an analysis of pedestrian safety, along with the consideration of measures listed above, would be considered as part of the County's review of specific development proposals based on the characteristics of those proposals. The County agrees with commenter that, as specific development projects are proposed, the County will review each project and impose appropriate conditions of approval, as

needed, to address site-specific pedestrian and bicycle safety issues from potential access to UP property from such developments.

The commenter suggests that a possible mitigation measure would be to relocate residential land uses far away from the tracks where possible, with setbacks and buffers. However, the commenter does not specify an acceptable distance. As noted previously, the closest part of the Specific Plan area is at least 200 feet from the tracks, and in some places more than 2,000 feet. The County believes these distances are adequate, given the DEIR's conclusions on impacts associated with proximity to the tracks, such as traffic, pedestrian and bicycle safety, noise, vibration, and mechanical odor.

Finally, the commenter states that the County should closely analyze pedestrian safety and consider one or more of a number of safety mitigation measures, including: grade-separated pedestrian walkways or an entire grade-separated roadway across the UPRR main line; relocating residential land uses far away from the tracks where possible; requiring setbacks and buffers; installing solid barriers, walls, and/or pedestrian gates; posting "no trespassing" signs; requiring railroad safety education programs; and planning for safe transportation routes to schools, entertainment, shopping, and recreational facilities. The County appreciates the commenter's recommendations and will consider these, and other potential mitigation measures that may be appropriate, as part of its review of site-specific development proposals submitted in the future under the Specific Plan.

UPRR-10 Please see response to comment UPRR-9.

UPRR-11 Please see response to comment UPRR-9.

UPRR-12 The commenter provides an overview of noise sources to which the project may be exposed, including the existing UPRR line, aircraft overflights, seasonal agricultural activities, local industry, and busy roadways, and states that the project is therefore likely to expose new residents to these existing noise conditions.

The County agrees that new project-generated residents would be exposed to various existing noise conditions. DEIR Chapter 3.5, "Noise," provides a thorough discussion of the types and levels of existing noise sources to which project residents would be exposed, including those listed by the commenter, on pages 3.5-16 through 3.5-25. An evaluation of exposure of project residents to noise from existing noise sources is contained in DEIR Impacts 3.5-1 through 3.5-9.

The commenter expresses appreciation for the County's analysis of noise generated by various sources, including railroad pass-bys. The commenter restates the conclusions of Impact 3.5-3.

No changes to DEIR text are required.

UPRR-13 The commenter provides an overview of mitigation measures proposed for the project. The commenter recommends further consideration of mitigation measures such as the construction of sound barrier walls or landscape buffers, and the use of sound-proofing materials for the project.

As suggested by the commenter, the use of solid noise barriers (i.e., sound walls and earthen berms), landscape buffers (increased setback distances), and sound-proofing materials are all recommended mitigation measures that are already contained in DEIR

Mitigation Measures 3.5-3 and 3.5-13. The use of these mitigation measures as outlined in the DEIR are feasible methods of reducing exterior and interior noise due to railroad operations adjacent to noise-sensitive land uses. However, as also outlined in the DEIR, the degree to which noise levels can be mitigated, and the detailed design measures that are necessary to ensure the effectiveness of the measures cannot be developed until site-specific lot plans and building plans are available. No changes to the text of the DEIR are required.

UPRR-14 The commenter notes that vibration generated by UP's rail operations, passenger trains, and aircraft arriving and departing Sacramento International Airport will likely affect the project site. The commenter expresses appreciation for the County's analysis of vibration generated from various sources, including railroad pass-bys. The commenter further notes that the Draft EIR states that the measured vibration levels during passage of freight trains were well below the threshold of significances for residential uses and that the County is not requiring any mitigation measures for exposure of residential uses to vibration from pass-bys, therefore. Comment noted; no changes to the text of the DEIR are required.

The commenter has correctly noted that DEIR Impact 3.5-4 found that measured vibration levels during passage of freight trains at the project site (0.015 in/sec PPV or less) were well below the threshold of acceptable levels (0.1 in/sec PPV); therefore, the DEIR concludes that railroad vibration would result in a less than significant impact to residents at the project site. No changes to the DEIR text are required.

UPRR-15 The commenter expresses concern, and urges caution in regards to disclosure of pre-existing and predictably-occurring vibration levels which are associated with active railways. The commenter recommends disclosure of the potential for elevated vibration levels at residences located in the vicinity of the railway within the recorded deed notices previously required for disclosure of noise levels.

The concern and caution in regards to disclosure of the railroad vibration levels is noted. However, the DEIR evaluated potential impacts from ground borne vibration generated by trains in Impact 3.5-4, and the measured ground borne vibration levels at the project site were substantially below the conservative threshold of significance that was established for the proposed project. As presented in the DEIR, ground borne vibration levels due to freight train passby on the project site ranged from 0.009 in/sec. PPV to 0.015 in/sec. PPV. The measured ground borne vibration levels were near or below levels that are considered to be the general threshold of human perception. Furthermore, the vibration measurements were conducted at a distance of 110 feet from the UPRR tracks; vibration levels at the nearest proposed land uses (located farther than 110 feet from the tracks) would attenuate further, and potentially be below the general threshold for human perception. No changes to the text of the DEIR are required in response to this comment.

UPRR-16 The commenter urges the County to continue to analyze potential railroad-generated vibration impacts on land uses near the tracks in subsequent project-level CEQA documents.

The commenter's concerns regarding ground borne vibration generated by trains are noted. Please see response to comment UPRR-15, which discusses the fact that ground borne vibration measurements were studied at the project site and were found to be extremely low, well below the appropriate threshold level, and therefore DEIR Impact 3.5-4 was determined to be less than significant. At the time future project-level CEQA

reviews are undertaken, the County will examine the findings in this DEIR to determine what type of additional analysis needs to be performed. The County will consider the commenter's request at that time. No changes to the text of the DEIR are required.

UPRR-17 The commenter states "it is well known" that trains emit "mechanical odors" in addition to creating noise and vibration, and asks that the DEIR analyze and provide mitigation measures for these "mechanical odors."

The commenter does not specify what he means by "mechanical odors." In an attempt to understand this request, the County's EIR preparer has consulted its library of air quality resources, fellow colleagues with experience analyzing odorous emissions, and has searched the Internet. Unfortunately, no information regarding "mechanical odors" emitted from trains is available. Therefore, the County is unable to respond to the commenter's request.

UPRR-18 The commenter observes that there is no mention of the main line in the description of the project site and vicinity in Section 2.3, or in the description of adjacent land uses in Section 3.1.2. The commenter requests that the County reference the main line in these sections. As shown in Chapter 3 of this FEIR, "Corrections and Revisions to the DEIR," the following text changes are proposed in response to this comment:

On page 2-1:

> Existing land use around the site is primarily agriculture in unincorporated areas of Sutter, Placer, Sacramento, and Yolo Counties. Sacramento International Airport and the proposed Metro Air Park (an industrial and business park) are located approximately 2 miles southwest of the project site. <u>The Union Pacific Railroad operates a railroad line which runs north-south near the eastern property boundary, on the east side of Natomas Road.</u> Nearby planned or approved developments include the Greenbriar Specific Plan project to the southwest and the Placer Vineyards Specific Plan and Rio Linda/Elverta Specific Plan projects to the east.

On page 3.1-18:

> The Natomas East Main Drainage Canal runs parallel to the eastern border of the project site and 0.5 mile south of Sankey Road. Natomas Road also runs parallel to the entire length of the eastern border of the project site. <u>The Union Pacific Railroad operates a railroad line which runs north-south near the eastern property boundary, to the east of Natomas Road.</u>

No further changes to the DEIR are required.

UPRR-19 The commenter urges the County to continue to analyze the project's impacts on traffic, safety, noise, vibration and mechanical odor in subsequent tiered EIRs inasmuch as they relate to rail safety and operations. Subsequent, project level environmental review will be required for all development at the project site. Comment noted; no response is required.

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John M. Bianchi
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Pleasant Grove, CA 95678

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Bianchi

January 31, 2009

Mr. Doug Libby AICP
Sutter County Community Services Department
1130 Civic Center Boulevard, Suite E
Yuba City, CA 95993
(530) 822-7400

RE: Sutter Pointe Specific Plan
Draft Environmental Impact Report

Dear Mr. Libby:

I am the owner of property located on both sides of the Sacramento/Sutter County line and along the East side of highway 99/70. (Sutter County APN: 35-310-013) The Sutter County portion of my property has been placed into phase # 4 of the Sutter Pointe Specific Plan. The County, it appears, is relying upon THE DEVELOPERS to drive the tractor i.e. piecemeal the phases and the infrastructure as they see fit. 1

On the proposed land use plan on my 289 acres (**i.e. 3% of 7500 total acres**), the developers have placed a high school and a k-8 school, two parks, a holding pond, raised open space buffer, frontage road to Elverta Road, and widening of RE 1000 drainage canal. 2

I have farmed this property for 35 years and plan to continue farming until the land is developed. Here lays the problem, trying to farm while I'm being boxed in by development on three sides. The DEIR fails to provide but the barest of analytical framework with regard to my land and farming impacts. It does not address the cumulative impact on the farming of my land while the build out of the first (three) phases are completed. 3 The DEIR has not addressed alternatives or mitigation measures that would reduce or lessen project impacts on my ability to continue to farm until phase #4. 4

<u>Comments on additional impacts to farming this property until phase #4 occurs</u>

- Page 3.11-4 (land use element) goal l.F, policy 1.F-1, l.F-2, 1.F-3 and 1.F-4. By placing my property in phase #4 the goals and policies are severely flawed. Farming of rice requires the use of airplanes for applying seed, fertilizer, and pesticides. These uses of the airplanes require adequate space to 5

turn around after each pass. By boxing developing in around three sides of my property the airplane use would be halted. Airplanes are not allowed to turn that low over schools, homes, employment villages, and or town centers. The County failed to evaluate in the DEIR the significant impact of "Boxing", with phase 1-3 development around my property

5 Cont'd

* Page 3.9-47 under heading agriculture resources, which also includes section 3.11. It says that agriculture during the project implementation would be impacted only "to a less-than – significant level". Though this statement may be true for most of agriculture around the outside boundaries of Sutter Pointe, my property within Sutter Pointe would significantly be impacted (i.e.) farming will be terminated.

6

INFRASTRUCTURE NEEDS IN THE FIRST THREE PHASES THAT WILL ADVERSELY AFFECT MY ABILITY TO FARM.

- Page 2-23 widen RD 1000 drain by 15 feet unto my property, which will also include a 50' construction easement.

7

- Page 2-29 My two existing agriculture wells will be impacted by Sutter Pointe supplying 37% of their water needs from ground water.

8

- Page 2-56 This talks about what supporting infrastructure improvements that will be needed in phase 1 and phase A Many of these infrastructure improvements will cumulatively impact my right to farm.

a) one K-8 school
b) one high school
c) one or two regional parks
d) town center
e) new roadways and right –of-ways
f) permanent run off detentions basins
g) storm drains pipes
h) manholes
i) inlets and outlet structures
j) groundwater well field
k) two sewer force mains
l) on-site sanitary sewer pipelines & pump stations
m) relocation of the NCMWCO irrigation canal.
n) widen R.D. 1000 drain along highway 99/70
o) dry utilities
p) frontage road on east side 99/70 to Elverta Road
q) fill along Sacramento/Sutter County line for 100 year flood protection

9

For all the reasons listed above, I request that my property be moved into phase 1 of the specific plan so that it can be developed along with the neighboring properties thereby eliminating the agriculture/urban interface issues I have described in this letter.

10

In addition, I believe that the high school should be relocated to a more centrally located area within the plan to better serve the residential component of the plan and eliminate conflicts with the adjacent elementary schools.

11

Sincerely,

John M. Bianchi

John M. Bianchi

Bianchi-1

The commenter identifies his ownership of property on the southern portion of the project site, and asserts that the County is allowing the developers to piecemeal phases and infrastructure as they see fit. The County interprets the commenter's description of "piecemealing" of the project to refer to the order in which planned improvements would be constructed, rather than a comment regarding the adequacy of environmental review under CEQA. The applicants and the County have worked together to develop an appropriate, well designed, land use plan that is split into phases. As discussed in DEIR Chapter 1.0, "Introduction," a 25-member Citizens Advisory Committee was appointed by the County Board of Supervisors both to provide input to the County Planning Commission and Board of Supervisors on the issues that committee members determined should be included in the General Plan and to provide recommendations identifying how those issues should be addressed. A series of study sessions and public meetings were conducted between March 13 and November 20, 1995. The Planning Commission reviewed the issues and the committee's recommendations during a separate series of public meetings and forwarded both sets of recommendations to the County Board of Supervisors for consideration and direction.

The committee also provided preliminary input regarding new areas for industrial and commercial development. In subsequent meetings, the County Planning Commission and the Board of Supervisors considered three land use alternatives. Following substantial public input, including requests for land use designation changes from individual property owners, the County Board of Supervisors selected a preferred alternative.

Several critical factors affecting project development were taken into consideration in the preparation of the proposed land use plan, including constraints and opportunities associated with the following:

- project site boundary;
- significant on-site existing easements (irrigation, drainage, and the Natomas Cross Canal);
- Natomas Basin Conservancy mitigation lands (i.e., habitat preserve areas) located west and south of the project site along the Sacramento River;
- existing on-site employment uses (Sysco Corporation warehousing and distribution center, Holt Tractor facility, A&N Auto Repair, and AR Readymix);
- existing floodplain issues;
- Sacramento International Airport noise issues;
- proximity to downtown Sacramento, Sacramento International Airport, regional planned projects, and SR 99/70 corridor; and
- developable areas (based on factors including size available for employment centers, topography, vegetation, access, and geotechnical conditions).

This comment does not raise issues related to the analysis contained in the DEIR; therefore, no changes to the text of the DEIR are required.

Bianchi-2 The commenter states that on his 289-acre property, a high school, a K-8 school, two parks, a holding pond, a raised open space buffer, a frontage road, and RD 1000 canal widening would take place. This comment does not raise issues or objections related to environmental review under CEQA, therefore no response is required.

Bianchi-3 The commenter asserts that his property would be "boxed-in" by development on three sides, which would affect his ability to farm, and asserts that the DEIR fails to adequately analyze this impact. The commenter further asserts that the DEIR fails to address the cumulative impact on the farming of the commenter's land while buildout of the first three phases is completed.

The DEIR addresses potential conflicts with existing on- and off-site agricultural operations in Impact 3.11-3 (page 3.11-13), and finds the impact to be significant. Three mitigation measures are proposed: Mitigation Measures 3.11-3a, -3b, and -3c. These mitigation measures include establishing buffers at least 150 feet wide on the urbanizing lands, providing the County's agricultural operations disclosure to prospective residents and tenants, and coordinating with landowners and operators to sustain existing operations until the parcels are needed for urban development. Even after the imposition of these feasible mitigation measures, the DEIR finds this impact to be significant and unavoidable. With respect to cumulative impacts, Section 5.7.11 of the DEIR (pages 5-25–5-26) identifies the project's cumulatively considerable contribution to this cumulatively significant and unavoidable impact. Therefore, no changes to the text of the DEIR are required.

Bianchi-4 The commenter asserts that the DEIR has not addressed alternatives or mitigation measures that would reduce or lessen project impacts on his ability to farm until Phase 4 of the project would be developed. Please see response to Bianchi-3 above for a description of the feasible mitigation measures contained in the DEIR that would help to reduce conflicts between on-going farming operations and project development. Even after the imposition of these feasible mitigation measures, the DEIR finds this impact to be significant and unavoidable. This comment does not raise specific alternatives or mitigation measures that the commenter believes should have been considered or imposed. No changes to the text of the DEIR are required.

Bianchi-5 The commenter states that rice farming requires the use of airplanes for applying seed, fertilizer, and pesticides, and states that use of airplanes for this purpose would be halted by development of the proposed project. The commenter then asserts that the County failed to evaluate the significant impact of "boxing-in" the commenter's property with earlier phases of development. Please refer to the response to Bianchi-3; the DEIR identifies conflict with existing on- and off-site agricultural operations as a significant impact in Impact 3.11-3 (page 3.11-13). Three mitigation measures are proposed: Mitigation Measures 3.11-3a, -3b, and -3c. Even after the imposition of these feasible mitigation measures, the DEIR finds this impact to be significant and unavoidable. No changes to the text of the DEIR are required.

Bianchi-6 The commenter refers to DEIR Chapter 3.9, "Water Supply," page 47, and claims that contrary to the statement in the DEIR, impacts to his farming on his property would not be less than significant. The commenter misstates the DEIR. The analysis contained on pages 3.9-43 through 3.9-47 relate to Impact 3.9-5, which evaluates the potential impacts

that could occur from curtailment of project development if the necessary water supplies to serve Phases 2-4 were to become unavailable, resulting in a partially built-out project. Because development phases 2-4 would not be constructed, and following the implementation of Mitigation Measures 3.11-3a, -3b, and -3c, the DEIR correctly states that impacts associated with disruption of existing agricultural operations during *construction activities* would be reduced to a less-than-significant level. The discussion on DEIR page 3.9-47 discloses that significant and unavoidable impacts related to conflicts with existing on-site and off-site agricultural operations would occur through implementation of the project. No changes to the text of the DEIR are required.

Bianchi-7 The commenter asserts that widening of existing RD 1000 facilities would adversely affect his ability to farm. RD 1000 would have to acquire any land that is needed for widening of its facilities. Please refer to the response to Bianchi-3; the DEIR discloses the significant and unavoidable impact on agricultural operations that would result from project implementation. No changes to the text of the DEIR are required.

Bianchi-8 The commenter asserts that his two existing agricultural wells would be "impacted" by the proposed project's use of groundwater for supply.

Please refer the response to comment Friends-A-18. The proposed Sutter Pointe wells are planned to produce groundwater from a greater depth (approximately 400 feet below ground surface) than most of the wells in the vicinity of the proposed project. The Groundwater Supply Assessment (GSA) prepared for the DEIR included extensive analysis and testing of the aquifer underlying the project site (DEIR Appendix C). The GSA analysis determined that the well spacing needed to be a minimum of 3,000 feet to reduce well interference between project wells to acceptable levels. Additionally, the GSA determined that local groundwater levels in the immediate vicinity of the proposed project wells would be lowered by approximately 10 feet, which is considered an insignificant change in local groundwater levels. Because the commenter did not provide the location of his two existing agricultural wells, it not possible for the County to respond in greater detail to this comment except to note that the final location of the proposed Sutter Pointe wells would be chosen, in part, based on the location of existing wells in the area. The DEIR analyzed the potential impact of groundwater depletion by the proposed project (Impact 3.7-6, beginning on page 3.7-62) and concluded that both the on-site and off-site impacts would be less than significant. Therefore, no changes to the text of the DEIR are required.

Bianchi-9 The commenter identifies 17 different infrastructure improvements in Phase 1 and Phase A, and asserts that many of these infrastructure improvements would "cumulatively impact" his right to farm. The DEIR includes an analysis of impacts related to conflicts with existing on- and off-site agricultural operations in Impact 3.11-3 (page 3.11-13). Please refer to the response to Bianchi-3 for a more detailed discussion of this issue. Cumulative impacts are evaluated in DEIR Chapter 5, and project-related impacts related to agriculture are identified as cumulatively significant and unavoidable. No changes to the text of the DEIR are necessary.

Bianchi-10 The commenter requests that his property be moved into Phase 1 of the project, so that it can be developed along with neighboring properties, thereby eliminating agricultural/urban interface issues described above. As described on page 2-54 of the DEIR, phasing could be adjusted to allow portions of the project to be built out-of-sequence upon County approval of a Phasing Study describing the proposed changes and documenting their consistency with the project objectives and Measure M. The DEIR

offers programmatic coverage of the project as a whole, and neither requires a specific phasing order, nor precludes changes to the phasing order for a particular portion of the project site, so long as a Phasing Study is adopted. The DEIR's programmatic coverage would apply if the commenter chose to submit a Phasing Study and propose development outside of the sequence described in the Specific Plan. The commenter's request would not alter the significance conclusions contained in the DEIR; the project site is too large to be developed all at the same time, and therefore regardless of which properties were developed in Phase 4, significant and unavoidable impacts would still occur. No changes to the text of the DEIR are required,

Bianchi-11 The commenter observes that he believes that the high school should be relocated to better serve the residential component of the plan and eliminate conflicts with adjacent elementary schools. Please see responses to East Nicolaus-11 and -13, and PGUSD-13. This DEIR provides an analysis at a program level. The location of school sites could be further refined in consultation with the East Nicolaus Joint Union High School District and the Pleasant Grove Joint Union School District. No changes to the text of the DEIR are required.