Final Environmental Impact Report

California Health Care Facility (Stockton)

EDAW | AECOM

March 2009

Final Environmental Impact Report

California Health Care Facility (Stockton)

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March 2009

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03.16.09

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ACRONYMS AND ABBREVIATIONS

afy	acre-feet per year
AIA	air impact assessment
AQAP	air quality attainment plan
ARB	California Air Resources Board
BACT	best available control technology
BO	biological opinion
CBC	California Building Code
CCAR	California Climate Action Registry
CCC	California Conservation Corps
CCWD	Calaveras County Water District
CDCR	California Department of Corrections and Rehabilitation
CEQA	California Environmental Quality Act
CESA	California Endangered Species Act
CHCF Stockton	California Health Care Facility, Stockton
CPR	California Prison Health Care Receivership Corporation
CTCA	Correctional Training Center Annex
DEIR	draft environmental impact report
DFG	California Department of Fish and Game
DJJ	Division of Juvenile Justice
DWSP	Delta Water Supply Project
EPAP	Existing plus Approved Projects
ESA	federal Endangered Species Act
FEIR	final environmental impact report
FTE	full-time equivalent
GAMAQI	*Guide for Assessing and Mitigating Air Quality Impacts*
HSA	Health Services Agency
LAFCO	Local Agency Formation Commission
LOS	level of service
LULU	locally unwanted land uses
MCL	maximum contaminant level
msw	municipal solid waste
NCRF	Northern California Reentry Facility
NCYCC	Northern California Youth Correctional Center
NEPA	National Environmental Policy Act

PCE	tetrachloroethylene
PHF	Peak-hour factor
proposed project	proposed California Health Care Facility, Stockton Project
RWQCB	Regional Water Quality Control Board
SEWD	Stockton East Water District
SJCOG	San Joaquin Council of Governments
SJMSCP	*San Joaquin County Multispecies Habitat Conservation Plan*
SPUI	single-point urban interchange
SR	State Route
TIS	traffic impact study
USACE	U.S. Army Corps of Engineers
VOC	volatile organic compounds
WDR	waste discharge requirements

1 INTRODUCTION

1.1 DRAFT AND FINAL ENVIRONMENTAL IMPACT REPORT

On October 24, 2008, the California Prison Health Care Receivership Corporation (CPR) distributed to public agencies and the general public a draft environmental impact report (DEIR) for the proposed California Health Care Facility, Stockton (CHCF Stockton) Project (proposed project). The facility would provide subacute medical and mental health care to up to 1,734 inmate patients. The proposed project would replace the existing closed Karl Holton Youth Correctional Facility in San Joaquin County near the Stockton city limits with housing units, a diagnostic and treatment center, community space for patients, administrative buildings, support structures (a warehouse, regional food service facility, and central plant), and secured perimeter (a guard tower, lethal electrified fence, sally port, and armory).

The primary and fundamental objective of CHCF Stockton is to provide, in an expeditious manner, constitutionally adequate medical and mental health care for California prison inmates, consistent with federal district court orders. This objective would be met by constructing medical and mental health facilities at key locations throughout California, potentially including the project site. See Section 1.1 in the DEIR's Introduction for a detailed description of the CPR's background, purpose, and responsibilities.

As part of that overall goal, the proposed project is intended to achieve the following objectives:

- Locate the medical and mental health facility in a geographic area which effectively serves state prisons.
- Locate the medical and mental health care facility in proximity to a metropolitan area where there is access to a large employment base to serve the facility, including areas with potential training facilities.
- Locate the medical and mental health care facility on state-owned property with priority given to existing California Department of Corrections and Rehabilitation (CDCR) facilities.
- Size the facility to provide between 1,300 and 1,800 beds to achieve the most efficient and optimal patient care while ensuring a secure facility.
- Design the facility in a manner that is conducive to optimal care, including patient access to the diagnostic and treatment center, patient support areas, and outdoor areas.
- Provide a high level of security to protect the safety of the patients, correctional and medical staff, and the surrounding community.

The DEIR evaluated the environmental impacts associated with constructing and operating the subacute medical and mental health care facility, and included mitigation measures and project alternatives to reduce the significance of impacts. Section 15205(d) of the California Environmental Quality Act Guidelines (State CEQA Guidelines) requires a 45-day period for public review of the DEIR. The 45-day review period for CHCF Stockton began on October 24, 2008, and ended on December 8, 2008. State and local agencies, and the general public, commented on issues evaluated in the DEIR during the review period. In addition, on November 10, 2008, a public hearing was held at the board room of the San Joaquin Council of Governments, during which oral comments on the DEIR were received. Written comment letters and a transcript of oral testimony provided at the public hearing are provided in their entirety in Chapter 3, "Comments and Responses to Comments on the DEIR."

Comments received on the DEIR raise various issues including (to name only a few) impacts to public services, annexation into the city, program versus project-level environmental review, the question of CPR's lead agency status, and whether analysis under the National Environmental Policy Act (NEPA) (42 U.S.C., § 4321 et seq.) is necessary. Responses to each of the comments received are provided in this final environmental impact report

(FEIR). Although some of the comments have resulted in changes to the text of the DEIR (see Chapter 4, "Corrections and Revisions to the DEIR"), none of the changes constitute "significant new information," under CEQA Guidelines Section 15088.5, requiring recirculation of the DEIR.

The FEIR includes the following documents in their entirety:

- *Draft Environmental Impact Report for the California Health Care Facility (Stockton)* (including Appendices A–I), dated October 2008 (Volumes I–III);
- Comments received on the DEIR; and
- CPR's responses to comments received on the DEIR, dated March 16, 2009 (Volume IV);
- Corrections and revisions to the DEIR, dated March 16, 2009 (Volume V);
- FEIR Appendices A through E, dated March 16, 2009 (Volume VI through X).

These documents are available for review at URS/Bovis Lend Lease Joint Venture, 2400 Del Paso Road, Suite 255, Sacramento, CA 95834; on the Internet at http://www.cphcs.ca.gov, under "Construction Projects;" and at the following additional locations:

San Joaquin County Library
Chavez Central
605 N. El Dorado Street
Stockton, CA 95202

Lathrop Branch Library
15461 Seventh Street
Lathrop, CA 95330

Manteca Branch Library
320 W. Center
Manteca, CA 95336-4539

City of Stockton
Community Development Department
345 N. El Dorado Street
Stockton, CA 95202

San Joaquin County
Community Development Department
1810 E. Hazelton Avenue
Stockton, CA 95205-6298

1.2 ORGANIZATION OF THE RESPONSES TO COMMENTS DOCUMENT

Chapter 2, "Summary of the Project Description," presents a summary of the project description from the DEIR, including changes to the project description since the release of the DEIR. Chapter 3, "Comments and Responses to Comments on the DEIR," contains all written and oral comments received on the DEIR and presents responses to significant environmental issues raised in the comments, as required by Section 15132 of the State CEQA Guidelines.

Several of the issues raised in comments on the DEIR address matters that do not require responses in the context of CEQA. Nevertheless, where feasible and relevant, responses have been provided to supply as much information as possible about the proposed project to the public, interested agencies, and decision makers.

All comment letters and comments by speakers at public hearings are labeled to correspond with an index table (Table 3-1, page 3-1) in Chapter 3. Each individual comment is assigned a number (e.g., 1-1) that corresponds with the response that follows the comment. Chapter 4, "Corrections and Revisions to the DEIR," presents specific changes that were made to the text of the DEIR in response to comments raised or new project information. Chapter 5, "References," identifies the documents and personal communications cited in this document. Chapter 6, "Report Preparers," identifies the preparers of this document.

For those comments that have resulted in corrections or revisions to the DEIR, the text of the DEIR is reproduced in the comment and in Chapter 4. Changes in the text are indicated by strikethrough (~~strikethrough~~) where text is removed and by double underline (double underline) where text is added.

1.3 COMMENTS THAT REQUIRE RESPONSES

Section 15088(c) of the State CEQA Guidelines specifies that the focus of the responses to comments shall be on the disposition of significant environmental issues. Responses are not required on comments regarding the merits of the project or on issues not related to the project's environmental impacts. Comments on the merits of the proposed project or other comments that do not raise environmental issues will be forwarded to the federal Receiver for consideration before it either approves the proposed project, approves a modified project, or denies the project.

1.4 PROJECT DECISION PROCESS

The environmental review process was initiated with the publication of the Notice of Preparation (NOP) for a DEIR on June 16, 2008; a public scoping meeting in Stockton on June 30, 2008; and recirculation of the NOP on August 11, 2008. The DEIR was circulated for a 45-day public review period on October 24, 2008, and a public hearing to receive oral and written comments on the contents of the DEIR was held in Stockton on November 10, 2008.

This FEIR document is being released on March 16, 2009, and sent to agencies who commented in writing within the DEIR's 45-day review period, or who provided comments at the November 10, 2008 public hearing. Lead agencies are required to provide to the commenting public agency proposed responses to the commenting agency's comments on DEIRs at least 10 days before the certification of the FEIR (State CEQA Guidelines Section 15088[b]).

After the 10-day agency review period, the federal Receiver will review the DEIR and this final EIR document, which together form the complete FEIR. As part of this review, the federal Receiver will consider any comments provided on this document, as well as other information pertaining to the FEIR, and will determine whether the FEIR should be certified as adequate under CEQA. If so, the Receiver will adopt a resolution certifying the FEIR pursuant to CEQA Guidelines Section 15090.

Once the FEIR is certified, the Receiver can decide whether to approve the project as proposed, approve a modified project, or deny the project. If the Receiver decides to approve the project, he will adopt a resolution memorializing the project approval and provide required notice, including notice to anyone or interested party who previously requested notice. In addition, the Receiver will adopt findings of fact pursuant to CEQA Guidelines section 15091.For each significant environmental effect identified in the EIR, the receiver must issue a written finding reaching one or more of three permissible conclusions. According to the State CEQA Guidelines, Section 15091, the three possible findings are:

- Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR;

- Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency; or

- Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the FEIR.

In addition, if the Receiver determines to approve the project, the Receiver will adopt a mitigation monitoring and reporting program (MMRP)—consistent with Section 15097 of the State CEQA Guidelines—that describes how each of the mitigation measures adopted for the project will be implemented and provides a mechanism for tracking their implementation. Because the project is considered to be of statewide, regional, or areawide importance, CPR will, consistent with State CEQA Guidelines Section 15097(g), distribute the MMRP to Caltrans and the San Joaquin Council of Governments (SJCOG), which is the Regional Transportation Planning Agency (RTPA). The Receiver's decision whether to deny or approve the project or one of its alternatives will not involve a public hearing.

2 SUMMARY OF THE PROJECT DESCRIPTION

2.1 PROJECT LOCATION

The 144.2-acre project site is located approximately 1.5 miles east of State Route (SR) 99 in unincorporated central San Joaquin County. Situated within the Northern California Youth Correctional Center (NCYCC) at 7650 South Newcastle Road, the site is approximately one-third mile south of the Stockton city limits. Newcastle Road provides direct access to the NCYCC facilities.

The 400-acre NCYCC is located approximately 1,600 feet south of Arch Road and is accessed from two driveways on Newcastle Road. NCYCC is developed with the N. A. Chaderjian, O. H. Close, DeWitt Nelson, and Karl Holton youth correctional facilities. The N. A. Chaderjian facility was designed for a capacity of 600 wards and the other three facilities were designed for 400 wards each, for a total capacity at NCYCC of 1,800 wards. The Karl Holton facility was closed in 2003. As of June 2008, the three operational youth correctional facilities housed a combined total of approximately 450 wards. As of August 2008, the DeWitt Nelson facility had no wards and was being used temporarily to train staff members of youth correctional facilities who were being reassigned to adult correctional facilities at other sites. In addition to the youth correctional facilities, an existing state-owned correctional training center, the Richard A. McGee Correctional Training Center Annex (CTCA) (formerly the Northern California Women's Facility), is located on Arch Road adjacent to NCYCC to the northeast. In early 2008, CDCR approved converting the CTCA facility into the Northern California Re-Entry Facility, to provide counseling, services, job training, and housing placement services for up to 500 adult male inmates who are a year or less from their release dates. An approved California Conservation Corps (CCC) project with 111 participants and 35 employees will be constructed on 20 acres east of Newcastle Road, just north of the O. H. Close facility.

2.2 PROJECT OBJECTIVES

The primary and fundamental objective of CHCF Stockton is to provide, in an expeditious manner, constitutionally adequate medical and mental health care for California prison inmates, consistent with federal district court orders. This objective would be met by constructing medical and mental health facilities at key locations throughout California, potentially including the project site. See Section 1.1 in the DEIR's Introduction for a detailed description of the CPR's background, purpose, and responsibilities.

As part of that overall goal, the proposed project is intended to achieve the following objectives:

- Locate the medical and mental health facility in a geographic area which effectively serves state prisons.
- Locate the medical and mental health care facility in proximity to a metropolitan area where there is access to a large employment base to serve the facility, including areas with potential training facilities.
- Locate the medical and mental health care facility on state-owned property with priority given to existing CDCR facilities.
- Size the facility to provide between 1,300 and 1,800 beds to achieve the most efficient and optimal patient care while ensuring a secure facility.
- Design the facility in a manner that is conducive to optimal care, including patient access to the diagnostic and treatment center, patient support areas, and outdoor areas.
- Provide a high level of security to protect the safety of the patients, correctional and medical staff, and the surrounding community.

2.3 FACILITY CHARACTERISTICS

As described in Chapter 3 of the DEIR, the project involves constructing a subacute medical and mental health care facility on the project site with up to 1,734 beds. The facility would consist of approximately 1.2 million square feet and would include housing clusters, diagnostic and treatment centers, an armory, warehousing and support facilities, a central plant, outdoor recreation fields, a gatehouse, a regional food service facility, and staff training facilities and parking areas. A 12-foot-tall lethal electrified fence would surround the secured area, a vehicle sally port would be incorporated into the fencing, and one 54-foot-tall guard tower would be located at the vehicle sally port. The project also includes exterior lighting. Parking would be provided both for staff members and for the 75–100 daily visitors anticipated. Section 2.5, "Project Updates Since Publication of the DEIR," provides a more detailed description of changes to the project description.

2.4 OPERATIONAL CHARACTERISTICS AND STAFFING

It is anticipated that the proposed medical care facility would employ 2,400–3,000 employees. The number "3,000" was used as a conservative assumption for the EIR's analysis and modeling. The following factors would determine the final number of employees at the proposed facility: (1) the acuity level of the patients, particularly the mental health patients; (2) the decision to locate administrative and/or managerial functions at this site or at some other proposed CPR facility or facilities; and (3) various California licensure standards for medical and correctional facilities.

These employees would work several different shifts. The total number of employees present on the site in the course of a day would be less than the total number of persons hired. The facility would operate 24 hours a day, 7 days a week, and staff members would rotate among the various shifts and days of operation. The staffing distribution that was shown on Table 3-3 of the DEIR (page 3-10) has been superseded by the revised Mitigation Measure for Impact TRAF-4. Please refer to Response to Comment 26-15 for the required staff distribution by shift. This change is also identified in Chapter 4, "Corrections and Revisions to the DEIR," of this FEIR.

More detailed operational characteristics are described on page 3-10 of the DEIR.

2.5 PROJECT UPDATES SINCE PUBLICATION OF THE DEIR

Since the publication of the DEIR in October 2008, the staff-initiated changes described below have been made to the project description.

As reported in the DEIR (see pages 4.7-21 through 4.7-22), the potential existed for the on-site drainage basin to be modified, resulting in the potential for filling jurisdictional waters of the United States and the need for associated permitting. Since publication of the DEIR, engineering studies prepared by Kimley-Horn and Associates (see Appendix A) have concluded that expansion of the existing retention basin is not needed.

Kimley Horn concludes on page 16 of the Drainage Study (Appendix A) that the basin has a total storage capacity of 87.6 acre feet (AF). Using the San Joaquin County Hydrology Manual, the existing basin would accept runoff from the 100-year storm (66.2 AF) with no discharge into Littlejohn's Creek and would generally operate as a retention basin. Using San Joaquin Improvement Standards, the run-off from the 100-year storm increases to 91.2 AF; this volume is 3.6 AF above the capacity of the basin if operating as a "retention basin," meaning that the basin holds all runoff without any pumping. Using the pumps that already exist at the basin, the basin then operates as a "detention basin," which is able to pump the excess 3.6 AF of runoff into Littlejohn's Creek during a 100-year storm event, as modeled using the San Joaquin Improvement Standards. This is a worst-case condition that requires only minimal use of the existing pumps, which would be metered to prevent any potential for downstream flooding (See Appendix A). Therefore, the existing retention basin has sufficient capacity to serve the CHCF Stockton and existing Northern California Youth Correctional Center facilities. The discussion in the DEIR regarding National Pollution Discharge Elimination System (NPDES) permitting remains applicable

(p. 4.6-18), and the DEIR's conclusion regarding potential for on- and off-site flooding remains unchanged (Impact HYDRO-4, on p. 4.6-21).

Because the detention basin would no longer require expansion, the proposed project would not directly or indirectly discharge dredged or fill material into jurisdictional waters of the United States and no authorizations from the U.S. Army Corps of Engineers or the Central Valley Regional Water Quality Control Board are required. Discussions of several impacts in Section 4.7, "Biological Resources," of the DEIR—impacts on special-status reptiles such as northwestern pond turtle and giant garter snake, on tricolored blackbird, and on potential waters of the United States—are directly related to augmenting the previously proposed expansion of the detention basin. Therefore, because the proposed project has been revised to no longer include expansion of the detention basin, the discussions regarding the basin expansion (or effects thereof) in the DEIR's project description and in Impacts HYDRO-2, BIO-3, BIO-4, BIO-6 and UTIL-4, no longer apply. Furthermore, mitigation measures for Impacts BIO-3, BIO-4, and BIO-6, which mitigate potential injury or mortality of the special-status species mentioned above and short-term impacts on waters of the United States, are no longer necessary and will not be included in the mitigation monitoring and reporting plan for the project. Because this change in the proposed project would result in avoidance of the impacts, rather than mitigation of the impact to a less-than-significant level, the overall project impacts would be less than originally proposed. Section 4 of this document reflects these changes in the EIR.

The changes to the project description do not necessitate recirculation of the DEIR. CEQA Guidelines Section 15088.5 requires a lead agency to recirculate an EIR for further review and comment when significant new information is added to the EIR after public notice is given of the availability of the draft EIR but before certification of the Final EIR. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect that the project proponent declines to implement. The CEQA Guidelines provide the following examples of significant new information under this standard:

- A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.
- The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043).

(CEQA Guidelines, § 15088.5, subd. (a).)

Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. (CEQA Guidelines, § 15088.5, subd. (b).)

In this case, the elimination of the expansion of the existing detention basin would serve to reduce the project's potential for significant adverse environmental effects, as discussed above. No changes have been made to the proposed project that would result in an increase in environmental impacts over those described in the DEIR. Therefore, the changes to the project description do not rise to the level of "significant" information requiring recirculation of the DEIR.

3 COMMENTS AND RESPONSES TO COMMENTS ON THE DEIR

This chapter of the FEIR contains comment letters received during the public review period for the DEIR, which concluded on December 8, 2008. In conformance with Section 15088(a) of the State CEQA Guidelines, written responses were prepared addressing comments on environmental issues received from reviewers of the DEIR.

3.1 LIST OF COMMENTERS ON THE DEIR

Table 3-1 below indicates the numerical designation for each comment letter received, the author of the comment letter, the date of the comment letter, and the main issues raised in each comment letter.

3.2 COMMENTS AND RESPONSES ON THE DEIR

3.2.1 MASTER RESPONSES

Several of the comments received on the DEIR raised similar issues. To eliminate redundancy, the master responses provided below have been prepared to address these common issues. The master responses include the following:

- Master Response 1: Alternatives
- Master Response 2: Programmatic versus Project-Level Environmental Review
- Master Response 3: Recruitment and Staffing Issues Resulting from the Proposed Project
- Master Response 4: Increased Demand for Local Services
- Master Response 5: Traffic Issues

Table 3-1
Comment Letters Regarding the DEIR: Matrix of Comments and Summary of Concerns

Letter #	Agency	Author(s) of Comment Letter	Date Sent	Summary of Concerns Expressed in the Comment Letter
1	San Joaquin County Board of Supervisors	Ken Vogel, Chairman	11/23/08	States opposition to the proposed project, and includes a resolution, passed by the County Board of Supervisors, opposing the project. Lists the following key points of opposition*: • *Public Works:* Concerns include increases in travel levels and fees for mitigating impacts on traffic, regional transportation, and water. • *Human Services Agency:* Affected programs include General Assistance, CALWorks and Food Stamps, In-Home Support, Adult Protective Services, Multipurpose Senior Services, and Child Protective Services. • *Health Care Services:* Concerns include effects on the County's ability to recruit and retain health care/support staff, and the possible need to expand current health care facilities to accommodate additional state referrals. • *Sheriff's Office:* Concerns include increases in coroner's cases and demand for public-administrator service; effects on the ability to recruit and retain correctional officers; budgetary effects of the construction costs of the expanded jail facility; and ability to staff the facility within 90 days of project completion. * The comment letter states that opposition would cease if all County-requested mitigation measures requested by San Joaquin County were to be adequately addressed in the FEIR. The letter includes points of mitigation and their estimated costs.
2	Health Plan of San Joaquin	Dale Bishop, M.D., Medical Director John Hackworth, Ph.D., CEO	11/10/08	States the following main points of concern regarding the proposed project: • Recruitment and retention of personnel for a facility requiring a huge medical staff may be difficult in an area already struggling with this issue. • The current physician shortage in many specialty areas may be exacerbated if training and recruitment are not addressed. • The nationwide shortage of nurses, and higher salaries offered, may pull nurses away from County facilities and skilled nursing facilities. • The existing shortage of medical technicians, including psychiatric, pharmacological, and radiologic, may be exacerbated. Requests a delay in construction until the shortages in funding and staff members for needed training programs have been addressed.

Table 3-1
Comment Letters Regarding the DEIR: Matrix of Comments and Summary of Concerns

Letter #	Agency	Author(s) of Comment Letter	Date Sent	Summary of Concerns Expressed in the Comment Letter
3	Docter & Docter Realtors	Dana Dodson	11/11/08	States strong opposition to the proposed project, based on the following issues: • In an already economically challenged area, the proposed project would increase economic problems. • Declines in property values approaching 50%. • The crime rate is increasing. States that the proposed health care facility would not be among the many reasons people choose to reside in Stockton.
4	SJCOG, Inc.	Anne-Marie Poggio-Castillou, Habitat Planner Technician	11/13/08	Advises that participation in the SJMSCP is voluntary, but if the project applicants were to decline participation, they would be required to provide alternative mitigation in an amount and kind equal to that provided in the SJMSCP. Such payment, however, would not modify requirements that could be imposed by USACE and the Central Valley RWQCB. A preliminary wetlands map would help determine jurisdictions. Requests a copy of the EIR for the proposed project. Outlines the process for participating in the SJMSCP.
5	ESA | Community Development	Brian Grattidge, via Jenny TeStrake (e-mail)	11/17/08	Briefly expresses concern about traffic impacts for which mitigation has been determined to be infeasible.
6	First Industrial Realty Trust, Inc.	Jenny TeStrake, Investment Associate	11/17/08	States that because the proposed project would require the use of City services (specifically water-related services), the project should be required to annex into the City of Stockton. The proposed project should be required to fund its fair share of public improvements and services, including the costs of mitigation measures (farmland, traffic). The project should also pay the City's public facilities Fees, and should be treated the same as other projects in the Arch Road corridor.
7	Stanislaus County Environmental Review Committee	Raul Mendez, Senior Management Consultant	11/17/08	States that the committee has reviewed the proposed project and has no comments at this time.

Table 3-1
Comment Letters Regarding the DEIR: Matrix of Comments and Summary of Concerns

Letter #	Agency	Author(s) of Comment Letter	Date Sent	Summary of Concerns Expressed in the Comment Letter
8	San Joaquin County Health Care Services	Kenneth B. Cohen	11/24/08	States that the commenter is attending a meeting to obtain the most current information on the proposed project and intends to submit written comments no later than 12/8/08. The commenter's present concerns related to manpower shortages, local impacts, and other issues were previously submitted.
9	Meyers Nave (Ribach, Silver & Wilson), Professional law Corporation	Edward Grutzmacher, Attorney	12/8/08	Appreciates that the federal Receiver is following CEQA in analyses of a 10,000-bed program, but states that a program EIR for all proposed facilities should have been prepared, to evaluate the impacts of siting any given facility in one location rather than another. Specific concerns include the following: • Why is 1,300–1,800 beds considered the "optimal" size? • How was it determined that seven facilities would be constructed? • How was the division of facilities—three for northern California and four for southern California—determined? • Why is the project objective to locate the project on state-owned land? • What is the location of the seventh facility? (NOPs have been released for six facilities.)
10	Morrison & Foerster LLP, on behalf of the California Correctional Peace Officers Association	Peter Hsiao	12/8/08	States that the EIR is not legally adequate under CEQA, for the way it "piecemeals" CEQA review and for inadequate analysis of project-specific and cumulative impacts. In this 15-page detailed letter, accompanied by Exhibits A–G, specific objections include the EIR's failure to adequately analyze: • programmatic impacts; • water supply impacts; • public utilities impacts from new infrastructure construction (i.e., understatement of impacts); • traffic impacts, and failure to require feasible mitigation measures for these impacts; • air quality impacts; • cultural resources impacts; • impacts and mitigation, improperly deferring analysis of both; • climate change impacts; and • cumulative impacts.

Table 3-1
Comment Letters Regarding the DEIR: Matrix of Comments and Summary of Concerns

Letter #	Agency	Author(s) of Comment Letter	Date Sent	Summary of Concerns Expressed in the Comment Letter
				Concludes that, by addressing only project-level impacts, the EIR fails to meet CEQA's core informational and public-disclosure requirements. A program EIR should be prepared and legal deficiencies in this EIR, for this project, should be corrected.
11	California Department of Corrections and Rehabilitation, Facility Planning, Construction and Management	Deborah Hysen, Chief Deputy Secretary	12/8/08	States that, providing that the federal Receiver receives appropriate authority and funding to proceed with the proposed project, the Receiver should take the following actions, related to these topics: • *Level of Detail of Site Plan:* Clarify whether a more focused, detailed EIR should be prepared once there is an actual site plan; and whether a public review of site plans will occur. • *Development of Alternatives/Need for NCYCC Facility:* In the FEIR, provide a thorough evaluation of the many potential sites, describe how the seven priority sites were selected, and explain the approach of constructing large medical facilities as opposed to contracting services or constructing smaller facilities. • *Division of Juvenile Justice, Long-Range Planning:* Acknowledge that CDCR's Division of Juvenile Justice is continuing to evaluate the NCYCC property to meet its court-ordered obligations. • *Conflict with NCRF Project Site:* Identify and evaluate in the FEIR other areas that could be used for construction staging. • *Proposed Project Staffing Exceeds Latest Facility Program Statement Draft:* Represent in the FEIR the correct staffing level and evaluate impacts accordingly. • *Mitigation for Additional Lethal Fence:* Clarify in the FEIR that the Receiver is solely responsible for securing an agreement with USFWS and DFG for design and mitigation of any new lethal fencing to be employed.
12	City of Stockton, Office of the City Manager	J. Gordon Palmer, Jr., City Manager	12/5/08	Reiterates comments of 7/17/08 and 9/11/08, and adds these comments: • The DEIR does not address the City's conditional requirement for annexation. • The proposed project does not adequately address impacts on City police and fire services. • The FEIR should address significant environmental impacts on police that would occur should the site be annexed (provides list of five specific concerns).

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Comment Letters Regarding the DEIR: Matrix of Comments and Summary of Concerns

Letter #	Agency	Author(s) of Comment Letter	Date Sent	Summary of Concerns Expressed in the Comment Letter
				• A firehouse with four personnel on-site 24/7 would be required by the City's general plan, and the proposed project would be responsible for all applicable costs. • The level of fire service currently available is correctly stated in the DEIR. • The comment letter provides clarifications regarding utilities and infrastructure/water related to the project description. • The proposed project may need permits for stormwater discharges. • New pump station facilities would be required to install grinders. • The letter states requirements related to existing and proposed water distribution systems, involving water mains. • The letter states the City's fair-share formula related to traffic. • Project access beyond one driveway would require further analysis and justification. • Impact TRAF-4 may need to be revised for accuracy of intersection configuration. • Mitigation measures for Impact TRAF-4 may need to be supplemented by alternate mitigation. • Mitigation measures for Impact TRAF-7, related to Austin and Arch Roads, would contribute to significant and unavoidable cumulative impacts. Further project mitigation would lessen these impacts.
13	Law Office of Thomas H. Terpstra, on behalf of San Joaquin County	Thomas H. Terpstra, Attorney	12/8/08	States that the DEIR is incomplete and inadequate because it lacks the following elements: • a description of the approval process for the proposed project; • justification for and consistent treatment of CPR as a "state agency"; • a NEPA analysis; • a list of necessary federal, state, and local permits and entitlements; • a complete and accurate project description; • an adequate impacts analysis and mitigation for loss of agricultural lands; • an adequate analysis of growth-inducing impacts; • an adequate and accurate analysis of traffic impacts;

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				• an adequate air quality analysis; • an adequate analysis of the impacts on County services; • alternatives related to other potential project sites; and • alternatives related to possibilities other than seven facilities and their sites, particularly regarding the possibility of providing services on a single site. Suggests redrafting and recirculating the DEIR, with the above-mentioned flaws rectified. The letter packet, which includes the letters listed below as attachments, includes County agency comments on the NOP, for reference.
	San Joaquin County Community Development Department (attached to Terpstra letter [#13])	Harry Islas, Senior Planner	12/3/08	States the following concerns: • lack of rationale for following the state process instead of NEPA; • lack of analysis of alternative sites outside of San Joaquin County, given the nature of the cumulative impacts; • lack of a single-site alternative analysis; • the need for the proposed project to be developed where the many cumulative impacts can be effectively mitigated; • an inadequate analysis of growth-inducing impacts; and • applicability of the *San Joaquin County General Plan* to the project site, because the site's zoning is consistent with the general plan.
	San Joaquin County Department of Public Works (attached to Terpstra letter [#13])	Mark Hopkins, Environmental Coordinator	11/26/08	States the County permits, standards, specifications, and fees that would be required of the proposed project. Makes numerous comments regarding the following topics: • Traffic • Utilities • Solid waste • Flooding and stormwater
	San Joaquin County Human Services Agency (attached to Terpstra letter [#13])	Joseph E. Chelli, Director	11/25/08	Provides comments related to the following topics: • Children's services • Income maintenance (application and receipt of public services)

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				• Aging and community services Attachment A specifies costs of services.
	San Joaquin County, Office of the County Administrator (attached to Terpstra letter [#13])	Manuel Lopez, County Administrator	11/17/08	Recommends that the County Board of Supervisors approve a resolution opposing the proposed project. The letter is concerned with financial impacts on several County agencies providing community services: • Department of Public Works • Human Services Agency • Health Care Services Agency • Sheriff's Office Attachment A lists the "items" that the County knows about the proposed facility; Attachment B states the possible impacts and related costs to the County.
	San Joaquin County Sheriff's Office (attached to Terpstra letter [#13])	Sheriff's Transition Team	11/4/08	States impacts on the County Jail Expansion Project, under the categories of personnel and construction. Other adverse effects discussed in the letter are related to traffic and increased service demands. Under "Perceived Inaccuracies and Corrections to the DEIR," the letter addresses information related to competition from the County and omitted information, the latter specifically concerned with public services and population and housing.
14	City of Stockton Fire Department	Ronald L. Hittle, Fire Chief	11/17/08	States that the proposed project would be required to provide a new firehouse, staffed with four firefighters day and night, if the site were annexed into the City of Stockton. States that public fees and community district facility fees may be required if the site were annexed. States that the assessment of existing levels of service to the project site is correct.
15	Local Resident	Raul Sanchez	12/5/08	Requests information about the availability of qualified personnel to staff the proposed facility and existing County facilities. Asks whether the lethal electrified fence would kill a person if he or she touched it.

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Letter #	Agency	Author(s) of Comment Letter	Date Sent	Summary of Concerns Expressed in the Comment Letter
16	Public Hearing Testimony	Manuel Lopez, County Administrator for San Joaquin County	11/10/08	States that $105 million worth of direct impacts would occur to County services and facilities. States that the proposed project would degrade County facilities and service levels.
17	Public Hearing Testimony	Bill Goodwin, Local Resident	11/10/08	Suggests that some of the funding of the program be spent on local jails and educational programs. Recommends that some of the funding be invested in County hospitals and ankle bracelets for furloughed prisoners. Suggests that some of the funding be directed toward mental health medicines and counseling services.
18	Public Hearing Testimony	Michael Selling, San Joaquin County Public Works and Training	11/10/08	States that the proposed project would be subject to a traffic impact mitigation fee and a regional transportation fee. States that Austin Road would need to be widened from Arch Road to the proposed entrance, frontage improvements along Austin Road would be required, and a traffic signal would be needed at the intersection of Arch Road and Austin Road. States that the proposed project would require an encroachment permit from the County and that inspection fees are assessed. States that the proposed project would need to detain stormwater on-site and that a hydrology study would be required to demonstrate achievement of this requirement.
19	Public Hearing Testimony	Douglas Wilhoit, CEO of the Greater Stockton Chamber of Commerce	11/10/08	States opposition to the proposed project and expresses concern that the public participation was inadequate.
20	Public Hearing Testimony	Cynthia Clays, San Joaquin County Human Resources	11/10/08	Expresses concerns that the proposed project would significantly affect recruitment of qualified personnel to staff County positions.

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Letter #	Agency	Author(s) of Comment Letter	Date Sent	Summary of Concerns Expressed in the Comment Letter
21	Public Hearing Testimony	Scott Seamons, Regional Vice President for the Hospital Council of Northern and Central California	11/10/08	Voices concern that the medical personnel needed to staff the proposed facility would adversely affect the ability of medical care facilities to employ adequate staff to maintain acceptable levels of service, and suggests using some of the funds to increase educational and training programs. Also expresses concern that removing inmate patients from regional hospitals to the proposed medical facility would result in budgetary losses at the hospitals.
22	Public Hearing Testimony	Bill Goodwin, Local Resident	11/10/08	Recommends the use of solar panels to reduce emissions of global greenhouse gases.
23	Public Hearing Testimony	Rosalio Estrada, Local Resident	11/10/08	Generally states the opinion that the CEQA document is inadequate. Recommends investing more of the funds into educational programs rather than capital improvements.
24	Herum/Crabtree Attorneys, on behalf of the Greater Stockton Chamber of Commerce	Steven A. Herum, Attorney at Law	12/4/08	In addition to opining on the CEQA process and the meaning of CEQA in general based on interpretations of case law, raises the following concerns: • correlation of adverse air quality impacts to resultant adverse health effects, • failure to satisfy Appendix F (Energy Conservation) of the State CEQA Guidelines, • deficient evaluation of the proposed project's direct and indirect impacts on global warming, • factually inaccurate evaluation of municipal utilities, • failure to correlate traffic impacts to the predicted regional distribution of employees, • deficient evaluation of growth-inducing impacts, • lack of supporting evidence in the evaluation of impacts on agricultural resources and mitigation measures to reduce significance levels, • deficient discussion of alternatives, and • post-hoc CEQA analysis driven by political and bureaucratic momentum behind the proposed project.

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Letter #	Agency	Author(s) of Comment Letter	Date Sent	Summary of Concerns Expressed in the Comment Letter
25	U.S. Army Corps of Engineers, Sacramento District, Regulatory Branch	Zachary Simmons, Regulatory Project Manager	12/30/08	Explains USACE jurisdiction over waters of the United States and its authority to regulate the discharge of dredged or fill material into jurisdictional waters. Provides instructions on how to determine the lateral extent of USACE jurisdiction. Suggests that the range of alternatives include a project that avoids impacts on jurisdictional wetlands and waters.
26	California Department of Transportation	Tom Dumas, Chief, Office of Metropolitan Planning	1/16/09	Provides many detailed comments related to the following topics: • travel forecast assumptions, methods, and results; • providing a copy of the DEIR to the San Joaquin Valley Air Pollution Control District; • traffic operations pertaining to SIM7 analysis at State Route 99 and Arch Road in the traffic impact study; and • evaluation of traffic operations in the DEIR for the Existing Plus Approved Projects, *Highway Capacity Manual* analysis, and mitigation measures
27	Local Resident	Dana Dodson	9/11/08	Expresses concern related to the project's affect on Stockton's current economic difficulties as well as the affect on local property values

Notes:
CDCR = California Department of Corrections and Rehabilitation; CEQA = California Environmental Quality Act; City = City of Stockton; County = San Joaquin County; DEIR = draft environmental impact report; DFG = California Department of Fish and Game; EIR = environmental impact report; FEIR = final environmental impact report; NCRF = Northern California Re-entry Facility; NCYCC = Northern California Youth Correctional Center; NEPA = National Environmental Policy Act; NOP = notice of preparation; SJCOG = San Joaquin Council of Governments; SJMSCP = *San Joaquin County Multispecies Habitat Conservation Plan*; USACE = U.S. Army Corps of Engineers; USFWS = U.S. Fish and Wildlife Service
Source: Data compiled by EDAW in 2009

MASTER RESPONSE 1: ALTERNATIVES

Several comments addressed the alternatives analysis in the DEIR. The following issues were among those raised in these comments:

- The EIR limited its consideration to alternatives on the overall project site.
- The EIR should have considered sites throughout the state because the project is not geographically limited.
- The project objectives, such as requiring facilities to be proximate to a sizable job base and on state-owned land, overly narrow the scope of the alternatives analysis and preclude consideration of off-site alternatives.
- The EIR improperly limited its discussion to alternatives that could be accomplished on state-owned property. As a state agency, CPR could acquire other sites using eminent domain.
- The alternatives analysis was overly narrow because CPR had previously committed to facilities ranging in size from 1,300 to 1,800 beds, making the EIR a *post hoc* rationalization for a decision already made.
- The EIR limited its consideration of the overall need for 10,000 beds to seven facilities.

This master response addresses the concerns listed above, describes CEQA's requirements with respect to an EIR's alternative analysis, and describes the purpose behind CEQA's requirement that an EIR identify and evaluate alternatives to a proposed project. This master response provides background into the Receiver's court-ordered mandate and the Receiver's decision-making process regarding the need to develop 10,000 new medical and mental health care beds for inmates within California's correctional system. The circumstances giving rise to the need for additional prison health care facilities in California are unprecedented and present unique challenges, both in complying with U.S. District Court orders to bring California's prison health care system into constitutional compliance as soon as practicable, and in conducting environmental review of the new health care facilities. For the reasons explained below, the DEIR's alternative analysis fully complies with CEQA by describing a range of reasonable alternatives to the proposed project that would feasibly attain most of the basic project objectives, but would avoid or substantially lessen any of its significant effects.

Background

The Court-Ordered Establishment of the Receivership

In 2001, a group of California inmates filed a class action lawsuit in the U.S. District Court for the Northern District of California against officials of CDCR (then the California Department of Corrections), alleging, among other things, that the State of California's provision of medical care at all state prisons violated the Eighth Amendment of the U.S. Constitution, which prohibits cruel and unusual punishment (*Plata v. Schwarzenegger*, No. C01-01351 TEH [E.D. Cal.] [*Plata*]) (See Appendix B). In response to the suit, CDCR agreed to enter into a consent decree and to implement comprehensive medical care policies and procedures at all of its institutions. The district court ordered CDCR to implement the policies and procedures on a staggered basis until statewide constitutional compliance had been achieved.

CDCR was unable to achieve constitutional compliance. In 2004, court appointed experts submitted a report to the district court, which found an "emerging pattern of inadequate and seriously deficient physician quality in CDC[R] facilities." (*Plata v. Schwarzenegger*, Findings of Fact and Conclusions of Law Re: Appointment of Receiver, p. 3 ["Findings of Fact"].) The experts concluded that CDCR's failure to implement the required remedies had placed prisoners "at serious risk of harm or death." (*Ibid.*) The expert's reports were essentially uncontested in court.

Following evidentiary hearings, on October 3, 2005, the Honorable Thelton E. Henderson, judge of the U.S. District Court for the Northern District of California, issued findings detailing a long history of constitutional violations in the state's prison health care system and the state's failure to comply with remedial orders. Judge Henderson found, among other things that:

> By all accounts, the California prison medical care system is broken beyond repair. The harm done in this case to California's prison inmate population could not be more grave, and the threat of future injury and death is virtually guaranteed in the absence of drastic action. The Court has given defendants every reasonable opportunity to bring its prison medical system up to constitutional standards, and it is beyond reasonable dispute that the State has failed. Indeed, it is an uncontested fact that, on average, an inmate in one of California's prisons needlessly dies every six to seven days due to constitutional deficiencies in the system. This statistic, as awful as it is, barely provides a window into the waste of human life occurring behind California's prison walls due to the gross failures of the medical delivery system.
>
> It is clear to the Court that this unconscionable degree of suffering and death is sure to continue if the system is not dramatically overhauled. Decades of neglecting medical care while vastly expanding the size of the prison system has led to a state of institutional paralysis. The prison system is unable to function effectively and suffers a lack of will with respect to prisoner medical care.
>
> (Findings of Fact, pp. 1-2.)

Based on the unprecedented and ongoing crisis in the state's prison health care system and the apparent inability of the state to address that crisis, the court determined to impose "the drastic but necessary remedy of a Receivership in anticipation that a Receiver can reverse the entrenched paralysis and dysfunction and bring the delivery of health care in California prisons up to constitutional standards" (Findings of Fact, p.2).

On February 14, 2006, Judge Henderson appointed a federal Receiver to take control of the delivery of medical services to prisoners confined by CDCR in California. Receiver J. Clark Kelso was appointed by the district court in January 2008 to replace former Receiver Robert Sillen. Since the establishment of the Receivership for the *Plata v. Schwarzenegger* case, the Receiver's task has been coordinated with three other major class actions against the California prison system: *Perez v. Tilton*, No. C 05-05241 JSW (N.D. Cal.), related to dental care; *Coleman v. Schwarzenegger*, No. CIV S-90-0520 LKK JFM (E.D. Cal.) (*Coleman*), related to mental health; and *Armstrong v. Schwarzenegger*, No. C94-2307 CW (N.D. Cal.), related to the Americans with Disabilities Act. As described in the DEIR, several joint orders in the *Coleman*, *Perez*, and *Plata* cases approved various coordination agreements between the representatives of the three health care class actions. These agreements create a number of efficiencies and allow the *Plata* Receiver to assume responsibility for direct oversight of various shared functions of the medical, dental, and mental health care programs. Among other areas of coordination, the Receiver is tasked with assuming the lead role in the implementation of the contracting, information technology and pharmacy operations serving the medical, dental, and mental health programs. The Receiver is also tasked with coordinating construction efforts. It is expected that other orders will be issued in the future to ensure further coordination and effective implementation of the courts' remedial efforts. Please see Appendix B for documents related to these court cases.

The district court charged the Receiver with the "monumental and critical task of bringing the level of medical care provided to California's…inmates up to federal standards." (Order Appointing Receiver, pp. 1-2.) The district court vested with the Receiver the "duty to control, oversee, supervise, and direct all administrative, personnel, financial, accounting, contractual, legal and other operational functions of the medical delivery component of the CDCR." (*Id*. at p. 2.) Through his management of the prison health care delivery system, the Receiver's goals are to restructure day-to-day operations and develop, implement, and validate a "new,

sustainable system that provides constitutionally adequate medical care to all class members as soon as practicable." (*Ibid*.)(emphasis added)

To that end, the district court's order required the Receiver to develop a detailed plan of action to bring California's prison health care delivery system up to constitutional levels. Pending development of the plan of action, the Receiver was to undertake "immediate and/or short term measures designed to improve medical care and begin the process of restructuring and development of a constitutionally adequate medical health care delivery system" (Order Appointing Receiver:2). The Receiver also must file bimonthly progress reports with the district court (Order Appointing Receiver:3). Given that the Receivership is "unprecedented in scope and dimension," the court found that "flexibility will be an important element in ensuring its effectiveness." Accordingly, the court retained the authority to modify the order as necessary to assure the effectiveness of the Receivership and to eventually return authority over the prison health care system back to the state (Order Appointing Receiver:9).

Background: The New Medical Health Care Facilities

The State of California has long recognized a shortage in adequate sub-acute services and mental health care facilities to meet inmate/patient needs. As found by the federal district court in the *Plata* case, "one of the reasons the State was incapable of implementing the original stipulated remedy is that the CDCR either completely lacked the basic infrastructure necessary to implement the remedy, or where such infrastructure was in place, it was wholly dysfunctional. The Receiver must now create a functional infrastructure in virtually every key area of operations." (*Plata v. Schwarzenegger*, *supra*, Order Re: (1) Receiver's May 2007 Preliminary Plan of Action and Motion for Order Modifying Stipulated Injunction and Orders Entered Herein, and (2) Plaintiff's Motion for Order Directing Receiver to Comply with April 4, 2003 Order Etc.)

Despite efforts of various state task forces, numerous state studies and reports (including CDCR and state legislature reports), and Special Sessions of the Legislature, California has not instituted any effective response to the worsening overcrowding and lack of adequate infrastructure crisis in its prisons. (*Plata v. Schwarzenegger*, *supra*, Receiver's Report on Overcrowding, p. 2.) For instance, in June 2006, Governor Schwarzenegger convened a special session of the legislature to discuss a request from the governor for an almost $5.8 billion bond package to finance prison construction projects. Of that $5.8 billion, $500 million was to be spent on new prison hospitals. (Economist.com, "Packing them in: Gross Overcrowding has Led to a Sky-High Recidivist Rate. Will Money Help?" (Aug. 10, 2006))The legislature, however, did not pass the bond.

As a result of legislative inaction, in fall 2006 the Receiver commenced planning for 5,000 multipurpose medical beds, with the hope that they would be operational within the next 3–5 years. Coordination with the Special Master in the *Coleman* case resulted in the determination that an additional 5,000 beds should be planned for mental health care patients (CPR 2006:26). To help assist with pre-construction and construction management services for the new inpatient beds, the Receiver acquired the services of the joint venture URS-Bovis Lend Lease. Vanir Construction Management was also hired to help plan and construct upgrades of existing facilities, mainly for outpatient beds.

On November 15, 2007, the Receiver filed a first draft of the *California Prison Health Care Receivership Corporation (CPR, Inc.) Prison Medical Care System Reform Plan of Action* (Plan of Action), as required by the federal court order, setting forth a road map for the changes necessary to bring the delivery of medical care in California's prisons up to constitutional levels. The plan explained the need for 10,000 new beds; namely, the 10,000 beds would be needed to help implement Goal F of the draft Plan of Action, which was to "[c]reate new clinical and administrative space to provide a safe environment for staff and patients based on the new clinical process redesign and on projections of future bed capacity" (CPR 2007a: Goal F).

The draft Plan of Action also contained several voluminous appendices of supporting documentation for the 10,000-beds proposal. Among supporting documents was a report by Abt Associates and Lumetra that documented the burden of chronic disease and physical and cognitive functioning on the current CDCR

prisoner/patient population (CPR 2007b). The Abt Associates and Lumetra report, along with Navigant Consulting's report on mental health, serve as a basis for planning the medical bed space to accommodate CDCR's prisoner/patient population through 2017. The reports document that CDCR does not have adequate clinical, administrative, and housing facilities to support constitutionally adequate health care in both present and future inmate populations (CPR 2007c:77).

Following public comment on the first draft Plan of Action, on March 11, 2008, the Receiver released a draft Strategic Plan for public comment. The draft plan included improvement to health care facilities at the 33 existing CDCR facilities and expansion for up to 10,000 new medical and mental health beds. Following extensive public comment, workshops, and coordination with the federal district court and plaintiffs in the class actions against the state's prison system, the Receiver finalized his plan to bring the prison health care system into constitutional compliance in a document titled Turnaround Plan of Action. The Plan was filed on June 6, 2008. These documents can be located on the CPR website (as of FEIR publication): http://www.cprinc.org/receiver_tpa.aspx.

The Turnaround Plan of Action contains six goals to focus the Receiver's efforts for bringing the prison health care delivery system up to constitutional standards (CPR 2008a:iv):

(1) Ensure timely access to health care services.
(2) Improve the medical program.
(3) Strengthen the health care workforce.
(4) Implement quality assurance and continuous improvement.
(5) Establish medical support infrastructure.
(6) Provide health care and health care–related facilities.

Developing 10,000 new patient beds is a core component of goal 6—to provide health care and health care–related facilities (CPR 2008a:27). As explained in the Turnaround Plan of Action (CPR 2008a:25) [emphasis added]:

> The facilities available for providing health care services within CDCR are woefully inadequate. Through years of neglect, the facilities have long since passed the time when modest investments could remedy the problem. We are dealing not with deferred maintenance, but with some facilities that are literally falling apart. In addition, investments in health care facilities have significantly lagged behind growing inmate populations, so much so that available clinical space is less than half of what is necessary for daily operations.
>
> The only cost-effective remedy is to improve and/or build new administrative and clinical facilities at each of CDCR's 33 prison locations to provide local health care services. These facilities will generally include clinical treatment space, medical administrative space, medical storage space and other medical support spaces such as pharmacy, medical records and laboratories.
>
> *In addition to these local facilities, CDCR needs to establish seven regional long-term care centers at existing CDCR institutions with administrative, clinical and housing facilities to serve up to 6% of CDCR's inmate population who have long-term medical and/or mental health needs.* Approximately three-quarters of the housing at these centers will consist of open dormitory quality housing for patient-inmates with functional impairments or chronic conditions requiring ready access to health care services.

The philosophical framework behind plans for new prison health care facilities is grounded in the reason for the federal court's intervention: the current delivery of medical and mental health services to inmates does not meet minimum constitutional standards. The court's intervention requires that every aspect of delivering health and mental health services help fulfill the objective of returning inmates to conditions that prepare them to return to general custody, or to be released in the community once their commitments have been satisfied.

The rationale behind determining that up to seven new facilities are required is based on studies completed regarding the total number of medical and mental health beds needed as well as an ideal facility size for optimum management and service delivery. As part of the planning efforts for the new medical and mental health beds, URS-Bovis Lend Lease Joint Venture prepared an options report setting forth a recommended framework for developing new health care facilities. The options report considered four site models: a one-site model, a three-site model, a five-site model, and a "regionalized" seven-site model (URS-Bovis Lend Lease Joint Venture 2008:33–37).

After considering the four different site models, the options report recommended implementing the regionalized seven-site model (URS-Bovis Lend Lease Joint Venture 2008:ii). The report explained that compared to the other site models, the regionalized seven-site model would afford greater opportunities to share and blend medical and mental health services and resources; would allow for more manageable service and staffing size; and would provide for smaller, more compact campuses for greater/closer access by staff and patients to campus treatment and support services (URS-Bovis Lend Lease Joint Venture 2008:36). The report noted that sites could be distributed around the state at existing prisons or other selected locations (URS-Bovis Lend Lease Joint Venture 2008:36). It also stated that, depending on available sites and/or land for the proposed health care facilities, one or more of the 1,500-bed units could be co-located on a single site, but that the management of each must be substantially independent (URS-Bovis Lend Lease Joint Venture 2008:ii). The report also looked at a smaller number of facilities as an option, i.e. three or five facilities with a larger number of beds than the seven facility model. These sites were not ideal, from the perspective of management and staffing challenges and service delivery given the distance between the residential units and the treatment center. As explained below, a single site housing all seven facilities or 10,000 beds would be infeasible.

Planning details for the health care facilities, including the type and number of beds, are still being considered. As the Receiver's planning teams examine various functional needs for the system in greater detail, they suggest modifications; the 1,500-bed recommendation is approximate. A 1,500-bed facility is sufficiently large to function as a stand-alone facility that does not rely on management by outside entities. It allows medical and mental health patients sufficient access to a full staff (a high percentage of mental health patients need medical care and vice versa thus making co-location cost efficient). Thus, a health care facility could be co-located with a prison, but would not rely on the prison for management. It could also be located on a site where there is no other prison. A facility with substantially fewer than 1,500 beds would result in inefficient utilization of the full complement of administrative, medical, and security staff services. A facility with substantially more than 1,500 beds could create operational challenges because of its size and staffing needs (Glass, pers. comm., 2009).

As a point of comparison, a query was made regarding the sizes of hospitals and skilled nursing facilities in California. Note that the health care facilities are neither hospitals nor skilled nursing facilities, but they provide similar services. The search conducted was not exhaustive. It appears that the largest facility in California is the Laguna Honda Hospital in San Francisco, with 1,457 beds (Hospital-Data.com 2009). Cedars-Sinai Medical Center in Los Angeles has 1,004 beds and the USC Medical Center has 800 beds (Kowalczyk, as cited in.Isnare.com 2009). It was difficult to definitively determine the largest skilled nursing facility in California, but the largest in Los Angeles appears to be the Los Angeles Jewish Home for the Aging, with 819 beds (Herman 2005, as cited in Allbusiness.com 2009).

One of the biggest challenges for the Receiver has been—and continues to be—determining potentially feasible locations on which to build the medical care facilities. A total of 10,000 beds at one location was considered; however, it was determined that such a facility would be infeasible for two reasons: (1) the inability to staff a facility of that size in one location, and (2) and the inefficiency of transporting inmates from all over the state to one location, which would result in delayed health care services and, most likely, greater vehicle miles traveled and air quality impacts, rather than to facilities that could be located closer to the originating prison (URS-Bovis Lend Lease Joint Venture 2008). Instead, as documented in CPR's options report, a regionalized approach utilizing seven facilities spread throughout the state, each with approximately 1,500 beds, would have the advantage of allowing the facilities to be large enough to be independent (i.e., not rely on any other facility for

management) while also being able provide a full continuum of housing and treatment services (URS-Bovis Lend Lease Joint Venture 2008).

Preliminary sites for the seven facilities under consideration were the California State Prison, Los Angeles County, in Lancaster; the California Men's Colony in San Luis Obispo; the California Institution for Men in Chino; the Richard J. Donovan Correctional Facility in San Diego; the Duel Vocational Institution in Tracy; the California Medical Facility in Vacaville; and the Fred C. Nelles Youth Correctional Facility in Whittier (CPR 2006:29). Since then, the list has been refined and altered as a result of site investigations. During the week of August 20, 2007, site visits to four potential locations in northern California were completed by staff members from the URS-Bovis Lend Lease Joint Venture, CDCR's Office of Facilities Management, the Governor's Assembly Bill (AB) 900 strike team, the California Department of Health Care Services, and the Office of the Receiver. A second set of visits to locations in southern California was conducted during the week of September 11, 2007, and a third set of visits in central California occurred during the week of September 24, 2007. The sites currently under CEQA review include, San Diego, Vacaville, Folsom, Ventura and Chino. Other sites being considered include, but are not necessarily limited to, Whittier, Norwalk and San Bernardino.

In reviewing the potential sites, CPR staff members identified those posing the fewest environmental and other constraints, particularly cost, to the construction of the medical and mental health bed projects. See Appendix C for the list of sites visited. Because the facilities would need to be staffed by a large number of highly trained medical professionals (up to 1,500 for the proposed project), they would need to be located near large urban areas. Rural areas do not have the sufficient population to staff medical facilities with as many beds as proposed, keeping in mind that each facility would be as large (in terms of the number of beds) as any operating in California today. In addition, CDCR's experience in hiring correctional officers included difficulty in retaining correctional officers in rural areas, which may be an issue with medical staff as well This is further supported by various comments on the DEIR, such as comment 2-1, expressing concern that even in a metropolitan area such as Stockton—which can draw on a population of nearly 55,000 health care professionals (see page 4.11-2 of the DEIR)—the proposed project would draw away medical professionals and leave a shortage at other medical facilities in the community.

Another factor considered in the facility siting process was the very nature of urban areas, where the facilities must be located to address the employment issues. In urban settings, there is a tendency for perceived or actual land use conflicts between a secured facility and the surrounding population. Although communities often build up around prisons (e.g., Folsom, San Quentin, Chino, and Vacaville, where residential development has moved closer and closer to existing state prisons), it is more difficult to site a new prison facility or other large institutional uses on a location that is vacant and unused for such a use. Prison facilities are typically labeled "locally unwanted land uses" (LULUs). Thus, to reduce the potential for land use conflicts, CPR found it most efficient to locate the health care facilities on properties already dedicated to incarceration-related uses. CPR explored sites with existing or previously used state prison (or similar) facility uses if those sites had additional land available for the project, and sufficient infrastructure, where possible.

These pragmatic criteria also serve to minimize adverse environmental impacts. Because these sites are already developed with prison or similar uses, they are not likely to support a host of environmental resources, at least not in comparison with sites on vacant land, which could support native biological habitat or farmland. (In California, it is rare to find vacant land that is neither habitat nor farmland.) At the same time, this criterion limits the number of sites that would support a project of this type. Not only has CPR identified what it believes to be the sites that meet these criteria; upon further study, it has had to eliminate some sites and look for other sites because of constraints such as infrastructure limitations, flooding, land use conflicts, easements, or other environmental concerns. There are few fallback sites based on these criteria. None of the comments received on the DEIR identify any specific alternative sites.

The CHCF Stockton project site was selected as a potential location to house one of the Receiver's proposed health care facilities for several reasons:

- The site already serves an incarcerated population. A prison reentry facility for adult males has been approved to reuse a former women's prison to the immediate north. Operating juvenile detention facilities are located on the site to the south. The proposed project would reuse an existing, but no longer operating, campus within a juvenile detention facility. Except for a relatively small area owned by the state and used for farming, the proposed project would entirely reuse an existing developed property. In other words, the facility would be placed on a site dedicated to detention facilities, reusing the site of a facility no longer in operation.

- The number of inmates who are from the San Joaquin Valley is rapidly growing, which makes Stockton a logical location in terms of locating the facility near an inmate/patient's home to ease in family visits (Bailey and Hayes 2006:13).

- Because the property is already developed and owned by the state, siting the facility at the Northern California Youth Correctional Center (NCYCC) site would be more efficient, less disruptive, and more cost effective, and would result in fewer environmental impacts than siting the facility on a vacant or non-state-owned site.

(See also Appendix C).

With this background in mind, this master response considers the adequacy of the alternatives analyzed in the DEIR.

Sufficiency of the EIR's Alternative Analysis

According to the State CEQA Guidelines, an EIR must "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" (Section 15126.6[a]). An EIR should also describe the lead agency's rationale for selecting the alternatives considered and briefly identify alternatives rejected as infeasible and why (Section 15126.6[c]). The discussion of alternatives must include sufficient information about each alternative to allow "meaningful evaluation, analysis, and comparison with the proposed project" (Section 15126.6[d]).

The purpose of CEQA's requirement that an EIR identify and evaluate alternatives to a project arises from CEQA's fundamental statutory policy that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would *substantially lessen the significant environmental effects of such projects*" (Public Resources Code, Section 21002 [emphasis added]; *Citizens of Goleta Valley v. Bd. of Supervisors* [1990] 42 Cal.3d 553, 564 [*Goleta*]). As stated in Section 15126.6 of the State CEQA Guidelines:

> (b) Purpose. Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening 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 does not prescribe fixed rules governing the type of alternatives to a project that should be analyzed, and the nature of alternatives varies depending on the context of the project being analyzed. As expressed by the California Supreme Court: "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 facts, which in turn must be reviewed in light of the statutory purpose" (*Goleta*: 566). Ultimately, as specified in the State CEQA Guidelines, the nature and scope of the alternatives to be discussed in an EIR are governed by the rule of reason, and an EIR must "set forth only those alternatives necessary to permit a reasoned choice" (Section 15126.6[f]). Concurrently, the alternatives must "be limited to ones that would avoid or substantially lessen any of the significant effects of the project," and the

alternatives must be selected and discussed "in a manner that will foster meaningful public participation and informed decision making" (Section 15126.6[f]).

In this case, the DEIR evaluated the "No Project (No Development) Alternative" (Section 7.4.1); the "Reduced Footprint Alternative" (Section 7.4.2); the "Reduced Intensity Alternative" (Section 7.5.3); and a combination of the Reduced Footprint and Reduced Intensity Alternatives (Section 7.5). The DEIR also described alternatives that were considered but rejected as infeasible, or because they would not avoid or substantially lessen the significant adverse effects of the project, and therefore were not analyzed in detail. These alternatives included an off-site alternative (Section 7.3). The DEIR's discussion of alternatives included sufficient information to allow evaluation, analysis, and comparison with the proposed project. Each of the alternatives evaluated in the DEIR would substantially lessen or avoid some of the significant environmental impacts of the proposed project (Section 7.5).

Is this a "reasonable range" of alternatives? This question is driven largely by the project under consideration. For instance, in the context of a retail facility with the objective of developing big-box stores on a certain site to provide certain goods to a community, the types of alternatives discussed may include different locations in the market area, provided that attainment of the other sites is feasible. Alternatively, or additionally, the alternatives may include a reconfiguration or redesign of the project (e.g., a different footprint), and/or different types of uses (e.g., eliminating a big-box facility in favor of smaller shops), or different intensity of uses (e.g., a larger or smaller shopping center). Depending on the circumstances surrounding the proposed development, including economic, environmental, legal, social, and technological factors, these alternatives could potentially be feasible alternatives that attain most of the project's objectives. So long as the number of alternatives is not excessive, the range of alternatives would be reasonable. On the other hand, a wastewater treatment expansion project, with the objective of meeting community growth objectives, would entail a very different range of project alternatives than a retail project. For instance, the alternatives evaluated would not be likely to include an off-site alternative because the treatment plant could not be moved without moving sewer lines that serve it, which would probably be infeasible. Nor would a housing development project be a feasible alternative to the treatment plant. Alternatives that attain basic objectives might be limited to the footprint and effluent treatment quality from the plant, and nothing else; yet this would be reasonable, given the project under consideration.

In the case of this project, as a matter of necessity, the Receiver's consideration of the proposed project and the potential alternatives have been guided by the U.S. District Court's determination that the entire California prison health care system violates the Eighth Amendment to the U.S. Constitution. The Receiver's team determined that 10,000 new beds are required to bring the medical and mental health care system up to constitutional standards.

Section 21154 of the California Public Resources Code prescribes that "[w]henever any state agency, board, or commission issues an order which requires a local agency to carry out a project which may have a significant effect on the environment, any [EIR] which the local agency may prepare *shall be limited to consideration of those factors and alternatives which will not conflict with such order*" [emphasis added]. Although Section 21154 applies to state orders to local agencies, not federal orders to state entities, the reasoning behind CPR's selection of alternatives is the same: the Receiver's decision whether to pursue the proposed project and the selection of alternatives must not conflict with the court-ordered mandate to bring California's prison health care system up to constitutional levels as soon as practicable.

Based on substantial evidence, at this time 10,000 new medical and mental health care beds are ultimately needed to achieve compliance with the U.S. District Court's orders. Further, a regional approach in which seven medical and mental health facilities of approximately 1,500 beds each would be distributed throughout the state (four in southern California and three in northern California) would be the most effective manner in which to locate those beds. The court has agreed, in *Order Approving Receiver's Turnaround Plan of Action* issued in the *Plata* case on June 16, 2008 (Turnaround Plan Approval Order), that achieving the goals set forth in the Receiver's Turnaround Plan of Action, including the development of 10,000 health care beds located at seven facilities throughout the state, is "*necessary* to bring California's medical health care system up to constitutional standards," and the court

was "satisfied that the objectives and action items identified in the plan will help the Receivership achieve those six goals" (Turnaround Plan Approval Order:3–4) [emphasis added].

At the same time, it is recognized that the Receiver's plan is "a living document" and must be updated or modified as necessary throughout the Receivership (Turnaround Plan Approval Order:4). The Receiver continues to assess whether the recommended 10,000 new beds remain necessary. The Receiver, in response to California's budget deficit, most recently offered several downsized versions of his plan, including an alternative that would provide 5,000 medical beds only and no mental health beds. In large part, there is an immediate need and long-term need, and plans will likely be adjusted best on the best available information.

10,000 new beds are ultimately needed for mental and medical health care needs because CDCR neither planned for nor provided adequate medical beds for disabled prisoners, aged inmates, and prisoners who need sheltered living because of medical or health care conditions (Updated Need Analyses:27). Thus, although circumstances may change, at this time it appears that each of the health care facilities identified as needed in the court-approved Turnaround Plan of Action *must* be placed *somewhere*. As described above, CPR staff members, after much consideration and debate, selected sites that appear to be preliminarily feasible sites; among them is the NCYCC site in San Joaquin County. The CEQA review process of the sites currently being considered by the Receiver might reveal that one or more of the sites is not in fact a feasible or advisable site for a proposed health care facility. Thus, no one particular site must be approved.

The Receiver and CPR staff members continue to evaluate planning details and other means to reduce impacts of the various health care projects on communities in which they would be located, and impacts on the environment, to the fullest extent feasible. Nevertheless, the Receiver is constrained in selecting potential alternatives to the proposed project given the lack of potentially feasible sites for the projects (as described above) and the need to site up to seven new facilities throughout the state as soon and as efficiently as practicable.

CEQA does not set a specific number or range of alternatives that is necessary to constitute a legally adequate range of alternatives. The reasonableness of the range of alternatives varies from case to case depending on the project under review. In this case, the alternatives presented in the DEIR represent a reasonable range of alternatives under the circumstances. Each of the alternatives presented would substantially reduce or avoid some of the project's otherwise significant environmental effects. Each is potentially feasible, and each would meet most of the basic project objectives. The alternatives presented in the EIR were selected and discussed in a manner that fosters meaningful public participation and will enable informed decision making by the Receiver.

Specific Comments Received Regarding Alternatives

Some specific comments received on the DEIR stated that off-site alternatives should be evaluated. As described above, CPR is already considering health care facility projects on the state-owned sites that CPR considers viable and that would attain most of the basic project objectives. As described in the DEIR (Section 7.3.1), CPR considered an off-site alternative to the CHCF Stockton project, but determined that it would be infeasible.

Some comments suggest that CPR, acting in a role of a state agency, could use eminent domain to acquire an alternative site. This is true; however, it is unclear what environmental advantages this would have. If the alternative site were located in an urban area, such a "solution" would result in impacts similar to those associated with the proposed project (e.g., traffic, air quality) but would also be likely to displace existing uses. Further, it is unlikely that an ideal site, one already used for incarceration purposes, would be identified. If the alternative site were located in a nonurban area, substantial amounts of either habitat or farmland would likely be affected (and employment issues would emerge). Although the proposed project also affects these resources to a limited degree, it would reuse a developed site, thereby minimizing effects on habitat values and agricultural land conversion. Further, land acquisition, including eminent domain, is expensive and time consuming, and using this option would not necessarily be a feasible method of fulfilling the mandate of ensuring constitutionally adequate health care as soon as practicable. A typical eminent domain process is:

1. “Initial contact by government agency to express interest in the property;

2. Appraisal of the property, including improvements, by agency retained appraiser;

3. Offer to purchase the property is made to the owner, together with summary of appraisal upon which offer to purchase is made;

4. Notice of public hearing to adopt "resolution of necessity" to acquire property by eminent domain;

5. Public hearing is held to adopt "resolution of necessity" to acquire the property by eminent domain;

6. Eminent domain case is filed in court and served on property owner;

7. Deposit by agency of the probable amount of just compensation is paid into court and motion by agency for early possession of the property;

8. Discovery (i.e., depositions and document production) takes place in eminent domain action, and both the property owner and government hire appraisers to determine "fair market value" of the subject property;

9. The property owner and government exchange their respective appraisers' reports;

10. Final settlement offers and demands are exchanged (about 20 days before trial);

11. If settlement cannot be reached, trial of the eminent domain action takes place before a jury whose job it is to determine "fair market value" of the subject property;

12. Jury returns verdict and judgment is entered;

13. Government pays judgment within 30 days following entry of judgment and title to subject property is transferred to the government by the court.” (The California Eminent Domain Handbook, www.eminentdomainlaw.net/procedures.html, 2009)

Eminent domain can take years. Real lives are at stake; the Receiver does not have the luxury of time.

None of the comments questioning the EIR’s focus on on-site alternatives address the specific environmental effects that would be reduced or avoided by adopting a particular alternative site. In determining what alternatives to include in an EIR, a lead agency must bear in mind the statutory purpose behind the requirement that an EIR identify and evaluate project alternatives: “to avoid or substantially lessen any significant effects of the project” (State CEQA Guidelines, Section 15126.6). (See also, e.g., *Mann v. Community Redevelopment Agency* [1991] 233 Cal.App.3d 1143, which stated that there was no need to study a proposed alternative that varied the size of project components because it was not shown to be environmentally superior.) In this case, because the CHCF Stockton site is largely developed and would reuse a site that is no longer in operation, the potential environmental effects of the proposed project would be less than if the facility were located on previously undisturbed land or far from an urban area in which staff members could reside. The comments have not identified another site that would meet most of the basic project objectives and substantially lessen or reduce any of the proposed project’s significant environmental effects.

The comments also have not addressed the overall adequacy of the alternatives analysis. It is true that the objectives somewhat narrow the selection of alternatives to consider; however, the basic purpose of the project is to provide constitutionally adequate health care to state prison inmates. The reasonable range of alternatives that meet the project’s purpose, and the reasonable objectives that support the purpose, is not voluminous. The EIR, by identifying those alternatives that would attain most of the project objectives but reduce environmental impacts, does what CEQA requires it to do (State CEQA Guidelines, Section 15126.6[a]).

Other comments stated that the project's objectives were overly narrow. The project objectives are not improperly narrowly tailored; instead, they are consistent with CPR's court-ordered objective to bring California's prison health care system up to a constitutional level of care as soon as practicable (Order Appointing Receiver:2). The range of alternatives available for consideration in the EIR is more restricted than those that might be available for a typical development project because of the unique nature of the health care facilities required to serve inmates. These facilities cannot necessarily be built anywhere.

As noted, because of the urgency of the court's mandate to provide health care to inmates/patients that meets constitutional standards, CPR has focused efforts on existing state correctional facilities, thereby avoiding the need to acquire private land or take eminent domain action, a process that could take years and cost substantially more in terms of time and money to pursue. Siting the facility on state land, particularly with existing CDCR facilities, would be more efficient, less disruptive, and more cost effective, and all other things being equal, would result in fewer environmental impacts because the facility would be developed on an already disturbed site.

The project objectives, moreover, are not dispositive; they are only one factor CPR may consider in deciding whether to reject an alternative. (See Section 15124[b] of the State CEQA Guidelines, which states that objectives "aid the decisionmakers in preparing findings or a statement of overriding considerations, *if necessary*" [emphasis added].) The project's objectives, as drafted, would not prevent CPR from adopting one of the alternatives presented if it determined that such alternative would be feasible and would avoid or substantially lessen any of the significant adverse effects of the project. The alternative need only attain *most* of the basic objectives of the project (State CEQA Guidelines, Section 15126.6[a] [emphasis added]).

Some comments also stated that, by narrowing the alternatives, the EIR is a *post hoc* rationalization for a decision already made. Although the Receiver has great incentive to move swiftly—lives are being lost and the federal court has ordered that the system be fixed—the CEQA process and its requirements are being fully followed. In that spirit, the Receiver will consider the project and the adequacy of the EIR before deciding whether or not to approve the proposed project. The Receiver is still examining several sites and is preparing EIRs on CHCF sites proposed in Vacaville, Folsom, San Diego, Ventura, and Chino, in addition to the site in Stockton. Some projects may be approved, others may not. There has been no commitment made to approve the project.

Lastly, with regard to alternatives to the identified need for the 10,000 beds, please refer to Master Response 2, "Programmatic versus Project-Level Environmental Review." As explained in that master response, CEQA does not require the Receiver to first evaluate the identified need for 10,000 new beds in a single programmatic EIR. (See, e.g., *Stand Tall on Principles v. Shasta Union High School Dist.* [1991] 235 Cal.App.3d 772, which states that an EIR evaluating "all potential sites in a site selection process" may "prove too cumbersome and yield little of value given its lack of focus.") Because a single program-level CEQA analysis is not required, alternatives to the identified need for 10,000 beds do not need to be identified.

For these reasons, the DEIR's alternatives analysis satisfies CEQA.

MASTER RESPONSE 2: PROGRAMMATIC VERSUS PROJECT-LEVEL ENVIRONMENTAL REVIEW

Some commenters questioned whether CPR should have prepared a program EIR for the anticipated statewide development of 10,000 new health care facility beds (5,000 medical, 5,000 mental health), as opposed to project-specific EIRs for the individual proposed health care facilities that would house those beds. This master response explains the requirements under CEQA with respect to programmatic environmental review, as well as case law applying those requirements. For the reasons set forth below, CEQA did not require preparation of a program EIR in connection with the identified need for 10,000 new beds. CPR has fully complied with CEQA in preparing a project-specific EIR for the proposed project.

The statutory provisions of CEQA, found within the Public Resources Code at Section 21000 et seq., and the State CEQA Guidelines, found within Title 14 of the California Code of Regulations at Section 15000 et seq.,

authorize lead agencies to prepare various types of EIRs, depending on the circumstances of a particular project, to render the environmental review as efficient and useful as possible. The types of EIRs available to lead agencies under CEQA are:

- project EIRs (Section 15161 of the State CEQA Guidelines),
- EIRs as part of general plans (Section 15166),
- master EIRs (Section 15175–15179.5),
- program EIRs (Section 15168),
- staged EIRs (Section 15167),
- subsequent EIRs (Section 15162), and
- supplements to EIRs (Section 15163).

The EIR types listed above "are not exclusive" (State CEQA Guidelines, Section 15160). The various types of EIRs allow agencies to tailor their environmental analysis to avoid piecemealing or segmenting environmental review by chopping a project up into two or more segments, each with a potential environmental impact, which cumulatively could have greater environmental consequences. The different types of EIRs also allow agencies to avoid needless redundancy and duplication. By choosing the most appropriate form of EIR, lead agencies can effectively analyze the foreseeable consequences of a proposed project, including cumulative impacts (State CEQA Guidelines, Section 15160).

Here, CPR determined that the most effective type of EIR for the CHCF Stockton (as well as other potential health care facilities) is a "project EIR." A project EIR is the "most common type of EIR" and "examines the environmental impacts of a specific development project" (State CEQA Guidelines, Section 15161). Consistent with Section 15161, this EIR focuses primarily on the changes in the environment that would result from the project and examines all phases of the project, "including planning, construction, and operation."

Another type of EIR available to lead agencies under CEQA is a "program EIR." As stated in Section 15168(a) of the State CEQA Guidelines, a program EIR:

> *may* be prepared on a series of actions that can be characterized as one large project and are related either: (1) Geographically, (2) As logical parts in the chain of contemplated actions, (3) In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or (4) As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways. [emphasis added]

In many circumstances a program EIR is a useful and flexible tool in which to conduct CEQA review (see e.g., *In re Bay-Delta Programmatic EIR Coordinated Proceedings* [2008] 43 Cal.4th 1143). In this case, however, as explained below, a program EIR evaluating the potential development of 10,000 new medical/mental health care beds throughout the state was neither necessary nor advisable.

CEQA Does Not Require CPR to First Prepare a Program EIR

Applicable Case Law and Statutory/Regulatory Authority

The decision whether to prepare a program EIR, as opposed to a project EIR, is within the lead agency's discretion. (See *Al Larson Boat Shop, Inc. v. Bd. of Harbor Com.* [1993] 18 Cal.App.4th 729, 741, which states that a program EIR is an "*optional* procedure to review in one document a 'series of actions that can be characterized as one large project,'" quoting Section 15168[a] of the State CEQA Guidelines.) Under Section 15165 of the State CEQA Guidelines, a program EIR is required *only* "[w]here individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect." Similarly, as also stated in Section 15165, "Where an individual project is a necessary

precedent for action on a larger project, or commits the lead agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project."

The requirements set forth in Section 15165 of the State CEQA Guidelines are frequently expressed as prohibiting agencies from "piecemealing" or "segmenting" a project by splitting it into two or more segments (*Bozung v. Local Agency Formation Com.* [1975] 13 Cal.3d 263, 283–284 [former Section 15169 of the State CEQA Guidelines, now Section 15165]). Section 15165 of the State CEQA Guidelines ensures "that environmental considerations do not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences" (*Lighthouse Field Beach Rescue v. City of Santa Cruz* [2005] 131 Cal.App.4th 1170, 1208; *Sierra Club v. West Side Irrigation Dist.* [2005] 128 Cal.App.4th 690, 699–700 [*West Side Irrigation District*]; *El Dorado County Taxpayers for Quality Growth v. County of El Dorado* [2004] 122 Cal.App.4th 1591, 1599; *Berkeley Keep Jets over the Bay Com. v. Bd of Port Comrs*. [2001] 91 Cal.App.4th 1344, 1358).

Where, however, one project "is not deemed part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project, but shall in either case comment upon the cumulative effect" (State CEQA Guidelines, Section 15165). The question here is whether the proposed CHCF Stockton is part of a larger project with significant environmental effects, or whether it is a stand-alone project for which a program EIR *may*, but not *must*, be prepared. As explained below, the proposed project is an independent project, separate and apart from the other potential health care facility projects, justifying individual project-level environmental review. This is true even though the proposed project is part of a larger scheme to add up to 10,000 new beds to the medical and mental health care system for California's prisons.

CEQA permits an agency to focus an environmental document solely on one part of what is arguably a larger scheme (here, the identified need for 10,000 new beds) where that project has independent utility that justifies its separate processing and approval (*Del Mar Terrace Conservancy, Inc. v. City Council of the City of San Diego* [1992] 10 Cal.App.4th 712 [*Del Mar Terrace*]). In *Del Mar Terrace*, the Court of Appeal upheld an EIR that treated as the "project" at issue one freeway segment within a long-term, multisegment regional plan to expand the freeway system throughout San Diego County. In other words, the freeway segment had independent utility, separate and apart from the larger regional freeway expansion project. Because the segment at issue would serve a viable purpose even if the later segments were never built, the court found no problem with the agency's focus on that limited project (*Del Mar Terrace*:728–729).

Section 15165 of the State CEQA Guidelines captures the concept of independent utility in providing that "[w]here one project is one of several similar projects of a public agency, but is not deemed a part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project, but shall in either case comment upon the cumulative effect" (*West Side Irrigation District*:690, 699).

In *West Side Irrigation District*, the Court of Appeal rejected challenges to two negative declarations that analyzed agreements between two irrigation districts for the transfer of water to the City of Tracy. Tracy needed the water to accommodate buildout of its general plan. Specifically, the city's 1993 general plan called for an increase in population from 33,500 to nearly 130,000 over a 20-year period, and City of Tracy officials anticipated that the city would need at least 29,000 acre-feet per year (afy) of water to accommodate that growth. The West Side Irrigation District and the Banta-Carbona Irrigation District each had excess water supply because of reduced demands from decreasing constituencies. The City of Tracy entered into an agreement with the West Side Irrigation District to transfer 2,500 afy of water (with an option for an additional 2,500), subject to CEQA compliance. The agreement further provided that the district would act as lead agency. Tracy entered into a similar agreement with Banta-Carbona. Both districts prepared initial studies and negative declarations in conjunction with the agreements (*West Side Irrigation District*:694–697).

The Sierra Club sued, arguing that this arrangement resulted in improper segmentation, and that the two assignments were actually a single project whereby the City of Tracy accepted an assignment of 10,000 afy of

water. The Sierra Club argued that a single environmental document should have been prepared for the transfers. The court disagreed. It held that the "rule prohibiting segmentation of a CEQA project does not apply here because the assignments are two separate projects independent of each other." As evidence of this independence, the court noted, among other things, that neither transfer was contingent upon the other and that they could be implemented independent of the other (*West Side Irrigation District*:699).

Applicability to the Proposed Project

Here, each proposed health care facility, including the proposed project, has independent utility separate and apart from the other facilities, irrespective of any similarities of project objectives, operation, and staffing needs. The construction and operation of the proposed project, for example, is not dependent on the construction and operation of any other proposed health care facility projects, nor would constructing or operating CHCF Stockton necessitate the development of any other prison health care facility. The proposed project would supply much-needed care to inmates even if it were the only healthcare facility constructed for the prison health care system The proposed projects are also, by necessity, geographically separated. .

Further, although the Receiver has identified an overall goal to develop 10,000 new beds, that goal could very well change as the Receiver continues to reevaluate and implement measures to bring the state's prison medical health care up to constitutional standards. The Receiver may determine that only three, as opposed to seven, facilities should be built if mental health beds are redacted from the plan. The Receiver and the federal courts will continue to evaluate whether 10,000 new beds are necessary to bring the state's prison health care system up to constitutional levels. (See page 4 of the *Plata* Turnaround Plan Approval Order, which states that the Turnaround Plan for Action is "a living document" and must be updated or modified as necessary throughout the Receivership; see also CPR 2009.) In addition, it is unclear whether funding will become available in the near future to construct all or a portion of the 10,000 beds, given the state budget crisis and other factors. Although the Receiver has identified a shortage in health care beds and concluded that 10,000 new beds are necessary to bring the state's prison medical and mental health care system up to constitutional levels, the goal of 10,000 beds is flexible and subject to change until the federal court determines that California's prison health care system complies with the U.S. Constitution.

Because the proposed CHCF Stockton is independent from the other proposed health care facilities, the DEIR's project description is not deficient for describing the proposed project as an individual facility, as opposed to describing and analyzing the project as the development of 10,000 new beds at up to seven locations throughout the state.

The court's decision in *Christward Ministry v. County of San Diego* (1993) 13 Cal.App.4th 31 (*Christward II*) is on point. In that case, the Court of Appeal upheld an EIR for a proposed landfill expansion against the petitioner's claim that the "project" at issue was not merely the expansion of one facility, but the setting of solid-waste management policy on a countywide scale. The court held that "the law does not require that a single EIR be prepared for all of the trash projects in North County or that a County-wide EIR be prepared" (*Christward II*:45). The court reasoned that although San Diego County was concurrently considering other trash projects, those "'projects are being processed through the appropriate state and local agencies, regardless of the proposed landfill expansion, and are not dependent on the landfill expansion'" (*Christward II*:41). The other landfill projects were also uncertain (*Christward II*:45). Citing *City of Del Mar* favorably, the court concluded that San Diego County was not guilty of piecemealing its environmental review because the other solid-waste projects were independent of the landfill expansion project at issue (*Christward II*:46; see especially footnote 5).

The same is true here. As described above, each health care facility has utility independent of the other potential facilities justifying its independent environmental review. The Receiver has not approved projects on any of the specific sites currently being considered. As CEQA review is completed for each, as funding is identified, and as the demand for beds evolves, projects may be approved on some sites and not others. Other sites may be proposed, or some or all of the sites currently identified may be all that is needed. Like *Christward II*, in which

the landfill expansion project was arguably part of a larger need for waste disposal projects, here CEQA does not require all the possible health care facility projects to be analyzed in a single program EIR. The Receiver did not impermissibly piecemeal or segment the health care projects in preparing project-level EIRs for those projects (*Christward II*:46).

Preparation of a Program EIR Would Be Inappropriate Given the Circumstances Surrounding the Identified Need for 10,000 Medical and Mental Health Care Beds

The State CEQA Guidelines (Section 15168[a]) use the term "program" to mean:

> a series of actions that can be characterized as one large project and can be related either: (1) Geographically, (2) As logical parts in the chain of contemplated actions, (3) In connection with the issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or (4) As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects that can be mitigated in similar ways.

The health care facilities being considered by the Receiver arguably do not fit any of the four criteria for "related" activities, for the reasons described below.

- The health care facilities would not be related geographically because they are proposed for specific sites dispersed throughout the northern and southern portions of the state. This dispersion reflects the state's demographics and helps ensure access to a qualified pool of staff. (See Master Response 1, "Alternatives," explaining why the projects must be geographically separated.)

- The proposed facilities are not logical parts in a chain of contemplated actions because the facilities could be built simultaneously and are otherwise not integral to each other.

- Although the Receiver has identified a need for 10,000 new beds, the 10,000 beds are not being proposed in connection with the issuance of general criteria or rule to govern a continuing program. Rather, each proposed facility would be independently managed. (See page ii of *Option Report: The Framework for the Development of the New California Health Care Facilities*, which concluded that management of the health care facilities must be substantially independent.) There is no court order or rule, moreover, mandating the approval and construction of 10,000 beds at any specific location. As noted above, the Receiver's plan is flexible and subject to change. Once prison health care standards are up to constitutional levels, control of the state prison health care system will revert back to the state.

- Although the health care facility projects are proposed to be carried out under the same authority (i.e., CPR), the projects would not necessarily have similar environmental effects that could be mitigated in similar ways (see Section 15168[a][4] of the State CEQA Guidelines). Rather, the potential adverse environmental effects of each facility would be unique to its location, infrastructure constraints, traffic conditions, and so on. The impacts would therefore largely differ by location. It should be noted that the Receiver is currently considering facilities on state-owned property at the following locations:
  - this project site (San Joaquin County), in an area surrounded by farmland;
  - Folsom State Prison, in an area surrounded by urban development and a major river;
  - Vacaville, on property surrounded by hillsides/open space and urban development;
  - Ventura County, on property that is developed and surrounded by agriculture;
  - Whittier, on a site surrounded by dense development;
  - Chino, on a site surrounded by urban development; and
  - San Diego, on undeveloped land.

Even if a program EIR were arguably a type of EIR that could be prepared for the various proposed health care projects, preparation of a program EIR would have been unpracticable and wasteful. Given the urgent need to

bring the state's prison health care system up to constitutional standards, spending the 2–3 years anticipated to be necessary to prepare and certify a program EIR would have unreasonably delayed compliance with the federal district court's order—even assuming that the program EIR would not be not challenged in court. Litigation over the program EIR could have forestalled the CEQA review and development of site-specific projects for years. The Receiver has been ordered to bring California's prison health care system up to constitutional standards "as soon as practicable" (Order Appointing Receiver:1–2). Preparation of a program EIR could have interfered with the Receiver's court-ordered mandate.

Further, because the environmental effects of any health care facility proposed by the Receiver will be evaluated in its own CEQA document, a program EIR evaluating placement of up to 10,000 beds would be unnecessary and redundant. (See *Stand Tall on Principles v. Shasta Union High School Dist.* [1991] 235 Cal.App.3d 772, which stated that an EIR evaluating "all potential sites in a site selection process" may "prove too cumbersome and yield little of value given its lack of focus.") Because the projects would not collectively have cumulative impacts given their geographic distribution, there would be no utility, from an environmental perspective, in combining environmental review of the projects into a single document. (See *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* [1994] 27 Cal.App.4th 713, 733, which stated that because a sewer project would be a foreseeable future project contributing to cumulative impacts, an EIR for a development project was deficient for not containing an analysis of the "combined environmental effects" of the development project and the sewer expansion.) Additionally, because the Receiver is constantly reassessing whether the various components of his Turnaround Plan of Action are required and whether constitutional levels of care could be achieved alternatively, a program EIR evaluating alternatives to the 10,000-bed program would be of little value.

It would have been unrealistic for the Receiver to prepare a program EIR for the 10,000 beds in order to evaluate every potentially feasible site upon which the various health care facilities could be located; environmental review would have been premature. The State CEQA Guidelines (Section 15004[b]) explain that "[c]hoosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment."

The issue revolves around the appropriate timing for environmental review: When along the continuum of project development does a proposal trigger mandatory CEQA analysis? Here, at the time that the need for 10,000 beds was identified, that need was only a generally defined goal. The Receiver determined that environmental review would be premature if it were prepared before potentially feasible sites were selected on which the various proposed projects could potentially be constructed; and before the details of the health care facilities were sufficiently defined so that the EIR(s) could provide meaningful information to the Receiver for a final determination as to whether to approve a proposed health care facility. As the California Supreme Court recently observed, "CEQA review was not intended to be only an afterthought to project approval, but neither was it intended to place unneeded obstacles in the path of project formulation and development" (*Save Tara v. City of West Hollywood* [2008] 45 Cal.4th 116, 137 [*Save Tara*]; *Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556 [preparing an EIR for the placement of future waste disposal facilities would have been premature prior to site selection].)

The Receiver's decision to prepare project-level EIR's does not conflict with the California Supreme Court's recent decision in *Save Tara*. There, the City of West Hollywood granted two nonprofit community housing developers an option to purchase and redevelop city property with low-income senior housing. The city granted the option to support the developers' application for a federal redevelopment grant. Before and after the federal grant was approved and the option granted, city officials made numerous public statements and several indications of *irrevocable* support for the project, including substantial financial assistance. Specifically, the California Supreme Court held that the city should have prepared an EIR for the project because the "[c]ircumstances surrounding City's approval of the agreements confirm City's commitment to the…project" (*Save Tara*:141). Despite the final agreement's inclusion of a condition granting the city discretion over CEQA matters, the city's "public announcements…, its actions… preparing to relocate tenants from the property, its

substantial financial contribution to the [private] project, and its willingness to bind itself, by the…draft agreement, to convey the property if the developer 'satisfied' CEQA's 'requirements, as reasonably determined by the City Manager,' all demonstrate that City committed itself to a definite course of action regarding the project before fully evaluating its environmental effects" as prohibited by CEQA (*Save Tara*:143).

In contrast to *Save Tara*, the Receiver has not committed to building facilities on any of the sites currently being considered, and a specific funding source has not been determined. Further, as the Receiver's plans for bringing prison health care up to constitutional standards evolve, substantial changes to addressing care in the prison system could occur. Indeed, the Receiver is currently contemplating the development of only three new prison health care facilities, as opposed to seven (Rochester 2009). The Receiver continues to evaluate whether 10,000 new beds are actually needed, depending on the changing political and budgetary landscape. Although substantial information about the objective to develop 10,000 new health care beds has been developed, that information and analysis was enough only to determine the potential feasibility of the various health care projects and to outline the basic elements of the health care facility template; this information was not sufficient to approve or proceed with CEQA review evaluating the placement of all 10,000 beds in a single document.

Summary

In summary, because the proposed project has independent utility, CEQA does not require it to be evaluated along with the other potential health care projects, which collectively could house up to 10,000 new health care beds. Preparing a program EIR was reasonably rejected because of the urgent nature of the proposed project, namely, to assist in alleviating the unconstitutional medical conditions that currently exist in the California prison system. Preparation of a program EIR would have also been premature given the lack of knowledge at the time about the potential sites. Without selecting potentially feasible sites on which the various proposed projects could potentially be constructed, and without sufficiently defining the details of the health care facilities, a program EIR would not have provided meaningful information to the Receiver. For all these reasons, the Receiver did not violate CEQA in deciding to prepare a project-specific EIR for the CHCF Stockton project, rather than a program EIR evaluating the placement of up to 10,000 new beds throughout the state.

MASTER RESPONSE 3: RECRUITMENT AND STAFFING ISSUES RESULTING FROM THE PROPOSED PROJECT

Several commenters on the DEIR raised concerns related to a potential decrease in the ability of local health care providers and the county sheriff department to retain and/or recruit qualified staff members. These comments generally described a situation in which local staff members would leave their current positions to work for the proposed CHCF Stockton. Many commenters associate the positions generated by the proposed project with higher compensation than currently available to local staff members in their current positions. Several commenters also pointed out existing difficulties in recruiting qualified staff, especially those in the health care field, and suggested that the proposed project would add to this problem. The comments did not identify a direct or indirect physical change to the environment related to the staffing needs of the project, or related to the potential for the project to draw employees from existing facilities.

CEQA is concerned with a project's economic or social effects when such effects may lead to foreseeable adverse physical changes to the environment. (CEQA Guidelines, § 15131, subd. (a) ["[e]conomic or social effects of a project shall not be treated as significant effects on the environment"]; see also CEQA Guidelines, Section 15382; CEQA Guidelines, Appendix G). As set forth in the DEIR (p. 4.12-6), an impact related to public services is considered significant if project implementation would:

> "result in the need for new or physically altered government facilities, the construction of which could cause significant environmental impacts to maintain acceptable service ratios, response times, or other performance objectives."

As disclosed in the DEIR, the potential project-generated increase in demand for medical and correctional staff would not require new or expanded facilities because the number of positions for medical professionals and correctional officers, including both open and filled positions, would not change as a result of the proposed project (the project has the potential to increase demand for staffing, not demand for service). The proposed project is different from those projects, such as a residential development, that generate the need for additional public services and facilities by locating residents to a new area serviced by a city or county. The proposed project would therefore not result in a physical change in the environment related to the need for public services. (DEIR, Section 4.12.4; see also Master Response 4). Although the potential social and economic effects associated with staffing the proposed CHCF Stockton facility would not lead to physical changes in the environment (and therefore need not be analyzed in the EIR), in recognition of the importance of staffing retention and recruitment issues to the local community, the following information regarding CPR's recruitment efforts is provided.

As a preliminary matter, it is worth noting that the unemployment rate in San Joaquin County is 15.1 percent as of January 2009, approximately 50 percent higher than the statewide unemployment rate of 10.1 percent. (Cal. Employment Development Department, Jan. 2009, Maps of Unemployment Rates and Jobs, available at: http://www.calmis.ca.gov/file/lfmonth/lf_geomaps.pdf (as of FEIR publication)). Both these rates (the county's and state's) are alarmingly high, and are a reflection of the severe recession hitting the state and country. The proposed project would add an estimated 3,000 new well-paying jobs to the community. The budget for construction of CHFC-Stockton is significant, and its anticipated operational payroll is well in excess of $100 million per year. By adding well-paying jobs to the community, the proposed project would enhance the tax base, bring clientele for existing restaurants and retail merchants and create customer base for new businesses. If anything, given the high unemployment rate in San Joaquin County (and the nation), the creation of new jobs would benefit the county, not hurt it.

With respect to staffing, although there is a national and statewide shortage of certain categories of health care workers, the CPR has, and will continue, to take steps necessary on a local basis to alleviate the shortage, including any shortages affecting the City of Stockton and San Joaquin County. For instance, CPR plans to recruit doctors and nurses primarily on a state, national, and international basis in order to avoid overreliance on the local labor pool. To assist in these efforts and in light of the short-term shortage for qualified staff (assuming a shortage, in fact, exists), the Receiver intends to support international professionals in obtaining H-1B visas (a nonimmigrant visa for persons with specialty occupations lasting up to six years) if other recruitment efforts do not result in sufficient staffing. The CPR also intends to avoid undue reliance on the local labor market by focusing recruitment efforts on physicians who have recently completed residency programs and recently graduated nurses, rather than experienced workers currently employed in the community and who may already have a vested interest in staying with their existing company based on seniority and other retirement benefits.

Moreover, CPR is working to expand educational programs from which to recruit future staff, and has already entered into discussion with various schools. For instance, the Receiver's office is in discussion with several community colleges regarding joint initiatives to enhance employment pools. Approaches under consideration include:

- Augmenting program budgets to support additional nurse instructors;
- Providing instructors if none are available;
- Creating apprenticeship programs;
- Exploring 20/20 programs (work half-time, go to school half-time);
- Including CDCR facilities in training clinical rotations so that students understand the correctional facility work environment.

The Receiver's staff has progressed significantly in negotiations with Southwestern College in San Diego regarding programs to address needs in southern California. The parties are now negotiating an agreement to implement a pilot program in the 2009-2010 academic year at Southwestern College that will include clinical rotations at the RJD Correctional Facility in San Diego and an expanded curriculum including education specific to nursing in correctional facilities.

The Receiver's staff has also had many communications with the officials of the Los Rios Community College District about potential collaborative efforts. In conjunction with Los Rios, the staff has also met with Sutter Health officials, who, in partnership with Los Rios, have developed a successful program that graduates 90 nurses per year. Sutter's approach may serve as a model for the Receiver's office should it elect to initiate a regional training center. In addition, the Receivers staff has met with Napa State Hospital, the Health Care Professionals Consortium, the Department of Industrial Relations, and the Department's Division of Apprenticeship Standards, including the Joint Apprenticeship Committee for Psychiatric Technicians.

It is important for local communities to understand that certain categories of medical personnel needed for the proposed project would not compete with local hospitals. For instance, hospitals do not employ psychiatric technicians and do not employ large numbers, if any, Licensed Vocational Nurses (LVNs), those who provide routine patient care. An LVN is usually trained for a year or more in anatomy, physiology, and patient care, differing from the Registered Nurse (RN), who has several more years of advanced science and frequently a four-year education. Once education is completed, the LVN must also do supervised work prior to applying for licensure. Many would argue that the LVN is one of the hardest of workers, though most receive about half the salary of an RN, approximately 24-48,000 US dollars (USD) per year. Many LVNs decided to achieve their RN after a few years of work, to take on more challenging work or to have a higher salary. The proposed project would also employ internal medicine doctors and not compete with local health care facilities for specialists. Specialty medicine would instead be provided under temporary contract/reimbursement arrangements with local providers.

It is also important to note that California has taken considerable steps to overcome its shortage of RNs. Governor Arnold Schwarzenegger, in 2005, established the California Nurse Education Initiative, which has made great strides in addressing California's shortage of registered nurses (RNs). Funding for the program was renewed in the 2006-2007 California budget. As a result of the program, 10,900 RNs are anticipated to be added to the workforce from initiation of the program (2005) to 2010, reducing the projected nursing shortage by 25%. The program consists of expanding the educational capacity at California Community Colleges (including a $90 million public-private partnership investment); expanding educational capacity in the California State University Bachelors and Masters programs; opening new University of California nursing programs at the Bachelors, Masters, and Doctoral levels; creation of a nursing education loan program to incentivize nurse teachers; and development of rural clinical programs to expand education in medically underserved areas of the state (UCSF 2007 and Center for Health Professionals 2009).

Some comments stated that CPR would compensate medical professionals at rates higher than typical medical facilities, which, according to the commenters would entice local medical professionals to leave their current jobs for a job at the proposed facility. This is not true. Salaries for RNs, nurse practitioners, physicians and other job classifications would be comparable to local salaries for the same job categories. On October 17, 2006, Judge Thelton Henderson issued an order to waive state law related to establishment of salaries. The waiver allowed the Receiver to adjust salaries for certain classifications of medical personnel. Classifications included RNs, Nurse Practitioners, Physicians and Chief Medical Officers, among others. The waiver was granted in light of undisputed evidence that compensation for medical personnel at CDCR facilities was far too low, resulting in extreme vacancy rates.

RNs working for CDCR were previously paid 20-40% below market, and supervising nurses were paid up to 57% below market. At the time, CDCR institutions faced a statewide vacancy rate of 20% for primary care positions, including 30% at six prisons, 50% at two prisons and 90% at one prison, with salary levels cited as a

primary cause. (*United States District Court for the Northern District of California, Marciano Plata, et al, v. Arnold Schwarzenegger*, No. C01-1351 THE, Class Action, Order Re: Receiver's Motion for a Waiver of State Law.) Salaries for RNs, nurse practitioners and physicians have since been raised to a more competitive range consistent with current market rates and vacancy rates for the salary-adjusted positions have declined. (Hagen 2009).

Despite increases in wages to current market rates, recruitment to correctional facilities continues to present certain obstacles. For instance, many medical professionals decline correctional facility opportunities due to a perceived stigma among their peers associated with correctional work. Others are dissuaded by fear that the environment is not safe. Others simply do not care to treat prisoners. (Cite: *Ibid.*) The same is anticipated to be true for the proposed project – many San Joaquin and City of Stockton health care workers would choose not to work at the proposed facility, even with competitive salaries. The statewide, national, and international recruitment efforts described above, in combination with efforts to promote education, would help alleviate problems with recruiting and retaining medical workers for the proposed project while avoiding adverse social and economic impacts to the local community.

With regard to correctional officers, the Receiver would employ officers who have completed training at the correctional officer academy operated by the CDCR in Galt. Requirements for the training academy are a high school diploma or GED certificate and law abiding behavior. CDCR advertises its job opportunities as the "greatest entry-level jobs," and indeed provides career path opportunities for the unskilled labor pool. Acceptance into the training academy takes between six and 24 months, and the training program is four months long. All jobs are offered at entry level. CDCR does not typically attract officers from local correctional facilities (sheriffs or police departments) because in almost all cases, the entry level for CDCR correctional officers is far lower than those for current sheriff or police officers, especially given the period of time required to be accepted as a candidate and complete the training program.

In summary, staffing for the construction and operation of the proposed project would not lead to reasonably foreseeable direct or indirect changes in the physical environment; therefore, these issues need not be discussed in the EIR. (CEQA Guidelines, §§ 15131, subd. (a). 15382). Nevertheless, for the reasons set forth above, it is anticipated that the proposed project would not result in adverse social or economic impacts to the City of Stockton or San Joaquin County, and in fact would likely improve the local economy. The Receiver understands and appreciates the community's fears that the proposed project would negatively impact local services and is taking steps necessary to address those concerns.

MASTER RESPONSE 4: INCREASED DEMAND FOR LOCAL SERVICES

Several comments on the DEIR suggested that the proposed project would adversely affect public services provided by the City of Stockton (City) and the County, such as the City's police and fire departments, the County sheriff's office (including the coroner's office), human services, and health care services. These services could presumably also include other services not mentioned, such as judicial services. Although the majority of these comments focused on the potential for the proposed project to increase employment vacancies and recruitment difficulty (which is addressed in Master Response 3), some of the comments indicated that the project would increase the demand for local services.

As discussed in Master Response 3, CEQA does not require an EIR to evaluate social or economic impacts unless such impacts could lead to physical changes in the environment. (CEQA Guidelines, §§ 15131, subd. (a), 15382). As explained in the DEIR, the project would not cause significant environmental impacts related to public services. (See DEIR, Chapter 4.12-6.) None of the comments received on the DEIR raising public service concerns indicated that potential public service impacts could lead to physical changes in the environment. Rather, most comments regarding impacts to local services expressed the concern that the proposed project would cost the City and/or the County significant (and unsubstantiated) sums of money. Although no environmental

impacts are anticipated in connection with the provision of public services, this Master Response provides additional information regarding the proposed project's economic and social impacts to local services.

Potential Economic and Social Impacts on City and County Agencies

Public Works

The proposed project would not have an impact on the local public works department. The only potential area in which the proposed project could affect the public works department would be in relation to the project's traffic and circulation impacts. The traffic study included in the DEIR, and revised in response to comments received on the DEIR analyzes traffic impacts related to the proposed project. Please see Master Response 5. The traffic analysis adequately analyzes the project's traffic impacts and proposes mitigation measures for these impacts. The mitigation measures proposed are directly related to the impacts as identified in the traffic study. While comments have cited dollar amounts associated with projected traffic impacts, these impacts and/or dollar amounts are not related to the revisions in shift times and the traffic study presented. They also do not provide any justification for either the impact stated or the proposed dollar amount.

Police Service

The CHCF Stockton is located in the County of San Joaquin, and therefore is not anticipated to have any impacts on City police services. As stated on page 4.12-7 of the DEIR, currently, the NCYCC handles all of its own law enforcement needs and rarely requires assistance from the County Sheriff's Department. The NCYCC complex employs 55 officers on a rotating basis so that 33 security officers are on duty 7 days a week, 24 hours per day, 365 days per year.

The proposed project would include up to 1,000 new correctional officers on staff to handle emergency or other activities where police services might normally be utilized. In addition, the correctional officers on staff would be better trained to handle state inmates and the types of situations experienced in a prison facility than the local police and therefore would be better equipped to handle any situation which may arise. Based on experience of other CDCR facilities, although local law enforcement is occasionally called to an institution due to isolated incidents caused by visitors, such as guards finding drugs or other contraband on a visitor, this has not occurred enough times to warrant a significant impact on local law enforcement.

Fire Service

As stated on page 4.12-8 of the DEIR, the combination of on-site fire protection and backup fire protection services would provide sufficient fire protection services for the proposed project. The county does provide backup fire protection services through the County Mutual Aid Agreement. However, the on-site services will adequately provide fire protection to the proposed project, and the Mutual Aid Agreement is only utilized during major emergency situations. During these situations, it is likely that the facility, including its up to 1,000 correctional officers and large number of medical staff would be providing services to the county as well.

In terms of emergency medical transport (EMT), currently the San Joaquin County General Hospital provides emergency ambulance services to the NCYCC facility approximately once a month. It is estimated that fewer than 20 patients would require transportation to a hospital per month, some by ambulance. The CPR would either provide ambulance services on-site, or would contract out with a local agency for those services. If contracted, the fees paid would be expected to cover any costs associated with providing services to the site. Therefore, the project is not anticipated to have an impact on fire services.

County Sheriff

As stated above, the proposed project is located in San Joaquin County. The project is expected to employ up to 1,000 correctional officers. These officers are expected to handle any situation which may arise which needs the

attention of law enforcement agencies. It is expected that the San Joaquin County Sheriff would respond to emergency calls in accordance with the County Mutual Aid Agreement; however, based on past experience with existing CDCR facilities, these responses would be infrequent and would not substantially increase the demand for services on site. Therefore, the proposed project would not increase in demand for public administrator services.

Considering the shortage of labor and construction related jobs in the region, the proposed project is not expected to have any impact on the construction cost for the County's expanded jail facility and/or its ability to staff the facility. (See Response to Comment 13-103; see also Master Response 3). Any impact on the County's ability to recruit and retain correctional officers is addressed in Master Response 3 above.

County Coroner's Office

A few comments described the potential for an increase in demand for coroner's services. Based on the frequency of coroner's cases at similar facilities, the proposed project would be likely to result in very few additional cases per year. Even if several cases per year were added, physical environmental impacts would not result. It should be noted that the coroner can coordinate with CPR for reimbursement for services on a case-by-case basis and has done so with CDCR in the past.

Human Services Agency

Several of the comments, especially those received from the County Health Services Agency, base the conclusion that the proposed project would have an adverse economic and/or social impact on public agencies on the assumption that the proposed project would result in an increased case load because of inmates' families moving to the area. This assumption is based on several unsupported premises:

- Families of inmates commonly move to the vicinity of their loved one's incarceration.
- All patients would be housed at the proposed facility long term.
- Families of inmates would require county services at a higher rate than typical residents.

No evidence is presented to validate any of these premises. In fact, the DEIR presents substantial evidence to the contrary. Impact POP-3 on page 4.11-10 of the DEIR includes an evaluation of whether an increase in the patient population as a result of the proposed project would increase the population of the surrounding community. As discussed in Impact POP-3, a recent study performed by CDCR (including evaluation of such places as Vacaville, where a correctional medical facility is located, and Folsom, where there is a large prison complex) concluded that a very small number of families move to be near an inmate (less than 0.5% of the total inmate population residing at a general population facility); the study also concluded that no evidence exists that such families are more prone toward criminal behavior or other factors that place a greater-than-average demand on social service providers than the population at large.

As can be seen, economic impacts related to inmates' families and loved ones moving to be near incarcerated patients are speculative and not based on any evidence, and the commenters do not address the contrary, data-based evidence presented in the DEIR.

Judicial System Services

The proposed project would not have significant environmental impacts on the County's judicial system, although it would likely increase caseload at all levels. Any crimes committed at the facility, including from visitors (e.g., drug smuggling) or inmates (e.g., if an inmate attacks an officer or another inmate) would, if pursued for prosecution, be handled the same as any crime committed in the County. In fact, CDCR facilities often substantially increase the caseload of the offices of the District Attorney, Public Defender, and the Courts. This does not, however, translate into a physical environmental impact. Rather, often times an additional staff person is retained to handle inmate cases, and a substantial amount of a judge's time is diverted to the cases. This

increase in caseload can stress the local judicial system personnel, and could ultimate result in longer wait times for cases to come to trial. But, court rooms do not need to be modified (CDCR personnel provide security). (CDCR 1993, pages 4.4-38 through 4.4-45)

While not an environmental impact, it is also likely that demands on the judicial system in San Joaquin County will not be substantial, unlike in locations where conventional state prisons are located. The stark reality is that inmates at the CHCF will be ill. Practically, ill inmates would have a far less propensity toward criminal behavior than healthy incarcerated inmates. No data has been collected as part of this EIR to support this assertion. Because this issue is not an environmental impact of the project, the EIR did not focus on it. But, rational considerations suggest that the caseload resulting from this project would not increase substantially. In locations where there has been a substantial increase, CDCR has responded with such means as remote video conferencing (a room is set aside at a prison with a video camera) to handle the majority of pre-trial proceedings. If caseload substantially increases as a result of this project, this type of option, or a similar solution, could be considered in the future. It is not a mitigation measure because it is not an environmental impact of the project.

Probation Department

The CHCF Stockton would house patients currently incarcerated in a CDCR facility. There are three possible means to exit the facility including:

1. After having received the appropriate level of medical/mental health care the patient is sent back to a general population facility;

2. After having served the required term, the patient is sent back to his county of sentencing to begin the parole process; and

3. The patient dies while at the facility.

None of the scenarios stated above would involve the local probation department, unless the patient being paroled was sentenced in San Joaquin County. If that were the situation, the patient would already be working with the local probation department and therefore the CHCF Stockton would not contribute to the department's workload. Given the three possible scenarios for leaving the facility, the proposed facility is not expected to have any impacts on the local probation department.

MASTER RESPONSE 5: TRAFFIC ISSUES

Several commenters raised a variety of traffic-related issues Most of the comments can be categorized under three general issues:

- methodology (i.e., modeling assumptions and type of model used);
- significance criteria (i.e., county versus city thresholds); and
- mitigation (i.e., feasibility and fee payment).

The majority of issues were raised in a comment letter from the California Department of Transportation (Caltrans) (included as Letter 26).

The EIR was prepared under contract to the Receiver by EDAW, with traffic analysis provided by DKS Associates. In consideration of issues raised by Caltrans, the Receiver staff, DKS Associates and EDAW met with Caltrans District 10 staff, and DKS Associates participated in additional phone conferences with Caltrans staff. Based on a conference call in December 2008, DKS Associates updated the level of service (LOS) and queuing analyses for the intersections of the SR 99 SPUI (single point urban interchange)/Arch Road and Kingsley (frontage) Road/Arch Road. In addition, DKS Associates used the Synchro/SimTraffic (Version 7) analysis software, as requested by Caltrans, to analyze the operational details of these closely spaced intersections.

This software provides a more precise method for consideration of traffic signal interactions and closely-spaced intersections than the TRAFFIX analysis software model traditionally used in EIRs for projects of similar size to the proposed project and used for the DEIR's analysis.

This Master Response summarizes the results of DKS's Synchro/SimTraffic analysis and sets forth mitigation measures that would reduce significant impacts not identified in the DEIR's original analysis to less-than-significant levels. Table 3-7 (located at the end of this master response) provides a comparison of the original DEIR Traffic Analysis and the Revised Traffic Analysis (SYNCHRO Model plus adjusted configurations). As shown in Table 3-7, as a result of a new mitigation strategy developed in response to concerns raised by Caltrans and other commenters on the DEIR, the project would result in fewer significant adverse traffic impacts than previously identified in the DEIR. While the discussion contained in this master response is technical, it is necessary in order to provide a thorough response to comments raising traffic concerns, particularly Caltrans's comments.

Based on Caltrans's initial review of the traffic impact analysis, the following items were coded into the Synchro/SimTraffic networks for the Existing, Existing Plus Approved Projects (EPAP), and 2035 Cumulative scenarios (same scenarios as evaluated in the DEIR), with and without the proposed project:

- revised lane coding to reflect the unique geometrics of the SR 99 northbound off-ramp at Arch Road operations (signalized left turns and one-way stop-controlled right turns);
- revised peak-hour factor, from 1.00 to the Synchro default of 0.92;
- revised storage lane lengths, particularly at the SR 99/Arch Road northbound and southbound off-ramps (parameters provided by Caltrans), which were not analyzed previously;
- revised left-turn phasing to accurately reflect the SPUI operations;
- clearance time to accurately reflect the SPUI operations (provided by Caltrans);
- 60-minute seeding times for the network in SimTraffic;
- a revised vehicle mix that included a higher percentage of semi-trucks, based on existing truck percentage information provided by Caltrans in comment 26-27; and
- a minimum run of three iterations per analysis scenario, to determine the maximum queue lengths at both intersections based on direction from Caltrans.

Revised Traffic Analysis

Existing Plus Project Condition

Based on the revised LOS analysis, the proposed project would not create a significant impact in the Existing plus Project condition. See results in Table 3-2 below (the data is provided in Appendix D).

Existing Plus Approved Projects (EPAP) Plus Project Condition

In the EPAP plus Project condition, the proposed project would contribute 571.6 seconds of delay in the a.m. peak hour to the unsignalized northbound off-ramp, which is already forecast to operate adversely at LOS F in the baseline (i.e., without project) condition. The proposed project would create a significant impact (as expressed in the DEIR, an increase of more than 5 seconds at an intersection operating at LOS E or LOS F within the City's jurisdiction) in both peak hours at the Kingsley (frontage) Road/Arch Road intersection by adding 140.3 and 16.4 seconds of delay to the LOS F operations in the a.m. and p.m. peak hours, respectively. The DEIR also identified

significant impacts to this intersection under the EPAP plus Project scenario for both peak hours (DEIR, Impact TRAF-4, pp. 4.3-24 through 4.3-28).

The project would also result in a significant impact at the SR 99 northbound off-ramp right turn onto Arch Road, which was not identified as a significant impact in the DEIR. See the results in Table 3-3 below (the data is provided in Appendix D).

Table 3-2
Revised LOS and Delays—Existing Condition and Existing plus Project Condition
(Delay Shown in Seconds)

Intersection		Control	Existing Condition				Existing + Project Condition					
			A.M. Peak Hour		P.M. Peak Hour		A.M. Peak Hour			P.M. Peak Hour		
			Delay	LOS	Delay	LOS	Delay	LOS	Delay Increase	Delay	LOS	Delay Increase
1a.	SR 99 SPUI/Arch Road	Signal	14.8	B	16.0	B	15.8	B	–	16.1	B	–
1b.	NB off-ramp right turn	One-way stop	11.3	B	10.7	B	13.5	B	–	10.8	B	–
2.	Kingsley Road/Arch Road	Signal	21.0	C	22.8	C	23.1	C	–	26.7	C	–

Notes:
LOS = level of service; NB = northbound; SPUI = single-point urban interchange; SR = State Route
" – " = less than significant increase in delay
Source: Data compiled by DKS Associates in 2009

Table 3-3
Revised LOS and Delays— EPAP Condition and EPAP plus Project Condition
(Delay Shown in Seconds)

Intersection		Control	EPAP Baseline Condition				EPAP + Project Condition					
			A.M. Peak Hour		P.M. Peak Hour		A.M. Peak Hour			P.M. Peak Hour		
			Delay	LOS	Delay	LOS	Delay	LOS	Delay Increase	Delay	LOS	Delay Increase
1a.	SR 99 SPUI/Arch Road	Signal	36.9	D	27.2	C	54.3	D	–	30.0	C	–
1b.	NB off-ramp right turn	One-way stop	**256.0**	**F**	20.3	C	**827.6**	**F**	**+ 571.6**	20.6	C	–
2.	Kingsley Road/Arch Road	Signal	**83.8**	**F**	49.3	D	**140.3**	**F**	**+ 56.5**	**65.7**	**E**	**+ 16.4**

Notes:
Boldface and shading indicates a significant impact.
EPAP = Existing plus Approved Projects; LOS = level of service; NB = northbound; SPUI = single-point urban interchange; SR = State Route
" – " = less than significant increase in delay
Source: Data compiled by DKS Associates in 2009

2035 Cumulative Plus Project Condition

In the 2035 Cumulative plus Project condition, the proposed project would contribute 43.4 and 18.2 seconds of delay in the a.m. and p.m. peak hours, respectively, to the SR 99 SPUI/Arch Road intersection, which is already forecast to operate adversely at LOS F in both peak hours in the baseline (without-project) condition. The proposed project would also contribute a significant amount of delay in both peak hours to the unsignalized northbound off-ramp of SR 99 at Arch Road, which is also forecasted to operate at LOS F in both peak hours in the baseline (without-project) condition.

The proposed project would also create a significant impact in the p.m. peak hour at the intersection of Kingsley (frontage) Road/Arch Road by adding 20.1 seconds of delay to the LOS E (to LOS F) operations in the p.m. peak hour. See the results in Table 3-4 below (the data is provided in Appendix D).

Table 3-4
Revised LOS and Delays— 2035 Cumulative Baseline Condition and 2035 Cumulative plus Project Condition (Delay Shown in Seconds)

Intersection		Control	2035 Cumulative Baseline				2035 Cumulative + Project Condition					
			A.M. Peak Hour		P.M. Peak Hour		A.M. Peak Hour			P.M. Peak Hour		
			Delay	LOS	Delay	LOS	Delay	LOS	Delay Increase	Delay	LOS	Delay Increase
1a.	SR 99 SPUI/Arch Road	Signal	187.1	F	155.3	F	**230.5**	**F**	**43.4**	**173.5**	**F**	**18.2**
1b.	NB off-ramp right turn	One-way stop	*	F	382.0	F	*****	**F**	**Significant**	**487.9**	**F**	**+ 105.9**
2.	Kingsley Road/Arch Road	Signal	30.3	C	78.0	E	29.0	C	–	**98.1**	**F**	**20.1**

Notes:
Boldface and shading indicates a significant impact.
* analysis result not reported by Snychro software as the projected delay is beyond the range that can be accurately calculated using Highway Capacity Manual 2000 analysis equations; thus it is assumed to be LOS F.
LOS = level of service; NB = northbound; SPUI = single-point urban interchange; SR = State Route
" – " = less than significant increase in delay
Source: Data compiled by DKS Associates in 2009

It should be noted that the analysis results indicate that signalization of the northbound off-ramp of SR 99 at the Arch Road intersection, and coordination with the adjacent signals in the EPAP and 2035 Cumulative conditions, would improve LOS (LOS F to LOS E) and would reduce delays to less than 5 seconds at the northbound off-ramp at Arch Road (better than baseline conditions), which fully mitigates the project's contribution to the LOS impact at the northbound off-ramp even though the LOS would not be improved to LOS D or better conditions.

SR 99/Arch Road Northbound and Southbound Off-Ramps at Existing, EPAP Plus Project, and 2035 Cumulative Project Plus Project Conditions

The results of the queuing analyses at the SR 99/Arch Road northbound and southbound off-ramps are presented in Table 3-5 below. The results of the full queuing analysis for all approaches at the SPUI and Kingsley Road/Arch Road are included in Appendix D.

Table 3-5
Results of the Queuing Analyses—Maximum Queues, in Feet

Scenario	Northbound Off-Ramp (1,500 feet of storage to SR 99 mainline)				Southbound Off-Ramp (1,250 feet of storage to SR 99 mainline)			
	Baseline Condition		Baseline + Project		Baseline Condition		Baseline + Project	
	A.M. Max	P.M. Max	A.M. Max	P.M. Max	A.M. Max	P.M. Max	A.M. Max	P.M. Max
Existing	178	135	251	110	168	225	213	179
EPAP	**1,759**	**1,765**	**1,748**	**1,762**	**1,365**	**1,383**	**1,366**	**1,384**
2035 GP	**1,741**	**1,796**	**1,735**	**1,735**	**1,397**	**1,384**	**1,398**	**1,393**

Notes:

Boldface and shading indicates a significant impact, i.e., the queue exceeds the storage length.

2035 GP = City of Stockton General Plan 2035; EPAP = Existing Plus Approved Projects; SR = State Route

All SR 99 ramp queues are forecast to spill-over to the SR 99 mainline in both peak hours of the EPAP and 2035 Cumulative scenarios for baseline and baseline plus project conditions.

In cases where the project results in a smaller queue than under the baseline condition, it is a function of the Synchro model re-assigning green time at nearby signalized intersections and optimizing the traffic flow in the entire interchange; thus, LOS and queues can vary up or down with increased traffic in order to optimize the entire system that includes several intersections and ramps.

Source: Data compiled by DKS Associates in 2009

Based on the SimTraffic queuing results, no queues would spill onto the SR 99 mainline in the Existing plus Project condition. However, in the EPAP and 2035 Cumulative baseline (without-project) conditions, queues at both ramps are forecast to spill onto the SR 99 mainline. This would potentially create a safety concern, as traffic traveling on the mainline of the freeway would potentially be met with slower or stopped traffic exiting the freeway. In the EPAP plus Project condition, the proposed project would not significantly add to the queues on the northbound and southbound off-ramps. Although the queues would still continue to spill onto the SR 99 mainline, the simulation model projects roughly the same queue length on the off-ramps under the baseline and the baseline plus project scenarios, largely as a result of the way overall traffic is balanced across the interchange.

Based on the revised LOS and queuing analyses at SR 99 SPUI/Arch Road and Kingsley (frontage) Road/Arch Road, significant project impacts were found at Kingsley Road/Arch Road in the EPAP and 2035 Cumulative plus Project scenarios (the DEIR indicated that the project would cause an impact at this intersection during the EPAP plus Project scenario, but not during the cumulative scenario). In addition, the proposed project would contribute to forecast LOS and queuing impacts at SR 99 SPUI/Arch Road and the northbound and southbound off-ramps.

Revised Mitigation Measure TRAF-4

To mitigate each of the significant impacts identified above, the mitigation measure for Impact TRAF-4 on pages 1-10 and 4.3-28 of the DEIR has been revised as follows (please also refer to Chapter 4, "Corrections and Revisions to the DEIR"):

Mitigation Measure(s) for Impact TRAF-4

- **~~Intersection of Kingsley Road (Frontage Road) and Arch Road:~~** ~~The addition of project-related trips would result in the degradation in LOS from LOS D to LOS E in the a.m. peak hour and LOS E to LOS F in the p.m. peak hour, which would be a significant impact. The project's contribution would be cumulative, in combination with EPAP projects. The project would contribute (20.6%) of the traffic to this intersection. CPR will pay the City of Stockton traffic fee to help fund a fair share of this improvement:~~

- ~~change the north-south signal phasing of the intersection from protected left-turn phasing to permissive phasing, convert the southbound left-turn lane to a shared left-through lane;~~

- ~~convert the southbound shared through-right-turn lane to a dedicated right-turn lane.~~

- ~~**Intersection of Newcastle Road and Arch Road:** The addition of project-related trips would result in the degradation in LOS from LOS C to LOS E in the p.m. peak hour, which would be a significant impact. To offset this impact, CPR will add a westbound through lane to the approach and return of the intersection. Because the intersection would operate at an acceptable LOS without the proposed project and the project constitutes the major reason why the intersection would deteriorate, CPR will fund this improvement entirely.~~

The Receiver shall schedule staff shift changes to occur outside of the weekday peak commute periods (7:00 a.m. to 9:00 a.m., and 4:00 p.m. to 6:00 p.m.). Deliveries and visitors to the site shall also be restricted through purchasing contracts or other binding agreements to the hours of 9 a.m. to 3 p.m. and after 6:00 p.m.to minimize project-generated traffic during the a.m. peak hour. Some examples of the off-peak hour staff shift changes could be as follows:

- *8-hour shift:* 5:00 a.m. to 2:00 p.m. and/or 9:00 a.m. to 6:00 p.m.; and late evening/early morning shifts
- 12-hour shift: 6:00 a.m. to 6:00 p.m.

Table 4.3-17 presents the revised project trip generation with the implementation of this measure.

Table 4.3-17
Trip Generation with Off-Peak Shift Timing Mitigation Measure

Variable	Daily Trips	A.M. Peak-Hour Trips			P.M. Peak-Hour Trips		
		In	Out	Total	In	Out	Total
Staff	3,292	0	0	0	0	0	0
Deliveries	42	0	0	0	0	0	0
Visitors	232	0	0	0	0	0	0
Total Trip Generation	**3,566**	**0**	**0**	**0**	**0**	**0**	**0**

Source: Data compiled by DKS Associates in 2009

Conclusions

The revised Mitigation Measure TRAF-4 removes all project trips from the roadway network during the AM and PM peak hours. Consequently, the DEIR's analysis of peak hour project impacts at intersections, roadway segments, and SR 99 mainline would change such that the "with project" scenarios would be identical to "background " or "no project" conditions under existing, EPAP, and cumulative 2035 scenarios. With this mitigation, the proposed project would no longer result in any peak hour impacts.

However, shifting the project's peak hour traffic to non-peak periods still places loads on certain intersections during off-peak hours. Therefore, an analysis of off-peak traffic was prepared; the methodology and results are described below.

Methodology for Off-Peak Traffic Analysis

As part of the FEIR preparation, DKS obtained intersection turning movement counts at the SR-99 SPUI/Arch Road intersection on Wednesday January 14th, 2009. These counts were conducted from 6:00 a.m. to 10:00 a.m. and from 3:00 p.m. to 7:00 p.m. For the purposes of evaluating off-peak traffic conditions, the off-peak periods (i.e., the peak of project traffic during certain high volume shift changes) were assumed to be from 9:00 a.m. to 10:00 a.m. and from 6:00 p.m. to 7:00 p.m.

To determine the percent change in volume between the peak and off-peak hours, DKS compared the highest morning and afternoon peak hour volumes (7:00 a.m. – 8:00 a.m. and 3:00 p.m. – 4:00 p.m.) to the off-peak hour volumes. The percent change in volume was then applied to the study intersections in the EPAP Baseline and 2035 Cumulative Baseline scenarios. The volumes from the SPUI counts were used to adjust the volumes at all movements destined/originating from the ramps. All turning movements that were not associated with the ramp volumes were adjusted according to a general percent reduction based on a comparison of peak to off-peak traffic volumes. In the absence of an off-peak travel forecast model and other data, this approach provided the best reasonable estimate of off-peak traffic volumes for use in this analysis.

Finally, project trips including staff, deliveries, and visitors (per the trip generation table in the DEIR, Table 4.3-13) were added to the two baseline scenarios in order to evaluate the potential project impacts and required mitigation measures during the late morning and evening off peak hours. Thus, an analysis of the peak hour of the project (which would be during off-peak hours) was conducted and compared to the adjacent street peak hour of traffic (whereas the DEIR analysis analyzed the normal morning and afternoon commute peak hours, coinciding with some shift changes, which would now change to off peak as a result of revised mitigation).

Summary of Off-Peak LOS Analysis Results

A shift in all project traffic to off-peak hour would mean three things: 1) the peak hour traffic analysis under each project scenario would be the same as the baseline scenario, as no additional trips would be added during either the AM or PM peak hours; 2) there would be no peak hour traffic impacts or required mitigation measures, as all project trips would be added to the roadway network during off-peak hours; and 3) off-peak traffic conditions should be, and therefore have been, evaluated to see if the shift in traffic would affect off-peak traffic in the study area. The results of the off-peak traffic evaluation are summarized below.

Near Term EPAP plus Project Scenario: Intersections and Roadway Segments

In the Near Term EPAP plus Project scenario, the revised peak hour analysis, using the Synchro/SimTraffic model, concluded that there would be three intersections where significant impacts would occur: SR 99 Northbound Off-Ramp/Arch Road (LOS F), Kingsley Road/Arch Road (LOS F), and Newcastle Road/Arch Road(LOS E). By shifting all project traffic to the off-peak hours there would be no intersection LOS impacts during either the peak or off-peak hours (all intersections operating at LOS C and better), eliminating the need for mitigation at these three intersections. In the revised peak hour analysis using the Synchro/SimTraffic model, nearby area roadways would not be significantly affected under the EPAP + Project scenario; this would not change with a shift in project traffic to off-peak hours, as off-peak baseline traffic volumes on area roadways are projected to be less than during the peak hours.

There would be a significant project impact at SR 99 northbound off-ramp/Arch Road intersection under the peak hour analysis, but the shift of project trips to the off-peak would eliminate this impact under the EPAP plus Project scenario(see Appendix D).

2035 Cumulative plus Project Scenario: Intersections and Roadway Segments

In the 2035 Cumulative plus Project scenario, the revised peak hour analysis, using the Synchro/SimTraffic model, concluded that there would be five significantly affected intersections and two significantly affected

roadway segments. The significantly affected intersections were: SR 99 SPUI/Arch Road (LOS F), SR 99 Northbound Off-Ramp/Arch Road (LOS F), Kingsley Road/Arch Road (LOS F), Austin Road/Arch Road (LOS F), and Austin Road/Project Driveway (LOS F). The impacted roadways were Arch Road between Newcastle Road and the NCWF Driveway, and Austin Road between Arch Road and the Project Driveway. By shifting all project traffic to the off-peak hours there would be three significantly affected intersections during off-peak hours: SR 99 Northbound Off-Ramp/Arch Road (LOS F), Austin Road/Arch Road (LOS E), and Austin Road/Project Driveway (LOS F). There would be no significant impacts to roadway segments during off-peak hours.

The need for mitigation at two of the three intersections was previously identified in the DEIR. At Austin Road/Project Driveway, a traffic signal was identified (Mitigation Measure for TRAF-6) as the appropriate mitigation measure, and this mitigation measure would still be the necessary. At Austin Road/Arch Road, the DEIR required, as mitigation, the addition of several turning lanes. By shifting project traffic to the off-peak, mitigation would still be required but to a lesser extent, as described in Table 3-7 at the end of this Master Response. See revisions to Mitigation Measure TRAF-6 at the end of this discussion and in Section 4.

At the SR 99 northbound off-ramp/Arch Road intersection, the impact would be significant and unavoidable under a peak hour traffic analysis, even with a traffic signal and signal timing coordination with nearby intersections as a mitigation measure. By shifting the traffic to off-peak hours (required by revised mitigation TRAF-4, see above), the impact would be reduced to a less than significant level with installation of a traffic signal and signal timing coordination included in revised Mitigation Measure to TRAF-6. In Caltrans' comment letter, one comment (26-17) provides the opinion that traffic signal timing coordination is not considered an effective or adequate mitigation. However, in response the analysis demonstrating the efficacy of the proposed mitigation measure, including signal coordination, is provided in Appendix D. This is a Caltrans facility that would be deficient under EPAP conditions with or without the project. As explained in Appendix D, the proposed mitigation measure follows recognized traffic engineering practice and is technically feasible. This mitigation measure can and should be adopted by Caltrans to mitigate the projected impact under the EPAP Baseline Condition as well as the EPAP Baseline plus Project Condition. The Receiver would fully fund the mitigation, so it is considered feasible.

Summary of Off-Peak Queuing Analysis Results

Near Term EPAP Baseline and EPAP plus Project scenarios

In the Near Term EPAP Baseline scenario, the revised traffic analysis concluded that there would be a queue of up to 1,765 feet on the SR 99 northbound off-ramp at Arch Road. The ramp has a capacity of approximately 1,500 feet. The addition of project traffic would result in small changes to the peak hour queue length, but essentially the same amount of queue during both the AM and PM peak hours.

Also in the Near Term EPAP Baseline (without project) scenario, the revised traffic analysis concluded that there would be a queue of up to 1,383 feet on the SR 99 southbound off-ramp at Arch Road. The ramp has a capacity of approximately 1,250 feet. The addition of project traffic would result in small changes to the peak hour queue length, but essentially the same amount of queue during both the AM and PM peak hours.

By shifting all project traffic to the off-peak hours, the projected off-peak queue on the SR 99 Northbound Off-Ramp during the EPAP Baseline and Baseline plus Project Conditions would be below the 1,500 feet of storage capacity.

At the SR 99 southbound off-ramp, the off-peak queues would remain below the 1,250 feet of storage capacity under the EPAP Baseline and EPAP with Project Conditions. Thus, the shift of project trips to the off-peak would eliminate the queue impact on the SR 99 off-ramp at Arch Road under the EPAP plus Project scenario.

2035 Cumulative Baseline and Cumulative plus Project scenarios

In the 2035 Cumulative Baseline scenario, the revised traffic analysis concluded that the off-ramp queue would extend beyond the available capacity on both the SR 99 northbound and southbound off-ramps at Arch Road. In the off-peak hours, the addition of project traffic would, likewise, result in changes to the off-peak hour queue lengths, which, under current configurations (no signal) at the northbound off-ramp, could result in queue lengths exceeding the available capacity. However, the traffic signal at the SR 99 northbound off-ramp, required in revised Mitigation Measure to Impact TRAF-6 (see below), would also reduce the off-ramp queue by clearing vehicles from the ramp in a more efficient manner, and the signal would reduce the queue impact to a less than significant level (e.g., the queue would be less than 1,500 feet and remain within the available storage capacity with the installation of a traffic signal).

However, even with the signalization of the northbound off-ramp, the addition of project traffic in the off-peak hour would exceed the capacity of the southbound SR-99 off-ramp at Arch Road due to the number of project trips that would be expected to use the ramp during off peak hours. The southbound off-ramp is controlled by the SR 99 SPUI intersection at Arch Road for eastbound traffic and uncontrolled for westbound traffic (there is an uncontrolled free right turn from the SR 99 southbound off-ramp onto westbound Arch Road). The mitigation for this Cumulative Baseline impact is to add 131 feet of capacity to the SR 99 southbound off-ramp by widening the two-lane segment of the off-ramp to three lanes prior to where the off-ramp splits into two lefts and one right turn lane. This would be within Caltrans right-of-way, and Caltrans would be the implementing agency. This mitigation measure is feasible given the right-of-way within the off-ramp and the spacing between the gore point exiting the freeway and the location of the existing lane widening to three lanes. See Appendix D for a more detailed explanation regarding feasibility.

Table 3-6a
Summary of Off-Peak Analysis of SR 99 Off-Ramps at Arch Road

	Northbound Off-Ramp (1,500 feet of storage to SR 99 mainline)				Southbound Off-Ramp (1,250 feet of storage to SR 99 mainline)			
	Baseline Condition		Baseline + Project		Baseline Condition		Baseline + Project	
Scenario	AM Max	PM Max	AM Max	PM Max	AM Max	PM Max	AM Max	PM Max
EPAP	310’	555’	1,219’	981’	177’	377’	398’	498’
2035 GP	387’	**1,747’**	848’	**1,712’***	399’	**1,782’**	532’	**1,826’**

Note: All SR 99 ramp queues are forecast to spill-over to the SR 99 mainline in both peak hours of the EPAP and 2035 Cumulative scenarios for baseline and baseline plus project conditions.
*Volume changes associated with changes in traffic volumes and the optimized signal time giving the northbound traffic more of a chance to clear with the addition of project traffic.

Table 3-6b presents the results of the off-peak queue analysis after applying the traffic signal mitigation at the SR 99 northbound off-ramp at Arch Road. The traffic signal at the off ramp and signal timing coordination would also affect the dispersion of queues on the northbound and southbound off-ramps, thus reducing the queues on the off-ramps.

Table 3-6b Summary of Off-Peak Analysis of SR 99 Off-Ramps at Arch Road After Signalization								
Scenario	Northbound Off-Ramp (1,500 feet of storage to SR 99 mainline)				Southbound Off-Ramp (1,250 feet of storage to SR 99 mainline)			
	Before Mitigation Baseline + Project		After Mitigation Baseline + Project		Before Mitigation Baseline + Project		After Mitigation Baseline + Project	
	AM Max	PM Max	AM Max	PM Max	AM Max	PM Max	AM Max	PM Max
2035 GP	848’	1,712’	598’	1,072*	532	1,826’	623’	1,381’
*Volume changes associated with changes in traffic volumes and the optimized signal time giving the northbound traffic more of a chance to clear with the addition of project traffic.								

Based on the off-peak analysis for intersection LOS, roadway LOS, and queuing, the Mitigation Measure for Impact TRAF-6 has been revised as follows:

Mitigation Measure(s) for Impact TRAF-6:

Prior to initiating construction, CPR shall coordinate, as appropriate, with the County of San Joaquin’s and City of Stockton’s departments of public works and Caltrans for implementation of the following measures: ~~The fees to be paid by the CPR into the City of Stockton fee program would be intended to cover the fair share of improvements associated with the project’s contribution to cumulative impacts. However, no feasible improvements are available for the following intersections, since they are assumed to be constructed to their ultimate widths and fully improved in 2035:~~

- **Intersection of Arch Road and SR 99 Northbound~~/Southbound~~ Access:** The CPR shall fully fund the installation of a traffic signal at the intersection of Arch Road and the northbound SR 99 SPUI off-ramp. ~~Improvements that would reduce the impact to a less-than-significant impact are not feasible, due to right-of-way constraints, infrastructure, and utilities. The project would contribute 5.6% of the new (cumulative) traffic that affects this intersection.~~

- **Southbound SR 99 Off-ramp:** The CPR shall fully fund the expansion of the northbound SR 99 off-ramp to add 131 feet of capacity by widening the two-lane segment of the off-ramp to three lanes prior to where the off-ramp splits into two lefts and one right turn lane.

- **Intersection of Arch Road and Austin Road:** The addition of an additional eastbound left-turn lane (to create triple eastbound left-turn lanes) ~~and an additional southbound right-turn lane (triple southbound right-turn lanes)~~ would offset the project’s impact in the year 2035. Because of right-of-way constraints and the City’s design standards, these improvements would not be feasible. The project would contribute 10.0~~11.7~~% of the new (cumulative) traffic that affects this intersection. CPR shall pay its fair share, based on the estimated (10 %) contribution into the City’s the Regional Transportation Improvement Program (RTIP).

~~CPR will improve the following intersection as described below.~~

- **Intersection of the Proposed Project Driveway and Austin Road**: CPR will install a traffic signal on Austin Road at the proposed project driveway to offset the project’s impact. The project results in this impact and is fully responsible for mitigation.

Conclusions

With implementation of mitigation measure TRAF-6, all intersections would operate at an acceptable level of service, except for the intersection of Arch Road and Austin Road. Because adding a third eastbound left turn lane at the intersection is considered infeasible, the project would pay its fair share to the City's RTIP; however the impact would remain significant and unavoidable, as concluded in the DEIR.

SR 99 Mainline

Although there is no forecast of future off-peak traffic volumes on SR 99 in this area, based on observations made by DKS Associates and existing traffic counts during off-peak hours at ramp intersections, it is reasonable to assume that the baseline mainline traffic volumes during off-peak conditions would be lower compared to the traditional a.m. and p.m. peak hours. However, it is not certain how much lower; therefore, the project's potential impacts would still be considered significant, which is the same conclusion as the DEIR.

In the response to Comment 26-3, which includes the corrected freeway mainline analysis, the DEIR's conclusion was validated: the project would contribute slightly to deficient LOS for the SR 99 mainline north and south of Arch Road in 2035 conditions. Because traffic conditions are forecast to already be LOS E or LOS F during the AM and PM peak hours, the contribution of project traffic to this cumulative impact would be considerable and therefore significant (as concluded under Impact TRAF-8 in the DEIR).

If the project's trips were applied to off-peak hours with a lower baseline traffic volume, the project's impacts would be less than under the peak hour analysis, but the DEIR's conclusion of a significant impact would still apply and the CPR would still be required to pay the project's fair share to the Regional Transportation Improvement Program (as identified under Impact TRAF-8).

Concerns Related to Significance Thresholds

Some concerns were raised, primarily by the County of San Joaquin Public Works Department, regarding the fact that the DEIR did not apply county LOS standards to intersections within County jurisdiction for the Existing plus Project and EPAP plus Project scenarios (County public works department's comment 13-52 notes that using the City's LOS criteria for the cumulative 2035 scenario is appropriate for intersections and roadways within the City's sphere of influence, since those intersections will most likely be within the City's jurisdiction by 2035). DKS Associates reviewed these comments and concluded that with Austin Road analyzed with the County's LOS C standard, the proposed project would create a significant impact in the Existing plus Project and EPAP plus Project conditions (LOS C to LOS D in both peak hours for both scenarios). With the implementation of the (revised) Mitigation Measure for Impact TRAF-4, which requires employee shifts to begin and end outside of the peak hours, the peak hour traffic volumes would be identical with and without the project; consequently, no peak hour impacts would occur. DKS also analyzed off-peak impacts and found that in the Existing plus Project and EPAP plus Project scenarios, no impacts to roadways or intersections would occur with the implementation of (revised) Mitigation Measure for Impact TRAF-4 (using County threshold of significance LOS C or better).

Issues Related to Mitigation

Mitigation Feasibility

Several issues were raised regarding statements in the DEIR that certain traffic mitigation measures were considered infeasible. For the most part, the infeasibility was due to a combination of insufficient right-of-way and conflicts with local transportation plans, including the City/County General Plans. Also, where fair share funding was required as mitigation, there was no assurance that sufficient funds from other sources would be collected to make the mitigation feasible .However, due to the revised Mitigation Measure TRAF-4, which restricts project traffic to off-peak hours, mitigation measures are only necessary for off-peak impacts, as

described above, and those measures are considered feasible and reduce most project impacts to less-than-significant levels.

The only remaining significant impacts (after Implementation of Mitigation Measure TRAF-4) are the intersection of Arch Road and Austin Road (Impact TRAF-6) and the SR 99 mainline (Impact TRAF-8) under cumulative 2035 conditions (see Table 3-7 at the end of this master response).

Regarding the intersection of Arch Road and Austin Road, DKS' off-peak analysis indicates that adding a third eastbound left turn lane (which was included in Mitigation Measure to Impact TRAF-6 in the DEIR) would reduce project impacts in the off-peak hour to a less-than-significant level. However, as indicated in the DEIR, this mitigation measure is infeasible due to conflicts with City standards and the lack of available right-of-way. Therefore, the impact remains significant and unavoidable.

Regarding impacts to SR 99 mainline, the proposed project may contribute to off-peak impacts on the freeway mainline, which is consistent with the conclusion of Impact TRAF-8 in the DEIR. Mitigation is not available in the 2035 condition because the freeway will be constructed to its ultimate width. Therefore, the impact remains significant and unavoidable.

Regarding the feasibility of the revised mitigation measure TRAF-6, please see Appendix D.

Mitigation Fee Payment

Several commenters indicated that the project is required to pay various traffic mitigation fees, or that the fee payment schedule needs to be revised. Due to the revised Mitigation Measure for Impact TRAF-4, all but two of the impacts identified in the DEIR that required fair share payment have been avoided, and fair share payments for those impacts are no longer required. The only two exceptions are: (1) under revised Mitigation Measure for Impact TRAF-6; CPR would be required to pay the fair share for the project's contribution to 2035 cumulative traffic impacts at the intersection of Arch Road and Austin Road (10%), consistent with the City's fair share formula; and (2) under Mitigation Measure TRAF-8, CPR would be required to pay the project's fair share payment to the Regional Transportation Improvement Program (RTIP) as a result of the project's contribution to a cumulative 2035 impact on SR 99 mainline(as described in the DEIR under Impact TRAF-8).

Construction Traffic

The County's comments indicated that although the study intersections and roadways are within the City's sphere of influence, for the Existing and Existing plus Construction Trips scenarios, the LOS threshold should be based on the County's threshold of LOS C because annexation to the City would be unlikely by the time construction begins. Although CPR is under no duty to use the County's thresholds of significance, CPR understands the County's concerns and therefore requested DKS to revise the traffic analysis using the County's threshold of LOS C for Impact TRAF-1. Based on the County's threshold of LOS C, there would be a significant impact (LOS D) to the intersection of Austin Road/Arch Road (after implementation of Mitigation Measure TRAF-1, as stated in the DEIR).

In order to mitigate this impact, the construction traffic mitigation plan (CTMP), included in Mitigation Measure TRAF-1, would require an increase in average vehicle occupancy (AVO) during the peak hours, from 1.75 to 3.40 and would require shifting construction hours so that no trips enter or exit the site during peak hours. These requirements would keep the construction trip impacts below the County's threshold at the affected intersection of Austin Road/Arch Road (LOS C).

The mitigation measure for Impact TRAF-1 on pages 1-9 and 4.3-15 of the DEIR has been revised as follows (please also refer to Chapter 4, "Corrections and Revisions to the DEIR"):

Mitigation Measure(s) for Impact TRAF-1

CPR will hire a qualified traffic consultant to prepare a Construction Traffic Mitigation Plan (CTMP) for the proposed project.

The CTMP will ~~establish a target of reducing~~ eliminate construction traffic ~~by 40~~% in each peak traffic hour during which construction would occur~~, based on the total number of trips calculated to occur during the peak construction period. As shown in Table 4.3-7, peak traffic is 933 vehicles, so the maximum peak hour target number of vehicles that could enter or exit the site during any single peak hour would be 570.~~ The CTMP shall require all construction workers to be on the site prior to 6 a.m. or after 10 a.m. and they shall not leave the site between the hours of 4 p.m. and 6 p.m. In addition, to reduce construction traffic in the off-peak hours, ~~This will be accomplished by one or~~ the CTMP shall include a combination of the following measures:

- Encourage construction workers to carpool with a goal of ~~1.75~~ 3.40 average vehicle occupancy at all times during the construction period.

- ~~Stage construction hours to offset traffic during peak traffic hours.~~

- Instruct construction employees to (equally) utilize three separate east-west routes to the project site: 1) Mariposa Road; 2) Arch Road; and 3) French Camp Road. This would disperse construction trips from Arch Road and SR 99 north and south of Arch Road.

- Provide shuttle buses (seating capacity = 40) to pick up construction workers from four remote locations. These four pick up locations would ideally be located in north Stockton, two in central Stockton and one in the south towards the City of Modesto.

In addition to these measures, the CPR will include the following to improve operations near the site:

- A flagman or other traffic control will be placed at the intersection of Arch Road/Austin Road and the project access driveway during peak arrival/departure whenever there is significant congestion at this intersection.

With implementation of revised mitigation measure TRAF-1 short-term traffic impacts during project construction would be reduced to a less-than-significant level.

Conclusion

Table 3-7 below provides a comparison between the original DEIR traffic analysis, the revised traffic analysis (using SYNCHRO and revised configurations), and the analysis of off-peak traffic resulting from the peak hour mitigation. Based on the DEIR comments, the analysis has been revised for both peak and off-peak conditions. Working through this process has led to an effective project mitigation strategy of shifting traffic to off-peak periods. As shown on the table, the strategy of moving all project and construction traffic to off peak hours would result in fewer significant adverse transportation impacts at study intersections, roadway segments and freeway off-ramps.

Table 3-7
Comparison of Original DEIR Traffic Analysis with Revised Traffic Analysis

Impact		Original DEIR Traffic Analysis (Peak Hour)			Revised Peak Hour Traffic Analysis (SYNCHRO Model + Adjusted Configurations)			Off-Peak Traffic Analysis after Peak Hour Mitigation		
		Impacted Facilities	Mitigation	Concl	Impacted Facilities	Mitigation	Concl	Impacted Facilities	Mitigation	Concl
TRAF-1	Short-Term Traffic Impacts during Project Construction.	► Austin Road/Arch Road Intersection ► Austin Road/Project Driveway Intersection ► Austin Road (Arch Road to Project Driveway)	Prepare CTMP	LTS	► Austin Road/Arch Road Intersection ► Austin Road/Project Driveway Intersection ► Austin Road (Arch Road to Project Driveway)	Prepare CTMP (with increased construction worker AVO) No construction trips in peak hour	LTS	► Austin Road/Arch Road Intersection ► Austin Road/Project Driveway Intersection	Prepare CTMP (with increased construction worker AVO) No construction trips in peak hour	LTS
TRAF-2	Potential for Substantial Degradation of LOS at Local Intersections under Existing Conditions.	None	N/A	LTS	None	N/A	LTS	None	N/A	LTS
TRAF-3	Potential for Substantial Degradation of LOS of Local Roadway Segments under Existing Conditions.	None	N/A	LTS	None	N/A	LTS	None	N/A	LTS
TRAF-4	Potential for Addition of Project Traffic to Result in Substantial Degradation of LOS at Local Intersections under Existing Conditions plus Approved Projects in the Area (EPAP).	► Kingsley Road/Arch Road Intersection	► Fair share payment to change signal phasing and convert left-turn lane to shared.	SU	► Kingsley Road/Arch Road Intersection	Shift project traffic to off-peak	LTS	None	N/A	LTS
		► Newcastle Road/Arch Road Intersection	► Add westbound through lane to approach and return.	LTS	► Newcastle Road/Arch Road Intersection	Shift project traffic to off-peak	LTS	None	N/A	LTS
					► SR 99 Northbound Off-Ramp /Arch Road Intersection	Shift project traffic to off-peak	LTS	None	N/A	LTS
TRAF-5	Potential for Addition of Project Traffic to Result in Substantial Degradation of LOS of Local Roadway Segments under EPAP Conditions.	None	N/A	LTS	None	N/A	LTS	None	N/A	LTS
TRAF-6	Substantial Degradation of LOS at Local Intersections under Cumulative Conditions.	► SR 99 SPUI/Arch Road Intersection	Fair share payment	SU	► SR 99 SPUI/Arch Road Intersection	None (after shift of project traffic to off-peak required for Impact TRAF-4)	LTS	None	N/A	LTS
		► Austin Road/Arch Road Intersection	Fair share payment	SU	► Austin Road/Arch Road Intersection	None (after shift of project traffic to off-peak required for Impact TRAF-4)	LTS	► Austin Road/Arch Road Intersection	Fair share payment	SU
		► Austin Road/Project Driveway Intersection	Install Traffic Signal	LTS	► Austin Road/Project Driveway Intersection	Install Traffic Signal	LTS	► Austin Road/Project Driveway Intersection	Same mitigation as peak hour (install traffic signal)	LTS
					► Kingsley Road/Arch Road Intersection	None (after shift of project traffic to off-peak required for Impact TRAF-4)	LTS	None	N/A	LTS
					► SR 99 Northbound Off-Ramp /Arch Road Intersection	None (after shift of project traffic to off-peak required for Impact TRAF-4)	LTS	► SR 99 Northbound Off-Ramp /Arch Road Intersection	Install Traffic Signal, coordinate signal timing	LTS

Table 3-7
Comparison of Original DEIR Traffic Analysis with Revised Traffic Analysis

Impact		Original DEIR Traffic Analysis (Peak Hour)			Revised Peak Hour Traffic Analysis (SYNCHRO Model + Adjusted Configurations)			Off-Peak Traffic Analysis after Peak Hour Mitigation		
		Impacted Facilities	Mitigation	Concl	Impacted Facilities	Mitigation	Concl	Impacted Facilities	Mitigation	Concl
					▸ SR 99 Southbound Off-Ramp Queue	None (after shift of project traffic to off-peak required for Impact TRAF-4)	LTS	▸ SR 99 Southbound Off-Ramp Queue	Add 131 feet of storage space to the off-ramp	LTS
					▸ SR 99 Northbound Off-Ramp Queue	None (after shift of project traffic to off-peak required for Impact TRAF-4)	LTS	▸ SR 99 Northbound Off-Ramp Queue	None (with installation of traffic signal and signal timing coordination)	LTS
TRAF-7	Potential for Substantial Degradation of LOS of Local Roadway Segments under Cumulative Conditions.	▸ Arch Road (Newcastle to CTCA west driveway) ▸ Austin Road (Arch Road to project driveway)	None available.	SU	▸ Arch Road (Newcastle to CTCA west driveway)	None (after shift of project traffic to off-peak required for Impact TRAF-4)	LTS	None	N/A	LTS
					▸ Austin Road (Arch Road to project driveway)	None (after shift of project traffic to off-peak required for Impact TRAF-4)	LTS	None	N/A	LTS
TRAF-8	Substantial Degradation of Mainline Freeway Levels of Service.	SR 99 North of Arch Road	None available.	SU	SR 99 North of Arch Road	None (after shift of project traffic to off-peak required for Impact TRAF-4)	LTS	SR 99 North of Arch Road	None available.	SU
TRAF-9	Potential for Inadequate Parking.	None	N/A	LTS	None	N/A	LTS	None	N/A	LTS

3.2.2 INDIVIDUAL COMMENTS AND RESPONSES

The written individual comments received on the DEIR and the responses to those comments are provided in this section of Chapter 3. 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.

REC'D OCT 24 2008

037

1

BOARD OF SUPERVISORS

222 EAST WEBER AVENUE, ROOM 701
STOCKTON, CALIFORNIA 95202
TELEPHONE: 209/468-3113
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LOIS M. SAHYOUN
Clerk of the Board

October 23, 2008

Laura Sainz
CEQA Project Manager for the California Prison Receivership
URS/Bovis Lend Lease Joint Venture
2400 Del Paso Road, Suite 255
Sacramento, CA 95834

Dear Ms. Sainz:

Resolution Opposing the Proposed State Prison Healthcare Facility in San Joaquin County

On October 21, 2008, the San Joaquin County Board of Supervisors approved Resolution R-08-624 opposing the proposed 1,800-bed State prison healthcare facility located at 7650 South Newcastle Road, Stockton, in San Joaquin County. Attached is Resolution R-08-624, *Resolution in Opposition to the Proposed State Prison Healthcare Facility in San Joaquin County,* including a summary of the possible impacts to San Joaquin County. 1-1

If you have any questions or comments concerning this matter, please feel free to contact me at (209) 468-3113 or Manuel Lopez, County Administrator at (209) 468-3203.

Sincerely,

Ken Vogel

Ken Vogel, Chairman
San Joaquin County Board of Supervisors

KV:ML:crr

Attachment

c: Board of Supervisors
County Administrator
County Counsel
District Attorney
Health Care Services
Human Services Agency
Probation Department
Public Defender
Public Works Department
Sheriff's Office

BOS10-02

Before the Board of Supervisors
of the County of San Joaquin, State of California

R-08- 624

Resolution in Opposition to the Proposed State Prison Healthcare Facility

WHEREAS, as a result of the class action lawsuits, Plata v. Schwarzenegger and Coleman v. Schwarzenegger, the U.S. District Court found that the quality of California's prison health and mental health care was so poor it violated the U. S. Constitution's Eighth Amendment prohibition against cruel and unusual punishment; and

WHEREAS, the federal court established a receivership to administer the California's prison medical delivery system; and

WHEREAS, the federal receiver plans to construct seven medical, mental and long-term care facilities, providing an additional 10,000 beds by 2013, including one in San Joaquin County which is proposed to be completed by 2011; and

WHEREAS, the State has identified its first proposed facility, which is the 144-acre site located at the Northern California Youth Correctional Center at 7650 South Newcastle Road, Stockton in San Joaquin County; and

1-2

WHEREAS, in addition to those impacts identified in Attachment A, the proposed facility will likely impact services provided by many County departments, including the District Attorney, Public Defender, and the Probation Department; and

WHEREAS, the financial impact to the County could exceed $105 million in one-time costs as well as ongoing annual costs of $25.4 million; and

WHEREAS, even if the State acknowledges and attempts to remediate its impacts by expanding the County's workforce development capabilities, it is not certain that there will be a large enough pool of skilled professionals to staff the existing and proposed County and State health and correctional facilities in the region; and

WHEREAS, the State anticipates releasing the draft Environmental Impact Report by October 21, 2008; and

NOW, THEREFORE, BE IT RESOLVED that this San Joaquin County Board of Supervisors does hereby opposes the proposed 1,800-bed State prison healthcare facility in San Joaquin County **unless** all County requested mitigation measures noted in Attachment A (as well as others, which may be identified in the normal course of the project review process) are adequately addressed in the final Environmental Impact Report.

R-08- 624

PASSED AND ADOPTED, this 21st day of October, 2008 by the following vote of the Board of Supervisors, to wit:

AYES: Ruhstaller, Ornellas, Gutierrez, Mow, Vogel

NOES: None

ABSENT: None

None

KEN VOGEL, CHAIRMAN
Board of Supervisors
County of San Joaquin
State of California

ATTEST: LOIS M. SAHYOUN
Clerk of the Board of Supervisors
of the County of San Joaquin,
State of California

By Caroline Garcia
Deputy Clerk

SEAL

Attachment A

Proposed 1,800-Bed State Prison Healthcare Facility
7650 South Newcastle Road, Stockton, California

Possible Impacts on San Joaquin County	One-time Cost	Annual Cost
A. Public Works		
1. Increase in travel levels		
a. Arch Road to be improved to an eight-lane arterial roadway, between State Highway Route 99 and Austin Road	$5.0 million	
b. Austin Road to be improved to a four-lane roadway between the project's entrance and Austin Road	$3.5 million	
c. Improvements to the signal for the share intersection due to widening of both Arch Road and Austin Road	$1.0 million	
d. Interchange at State Highway Route 99 and French Camp Road	$50.0 million	
2. Traffic Impact Mitigation Fees	$2.0 million	
3. Regional Transportation Impact Fees	$1.0 million	
4. Water Impact Mitigation Fees.	$0.5 million	

1-3

Attachment A

Proposed 1,800-Bed State Prison Healthcare Facility
7650 South Newcastle Road, Stockton, California

Possible Impacts on San Joaquin County	One-time Cost	Annual Cost
B. Human Services Agency		
1. Increase in public assistance service demand and caseloads (cost projection is based on the assumption that 50% or 900 families will follow inmates)		
a. General Assistance programs		
- Additional staffing		$150,000
- Client benefits		$440,000
b. CalWORKs & Food Stamps programs		
- Additional staffing		$150,000
- Client benefits		$180,000
c. In-Home Support Services		
- Additional staffing		$33,000
- Client benefits		$595,000
d. Adult Protective Services programs		
- Additional staffing		$54,000
- Client benefits		$10,000
e. Multipurpose Senior Services Programs		
- Additional staffing		$63,000
- Client benefits		$9,000
f. Child Protective Services programs		
- Additional staffing		$180,000
- Client benefits		$12,000

1-4

Attachment A

Proposed 1,800-Bed State Prison Healthcare Facility
7650 South Newcastle Road, Stockton, California

Possible Impacts on San Joaquin County	One-time Cost	Annual Cost
C. Health Care Services		
1. Significant threat to the County's ability to recruit and retain health care/support staff		
2. Increase in medical service demand may require the County to expand its current health care facilities to accommodate the additional State referrals		
Following are the specific mitigation measures and the estimated costs to implement these measures:		
1. San Joaquin General Hospital		
a. Capital cost for a new/remodeled secure acute care medical surgical unit (based on average daily census increase of six inmates)	$15.3 million	
b. Capital cost for a healthcare training facility for 320 students consisting of 80 Registered Nurses, 60 Vocational Nurses, 60 Psychiatric Technicians, and 60 Certified Nursing Assistant	$16.0 million	$2.6 million
c. Competitive compensation/salary escalation (based on 10% wage increase)		$10.0 million
2. Correctional Health Services		
a. Competitive compensation/salary escalation (based on 10% wage increase)		$0.7 million
3. Behavioral Health Services		
a. Competitive compensation/salary escalation (based on 10% wage increase)		$4.0 million

1-5

Attachment A

Proposed 1,800-Bed State Prison Healthcare Facility
7650 South Newcastle Road, Stockton, California

Possible Impacts on San Joaquin County	One-time Cost	Annual Cost
D. Sheriff's Office		
1. Increase in coroner cases may accelerate the need for a replacement County morgue/forensic pathology facility (estimated at 16 death cases per month)		
2. Increase in public administrator service demand		
3. Significant threat on the County's ability to recruit and retain correctional officers. There is a limited number of qualified candidates and training facility for correctional officers.		
4. Adverse impact on the construction cost for the County's expanded jail facility and may jeopardize the County's ability to staff the facility within 90 days of project completion. If the expanded jail facility is not operated within 90 days, the State will take possession of the facility and utilize it for the housing of inmates the State deems necessary.		
Following are the specific mitigation measures and the estimated costs to implement these measures:		
1. Coroner's Office		
a. Pro-rated capital cost for an expanded forensic pathology facility	$3.0 million	
b. Additional staffing		$1.2 million
2. Public Administrator's Office		
a. Additional staffing		$80,000

1-6

Attachment A

Proposed 1,800-Bed State Prison Healthcare Facility
7650 South Newcastle Road, Stockton, California

Possible Impacts on San Joaquin County	One-time Cost	Annual Cost
D. Sheriff's Office (continued)		
3. Custody (County Jail)		
a. Capital cost for a new workforce development facility	$8.0 million	
b. Workforce development		$1.0 million
c. Competitive compensation/salary escalation (based on 10% wage increase)		$4.0 million

1-6
(Cont'd)

1-1 The comment indicates that the County Board of Supervisors adopted a resolution opposing the proposed project. The comment does not raise issues related to the adequacy of the DEIR and will be forwarded to CPR for consideration.

1-2 This comment is the text of the resolution passed by the County Board of Supervisors. The resolution primarily describes the project and raises concerns about fiscal effects on the County's services and workforce and concludes that the board opposes the project unless a detailed list of "mitigation measures," provided as an attachment to the resolution, are implemented. The comment does not address the contents of the DEIR. Project-specific issues are addressed in the following responses that correspond to the attachment to the resolution.

Generally, the comments raise issues associated with perceived or potential costs to the County for additional services it believes would result from the project. As explained further below and in Master Response 4, the issues raised by the County are economic in nature. Because the issues, for the most part, are not related to the physical environmental impacts of the proposed project, they are not addressed in the EIR. However, these comments will be reviewed by the Receiver in determining the course of action associated with potential project approval.

1-3 The comment lists several improvements to County and California Department of Transportation (Caltrans) transportation facilities as well as impact fees that, as indicated in the resolution, the County would like CPR to implement to avoid County opposition to the proposed project. This comment is difficult to address. It lists specific measures, and dollar requirements, but does not tie these requests to significant impacts of the project. There is a request for $2 million for traffic impact fees. Projects in San Joaquin County pay traffic impact fees based on the trip generation characteristics of a project, and these fees are used to help fund overall regional improvements. On top of this, the County is requesting more than $60 million in fees to improve regional roads without describing how the proposed project would result in this need. The vast majority of project trips would travel to the project site via Arch Road and would therefore use the SR 99 interchange at Arch Road; little project traffic is anticipated to utilize the SR 99 interchange at French Camp Road, where the County is requesting $50 million. Section 15141 of the State CEQA Guidelines establishes that mitigation can only be proportionate to the impact created and that there must be a nexus between the impact and mitigation. No nexus is shown in the comment, and the comment does not address any of the content of the traffic analysis in Section 4.3 of the DEIR.

1-4 Like Comment 1-3, this comment lists various costs to the County that the commenter asserts, without supporting data, are associated with the proposed project. In this case, the list consists of more than $1 million for additional staffing and client benefits related to the Human Services Agency. The comment indicates that the cost projection is based on an assumed 50%, or 900, families that would follow inmates. Please see the discussion of County services in Master Response 4. As described, these issues are economic in nature and not significant adverse impacts on the physical environment. The number of families that would be expected to relocate would be substantially less than estimated in the comment, and no evidence is provided to support the claim that the families of inmates would result in demand for social services at a greater level than the general population, or, more importantly, lead to adverse environmental impacts.

1-5 Like Comments 1-3 and 1-4, this comment lists several measures indicated as necessary to avoid impacts on County facilities and services. In this case, the comment identifies several measures to mitigate perceived impacts on County health services. None of the costs are supported by information that supports how they were derived. For instance, $31 million is asserted as necessary for a new surgical unit at San Joaquin General Hospital and for a health care training facility, but the comment does not explain how these costs were derived. Even under the assumption that six inmates would be at the hospital at one time, no connection is provided between that and a $15.3 million surgical unit. CDCR provides security for inmates when they require hospitalization, so the need for additional facilities or for the County to provide more secure facilities is not based on operational history in other locations. As to the other funding requests, these perceived additional costs are not based on environmental impacts of the proposed project, and are therefore not a consideration in the EIR. Please see also Master Response 4.

1-6 This comment lists several measures to mitigate perceived impacts on sheriff's services, including the coroner, public administrator, and jail. Please see Master Response 4. The issues raised, such as the County's ability to staff the jail and competing construction schedules and associated costs, are speculative. Regarding workforce development, unemployment rates in San Joaquin County are high and climbing, as in other parts of California. Fiscal issues are leading to layoffs of qualified employees in the region, including potentially members of the Stockton police force. Whether the fiscal and economic downturn that led to these effects is still occurring at the time the County jail is constructed is unknown, but this points to the complex nature of such issues.

Further, it is difficult to argue, at a time where there is very high unemployment in the construction industry—so high that the federal government is sponsoring legislation to spur numerous construction projects to ease unemployment—that the CPR project would lead to higher construction costs for a County jail.

Finally, even in the very unlikely event that the proposed project does compete with the approved jail project, the increased construction costs and shortage of construction workers would not be considered an environmental impact.

The issues raised are largely speculative and do not pertain to any reasonably foreseeable adverse effects (either direct or indirect) to the physical environment.

2

Health Plan of San Joaquin

November 10, 2008

California Healthcare Receivership Corporation

To Whom It May Concern:

The 1,800 bed prison hospital proposed for San Joaquin County totals more beds than are available at all existing hospitals in the county. A facility that size - which has actually grown from his original 1,500 bed proposal - will require a huge medical staff in an area already struggling to attract and keep enough doctors, nurses, medical technicians and other support staff to take care of the county's citizens. There are potential positive economic impacts, but if the training and recruiting issues are not addressed proactively, they are outweighed by the negative impacts. There undoubtedly will be some overlap between the jobs at the prison hospital and the vacancies that six acute-care hospitals in the county are trying to fill at any given time. 2-1

A 2008 study of the physician workforce in San Joaquin County completed by the Health Plan of San Joaquin, Community Medical Centers and San Joaquin County Health Care Services in conjunction with the Camden Group and funded by Kaiser Permanente determined that there are significant physician shortages in primary and specialty care. We are currently experiencing significant physician shortages in Internal Medicine, Family Medicine, Psychiatry, Oncology, Endocrinology, Gastroenterology, Dermatology, Nephrology, Rheumatology, Radiation Oncology, Infectious Disease, General Surgery, Neurosurgery, OB/Gyn, Ophthalmology, ENT, Urology and Vascular Surgery. Recruiting physicians to this area is difficult and the prison hospital, which will offer significantly higher salaries, will further exacerbate these shortages if training and recruitment are not addressed. A medical school at UC Merced Medical School could offer significant relief to this problem, but at this time, is not funded. 2-2

Another significant challenge will be caused by the nationwide shortage of nurses. The San Joaquin County prison hospital would need at least 300 licensed vocational nurses and registered nurses. Again, higher salaries will be offered and that will pull experienced nurses away from San Joaquin County hospitals, and skilled nursing facilities. Existing schools and training programs in the county including Delta College and Stanislaus State College do not produce enough nurses to meet projected demand, even without another hospital. More qualified instructors to train student nurses are needed and are difficult to recruit. 2-3

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(209) 942-6300 • 1-800-932-PLAN (7526) • (209) 942-6305 fax • www.hpsj.com

In addition to physicians and nurses, other medical personnel will be needed. The supply of psychiatric technicians, for example, is inadequate in the San Joaquin Valley. Before a prison facility is opened here, the need to increase training for psychiatric technicians as well as lab technicians, pharmacists, radiologic technicians and other health professionals including dieticians should be addressed. 2-4

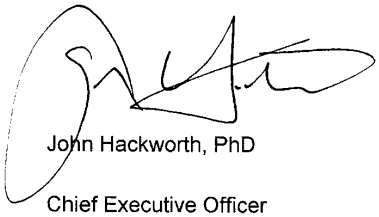
It takes time to build up training programs and teach medical professionals. In the meantime, if this facility is opened prematurely, there will be a significant drain on existing facilities. We strongly urge the committee to delay the construction of the prison hospital in San Joaquin county pending addressing funding and staffing the training programs that will be necessary to staff this facility. 2-5

Sincerely:

Dale Bishop, MD

Medical Director

Health Plan of San Joaquin



John Hackworth, PhD

Chief Executive Officer

Health Plan of San Joaquin

2-1 The commenters raise issues associated with project-related increases in demand for medical staff. In the case of the proposed project, the commenters are correct in indicating that an increase in demand for medical staff members would result. See Master Response 3 for a discussion related to supply and demand of medical staff and various strategies that the Receiver is using to staff the facility while reducing the potential for competition with local health care providers.

The commenter makes a connection between the increased demand resulting from the project and negative "economic impacts." CEQA directs lead agencies to determine whether a project would have a significant effect on the environment. The State CEQA Guidelines (Section 15064[e]) state:

> Economic and social changes resulting from a project shall not be treated as significant effects on the environment. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project.

A reasonably foreseeable nexus cannot be drawn between the increase in demand for medical staff members and a "physical change" in the environment. Such a change, for example, would be the permanent closing of hospitals, resulting in urban decay, which is not a reasonably foreseeable outcome. Please also see Master Response 3 "Recruitment and Staffing Issues Resulting from the Proposed Project."

2-2 The comment provides additional detail to the assertion made in the previous comment that the proposed project's increase in demand for medical professionals (this comment focuses on physicians) would exacerbate existing staffing shortages in the area. As noted under Response to Comment 2-1 above, the DEIR indicates on page 4.11-8 that the number of medical staff members available in the local population who are not already employed may be limited because of the growing demand for medical personnel. Also, please see Master Response 3, "Recruitment and Staffing Issues Resulting from the Proposed Project." There is no argument that medical staffing in San Joaquin County, and the State in general, is a problem that is expected to grow as the population ages. The DEIR discloses the existing state-wide shortage of medical staff members. Master Response 3 describes several strategies that the Receiver is using to staff the project while reducing potential competition with local health care providers and also programs initiated by the governor to help the nursing shortage in California.

CEQA directs lead agencies to determine whether a project would have a significant effect on the environment. Following the reasoning outlined under Section 13, "Public Services" in the CEQA Environmental Checklist (based on Appendix G of the State CEQA Guidelines), the proposed project would result in a significant effect related to hospital services if it would:

> result in substantial adverse physical impacts associated with the provision of new or physically altered [hospital] facilities, need for new or physically altered [hospital] facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios…or other performance objectives.

In this case, the potential project-generated increase in demand for medical professional staff members would not require new or expanded hospital facilities to be constructed to serve those inmates sent to local hospitals. Neither can economic effects be attributed to the proposed project, such that substantial urban decay would result. The proposed project therefore would not result in a physical change in the environment related to hospital service or urban decay. Please also see Response to Comment 1-5. Please also see Master Response 3 "Recruitment and Staffing Issues Resulting from the Proposed Project."

2-3 This comment is generally the same as the previous comment (2-2) except that its focus is on nurses, rather than physicians. Please see Responses to Comments 2-1 and 2-2 above, which address similar comments related to the staffing shortage and recruitment difficulties for medical professionals (including physicians, nurses, and other medical personnel). Please also see Master Response 3 "Recruitment and Staffing Issues Resulting from the Proposed Project."

2-4 This comment is generally the same as the previous comment (2-2) except that its focus is on other medical personnel, rather than physicians. Please see Responses to Comments 2-1 and 2-2 above, which address similar comments related to the staffing shortage and recruitment difficulties for medical professionals (including physicians, nurses, and other medical personnel). Please also see Master Response 3 "Recruitment and Staffing Issues Resulting from the Proposed Project."

2-5 The comment notes that training programs take time to develop, and urges delay in opening the proposed facility. Please see Master Response 1 "Alternatives" regarding the urgency of the proposed project. Although this comment does not address environmental impacts, it (and the other comments above) raise important Issues associated with staffing concerns at San Joaquin County hospitals, and the potential for the proposed project to affect them. This information will be considered by the Receiver when deciding whether to approve the project. Please also see Master Response 3 "Recruitment and Staffing issues Resulting from the Proposed Project."

From: danadodson@comcast.net
Sent: Tuesday, November 11, 2008 12:55 PM
To: PR
Subject: medical facility

I am strongly against the Inmate Medical Facility that is planned for Stockton. I am so very grateful that a federal appeals court granted us a "stay" of execution. Many data resources such as Trend Graphics show Stockton and San Joaquin county to be one of the most economically "challenged" areas of California as well as the U.S. And this facility will only add to the economic problems that already exist here. Our property values are quickly approaching 50% to the downside. But our crime rate isn't plunging. It's going up. There are many great things about Stockton and many reasons why people want to live here. But that new medical facility isn't one of them. I stongly urge the citizens of Stockton and San Jaoquin County to fight this mandate and do everything that we can to save our streets and our property values and our image. Dana Dodson Docter& Docter Realtors
878 W. Benjamin Holt Drive Stockton, CA 95207

3-1

3-1 The comment identifies the existing condition of depreciating housing values and increasing crime rates. This comment does not address environmental issues, and it is also unfounded. Please see the discussion on pages 4.11-10 through 4.11-11 of the DEIR, which describes studies on the effects of certain prisons on crime and property values. In short, no correlation exists.

S J C O G, Inc.

555 East Weber Avenue • Stockton, CA 95202 • (209) 468-3913 • FAX (209) 468-1084

San Joaquin County Multi-Species Habitat Conservation & Open Space Plan (SJMSCP)

SJMSCP RESPONSE TO LEAD AGENCY ADVISORY AGENCY NOTICE TO SJCOG, Inc.

To: Laura Sainz, Environmental Planning, Department of Corrections and Rehabilitation

From: Anne-Marie Poggio-Castillou, Habitat Planner Technician, SJCOG, Inc.

Date: November 13, 2008

Re: **Lead Agency Project Title:** California Health Care Facility Stockton

Lead Agency Project Number:

Assessor Parcel Number(s): 181-100-07, -11, 181-150-02, -11 & -12

Total Acres to be converted from Open Space Use: 144.2 acres

Habitat Types to be Disturbed: Agriculture, Natural, and Urban Habitat Land

Species Impact Findings: Findings to be determined by SJMSCP biologist.

Dear Ms. Sainz:

SJCOG, Inc. has reviewed The Revised Notice of Preparation. This proved will include the development of a new medical care facility with up to 1,800 beds on a 144.2-acre site. The project site includes most of the former Karl Holton Youth Correctional Facility, with is part of the Northern California Youth Correctional Center located at 7650 South Newcastle Road. 4-1

San Joaquin County is a signatory to San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). Participation in the SJMSCP satisfies requirements of both the state and federal endangered species acts, and ensures that the impacts are mitigated below a level of significance in compliance with the California Environmental Quality Act (CEQA). Although participation in the SJMSCP is voluntary, lead agents should be aware that if project applicants choose against participating in the SJMSCP, they will be required to provide alternative mitigation in an amount and kind equal to that provided in the SJMSCP. 4-2

It should be noted that two important federal agencies (U.S. Army Corps of Engineers and the California Regional Water Quality Control Board) have not issued permits to the SJCOG and so payment of the fee to use the SJMSCP will not modify requirements that could be imposed by these two agencies. Potential waters of the United States [pursuant to Section 404 Clean Water Act] are believed to occur on the project site. It may be prudent to obtain a preliminary wetlands map from a qualified consultant. If waters of the United States are confirmed on the project site, the Corps and the Regional Water Quality Control Board (RWQCB) would have regulatory authority over those mapped areas [pursuant to Section 404 and 401 of the Clean Water Act respectively] and permits would be required from each of these resource agencies prior to grading the project site. 4-3

The SJMSCP is requesting a copy of the Environmental Impact Report for the proposed project. ***This This Project is subject to the SJMSCP***. Per requirements of the SJMSCP, this project must seek coverage due to required Army Corp permitting and Section 7 consultation. This project is subject to a case-by-case review. This can be a 90 day process and it is recommended that the project applicant contact SJMSCP staff as early as possible. It is also recommended that the project applicant obtain an information package. http://www.sjcog.org

4-4

After this project is approved by the Habitat Technical Advisory Committee and the SJCOG Inc. Board, the following process must occur to participate in the SJMSCP:

- Schedule a SJMSCP Biologist to perform a pre-construction survey ***prior to any ground disturbance***
- Sign and Return Incidental Take Minimization Measures to SJMSCP staff (given to project applicant after pre-construction survey is completed)
- Pay appropriate fee to the City of Stockton based on SJMSCP findings
- Receive your Certificate of Payment and release the required permit

4-5

If you have any questions, please call (209) 468-3913.

Please contact SJMSCP staff regarding completing the following steps to satisfy SJMSCP requirements if needed:

- Schedule a SJMSCP Biologist to perform a pre-construction survey ***prior to any ground disturbance***
- Sign and Return Incidental Take Minimization Measures to SJMSCP staff (given to project applicant after pre-construction survey is completed)
- Return signed ITMM's to both the City of Stockton and SJCOG, Inc. for release of grading permit

4-6

If you have any questions, please call (209) 468-3913.

4-1 This comment is an introductory paragraph stating that the San Joaquin Council of Governments (SJCOG) has reviewed the proposed project and is providing advice for compliance with the *San Joaquin County Multispecies Habitat Conservation Plan* (SJMSCP). No issues are raised, so no further response is provided.

4-2 This comment describes the SJMSCP and how it provides compliance with the federal Endangered Species Act (ESA) and California Endangered Species Act (CESA), and mitigation for significant impacts on biological resources. This comment states that alternative mitigation in kind and amount would be needed to reduce the significance of impacts on biological resources if the lead agency were not to participate in the SJMSCP. However, Mitigation Measure(s) for Impact BIO-1 on page 4.7-14 requires CPR to participate in the SJMSCP and implement all of the plan's avoidance measures for species and activities covered under the SJMSCP, so alternative mitigation would not be needed.

4-3 This comment explains that the SJMSCP does not cover permitting under Sections 401 and 404 of the Clean Water Act. It advises that if waters of the United States were to occur on the project site, then permits may be needed from the U.S. Army Corps of Engineers (USACE) and the Central Valley Regional Water Quality Control Board (RWQCB), respectively. This comment is noted.

As reported in the DEIR (see pages 4.7-21 through 4.7-22), the potential existed for the on-site drainage basin to be modified, resulting in the potential for filling jurisdictional waters of the United States and the need for associated permitting. Since publication of the DEIR, engineering studies (included as Appendix A) have concluded that expansion of the existing retention basin would not be needed. The existing retention basin has sufficient capacity to serve the CHCF Stockton and the existing NCYCC facilities. (See Section 2.5 "Project Updates Since Publication of the DEIR" for specific information on the capacity of the basin) The proposed project would not directly or indirectly discharge dredged or fill material into jurisdictional waters of the United States and no authorizations from USACE or the Central Valley RWQCB are required.

4-4 This comment states that the proposed project is subject to case-by-case review under the SJMSCP. Please see Response to Comment 4-2. Furthermore, the DEIR states on page 4.7-14 that the proposed project is consistent with the definition of "Major Impact Projects" as described in Section 8.2.2.c of the SJMSCP. Please see also Response to Comment 4-3 regarding USACE permitting.

4-5 This comment advises CPR of the SJMSCP compliance process after the project is approved by the Habitat Technical Advisory Committee. The comment is noted.

4-6 This comment further addresses procedures for compliance with the SJMSCP. This comment does not address any issues in the DEIR. CPR would follow all SJMSCP requirements in the execution of the project, if it is approved.

From: Jenny TeStrake [jtestrake@firstindustrial.com]
Sent: Monday, November 17, 2008 1:34 PM
To: PR
Cc: Mike Niblock; Jose Rubianes; Wallace G. Murfit
Subject: FW: Public Comments - CA Health Care Facility
Please see additional comment below.

-Jenny

-----Original Message-----
From: Brian Grattidge [mailto:BGrattidge@esassoc.com]
Sent: Monday, November 17, 2008 12:41 PM
To: Jenny TeStrake
Cc: Ray Weiss; Aaron Hecock
Subject: RE: Public Comments - CA Health Care Facility

Thanks for cc'ing us, Jenny. The traffic impacts of this facility do overlap yours, and in some cases they have determined that mitigation is infeasible, when in fact there are necessary improvements that you (and your neighbors across the street) are paying for. 5-1

Brian

Brian J. Grattidge
ESA | Community Development
8950 Cal Center Drive, Building 3, Suite 300
Sacramento, CA 95826
916.564-4500 | 916.564-4501 fax
bgrattidge@esassoc.com
www.esassoc.com

From: Jenny TeStrake [mailto:jtestrake@firstindustrial.com]
Sent: Monday, November 17, 2008 10:59 AM
To: Mamie Starr; Aaron Hecock; Ray Weiss; Brian Grattidge; Rasmussen, Blake @ Stockton; Vallenari, Tyson @ Stockton; McShane, Ryan @ Stockton; Dalporto, Kevin @ Stockton
Subject: FW: Public Comments - CA Health Care Facility

Fyi

-----Original Message-----
From: Jenny TeStrake
Sent: Monday, November 17, 2008 10:57 AM
To: 'CHCFStocktonPublicComments@ursblljv.com'
Cc: 'Mike Niblock'; 'Jose Rubianes'; Wallace G. Murfit
Subject: Public Comments - CA Health Care Facility

Laura,

Attached is a letter outlining our public written comments on the DEIR for the CA Health Care Facility. A hard copy will also be sent in the mail to you.

Jenny TeStrake

<<First Industrial comment - CA Health Facility.pdf>>

First Industrial Realty Trust, Inc. (NYSE: FR)

1900 S. Norfolk St, Suite 350

San Mateo, CA 94403

Office: (650) 577-2322

Fax: (650) 577-2328

Cell: (650) 922-0530

5-1 The commenter indicates that mitigation measures deemed infeasible in the DEIR are being paid for by other development in the vicinity. The infeasibility issue is discussed in detail in Master Response 5 "Traffic Issues" but basically indicates that with the revision to Mitigation Measure for Impact TRAF-4, which restricts all project trips to off-peak hours, would eliminate impacts at all of the intersections and roadways for which mitigation was considered infeasible in the DEIR. See Master Response 5 for more information regarding the revised mitigation and the resulting effects on local traffic.

6

FIRST INDUSTRIAL REALTY·TRUST

First Industrial Realty Trust, Inc.
1900 South Norfolk Street, Suite 350
San Mateo, CA 94403
T: (650) 577-2322
F: (650) 577-2328

November 17, 2008

Laura Sainz
CEQA Project Manager for the California Prison Health Care Receivership Corporation
2400 Del Paso Road, Suite 255
Sacramento, CA 95834

Subject: Written comments on the DEIR for the California Health Care Facility
7540 South Newcastle Road
Stockton, CA

Dear Laura,

Per review of the DEIR, First Industrial Realty Trust, Inc. would like to provide public written comments on the report. Since the Project requires the use of city services including water, wastewater treatment, and stormwater management, the Project should be required to annex into the City of Stockton to obtain these services, which annexation is approved by LAFCO, a State mandated entity. The project should also be required to fund their fair-share of public improvements and public services, including mitigation measures related to significant impacts, such as the conversion of farmland and traffic-related impacts to intersections and freeway mainline. The Project should also be required to pay the City's Public Facilities Fees associated with development. 6-1

This development project should be treated equitably to the other developments in the Arch Road corridor and is not immune to the associated fees, expenses, and annexation requirements for obtaining and using City services. 6-2

Sincerely,

FIRST INDUSTRIAL REALTY TRUST, INC.

By: Jenny TeStrake
Jenny TeStrake
Investment Associate

cc: Mike Niblock, City of Stockton Community Development Director
cc: Jose Rubianes, Associate Planner – Planning Division

6-1 The comment states that the project site must be annexed into the City of Stockton. This concern is addressed in detail below. The commenter also states that the proposed project should be required to pay its fair share of fees toward public improvements and services, including mitigation measures related to significant impacts such as the conversion of farmland and traffic-related impacts on intersections, as well as the City's public facilities fees associated with development. As indicated throughout the DEIR, the CPR would pay impact fees to reduce project impacts to the extent feasible. (See, e.g., Mitigation Measure AG-1, which has been revised to require CPR to purchase off-site conservation easements for farmland; and Mitigation Measure BIO-1, which requires CPR to participate in the SJMSCP, which in turn includes payment of mitigation fees. (See also *City of Marina v. Bd. of Trustees of the Cal. State Univ.* [2006] 39 Cal.4th 341.)

The commenter states that because the proposed project would require the use of City services, including water, wastewater, and stormwater management, the project site should be annexed into the City of Stockton. The commenter notes that annexation would require approval by the [San Joaquin] Local Agency Formation Commission (LAFCO). As explained below, annexation is not required. Therefore, the DEIR did not impermissibly fail to identify annexation as a required approval, or to identify San Joaquin LAFCO as a responsible agency.

Water Supply

Annexation of the project site into the City of Stockton is not required to serve the proposed project with City water. On December 8, 2008, the Central Valley RWQCB ordered Forward Inc., operator of the Forward Landfill adjacent to the project site, to supply water to the site through the issuance of a cleanup and abatement order (Central Valley RWQCB 2008) (Appendix E). The NCYCC and CDCR have historically relied on groundwater at the site for drinking water and other uses.

From 1954 until 2000, the City owned and operated the Austin Road Landfill for the disposal of Class II and Class III municipal solid waste (Fugro West 2008). The Austin Road Landfill is located approximately 1,900 feet south of the NCYCC site, just north of what is now the Forward Landfill. Under the City's management, the Austin Road Landfill accommodated the disposal of municipal solid waste in unlined trenches excavated to approximately 20 feet below ground surface. In addition to being unlined, the trenches lacked a system for collecting and removing landfill gases and leachate to prevent groundwater contamination. A corrective action plan to remediate the resulting plume of groundwater contamination was approved in 1991. By 1998, however, the corrective action measures remained ineffective in remediating the groundwater impacts.

In September 2000, Forward Inc. purchased the Austin Road Landfill from the City (Central Valley RWQCB 2008). Operations of the Forward Landfill and the Austin Road Landfill were later combined by Allied Waste into a single facility under the name "Forward Landfill." According to the Cleanup and Abatement Order, all three groundwater wells at the existing NCYCC facility have been affected, to some degree or another, by the landfill's contamination, such that concentrations of volatile organic compounds (VOCs) exceed maximum contaminant levels (MCLs) established by the U.S. Environmental Protection Agency (EPA) for drinking

water. This is of particular concern with respect to tetrachloroethylene levels that have already caused one well to be shut down.

The VOCs detected in the NCYCC wells also include solvents used in dry cleaning and breakdown products that are not naturally occurring. Some are known human carcinogens. As found by the Central Valley RWQCB, the presence of these chemicals in the groundwater has impaired the NCYCC's beneficial use of the groundwater (Central Valley RWQCB 2008).

In 2003, the Central Valley RWQCB adopted waste discharge requirements in Orders R5-2003-0049 and R5-2003-0080 to implement revised corrective actions and to remediate groundwater contamination associated with the landfill. The measures, however, were found to be insufficient to control the plume and remediate the release of groundwater pollutants from the landfill. In April 2007, the California Department of Health Services, Division of Drinking Water and Environmental Management, issued a citation to the NCYCC for failure to comply with the drinking-water standards for tetrachloroethylene (Central Valley RWQCB 2008:paragraphs 13 and 17).

Under the Porter-Cologne Water Quality Control Act (Porter-Cologne Act), the Central Valley RWQCB is authorized to regulate the discharge by any person of waste that could affect the quality of the state's waters (California Water Code, Sections 13260 and 13263). The Porter-Cologne Act gives the various RWQCBs broad enforcement authority to ensure that water quality meets minimum standards. One enforcement mechanism is the issuance of cleanup and abatement orders. Cleanup and abatement orders generally require a discharger to clean up waste, abate its effects, and take other remedial actions (Water Code, Sections 13223 and 13304). Cleanup and abatement orders may also require the provision of, or payment for, uninterrupted replacement-water service (Water Code, Section 13304[a]). Replacement water provided "shall meet all federal, state, and local drinking water standards and shall have comparable quality to that pumped by the public water system or private well owner prior to the discharge of waste" (Water Code, Section 13304[f]).

In December 2008, the Central Valley RWQCB issued a cleanup and abatement order to Forward Inc. in response to the contamination of the NCYCC's groundwater wells. The order requires Forward Inc. to, among other things, supply replacement water to the NCYCC site at no cost to the NCYCC (Central Valley RWQCB 2008). The Central Valley RWQCB has found that the issuance and implementation of the cleanup and abatement order is exempt from CEQA, and that Forward Inc. must comply with the order as soon as reasonably possible (Central Valley RWQCB 2008:paragraph 33). Specifically, the order (Central Valley RWQCB 2008:"Water Supply," paragraph 1) requires:

> By **31 December 2008**, the Discharger [Forward Inc.] shall submit a contingency plan to supply drinking water to the Northern California Youth Authority without any cost to the facility. The contingency plan must include a short-term remedy that could be implemented immediately, such as wellhead treatment or a waterline. The plan must be implemented upon the confirmed detection of VOCs above drinking water standards (Maximum Contaminant Levels (MCLs)) in the drinking water faucets fed by the Northern California Youth Authority water storage tank…. A copy of the plan shall be provided to Northern California Youth Authority and a second copy shall be placed in the facility's Operating Record.

To date, a contingency plan has not been submitted by Forward Inc. The plan is nevertheless expected to be submitted to the Central Valley RWQCB shortly (Central Valley RWQCB 2008:"Water Supply," paragraph 1). Failure to comply with the order could lead to a referral to

the California Attorney General for injunctive relief. (Section 13304[a] of the California Water Code states that upon failure of any person to comply with a cleanup or abatement order, the Attorney General, at the request of the RWQCB, shall petition the superior court of that county for the issuance of an injunction requiring such person to comply.) Failure could also lead to administrative civil liability of up to $10,000 per violation per day (Central Valley RWQCB 2008:14, citing Sections 13268, 13350, and/or 13385 of the Clean Water Act). The analysis in DEIR Section 4.13 evaluated sufficiency of city water supply to serve the site and other development in Stockton, but did not discuss the recent cleanup and abatement order because it had not been released.

To provide the requisite replacement water to the NCYCC site, Forward Inc. has indicated plans to purchase City water. Because of ongoing Central Valley RWQCB investigations, and in apparent anticipation that the board would require Forward Landfill to supply replacement water to the NCYCC, Allied Waste, the parent company of Forward Inc., has been working on the plans and infrastructure needed to supply the site with City water since at least 2007. (See the improvement plans by Allied Waste entitled "California Youth Authority Water Line," Dee Jasper & Associates, Inc. Civil Engineers [December 7, 2007] under contract to Allied, Basso, pers. comm., 2007.)

The replacement water provided by Forward Inc. would be supplied to the project site as described in Section 4.14, "Public Utilities," of the DEIR. As explained on page 4.14-19 of the DEIR, the proposed project would connect to the 16-inch distribution line currently in place on Arch Road and would loop the system by extending a new distribution line down Newcastle Road. (see also Tovar, pers. comm., 2008; Palmer, pers. comm., 2008).

Until release of the revised Notice of Preparation (NOP) for the proposed project, no party objected to the water line extension down Arch and Newcastle Roads to the NCYCC site, or indicated that it would require annexation before City water could be supplied to the site. Because Forward Inc. is legally obligated under the cleanup and abatement order to supply the project site with water, the duty to pursue annexation if, in fact, the City so requires, is the obligation of Forward Inc. and the City.

To date, annexation has not been required. This may be because the City's prior construction and operation of the Austin Road Landfill resulted in the groundwater contamination. The City, like Forward Inc., therefore has an interest in expeditious compliance with the Central Valley RWQCB's cleanup and abatement order (Central Valley RWQCB 2008:"Water Supply," paragraph 1).

Implementation Measure HS-17 of the City General Plan, in fact, requires the City to "investigate the possibility of groundwater contamination…adjacent to the City's Austin Road landfill and support long-term programs by appropriate agencies to prevent future groundwater degradation" (City of Stockton 2007a:11-16). By allowing Forward Inc. to supply replacement water to the NCYCC and comply with the cleanup and abatement order on an expedited basis (i.e., without requiring annexation), the City would be helping to prevent future groundwater degradation from the landfill.

Even if the City were to require annexation (or an out-of-agency service agreement) before allowing Forward Inc. to supply City water to the NCYCC site, that annexation would not be a required entitlement of the proposed project, but rather an independent action required to be undertaken by Forward Inc. in response to the Central Valley RWQCB's order. Because Forward Inc. *must* supply replacement water to the NCYCC, the proposed project's water supply is not

speculative. Section 4.13 of the DEIR fully analyzes the environmental consequences of using City water supply to serve the project's water demands.

Annexation of the project site is also not required as a result of the City providing new or extended service to CPR/CDCR by contract or agreement outside its jurisdictional boundaries under Sections 56133(a) and 56133(e) of the Government Code, within the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Section 56000 et seq.). (Note: As discussed under "Wastewater Services" below, the City already extends service to the site.) Pursuant to that section, contracts or agreements involving two or more public agencies for the provision of public services as an alternative to, or substitute for, public services already being provided where the level of service to be provided is consistent with levels of service contemplated by the existing service provider do not require LAFCO approval. Here, the level of service contemplated by CDCR with the existing groundwater wells is that water service needed for services at buildout of the property. Transfer to City water would be consistent with that service level. In addition, extension of the City's water supply system could also be granted to respond to the current Clean Up and Abatement Order and to the existing public health and safety threat due to the Landfill's contamination of the groundwater. For all of the above reasons, annexation of the project site into the City of Stockton is not required to serve the proposed project with City water.

Wastewater Services

The NCYCC site, on which the proposed health care facility would be located, currently contracts wastewater services from the City (see page 4.14-2 of the DEIR). Service to the project site would be within the scope of the existing contract, which allows flows of up to 800,000 gallons per day. With the proposed project in place, flows from the entire site would be approximately 400,000 gallons per day. The proposed on-site sewer pump station will include a wet well or temporary sewage storage facility that will attenuate peak sewage flows to ensure that the conditions of the agreement between the City and the state are maintained (see page 4.14-18 of the DEIR). Because the City is currently contractually obligated to supply such services to the site, it cannot condition wastewater service to the project site upon annexation. Nor would the provision of wastewater service constitute a "new or extended" service requiring LAFCO approval under Government Code Section 56133 because the City currently provides that service to the project site.

Stormwater Facilities

As explained in Section 4.14, "Public Utilities," of the DEIR, the existing detention/retention basin on the project site was proposed to be expanded to accommodate increased runoff and prevent increases in the amount of discharge into the adjacent Littlejohns Creek. However, more recent engineering studies prepared by Kimley-Horn Associates (see Appendix A), which are based on actual surveys of the basin, indicate that the basin has adequate capacity to serve both the proposed project and the existing NCYCC facilities. Therefore, the proposed project would not directly or indirectly result in the need for new or expanded stormwater drainage facilities from the City or County. Because expanded City services are not required in connection with the proposed project's stormwater management, annexation into the City of Stockton would not be required, nor would LAFCO approval of an out-of-agency service extension be required under Section 56133 of the Government Code.

6-2 The comment indicates that the proposed project is not immune from fees and requirements and should be treated equitably with nearby development. This comment does not raise issues related to the adequacy of the DEIR and does not describe the impacts for which the fees would be used.

CPR is a state agency, and as such, is not subject to local fee programs, although it can participate to the degree that the programs would mitigate the significant environmental effects of the project. A wealth of opinions from the California Attorney General and several cases exist about whether the state is required to pay local impact fees in conjunction with state projects. In summary, a review of these opinions and cases finds that the state is not required to pay such fees. (See, e.g., *Guy Hall v. City of Taft*, 47 Cal.2d 177 [1956], which stated that when the state engages in such sovereign activities as the construction and maintenance of its buildings, it is not subject to local regulations unless the constitution says it is or the legislature has consented to such regulation; and 63 Ops. Cal. Atty. Gen. 768 [1980], which found that Folsom State Prison is exempt from paying fees levied by the Sacramento County Air Pollution Control District.)

RECD NOV 20 2008

7

04
CHIEF EXECUTIVE OFFI
Richard W. Robin
Chief Executive Offi

Patricia Hill Thomas
Chief Operations Officer/
Assistant Executive Officer

Monica Nino-Reid
Assistant Executive Officer

Stan Risen
Assistant Executive Officer

1010 10th Street, Suite 6800, Modesto, CA 95354
P.O. Box 3404, Modesto, CA 95353-3404
Phone: 209.525.6333 Fax 209.544.6226

STANISLAUS COUNTY ENVIRONMENTAL REVIEW COMMITTEE

November 17, 2008

Laura Sainz
CEQA Project Manger for the
CA Prison Health Care Receivership Corp.
2400 Del Paso Road, Suite 255
Sacramento, CA 95834

SUBJECT: **ENVIRONMENTAL REFERRAL – NOTICE OF DRAFT ENVIRONMENTAL IMPACT REPORT AND PUBLIC MEETING FOR THE CALIFORNIA HEALTH CARE FACILITY, STOCKTON**

Ms. Sainz:

The Stanislaus County Environmental Review Committee (ERC) has reviewed the subject project and has no comments at this time. 7-1

The ERC appreciates the opportunity to comment on this project.

Sincerely,

Raul Mendez, Senior Management Consultant
Environmental Review Committee

cc: ERC Members

7-1 This letter states that the Stanislaus County Environmental Review Committee has reviewed the DEIR and has no comments at this time. The comment is noted.

8

04145

The California Health Care Facility, Stockton

REC'D NOV 24 2008

COMMENTS

Please provide comments on the draft environmental impact report for the California Health Care Facility, Stockton. Return this sheet to the comment box or mail it by December 8, 2008 to: Laura Sainz, CEQA Project Manager for the CPR, URS/Bovis Lend Lease Joint Venture, 2400 Del Paso Road - Suite 255, Sacramento, CA 95834 or fax to 916-779-6399.

I am attending tonight to listen, learn and obtain the most current information regarding the proposed Stockton 1800 facility. Finally, I fully intend to submit written comments no later than 12/8/2008 as outlined in the above instructions. 8-1

Kenneth Cohen

My present concerns relate to manpower shortages, local impacts and other issues previously submitted.

Name Kenneth B Cohen

Organization/Company (if any) San Joaquin County Health Care Services

Address 500 West Hospital Road

City/State/Zip Code French Camp, CA 95231

Phone 209 468 6600 E-Mail KCohen@sjgh.org

8-1 The commenter states that there are concerns regarding manpower shortages, local impacts, and other issues. No other details are provided in the comment, so a direct response cannot be provided. Please refer to Master Response 3, "Recruitment and Staffing Issues Resulting from the Proposed Project," regarding staffing, recruitment, and County services.

9

meyers | nave riback silver & wilson
professional law corporation

555 12th Street, Suite 1500
Oakland, California 94607
Tel (510) 808-2000
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www.meyersnave.com

FAX TRANSMITTAL

DATE: December 8, 2008
CLIENT NO: 1313.002

TO: Laura Sainz
URS/Bovis Lend Lease Joint Venture
Fax: 916.779.6399

FROM: Edward Grutzmacher

RE: California Health Care Facility, Stockton

NO. OF PAGES SENT (Including This Sheet): 3

HARD COPY TO FOLLOW? No

ADDITIONAL COMMENTS:

docid

meyers | nave riback silver & wilson
professional law corporation

Ed Grutzmacher
Attorney at Law
510.808.2000

December 8, 2008

VIA FAX and U.S. MAIL

Laura Sainz
CEQA Project Manager for the California Prison Receivership
URS/Bovis Lend Lease Joint Venture
2400 Del Paso Road, Suite 255
Sacramento, California 95834
Fax: (916) 779-6399

Re: California Health Care Facility, Stockton

Dear Ms. Sainz,

Meyers Nave represents the City of Whittier ("Whittier") with respect to the California Prison Health Care Receiver's ("Receiver") program to construct 10,000 medical and mental health beds to service California's prisoner population. Whittier has the following comments on the draft Environmental Impact Report ("EIR") for the proposed California Health Care Facility project at the Northern California Youth Correctional Center in Stockton, CA ("project"). 9-1

First, Whittier would again like to express its gratitude that the Receiver has decided to follow the California Environmental Quality Act in evaluating proposed sites for the Receiver's projects and hopes that the Receiver will continue to follow this very important law. That said, it causes some concern that the Receiver has, in effect, proposed one 10,000 bed program, but has chosen to evaluate the environmental impacts of the program in seven separate EIRs. Why was a Program EIR not prepared for all of the proposed facilities? Since no Program EIR has been prepared, where does the Receiver evaluate the relative environmental impacts of locating one facility at one location instead of another? As the analysis now stands, it is difficult for the reader to determine whether one proposed location for a CDCR facility has more or less environmental impacts than locating the facility somewhere else. 9-2

Along these same lines, Whittier has a number of specific comments:

Why is between 1,300 and 1,800 beds considered the "optimal" size? (Page 1 -1.) Could a larger facility be located on the proposed project site? If so, why was a larger facility not proposed? If a larger facility is feasible, could increasing the size of this facility eliminate the need for one or more of the other facilities? If so, would the reduction of the need for other facilities have a net benefit to the environment as a whole? 9-3

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The EIR states (page 3-1) that these 10,000 beds will be divided up into seven facilities. How was it determined to construct seven facilities? Why is it not feasible to construct fewer, larger facilities that may minimize the overall environmental impacts of the 10,000 bed program as a whole? 9-4

The EIR states (page 3-1) that three of the seven proposed facilities will be located in "northern" California and four will be located in "southern" California. How did the Receiver decide on this division of the facilities? Where did the Receiver draw the line between "northern" and "southern" California? 9-5

Why is it a project objective to locate the project on state-owned land? Are the financial constraints of purchasing land for the facility the only reason privately-owned land was not considered for the facility? What is the evidence of this financial infeasibility? If not, what other rationale was used to exclude sites on privately-held land? 9-6

CEQA Guidelines section 15126.6(c) requires the EIR to "identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination." The EIR includes a list of three alternatives considered but rejected in section 7.3 including the "Off-Site Location Alternative." The discussion of the "Off-Site Location Alternative indicates that "all sites that have been deemed feasible for construction of medical and mental health facilities and are owned by the state are currently identified for proposed future facilities." (Page 7-5.) To date, the Receievr has released NOPs for six facilities, including facilities in Chino, Folsom, San Diego, Stockton, Vacaville, and Ventura. Please provide the location for the seventh proposed facility. Can the reader assume that if a currently owned CDCR facility is not among the six already identified sites or the seventh site, the Receiver has determined that that CDCR facility is not a feasible location for the 10,000 bed program? 9-7

Thank you for the opportunity to comment on this important project. Please ensure that Whittier continues to receive all further notices and correspondence concerning this project at my office, 555 12th Street, Suite 1500, Oakland, CA 94607.

Very truly yours,

Ed Grutzmacher

CC: Steve Helvey, Nancy Mendez

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9-1 The comment provides an introduction to the letter. Because no specific comments are provided no additional response is required.

9-2 The comment questions why a program EIR was not prepared and indicates difficulty understanding the impacts at certain locations versus others for siting the facilities. Please see Master Responses 1 and 2, "Alternatives" and "Programmatic versus Project-Level Environmental Review," respectively.

9-3 The commenter questions why the specific range of beds is "optimal" and whether a larger facility, if feasible, could eliminate the need for other facilities, which might reduce environmental effects as a whole.

In September 2007, a variety of topics were reviewed by the Receiver's planning team. This review ultimately led to discussions regarding management models, levels of integration between medical and mental health services, and the preferred number of beds to be located within a single facility. The Receiver's planning team engaged in several activities:

- identified objectives to support the Receiver's Plan of Action,
- touring comparable facilities,
- continuing to test and refine development options,
- documenting implementation strategies for different development options, and
- initiating preliminary discussions about broad operational considerations.

The planning team relied heavily on the *Chronic and Long-Term Care in California Prisons: Needs Assessment—Final Report* prepared for CPR by Abt Associates, Inc., and Lumetra (CPR 2007d), to determine existing patient's medical needs and project future needs and population increases. According to this report, by the year 2017 the continued aging of the population is projected to increase the need for medical beds to 4,970–5,750 beds for patients who need High Acuity, Low Acuity, and/or Specialized General Population beds. Given that range of beds needed, and the plans to improve health care access and services in all of the existing 33 CDCR prison facilities, the Receiver determined the need for 5,000 additional medical beds.

Navigant Consulting, Inc., completed a study for the *Coleman* court in an effort to determine the number of mental health beds needed to comply with the *Coleman* case, which dealt with deficiencies in CDCR's treatment of inmates with mental health needs. Navigant determined that 5,000 beds were needed to meet mental health needs. This number was validated in the *Supplemental Bed Plan Report—August 2007* (CDCR 2007), which identifies the need for additional housing and treatment space for the mentally ill population.

Given the need to construct 10,000 beds (5,000 medical and 5,000 mental health), several options for both sizing and the total number of sites were considered:

- One Site Model (all 10,000 beds at one site)—This model was ruled out because of the challenges identified in:

- effectively managing such a large complex;
- recruiting an adequate number of qualified professionals and staff members;
- providing effective support services, such as food, laundry, and visiting; and
- managing transportation costs related to transferring inmates throughout the state to one location.

► Three Site Model—This model was ruled out because of the challenges identified related to:

- large patient population size, which presents management and staffing challenges; and
- distances between residential units and treatment/services, which could adversely affect the program.

► Five Site Model—This model was ruled out because of the challenges identified:

- Large patient population size presents management and staffing challenges
- Distances between residential units and treatment/services could adversely impact the program

► Seven Site Model—This model was determined to be the most reasonable because :

- The facility could be a stand-alone facility and could be managed independently from surrounding facilities;
- It provides the most reasonable size for the management and delivery of treatment services;
- A smaller, more compact campus would provide greater and closer access by staff members and patients to campus treatment and support services;
- There would be less impact on visiting families because of the shorter distance to travel; and
- There would be reduced cost related to transferring inmates because of proximity to existing prisons in Southern and Northern California.

Given the need to provide 10,000 beds (5,000 medical beds and 5,000 mental health beds) at an optimal number of seven sites (as described above), the optimal size of these facilities, in terms of program, cost, and management efficiencies, is generally 1,300–1,800 beds. The range in size is because of the various types of mental health beds that are included in the Receiver's program, as well as the potential to establish site-specific specializations, which would result in less duplication and maximum utilization of specialized staff members, resources, and equipment.

Please also see Master Responses 1 and 2.

9-4 Please see Response to Comment 9-3.

9-5 The commenter brings into question the division of the facilities, primarily between northern and southern California. The division of the facilities, three in the north and four in the south, is based

on the distribution of the state's population. Based on other project objectives, notably the need to locate facilities in urban areas, a limited number of sites are available outside of major metropolitan areas. The more rural Central Valley and desert areas do not have a sufficient employment base to support staffing of these facilities in these areas. Therefore, the facilities are sited near major metropolitan areas in both northern and southern California.

9-6 CPR directed the site team to locate the facilities on state-owned land in an effort to decrease cost and reduce the amount of time needed to develop the facilities, given the lengthy process and expense related to acquisition of real property and/or the eminent domain process. Financial and time constraints for complying with the federal court order were two reasons that privately owned land was not considered. As to financial feasibility, an analysis of siting on private land was not conducted. However, given the current state of fiscal conditions, with a state budget deficit over $40 billion (according to a February 2009 Wall Street Journal article), it is prudent and in the best interest of California taxpayers to site the projects on land with few or no acquisition costs. For a further discussion of alternative sites, please see Master Response 1.

9-7 The commenter requests the location of the seventh facility and asks whether it may be assumed that any location not already identified among the six sites or the seventh site would not be selected. The location of a seventh site has not been finalized, although the Fred C. Nelles Youth Correctional Facility in Whittier is being considered. As to conclusions that can be drawn about the feasibility of other CDCR sites, CPR has identified the sites among all CDCR sites (and other state incarceration facility sites) that it considers to have the best combination of location, space, environmental constraints, and infrastructure. This does not, however, imply that other sites will or will not be identified on CDCR or other state land. Like all lead agencies, CPR will review the content of its CEQA documents on each site it considers, along with other relevant information, and will determine whether a project should be approved on the relevant site. If additional sites are needed, CPR would determine whether they are feasible and whether they should be considered for a project. If so, CEQA analyses would be prepared to determine the environmental effects of locating a project on the relevant site, and whether a project should be approved.

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December 8, 2008

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Re: California Health Care Facility (Stockton) – Draft Environmental Impact Report

Dear Ms. Sainz:

This letter is sent on behalf of the California Correctional Peace Officers Association ("CCPOA"), which represents the dedicated men and women who walk the "toughest beat in the state" in our corrections institutions. The CCPOA submits the following comments regarding the October 2008 Draft Environmental Impact Report ("DEIR") for the California Health Care Facility (Stockton) ("Project").

The CCPOA has important interests in this proposed Project. In addition to its professional responsibilities, CCPOA has members that currently live within the vicinity of the Project, and many others may relocate along with their families to the Project vicinity, if the Project is approved and becomes operational. For these reasons, CCPOA's members are greatly concerned about the Project's impacts on the environment, the community, and of primary importance, the operational safety for its members, the inmates, and the public at large. 10-1

We have carefully reviewed the DEIR. Unfortunately, we find that the document is not legally adequate under the California Environmental Quality Act ("CEQA"). The DEIR improperly "piecemeals" CEQA review by segmenting this Project from the statewide prison construction program, including an adjacent facility, and the statewide correctional health care facility construction program. Further, the DEIR does not adequately analyze the Project's project-specific and cumulative environmental impacts in the areas of water supply, public utilities, traffic, air quality, cultural resources, geology, and climate change. These flaws render the DEIR legally deficient and fail to inform decision-makers and the public of the Project's significant environmental effects.

A. The DEIR Fails to Analyze the Programmatic Impacts From All Prison Construction Projects, Resulting in Improper "Piecemealing" of CEQA Review

This Project is part of a larger statewide program to construct new prison facilities and correctional health care facilities. The California Prison Health Care Receivership Corporation ("CPR") undertook this program with authorization from the Public Safety and Offender Rehabilitation Services Act of 2007 ("AB 900") and as a result of the class action lawsuit, *Plata v. Schwarzenegger*. The program includes up to seven new correctional health care facilities proposed by CPR and several correctional facilities proposed by the California Department of Corrections and Rehabilitation. The impacts of this statewide program must first be analyzed in a Program EIR before any single project is approved.

CEQA Guidelines section 15165 provides:

> Where individual projects are . . . 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.

14 Cal. Code Regs. § 15165 (emphasis added). A Program EIR is required for related projects that are "carried out under the same authorizing statutory or regulatory authority and hav[e] generally similar environmental effects which can be mitigated in similar ways." *Id.* § 15168. The "total undertaking" of constructing or renovating a series of prisons and correctional health care facilities, all authorized by the same statute and part of the same statewide effort to improve the prison system, requires preparation of a Program EIR.

10-2

The DEIR for this Project is inadequate because it takes a "piecemeal" approach to CEQA review. The DEIR only analyzes impacts from one project among a series of related projects statewide. CEQA *mandates* that a program EIR be prepared *first* in such a situation before project-level impacts can be addressed. This DEIR fails to inform decisionmakers and the public about the true nature and extent of environmental effects from statewide prison improvements. Prior to approving this – or any – correctional health care facility or prison improvement project, CPR, in conjunction with the California Department of Corrections and Rehabilitation, must first prepare a program EIR.

10-3

The DEIR also fails to analyze the more localized programmatic impacts from the proposed Northern California Re-Entry Facility ("Re-Entry Facility"). As the Re-Entry Facility will be constructed immediately adjacent to this Project, the localized impacts will be greater and should be evaluated in detail. The DEIR for this Project and the Mitigated Negative Declaration for the Re-Entry Facility take an individual project-by-project approach that does not fully inform decisionmakers and the public about the combined effects from the two projects.

10-4

B. The DEIR Fails to Provide an Adequate Analysis of Water Supply Impacts

The DEIR's analysis of project-specific and cumulative water supply impacts is inadequate for several reasons, as detailed below.

1. The DEIR's conclusion that the Delta Water Supply Project will provide firm long-term water supply is not supported by substantial evidence

a. Concerns relating to biological resources make the DWSP water unreliable

10-5

The DEIR improperly concludes that the Delta Water Supply Project ("DWSP") is a firm source despite potential impacts from pumping restrictions in the Delta. CEQA requires a reasoned analysis of the likelihood of future water availability. *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal. 4th 412, 432 (2007). The DEIR discloses on page 4.13-6 that "Section 1485 water may be subject to pumping restrictions due to fish protection" but concludes "it is reasonable to expect that the permits will be granted in the next few months." There is no evidence to support this conclusion aside from the City of Stockton's ("City") indication that its staff has been "actively pursuing" the permits. To the contrary, substantial evidence suggests that Delta water deliveries may not prove to be available and should not be relied on.

Diverting Delta water for urban and agricultural uses has recently become one of the most hotly contested environmental battles in the State. Environmental organizations have recently scored a number of victories on this front, which has resulted in severe curtailment of pumping from the Delta, most significantly through the *Natural Resources Defense Council v. Kempthorne* and *Pacific Coast Federation of Fisherman's Associations v. Gutierrez* cases which invalidated Biological Opinions for the Delta smelt, Chinook salmon and Central Valley Steelhead. Until new Biological Opinions are issued and the court's interim order is lifted, it is unknown whether pumping will continue in the Delta and on what terms. Indeed, the new Biological Opinions could affect diversions throughout the integrated Delta system. This litigation also serves as evidence of the high degree of uncertainty in the consultation process needed to obtain a take permit. While the DEIR mentions this litigation, it fails to disclose the adverse impact the litigation could have on water supply deliveries from the DWSP.

10-6

Further, the Fish and Wildlife Service has given notice that it will consider a petition to uplist Delta smelt from threatened to endangered. The petition is attached as Exhibit A. This potential change in status is a result of a recent precipitous drop in abundance. *Id.* As a result of this uplisting, the Delta smelt battle will likely intensify, making it is more likely

10-7

that further curtailments on Delta water diversions will be necessary. This issue goes unmentioned in the DEIR. 10-7 Cont'd

In another recent development, on December 1, 2008, two environmental groups filed a lawsuit against the Department of Water Resources alleging that DWR's management of the Delta (specifically, its overuse for water supply and attendant biological impacts) violates, among other things, the public trust and the California Constitution. A copy of the complaint is attached as Exhibit B. A spokesman for DWR described the lawsuit as potentially leading to "draconian" cuts in deliveries of Delta water supplies. This latest lawsuit provides further evidence that the DWSP water may never prove to be available, or at least not in the quantities suggested as reliable in the DEIR. 10-8

Issues relating to Delta smelt are of key importance to the Project's water supply because one of the permits the City is awaiting is a take permit due to the impact on Delta smelt. Nonetheless, despite the great state of uncertainty attending Delta water, a member of the public would have little idea of these significant developments after reading the DEIR. Indeed, the DEIR refers to DWSP as "a very reliable source of water." DEIR, at 4.13-6. This is misleading, and clearly fails to live up to the *Vineyard Area Citizens* standard of describing any uncertainties attending water supplies relied on. The closest the DEIR comes to addressing these issues is to say that it is "unclear" how an adverse ruling would affect system operations (including the DWSP). DEIR, at 4.13-7. While it is true that it is unknown how these events will turn out, the *Vineyard Area Citizens* case requires that the DEIR make clear that the DWSP deliveries are uncertain, that may never occur or may occur in significantly reduced quantities. The DEIR largely ignores these issues. 10-9

We also note that the City of Stockton's new General Plan 2035 explicitly recognizes that the DWSP should not be relied on for new development while its approval is pending. General Plan Policy PFS-2.8 states that "The City shall not approve new development that relies on water from the Delta Water Supply Project until this Delta water is allocated through a water right to the City by the State Water Resources Control Board or a replacement water supply is secured." City of Stockton General Plan 2035, Goals and Policies Report, at pg. 9-7. If the City could not approve this project, neither should CPR. 10-10

Where long-term water supply is uncertain, "an EIR may satisfy CEQA by fully disclosing the uncertainty, the other possible outcomes, their impacts and appropriate mitigation measures." *Vineyard Area Citizens*, 40 Cal. 4th at 446. The DEIR does not fully disclose all of the uncertainties from the potential Delta smelt listing as an endangered species, the time-intensive and controversial process of obtaining a take permit, and the potential system-wide effects from the new Biological Opinions from the *Kempthorne* decision. 10-11

Further, the DEIR does not analyze the feasibility of obtaining alternative supplies if DWSP water is not available. Where there is uncertainty regarding availability of future water supplies, CEQA requires "discussion of possible replacement sources or alternatives to use 10-12

of the anticipated water, and of the environmental consequences of those contingencies." *Vineyard Area Citizens*, 40 Cal. 4th at 432. For example, page 4.13-3 states that groundwater supplies "will exist" but does not disclose the location or status of new facilities. It mentions but does not address the feasibility of obtaining "other potential water supplies," including "possible use" of tertiary treated recycled water and raw surface water transfers. The DEIR should disclose the status of these pursuits and analyze the impacts from any necessary infrastructure improvements. Without such analysis, future water supply alternatives are merely speculative and do not support the less than significant determination for Impact WS-1.

10-12 Cont'd

b. Groundwater supplies are in critical overdraft

The DEIR inaccurately describes groundwater as a reliable water supply. To the contrary, the Department of Water Resources has described the Northeaster San Joaquin subbasin, on which the Project would rely, as "in a critical condition of overdraft." *See* Memorandum from Morris L. Allen to J. William Yeates, Regarding City of Stockton General Plan 2035 Draft EIR, January 26, 2007 ("Allen Memo"), attached as Exhibit C. This is not just an historical condition, as the DEIR would have it. Instead, "[c]urrent and historical groundwater pumping rates exceed the sustainable yield of the underlying groundwater basin on an average annual basis." *Id.* As a result of this ongoing overdraft condition, as explained more fully in the Allen Memo, groundwater should not be considered a firm water supply.

10-13

c. The DEIR fails to account for climate change impacts on water supply

The DEIR also does not disclose the significant uncertainty surrounding future availability of water due to climate change. As described by the Department of Water Resources ("DWR"), a rise in sea level will adversely impact the Delta:

> [P]erhaps the most significant [impact] from the standpoint of the State's water resources are increased sea water intrusion and increased potential for levee failure in the Delta. Increased sea water intrusion into the Delta threatens the operations of the State Water Project and the Central Valley Project, as well as other Delta water supply diversions due to water quality degradation. Water quality degradation in the Delta also potentially threatens the Delta's fragile ecosystem, which supports threatened and endangered species. Finally, increased sea water intrusion into the Delta could threaten some groundwater supplies through the interaction of Delta waters with underlying and adjoining portions of the Central Valley groundwater basin.

10-14

Progress on Incorporating Climate Change into Management of California's Water Resources, California Department of Water Resources, July 2006, at 2-32 ("DWR Climate Change Report"), a portion of which is attached as Exhibit D.[1] DWR identified other climate change impacts on the State's water demand and supply, including, among others, increased evapotranspiration causing increased salt accumulation and additional demand for agriculture, increased landscape irrigation and domestic water use due to increased temperatures, increased evaporation losses, and increased Delta outflow requirements to maintain Delta salinity and protect aquatic habitat temparatures. The DEIR must account for these changes when determining the availability of water for the proposed Project. 10-14 Cont'd

d. The DEIR inappropriately treats CCWD transfers as reliable sources of water

The DEIR correctly points out that SEWD has the right to use that portion of Calaveras County Water District's ("CCWD") Bureau of Reclamation water which CCWD does not use in any given year. Without providing any evidence, the DEIR concludes that SEWD can rely on at least 10,000 afy of this water, even after buildout of the Calaveras General Plan. That is, the DEIR concludes that there will always be at least 10,000 afy of water every year to which CCWD is entitled, but it does not use, and thus which SEWD can use. There is no basis for this conclusion. To the contrary, CCWD has recently stated its intention to use its full allocation in the future, in which case SEWD would not be entitled to any so-called "unused water." Letter from David Andres, General Manager, CCWD, to City of Stockton, January 26, 2007, attached as Exhibit E. CCWD has strongly stated its position that it is inappropriate for Stockton to rely on this supply for purposes of water supply planning. *Id.* By relying on the CCWD "unused water," the DEIR overstates available water supply. 10-15

2. Annexation may be necessary before the City may serve the Project

In addition, it is not clear that the City is authorized to provide water to the Project. Page 4.13-6 of the DEIR states that the initial phase of the DWSP is confined to the 1990 General Plan boundary. The DEIR should specify whether the City's current Sphere of Influence is included in this boundary and whether the Project is within the current place of use of the permit. 10-16

Further, the DEIR fails to include annexation of the Project site to the City as part of the project description. The DEIR states on page 4.13-3 that the City's water service area is coterminous with its boundary, however, the Project is located within unincorporated San Joaquin County. If the City will be providing water service outside its boundary, the Project may require an out-of-agency service extension which would need approval from the San 10-17

[1] See http://baydeltaoffice.water.ca.gov/climatechange/DWRClimateChangeJuly06.pdf for the entire report, which is incorporated herein by reference.

Joaquin Local Agency Formation Commission ("LAFCO"). This discretionary approval should be disclosed in the DEIR and LAFCO should be included as a responsible agency, and should have been given notice of this project and an opportunity to comment and be involved early in the process, pursuant to CEQA Guideline Section 15096. Alternatively, if the City plans to annex the Project area rather than provide out-of-agency service, the annexation action should be included as part of the project description and the potential environmental impacts from extension of City boundaries should be analyzed. 10-17 Cont'd

3. The DEIR fails to analyze cumulative impacts from adjacent facilities' potential future reliance on surface water supplies

The DEIR does not address the cumulative impacts that may occur as a result of nearby groundwater contamination. One of the wells used by the neighboring Northern California Youth Correctional Center ("NCYCC") is already on stand-by and others may soon become contaminated. (DEIR page 4.13-2). Just as the proposed Project will not rely on these uncertain groundwater supplies, the neighboring NCYCC may also need to connect to the City's water supply, which would reduce available supplies and distribution line capacity for this Project. The DEIR should analyze the cumulative water supply impacts if both facilities will need to rely on City water supplies. 10-18

C. The DEIR Understates the Public Utilities Impacts From New Infrastructure Construction

Impact UTIL-4 improperly concludes that the Project will not result in the need for new stormwater drainage facilities despite contrary evidence in the discussion. Page 4.14-18 discloses that a new 66-inch drainage line and stormwater pump station will be installed to serve the Project and the existing detention basin could be expanded. The location of this new off-site infrastructure must be disclosed and the construction impacts analyzed and mitigated, as necessary. 10-19

Similarly, Impact UTIL-6 improperly concludes that the Project will not require construction of new water distribution facilities. The discussion indicates, however, that the Project will require extension of a new distribution line down Newcastle Road. The DEIR must disclose the size of this new line and analyze any construction and operation impacts. 10-20

D. The DEIR Fails to Analyze and Require Feasible Mitigation Measures for Significant Traffic Impacts

Numerous feasible mitigation measures exist that could reduce Impacts TRAF-4, 6, 7, and 8 to less than significant levels. The DEIR concludes that these impacts are significant and unavoidable because CPR does not control the City's traffic fee/improvement program (page 4.3-28) or because certain intersections could not be improved to account for cumulative 10-21

traffic increases (pages 4.3-36, 4.3-38, 4.3-40). These conclusions ignore available mitigation measures that could be applied to the Project. 10-21 Cont'd

As to the first conclusion, the DEIR should not defer mitigation due to lack of control over the timing of improvements. Conversely, the DEIR should propose mitigation that can be implemented prior to operation of the Project so that impacts are mitigated to the maximum extent feasible. For example, the DEIR could require the Project to fully fund the signal phasing and lane conversion at the Kingsley Road/Arch Road intersection. The City could require future nearby projects to provide reimbursement as they develop. This would ensure that the Project does not aggravate traffic and air quality impacts in the interim until the City's program is fully funded. 10-22

As to the second conclusion, there are several mitigation measures that could improve levels of service in addition to road widening. The DEIR should analyze the feasibility of installing or updating traffic signals and reconfiguring lanes, for example. Where these improvements are not feasible due to right-of-way constraints or other barriers, the DEIR should specify the constraints with more detail. The DEIR's conclusory dismissal of these measures does not fully inform the public of their availability, nor is the analysis sufficient to support a significant and unavoidable finding. 10-23

E. The DEIR Fails to Provide an Adequate Analysis of Air Quality Impacts

1. The DEIR fails to analyze Valley Fever as an air quality impact

The New York Academy of Science recently published a study of the link between new prison construction in California and reported cases of Coccidioidomycosis, also known as Valley Fever. A symposium on Valley Fever was held in 2007 and the report, "Recommendations for Coccidioidomycosis Mitigation in Prisons in the Hyperendemic Areas of California", was submitted to CPR in June 2007. The report is attached to this letter as Exhibit F. 10-24

The report indicates that Valley Fever has been recognized in California correctional facilities since 1919 and that cases have been diagnosed inside and outside of endemic areas. (Att. A page 9). The report also emphasizes that both inmates and employees of correctional institutions may acquire Valley Fever, which includes CCPOA's members who work in Central Valley prisons. (Att. A page 12). The report recommends that CPR implement environmental mitigation for Valley Fever through use of landscaping ground cover, concrete, and other dust-reducing materials. (Att. A pages 3-4). 10-25

Despite CPR's receipt of this report and its knowledge of the serious health effects on inmates and employees of new correctional facilities, the DEIR does not mention Valley Fever. This disease is a significant air quality impact that should be disclosed in the DEIR and dust-reducing mitigation must be required for the Project. 10-26

2. The DEIR's analysis of criteria air pollutant impacts is inadequate

The DEIR fails to make a significance determination for long-term emissions of ROG and PM_{10}, and the "less than significant with mitigation" determination for NO_x is not supported by substantial evidence. 10-27

Page 4.4-31 discloses that "[t]he exact amount of [stationary source] emissions were not quantified for the purposes of this analysis as such would be speculative at this point in the project." The discussion indicates that these unquantified emissions will be "additive" to those quantified in the DEIR. Thus, there is insufficient evidence to conclude that these impacts will be less than significant. Emissions from the cooling plant and other Project components could contribute to a violation of SJVAPCD thresholds. The DEIR must disclose all Project emissions and provide for adequate mitigation. Further, the discussion never indicates whether the ROG and PM_{10} emissions would be significant, making it unclear whether the impact is significant, less-than-significant, or too speculative to analyze. If it is too speculative, the DEIR must include a "thorough investigation" explaining why it is too speculative, which is lacking here. CEQA Guideline Section 15145. 10-28

The discussion of Impact AIR-2 concludes that the Project's NO_x emissions will exceed the SJVAPCD threshold in 2011 but will drop beginning in 2012. The drop is attributed to lower average emissions from vehicles in California "as older vehicles are retired and newer lower-emission vehicles are added." (DEIR page 4.4-30). This vague statement does not provide substantial evidence to support the DEIR's conclusion that impacts from long-term NO_x emissions will be less than significant. The DEIR should explain the basis for making such a conclusion and disclose the source of the baseline data for 2012. Because emissions reduction from future vehicle replacement is uncertain, the DEIR should analyze NO_x impacts without such reduction and revise the significance determination. Further, if this prediction is based on the implementation of the Pavley standards, it should be disclosed that the regulations are currently the subject of litigation and California did not receive a "waiver." Thus, under the current status quo, it should be assumed that the Pavely standards will not be implemented. To assume otherwise is to speculate that the State will be successful in its litigation and obtain the sought after waiver. As it currently stands, however, the waiver was denied and the DEIR should not assume otherwise. These facts make the 2012 prediction highly uncertain and unreliable, a fact which is not disclosed in the DEIR. 10-29

In addition, the Mitigation Measure for Impact AIR-2 requires the Project to "[i]nclude as many clean alternative energy features as possible to promote energy self-sufficiency (e.g., photovoltaic cells, solar thermal electricity systems, small wind turbines)." This mitigation measure is limitless and would require significant modifications to the Project until all "possible" alternative energy features are incorporated. The DEIR contains no analysis of the potentially significant impacts from installation of photovoltaic cells or wind turbines at 10-30

the site. Installation of energy facilities large enough to make the Project "self-sufficient" would significantly alter the Project and lead to a range of impacts that would need to be analyzed and mitigated. 10-30 Cont'd

Moreover, the DEIR does not indicate how the Mitigation Measure for Impact AIR-2 will be enforced and on what timeline. There are no criteria for determining whether an alternative energy feature is "possible." The DEIR does not specify who will be responsible for making this determination. Without this information, the DEIR improperly defers mitigation by postponing the decision of what is "possible" to an unspecified future date to be made by an unspecified person. The mitigation is also so vague and undefined that its effectiveness cannot be determined, let alone evaluated. Finally, CEQA requires "feasible" mitigation as opposed to "possible" mitigation, and the DEIR does not explain whether there is a distinction between these terms. This all amounts to an improper deferral of vague and unenforceable mitigation. 10-31

The DEIR also fails to make a significance determination for short-term and long-term emissions of $PM_{2.5}$. A footnote in Table 4.4-5 states that SJVAPCD has not identified a threshold for this pollutant. However, despite the lack of an adopted threshold by SJVAPCD, the DEIR must still analyze and mitigate impacts from $PM_{2.5}$ emissions based on its own evidence. *See* 14 Cal. Code Regs. § 15064(f). The fact that SJVAPCD has not established a threshold does not relieve CPR from determining significance. As the Office of Planning and Research recently explained in its Climate Change Technical Advisory, the lack of an established threshold does not relieve a lead agency from determining the significance of an impact and mitigating such impacts. *CEQA And Climate Change: Addressing Climate Change Through California Environmental Quality Act (CEQA) Review*, Office of Planning and Research, June 19, 2008 ("Even in the absence of clearly defined thresholds for GHG emissions, the law requires that such emissions from CEQA projects must be disclosed and mitigated to the extent feasible whenever the lead agency determines that the project contributes to a significant, cumulative climate change impact."). CPR cannot hide behind the fact that SJVAPCD has not adopted a threshold, but rather must offer a reasoned analysis of the impact of $PM_{2.5}$ emissions. 10-32

F. The DEIR Fails to Provide Adequate Mitigation for Cultural Resources Impacts

The DEIR discloses on page 4.8-10 that the Project will cause significant cultural resources impacts because unrecorded cultural resources or human remains could be discovered at the site. Mitigation consists of halting construction and notifying the appropriate professionals. The DEIR should impose mitigation that will *prevent* impacts at the earliest possible stage, rather than remedying resource disturbances after they have already occurred. This could be accomplished by requiring CPR to retain an archaeologist to provide training to construction employees and to supervise construction activities. 10-33

G. The DEIR Improperly Defers Analysis of Impacts and Mitigation

CEQA requires analysis of project impacts at the earliest feasible stage and prohibits deferring analysis of an impact until after project approval. *Sundstrom v. County of Mendocino*, 202 Cal. App. 3d 296, 307 (1988). In a number of instances, the DEIR improperly defers analysis of whether an impact is significant and the mitigation of such an impact. 10-34

Although it is feasible to analyze geology impacts now, the DEIR defers mitigation to an unstated future time and fails to provide the public and interested agencies with the opportunity for meaningful review prior to project approval. Impact GEO-2 identifies significant impacts related to expansive soils, but the DEIR does not impose specific mitigation. Rather, the DEIR requires CPR to implement mitigation that *will be identified* in a future soils report. The court in *Sundstrom* held that "[t]he requirement that the applicant adopt mitigation measures recommended in a future study is in direct conflict with the guidelines implementing CEQA." 202 Cal. App. 3d at 306. These guidelines require full disclosure of all environmental impacts from a project in one DEIR. 10-35

The environmental effects of the soils report recommendations should be analyzed in the DEIR. The potential recommendations, which could include design changes and correction in grading activities (page 4.9-13), may have significant impacts of their own which should be evaluated as part of this DEIR. The public is also denied the opportunity to scrutinize the effectiveness of these measures at reducing the significance of Impact GEO-2. 10-36

Finally, GEO-2 requires that CPR implement all "feasible" engineering and design recommendations. Because the DEIR does not analyze these mitigation measures now, the public and the decision-makers do not know whether "feasible" measures exist to reduce the impact to a less than significant level. 10-37

It is feasible to evaluate geology impacts at this time. The DEIR does not explain why CPR cannot retain a geologist to prepare a soils report now, and it does not provide a timeline when this will occur. The DEIR should identify the areas where development will occur so that the underlying soils can be evaluated as part of this CEQA process. By deferring this analysis, the DEIR does not fully analyze all impacts from the Project. 10-38

The DEIR took this same deferral strategy for other impacts as well. *See also e.g.,* Mitigation Measure HAZ-2 (requiring post-approval investigation into soil contamination and presence of asbestos and lead based paint); Impact UTIL-1 (deferring analysis of electricity demand); Mitigation Measure BIO-2 (requiring a post-approval survey for pallid bats). Because such impacts can be assessed now and the mitigation measures more clearly defined, CPR should do so prior to project approval. 10-39

H. The DEIR Fails to Provide an Adequate Analysis of Climate Change Impacts

Table 5-3 of the DEIR improperly concludes that it would be speculative to quantify greenhouse gas emissions from the production and transport of materials during construction, solid waste disposal, and end of life of the materials and processes from the Project. These emissions should be quantified and analyzed as climate change impacts, even if they are only "indirect" Project impacts. The California Air Pollution Control Officers Association suggests several models than can be used, including the Urban Emissions Model ("URBEMIS") and the California Climate Action Registry's Protocol v.2.2. 10-40

Further, the DEIR improperly defers analysis of indirect emissions from in-state energy production, solid waste disposal, and wastewater treatment. Although the energy sources and waste processing facilities will analyze climate change impacts as part of their own environmental review documents, the DEIR should analyze the Project's incremental contribution by quantifying these emissions as well. The California Air Resources Board is currently recommending quantitative thresholds. At a minimum, the DEIR should disclose that there are additional emissions from this Project rather than avoiding any discussion as "speculative." 10-41

The DEIR finds that the climate change impact is "significant and unavoidable." Because of this finding, the Project may only be approved if CPR adopts a Statement of Overriding Considerations, a strategy that is only permitted if all "feasible" mitigation reducing the climate change impacts is incorporated. If feasible mitigation is available that is not incorporated, a Statement of Overriding Considerations is not appropriate. 10-42

The DEIR's approach to climate change mitigation appears to have been to review the climate change mitigation measures suggested by the California Attorney General's Office, and to adopt a subset of such measures, describing such measures with nearly verbatim language. *The California Environmental Quality Act: Addressing Global Warming Impacts at the Local Agency Level*, Office of the Attorney General, updated September 26, 2008 ("AG Mitigation Measures"), attached as Exhibit G. There are three problems with this approach. First, additional "feasible" mitigation exists which is not included. For example, CPR should require installation of light emitting diodes for outdoor lighting, use of low or zero emission construction vehicles, and implementation of a low carbon fuel vehicle incentive program. Further, even if the Project will include all on-site feasible mitigation, CPR should require off-site mitigation to further reduce the impact. AG Mitigation Measures, at 4. For example, CPR could fund alternative energy projects, or energy or water audits for existing projects that will reduce carbon emissions, conduct an audit of CPR's other existing operations and agree to retrofit, or purchase carbon "credits" from another entity that will undertake mitigation. *Id.* Such "offsets" could result in a zero net increase in greenhouse gas emissions, and would support a less-than-significant finding. CPR must 10-43

either adopt such additional mitigation measures suggested by the Office of Attorney General, or explain why such measures are infeasible.

10-43 Cont'd

The second problem with the DEIR's approach is that the proposed mitigation measures are vague and undefined, rendering it impossible to determine their effectiveness. The DEIR has essentially repeated verbatim general mitigation measures suggested by the Attorney General. However, the Attorney General's suggestions are very broadly worded because they are meant to apply to virtually any construction project in the state. They were not meant to apply verbatim to a specific construction project where more detailed mitigation measures would be appropriate. For example, the Attorney General suggests: "Design buildings to be energy efficient." The AG Mitigation Measures document contains a footnote reference, suggesting that when implementing this measure, lead agencies consider one of the national "green building" programs, such as LEED or Build It Green. AG Mitigation Measures, at fn.2. Instead of looking to these standards, which contain detailed green building rating systems, the DEIR simply repeats the vague mantra: "Design buildings to be energy efficient." DEIR, at 5-13. What does this mean? LEED certified? LEED Gold? Without more specificity, it is impossible for the public or the decision-makers to know what impact that mitigation measure will have. Indeed, it is impossible to discern what CPR is even requiring here. Another mitigation measure is to "provide shuttle service to public transit," but it fails to provide any details on what such a shuttle service would entail, or even if there is nearby public transit with which a shuttle service could connect. Because CPR simply copied verbatim broad mitigation measures suggested by the Attorney General's Office, this type of vagueness permeates each of the climate change mitigation measures. Such undetermined mitigation does not satisfy CEQA's mitigation requirements. *See e.g., San Franciscans for Reasonable Growth v. City & County of San Francisco*, 151 Cal. App. 3d 61, 79 (1984). CEQA requires far more specificity than these vague measures.

10-44

Third, the decision of which mitigation is "feasible" apparently will be made after project approval, which is an inappropriate deferral of mitigation. *Sundstrom v. County of Mendocino*, 202 Cal. App. 3d 296, 307 (1988). Page 5-13 states that "CPR will implement where feasible" each of the suggested mitigation measures. However, the public and decision-makers are left with no way to determine which measures are "feasible" and thus which will be implemented. As a result, it is not possible to determine the scope of the climate change impact. There is nothing to prevent CPR from determining the feasibility of these mitigation measures now, and it should do so.

10-45

I. The DEIR Fails to Adequately Analyze Cumulative Impacts

The DEIR mentions but does not adequately analyze the cumulative impacts from construction of the adjacent proposed California Conservation Corps project and the Re-Entry Facility. The significance of the cumulative impacts from these state-sponsored projects must be addressed in this DEIR to ensure that mitigation will be adequate and that

10-46

each project's mitigation program will be integrated with the others. In particular, air quality, traffic, and noise would benefit from a cumulative approach to mitigation. 10-46 Cont'd

For example, the DEIR concludes on page 5-10 that cumulative long-term operational air quality impacts will be less than significant without any mention of the adjacent facilities. There is no data and no analysis of the three projects' cumulative contribution to air quality. Thus, the less than significant determination is not supported by substantial evidence. 10-47

The DEIR determines that cumulative traffic impacts will be significant and unavoidable. The DEIR should discuss mitigation proposed in the CEQA documents for the other two facilities and should adopt similar mitigation where possible. The three projects together might generate enough vehicle trips to warrant new road construction or other major road improvements that may not be feasible for one project alone. The DEIR should explore and evaluate these options. 10-48

Additionally, the DEIR concludes that cumulative air quality impacts will be less than significant based in part on the fact that the Project falls within the growth projections of the local air quality attainment plan. Compliance with an air quality attainment plan does not necessarily reduce an impact to less than significant. Further, the DEIR states on page 5-10 that the Project "would be required to implement all feasible measures in the plan." The DEIR must identify which measures are feasible and specify how they will be implemented. CEQA requires that mitigation measures be clearly defined so that they are enforceable and can be scrutinized by the public. *See Kings County Farm Bureau v. City of Hanford*, 221 Cal. App. 3d 692, 728 (1990). Finally, the air quality cumulative impact analysis is defective because it is limited to other plans for growth only within San Joaquin County. Cumulative air impacts should not be defined by County boundaries, but rather by projects within the same air basin, which at the very least would include projects in other nearby Counties such as Sacramento and Stanislaus Counties. *Id.* at 721-24. 10-49

J. Conclusion

The proposed Project is part of a statewide program to construct or convert prison facilities, including up to seven correctional health care facilities. Despite the fact that these projects are being carried out under the same statutory and judicial authority, and despite the fact that they will have similar environmental effects, the DEIR only addresses project-level impacts. This approach fails to meet CEQA's core informational and public disclosure requirements. Further, the DEIR fails to provide an adequate analysis of project-level and cumulative impacts on water supply, public utilities, traffic, air quality, cultural resources, geology, and climate change. Thus, a program EIR should be prepared and the legal deficiencies in the DEIR for this Project should be corrected. 10-50

Thank you for providing the opportunity to comment on the DEIR and for your consideration of our comments.

Sincerely,

Peter Hsiao

Attachments

Exhibit A

(c) If more than one individual should qualify for payment—

(1) Under the Act, at 42 U.S.C. 3796(a)(4)(1), payment shall be made to each of them in equal shares, except that, if the designation itself should manifest a different distribution, payment shall be made to each of them in shares in accordance with such distribution; or

(2) Under the Act, at 42 U.S.C. 3796(a)(4)(2), payment shall be made to each of them in equal shares.

§ 32.29 [Amended]

12. Amend § 32.29(a)(1)(ii) by removing "The" and adding in its place "Consistent with § 32.42(c), the".

§ 32.41 [Amended]

13. Amend § 32.41 by adding ", and of claims remanded (or matters referred) under § 32.54(c)" before the final period.

14. Amend § 32.42 as follows:

a. In the introductory text of paragraph (a), remove "Unless" and add in its place "Subject to paragraph (c) of this section, and unless".

b. Add a paragraph (c) to read as follows:

§ 32.42 Time for filing request for determination.

* * * * *

(c) The timely filing of a motion for reconsideration under § 32.28(a) shall be deemed to constitute a timely filing, under paragraph (a) of this section, of a request for determination with respect to any grounds described in § 32.29(a)(1)(ii) that may be applicable.

§ 32.43 [Amended]

15. Amend § 32.43(b) by adding "(or upon remand or referral)" after "determination".

§ 32.45 [Amended]

16. Amend § 32.45(a) by removing "At" and adding in its place "Except with respect to a remand or referral, at".

17. Amend § 32.54 by adding paragraph (c) to read as follows:

§ 32.54 Director determination.

* * * * *

(c) With respect to any claim before him, the Director, as appropriate, may—

(1) Remand the same to the PSOB Office, or to a Hearing Officer;

(2) Vacate any related determination under this part; or

(3) Refer any related matters to a Hearing Officer (as a special master), to recommend factual findings and dispositions in connection therewith.

§ 32.55 [Amended]

18. Amend § 32.55(a) by removing "under 28 U.S.C. 1491(a) (claims against the United States)" and adding in its place "pursuant to the Act, at 42 U.S.C. 3796c–2".

Dated: July 7, 2008.

Jeffrey L. Sedgwick,

Acting Assistant Attorney General.

[FR Doc. E8–15730 Filed 7–9–08; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R8–ES–2008–0067; 1111–FY08–MO–B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Reclassify the Delta Smelt (Hypomesus transpacificus) From Threatened to Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to reclassify the delta smelt (*Hypomesus transpacificus*) from threatened to endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that reclassification of the delta smelt from threatened to endangered may be warranted. Therefore, we are initiating a status review to determine if reclassifying this species as endangered under the Act is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial data and other information regarding this species.

DATES: To allow us adequate time to conduct this review, we request that information be submitted to us on or before September 8, 2008.

ADDRESSES: You may submit information by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R8–ES–2008–0067, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all information at *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Solicited section below for more details).

FOR FURTHER INFORMATION CONTACT: Susan Moore, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, CA 95825; telephone 916–414–6600; facsimile 916–414–6712. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

When we make a finding that substantial information is presented to indicate that listing, delisting, or reclassifying a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information concerning the status of the delta smelt. We request information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning the status of the delta smelt, including but not limited to information on:

(1) The effects of potential threat factors that are the basis for a listing determination under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) Present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(2) Population abundance, distribution, trends, and dynamics; habitat selection and trends; food habits; and effects of disease, competition, and predation on delta smelt.

(3) The effects of climate change, sea level change, and change in water temperatures on the distribution and abundance of delta smelt and their principal prey.

(4) The effects of other potential threat factors, including water diversions in the Sacramento-San Joaquin River Delta (Delta), contaminants, invasive species, and changes of the distribution and abundance of delta smelt and their principal prey.

(5) Management programs for delta smelt conservation, including mitigation

measures related to water diversions and development, habitat conservation programs, invasive species control programs, and any other private, tribal, or governmental conservation programs which benefit delta smelt.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available." Based on the status review, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this finding by one of the methods listed in the **ADDRESSES** section. We will not consider submissions sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov*, your entire submission—including your personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly commence a status review of the species.

We were originally petitioned to list the delta smelt as endangered on June 26, 1990. We proposed the species as threatened and proposed the designation of critical habitat on October 3, 1991 (56 FR 50075). We listed the species as threatened on March 5, 1993 (58 FR 12854), and we designated critical habitat on December 19, 1994 (59 FR 65256). The delta smelt was one of eight fish species addressed in the November 26, 1996, *Recovery Plan for the Sacramento-San Joaquin Delta Native Fishes* (Service 1996, pp. 1–195). We completed a 5-year status review of the delta smelt on March 31, 2004 (Service 2004, pp. 1–50).

On March 9, 2006, we received a petition, dated March 8, 2006, from the Center for Biological Diversity, the Bay Institute, and Natural Resources Defense Council (CBD *et al.* 2006, pp. 1–33) to reclassify the listing status of the delta smelt, a threatened species, to endangered status on an emergency basis. The petition clearly identified itself as a petition and included the requisite identification information for the petitioners, as required at 50 CFR 424.14(a). The Service has the authority to promulgate an emergency listing rule for a species when an emergency exists that poses a significant risk to the well-being of that species (50 CFR 424.20). The petition contained information on changes in the status and distribution of the species, and on increased threats to the species.

In response to the petition, we sent a letter to the petitioners dated June 20, 2006, stating that we would not be able to address their petition at that time because further action on the petition was precluded by court orders and settlement agreements for other listing actions that required us to use nearly all of our listing funds for fiscal year 2006. We also stated in our June 20, 2006, letter that we had evaluated the immediacy of possible threats to the delta smelt, and had determined that an emergency reclassification was not warranted at that time.

This notice constitutes our 90-day finding on the March 8, 2006, petition to reclassify the delta smelt from threatened to endangered.

Species Information

The petitioners presented a summary of the known information on the description, taxonomy, distribution, habitat requirements, life history, and natural mortality of the delta smelt. They also described recent changes in the fish's distribution and abundance, and summarized recent delta smelt population trend and extinction risk analyses.

Description and Taxonomy

Delta smelt are slender-bodied fish, generally about 60 to 70 millimeters (mm) (2 to 3 inches (in)) long, although they may reach lengths of up to 120 mm (4.7 in) (Moyle 2002, p. 227). Delta smelt are in the Osmeridae family (smelts) (Stanley *et al.* 1995, p. 390). Live fish are nearly translucent and have a steely blue sheen to their sides (Moyle 2002, p. 227). Delta smelt feed primarily on small planktonic (free floating) crustaceans, and occasionally on insect larva (Moyle 2002, p. 228). Delta smelt usually aggregate but do not appear to be strongly shoaling, and their swimming behavior likely makes schooling difficult (Moyle 2002, p. 228).

The delta smelt is one of six species currently recognized in the Hypomesus genus (Bennett 2005, p. 8), and genetic analyses have confirmed that it is a well-defined species with a single intermixing population (Stanley *et al.* 1995, p. 391; Trenham *et al.* 1998, p. 418). Within the genus, delta smelt is most closely related to surf smelt (*H. pretiosis*), a species common along the western coast of North America. In contrast, delta smelt is a comparatively distant relation to the wakasagi (*H. nipponensis*), which was introduced into Central Valley reservoirs in 1959 and is now sympatric with delta smelt in the estuary (Trenham *et al.* 1998, p. 417).

Distribution and Abundance

Delta smelt are endemic to (native and restricted to) the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Delta) in California, found only from the San Pablo Bay upstream through the Delta in Contra Costa, Sacramento, San Joaquin, Solano, and Yolo counties (Moyle 2002, p. 227). Their historical range is thought to have extended from San Pablo Bay upstream to at least the city of Sacramento on the Sacramento River and Mossdale on the San Joaquin River. They were once one of the most common pelagic (living in open water away from the bottom) fish in the upper

Sacramento-San Joaquin Estuary (Moyle 2002, p. 230).

Although exact population estimates are not possible to obtain for this species (Moyle 2002, p. 230), relative population levels have been monitored for several decades using various net surveys and counts of adults entrained by Federal and State water export facilities (Bennett 2005, p. 5). Based on those surveys, delta smelt population levels declined precipitously in 1982, leading to very low numbers from 1982 to 1991, and to their listing as a threatened species in 1993 (58 FR 12854; Moyle 2002, p. 230; CBD *et al.* 2006, p. 9). From 1992 to 2001, abundance levels stabilized, remaining generally low but within the bounds of pre-1980 levels. Recent surveys have shown another substantial drop, however, with record low abundance figures from 2002 through 2007 (Armor *et al.* 2005, p. 3; Bennett 2005, p. 2; CDFG 2008, p. 1). Bennett (2005, pp. 53, 54) conducted a population viability analysis based on known population trends, and found a 55 percent chance that the smelt population would reach a "point of no return" (quasi-extinction, estimated at 8,000 fish) within 20 years.

Habitat and Life History

The species requires specific environmental conditions (freshwater flow, water temperature, salinity) and habitat types (shallow open waters) within the estuary for migration, spawning, egg incubation, rearing, and larval and juvenile transport from spawning to rearing habitats (Moyle 2002, pp. 228–229). Delta smelt are a moderately euryhaline species (tolerant of a wide salinity range), and most individual fish live only one year (Moyle 2002, p. 228). Although they are restricted to a relatively small geographic range, delta smelt use different parts of the estuary at different life history stages. They hatch, typically around May, from eggs laid 9 to 13 days earlier in the slow-moving, freshwater spawning grounds of the upper Delta and lower Sacramento River, and in Montezuma Slough near Suisun Bay (Moyle 2002, pp. 228, 229). After several weeks of development, larvae are swept downstream until they reach a point (typically in Suisun Bay) where the salinity reaches about 2 to 7 parts per thousand (ppt). This is the beginning of the "mixing zone" where fresh and brackish water meet. Juvenile smelt tend to seek out that salinity level, and will rear and grow there for several months, preferring relatively shallow open water (Moyle 2002, p. 228). The mixing zone is typically located in Suisun Bay, but moves farther upstream when freshwater outflows are reduced (Moyle 2002, p. 230). Federal and State water pumps can affect outflows by exporting large amounts of fresh water from the southern portion of the Delta for agricultural and municipal uses. Thousands of smaller water diversions throughout the Delta also export water for local agriculture. Additionally, two power plants located in Antioch and Pittsburg, California, use Delta water for cooling (Bennett 2005, p. 34; Armor 2005, p. 2)

Around September or October, delta smelt reach adulthood and begin a gradual migration back upstream to the spawning areas. Spawning can occur any time between February and July, but most spawning takes place from early April to mid-May, in water temperatures ranging from 7 to 15 degrees Celsius (45 to 59 degrees Fahrenheit) (Moyle 2002, p. 229). Although spawning has not been observed in the wild, the eggs are thought to attach to substrates such as cattails, tules, tree roots, and submerged branches, and the spawning areas most likely contain gravel, sand, or other submerged material that is washed by gentle currents close to the main river channel (Wang 1991, p. 11; Moyle 2002, p. 229). Most delta smelt die after spawning, but a small contingent of adults survive and can spawn in their second year (Moyle 2002, p. 228).

The petitioners referred to the Service's December 19, 1994, critical habitat determination (59 FR 65256) for descriptions of the specific habitat conditions required for spawning, larval and juvenile transport, rearing, and adult migration.

Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and implementing regulations at 50 CFR 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this 90-day finding, we evaluated whether information on threats to the delta smelt presented in the March 2006 petition, and other information available in our files at the time of the petition review, constitute substantial scientific or commercial information such that reclassification from threatened to endangered under the Act may be warranted. A brief evaluation of this information is presented below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The petition notes that water diversions, particularly from the large Federal and State pumping stations in the southern portion of the Delta, can modify the smelt's habitat in three ways. First, they remove planktonic food organisms out of the water. Second, they diminish freshwater outflows, causing the mixing zone to move upstream and away from Suisun Bay where the best rearing habitat is located. Third, the large Federal and State pumps can actually halt and reverse flows in the southern Delta, potentially interfering with both the transport of plankton and smelt larvae downstream and with the spawning migration of adult smelt upstream (CBD *et al.* 2006, pp. 13, 14).

The petition also notes that the diversions entrain and kill smelt directly. This is not technically a habitat alteration, but we consider it here because the direct effects of freshwater diversions are intertwined with their impacts to habitat. The petition states that the State and Federal pumping stations have shown an increase in recent years in number of delta smelt entrained relative to their abundance (CBD *et al.* 2006, p. 16). The increase is concurrent with recent increases in water pumped from the facilities, particularly during the winter when migrating adult smelt are most likely to be in the vicinity (CBD *et al.* 2006, p. 15). Additionally, because the Federal and State pumps only monitor impacts to smelt longer than 20 mm (0.8 in.), direct impacts to smaller smelt remain unknown. The petition does note, however, that summer trawl net surveys showed a serious drop in juvenile smelt in the south Delta in the mid-1970s, during which time Federal and State exports from the Delta were increased (CBD *et al.* 2006, pp. 15, 16). Monitoring of direct impacts is absent at the 1,800 smaller agricultural diversions throughout the Delta, and at the two power plants that use Delta water for cooling (CBD *et al.* 2006, p. 14).

The combined habitat destruction or modification (Factor A) and direct impacts from water diversions are difficult to quantify, but potentially serious. The petition cites a 2005 analysis showing a significant inverse correlation between smelt population, winter water export rates, and numbers of adult and juvenile smelt sampled

later in the year (CBD *et al.* 2006, p. 17). Armor (*et al.* 2005, p. 39) supports this, noting that the data on wintertime entrainment "reveal a consistent pattern across species that corresponds with the period of fish declines."

In summary, habitat destruction and modification (Factor A), as well as direct impacts from water diversions, threaten the continued existence of delta smelt, as they did at the time of the original listing of the species. Record or near record low delta smelt abundance indices from 2002 through 2007 (Armor *et al.* 2005, p. 3; Bennett 2005, p. 2; CDFG 2008, pp. 1–2), indicate that these existing threats may now be more imminent than at the time of listing. The delta smelt abundance indices for 2002 and 2003 are at or slightly above the 1994 low, and indices for 2004 to 2007 are less than half to near a quarter of the 1994 low (CDFG 2008, p. 2). As a consequence, we conclude that substantial information is provided to indicate that reclassification of delta smelt from threatened to endangered due to destruction, modification, or curtailment of its habitat may be warranted.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petition provides no information documenting current or future threats under this factor, and we do not have any information in our files to indicate that overutilization for commercial, recreational, scientific, or educational purposes threaten delta smelt. Therefore we conclude that there is no substantial scientific or commercial information to indicate that reclassifying delta smelt from threatened to endangered may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes. However, all factors, including threats from commercial, recreational, scientific, or educational activities, will be evaluated when we conduct our status review.

C. Disease or Predation

The petition acknowledges a lack of evidence to indicate that delta smelt populations have declined due to disease or predation (CBD *et al.* 2006, p. 20). It does note, however, that striped bass (*Morone saxatilis*, a nonnative predatory species) may have been maintained at artificially high levels relative to potential prey species, such as the delta smelt, under a stocking program carried out until 2004 by the California Department of Fish and Game (Service 2004, p. 6; CBD *et al.* 2006, p. 20). The petition also notes that inland silverside (*Menidia beryllina*, a nonnative species feeding primarily on plankton) may prey on delta smelt eggs and larvae, as well as compete with delta smelt for planktonic food. Other introduced species that may be preying on eggs or larvae of delta smelt include the chameleon goby (*Tridentiger trigonocephalus*) and the yellowfin goby (*Acanthogobius flavimanus*).

The petitioner cites a lack of evidence that disease and predation threaten delta smelt, and we do not have substantial information in our files to suggest that disease and predation threaten delta smelt. Therefore, we conclude that there is no substantial scientific or commercial information to indicate that threats from disease or predation may warrant reclassification of delta smelt from threatened to endangered. However, all factors, including threats from disease or predation, will be evaluated when we conduct our status review.

D. The Inadequacy of Existing Regulatory Mechanisms

The petition presents information regarding existing and planned regulatory mechanisms and their perceived inadequacy, stating that the current export criteria in the water rights permits issued under the State Water Resources Control Board regulations allow export operations at levels that exceed those necessary to maintain healthy delta smelt populations. The petitioners state that dedications of water for the environment and of money for supplemental acquisitions of environmental water mandated in the 1992 Central Valley Project Improvement Act intended to reduce the negative impacts of the Federal water project on fish and wildlife have not been fully or aggressively implemented. The petition claims that the CALFED (joint California State and Federal government) Bay-Delta Program has been largely ineffective in addressing environmental problems in the Delta, and that its future status is uncertain. The petition states that the Service's most recent biological opinion for protection of the species relied heavily on the CALFED Environmental Water Account, which has failed to provide detectable benefits for delta smelt. The petition also states that the South Delta Improvements Program, in the process of being approved by Federal and State agencies at the time of the petition, would increase Delta water exports and install permanent tidal barriers that further modify Delta flow patterns and habitat.

In summary, the petition points out that numerous changes have occurred since the time of the species' listing, and suggests that the regulatory mechanisms governing such changes have not provided adequate conservation for delta smelt. Given that delta smelt abundance indices from 2002 through 2007 have been at record lows (Armor *et al.* 2005, p. 3; Bennett 2005, p. 2; CDFG 2008, p. 1), we conclude that substantial information is presented in the petition to indicate that reclassification of delta smelt from threatened to endangered due to the inadequacy of existing regulatory mechanisms may be warranted.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The petition presents information asserting that threats from low population size, nonnative species, and lethal and sublethal effects of toxic chemicals may have changed since we listed the delta smelt as threatened. The petition presents information concerning the delta smelt's population size and extinction probability, stating this information indicates that the delta smelt is at risk of falling below an effective population size and losing genetic integrity, and is therefore in danger of becoming extinct. The petition also states that increased competition by nonnative species, such as the clam *Corbula amurensis*, has reduced the availability of the delta smelt's planktonic food supply. Additionally, the petition cites the threat of lethal and sublethal effects of toxic chemicals, such as pesticides discharged and transported from upstream into the Delta.

We have substantial information in our files to indicate that the delta smelt abundance indices from 2002 through 2007 have been at record lows (Armor *et al.* 2005, p. 3; Bennett 2005, p. 2; CDFG 2008, p. 1). According to recent fish survey information collected by the California Department of Fish and Game (CDFG) (Fall Midwater Trawl (FMWT)), the average catch of delta smelt declined to the lowest level since the surveys began in 1967 (CDFG 2008, p. 1). We do not have substantial information in our files to indicate that competition from nonnative species has changed since the time we listed the delta smelt as threatened. We also do not have substantial information in our files to indicate that lethal and sublethal effects of toxic chemicals have changed since the time we listed the delta smelt as threatened. Toxic chemicals are present in the San Francisco Bay-Delta; however, it is uncertain what effect these chemicals have on delta smelt (Bennett 2005, p. 44). For example, in

2008, the Pelagic Organism Decline (POD) Working Group summarized and provided a progress report of the studies and information collected in 2007 by the Interagency Ecological Program (IEP) (Baxter *et al.* 2008, pp. 1–52). The summary report did identify contaminants as having possible effects during flow pulses in the winter, but there is no evidence currently available that these pulse events cause toxicity to delta smelt (Baxter *et al.* 2008, p. 29).

We conclude that the petition presents substantial information to indicate a significant reduction in the population size of delta smelt since the time of listing and that reclassification of delta smelt from threatened to endangered may be warranted.

Finding

We have reviewed the petition and literature cited in the petition and evaluated that information in relation to information available in our files. Based on this review, we find the petition presents substantial information that reclassification of the delta smelt from threatened to endangered may be warranted.

When we listed the delta smelt as threatened in 1993, the factors identified that threatened the species' continued existence included threats such as: water diversions, inadequacy of existing regulatory mechanisms, introduced species, and contaminants. For the most part, these factors continue to threaten the species, although the degree to which they each affect delta smelt populations likely has changed. Recent surveys have shown a substantial decline in delta smelt abundance from 2002 through 2007 (Armor *et al.* 2005, p. 3; Bennett 2005, p. 2; CDFG 2008, p. 1), indicating that the threats may be of higher magnitude or imminence than was thought at the time of listing.

As discussed above, we believe the petition provides substantial information indicating that a reclassification from threatened to endangered may be warranted. Specifically, substantial information was provided under Factor A (habitat loss, and water diversions), Factor D (the inadequacy of existing regulatory mechanisms), and Factor E (low population size). Therefore, we are initiating a status review to determine if reclassifying the species from threatened to endangered is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial data and other information regarding this species.

Significant Portion of the Species' Range

The petitioners seek to reclassify the delta smelt as endangered, indicating the species is in danger of extinction throughout all or a significant portion of its range. During our status review we will evaluate whether the best scientific and commercial information available supports reclassification and whether there may be a portion of the delta smelt's range that may be significant. As a result we will provide our analysis of significant portion of range in the 12-month finding.

References Cited

A complete list of all references cited in this document is available, upon request, from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are staff of the California and Nevada Regional Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Sacramento, CA 95825.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 2, 2008.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E8–15747 Filed 7–9–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 080627793–8795–01]

RIN 0648–AW81

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Monkfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing to implement a new management measure for the monkfish fishery recommended in Framework Adjustment 6 (Framework 6) to the Monkfish Fishery Management Plan (FMP), which has been submitted jointly by the New England and Mid-Atlantic Fishery Management Councils (Councils). This action would eliminate the backstop provision adopted in Framework Adjustment 4 (Framework 4) to the FMP, which was implemented in October 2007. This provision would have adjusted, and possibly closed, the directed monkfish fishery in fishing year (FY) 2009 if the landings in FY 2007 exceeded the target total allowable catch (TTAC). Given the most recent information on the status of monkfish stocks, the backstop provision is no longer deemed necessary.

DATES: Written comments must be received no later than 5 p.m. eastern standard time, on August 11, 2008.

ADDRESSES: You may submit comments, identified by RIN number 0648–AW81, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal *http://www.regulations.gov*.
- Fax: (978) 281–9135, Attn: Emily Bryant.
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on Monkfish Framework 6."

Instructions: All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted via Microsoft Word, Microsoft Excel, WordPerfect, or Adobe PDF file formats only. Copies of the Environmental Assessment (EA), including the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA), prepared for Framework 6 are available upon request from Paul Howard, Executive Director, New England Fishery Management Council (NEFMC), 50 Water Street, Newburyport, MA, 01950. The document is also available online at *www.nefmc.org*.

FOR FURTHER INFORMATION CONTACT: Emily Bryant, Fishery Management Specialist, phone (978) 281–9244, fax (978) 281–9135.

Exhibit B

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

California Water Impact Network (C-WIN) and California Sportfishing Protection Alliance (CSPA), Felix Smith (an individual) Plaintiffs, vs. California Department Water Resources, The California State Water Resources Control Board, the United States Bureau of Reclamation, and DOES 1-100, Defendants	Case No.: **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** Date: Time: Dept:

The California Water Impact Network (C-WIN), the California Sportfishing Protection Alliance (CSPA), and Felix Smith (hereinafter "Plaintiffs") by and through their attorneys, Michael B. Jackson and Julia R. Jackson, allege on information and belief as follows:

INTRODUCTION

This lawsuit seeks to cure continuing and unlawful harm, injury, and death to fish species native to the Sacramento-San Joaquin Delta ("the Bay/ Delta") some of which are listed as threatened or endangered under the Endangered Species Act, including the Sacramento River winter-run chinook salmon, Central Valley spring-run chinook salmon, Central Valley steelhead, and delta smelt, due to the conduct of the California Department of Water Resources and the Bureau of Reclamation in managing their respective export water supply facilities in the San Francisco Bay/Delta, and the failure of the State Water Reources Control Board (hereinafter "Board") to regulate such unlawful conduct.

PARTIES

1. Plaintiff C-WIN is a non-profit public benefit corporation formed under the laws of the State of California for the purpose of protecting and restoring fish and wildlife resources, scenery, water quality, recreational opportunities, agricultural uses, and other natural environmental resources and uses of the rivers and streams of California, including the Bay/Delta, its watershed and its underlying groundwater resources. Members of the C-WIN reside in, use, and enjoy the Bay/Delta and inhabit and use its watershed. They use the rivers of the Central Valley and the Bay/Delta for nature study, recreation, and aesthetic enjoyment. The "collapse" of the pelagic and anadromous fishery in the Bay/Delta and its watershed harms the California Water Impact Network and its members by threatening impairment of their use and enjoyment of these species and their habitat.

2. Plaintiff CSPA was established in 1983 and is a 501(c)(3) non-profit organization whose mission is to protect, preserve and enhance the fisheries and associated aquatic and riparian ecosystems of California's waterways, including the Central Valley rivers leading to the Bay/Delta. This mission is implemented through active participation in water rights and water quality processes, education and organization of the fishing community, restoration efforts, and

vigorous enforcement of environmental laws enacted to protect fisheries, habitat and water quality. Members of both Plaintiff organizations reside along the Central Valley watershed and in the Bay/Delta and enjoy the habitat and species that live there. Plaintiff's members visit the Delta and appreciate the Delta ecosystem.

3. Plaintiffs' members view, enjoy, and use the Delta ecosystem. Plaintiffs' members routinely engage in various recreational activities in the Delta – including boating, fishing, and wildlife viewing – and have concrete plans to continue to do so in the future. Plaintiffs' members derive significant use and enjoyment from the aesthetic, recreational, and conservation benefits of the Delta ecosystem, including the Listed Species. Plaintiffs' members have fished for various species of fishes in the Delta, including salmon. Plaintiffs' and their members are deeply concerned about the health of the Delta ecosystem and its evident decline. The decline of the Listed Species has had and continues to have a substantial negative impact on Plaintiffs' organizational members, impairing their use and enjoyment of the Delta and the Listed Species by, among other things, impairing the ability of Plaintiffs' members to fish for and view salmon and other species. Additionally, the decline of native species in the Delta ecosystem, such as the delta smelt, in that same system impair the natural functioning of the Delta ecosystem. The decline of native species, proliferation of invasive species, and impaired function of the Delta ecosystem adversely impacts Plaintiffs' members' use and enjoyment of the Delta ecosystem and Listed Species. Defendants' violations of the state statutes have caused significant harm to the Listed Species and the Delta, which in turn causes significant harm to the plaintiff and its members.

4. Plaintiff Felix Smith is a California resident and a retired supervisor for the United States Fish and Wildlife Service. Plaintiff has spent his life working on Bay/Delta fisheries problems, and filed a complaint with Defendant Board regarding the application of water to drainage impaired land on the west side of the San Joaquin Valley. Plaintiff Smith derives significant use and enjoyment from the aesthetic, recreational, and conservation benefits of the Delta ecosystem, including the Listed Species. Plaintiff has fished for various species of

fishes in the Delta, including salmon. Plaintiff is deeply concerned about the health of the Delta ecosystem and its evident decline.

5. Defendant State Water Resources Control Board (hereinafter "Board") performs both adjudicatory and regulatory functions of the state in allocating water rights and ensuring water quality pursuant to the California Water Code. The State Water Board has broad authority to carry out these functions, including the authority to hold hearings and conduct investigations in any part of the state necessary to carry out the powers vested in it. It also may require a state or local agency to investigate or report on technical factors, or comply with waste discharge requirements involved in water quality control. The Board may subject water rights to terms and conditions the board finds necessary to carry out a water quality control plan, and a water quality control plan may require changes to water rights, and it may reserve its jurisdiction to enforce these terms and conditions over time. The Board may hold an adjudicative proceeding to consider any changes to water rights to implement the plan. The proceeding would be subject to the administrative adjudication provisions of chapter 4.5 of the Administrative Procedure Act (APA) (commencing with Gov. Code, § 11400). (See Cal. Code Regs., tit. 23, § 648 [incorporating provisions of the APA].) An adjudicative proceeding is used to receive evidence to make a decision regarding "a legal right, duty, privilege, immunity, or other legal interest of a particular person." (Gov. Code, §§ 11405.20, 11405.50.)

6. Defendant Department of Water Resources (hereinafter "DWR") is a state agency responsible for the State of California's management and regulation of water usage. DWR operates the State Water Project, including the Oroville Reservoir and dam, the Clifton Court Forebay, the John E. Skinner Delta Fish Protective Facility, and the Harvey O. Banks Pumping Plant.

7. Defendant Bureau of Reclamation (hereinafter "Bureau") is a federal agency, required by the Reclamation Act of 1902 to comply with state laws relating to the control, appropriation, use, or distribution of water. Defendant Bureau operates the Central Valley

Project, which reaches from the Cascade Mountains near Redding in the north some 500 miles to the Tehachapi Mountains near Bakersfield in the south. The Project is comprised of 20 dams and reservoirs, 11 powerplants, and 500 miles of major canal as well as conduits, tunnels, and related facilities.

8. The true names and capacities of defendants sued in the Complaint under the fictitious names of Does 1 through 100, inclusive, are unknown to plaintiffs who therefore sue such defendants by such fictitious names.

9. Whenever reference is made in this complaint to any act of Defendants, such allegation shall mean that each Defendant acted individually and jointly with the other Defendants named in that cause of action.

10. At all relevant times, each of the Defendants has acted as an agent, representative, or employee of each of the other Defendants and has acted within the course and scope of said agency or representation or employment with respect to the causes of action in this complaint.

11. At all relevant times, each Defendant has committed the acts, caused others to commit the acts. or permitted others to commit the acts referred to in this complaint and has made, caused, or permitted others to ignore the legal obligations referred to in this complaint.

JURISDICTION AND VENUE

12. This court has jurisdiction pursuant to Code of Civil Procedure § 1085.

13. Section 1085(a) provides that "[a] writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station. . . ."

14. Venue is proper in this court pursuant to Code of Civil Procedure § 393 because some of the facilities at issue are located in Sacramento County and Petitioner's cause, or some part of that cause, arises in that county.

FACTUAL ALLEGATIONS

15. The Bay-Delta is the largest estuary on the west coast of the Americas, and serves as one of California's most environmentally important and economically valuable ecosystems. It provides a recreational resource for millions of people.

16. The Bay/Delta is home to 500,000 residents and is a major recreation and tourist destination. The Delta's 635 miles of boating waterways are served by 95 marinas containing 11,700 in-water boat slips and dry storage for 5,500 boats. In 2000, there were an estimated 2.13 million boating trips in the Delta.

17. Of the Delta's 738,000 acres, roughly two-thirds support agriculture. More than 500,000 acres of the Delta currently are in agricultural production. The Delta also serves as a drainage area for vast areas of agricultural land located in the watershed of the Sacramento, San Joaquin and other creeks and rivers leading into the Bay/Delta.

18. The Delta supports more than 750 plant and animal species, including 130 species of fish. The Delta serves as an important fishery habitat; it supports an estimated 25 percent of all warm water and anadromous (meaning fish that move between fresh and salt-water)sport-fishing species, and 80 percent of California's commercial fishery species live in, or migrate through, the Delta.

19. The Delta also provides habitat for a number of species that are protected by the Endangered Species Act ("ESA"), including the Sacramento winter-run chinook salmon, Central Valley spring-run chinook salmon (*Onchorhynchus tschawytscha*), Central Valley steelhead (*Onchorhynchus mykiss*), and delta smelt (*Hypomesus transpacificus*, collectively, the "Listed-Species").

20. The Sacramento River winter-run chinook salmon is an anadromous fish that migrates through the Delta to the upper Sacramento River from December to May. Anadromous fish spend most of their life in the ocean but must enter fresh water rivers and streams to spawn.

21. The National Marine Fisheries Service ("NMFS") listed the Sacramento River winter-run chinook salmon as an endangered species on January 4, 1994. 59 Fed. Reg. 440 (Jan. 4, 1994).

22. NMFS designated the Bay/Delta as critical habitat for the Sacramento River winter-run chinook salmon on June 16, 1993. 58 Fed. Reg. 33,212 (June 16, 1993).

23. The Central Valley spring-run chinook salmon is an anadromous fish that migrates through the Delta to the upper Sacramento River from March to July.

24. NMFS listed the Central Valley spring-run chinook salmon as a threatened species on September 16, 1999. 64 Fed. Reg. 50,394 (Sept. 16, 1999).

25. NMFS designated the Bay/Delta as critical habitat for the Central Valley spring-run chinook salmon on September 2, 2005. 70 Fed. Reg. 52,488 (Sept. 2, 2005).

26. The state's largest salmon run (the Central Valley fall Chinook salmon), while not listed as an endangered or threatened species, is suffering an unprecedented collapse which is part of a broader decline throughout the West.

27. The collapse of the California salmon run has triggered severe fishing restrictions that have resulted in the complete closure of commercial and recreational salmon fishing in California for the 2008 fishing season.

28. The number of chinook, or king, salmon returning from the Pacific Ocean to spawn in the Sacramento River and its tributaries this past fall dropped 67 percent from a poor year earlier, according to an internal memo to members of the Pacific Fishery Management Council published in many newspapers in California around the first of February, 2008.

29. Indications are that the closure of salmon fishing will extend beyond the 2008 fishing season, and into the 2009 season.

30. The Central Valley steelhead is a coastal steelhead that occupies the Sacramento and San Joaquin rivers and their tributaries. Steelhead and rainbow trout are the same species; the distinguishing characteristic between these fish is that steelhead are anadromous whereas rainbow trout permanently reside in freshwater.

31. NMFS listed the Central Valley steelhead as a threatened species on March 19, 1998. 63 Fed. Reg. 13,347 (March 19, 1998).

32. NMFS designated the Bay/Delta as critical habitat for the Central Valley steelhead on September 2, 2005. 70 Fed. Reg. 52,488 (Sept. 2, 2005).

33. The delta smelt is a small translucent fish with a narrow geographic range limited to low salinity and freshwater habitats of the Delta. 58 Fed. Reg. 12,854 (March 5, 1993) (final rule listing the delta smelt as threatened).

34. The delta smelt is the only true native estuarine fish species found in the Delta.

35. The Fish and Wildlife Service ("FWS") listed the delta smelt as a threatened species on March 5, 1993. 58 Fed. Reg. at 12,854.

36. FWS designated the Bay/Delta as critical habitat for the delta smelt on December 19, 1994. 59 Fed. Reg. 65,256 (Dec. 19, 1994).

37. Millions of Californians depend upon the Bay-Delta Estuary as one of the sources of their drinking water.

38. An extraordinary variety of wildlife, including many species found nowhere else, lives in the Bay-Delta. Many other species depend upon the Bay-Delta for migratory corridor habitat, and several commercial and sport fisheries depend upon the Bay-Delta for their continued existence.

39. The Bay-Delta Estuary is one of California's most threatened ecosystems. Violations of federal and state water quality standards are chronic, and the California State Water

Resources Control Board has designated the Delta's channels, the Sacramento and San Joaquin Rivers, and areas throughout the Bay as water-quality-limited water bodies. *See* Final 2002 Clean Water Act Section 303(d) List of Water Quality Limited Segments, Region 2 (San Francisco) and Region 5 (Central Valley).

40. Many of the Bay-Delta's fish are threatened with extinction, and in the last three years populations of several previously healthy species are suffering catastrophic declines. Other species, including plankton and other food organisms that underpin the Bay-Delta's entire food chain, are in similarly poor health.

41. In 1992, Congress passed legislation, the Central Valley Project Improvement Act, specifically intended to restore the Bay/Delta's fishery. Tens of millions of dollars have gone to restoration projects, but fishery populations have continued to dramatically decline.

42. A primary cause of these problems is the network of massive federal and state diversion pumps that supply the Central Valley Project (CVP) and State Water Project (SWP).

43. The CVP is the United States government's largest water storage and diversion project, and one of the largest water projects in the world.

44. The CVP diverts and delivers an annual average of about seven million acre-feet of water, and manages an average of approximately 12 million acre-feet of water per year, including water for wildlife refuges in the Central Valley watershed.

45. Much of the CVP water is pumped from the project's Tracy Pumping Plant, located at the southern edge of the Delta, into the Delta-Mendota and San Luis canals, which transport that water to predominantly agricultural users south of the Delta.

46. DWR's SWP is a similarly massive water storage and diversion project. More than 20 million people rely on water that comes at least partly from the SWP.

47. Table A of the SWP contracts allocate approximately 4.2 million acre-feet of annual delivery amounts. Almost all of Table "A" water is pumped from the SWP's Banks pumping facility, located at the southern edge of the Delta close to the Clifton Court Forebay, into Bethany Reservoir and the California Aqueduct. The California Aqueduct then conveys the

water to southern California users, with the largest contractors for its water including the Kern County Water Agency and the Metropolitan Water District of Southern California.

48. The SWP is the subject of a coordinated operations agreement with the CVP, and shares the use of the San Luis Reservoir and other facilities with the CVP, and the two projects have received a permit from the State Water Resources Control Board to operate their projects through joint point of diversion (JPOD) arrangement.

49. The two projects' pumps have altered the entire Bay-Delta ecosystem, reducing the quantity and quality of freshwater within the Bay-Delta, altering flow patterns, and killing millions of fish over the last half-century.

50. Winter exports from the CVP and SWP have increased since the late 1990's.

51. Winter flows of the Old River and Middle River [ORMR] have been consistently negative (e.g., net flow is upstream) since 2000. The Old and Middle Rivers are channels of the San Joaquin River that are used by DWR and the Bureau as routes to draw Sacramento River water through the Bureau's Delta Cross Channel and from the confluence of the Sacramento and San Joaquin Rivers across the Delta to the project pumps and hence to the California Aqueduct and the Delta Mendota Canal for contractor use.

52. Reverse flows that draw water through numerous Delta channels and sensitive nursery areas to the export facilities bring with them an array of pollutants harmful to aquatic life.

53. Reverse flows in Old and Middle Rivers cause small fish, phytoplankton, and juvenile stages of species important to the food web of the Delta to be drawn into the project pumps and killed or exported out of the Bay/Delta.

54. Fish screens at each project site are intended to shield larger, more mature fish from being directly sucked into the export pumps.

55. Due to the strength of the reverse flows caused by the draw of the pumps, many of these fish cannot swim against the current entering the diversion facilities and become entrained on the screens or destroyed in the pumps themselves.

56. Periodically, agents of Defendant Bureau and Defendant DWR "salvage" (scrape off) live fish off the screens and transport them in trucks for downstream reentry into the Delta.

57. Many of these fish reenter the Delta weakened and disoriented and quickly die. Those who do not immediately die are at a significantly increased risk of predation by other fish at points of re-entry downstream.

58. In recent years, there appears to have been a step increase in "salvage density" (number of fish killed per acre-foot of water diverted) of adult Delta smelt, threadfin shad, and longfin smelt at the SWP and CVP pumps, even as these fish have declined in species numbers (population).

59. There is a strong causal relationship between winter "salvage" of adult Delta smelt and the occurrence of negative (reverse) flows in Old and Middle Rivers.

60. Recent modeling analyses indicate that losses of larval Delta smelt at the SWP and CVP pumps can be very high (up to 40 percent) in early spring under certain conditions that can occur in some dry years

61. Preliminary results from Bodega Marine Laboratory suggest that losses of early (winter) spawning Delta smelt and their progeny may be especially important to the population. Their evidence indicates that the quality of eggs and young from these winter spawning events may be superior to those produced in spring.

62. Science indicates that unless there is a decrease in the amount of water delivered through those pumps, continued pumping at the current levels will inevitably produce significant adverse environmental effects, thus compounding already existing problems.

63. The flow regime of the Bay/Delta's watershed rivers (primarily the Sacramento and San Joaquin rivers) has been fundamentally altered by the construction and operation of upstream project dams and subsequent construction and operation of Delta pumping facilities to export water into Defendant DWR's California Aqueduct and the Delta-Mendota Canal.

64. Historically, the Bay/Delta's hydrology was characterized by highly variable flows during winter and rapid attenuation of flows in the summer.

65. Under the present hydrologic regime, controlled by the projects, the magnitude of winter flows has been significantly reduced while the magnitude and consistency of summer flows for water export has dramatically increased.

66. Populations of anadromous and pelagic fish have dropped dramatically in recent years, due to insufficient stream flows and export pumping during critical times of the year, impairment of migration due to dams, and unscreened agriculture and municipal diversions.

67. The Central Valley upstream watersheds sustain fall and spring-run chinook salmon and their habitat.

68. The management and use of water by the USBR, DWR and their contractors under permitted water rights issued by the SWRCB have adversely affected the fall-run Chinook salmon and their habitat.

69. The Central Valley spring-run Chinook salmon species have been listed as threatened by the NMFS pursuant to the federal ESA.

70. The Central Valley watersheds also sustain a remnant population of steelhead trout *(Oncorhynchus mykiss)* and their habitat. In 1998, the "Evolutionarily Significant Unit" of Central Valley steelhead was listed as "threatened" by NMFS pursuant to the provisions of the federal Endangered Species (ESA).

71. The Central Valley rivers and the Bay/Delta were listed as critical habitat for Central Valley steelhead trout in February 2000 and September 2005.

72. There are no mandatory minimum daily flows from upstream dams that are sufficient to protect the anadromous and pelagic fisheries of the Central Valley Rivers and the Bay/Delta below the Central Valley rim dams owned by DWR and the Bureau.

73. The Bureau and DWR control most releases of water stored in Central Valley watershed dams, with the exception of releases for flood control purposes, water in the minimum pool and prior riparian entitlements.

74. Restoration of California's anadromous fish populations is mandated by the Salmon, Steelhead, and Anadromous Fisheries Program Act of 1988 (full cite) which states that

it is the policy of the State to significantly increase the natural production of salmon and steelhead by the end of the 20th century.

75. Delta pumping by the state and federal projects has been identified as a cause (stressor) of the general decline of the health of the San Francisco Bay/Delta estuary by numerous scientific and legal investigations including: 1) the SWRCB Decision 1485 hearing record; 2) the 1995 Water Quality Control Plan EIR/EIS; 3) the CALFED programmatic EIS/EIR; and, 4) the SWRCB Decision 1641 hearing record, and 5) even the unlawful 2004 USBR Operating Criteria and Plan.

76. Operation of the projects without harm to listed species is a requirement of both project permits and existing law and the above-summarized evidence indicates that project operations are presently harming the pelagic fishery of the Bay/Delta.

77. On March 18, 2008, Plaintiffs filed a complaint before the SWRCB against the U.S. Bureau of Reclamation and the California Department of Water Resources for violations of the Public Trust, waste and unreasonable use, and unreasonable method of diversion on the Central Valley rivers.

78. Plaintiffs further requested that, following Defendant's investigation of the complaint, that Defendants grant Plaintiffs an evidentiary hearing in accordance with the California Code of Federal Regulations and the State Water Board complaint procedure.

79. On October 28, 2008, Plaintiffs received a letter from the SWRCB stating that the CWIN/CSPA complaint was dismissed by the State Board without investigation or hearing. Plaintiff has exhausted any administrative remedies other than filing this action.

FIRST CAUSE OF ACTION

Violation of California Public Trust Doctrine

80. Plaintiffs restate and reallege and incorporate herein the foregoing paragraphs 1 through 79 of this Complaint.

81. Defendant Board has an affirmative duty to protect trust resources. *See* Illinois Central Railroad v. Illinois, 146 U.S. 387; and National Audubon Society v. Superior Court

(1983) 33 Cal.3d 419 (The state may not abdicate its supervisory role any more than the state may abdicate its police power); *see also* Stevens, The Public Trust: A Sovereign's Ancient Prerogative Becomes the People's Environmental Right, 14 U.C. Davis Law Review 195, 223.

82. Over the years and continuing to the present time, the Defendant Board's permitting process and Defendants DWR's and Bureau's methods of diversion caused there to be insufficient in stream flow and Delta outflow to support the environmental needs of the estuary which has caused injury to the ecosystem and to members of the public, including Plaintiffs.

83. Since 2000, Bay/Delta exports have been substantially increased to meet downstream water demands.

84. As a result of increased exports, both the pelagic fishery and the salmon fishery have abruptly and substantially declined.

85. With the increase in pumping since 2000, the mid-water trawls that monitor species population data indicate a sharp drop in population totals for salmon, Delta smelt, split-tail, striped bass, long-fin smelt and the food web that supports them.

86. Present ecological conditions in the Bay/Delta have contributed to the closure of the commercial and sport-fishing fishing seasons off the California Coast, resulting in the complete loss of recreational fishing opportunities for anglers.

87. On information and belief, unless enjoined Defendants will continue to violate the Public Trust, as described above.

88. In light of the Defendants' failure to comply with the California Public Trust doctrine, and the significant likelihood of repeated violations in the future, the Defendants must be permanently enjoined from continuing to divert water from the Bay/Delta until such a time as Defendant Board has an evidentiary hearing to establish reasonable water diversions that protect the Public Trust. If Defendants are not so enjoined, Plaintiffs will suffer irreparable injury for which there is no adequate remedy at law.

89. An actual controversy exists between Plaintiffs on the one hand and Defendants on the other regarding the degree to which the California Public Trust doctrine protects the

Bay/Delta estuary and mandates Defendant Board's enforcement. Specifically, Plaintiffs contend and Defendants deny that Defendant Board's lack of enforcement of the conditions of their respective water rights permits of Defendant DWR and Defendant Bureau violate the Public Trust and injure Plaintiffs. As an actual controversy exists, Plaintiffs are entitled to and hereby seek a declaration that Defendant Board has violated its affirmative duty to protect the public trust.

SECOND CAUSE OF ACTION

Violation of Article 10, Section 2 of the California Constitution: Unreasonable Method of Diversion

90. Plaintiffs restate and reallege and incorporate herein the foregoing paragraphs 1 through 89 of this Complaint.

91. Article X, Section Two of the California Constitution states that "the right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water."

92. Water levels in some Delta channels are drawn by operation of the SWP and CVP project pumps to unacceptably low levels harming fish and riparian diverters in the process.

93. The CVP/SWP Method of Diversion from the Bay/Delta at the export pumps to sustain present export levels is unreasonable, as it has overwhelmingly contributed to the pelagic fish decline, and the listing of several species as endangered.

94. Over the years and continuing to the present time, the Defendant Board's permitting process and Defendant DWR and Bureau's methods of diversion caused there to be insufficient in stream flow and Delta outflow to support the environmental needs of the estuary which has caused injury to the ecosystem and to members of the public, including Plaintiffs.

95. Over the years and continuing to the present time, Defendants, and each of them, have used an unreasonable method of diversion of water from their facilities in the Bay/Delta in

violation of Article 10, Section Two of the California Constitution by continuing to increase volumes of water drawn from the Bay/Delta ecosystem, and limiting and ignoring research and information that indicated this method of diversion is causing a collapse in the Pelagic fisheries in the Bay/Delta and harm to the listed salmonids and other fish and wildlife.

96. On information and belief, unless enjoined Defendants will continue to violate the California Constitution, as described above.

97. In light of the Defendants' failure to comply with the California Constitution, and the significant likelihood of repeated violations in the future, the Defendants must be permanently enjoined from continuing to divert water from the Bay/Delta until such a time as Defendant Board has an evidentiary hearing to establish reasonable water diversions that conform to the mandates of Article X, Section Two of the California Constitution. If Defendants are not so enjoined, Plaintiffs will suffer irreparable injury for which there is no adequate remedy at law.

98. An actual controversy exists between Plaintiffs on the one hand and Defendants on the other regarding the degree to which the Article 10, Section Two of the California Constitution protects the Bay/Delta estuary and mandates Defendant Boards's enforcement. Specifically, Plaintiffs contend and Defendant Board denies that the Board's inability or unwillingness to halt the fishery crash and/or alter the water rights permits of Defendants DWR and Bureau to correct existing problems constitutes a violation of the state constitutional mandate against unreasonable use of water or unreasonable methods of diversion, causing injury to Plaintiffs. As an actual controversy exists, Plaintiffs are entitled to, and hereby seek, a ruling that Defendant Board has Article X, Section 2 of the California Constitution by dismissing Plaintiffs' complaint.

THIRD CAUSE OF ACTION

Violation of Article 10, Section 2 of the California Constitution: Unreasonable Use

99. Plaintiffs restate and reallege and incorporate herein the foregoing paragraphs 1 through 98 of this Complaint.

100. Article X, Section Two of the California Constitution states that, due to the conditions prevailing in the State "the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare."

101. Further, Article X, Section Two specifically states that "the right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water."

102. Defendant Bureau has been delivering Delta water to unsuitable soils in the Western San Joaquin Valley since 1951, through the Delta-Mendota Canal, and since 1967 through the federal portion of the State Aqueduct.

103. Some 150,000 upslope acres in the Westlands Water District, now known as Area II, were originally excluded from boundaries the original San Luis Unit because the salty soils were considered non-irrigable, or unfit for irrigation. *See* 1979 Special Congressional Task Force Report on the San Luis Unit of the Central Valley Project. Public Law 94-36.

104. High levels of selenium in western San Joaquin Valley soils were first documented in the mid-1980s, when species, including small mammals, fish, and birds living in habitats around evaporation ponds and canals on the west side of the San Joaquin Valley began exhibiting deformities associated with selenium poisoning.

105. Tests conducted in the area by the Central Valley Regional Water Quality Control Board and the United States Geological Survey discovered toxic amounts of salts, selenium, mercury, lead, nickel, molybdenum, and boron, coming from Bureau water applied to contractors land on the western part of the San Joaquin Valley.

106. As a result, the Kesterson reservoir, which impounded drainage water and served irrigators in the west side of the San Joaquin Valley, was ordered closed by the Board in 1985.

107. In their decision to close Kesterson reservoir, Defendant Board declared the contaminated drainage water a "public nuisance."

108. Despite this admission, Defendant Board has taken no action to halt the irrigation of these high selenium lands for over 23 years.

109. No disposal site has been established for the millions of tons of salts, selenium, mercury, lead, nickel, molybdenum, and boron, coming from Bureau water applied to contracts serving irrigators in the western part of the San Joaquin Valley.

110. Due to the lack of proper disposal, the toxins have continued to seep into the groundwater and flow into sloughs, streams, and creeks leading to the San Joaquin river and ultimately to the Bay/Delta estuary and Suisun Marsh for over twenty-three years.

111. Since 1985, this flow of contaminated surface and groundwater from the drainage impaired lands has entered the San Joaquin river and has been transported to the South Delta, violating water quality standards in the San Joaquin River and the South Delta waterways.

112. Much of the marginal upslope lands on the west side now being irrigated have high levels of selenium and other trace elements and/or heavy metals.

113. Continued irrigation of low quality upslope lands insures the permanent contamination and utter destruction of downslope lands that were once very high quality farmlands (i.e. the area around Mendota and all along the San Joaquin River flood plain.

114. Since at least 1967, Defendant Bureau has caused an unreasonable use of water in violation of Article X, Section Two of the California Constitution by applying Bay/Delta project water to drainage impaired land on the west side of the San Joaquin Valley, and have limited ignored research and information that indicated this application of water was contributing to the collapse in the Pelagic fisheries in the Bay/Delta and harm to the listed salmonids.

115. Over the years and continuing to the present day, Defendant Board has failed to enforce the provisions of Article 10, Section Two of the California Constitution against

Defendant Bureau for its unreasonable application of water to drainage impaired land on the west side of the San Joaquin Valley, and have ignored research and information indicating this application of water was contributing to the collapse in the Pelagic fisheries and ecosystem in the Bay/Delta and harm to the listed salmonids.

116. On information and belief, unless enjoined Defendant Bureau and Defendant Board will continue to violate the California Constitution, as described above.

117. In light of the Defendants' failure to comply with the California Constitution, and the significant likelihood of repeated violations in the future, the Defendants Bureau and Board must be permanently enjoined from continuing to divert water from the Bay/Delta and applying it to drainage impaired lands. If Defendants are not so enjoined, Plaintiffs will suffer irreparable injury for which there is no adequate remedy at law.

118. An actual controversy exists between Plaintiffs on the one hand and Defendants on the other regarding the degree to which the Article 10, Section Two of the California Constitution protects the Bay/Delta estuary and mandates Defendant Board's enforcement and Defendant Bureau's application of water. Specifically, Plaintiffs contend and Defendants deny that Defendant Board's lack of enforcement of the protective conditions of the water rights permits of DWR and the Bureau violate the Constitution and injure Plaintiffs. As an actual controversy exists, Plaintiffs are entitled to, and hereby seek, a ruling that Defendant Board has Article X, Section 2 of the California Constitution by dismissing Plaintiffs' complaint.

FOURTH CAUSE OF ACTION

Violation of California Fish and Game Code § 5937

119. Plaintiffs restate and reallege and incorporate herein the foregoing paragraphs 1 through 118 of this Complaint.

120. California Fish and Game Code Section 5937 states that "the owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam."

121. Fish and Game Code Section 5937 creates an express duty in dam owners to maintain adequate cold water storage, and to release this water to maintain, at all times, the fish and fish habitat below the dams.

122. Over the years and continuing to the present time, the Defendants have violated California Fish and Game Code Section 5937 by allowing water storage in Shasta, Folsom, New Melones, and Oroville dams to fall below the level in which adequate cold water storage is sufficient to maintain the fish below the dams in good condition.

123. Recent examination of temperature regimes below major rim dams surrounding the Central Valley demonstrates that protective temperature criteria are routinely exceeded.

124. The principle cause of this storage shortfall is the cannibalization of north-of-Delta storage over the last several years to supply south-of-Delta storage in Semi-Tropic and Kern water banks and Diamond Valley Reservoir.

125. These low flows have, and will likely cause and contribute to reductions in spawning and rearing habitat, lethal temperatures for fish, and increases in pollutant concentration the rivers of the Bay/Delta watershed.

126. Given the dramatic crash of pelagic species and the recent acceleration in the long-term decline in salmonid escapement, these expected low flows could trigger a catastrophic disaster to fisheries already hovering on the edge of extinction.

127. In light of the Defendants' failure to comply with California Fish and Game Code Section 5937, and the significant likelihood of repeated violations in the future, the Defendants Bureau and DWR must be permanently enjoined from continuing to release water from Shasta, Folsom, New Melones, and Oroville dams in order to supply water exports from the Bay/Delta. If Defendants are not so enjoined, Plaintiffs will suffer irreparable injury for which there is no adequate remedy at law.

128. An actual controversy exists between Plaintiffs on the one hand and Defendants on the other regarding the degree to which the California Fish and Game Code § 5937 protects the Bay/Delta estuary and mandates that the project Defendants release water from their dams at

times necessary to protect fish and wildlife in the Bay/Delta. Specifically, Plaintiffs contend and Defendants deny that Defendants actions injure Plaintiffs. As an actual controversy exists, Plaintiffs are entitled to, and hereby seek, a ruling that Defendants DWR and Bureau be ordered to release sufficient water necessary to keep fish in good condition at all times below Shasta, Folsom, Oroville, and New Melones reservoirs.

FIFTH CAUSE OF ACTION

Violation of Porter-Cologne Act

129. Plaintiffs restate and reallege and incorporate herein the foregoing paragraphs 1 through 128 of this Complaint.

130. Consistent with the Clean Water Act, the Porter-Cologne Act directs the nine regional water quality control boards to ensure that their basin plans (1) designate one or more "beneficial uses" for a particular water body and (2) to specify "water quality objectives" necessary to "ensure the reasonable protection of beneficial uses and the prevention of nuisance." Water Code § 13421.

131. After water quality standards are established, "[t]he actual administration of the Porter-Cologne Act rests on the power of the regional boards to prescribe waste discharge requirements for all persons discharging waste into inland surface waters enclosed bays and estuaries within their jurisdiction." *Waterkeepers Northern California v. State Water Resources Control Bd.* (2002) 102 Cal. App. 4th 1448, 1452 (citing Water Code § 13263).

132. The Board assigned DWR and the Bureau the responsibility for meeting salinity objectives in the 1979 Delta Plan, D-1485, the 1995 Delta Plan, and D-1641, the Board Water Rights decision implementing the 1995 Water Quality Control Plan.

133. The San Joaquin River Salinity and Boron TMDL also assign responsibility for controlling salt delivered to the San Joaquin Valley from the Delta to the Bureau.

134. The state and federal export projects, which typically export about 10,000 to as much as 13,000 cubic feet per second (cfs) of Delta water, increase the loading, transport, and fate in Delta waters of a variety of pollutants, such as mercury, organochlorine pesticides, PCBs,

organophosphorus and other pesticides, herbicides, aquatic plant nutrients, aquatic life toxic burden, etc. These contaminants accumulate in sediments and are absorbed from the water column and sediments by benthic organisms which initiate bioaccumulation of these toxins up the aquatic and terrestrial food chains.

135. A recent review of discharge and ambient monitoring data collected by industrial and municipal dischargers, under the NPDES program, reveal numerous violations of fundamental water quality standards that apply to these and other toxic contaminants.

136. Examination of temperature regimes below major rim dams surrounding the Central Valley demonstrates that protective temperature criteria are routinely exceeded.

137. Salinity standards have and continue to be routinely violated by the projects.

138. In light of Defendants DWR and Bureau's failure to comply with the Porter-Cologne Act, and Defendant Board's failure to enforce the Act, and the significant likelihood of repeated violations in the future, Defendants DWR and Bureau must be permanently enjoined from continuing to export water from the Bay/Delta until such a time as they fully comply with the Porter-Cologne Act. If Defendants are not so enjoined, Plaintiffs will suffer irreparable injury for which there is no adequate remedy at law.

139. An actual controversy exists between Plaintiffs on the one hand and Defendants DWR and Bureau on the other regarding the degree to which the Porter-Cologne Act protects the Bay/Delta estuary and mandates Board enforcement. Specifically, Plaintiffs contend and Defendants DWR and Bureau deny that they are in violation of the Porter-Cologne Act. As an actual controversy exists, Plaintiffs are entitled to, and hereby seek, a ruling that Defendants DWR and Bureau have violated the Porter-Cologne Act and Defendant Board has failed to enforce the Act as required by law.

SIXTH CAUSE OF ACTION

Violation of the 1995 Water Quality Control Plan Narrative Standard for Fish and Wildlife

140. Plaintiffs restate and reallege and incorporate herein the foregoing paragraphs 1 through 139 of this Complaint.

141. The 1995 Water Quality Control Plan requires that water quality conditions shall be maintained, together with other measures in the watershed, sufficient to achieve a doubling of natural production of chinook salmon from the average production of 1967-1991, consistent with the provisions of State and federal law.

142. The Water Quality Control Plan Narrative Standard for Fish and Wildlife (hereinafter "the narrative standard") contains a requirement that water quality conditions are sufficient to achieve a doubling of natural production of Chinook salmon from the average production of 1967-1991.

143. In September, 1999 the National Marine Fisheries Service listed the Central Valley spring-run chinook salmon as a threatened species.

144. The collapse of the California various salmon runs has resulted in the complete closure of commercial and sportfishing salmon fishing in California for the 2008 fishing season.

145. The number of chinook, or king, salmon returning from the Pacific Ocean to spawn in the Sacramento River and its tributaries this fall dropped 67 percent from a year earlier.

146. Indications are that the closure of salmon fishing will extend beyond the 2008 fishing season, and into the 2009 season.

147. The narrative standard's requirement to double the natural production of salmon from the average between 1967-1991 has clearly not been met by Defendants DWR and Bureau, nor has it been enforced by Defendant Board.

148. In light of the Defendants DWR and Bureau's failure to comply with the 1995 Quality Control Plan, including the failure to comply with the narrative standard, and Defendant Board's failure to enforce the standard, and considering the significant likelihood of repeated violations in the future, Defendants DWR and Bureau must be permanently enjoined from continuing to export water from the Bay/Delta until such a time as they meet the requirements of the narrative standard, as required as a condition of their water rights permits. If Defendants are

not so enjoined, Plaintiffs will suffer irreparable injury for which there is no adequate remedy at law.

149. An actual controversy exists between Plaintiffs on the one hand and Defendants on the other regarding their duty to comply with the 1995 Water Quality Control Plan's narrative standard to protect fish and wildlife. Specifically, Plaintiffs contend and Defendants deny that Defendants DWR and Bureau are failing to comply with the standard, and that Defendant Board is required by law to enforce the standard. As an actual controversy exists, Plaintiffs are entitled to, and hereby seek, a ruling that Defendants DWR and Bureau are in violation of the requirements of the 1995 Water Quality Control Plan's narrative standard, and that Defendant Board has failed to enforce the standard as required by law.

SEVENTH CAUSE OF ACTION

Violation of State Board Decision 1641

150. Plaintiffs restate and reallege and incorporate herein the foregoing paragraphs 1 through 149 of this Complaint.

151. The State Water Resources Control Board adopted Decision 1641 (hereinafter "D-1641") on December 29, 1999. The Decision implements flow objectives for the Bay-Delta Estuary, as a part of the Board's implementation of the 1995 Bay/Delta Water Quality Control Plan.

152. D-1641 imposed a series of restrictions on the use of export pumps to protect fish and wildlife.

153. D- 1641 assigned responsibilities to the persons or entities holding water rights permits to meet specific flow objectives to protect fish and wildlife.

154. One such responsibility was that flow objectives must be met at four different monitoring stations, including the monitoring station at Vernalis.

155. Defendant DWR and Defendant Bureau were specifically charged with meeting the flow objectives on the San Joaquin at Vernalis and Brandt Bridge, and on the Old River near Middle River and at the Tracy Road Bridge.

156. Defendant DWR and Defendant Bureau have repeatedly failed to meet the flow objectives at Vernalis.

157. Scientific data indicates that decreased water outflow in the spring generally injures salmon.

158. Data from recent United States Fish and Wildlife Service San Joaquin smolt survival experiments indicate that there is a statistically significant relationship between water flow at Stockton and the ultimate survival of smolts from Dos Reis or Mossdale to Jersey Point.

159. Defendant Board has failed to enforce the flow objectives as set out in D-1641.

160. Defendant Board has a statutory duty to comply with its own water quality control plan.

161. In light of the Defendants DWR and Bureau's failure to comply with Decision 1641, and Defendant Board's failure to enforce D-1641 as required by law, and the significant likelihood of repeated violations in the future, Defendants DWR and Bureau must be permanently enjoined from continuing to export water from the Bay/Delta until such a time as they fully comply with the requirements of D-1641. If Defendants are not so enjoined, Plaintiffs will suffer irreparable injury for which there is no adequate remedy at law.

162. An actual controversy exists between Plaintiffs on the one hand and Defendants DWR and Bureau on the other regarding the extent to which their export pumping violates the conditions of D-1641, and Defendant Board's duty to enforce D-1641 as against holders of water rights permits. Specifically, Plaintiffs contend and Defendants DWR and Bureau deny that they are in violation of D-1641 by their export pumping in the Bay/Delta, and that Defendant Board has failed to enforce its own order. As an actual controversy exists, Plaintiffs are entitled to, and hereby seek, a ruling that Defendants DWR and Bureau are in violation of D-1641 and that Defendant Board has a duty to enforce D-1641, and has failed to do so.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment as follows:

1. Declare that Defendants' operations have violated the California Public Trust in the Bay/Delta;

2. Declare that Defendants' operations have violated Article 10, Section Two of the California Constitution in that present operations constitute an unreasonable method of diversion from the Bay/Delta;

3. Declare that Defendants' operations have violated Article 10, Section Two of the California Constitution in that application of water to drainage impaired lands within Defendants' service areas on the West side of the San Joaquin valley constitutes an unreasonable use of water from the Bay/Delta;

4. Declare that Defendants' operations have violated California Fish & Game Code § 5937 in that Defendants' upstream dams have failed to release sufficient cold water to keep fish below the dams in good condition;

5. Declare that Defendants' operations have violated the Porter-Cologne Act in that Defendants' have failed to meet the required salinity objectives under the Bay/Delta Water Quality Control Plan;

6. Declare that Defendants' operations have violated the 1995 Water Quality Control Plan narrative standard for salmon in that Defendants' have failed to meet the required doubling of the salmon population under the 1995 Water Quality Control Plan;

7. Declare that Defendants' operations have violated Decision 1641 in that Defendants' have failed to meet flow objectives necessary to protect beneficial uses in the Bay/Delta;

8. Enjoin Defendant DWR from diverting water from the Bay/Delta until such a time as Defendant DWR's operations conform with the law;

9. Enjoin Defendant Bureau from diverting water from the Bay/Delta until such a time as Defendant Bureau's operations conform with the law;

10. Enjoin Defendant Board from allowing operation of state and federal water export projects until such a time that Defendants DWR and Bureau come into compliance with state law

and the Public Trust Doctrine, including the prohibition on unreasonable methods of diversion, California Fish & Game Code section 5937, the Porter-Cologne Act, Decision 1641 and the 1995 Water Quality Control Plan.

11. Direct Defendants to remedy their violations of the California Public Trust, Article 10, Section Two of the California Constitution, the California Fish & Game Code § 5937, the Porter-Cologne Act, Decision 1641 and the 1995 Water Quality Control Plan within a reasonable time;

12. Retain jurisdiction over this matter until such time as Defendants have fully complied with the requirements of California Public Trust, Article 10, Section Two of the California Constitution, the California Fish & Game Code § 5937, the Porter-Cologne Act, Decision 1641 and the 1995 Water Quality Control Plan;

13. Award Plaintiffs their costs of litigation pursuant to California Code of Civil Procedure § 1021.5; and

14. Grant Plaintiffs such other further relief, including injunctive relief, as the Court may deem just and proper.

Dated: December 1, 2008

Michael B. Jackson
Attorney for Plaintiffs
C-WIN, CSPA, and Felix Smith

Julia R. Jackson
JACKSON & TUERCK
Attorney for Plaintiff
C-WIN

Exhibit C

Exhibit C

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MEMORANDUM

DATE: January 26, 2007

TO: J. William Yeates, Esq.

SUBJECT: CITY OF STOCKTON GENERAL PLAN 2035 DRAFT EIR

Background

The City of Stockton has developed a new General Plan intended to provide for expansion of public services through the year 2035 (GPU-2035). In preparing this Plan, the City has relied upon the following documents to justify extension of public water services to the expanded City limits:

- 2005 City of Stockton Urban Water Management Plan Update (Kennedy-Jenks Consultants)
- Chapter 9.0 (Public Facilities & Services), Draft EIR
- Appendix D to Draft EIR (Water Supply Evaluation for the General Plan), Amended May 12, 2006, and Exhibits
- Stockton Delta Water Supply Project Draft & Final EIR (ESA), April, 2005
- Delta Water Supply Project Groundwater Analysis Technical Memorandum (CDM), March 17, 2005
- Delta Water Supply Project Modeling Technical Appendix (MWH), April, 2005
- Background Report, Chapter 9, Public Facilities and Services, December 1, 2006
- Infrastructure Evaluation: Water Supply and Facilities (West Yost), October 28, 2005

Historically, the City of Stockton metropolitan area (COSMA) has met its water supply requirements by total reliance on groundwater. San Joaquin County's groundwater system is the Northeastern San Joaquin subbasin of the larger San Joaquin Valley Groundwater Complex. The largest user in terms of volume of groundwater has been agriculture. Because the volume of groundwater withdrawals has grossly exceeded natural recharge, this subbasin has been classified by the Department of Water Resources as "in a critical condition of overdraft". The actual amount of the overdraft has been estimated by different authorities as 160,000 acre feet/year (San Joaquin County); 200,000 acre feet/year (USA Corps of Engineers); and 150,000 acre feet/year (US Geological Survey). As a result of the overdraft, the basin has lost 1,000,000 acre feet of active storage, and groundwater levels have declined by as much as 100 ft (USACE) over the last 30 to 40 years. The subbasin serves the cities of Ripon, Manteca, Lathrop, Stockton, and Lodi, in addition to agricultural areas generally east

CITY OF STOCKTON GENERAL PLAN 2035 DRAFT EIR

of the urbanized areas. According to the *Eastern San Joaquin Groundwater Management Plan,* "Current and historical groundwater pumping rates exceed the sustainable yield of the underlying groundwater basin on an average annual basis."

As a result of this situation, in 1977, the Stockton East Water District (Stockton East) began to supply treated surface water to the urban area to replace groundwater. At this time, the source of this surface water was the Calaveras River via New Hogan Dam. In approximately 1990, this supply was extended to the north Stockton area. In 1983, Stockton East contracted with the US Bureau of Reclamation for an additional supply of (long-term interim) water from the Stanislaus River; however, Stockton East has not received this supply on a reliable basis each year and has sued the federal government to perfect this right. In addition, Stockton East receives excess water from the Stanislaus River under a temporary contract with Oakdale and South San Joaquin Irrigation Districts.

Existing Water Sources

Firm water sources available at this time to support the increased water demands described in the City of Stockton's General Plan 2035 Draft EIR are as follows:

- Surface Water via Stockton East Water District (Second Amended Agreement) – 20,000 acre feet/yr

Non-firm supplies being relied upon by the City of Stockton's urban water suppliers to meet demand:

- Groundwater basin (currently in critical overdraft). In my professional opinion the existing groundwater basin cannot be considered a firm water supply for the City's authorized growth under GPU-2035 since it has been found by the Department of Water Resources to be in critical overdraft.
- Surface water supplied from Stockton East from the Stanislaus River under contract from the US Bureau of Reclamation – quantity varies from 0-35,000 acre feet/yr
- Surface water supplied from Stockton East from the Stanislaus River under contract from OID/SSJID – quantity varies from 8-30,000 acre feet/yr

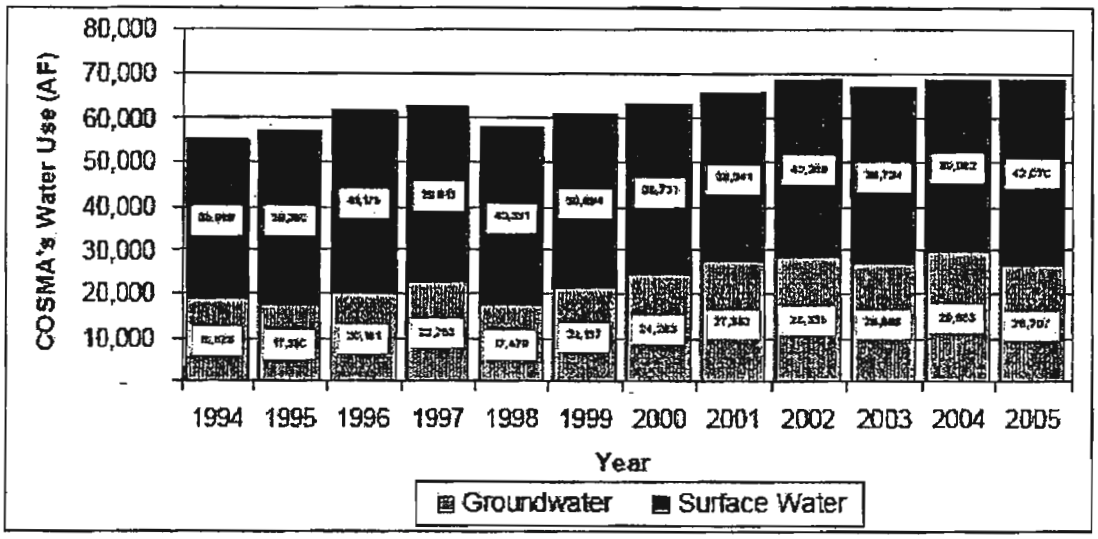
Existing Water Demands

Water use for the COSMA has varied over the years, consisting of a mix of groundwater and surface water supplied by Stockton East. Average use of surface water over the last twelve years has been 39,527 acre feet per year, as reported by the City of Stockton. During this same period, an average of 23,422 acre feet per year of groundwater has been used (see Figure 6, from the *General Plan 2035 Update Water Supply Evaluation*, reproduced below).

CITY OF STOCKTON GENERAL PLAN 2035 DRAFT EIR

Average total COSMA water demand is therefore 62,949 acre feet per year, and the 2005 water year use is 68,777 acre feet. Although the Stockton East Water District has been able to consistently supply to the COSMUD almost 20,000 acre feet per year is in excess of its firm supply, this amount cannot be relied upon in extended drought cycles, and should therefore not be allocated to new developments. Also, COSMA urban uses have been contributing to the existing groundwater basin overdraft by an average of over 23,000 acre feet per year. This amount represents at least 10% of the existing Eastern San Joaquin groundwater basin overdraft.

Figure 6. Historical COSMA Water Supply from Groundwater and Surface Water



Not accounted for in the above water use statistics is water used within the COSMA by agriculture, which amounts to approximately 17,000 acre feet of groundwater per year. Figure 6 should be corrected to reflect this additional 17,000 acre feet per year of groundwater use. Therefore, including agricultural use, the total overdraft within the COSMA is closer to 40,000 acre feet per year.

Delta Water Supply Project

In 1996, the City of Stockton submitted an Application to the State Water Resources Control Board (SWRCB) for the right to divert water from the San Joaquin River Delta. The intent of the Application was to correct existing supply deficiencies and provide sufficient supplies to support the population projections of the 1990 General Plan, and anticipated growth in water demands to 2050. The Application was later bifurcated to request water rights sufficient to

CITY OF STOCKTON GENERAL PLAN 2035 DRAFT EIR

support only the requirements anticipated in the 1990 General Plan. This right was requested in accordance with Section 1485 of the Water Code, which provides that the City of Stockton has the right to obtain water from the Delta in an amount roughly equal to the amount of reclaimed water discharged to the Delta via the San Joaquin River. Any future needs above this amount must be the subject of a future Application process. In December, 2005, the SWRCB issued a Permit to the City to divert up to a maximum of 33,000 acre feet per year, subject to Standard Term 91 and other conditions. Standard Term 91 is imposed by the SWRCB to prevent diversions whenever the diversion would require the release of State or Federal Project water. This means that, if the State or Federal projects are required to release water to keep the Delta in balance, in consideration of existing exports and inbasin uses, the City (or other Term 91 users) must curtail diversions. Also, the City must curtail diversions to protect Delta Smelt and other protected species.

Based upon the *City of Stockton Delta Water Supply Project Modeling Technical Appendix*, Tables 4-5, 4-13, and 4-20; for the majority of the time that Stockton proposes to divert at either the current Permitted 30 MGD level, or at the projected 160 MGD level, the Delta is in a "balanced" condition. Quoting from this report, at page 4-13: "Balanced water condition diversions must be off-set by a corresponding increase in Delta inflow from CVP-SWP storage release, or a reduction in CVP-SWP exports." Therefore, under Term 91, the **City will be unable to divert water at these times.** The additional yields noted by the Water Supply Assessment for the Delta Water Supply Project to meet immediate, foreseeable and long-term demands will not be available at the levels indicated, and should not be included in the determination of sufficiency.

Water Production Estimates

The GPU-2035 Programmatic Environmental Impact Report (DPEIR), Chapter 9, the Appendix D Water Supply Evaluation for the General Plan, and Chapter 9 of the Background Report consistently overstate the water production from the existing and proposed water treatment facilities by confusing capacity with production. A water treatment facility cannot produce treated water up to its design capacity on a consistent basis due to operational considerations, even if there is a consistent incoming water source of supply. For example, filters are taken off line routinely for backwashing. Equipment malfunctions or fails and must be repaired. Routine maintenance of all of the facilities is required to keep them operating efficiently. For planning purposes, it should not be assumed that a water production facility can be more than 75% efficient. This means that, for a 45 MGD water treatment plant, the facility owned and operated by Stockton East, only 34 MGD can be produced on a long-term, reliable basis. This compares favorably with actual statistics from Stockton East, and shows that the District is doing a first-class job in maintaining their water treatment plant. Therefore, the total water production estimates given in the referenced documents is overstated by 25% and must be reduced accordingly. Also, the analysis in the City's *Water Supply*

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Evaluation for the General Plan assumes that capacity of the Stockton East Water Treatment Plant will be increased to 60 MGD by 2016, and a production amount of 66,000 acre feet is assumed. This amount, which should be reduced to 49,500 acre feet/year for the reasons noted above, is highly speculative and requires that Stockton East acquire new water rights from the SWRCB, or that Stockton East is successful in the outcome of a pending lawsuit with the Federal Government over their Reclamation Contract, or both. In my professional judgment, this type of speculation has no place in a water supply assessment, and is not allowed by the statute.

Additional Water Supplies Necessary to support Planned Growth

The several technical reports cited above which are intended to justify the sufficiency of water supplies necessary to support the growth projections of the DPEIR rely on overstated water production from existing and new water treatment plants, and highly optimistic assumptions of the availability of water sources and allocation of additional water rights. In my professional opinion, reliance on these documents is highly inappropriate. The DPEIR must undertake a rigorous analysis of supply and demand and resource limitations. According to the *Background Report*, at page 9-29, the average per capita water use in the COSMA is 0.25 acre feet/capita/year. Therefore, the current population supported by the COSMA water system is 276,000 persons. In accordance with Table 14-3 of the DPEIR, utilizing the preferred Alternative #2, the 2035 Buildout population level of 580,000 persons is derived. This leads to a 2035 average water demand of 145,000 acre feet, whereas the *Water Supply Evaluation*, at page 39, uses 156,083 acre feet per year. This also exceeds the average water demand projected in the City's *Delta Water Supply Project Draft EIR*. In order to meet this average water demand, the COSMA will have had to develop about 90,000 acre feet of new water supplies, on average, per year. Considering the fact that the COSMA now has only 20,000 acre feet per year of **firm** water supplies to rely on, by 2035, COSMA will be exceeding firm supplies by 136,000 acre feet per year. While the City of Stockton and the Stockton East Water District are engaged in a number of activities to develop additional water rights for additional water supplies to serve COSMA, there is no assurance whatsoever that any additional water rights will be obtained for either expanding the Delta Water Supply Project as planned, or for expanding the Stockton East Water Treatment Plant as assumed in the *Water Supply Evaluation*. This means that the additional 136,000 acre feet per year required to support growth contemplated in GPU-2035 must come from groundwater, which is seriously overdrafted.

Setting aside the issue of **firm** water supplies for a moment, let's assume for purposes of argument that, on average, the COSMA continues to receive its allotment from Stockton East Water District, and that Stockton East Water District does expand its Water Treatment Plant to 60 MGD by 2016. Let's also assume that the City is able to pump 50% of the time from the Delta (even though its own analysis indicates this will not be possible due to "balanced

conditions" prohibitions). Under these most favorable conditions, this means that a total of 61,875 acre feet of surface water will be available, on average, to meet a COSMA demand of 156,083 acre feet, and the remaining demand of 94,208 acre feet must come from the existing overdrafted groundwater basin.

Impact on Groundwater Basin

As previously noted, the Eastern San Joaquin Groundwater Basin is in a "critical condition of overdraft." As noted by the Stockton East in its September 8, 2004 letter in response to the City's NOP, the City needs to acknowledge in its analysis that the Eastern San Joaquin Groundwater Basin is one basin that does not have a barrier that divides the agricultural areas from the urban areas. Even though some of the urban area monitoring wells show an increase in groundwater elevations, the basin as a whole is still in critical overdraft, and therefore cannot be counted upon as a firm source of water until the basin is in hydrologic balance. Also, the DPEIR does not acknowledge the fact that other San Joaquin County cities, including Ripon, Lathrop, Manteca, and Lodi all rely heavily on groundwater use, and that significant growth is also occurring in these cities. The City of Stockton must include its current and planned uses of groundwater with those of all San Joaquin County cities to determine what impact all cities, including Stockton, will have on groundwater availability. There are no estimates in any of Stockton's documentation that attempt to quantify the groundwater demands of the other cities overlying the Eastern San Joaquin Groundwater Basin. This is a serious flaw in the analysis, because it underestimates the City's significant adverse direct and cumulative impacts on regional groundwater supplies.

The *Stockton Delta Water Project Draft EIR*, at page 5-18, presents graphic illustrations of the effect this additional pumping will have on groundwater.

Figure 5-5 of this report, reproduced below, illustrates the simulated responses to the groundwater basin represented by six wells located in and around the COSMA. This figure shows that, despite the City's claim that the portion of the groundwater basin under the COSMA is at "equilibrium", groundwater levels have continued to decline, and the rate of decline is increasing. Unless substantial amounts of surface water are imported into the COSMA to reduce groundwater pumping and offset this trend, growth contemplated by the DPEIR will cause an even more rapid decline in groundwater levels. Declining groundwater levels will result in (1) increased pumping costs for all existing residential, commercial, agricultural and industrial users due to increased hydraulic lift; (2) decreased yields due to decreased aquifer saturated thickness, and (3) greater tendency for eastward migration of saline water from the west due to a steeper hydraulic gradient. Eastward movement of salinity will threaten and eventually eliminate many existing municipal wells on the westward edge of the COSMA as salinity exceeds the maximum contaminant levels set by the State for drinking

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water.

There is a further complication to this issue which has been completely ignored by the DPEIR. The Plan contemplates the urbanization of 24,160 acres of what is now agriculture/open space. This open space is now available for naturally occurring infiltration/recharge of rainfall. Once 24,160 acres of open space is converted to urban uses, this amount of open space will be hydrologically lost to the system, and will result in less recharge to the groundwater basin. The Eastern San Joaquin Groundwater Banking Authority, in cooperation with a number of water agencies, has been attempting to develop recharge projects on available agricultural/open space land. Reduction of 24,160 acres of land available for recharge projects will further exacerbate the overdraft by making less land available for these projects. Additionally, urban area runoff is a source of a multitude of contaminants that should not be recharged to groundwater.

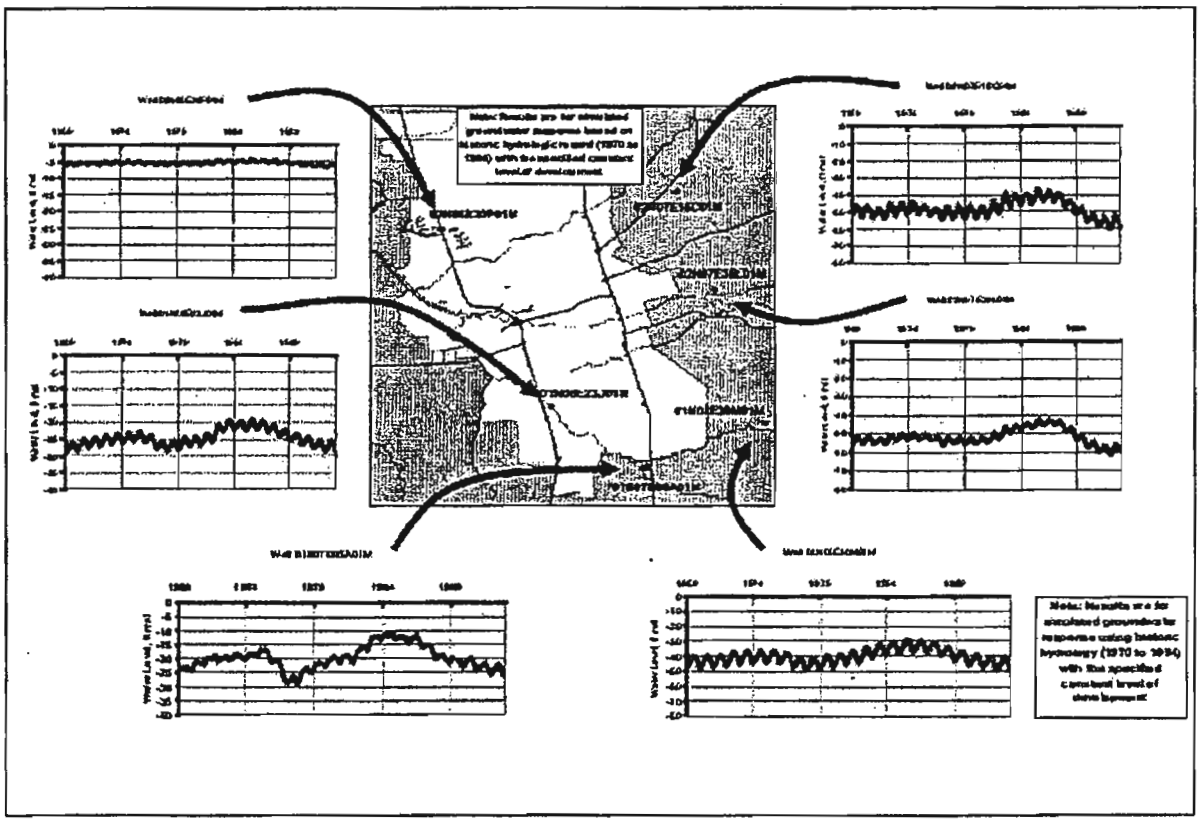
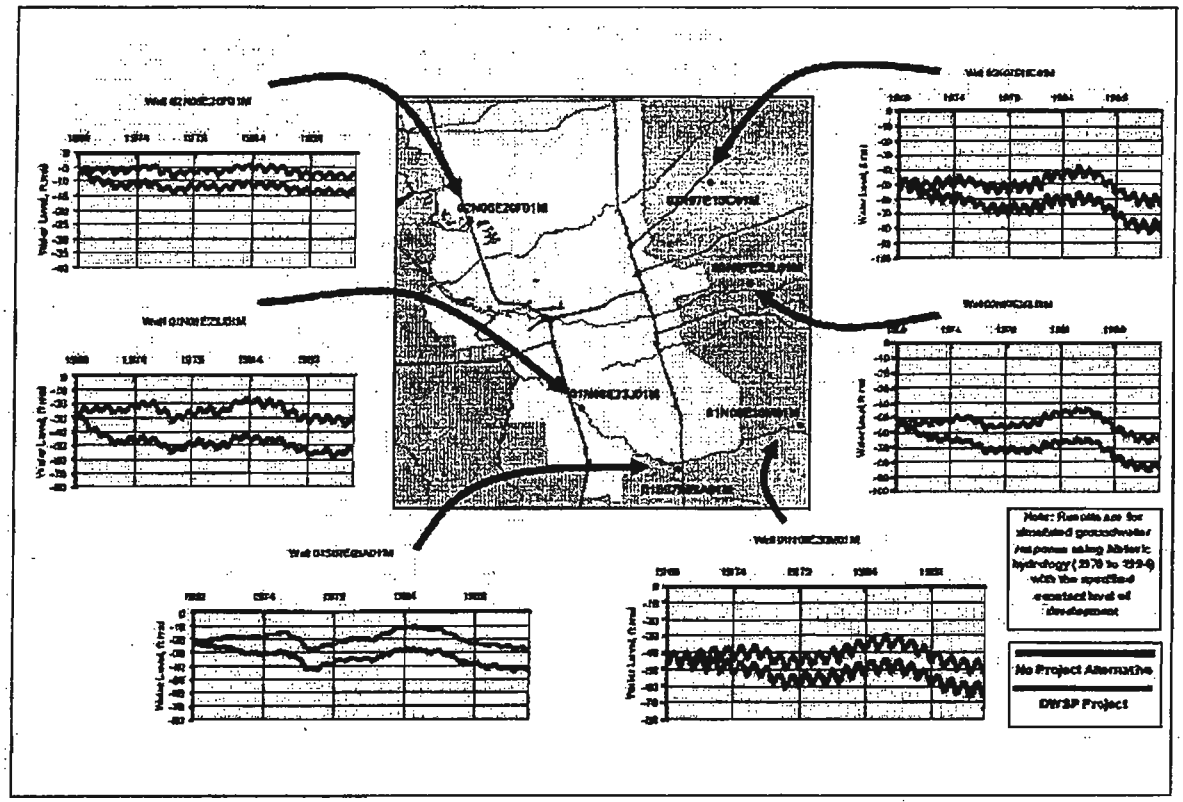


Figure 5-5

Figure 5-7 reproduced below illustrates the effect on groundwater if growth contemplated in the GPU-2035 continues until 2050. Also illustrated is the effect of the importation of surface water developed from the proposed Delta Water Supply Project at the Delta Water Supply's

ultimate development. This figure shows that, even in the unlikely event of full development of the water supply contemplated by the Delta Water Supply Project, groundwater levels will continue to decline, although, of course, groundwater levels would be significantly improved by the addition of this surface water. However, as noted above, it is **highly unlikely** that the City will ever be able to achieve the level of importation of Delta water contemplated and desired, due to the restriction on pumping during "balanced conditions" in the Delta. Furthermore, the figure assumes that the City will be able to recharge the groundwater aquifer with any surface water pumped from the Delta and not immediately needed by water users within COSMA. The City does not have the rights for this additional water over and above the Phase I Project, nor does it have the right to store this water underground, or have any project or system contemplated to do this. Therefore, what can only be predicted from the impact of population growth projected from the GPU-2035 is an average of a 20 foot decline in groundwater levels by 2050.



SOURCE: CDM, 2005; and Environmental Science Associates, 2005

Figure 5-7
Simulated Groundwater Level Response
Comparison of Project and No Project – 2050 Cumulative Conditions

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The USGS has evaluated groundwater in wells in the Eastern San Joaquin County subbasin of the Central Valley Groundwater Basin and has published a report if its findings (Open File Report 2006-1309). They have found that water levels have declined, and chloride concentrations have increased in a number of public supply, agricultural and domestic wells in this area. Many of the wells now exceed the USEPA Secondary maximum Contaminant Level for chloride of 250 milligrams per liter. The USGS found that the high chloride levels have been found further to the east since measurements began to be taken in 1984. While the USGS found a number of sources for the high chloride water found in wells, lowering of the ground water table by pumping in excess of natural recharge has and will continue to exacerbate the problem.

Agricultural Credits

In the *Water Supply Evaluation,* at Page 45, the City introduces the concept of "Agricultural Credits." The City attempts to justify this by stating that this "acknowledges that the groundwater basin was being used for agriculture prior to urbanization." To account for this prior agricultural pumping, the City uses a "credit" of not to exceed 1.0 acre foot per acre per year as a firm yield from the groundwater basin in these areas. In my professional opinion, there is absolutely no merit to this argument, and it runs completely contrary to what the City says it is trying to achieve by setting a "target" yield from the groundwater basin of not more than 0.6 acre feet per acre per year. As noted above, the groundwater basin is in a critical condition of overdraft. This has resulted from all users exceeding the safe yield of the groundwater basin. In the case of a basin in critical overdraft, no "credit" can be assumed by converting from one groundwater use to another.

The basic flaw in the analysis of "groundwater credits" can be taken from Exhibit "F" to the *Water Supply Evaluation,* at Page 1. This report states that "If any one of these groundwater extractors are [sic] removed or are [sic] taken off of groundwater there is a recognition that, if *groundwater elevations are acceptable today* [my emphasis] and the *groundwater basin is in a state of equilibrium,* [my emphasis] that groundwater pumping can continue at the same rate without further impacting the groundwater basin". The report goes on to state that the City is interested in reducing reliance on groundwater over time and wishes to target groundwater use to below today's level.

In my professional judgment, the Consultant who prepared Exhibit "F" used questionable assumptions as input to the "IGSM" model to derive a "credit" for COSMA groundwater firm yields due to lack of definitive data on cropping history and actual groundwater extractions. This will result in further degradation of the groundwater basin, and result in extractions of groundwater by the City far in excess of what the City considers firm groundwater yields. Records of groundwater production in the agricultural areas proposed for urbanization are

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either not available or not accurate. COSMA should therefore not use "agricultural credits" in any calculation of groundwater yield. The intent of this proposed action by the City is clear on Page 5 of Exhibit "F" by the statement: "the COS wishes to take some credit for this benefit by extracting a greater amount of groundwater until recharge technologies or more surface water becomes available to replace this need". In my professional opinion, this statement meets the classic definition of a "mining" of groundwater, and application of this "credit" by the City will result in an adverse impact on the groundwater basin.

MORRIS L. ALLEN, P.E.
CONSULTING CIVIL ENGINEER

CURRICULUM VITAE
MORRIS L. ALLEN, P.E.

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San Jose State University, San Jose, California: M.S. in Civil Engineering with an emphasis in Water Resources Management.

Registration:

Registered Professional Engineer (Civil), State of California

Certified Grade T5 Water Treatment Operator, State of California

Memberships:

American Society of Civil Engineers

American Water Works Association

American Public Works Association

International Association of Environmental Engineers

Water Environment Federation

California Water Environment Association

Summary of Background and Experience:

Over 36 years of progressively more responsible professional experience in civil engineering disciplines, including design, construction management, contract administration, facilities operation and management, management of various civil works, including flood control, watershed management, forestry, industrial complexes, public housing, sewage collection, treatment and disposal, stormwater systems, water supply, distribution and treatment, and other public utility systems.

Current Employment:

Civil Engineering consultant (sole proprietorship) in water supply, treatment and distribution, wastewater, sewage disposal systems; and utility and stormwater

management and operations. Legal consulting and expert witness testimony in cases pertinent to experience.

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** SYNOPSIS OF PROFESSIONAL POSITIONS **

MORRIS L. ALLEN, P.E.

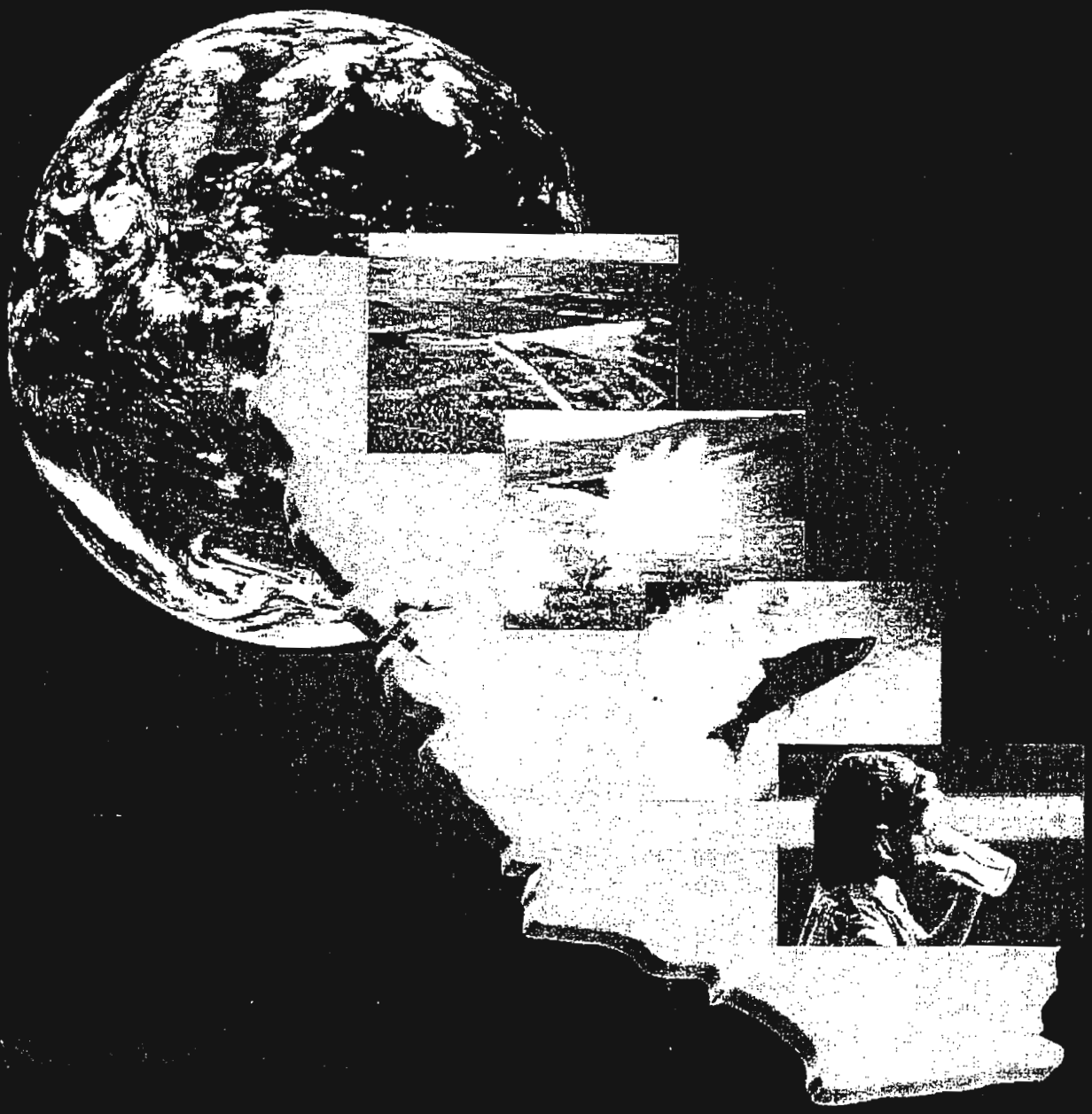
Employer	Date	Position	Responsibilities
Self-employed	January, 2003 to present	Consultant	Expert Witness; Civil Engineering; water, sewer, stormwater
City of Stockton	August, 1986 to December, 2002	Director of Municipal Utilities	General management of metropolitan regional water, sewage and storm drainage utility
City of Santa Cruz	October, 1974 to July,	Director of Water	Full responsibility for

	1986	Department	management and direct-ion of a major regional retail water utility
Tahoe City Public Utility District	October, 1971 to September, 1974	Chief Engineer and Assistant Manager	Responsible for all aspects of engineering program for a public water and sewer utility including maintenance and operations
Santa Clara Valley Water District	January, 1970, to September, 1971	Assistant Division Engineer	Construction contract administration and contract management
U.S. Navy Civil Engineer Corps	January to December, 1969	Assistant Director, Danang Design Division	Management and coord-ination of military design office in Vietnam
U.S. Navy Civil Engineer Corps	April, 1967 to December, 1968	Assistant Public Works Officer	Management of large and complex public works facility for Weapons Station and Polaris Missile Base
Santa Clara Valley Water District	December, 1964 to September, 1966	Assistant Civil Engineer	Construction Contract admin and design of flood control projects

Exhibit D

Exhibit D

Progress on Incorporating Climate Change into Management of California's Water Resources



July 2006
Technical Memorandum Report
California Department of Water Resources

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Published July 2006

Cover design by Jamie Anderson, Delta Modeling Section.

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Progress on Incorporating Climate Change into Planning and Management of California's Water Resources

Technical Memorandum Report

July 2006

Department of Water Resources

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The Resources Agency
Mike Chrisman, Secretary for Resources

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1.2 Climate Change and California's Water Resources

California water planners are concerned about climate change and its potential effects on our water resources. More than 20 million Californians rely on two massive water projects: the State Water Project (SWP) and federal Central Valley Project (CVP). These complex water storage and conveyance systems are operated by DWR and the Bureau of Reclamation (Reclamation) for water supply, flood management, environmental protection and recreational uses.

The ability of the SWP and the CVP to meet the water demands of its customers and the environment depends heavily on the accumulation of winter mountain snow melting into spring and summer runoff. A warming planet may reduce this natural water storage mechanism. Projected increases in air temperature may lead to changes in the timing, amount and form of precipitation – rain or snow, changes in runoff timing and volume, sea level rise effects on Delta water quality, and changes in the amount of irrigation water needed due to modified evapotranspiration rates.

1.3 DWR-Reclamation Climate Change Work Team

In the past, climate change was typically considered qualitatively in the planning process. Legislative mandates in California including Executive Order S-3-05 and the latest update to the California Water Plan (Bulletin 160) call for more quantitative assessments of climate change effects. To address these concerns, DWR and Reclamation formed a joint Climate Change Work Team to provide qualitative and quantitative information to managers on potential effects and risks of climate change to California's water resources.

The mission of the Climate Change Work Team is to coordinate with other State and federal agencies on the incorporation of climate change science into California's water resources planning and management. The team will provide and regularly update information for decision-makers on potential impacts and risks of climate change, flexibility of existing facilities to cope with climate change, and available mitigation measures.

In water resources planning, climate change studies often focus on what might happen without providing information about how likely it is to happen. A major long-term objective of the Work Team is to extend impacts analysis to include likelihoods associated with each climate change effect. In order to meet this objective, the Work Team set these goals:

- ❑ Build coalitions with experts in climate change and seek their guidance in estimating risk of climate change effects
- ❑ Support mandates on climate change
  - Governor's Executive Order S-3-05, June 1, 2005
  - California Water Plan Bulletin 160
- ❑ Assess impacts to operations of the SWP and CVP for several climate change scenarios
- ❑ Assess risk for the SWP and CVP systems based on impact studies and estimates of impact likelihood
- ❑ Evaluate risk-mitigation options

2.3 The Role of Water Management and Use in Greenhouse Gas Emissions

2.3.1 Executive Order S-03-05

Executive Order S-3-05, signed by Governor Arnold Schwarzenegger June 1, 2005, establishes aggressive greenhouse gas emission reduction goals for California. These goals are:

- by 2010, reduce emissions to 2000 levels
- by 2020, reduce emissions to 1990 levels
- by 2050, reduce emissions to 80 percent below 1990 levels

Since water management and use are a significant part of California's energy matrix, both in terms of energy generation and consumption, they are an important consideration in meeting the emission reduction goals established by the Governor.

2.3.2 Water Supply and Treatment

In the draft "Statewide Assessment of Energy Used to Manage Water," the California Energy Commission estimated that an average of about 44 million tons of carbon dioxide is emitted into the atmosphere each year to provide water in California. Any reductions in energy consumption related to water will help the State meet its greenhouse gas reduction goals.

California's aqueduct systems are one of the larger users of electricity in the State. Other significant uses of electrical power related to water in California include:

- pumping groundwater from wells
- treating drinking water
- delivering of water to consumers through local distribution systems
- treating wastewater and wastewater reclamation.

Diesel, gasoline, and natural gas-powered pumps are used for some water supply and treatment operations. Diesel-powered pumps are most prevalent in agriculture.

End uses of water also result in the consumption of electrical energy and natural gas, such as heating of water for domestic, commercial, and industrial operations. Various industrial processes that use water also result in energy consumption.

2.3.3 Hydroelectric Power

Hydroelectric power is generated at most publicly-owned water supply reservoirs in California and at many privately-owned reservoirs. Hydroelectric power is also generated by run-of-river hydroelectric plants and by power recovery plants along aqueducts and water distribution systems. Most of California's hydroelectric power is produced in the Sierra Nevada and Cascade

California's coastline is about 1,075 miles in length, not including inland bays, estuaries and offshore islands. The State's coastal features include broad coastal plains and wide beaches in much of Southern California. Extensive stretches of mountainous and rugged coastline occur in the central and northern parts of the State, along with more limited coastal plains than those in Southern California. California's coastal topography is shown in Figure 2-18. The State's coastline also includes major inland bays and estuaries, including the San Francisco Bay and the Sacramento-San Joaquin River Delta (Delta), as shown in Figure 2-19.

Future sea level rise, while projected to be a relatively slow and gradual process, presents a somewhat alarming prospect for California, especially in the case of the more extreme projections. The effects of sea level rise will include:

- increased erosion of beaches, bluffs and other coastal features
- inundation of coastal land and marshes
- local flooding near the mouths of rivers and streams due to backwater effects (especially on coastal plains)
- increased potential for sea water intrusion into coastal aquifers
- increased sea water intrusion into estuaries, including the Sacramento-San Joaquin River Delta
- increased potential for levee failure in the Delta
- potential adverse impacts on flow control and diversion facilities in the Delta
- inundation and critical alteration of aquatic ecosystem habitat development projects in the Delta

Of the effects listed above, perhaps the most significant from the standpoint of the State's water resources are increased sea water intrusion and increased potential for levee failure in the Delta. Increased sea water intrusion into the Delta threatens the operations of the State Water Project and the Central Valley Project, as well as other Delta water supply diversions due to water quality degradation. Water quality degradation in the Delta also potentially threatens the Delta's fragile ecosystem, which supports threatened and endangered species. Finally, increased sea water intrusion into the Delta could threaten some groundwater supplies through the interaction of Delta waters with underlying and adjoining portions of the Central Valley groundwater basin.

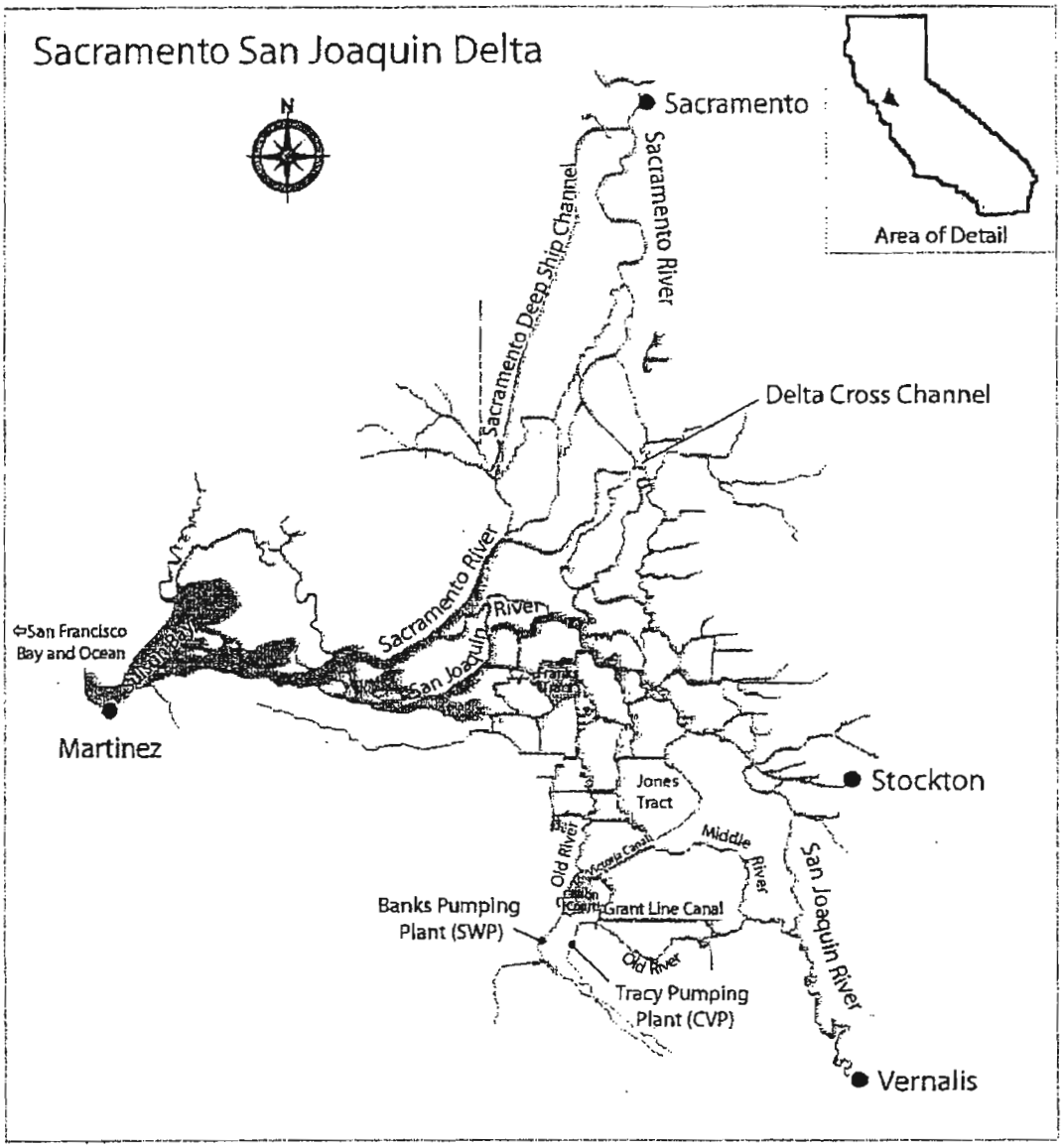

Figure 2-31 Sacramento-San Joaquin River Delta

The islands and tracts of the Delta are protected from the constant threat of inundation by about 1,100 miles of levees. Levee failure can occur due to seepage, piping, slippage, subsidence, sloughing or earthquakes, even during dry weather. Levee failure impacts include potential loss of human life, irreparable harm to the Delta's fragile ecosystem and its listed and endangered species, disruption of utilities and highways and water supply disruption. Water supply disruption can occur when levee failure and island flooding cause salinity levels in the Delta to increase to unacceptable levels due to:

- large amounts of saline ocean water to being drawn into the Delta from the San Francisco Bay, and
- increases in the volume of the Delta's tidal prism and resultant increases in the tidal exchange of saline water in the Delta.

Once a levee fails in the Delta and island flooding occurs, salinity conditions can take weeks or even months to return to normal, depending on the amount and location of levee failures and hydrologic conditions.

2.6.2.3.1 Future Increased Risk of Flooding in the Delta Due to Land Surface Subsidence and Climate Change

Flood risk in the Delta is increasing with time due to land surface subsidence and sea level rise. Land subsidence and sea level rise also increase the consequences of levee failure.

As mentioned earlier, worldwide average sea level rise is projected to be about 0.3 of a foot to 2.9 feet from 1990 to 2100 (IPCC, 2001a). Rising sea levels are likely to have a direct effect on water levels in the Delta because the bottom of essentially all Delta channels and waterways are at or below current mean seal level. Rising sea level will cause backwater effects upstream of the Delta.

Global sea level rise combined with short-term or episodic factors that increase sea level and water levels in the Delta will reduce available levee freeboard unless levees are raised. Short-term and episodic increases in water levels in the Delta include high river flows, ocean/atmosphere phenomena such as El Nino's, storm surge, barometric high tides and high astronomical tides (particularly during perigee, perihelion, and either new or full moon). Figure 2-32 illustrates the relative impact that sea level rise will have on astronomical tides in the Delta. An especially high level of risk would occur if several periodic events were to occur at the same time in the Delta.

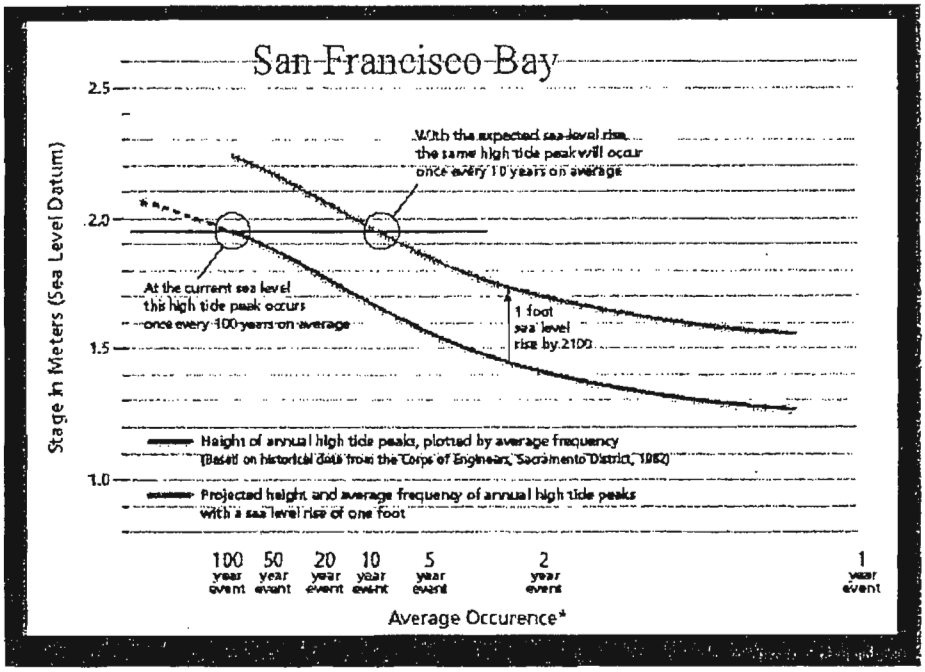

Figure 2-32 Impact of One Foot of Sea Level Rise on the Relative Effect of Astronomical Tides in the Delta

Source: Lawrence Berkeley National Lab (Miller, 1998).

Climate change may affect the magnitude and frequency of flood flows entering the Delta. In their paper on the potential impacts of climate change on California hydrology, Miller and others (2003) present peak river flow data based on climate change simulations. These data show an increased probability of higher annual peak flows for Central Valley rivers. These potential increased flows have yet to be quantified with any confidence. Higher flows will lead to higher water surface elevations in the Delta, especially in its upper reaches.

Ocean temperature anomalies, such as an El Nino, can cause a short-term rise in sea level along California's coast and thus increase water levels in the Delta. For example, the maximum water surface anomaly associated with the 1997-1998 El Nino event increased the level of the ocean along California's coast between about 0.6 to 0.8 of a foot during January 1998 (Bromirski, 2005). This level of rise was due to a combination of steric effects and poleward propagating, coastally-trapped waves. Climate change may increase the frequency or duration of El Nino events (Wara, 2005), although there is a significant amount of uncertainty about possible changes in the nature and occurrence of temperature anomalies in the Pacific as the result of climate change (Kerr, 2005).

Wind driven storm surge can also increase water surface elevations in the Delta. Stronger winds associated with some winter storms would lead to even greater changes in water surface

elevations. Such changes are a function of channel geometry and the distance of open water with respect to wind direction, referred to as "fetch."

Subsidence also must be considered as a risk to Delta levees. The surfaces of many of the Delta's islands and tracts are dominated by soils rich in peat. Peat is a complex organic material that is principally composed of degraded plant matter. Subsidence in the Delta primarily occurs when peat soils are exposed to oxygen and undergo microbial decomposition due to agricultural practices. Subsidence also occurs when peat soils are lost by wind erosion and occasional peat fires. The peat soils of the Sacramento-San Joaquin Delta have subsided at rates of up to about 2 inches per year in the past. Subsidence rates have been the highest in the central Delta islands (Mount, 2004).

Subsidence increases the threat of flooding in the Delta by increasing the differential forces that levees experience. Subsidence also increases the volume of water that can inundate an island or tract when a levee fails. Together, the continued subsidence of Delta islands and rising sea level pose a double-sided threat for Delta levees and flooding. Other factors such as possible increases in peak river flows as the result of climate change further increase the threat to Delta levees.

2.7 Future Water Demand

California's water supply future will be determined by two principal factors, the condition of the State's water resources and water demand. Climate change will likely have a significant effect on California's future water resources, as discussed elsewhere in this report. Climate change will likely also have an effect on future water demand. However, many other factors such as population, land development and economic conditions that are not directly related to climate change will also affect future demand. Table 2-7 provides a summary of some of the potential effects of climate change on future water demand. Table 2-8 lists selected factors that could affect future water demand that will not be directly affected by climate change.

Today there is much uncertainty about future water demand, especially those aspects of future demand that will be directly affected by climate change and warming. While climate change is expected to continue through at least the end of this century, the magnitude and, in some cases, the nature of future changes are uncertain. This uncertainty serves to complicate the analysis of future water demand, especially where the relationship between climate change and its potential effect on water demand is not well understood.

Of the water demand factors that could be directly affected by climate change, potential changes in evapotranspiration, agronomic practices, and environmental water demand might be the most significant for California. Of the changes in demand not directly affected by climate change, changes in demand related to population growth and technological innovation could be the most significant. The following discussion is mostly limited to these aspects of future water demand. Chapter 7 provides additional discussion on evapotranspiration and possible changes in evapotranspiration due to climate change.

5 Preliminary Climate Change Impacts Assessment for the Sacramento-San Joaquin Delta

5.1 Introduction

The Sacramento-San Joaquin Delta is a dynamic network of natural and man-made channels. Freshwater from the southward flowing Sacramento River and from the northward flowing San Joaquin River converge with salty tidal flows from San Francisco Bay (Figure 5.1). Historically the Delta was a vast marsh. After the Gold Rush, farmers began building levees in the Delta to reclaim farmland. After years of farming, many of the Delta islands have subsided and are currently below sea level. Today the Delta consists of 57 leveed islands and more than 700 miles of sloughs and channels. This complex ecosystem is home to more than 500 species, including 20 endangered species such as the Delta smelt and salt harvest Suisun Marsh mouse. The Delta is also part of the migration path of young salmon heading out to the ocean and for adult salmon returning to spawn in their natal streams.

The Sacramento-San Joaquin Delta can be considered the hub of California's water supply system. About two-thirds of Californians and millions of acres of farmland rely on water from the Delta. Pumping plants in the south Delta are integral components for water distribution to central and southern California from the State Water Project (SWP) and the federal Central Valley Project (CVP). The Delta also provides local water supply for municipal and industrial and agricultural uses. The Delta supports more than $500 million in annual crop production (DWR, 2006).

The Sacramento River provides most of the freshwater inflow into the Delta (Figure 5.2). From 1980-1991, on average nearly 25 percent of the freshwater inflows to the Delta were used for municipal, industrial and agricultural water supplies, while the remaining 75 percent flowed to San Francisco Bay as Delta outflow. The actual distribution of Delta inflows varies from year to year depending on factors such as the amount and timing of precipitation and operations of upstream reservoirs.

Climate change could affect the Delta water balance shown in Figure 5.2. Warmer air temperatures are expected to shift the timing and form -- rain or snow -- of winter precipitation (see Chapter 2 and Chapter 6). Less snowpack would lead to less spring runoff. These shifting precipitation and runoff patterns would affect reservoir operations and Delta exports (see Chapter 4). Since the major inflows into the Delta are controlled by reservoir releases, Delta inflow patterns would be affected as well. More changes to reservoir releases and Delta exports might be required for compliance with Delta water quality standards. Changes in crop evapotranspiration rates could affect the amount of water needed for agricultural uses (see Chapter 7).

Future projected sea level rise would also affect the Delta. Higher water levels could threaten Delta island levees. Increased saltwater intrusion from the ocean could require increased freshwater releases from upstream reservoirs to maintain compliance with Delta water quality standards.

Exhibit E

Exhibit E

CALAVERAS COUNTY WATER DISTRICT

BUSINESS OFFICE
423 East St Charles Street
Post Office Box 846
San Andreas, California 95249
(209) 754-3543
Fax (209) 754-1069

VIA U.S. MAIL AND FAX (209) 937-8893

January 26, 2007

City of Stockton
c/o Community Development Department
Planning Division
345 N. El Dorado Street
Stockton, CA 95202

Re: Calaveras County Water District Comments on Draft Environmental Impact Report, City of Stockton 2035 General Plan and Infrastructure Studies Project.

To Whom It May Concern:

Calaveras County Water District ("CCWD") appreciates the opportunity to comment on the Draft Environmental Impact Report for the City of Stockton's 2035 General Plan and Infrastructure Studies Project ("Draft EIR"). On March 22, 2006 CCWD submitted a request to be included on the distribution list for the Draft EIR (copy attached), but was inadvertently left out of the distribution. Please add CCWD to the distribution list for future documents related to the General Plan.

The Draft EIR, Appendix E, attaches a Water Supply Evaluation ("WSE"),[1] which is presented as meeting the requirements for "water supply assessments" as set forth in the California Water Code, §§10910 *et seq.* The WSE is circulated with the Draft EIR pursuant to Water Code §10911. This provision also requires the City to determine whether projected water supplies will be sufficient to satisfy the demands of the project, in addition to existing and planned future uses if the City determines that water supplies will not be sufficient, the City must include that determination in its findings for the project.

Availability of New Hogan Water Supplies

CCWD would like to take this opportunity to correct substantial inaccuracies contained in the WSE discussion of CCWD's water supplies and the availability thereof to Stockton East Water

[1] Exhibits to the WSE are identified in the table of contents for the WSE, but are not available in the on-line document reviewed by CCWD.

District ("SEWD"), and thence to City of Stockton municipal area users. Specifically, at p. 15 and Table 3 the WSE alludes to two types of CCWD-related water supplies:

> (1) water available to SEWD under contracts with the U.S. Bureau of Reclamation and Calaveras County Water District for water developed through the New Hogan project (identified in the WSE at a year 2035 quantity of 12,000 acre-feet); and
>
> (2) water available to SEWD under Calaveras County Water District "appropriative rights," called "unused CACWD rights" (identified in the WSE at p. 15, Table 3 at a year 2035 quantity of 10,000 acre-feet; at p. 56, Table 12 at a year 2035 quantity of 3,000 acre-feet).

There are at least two major problems with this discussion: First, SEWD does not have access to any CCWD appropriative rights. At present, the only water supply agreement between SEWD and CCWD pertains to contractual entitlements to New Hogan supplies for which the appropriative water rights are presently held by the U. S. Bureau of Reclamation ("Reclamation"). Second, although it is true that CCWD is not currently using its full New Hogan entitlement, and that SEWD may use some of this water on a temporary, year-to-year basis, CCWD may require that water at any time, and will use its full New Hogan entitlement in the future. Accordingly, as described in more detail below, it is inappropriate for the City to rely on CCWD's New Hogan supplies for water supply planning purposes.

On August 25, 1970, Reclamation, SEWD and CCWD entered into a water supply contract that entitles CCWD and SEWD to the entire yield of New Hogan Reservoir (Contract No. 14-06-200-5057A) ("New Hogan Contract"). The New Hogan Contract is a repayment contract requiring SEWD and CCWD to pay for the cost of conservation storage. CCWD also pays for a proportionate share of annual operation and maintenance costs of the New Hogan Project. In return, CCWD and SEWD are allocated the entire yield of the New Hogan Project for the authorized purposes of use. Under the New Hogan Contract, Reclamation holds the appropriative water right permits issued by the State Water Resources Control Board.

Simultaneous with execution of the New Hogan Contract, CCWD and SEWD entered into a second, separate contract that governs payment for the New Hogan Project and allocation of New Hogan water between the two districts ("CCWD-SEWD Contract"). Among other things, the CCWD-SEWD Contract allocates 43.5% of New Hogan Project yield to CCWD and the remaining 56.5% to SEWD. As noted, the CCWD-SEWD Contract does provide that at such times that CCWD does not request its full 43.5% entitlement, SEWD may use CCWD water[2] — but only until CCWD requires that water. Each year, CCWD notifies SEWD of how much water CCWD requires during that year and, in any given year, CCWD can require up to its full 43.5%. That amount must be made available to CCWD on request. In other words, if SEWD uses CCWD water, SEWD must terminate this use upon CCWD's request for increased supplies, in the same year that CCWD requests the increased supplies. SEWD has no continuing right to this water, and therefore SEWD customers cannot rely on this water. CCWD intends to use its full 43.5% allocation in the future. Accordingly, the WSE should be revised to delete any reference to so-called "unused" CCWD New Hogan water for purposes of water supply planning for the

[2] SEWD's right to use the water is limited by the specific terms of the contract between SEWD and CCWD.

City of Stockton municipal area.

Page-Specific Comments

WSE, Page 15 states that "[e]xisting firm surface water contracts held by SEWD include a Bureau of Reclamation (Reclamation) contract (New Hogan Reservoir) and a Calaveras County Water District (CACWD) contract on the Calaveras River based on appropriative water rights held by CACWD . . . " This statement is incorrect. The New Hogan Contract and the CCWD-SEWD Contract are relevant to the same supply of water, and both contracts are based on appropriative water rights held by Reclamation.[3]

WSE, Page 15, Table 3, just below the line item describing New Hogan water supplies there is another item entitled "CACWD Appropriative Water Rights."[4] This second item purports to identify up to 10,000 afy from "unused CACWD rights" that will be permanently available to the City of Stockton at the City's build-out. This 10,000 afy does not exist. As noted above, if this line item is intended to refer to New Hogan water, it is inaccurate because CCWD will use all of its 43.5% entitlement in the future, and neither SEWD nor the City can rely on that water for long-term planning. If this item is intended to refer to any other CCWD water right, then it is simply in error: beyond the limited availability provided by the SEWD-CCWD contract, there is no other scenario under which SEWD has access to CCWD water supplies.

WSE, Page 16 states that ". . .as development continues in Calaveras County, less of the CACWD water will be available to SEWD and its customers. This contract currently yields 24 TAF and will ultimately be decreased to 10 TAF at build-out." Again, this 10,000 afy does not exist; the full amount of CCWD's entitlement can be requested by CCWD in any given year. Moreover, CCWD will use its full entitlement in the future. There is no scenario under which the City can rely on unused CCWD entitlement for purposes of water supply planning.

WSE, Page 51 refers to a "transfer" of CCWD's rights to New Hogan water. Similarly, page 57 of the WSE states "Table 3 also shows that the senior water rights of the Calaveras County Appropriative Water Rights Transfer will yield some 'critical' year supply to increase the minimum of 12,000 AF/year used in the Feasibility Report." It is inaccurate to characterize the interim, temporary, year-to-year availability of water to SEWD from CCWD's New Hogan entitlement as a "transfer." This water may not be available to SEWD in any given year, and will not be available in the long-term.

WSE, Page 56, Table 12. In contrast to the information presented in Table 3, the second line item in WSE, Table 12 (row 2) suggests declining availability of the so-called "unused" CCWD entitlement to New Hogan water. This Table indicates an availability of such "unused" water of 8,000 afy in 2010, 6,000 afy in 2020, and 3,000 afy in 2035 to 0 afy availability in 2050. Because CCWD can call on its full 43.5% in any given year, and because CCWD intends to do so in the future, even this less draconian assumption is inappropriate. The City of Stockton

[3] There is a complex history that informs interpretation of the New Hogan contracts, but which is not relevant here because the City cannot rely on "unused" CCWD supplies.

[4] As indicated herein, at present the appropriative rights for New Hogan are held by the U.S. Bureau of Reclamation, and not CCWD or SEWD.

cannot rely on the CCWD New Hogan water for water supply planning.

The New Hogan Project Is Not A CVP Facility.

WSE, Page 25 states that the WSE modeling assumed that New Hogan supplies are subject to Central Valley Project ("CVP") deficiencies. However, the New Hogan contract is not a CVP contract and is not subject to CVP deficiencies.

Water Code § 11460

WSE, Pages 41-42 include a discussion of so-called "area of origin" rights. This discussion refers to Water Code § 11460, which provides that "a watershed or area wherein water originates, or an area immediately adjacent thereto which can be conveniently supplied with water therefrom, shall not be deprived by the department directly or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein." Under this provision, "department" refers to the State Water Project ("SWP") and, by separate provision, the Central Valley Project ("CVP"). (Water Code § 11128.)

Contrary to the implication in the WSE, Water Code § 11460 does not confer an independent right of appropriation, nor does it provide priority of right over all water users. Where it applies and is granted, a priority under Section 11460 provides for a priority over SWP and CVP water use only. CCWD rights would be entitled to priority over an application by the City of Stockton municipal area purveyors, regardless of whether Section 11460 applies to such application.

Conclusion

I would be happy to make available members of my staff to work with representatives of the City of Stockton to assist with future water supply planning as it relates to CCWD water supplies. I look forward to receiving notices of document availability and public hearings on these topics in the future. In the meantime, please also feel free to contact me on a more informal basis to discuss any questions or concerns.

Sincerely,

David Andres, General Manager
Calaveras County Water District

Attachment

cc: Larry Diamond, CCWD
Ed Pattison, CCWD
Kevin Kauffman, SEWD

Exhibit F

Recommendations for Coccidioidomycosis Mitigation in Prisons in the Hyperendemic Areas of California

Submitted by

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June 2007

Contributing Experts

We would like to express our sincere appreciation to the following contributors for providing their scientific evidence and professional opinion that has helped form the basis for our recommendations about how to mitigate the impact of Coccidioidomycosis in California Correctional Institutions.

California Department of Health Services

Division of Communicable Disease Control

Mark Starr, DVM, NPCM
Chief, Infection Control Branch

Local County Health Officers

in the Coccidioidomycosis Hyperendemic Area

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Ed Moreno, MD, Fresno County

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Coccidioidomycosis Academic Experts

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Recommendations for Coccidioidomycosis Mitigation in Prisons in the Hyperendemic Areas of California

Executive Summary

This report builds on the information previously provided to the Receiver in the May 21, 2007 memorandum entitled *Prevention and Treatment of Coccidioidomycosis at Pleasant Valley State Prison – Background and Status Report*. This report summarizes the findings from the May 24th *2007 Valley Fever Symposium* held in Bakersfield by the Kern County Health Department and includes additional recommendations for interventions that will help mitigate risk to patients. At the Symposium, representatives from the CDHS and seven County Health Officers[1] from within the hyperendemic area reported a significant increase in the rate of Cocci in their respective counties over the past several years.

On May 3, 2007, Assembly Bill 900 was chaptered. It authorized the California Department of Corrections and Rehabilitation (CDCR) to design, construct, or renovate prison housing units, prison support buildings, and programming space in order to add 7, 484 beds.[2] Four of the ten prisons identified for expanded construction are in the Coccidioidomycosis (CM) hyperendemic area and include Pleasant Valley State Prison in Fresno County and Kern Valley State Prison, Wasco State Prison, and North Kern State Prison in Kings County. The Administration at CDCR has made reducing prison overcrowding a priority and is already planning an aggressive effort to implement the requirements of this statute.

In consultation with the California Department of Health Services (CDHS), the Division of Correctional Health Care Services has implemented several actions designed to reduce inmate and staff exposure to CM and mitigate its harmful effects. The statutory decision to construct additional prison beds the hyperendemic area creates some urgency in evaluating the current effort and making additional recommendations.

Consensus Recommendations from CDHS, Local County Health Officers, Academic Coccidioidomycosis Experts, and CDCR Medical Care and Public Health Consultants

After this important meeting, extensive discussion ensued to develop recommendations and a plan of action to reduce exposure to at risk inmates and staff and improve outcomes for those who develop Coccidioidomycosis while in the correctional setting.

Key Recommendations from the Local County Health Officers

At the end of the Symposium, the Health Officers made the following recommendations to health professionals within the CDCR:

1. Proceed with environmental mitigation in the prisons through landscaping with ground cover, and placing concrete and other dust reducing materials on the grounds;
2. Continue the diversion and relocation of inmates at high risk for CM:
3. Reinstate the public health system in prisons;
4. Notify the local Health Departments of new cases identified by prison providers;
5. Expand epidemiologic research around CM;
6. Support vaccine research; and
7. Do not expand prison beds in the hyperendemic area, especially at PVSP.

[1] The seven Health Officers were: B. A. Jinadu, MD – Kern County, Michael MacLean, MD – Kings County, Ed Moreno, MD – Fresno County, Robert Levin, MD – Ventura County, Karen Haught, MD – Tulare County, Karen Furst, MD – San Joaquin County, and Greg Thomas, MD – San Luis Obispo County

[2] The bill also permits CDCR to acquire land, design construct, and renovate reentry program facilities and to construct and establish new buildings at facilities under the jurisdiction of the department to provide medical, dental, and mental health treatment housing for 6,000, as specified.

Key Recommendations from the CDCR Medical Care and Public Health Consultants

Immediate

1. Implement environmental mitigation techniques at PVSP based upon the best available data; both indoors and outdoors.
2. Consider providing the same outdoor mitigation to Avenal, Corcoran and SATF after determining if the incidence of CM in these prisons warrants this effort.
3. Defer any new construction that will lead to additional prisoners being housed in the hyperendemic area.
   a. Provide indoor recreation area for inmates to use during high wind/dust events;
   b. Any retrofitting must be done using dust mitigating construction methods.
4. Continue to exclude all of the following inmates from being housed in a facility that is in the hyperendemic area[3] including: HIV infected with a T-cell count less than 250, history of lymphoma; status post solid organ transplant; chronic immuno therapy (e.g. severe rheumatoid arthritis); chronic lung disease requiring oxygen therapy; and cancer inmate-patient on chemotherapy.
5. A request has been sent to Dr. Gil Chavez, Deputy Director of the CDHS Division of Preventive Health to ask Dr. Jean Yuan, from CDHS, to return and perform an analysis of the Coccidioidomycosis cases that have been diagnosed in the first quarter of 2007 to see if any new at-risk groups can be identified.
6. Continue to partner with Local Health Officers, CDHS, and subject matter experts on this issue.

Near Future

1. Expand the exclusion criteria to include all inmates who are HIV infected and have moderate and severe Chronic Obstructive Pulmonary Disease.
2. Perform a re-analysis of all new cases to determine the results of prior mitigation efforts.
3. Implement additional control measures as determined by results of ongoing analysis.
4. Provide additional education to all CDCR employees working and/or living in the hyperendemic area.
5. Support the development of a vaccine effective against CM.
6. Have all CM lab specimens sent to either Kern County PH Laboratory or the UC Davis Coccidioidomycosis Serology Laboratory for analysis; provide clinical information to the lab.
7. Establish a Coccidioidomycosis Working Group, including CDCR public health/communicable disease specialists and representatives from the Division of Communicable Disease Control and the Environmental Health Investigation Branch at CDHS, UCSF (Dr. Rutherford – Vaccine Project), and UC Davis Coccidioidomycosis Serology Laboratory (Dr. Pappagianis), and the Local Health Officers from the hyperendemic area to design, develop, implement and evaluate a comprehensive program to contain and reduce the rate of Cocci in inmates and staff at the CDCR.
8. Collaborate with the CDPH and Cal EPA to establish a measure for dust pollution in the air that can be used to indicate when staying indoors or wearing a mask while outdoors is recommended – similar to the air index used to warn those with vulnerable conditions to stay in on high smog pollution days.
9. Collaborate with Cal OSHA and CDPH in identifying staff issues and their mitigation for the hyperendemic area – include unions in this discussion.

Long term goal

1. Work toward the goal of not housing or employing any non-immune individuals in the hyperendemic area. This may depend upon technology that is not yet readily available, including immunization and/or reliable methodologies to determine who has previously been infected.
2. As part of future planning for centralized dialysis services, all dialysis patients will be located outside of the hyperendemic area. Patients will be moved once it can be done safely.
3. Based on the best scientific evidence, determine a minimum acceptable rate of Coccidioidomycosis (e. g. a rate equal to or less than the local community) for prisons in the hyperendemic area.
4. Evaluate the effort to reduce exposure and disease at PVSP. If no significant improvement is made, consider relocating all inmates from this institution to institutions with rates of Coccidioidomycosis equal to or better than their local community rates.

[3] As per memorandum of August 3, 2006, "INMATE-PATIENTS AT HIGH RISK OF VALLEY FEVER EXCLUDED FROM SPECIFIC CENTRAL VALLEY INSTITUTIONS".

Reported Cases of Coccidioidomycosis
For
Fresno and Kings Counties[1]
May 24, 2007

Percent of County Cases Reported by State Prisons

FRESNO COUNTY

REPORTED CASES				
YEAR	Fresno County Total	Coalinga-Civilian Total	PVSP Total	Prison % of County Cases
2002	84	4	47	56%
2003	140	23	107	76%
2004	122	6	70	57%
2005	290	42	100	35%
2006	776	154	520	67%
2007*	171	23	79	46%

* Through March 2007

KINGS COUNTY

REPORTED CASES					
YEAR	Kings County Total	Civilian Total	LNAS	Avenal and Corcoran Totals	Prison % of County Cases
2000	11	5	0	6	55%
2001	32	13	1	18	56%
2002	50	24	3	23	46%
2003	42	19	8	15	36%
2004	84	29	17	38	45%
2005	126	54	-	72	57%
2006	168	34	21	113	67%

[1] Provided as a handout at the May 24, 2007 Valley Fever Symposium by the Kern County Health Department in Bakersfield CA. These numbers may vary from the information provided by the UC Davis Coccidioidomycosis Laboratory as they are collected using two different methodologies.

Attachment 2

Coccidioidomycosis* in Inmates of California Correctional Institutions 2000 to Jan-Apr 2007

Prison Bold = Prison in hyperendemic area	Year Opened	2000-2001 **	Mar 2003 to Feb 2004	2005	2006	Jan through Apr 2007	TOTAL by Prison
Pleasant Valley (Coalinga)	**1994**	-	127+1 ****	150	514	137***	929
Avenal	**1987**	36****	22+ 1 ****	47	91	23	220
Corcoran State Prison	**1988**	14	21	23	12	7	77
Corcoran (SATF)	**1997**	-	-	2	22	7	31
CMC – San Luis Obispo		16	7	3	12	5	43
Vacaville (CMF)		8	1	-	2	-	11
CSP Solano		-	-	4	2	1	7
Mule Creek (Ione)		-	-	-	1	2	3
Chowchilla (Women's)		-	1	-	-	-	1
Ironwood (Blythe)		1	3	1	3	-	8
Chuckawalla Valley (Blythe)		1	1	-	1	1	4
Soledad CTF		-	-	5	4	1	10
Susanville		-	-	-	1	-	1
Centinela (El Centro)		-	-	-	-	1	1
CSP Sacramento/Folsom 2		-	-	-	-	1	1
North Kern SP	**1993**	-	-	1	-	-	1
Wasco	**1991**		1	-	-	-	1
Miscellaneous		10	18	8	-	-	36
Camarillo		-	-	-	1	-	1
Ventura Youth Authority		23*****	5	-	6	-	34
TOTAL		**109**	**209**	**244**	**672**	**186**	**1420**

* Using positive serum test for Coccidioidomycosis as bases for diagnosis
** In some instances, onset of disease may have been earlier in 2000
*** April = 23 cases
**** One case in prison employee
***** Note: The CYA cases in 2000 were in inmates who had been assigned to fight grass fires in McKittrick in the highly endemic area of Kern County.
Note 1: CA Correctional Institute (CCI) and Kern Valley State Prison (KVSP) are the two other prisons in the Hyperendemic area and do not have cases documented in this table.
Note 2: Data in this table may vary from the data in Attachment 1 – they are developed using two different data sources.
Note 3: This Attachment was compiled from Tables developed by D. Pappagianis, M. D., for the May 24 2007 Valley Fever Symposium

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   a. CA Department Health Services:
      Presented by Mark Starr, DVM, NPVM, Chief, Surveillance and Statistics Section, Infection Control Branch, Division of Communicable Diseases, CDHS.
   b. Local Snapshots – Public Health Departments
      i. B. A. Jinadu, MD – Kern County,
      ii. Michael MacLean, MD – Kings County,
      iii. Ed Moreno, MD – Fresno County,
      iv. Robert Levin, MD – Ventura County,
      v. Karen Haught, MD – Tulare County,
      vi. Karen Furst, MD – San Joaquin County, and
      vii. Greg Thomas, MD – San Luis Obispo County
   c. History of Valley Fever by Hans Einstein, MD, MPH, Kern Medical Center
   d. The Burden of Valley Fever on Individuals by Royce Johnson, MD, Kern Medical Center.
   e. Valley Fever Societal Costs by John Caldwell, Pharm. D., Kern Medical Center.
   f. Vaccine Development, Research and Funding by George Rutherford, MD, MPH
   g. Epidemiology and Testing for Valley Fever – Panel
   h. Epidemiology of Valley Fever by Mark Starr, DVM, NPVM
   i. Valley Fever in Correctional Facilities by Demosthenes Pappagianis, MD, PhD UC Davis
   j. Seventy Years of Skin Testing by Thomas Larwood, MD., Kern County

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ATTACHMENT 3

Coccidioidomycosis in California State Correctional Institutions

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Coccidioidomycosis Serology Laboratory

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KEYWORDS:

coccidioidomycosis, prisoners, prisons

ABSTRACT

Coccidioidomycosis (CM) has been recognized in inmates of California State prisons since 1919. CM has been diagnosed in inmates of various correctional facilities inside and outside the known endemic areas. In recent years construction of new prisons within endemic areas has led to an increase in the number of cases of CM. In the years 2005 and 2006, particularly affected have been the Pleasant Valley State Prison (PVSP) near Coalinga and Avenal State Prison (ASP) near Avenal on the Western side of the San Joaquin Valley. In 2005, our serologic testing yielded 150 new cases from PVSP, 30 from ASP. The incidence rate in 2005 for PVSP (population approx. 5,000) would be at lest 3,000 per 100,000, greater in 2006. Some cases recognized in 2006 likely began in 2005). Some cases are medically managed on site but very ill inmates have had care in non-prison facilities. Estimates of the cost per patient have varied from $8,000 in the 1990's to $30,000 more recently. Thus, there are important medical, demographic and financial implications to the State.

INTRODUCTION

For many years, coccidioidomycosis (CM) has been encountered in inmates of prisons in the endemic areas of the Southwestern United States. In recent years, new prisons have been constructed in coccidioidal endemic areas of California and this has resulted in an expanded problem with this disease among inmates and employees; a problem which has attracted our attention.

CM apparently was first recognized in an inmate of Folsom Prison in California in 1919.[1] This prison, near Sacramento was not in the area(s) to which this disease is endemic exemplifying how cases of the disease may be encountered outside the endemic zones. This

also is exemplified by a prisoner in Boise, Idaho whom we have followed serologically for some years after his acquisition of CM in California.

Other instances of CM in incarcerated persons occurred during World War II among Japanese-Americans forced into a camp near Casa Grande, Arizona, and among German prisoners of war in Florence, Arizona.[2] Among German prisoners of war some complained of mistreatment as a result of lethal and other coccidioidal infections, under the Geneva Convention Rules and this led to discontinuation of the use of the Florence, AZ facility for foreign prisoners; but it has continued to house civilian prisoners. In the 1950's and later, CM was described among young men prisoners who were sent to fight fires in endemic areas of Los Angeles County and elsewhere.[3,4]

For many years, our UC Davis Coccidioidomycosis Serology Laboratory has received serum specimens from incarcerated individuals who have or are suspected of having coccidioidomycosis. For example, sera had been submitted by Dr. D. Smilovitz and others from infected inmates in the California Men's Colony in San Luis Obispo County. In the year 2000, our attention was called to an outbreak of CM among inmates of the California Youth Authority, Paso Robles, who had been assigned to fight grass fires in McKittrick in the highly endemic area of Kern County. This led us into compilation of cases from other State Prisons.[5,6] The occurrence of CM in inmates has important implications—to the State and its citizens: medical, demographic, and financial.

MATERIALS AND METHODS

The cases of coccidioidomycosis were detected by positive serologic tests on serum or other body fluids. Testing was carried out at our UC Davis Coccidioidomycosis Serology Laboratory. Initial testing was carried out by immuno-diffusion of specimens after being concentrated approximately eight-fold by evaporation under reduced pressure.[7,8] Patients were identified by name, date of birth and inmate (California Department of Corrections) identification

number. In many instances, for logistical reasons, specimens from several inmates were drawn on the same date rather than in relationship to clinical indications. As a result of this, it was not possible to know the date of onset of illness thus usually precluding recording cases by month. Moreover, on some occasions it was evident that sera from some inmates came by way of some intermediate laboratory obscuring the provenance of the specimen. In Figure 1 we have presented a map of California indicating the location of prisons (name underlined) with respect to recognized areas to which CM is endemic. The more detailed map in Figure 2 indicates the relative positions of three prisons significantly represented among the cases we have tabulated: Coalinga (Pleasant Valley State Prison), Avenal, and Corcoran.

RESULTS

Simply expressed are the numbers of cases recognized serologically: Tables 1, 2, 3 and 4. Note that the data of Table 1 were obtained before Pleasant Valley State Prison (PVSP) was completed. Following its inclusion, PVSP became the largest contributor of cases Figure 3 illustrates the influence of "new construction" (including excavation) for a mental health hospital near (perhaps 200 yards from) PVSP. Construction began in late Summer to early Fall and soon the number of case increased. (As noted in Materials and Methods) some cases recorded for a given month were based on the date of the positive serum, but might have been drawn in an adjacent month. It was evident that PVSP had a higher rate of infections than other institutions some of which had comparable numbers of inmates. By mid-August 2006, PVSP had 300 new cases recognized, far exceeding those recognized (51) of Avenal, the next highest represented. We calculated incidence of 3,000/100,000 for PVSP in 2005; and in 2006 up to mid-August the rate was 6,000/100,000. For comparison, the highest incidence rate of CM was 572/100,000 for Kern County during the epidemic year 1993. By mid-August, the total reported cases of CM in California were approximately 1,300. Thus, the total cases 388, of state prisons (Table 4) represented approximately 30% of the cases reported to the California State Department of

Health Services. In 2005, the state prison cases (244) represented 15% of the total reported case[5] (approximately 1,600) in California.

Based on studies in Kern County during the epidemic years of the 1990's, the cost of care per patient was $8,000.[9] The 388 patients detected in State Prisons, based on the figure of Caldwell et al would have cost $3,104,000.00. Others have calculated that the cost per hospitalized patient (in 1998-2001) was approximately $34,000.[10] Inasmuch as approximately 5 per cent of patients with clinical evidence of coccidioidomycosis undergo metapulmonary dissemination of their disease, of the 388 patients at least 20 would have required hospitalization at a cost of $780,000. Therefore, the fiscal impact to the State is substantial.

DISCUSSION

Incarcerated individuals and employees of correctional institutions in endemic areas may acquire coccidioidomycosis. Because incarcerated individuals have centralized medical care, some compilation of cases is possible. Enumeration of cases among employees is more difficult because they do not have a unified source for medical care.

Coccidioidal infections can be acquired by inmates within the institutions to which they have been confined, or, as illustrated above, by inmates who have been confined in institutions outside the endemic areas but have been assigned to fight fires in endemic areas.

Occasionally prisoners are transferred from one California State Prison to another. In some instances, an individual already afflicted with coccidioidomycosis may baffle an unsuspecting medical staff owing to the mimicry of coccidioidomycosis for other diseases or because the medical staff does not appreciate that the patient/inmate had previously been in the endemic area. One striking example of this is a male prisoner in an institution in a non-endemic Idaho as cited above who acquired his coccidioidal infection in California.

Drastic consequences followed in a former prisoner who acquired his coccidioidal disease in prison in Arizona but who then moved to Alabama where he became moribund

cerebrovascular episode deemed to be lethal. His physicians in Alabama were not initially aware of his prior coccidioidomycosis, and donated his kidneys and liver to awaiting recipients. At 19 and 17 days after transplantation respectively the recipient of one kidney and the recipient of the liver died with fulminant coccidioidomycosis.[11] Owing to the varying severity of coccidioidomycosis, the intensity and strategy in the treatment of inmate/prisoners can pose a challenge to prison physicians and their often-limited resources. As a result there are occasions when the inmate/patient's illness requires more complex management modalities that are available at "outside", non-prison referral hospitals. An example, treatment of spinal coccidioidomycosis, provided valuable information on management of severe coccidioidomycosis.[12]

An additional problem pertains to patient/inmates who acquire coccidioidomycosis and are subsequently discharged after they have completed their sentence. Uncertainty about their clinical status and about how and where to seek medical attention may result in or be followed by recrudescence of coccidioidal disease. At least one such individual died following his belated ~~lower~~ case channeling into a medical care center.

One aspect of coccidioidomycosis that could be defined is the influence of certain intercurrent diseases present among inmates (e.g. hepatitis C) on the course of coccidioidomycosis. Additional valuable information may also accrue from the medical and surgical attention provide to inmates as mentioned above relative to spinal surgery.[12]

Some cases of CM can be anthropogenic, as in the construction of a mental health facility adjacent to Pleasant Valley State Prison, or can result form the expected seasonal/climatic associations which influence the rise and fall of incidence. However, the incarceration of individuals from non-endemic areas, in Federal [13] as well as State prisons within the endemic areas will continue to provide a stream of challenging and costly cases of coccidioidomycosis.

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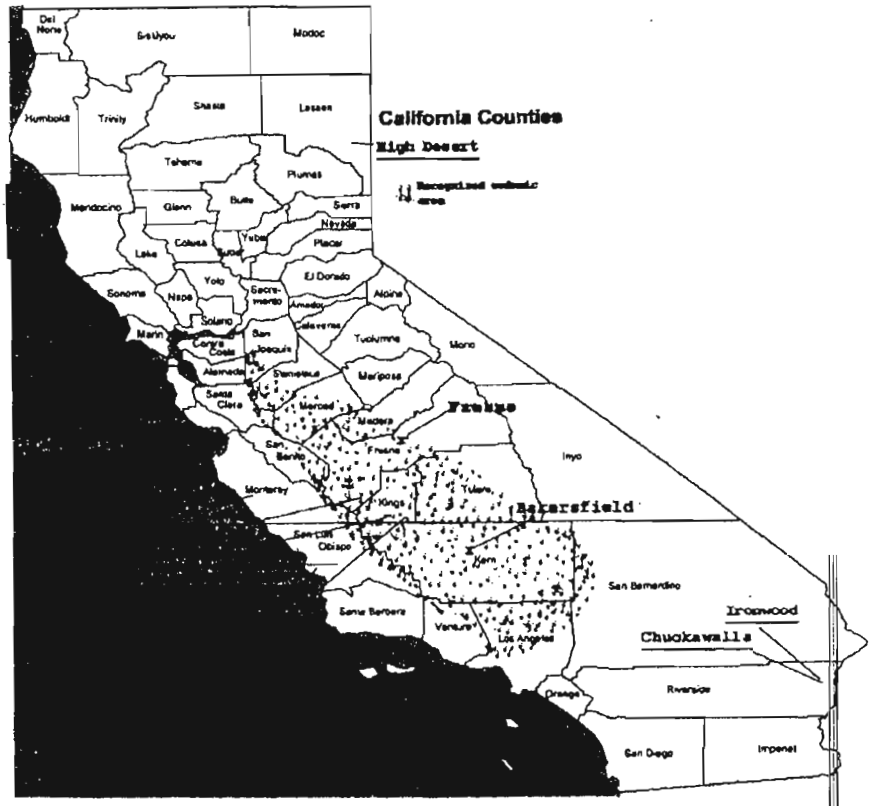
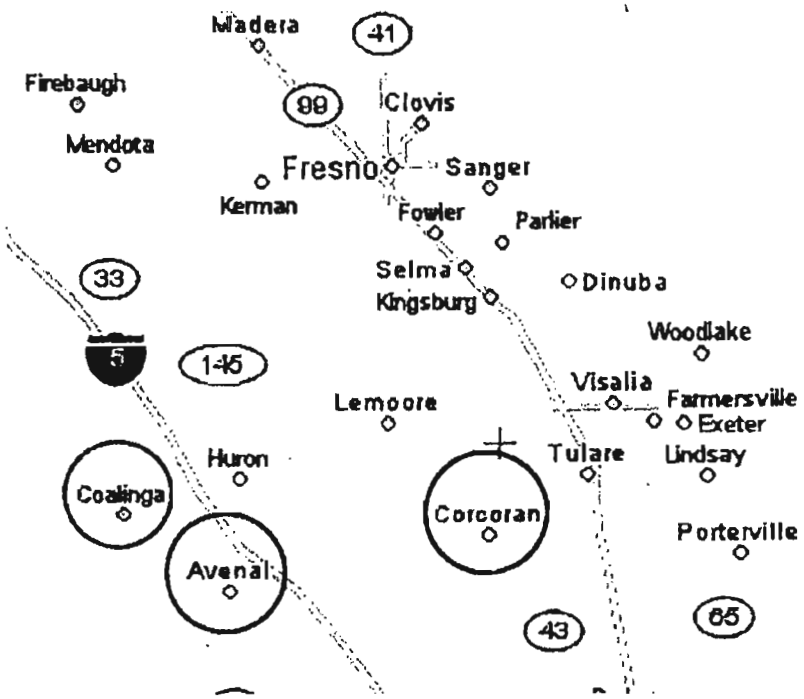
ACKNOWLEDGEMENTS

I am very grateful to Dr. Suzanne Johnson for support in the preparation of this report, and to the following members of the UCD Coccidioidomycosis Serology Laboratory for the performance of serologic tests: L. Fortis, D. Griffin, C. MacVean, M. Tamashiro, W. Tsang, and C. Miller.

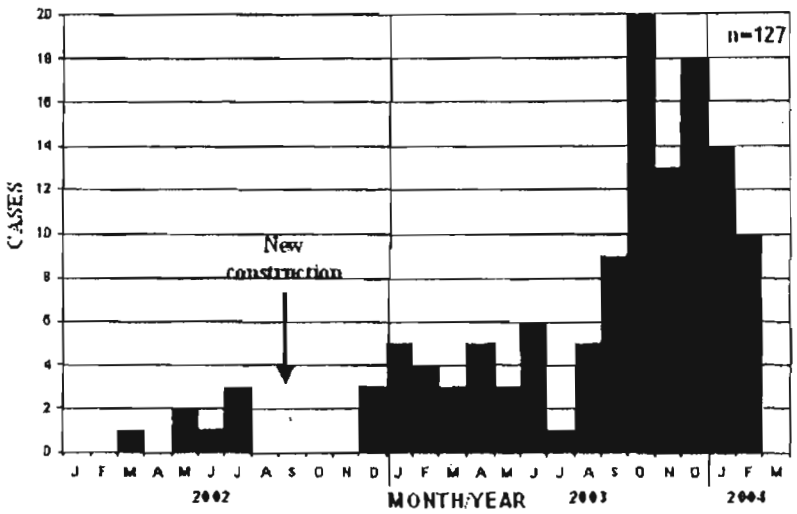


Map of California and recognized endemic area with prison locations (names underlined).



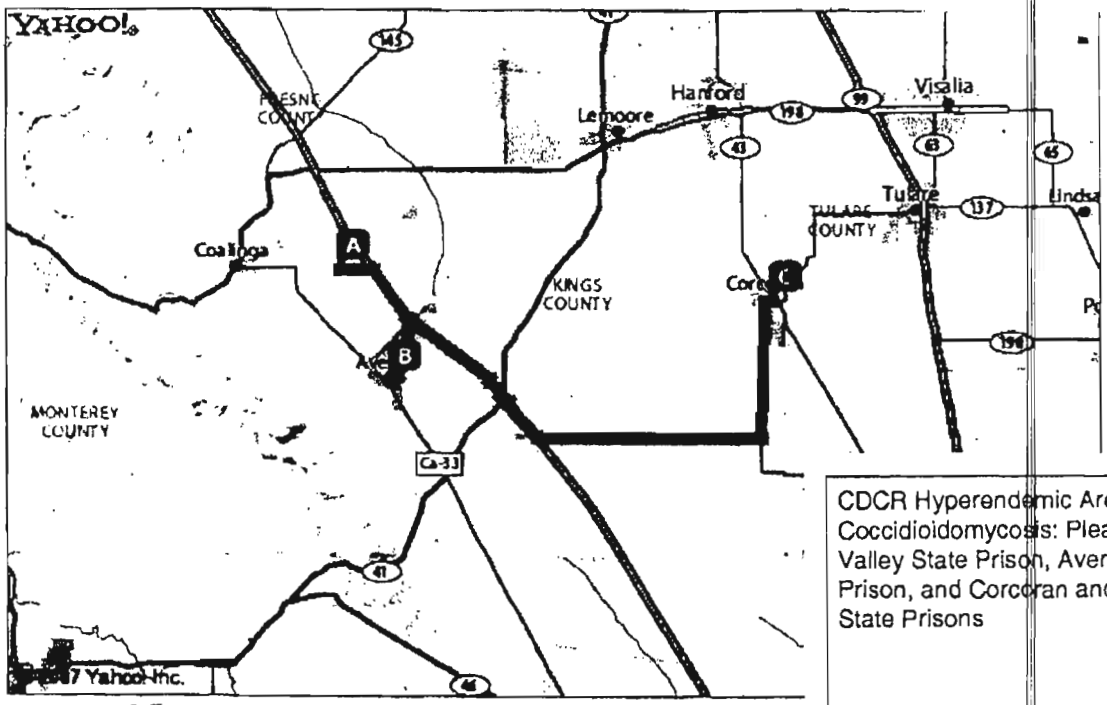
Three State prisons in the western San Joaquin Valley.

http://www.nyas.org/forthcoming

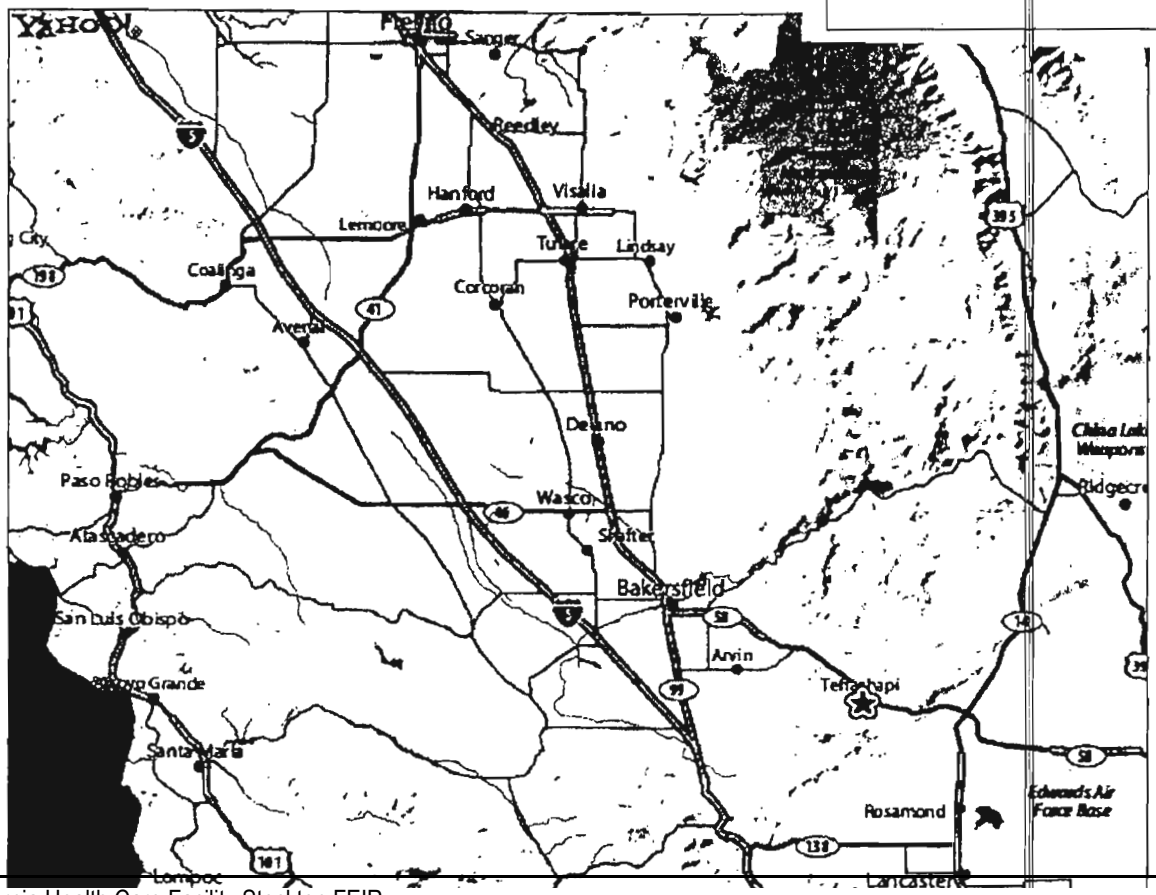


Cases of CM at Pleasant Valley State Prison between January 2002 and March 2004. Approximate time of construction of a mental health hospital near the prison is designated with an arrow.

CA DEPARTMENT OF CORRECTIONS AND REHAILITATION
HYPERENDEMIC AREA
FOR
COCCIDIOIDOMYCOSIS

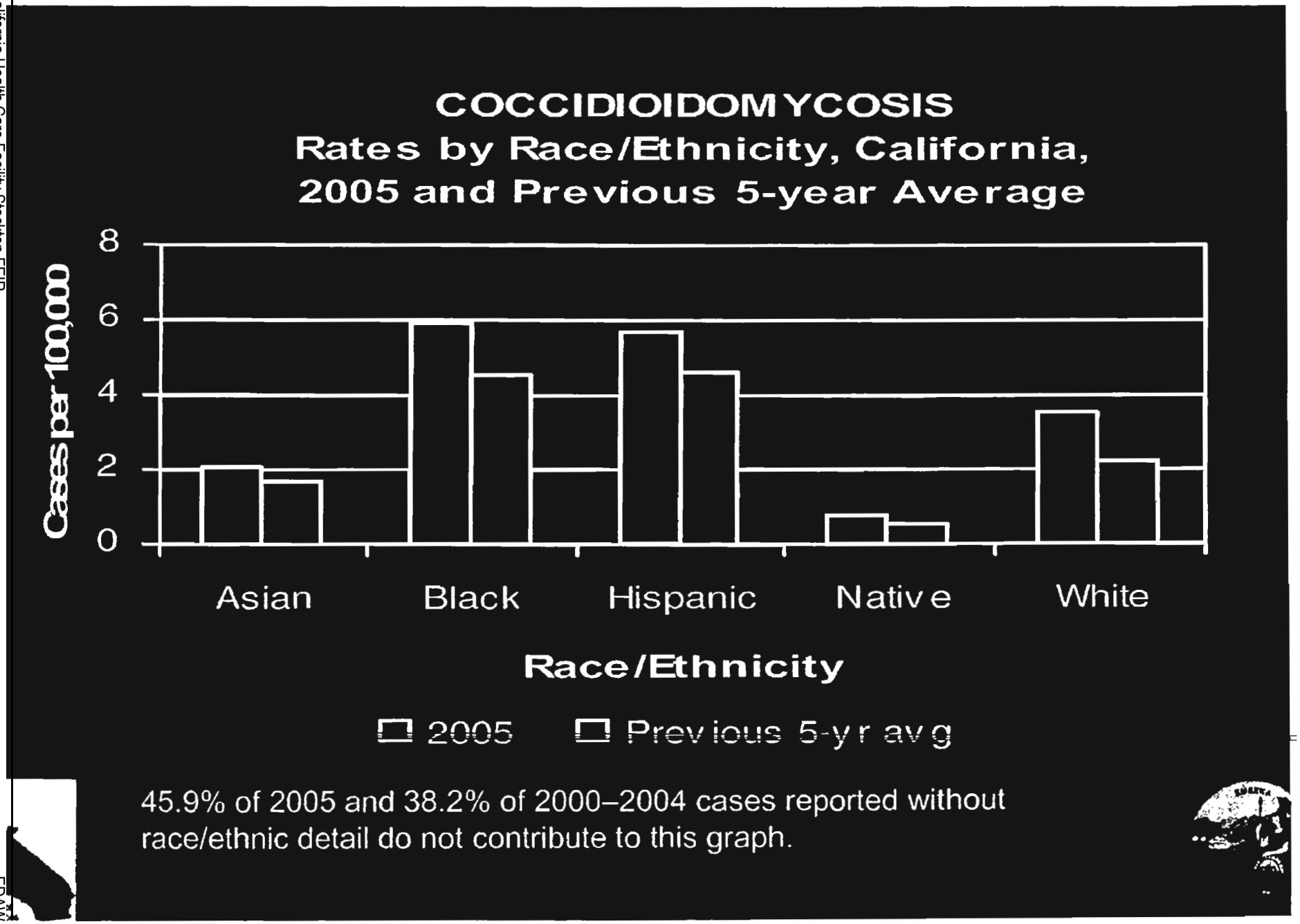


CDCR Hyperendemic Area for Coccidioidomycosis: Pleasant Valley State Prison, Avenal State Prison, and Corcoran and SATF State Prisons



Risk Factors for Coccidioidomycosis

- Region
- Weather
- Soil disturbance
- Lack of prior exposure
- For disseminated disease:
  - Immunosuppression and/or some chronic diseases
  - Male gender (and females in late pregnancy)
  - Race (e.g., Black, Filipino)


COCCIDIOIDOMYCOSIS
Rates by Race/Ethnicity, California,
2005 and Previous 5-year Average
Cases per 100,000
8
6
4
2
0
Asian
Black
Hispanic
Native
White
Race/Ethnicity
2005
Previous 5-yr avg
45.9% of 2005 and 38.2% of 2000–2004 cases reported without race/ethnic detail do not contribute to this graph.

Count of Coccidioidomycosis Cases by Estimated Year of Onset
4500
4000
3500
3000
2500
2000
1500
1000
500
0
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
Estimated Year of Onset

and
California, 1996 - 2006
Cases per 100,000
10
8
6
4
2
0
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
Year of Report
Rate by Local Health Jurisdiction ranges from 0 to 223 (Kern County, 2005).

Coccidioidomycosis by County
California, 2000
No Cases Reported
Between 0 and 5
Between 5 and 25
Above 25
County Rates
(cases per 100,000)

Exhibit G

The California Environmental Quality Act
Addressing Global Warming Impacts at the Local Agency Level

Under the California Environmental Quality Act (CEQA), local agencies have a very important role to play in California's fight against global warming – one of the most serious environmental effects facing the State today. Where local agencies undertake projects directly, they can and should design sustainable projects from the start, incorporating global warming related considerations into their projects at the earliest feasible time. Further, local agencies can encourage well-designed, sustainable private projects by analyzing and disclosing to the public the environmental benefits of such projects in any required environmental documents. And where projects as proposed will have significant global warming related effects, local agencies can require feasible changes or alternatives, and impose enforceable, verifiable, feasible mitigation measures to substantially lessen those effects. By the sum of their decisions, local agencies will help to move the State away from "business as usual" and toward a low-carbon future.

This document provides information that may be helpful to local agencies in carrying out their duties under CEQA as they relate to global warming. Included in this document are various measures that may reduce the global warming related impacts of a project. As appropriate, the measures can be included as design features of a project, required as changes to the project, or imposed as mitigation (whether undertaken directly by the project proponent or funded by mitigation fees). The measures set forth in this package are examples; the list is not intended to be exhaustive. Moreover, the measures cited may not be appropriate for every project. The decision of whether to approve a project – as proposed or with required changes or mitigation – is for the local agency, exercising its informed judgment in compliance with the law and balancing a variety of public objectives.

The first section of this document lists examples of measures that could be applied to a diverse range of projects where the lead agency determines that the project under consideration will have significant global warming related effects. In general, a given measure should not be considered in isolation, but as part of a larger set of measures that, working together, will reduce greenhouse gas emissions and the effects of global warming.

The second section of this document lists examples of potential greenhouse gas reduction measures in the general plan context. This section is included both to suggest how the measures set forth in the first section could be incorporated into a general plan, as well as to identify measures that are general plan specific. The measures in the second section may also be appropriate for inclusion in larger scale plans, including regional plans (*e.g.*, blueprint plans) and in specific plans. Including these types of measures at the larger planning level, as appropriate, will help to ensure more sustainable project-specific development.

The third section provides links to sources of information on global warming impacts and emission reduction measures. The list is not complete, but may be a helpful start for local agencies seeking more information to carry out their CEQA obligations as they relate to global warming.

The endnotes set forth just some of the many examples of exemplary emission reduction measures already being implemented by local governments and agencies, utilities, private industry, and others. As these examples evidence, California at every level of government is taking up the challenge, devising new and innovative solutions, and leading the charge in the fight against global warming.

(1) Generally Applicable Measures

Energy Efficiency[1]

- Design buildings to be energy efficient. Site buildings to take advantage of shade, prevailing winds, landscaping and sun screens to reduce energy use.[2]
- Install efficient lighting and lighting control systems. Use daylight as an integral part of lighting systems in buildings.
- Install light colored "cool" roofs, cool pavements, and strategically placed shade trees.[3]
- Provide information on energy management services for large energy users.[4]
- Install energy efficient heating and cooling systems, appliances and equipment, and control systems.[5]
- Install light emitting diodes (LEDs) for traffic, street and other outdoor lighting.[6]
- Limit the hours of operation of outdoor lighting.
- Use solar heating, automatic covers, and efficient pumps and motors for pools and spas.[7]
- Provide education on energy efficiency.[8]

Renewable Energy

- Install solar and wind power systems, solar and tankless hot water heaters, and energy-efficient heating ventilation and air conditioning. Educate consumers about existing incentives.[9]
- Install solar panels on carports and over parking areas.[10]
- Use combined heat and power in appropriate applications.[11]

Water Conservation and Efficiency[12]

- Create water-efficient landscapes.[13]
- Install water-efficient irrigation systems and devices, such as soil moisture-based irrigation controls.
- Use reclaimed water for landscape irrigation in new developments and on public property. Install the infrastructure to deliver and use reclaimed water.
- Design buildings to be water-efficient. Install water-efficient fixtures and appliances.
- Use graywater. (Graywater is untreated household waste water from bathtubs, showers, bathroom wash basins, and water from clothes washing machines.) For example, install dual plumbing in all new development allowing graywater to be used for landscape irrigation.[14]
- Restrict watering methods (*e.g.*, prohibit systems that apply water to non-vegetated surfaces) and control runoff.
- Restrict the use of water for cleaning outdoor surfaces and vehicles.
- Implement low-impact development practices that maintain the existing hydrologic character of the site to manage storm water and protect the environment. (Retaining storm water runoff on-

site can drastically reduce the need for energy-intensive imported water at the site.)[15]

- Devise a comprehensive water conservation strategy appropriate for the project and location. The strategy may include many of the specific items listed above, plus other innovative measures that are appropriate to the specific project.
- Provide education about water conservation and available programs and incentives.[16]

Solid Waste Measures

- Reuse and recycle construction and demolition waste (including, but not limited to, soil, vegetation, concrete, lumber, metal, and cardboard).
- Provide interior and exterior storage areas for recyclables and green waste and adequate recycling containers located in public areas.
- Recover by-product methane to generate electricity.[17]
- Provide education and publicity about reducing waste and available recycling services.[18]

Land Use Measures

- Include mixed-use, infill, and higher density in development projects to support the reduction of vehicle trips, promote alternatives to individual vehicle travel, and promote efficient delivery of services and goods.[19]
- Educate the public about the benefits of well-designed, higher density development.[20]
- Incorporate public transit into project design.
- Preserve and create open space and parks. Preserve existing trees, and plant replacement trees at a set ratio.
- Develop "brownfields" and other underused or defunct properties near existing public transportation and jobs.
- Include pedestrian and bicycle-only streets and plazas within developments. Create travel routes that ensure that destinations may be reached conveniently by public transportation, bicycling or walking.[21]

Transportation and Motor Vehicles

- Limit idling time for commercial vehicles, including delivery and construction vehicles.
- Use low or zero-emission vehicles, including construction vehicles.
- Promote ride sharing programs *e.g.*, by designating a certain percentage of parking spaces for ride sharing vehicles, designating adequate passenger loading and unloading and waiting areas for ride sharing vehicles, and providing a web site or message board for coordinating rides.
- Create car sharing programs. Accommodations for such programs include providing parking spaces for the car share vehicles at convenient locations accessible by public transportation.[22]
- Create local "light vehicle" networks, such as neighborhood electric vehicle (NEV) systems.[23]
- Provide the necessary facilities and infrastructure to encourage the use of low or zero-emission vehicles (*e.g.*, electric vehicle charging facilities and conveniently located alternative fueling

stations).

- Increase the cost of driving and parking private vehicles by, *e.g.*, imposing tolls and parking fees.
- Institute a low-carbon fuel vehicle incentive program.[24]
- Build or fund a transportation center where various public transportation modes intersect.
- Provide shuttle service to public transit.
- Provide public transit incentives such as free or low-cost monthly transit passes.
- Promote "least polluting" ways to connect people and goods to their destinations.[25]
- Incorporate bicycle lanes and routes into street systems, new subdivisions, and large developments.
- Incorporate bicycle-friendly intersections into street design.
- For commercial projects, provide adequate bicycle parking near building entrances to promote cyclist safety, security, and convenience. For large employers, provide facilities that encourage bicycle commuting, including, *e.g.*, locked bicycle storage or covered or indoor bicycle parking.
- Create bicycle lanes and walking paths directed to the location of schools, parks and other destination points.[26]
- Work with the school district to restore or expand school bus services.
- Institute a telecommute work program. Provide information, training, and incentives to encourage participation. Provide incentives for equipment purchases to allow high-quality teleconferences.
- Provide information on all options for individuals and businesses to reduce transportation-related emissions. Provide education and information about public transportation.

Off-Site Mitigation

If, after analyzing and requiring all reasonable and feasible on-site mitigation measures for avoiding or reducing greenhouse gas-related impacts, the lead agency determines that additional mitigation is required, the agency may consider additional off-site mitigation. The project proponent could, for example, fund off-site mitigation projects (*e.g.*, alternative energy projects, or energy or water audits for existing projects) that will reduce carbon emissions, conduct an audit of its other existing operations and agree to retrofit, or purchase carbon "credits" from another entity that will undertake mitigation.

The topic of offsets can be complicated, and a full discussion is outside the scope of this summary document. Issues that the lead agency should consider include:

- The location of the off-site mitigation. (If the off-site mitigation is far from the project, any additional, non-climate related benefits of the mitigation will be lost to the local community.)
- Whether the emissions reductions from off-site mitigation can be quantified and verified.
- Whether the mitigation ratio should be greater than 1:1 to reflect any uncertainty about the effectiveness of the offset.

(2) General Plan Measures[27]

Global warming measures may be reflected in a general plan as goals, policies, or programs; in land use designations; or as additional mitigation measures identified during the CEQA review process. Many of the measures listed above may be appropriate for inclusion in a general plan. In addition, a non-exhaustive list of measures specific to the general plan context follows. The examples are listed under required general plan elements. A given example may, however, be appropriate for inclusion in more than one element, or in a different element than listed. Global warming measures may, alternatively, be included in an optional Climate Change or Energy element.

Conservation Element[28]

- Climate Action Plan or Policy: Include a comprehensive climate change action plan that includes: a baseline inventory of greenhouse gas emissions from all sources; greenhouse gas emissions reduction targets and deadlines; and enforceable greenhouse gas emissions reduction measures.[29] (Note: If the Climate Action Plan complies with the requirements of Section 15064(h)(3) of the CEQA Guidelines, it may allow for the streamlining of individual projects that comply with the plan's requirements.)
- Climate Action Plan Implementation Program: Include mechanisms to ensure regular review of progress toward the emission reduction targets established by the Climate Action Plan, report progress to the public and responsible officials, and revise the plan as appropriate, using principles of adaptive management. Allocate funding to implement the plan. Fund staff to oversee implementation of the plan.
- Strengthen local building codes for new construction and renovation to require a higher level of energy efficiency.[30]
- Require that all new government buildings, and all major renovations and additions, meet identified green building standards.[31]
- Ensure availability of funds to support enforcement of code and permitting requirements.
- Adopt a "Green Building Program" to require or encourage green building practices and materials.[32] The program could be implemented through, *e.g.*, a set of green building ordinances.
- Require orientation of buildings to maximize passive solar heating during cool seasons, avoid solar heat gain during hot periods, enhance natural ventilation, and promote effective use of daylight. Orientation should optimize opportunities for on-site solar generation.
- Provide permitting-related and other incentives for energy efficient building projects, *e.g.*, by giving green projects priority in plan review, processing and field inspection services.[33]
- Conduct energy efficiency audits of existing buildings by checking, repairing, and readjusting heating, ventilation, air conditioning, lighting, water heating equipment, insulation and weatherization.[34] Offer financial incentives for adoption of identified efficiency measures.[35]
- Partner with community services agencies to fund energy efficiency projects, including heating, ventilation, air conditioning, lighting, water heating equipment, insulation and weatherization, for low income residents.
- Target local funds, including redevelopment and Community Development Block Grant resources, to assist affordable housing developers in incorporating energy efficient designs and

features.

- Provide innovative, low-interest financing for energy efficiency and alternative energy projects. For example, allow property owners to pay for energy efficiency improvements and solar system installation through long-term assessments on individual property tax bills.[36]
- Fund incentives to encourage the use of energy efficient vehicles, equipment and lighting.[37] Provide financial incentives for adoption of identified efficiency measures.
- Require environmentally responsible government purchasing.[38] Require or give preference to products that reduce or eliminate indirect greenhouse gas emissions, *e.g.*, by giving preference to recycled products over those made from virgin materials.[39]
- Require that government contractors take action to minimize greenhouse gas emissions, *e.g.*, by using low or zero-emission vehicles and equipment.
- Adopt a "heat island" mitigation plan that requires cool roofs, cool pavements, and strategically placed shade trees.[40] (Darker colored roofs, pavement, and lack of trees may cause temperatures in urban environments to increase by as much as 6-8 degrees Fahrenheit as compared to surrounding areas.[41]) Adopt a program of building permit enforcement for re-roofing to ensure compliance with existing state building requirements for cool roofs on non-residential buildings.
- Adopt a comprehensive water conservation strategy. The strategy may include, but not be limited to, imposing restrictions on the time of watering, requiring water-efficient irrigation equipment, and requiring new construction to offset demand so that there is no net increase in water use.[42] Include enforcement strategies, such as citations for wasting water.[43]
- Adopt water conservation pricing, *e.g.*, tiered rate structures, to encourage efficient water use.[44]
- Adopt fees structures that reflect higher costs of services for outlying areas.[45]
- Adopt water-efficient landscape ordinances.[46]
- Strengthen local building codes for new construction and implement a program to renovate existing buildings to require a higher level of water efficiency.
- Adopt ordinances requiring energy and water efficiency upgrades as a condition of issuing permits for renovations or additions, and on the sale of residences and buildings.[47]
- Provide individualized water audits to identify conservation opportunities.[48] Provide financial incentives for adopting identified efficiency measures.
- Provide water audits for large landscape accounts. Provide financial incentives for efficient irrigation controls and other efficiency measures.
- Require water efficiency training and certification for irrigation designers and installers, and property managers.[49]
- Implement or expand city or county-wide recycling and composting programs for residents and businesses. Require commercial and industrial recycling.
- Extend the types of recycling services offered (*e.g.*, to include food and green waste recycling).
- Establish methane recovery in local landfills and wastewater treatment plants to generate electricity.[50]

- Implement Community Choice Aggregation (CCA) for renewable electricity generation. (CCA allows cities and counties, or groups of them, to aggregate the electric loads of customers within their jurisdictions for purposes of procuring electrical services. CCA allows the community to choose what resources will serve their loads and can significantly increase renewable energy.)[51]
- Preserve existing conservation areas (*e.g.*, forested areas, agricultural lands, wildlife habitat and corridors, wetlands, watersheds, and groundwater recharge areas) that provide carbon sequestration benefits.
- Establish a mitigation program for development of conservation areas. Impose mitigation fees on development of such lands and use funds generated to protect existing, or create replacement, conservation areas.
- Provide public education and information about options for reducing greenhouse gas emissions through responsible purchasing, conservation, and recycling.

Land Use Element[52]

- Adopt land use designations to carry out policies designed to reduce greenhouse gas emissions, *e.g.*, policies to minimize or reduce vehicle miles traveled, expand development near existing public transportation corridors, encourage alternative modes of transportation, and increase infill, mixed use, and higher density development.
- Identify and facilitate the development of land uses not already present in local districts – such as supermarkets, parks and recreation fields, and schools in neighborhoods; or residential uses in business districts – to reduce vehicle miles traveled and allow bicycling and walking to these destinations.
- Create neighborhood commercial districts.
- Require bike lanes and bicycle/pedestrian paths.
- Prohibit projects that impede bicycle and walking access, *e.g.*, large parking areas that cannot be crossed by non-motorized vehicles, and new residential communities that block through access on existing or potential bicycle and pedestrian routes.
- Site schools to increase the potential for students to walk and bike to school.[53]
- Enact policies to limit or discourage low density development that segregates employment, services, and residential areas.[54]
- Where there are growth boundaries, adopt policies providing certainty for infill development.[55]
- Require best management practices in agriculture and animal operations to reduce emissions, conserve energy and water, and utilize alternative energy sources, including biogas, wind and solar.

Circulation Element[56]

- In conjunction with measures that encourage public transit, ride sharing, bicycling and walking, implement circulation improvements that reduce vehicle idling. For example, coordinate controlled intersections so that traffic passes more efficiently through congested areas.[57]
- Create an interconnected transportation system that allows a shift in travel from private

passenger vehicles to alternative modes, including public transit, ride sharing, car sharing, bicycling and walking. Before funding transportation improvements that increase vehicle miles traveled, consider alternatives such as increasing public transit or improving bicycle or pedestrian travel routes.

- Give funding preference to investment in public transit over investment in infrastructure for private automobile traffic.[58]
- Include safe and convenient bicycle and pedestrian access in all transportation improvement projects.
- Ensure that non-motorized transportation systems are complete, connected and not interrupted by impassable barriers, such as freeways.[59]
- Require amenities for non-motorized transportation, such as secure and convenient bicycle parking.[60]
- Provide adequate and affordable public transportation choices including expanded bus routes and service and other transit choices such as shuttles, light rail, and rail where feasible.
- Assess transportation impact fees on new development in order to maintain and increase public transit service.[61]
- Provide public transit incentives, including free and reduced fare areas.[62]
- Adopt a comprehensive parking policy that discourages private vehicle use and encourages the use of alternative transportation.[63] For example, reduce parking for private vehicles while increasing options for alternative transportation; eliminate minimum parking requirements for new buildings; "unbundle" parking (require that parking is paid for separately and is not included in rent for residential or commercial space); and set appropriate pricing for parking.
- Develop school transit plans to substantially reduce automobile trips to, and congestion surrounding, schools. (According to some estimates, parents driving their children to school account for 20-25% of the morning commute.) Plans may address, *e.g.*, necessary infrastructure improvements and potential funding sources; replacing older diesel buses with low or zero-emission vehicles; mitigation fees to expand school bus service; and Safe Routes to School programs[64] and other formal efforts to increase walking and biking by students.
- Create financing programs for the purchase or lease of vehicles used in employer ride sharing programs.
- Enter into partnerships to create and expand polluting vehicle buy-back programs to include vehicles with high greenhouse gas emissions.
- Provide public education and information about options for reducing motor vehicle-related greenhouse gas emissions. Include information on trip reduction; trip linking; public transit; biking and walking; vehicle performance and efficiency (*e.g.*, keeping tires inflated); low or zero-emission vehicles; and car and ride sharing.

Housing Element[65]

- Improve the jobs-housing balance and promote a range of affordable housing choices near jobs, services and transit.
- Concentrate mixed use, and medium to higher density residential development in areas near jobs, transit routes, schools, shopping areas and recreation.
- Increase density in single family residential areas located near transit routes or commercial areas. For example, promote duplexes in residential areas and increased height limits of multi-unit buildings on main arterial streets, under specified conditions.
- Encourage transit-oriented developments.[66]
- Impose minimum residential densities in areas designated for transit-oriented, mixed use development to ensure higher density in these areas.
- Designate mixed use areas where housing is one of the required uses.
- In areas designated for mixed use, adopt incentives for the concurrent development of different land uses (*e.g.*, retail with residential).
- Promote infill, mixed use, and higher density development by, for example, reducing developer fees;[67] providing fast-track permit processing; reducing processing fees; funding infrastructure loans; and giving preference for infrastructure improvements in these areas.

Open Space Element[68]

- Preserve forested areas, agricultural lands, wildlife habitat and corridors, wetlands, watersheds, groundwater recharge areas and other open space that provide carbon sequestration benefits.
- Establish a mitigation program for development of those types of open space that provide carbon sequestration benefits. Require like-kind replacement for, or impose mitigation fees on development of such lands. Use funds generated to protect existing, or create replacement, open space.
- Allow alternative energy projects in areas zoned for open space where consistent with other uses and values.
- Protect existing trees and encourage the planting of new trees. Adopt a tree protection and replacement ordinance, *e.g.*, requiring that trees larger than a specified diameter that are removed to accommodate development must be replaced at a set ratio.
- Connect parks and publicly accessible open space through shared pedestrian/bike paths and trails to encourage walking and bicycling.

Safety Element[69]

- Address expected effects of climate change that may impact public safety, including increased risk of wildfires, flooding and sea level rise, salt water intrusion; and health effects of increased heat and ozone, through appropriate policies and programs.
- Adopt programs for the purchase, transfer or extinguishment of development rights in high risk areas.

- Monitor the impacts of climate change. Use adaptive management to develop new strategies, and modify existing strategies, to respond to the impacts of climate change.

Energy Element

Many of the goals, policies, or programs set forth above may be contained in an optional energy element. The resources set forth below may be useful to local agencies in developing an energy element or an energy conservation plan.

- The California Public Utilities Commission issued a report entitled California Long Term Energy Efficiency Strategic Plan in September 2008. The report serves as a road map for achieving maximum energy savings across all major groups and sectors in California. Section 12 of the report focuses on the role of local governments as leaders in using energy efficiency to reduce energy use and greenhouse gas emissions. The section includes numerous specific suggestions for local government policies designed to reduce energy use. The report is available at http://www.californiaenergyefficiency.com/index.shtml.
- The Local Government Commission produced a detailed report in 2002 entitled General Plan Policy Options for Energy Efficiency in New and Existing Development. The document sets forth energy saving policies suitable for inclusion in general plans. Policies range from exceeding State minimum building efficiency standards, to retrofitting buildings to reduce energy consumption, to implementing energy conservation strategies for roofs, pavement and landscaping. The report also contains suggested general plan language. The report is available here: http://www.redwoodenergy.org/uploads/Energy_Element_Report.pdf.
- The California Energy Commission summarizes the energy-related efforts of Humboldt County, City of Pleasanton, City of Pasadena, City and County of San Francisco, the Los Angeles area, City of Chula Vista, the San Diego region, City of San Diego, City and County of San Luis Obispo, and City of Santa Monica, in the 2006 Integrated Energy Policy Report at pp. 82-87, available here: http://www.energy.ca.gov/2006publications/CEC-100-2006-001/CEC-100-2006-001-CMF.PDF.
- In 2006, the Association of Monterey Bay Area Governments published a regional energy plan, available here: http://www.ambag.org/programs/EnergyWatch/regional_plan.html. Part 1 describes the plan's goals and course of action. Part 2 describes actions that local agencies already have taken and identifies the most cost-effective measures in each sector. The appendices list existing energy programs that may provide support and funding for energy efficiency projects, suggest language for energy-related provisions to be included in general plans, and list and give brief explanations of more than one hundred energy-saving measures.
- The California Local Energy Efficiency Program (CALeep) has available on its website, http://www.caleep.com/default.htm, various resources and documents, including an energy "Workbook." The Workbook lays out a process for instituting local energy efficiency programs based in part on information developed in six California pilot projects (Inland Empire Utilities Agency, City of Oakland, San Joaquin Valley, Sonoma County, South Bay Cities Council of Governments, and Ventura County Regional Energy Alliance). The Workbook is designed to be used by local officials to initiate, plan, organize, implement, and assess energy efficiency activities at the local and regional level.

(3) Resources About Global Warming and Local Action

The following web sites and organizations provide general information about mitigating global warming impacts at the local level. These sites represent only a small fraction of the available resources. Local agencies are encouraged to conduct their own research in order to obtain the most current and relevant materials.

- The U.S. Conference of Mayors' Climate Protection Agreement contains valuable information for the many local agencies that are joining the fight against global warming. The Agreement is available here: http://www.coolcities.us/resources/bestPracticeGuides/USM_ClimateActionHB.pdf. Over one hundred and twenty California cities have joined the "Cool Cities" campaign, which means they have signed the U.S. Mayor's Climate Protection Agreement and are taking concrete steps toward addressing global warming. These steps include preparing a city-wide greenhouse gas emissions inventory and creating and implementing a local Climate Action Plan. Additional resources, including various cities' Climate Action Plans, are located at the Cool Cities website: http://www.coolcities.us/resources.php.

- In July 2007, Alameda County became one of twelve charter members of the "Cool Counties" initiative. Participating counties sign a Climate Stabilization Declaration, which is available at the website for King County (Washington State): http://www.metrokc.gov/exec/news/2007/0716dec.aspx. Participating counties agree to work with local, state, and federal governments and other leaders to reduce county geographical greenhouse gas emissions to 80% below current levels by 2050 by developing a greenhouse gas emissions inventory and regional reduction plan. Current member counties are recruiting new members and are committed to sharing information. Cool Counties contact information is available at: http://www.kingcounty.gov/exec/coolcounties.

- Local Governments for Sustainability, a program of International Cities for Local Environmental Initiatives (ICLEI), has initiated a campaign called Cities for Climate Protection (CCP). The membership program is designed to empower local governments worldwide to take action on climate change. Many California cities have joined ICLEI. More information is available at the organization's website: http://www.iclei.org/.

- The Institute for Local Government (ILG), an affiliate of the California State Association of Counties and the League of California Cities, has instituted a program called the California Climate Action Network (CaliforniaCAN!). The program provides information about the latest climate action resources and case studies. More information is available at the CaliforniaCAN! website: http://www.cacities.org/index.jsp?displaytype=&section=climate&zone=ilsg.

  ILG's detailed list of climate change "best practices" for local agencies is available at http://www.cacities.org/index.jsp?displaytype=&section=climate&zone=ilsg&sub_sec=climate_local.

  ILG maintains a list of local agencies that have adopted Climate Action Plans. The list is available here: http://www.cacities.org/index.jsp?zone=ilsg&previewStory=27035. According to ILG, the list includes Marin County and the cities of Arcata, Berkeley, Los Angeles, Palo Alto, San Diego, and San Francisco. Many additional local governments are in the process of conducting greenhouse gas inventories.

- The non-profit group Natural Capitalism Solutions (NCS) has developed an on-line Climate

Protection Manual for Cities. NCS states that its mission is "to educate senior decision-makers in business, government and civil society about the principles of sustainability." The manual is available at http://www.climatemanual.org/Cities/index.htm.

- The Local Government Commission provides many planning-related resources for local agencies at its website: http://www.lgc.org/.

  In cooperation with U.S. EPA, LGC has produced a booklet discussing the benefits of density and providing case studies of well-designed, higher density projects throughout the nation. Creating Great Neighborhoods: Density in Your Community (2003) is available here: http://www.lgc.org/freepub/PDF/Land_Use/reports/density_manual.pdf.

- The Pew Center on Global Climate Change was established in 1998 as a non-profit, non-partisan and independent organization. The Center's mission is to provide credible information, straight answers, and innovative solutions in the effort to address global climate change. See http://www.pewclimate.org. The Pew Center has published a series of reports called Climate Change 101. These reports provide a reliable and understandable introduction to climate change. They cover climate science and impacts, technological solutions, business solutions, international action, recent action in the U.S. states, and action taken by local governments. The Climate Change 101 reports are available at http://www.pewclimate.org/global-warming-basics/climate_change_101.

- The Climate Group, www.theclimategroup.org, is a non-profit organization founded by a group of companies, governments and activists to "accelerate international action on global warming with a new, strong focus on practical solutions." Its website contains a searchable database of about fifty case studies of actions that private companies, local and state governments, and the United Kingdom, have taken to reduce GHG emissions. Case studies include examples from California. The database, which can be searched by topic, is available at http://theclimategroup.org/index.php/reducing_emissions/case_studies.

- The Bay Area Climate Solutions Database features over 130 climate-related projects, programs and policies in the San Francisco Bay Area that are being undertaken by businesses, public agencies, non-government organizations, and concerned individuals. The database is available at http://www.bayareaclimate.org/services.html.

- U.S. EPA maintains a list of examples of codes that support "smart growth" development, available here: http://www.epa.gov/piedpage/codeexamples.htm. Examples include transit-oriented development in Pleasant Hill and Palo Alto, rowhouse design guidelines from Mountain View, and street design standards from San Diego.

- In November 2007, U.S. EPA issued a report entitled "Measuring the Air Quality and Transportation Impacts of Infill Development." This report summarizes three regional infill development scenarios in Denver, Colorado; Boston, Massachusetts; and Charlotte, North Carolina. The analysis shows how standard transportation forecasting models currently used by metropolitan planning organizations can be modified to capture at least some of the transportation and air quality benefits of brownfield and infill development. In all scenarios, more compact and transit oriented development was projected to substantially reduce vehicle miles traveled. As the agency found, "The results of this analysis suggest that strong support for infill development can be one of the most effective transportation and emission-reduction investments a region can pursue." The report is available at

http://www.epa.gov/smartgrowth/impacts_infill.htm.

- The Urban Land Institute (ULI) is a nonprofit research and education organization providing leadership in responsible land use and sustainability. In 2007, ULI produced a report entitled, "Growing Cooler: The Evidence on Urban Development and Climate Change," which reviews existing research on the relationship between urban development, travel, and greenhouse gases emitted by motor vehicles. It further discusses the emissions reductions that can be expected from compact development and how to make compact development happen. "Growing Cooler" is available at http://www.smartgrowthamerica.org/gcindex.html.

- The California Department of Housing and Community Development, http://www.hcd.ca.gov/, has many useful resources on its website related to housing policy and housing elements and specific recommendations for creating higher density and affordable communities. See http://www.hcd.ca.gov/hpd/hrc/plan/he/.

- The California Transportation Commission (CTC) recently made recommendations for changes to regional transportation guidelines to address climate change issues. Among other things, the CTC recommends various policies, strategies and performance standards that a regional transportation agency should consider including in a greenhouse reduction plan. These or analogous measures could be included in other types of planning documents or local climate action plans. The recommendation document, and Attachment A, entitled Smart Growth/Land Use Regional Transportation Plan Guidelines Amendments, are located at http://www.dot.ca.gov/hq/transprog/ctcbooks/2008/0108/12_4.4.pdf.

- The California Energy Commission's Research Development and Demonstration (RD&D) Division supports energy research, development and demonstration projects designed to bring environmentally safe, affordable and reliable energy services and products to the marketplace. On its website, http://www.energy.ca.gov/research/reports_pubs.html, RD&D makes available a number of reports and papers related to energy efficiency, alternative energy, and climate change.

- The Governor's Office of Planning and Research (OPR) provides valuable resources for lead agencies related to CEQA and global warming at http://opr.ca.gov/index.php?a=ceqa/index.html. Among the materials available are a list of environmental documents addressing climate change and greenhouse gas emissions and a list of local plans and policies addressing climate change. In addition, OPRs' The California Planners' Book of Lists 2008, which includes the results of surveys of local agencies on matters related to global warming, is available at http://www.opr.ca.gov/index.php?a=planning/publications.html#pubs-C.

- The California Air Pollution Control Officers Association has prepared a white paper entitled "CEQA and Climate Change" (January 2008). The document includes a list of mitigation measures and information about their relative efficacy and cost. The document is available at http://www.capcoa.org/ceqa/?docID=ceqa.

- The Attorney General's global warming website includes a section on CEQA. See http://ag.ca.gov/globalwarming/ceqa.php. The site includes all of the Attorney General's public comment letters that address CEQA and global warming.

(4) Endnotes

1. Energy efficiency leads the mitigation list because it promises significant greenhouse gas reductions through measures that are cost-effective for the individual residential and commercial energy consumer.

2. Leadership in Energy and Environmental Design (LEED) administers a Green Building Ratings program that provides benchmarks for the design, construction, and operation of high-performance green buildings. More information about the LEED ratings system is available at http://www.usgbc.org/DisplayPage.aspx?CategoryID=19. Build it Green is a non-profit, membership organization that promotes green building practices in California. The organization offers a point-based, green building rating system for various types of projects. See http://www.builditgreen.org/guidelines-rating-systems. Lawrence Berkeley National Laboratories' Building Technologies Department is working to develop coherent and innovative building construction and design techniques. Information and publications on energy efficient buildings are available at the Department's website at http://btech.lbl.gov. The California Department of Housing and Community Development has created an extensive Green Building & Sustainability Resources handbook with links to green building resources, available at http://www.hcd.ca.gov/hpd/green_build.pdf.

3. For more information, see Lawrence Berkeley National Laboratories, Heat Island Group at http://eetd.lbl.gov/HeatIsland/.

4. See California Energy Commission, "How to Hire an Energy Services Company" (2000) at http://www.energy.ca.gov/reports/efficiency_handbooks/400-00-001D.PDF.

5. Energy Star is a joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy that certifies energy efficient products and provides guidelines for energy efficient practices for homes and businesses. More information about Energy Star-certified products is available at http://www.energystar.gov/. The Electronic Product Environmental Assessment Tool (EPEAT) is a system that ranks computer products based on their conformance to a set of environmental criteria, including energy efficiency. More information about EPEAT is available at http://www.epeat.net/AboutEPEAT.aspx.

6. LED lighting is substantially more energy efficient than conventional lighting and can save money. See http://www.energy.ca.gov/efficiency/partnership/case_studies/TechAsstCity.pdf (noting that installing LED traffic signals saved the City of Westlake about $34,000 per year). As of 2005, only about a quarter of California's cities and counties were using 100% LEDs in traffic signals. See California Energy Commission (CEC), Light Emitting Diode Traffic Signal Survey (2005) at p. 15, available at http://www.energy.ca.gov/2005publications/CEC-400-2005-003/CEC-400-2005-003.PDF. The CEC's Energy Partnership Program can help local governments take advantage of energy saving technology, including, but not limited to, LED traffic signals. See http://www.energy.ca.gov/efficiency/partnership/.

7. See Palm Desert Energy Partnership at http://www.sce.com/rebatesandsavings/palmdesert. The City, in partnership with Southern California Edison, provides incentives and rebates for efficient equipment. See Southern California Edison, Pool Pump and Motor Replacement Rebate Program at http://www.sce.com/RebatesandSavings/Residential/pool/pump-motor.

8. Many cities and counties provide energy efficiency education. See, for example, the City of Stockton's Energy Efficiency website at http://www.stocktongov.com/energysaving/index.cfm. See also "Green

County San Bernardino," http://www.greencountysb.com/ at pp. 4-6. Private projects may also provide education. For example, a homeowners' association could provide information and energy audits to its members on a regular basis.

9. See http://www.gosolarcalifornia.ca.gov/documents/CEC-300-2007-008-CMF.PDF. At the direction of Governor Schwarzenegger, the California Public Utilities Commission (CPUC) approved the California Solar Initiative on January 12, 2006. The initiative creates a $3.3 billion, ten-year program to install solar panels on one million roofs in the State. See http://www.gosolarcalifornia.ca.gov/nshp/index.html.

10. For example, Alameda County has installed two solar tracking carports, each generating 250 kilowatts. By 2005, the County had installed eight photovoltaic systems totaling over 2.3 megawatts. The County is able to meet 6 percent of its electricity needs through solar power. See http://www.acgov.org/gsa/Alameda%20County%20-%20Solar%20Case%20Study.pdf.

11. Many commercial, industrial, and campus-type facilities (such as hospitals, universities and prisons) use fuel to produce steam and heat for their own operations and processes. Unless captured, much of this heat is wasted. Combined heat and power (CHP) captures waste heat and re-uses it, *e.g.*, for residential or commercial space heating or to generate electricity. See U.S. EPA, Catalog of CHP Technologies at http://www.epa.gov/chp/documents/catalog_of_%20chp_tech_entire.pdf. The average efficiency of fossil-fueled power plants in the United States is 33 percent. By using waste heat recovery technology, CHP systems typically achieve total system efficiencies of 60 to 80 percent. CHP can also substantially reduce emissions of carbon dioxide. http://www.epa.gov/chp/basic/efficiency.html. Currently, CHP in California has a capacity of over 9 million kilowatts. See list of California CHP facilities at http://www.eea-inc.com/chpdata/States/CA.html.

12. The California Energy Commission has found that the State's water-related energy use – which includes the conveyance, storage, treatment, distribution, wastewater collection, treatment, and discharge – consumes about 19 percent of the State's electricity, 30 percent of its natural gas, and 88 billion gallons of diesel fuel every year. See http://www.energy.ca.gov/2007publications/CEC-999-2007-008/CEC-999-2007-008.PDF. Accordingly, reducing water use and improving water efficiency can help reduce energy use and associated greenhouse gas emissions.

13. The Water Conservation in Landscaping Act of 2006 (AB 1881) requires the Department of Water Resources (DWR), not later than January 1, 2009, to update the Model Water Efficient Landscape Ordinance. The draft of the entire updated Model Water Efficient Landscape Ordinance will be made available to the public. See http://www.owue.water.ca.gov/landscape/ord/updatedOrd.cfm.

14. See Graywater Guide, Department of Water Resources, Office of Water Use Efficiency and Transfers at http://www.owue.water.ca.gov/docs/graywater_guide_book.pdf. See also The Ahwahnee Water Principles, Principle 6, at http://www.lgc.org/ahwahnee/h2o_principles.html. The Ahwahnee Water Principles have been adopted by City of Willits, Town of Windsor, Menlo Park, Morgan Hill, Palo Alto, Petaluma, Port Hueneme, Richmond, Rohnert Park, Rolling Hills Estates, San Luis Obispo, Santa Paula, Santa Rosa, City of Sunnyvale, City of Ukiah, Ventura, Marin County, Marin Municipal Water District, and Ventura County.

15. See Office of Environmental Health Hazard Assessment and the California Water and Land Use Partnership, Low Impact Development, at http://www.coastal.ca.gov/nps/lid-factsheet.pdf.

16. See, for example, the City of Santa Cruz, Water Conservation Office at http://www.ci.santa-cruz.ca.us/wt/conservation; Santa Clara Valley Water District, Water Conservation at http://www.valleywater.org/conservation/index.shtm; and Metropolitan Water District and the Family of Southern California Water Agencies, Be Water Wise at http://www.bewaterwise.com. Private projects may provide or fund similar education.

17. See Public Interest Energy Research Program, Dairy Power Production Program, Dairy Methane Digester System, 90-Day Evaluation Report, Eden Vale Dairy (Dec. 2006) at http://www.energy.ca.gov/2006publications/CEC-500-2006-083/CEC-500-2006-083.PDF. See also discussion in the general plan section, below, relating to wastewater treatment plants and landfills.

18. Many cities and counties provide information on waste reduction and recycling. See, for example, the Butte County Guide to Recycling at http://www.recyclebutte.net. The California Integrated Waste Management Board's website contains numerous publications on recycling and waste reduction that may be helpful in devising an education project. See http://www.ciwmb.ca.gov/Publications/default.asp?cat=13. Private projects may also provide education directly, or fund education.

19. See U.S. EPA, Our Built and Natural Environments, A Technical Review of the Interactions between Land Use, Transportation, and Environmental Quality (Jan. 2001) at pp. 46-48 http://www.epa.gov/dced/pdf/built.pdf.

20. See California Department of Housing and Community Development, Myths and Facts About Affordable and High Density Housing (2002), available at http://www.hcd.ca.gov/hpd/mythsnfacts.pdf.

21. Palo Alto's Green Ribbon Task Force Report on Climate Protection recommends pedestrian and bicycle-only streets under its proposed actions. See http://www.city.palo-alto.ca.us/civica/filebank/blobdload.asp?BlobID=7478.

22. There are a number of car sharing programs operating in California, including City CarShare http://www.citycarshare.org/ and Zip Car http://www.zipcar.com/.

23. The City of Lincoln has a NEV program. See http://www.lincolnev.com/index.html.

24. The County of Los Angeles has instituted an alternative fuel vehicle purchasing program open to County employees, retirees, family members, and contractors and subcontractors. See http://www.lacounty.gov/VPSP.htm.

25. Promoting "least polluting" methods of moving people and goods is part of a larger, integrated "sustainable streets" strategy now being explored at U.C. Davis's Sustainable Transportation Center. Resources and links are available at the Center's website. See http://stc.ucdavis.edu/outreach/ssp.php.

26. See, for example, Marin County's Safe Routes to Schools program at http://www.saferoutestoschools.org ; see also California Center for Physical Activity's California Walk to School website at http://www.cawalktoschool.com.

27. For information on the general plan process, see Governor's Office of Planning and Research, General Plan Guidelines (1998), available at http://ceres.ca.gov/planning/genplan/gpg.pdf.

28. The Conservation Element addresses the conservation, development, and use of natural resources including water, forests, soils, rivers, and mineral deposits. Measures proposed for the Conservation Element may alternatively be appropriate for other elements. In practice, there may be substantial overlap in the global warming mitigation measures appropriate for the Conservation and Open Space Elements.

29. See the Attorney General's settlement agreement with the County of San Bernardino, available at http://ag.ca.gov/cms_pdfs/press/2007-08-21_San_Bernardino_settlement_agreement.pdf; Attorney General's settlement agreement with the City of Stockton, available at http://ag.ca.gov/cms_attachments/press/pdfs/n1608_stocktonagreement.pdf . See also Marin County Greenhouse Gas Reduction Plan (Oct. 2006) at http://www.co.marin.ca.us/depts/CD/main/pdf/final_ghg_red_plan.pdf; Marin Countywide Plan (Nov. 6, 2007) at http://www.co.marin.ca.us/depts/CD/main/fm/cwpdocs/CWP_CD2.pdf; Draft Conservation Element, General Plan, City of San Diego at http://www.sandiego.gov/planning/genplan/pdf/generalplan/ce070918.pdf.

30. Public Resources Code Section 25402.1(h)2 and Section 10-106 of the Building Energy Efficiency Standards establish a process that allows local adoption of energy standards that are more stringent than the statewide Standards. More information is available at the California Energy Commission's website. See http://www.energy.ca.gov/title24/2005standards/ordinances_exceeding_2005_building_standards.html; see also California Public Utilities Commission, California Long Term Energy Efficiency Strategic Plan (Sept. 2008) at p. 92, available at http://www.californiaenergyefficiency.com/docs/EEStrategicPlan.pdf.

31. See, *e.g.*, LEED at http://www.usgbc.org/DisplayPage.aspx?CategoryID=19; see also Build it Green at http://www.builditgreen.org/guidelines-rating-systems.

32. During 2007 and 2008, an unprecedented number of communities across the State adopted green building requirements in order to increase energy efficiency and decrease greenhouse gas emissions and other environmental impacts within their jurisdictions. The California Attorney General's office has prepared a document that identifies common features of recent green building ordinances and various approaches that cities and counties have taken. The document is available at http://ag.ca.gov/globalwarming/greenbuilding.php.

33. See, *e.g.*, "Green County San Bernardino," http://www.greencountysb.com/. As part of its program, the County is waiving permit fees for alternative energy systems and efficient heating and air conditioning systems. See http://www.greencountysb.com/ at p. 3. For a representative list of incentives for green building offered in California and throughout the nation, see U.S. Green Building Council, Summary of Government LEED Incentives (updated quarterly) at https://www.usgbc.org/ShowFile.aspx?DocumentID=2021.

34. For example, Riverside Public Utilities offers free comprehensive energy audits to its business customers. See http://www.riversideca.gov/utilities/busi-technicalassistance.asp.

35. Under Southern California Gas Company's Energy Efficiency Program for Commercial/Industrial Large Business Customers, participants are eligible to receive an incentive based on 50% of the equipment cost, or $0.50 per therm saved, whichever is lower, up to a maximum amount of $1,000,000 per customer, per year. Eligible projects require an energy savings of at least 200,000 therms per year. See http://www.socalgas.com/business/rebates.

36. The City of Berkeley is in the process of instituting a "Sustainable Energy Financing District." According to the City, "The financing mechanism is loosely based on existing 'underground utility districts' where the City serves as the financing agent for a neighborhood when they move utility poles and wires underground. In this case, individual property owners would contract directly with qualified private solar installers and contractors for energy efficiency and solar projects on their building. The City provides the funding for the project from a bond or loan fund that it repays through assessments on participating property owners' tax bills for 20 years." See http://www.cityofberkeley.info/Mayor/PR/pressrelease2007-1023.htm.

The California Energy Commission's Public Interest Energy Research Program estimates that the technical potential for rooftop applications of photovoltaic systems in the State is about 40 gigawatts in 2006, rising to 68 gigawatts in 2016. See Public Interest Energy Research Program, California Rooftop Photovoltaic (PV) Resource Assessment and Growth Potential by County (2007), available at http://www.energy.ca.gov/publications/displayOneReport.php?pubNum=CEC-500-2007-048.

37. As described in its Climate Action Plan, the City of San Francisco uses a combination of incentives and technical assistance to reduce lighting energy use in small businesses such as grocery stores, small retail outlets, and restaurants. The program offers free energy audits and coordinated lighting retrofit installation. In addition, the City offers residents the opportunity to turn in their incandescent lamps for coupons to buy fluorescent units. See San Francisco's Climate Action Plan, available at http://www.sfenvironment.org/downloads/library/climateactionplan.pdf.

38. Among other strategies for reducing its greenhouse gas emissions, Yolo County is considering a purchasing policy that mandates all purchases of electrical equipment meet or exceed the PG&E Energy Star rating. This would require departments to purchase improved efficiency refrigerators, microwaves and related appliances that have greater power efficiencies and less GHG impacts. See http://www.yolocounty.org/Index.aspx?page=878.

39. See, for example, Los Angeles County Green Purchasing Policy, June 2007 at http://www.responsiblepurchasing.org/UserFiles/File/General/Los%20Angeles%20County,%20Green%20Purchasing%20Policy,%20June%202007.pdf. The policy requires County agencies to purchase products that minimize environmental impacts, including greenhouse gas emissions. See also California Energy Commission, Existing Green Procurement Initiatives, available at http://www.cec.org/files/pdf/ECONOMY/Green-Procurement_Initiatives_en.pdf.

40. Some local agencies have implemented a cool surfaces programs in conjunction with measures to address storm water runoff and water quality. See, for example, The City of Irvine's Sustainable Travelways/Green Streets program at http://www.cityofirvine.org/depts/redevelopment/sustainable_travelways.asp; The City of Los Angeles's Green Streets LA program at http://water.lgc.org/water-workshops/la-workshop/Green_Streets_Daniels.pdf/view; see also The

Chicago Green Alley Handbook at http://egov.cityofchicago.org/webportal/COCWebPortal/COC_EDITORIAL/GreenAlleyHandbook_Jan.pdf.

41. See the website for Lawrence Berkeley National Laboratory's Urban Heat Island Group at http://eetd.lbl.gov/HeatIsland/LEARN/ and U.S. EPA's Heat Island website at www.epa.gov/heatisland/. To learn about the effectiveness of various heat island mitigation strategies, see the Mitigation Impact Screening Tool, available at http://www.epa.gov/heatisld/resources/tools.html.

42. For example, the City of Lompoc has a policy to "require new development to offset new water demand with savings from existing water users, as long as savings are available." See http://www.ci.lompoc.ca.us/departments/comdev/pdf07/RESRCMGMT.pdf.

43. The Eastern Municipal Water District imposes fines on all customers, including residential customers, for excessive runoff. See Water Use Efficiency Ordinance 72.23, available at http://www.emwd.org/usewaterwisely.

44. The Irvine Ranch Water District in Southern California, for example, uses a five-tiered rate structure that rewards conservation. The water district has a baseline charge for necessary water use. Water use that exceeds the baseline amount costs incrementally more money. While "low volume" water use costs $.082 per hundred cubic feet (ccf), "wasteful" water use costs $7.84 per ccf. See http://www.irwd.com/AboutIRWD/rates_residential.php. Marin County has included tiered billing rates as part of its general plan program to conserve water. See Marin County Countywide Plan, page 3-204, PFS-2.q, available at http://www.co.marin.ca.us/depts/CD/main/fm/cwpdocs/CWP_CD2.pdf.

45. The Sacramento Regional Sanitation District has adopted a tiered sewer impact fee ordinance that charges less for connections to identified "infill communities" as compared to identified "new communities." See http://www.srcsd.com/pdf/ord-0106.pdf.

46. See the City of Fresno's Watering Regulations and Ordinances at http://www.fresno.gov/Government/DepartmentDirectory/PublicUtilities/Watermanagement/Conservation/WaterRegulation/WateringRegulationsandRestrictions.htm.

47. See, *e.g.*, the City of San Diego's plumbing retrofit ordinance at http://www.sandiego.gov/water/conservation/selling.shtml; City of San Francisco's residential energy conservation ordinance (fact sheet) at http://www.sfgov.org/site/uploadedfiles/dbi/Key_Information/19_ResidEnergyConsBk1107v5.pdf.

48. The City of Roseville offers free water conservation audits through house calls and on-line surveys. See http://www.roseville.ca.us/eu/water_utility/water_conservation/for_home/programs_n_rebates.asp.

49. See Landscape Performance Certification Program, Municipal Water District of Orange County at http://waterprograms.com/wb/30_Landscapers/LC_01.htm.

50. For example, San Diego's Metropolitan Wastewater Department (SDMWD) installed eight digesters at one of its wastewater treatment plants. Digesters use heat and bacteria to break down the organic solids removed from the wastewater to create methane, which can be captured and used for energy. The methane generated by SDMWD's digesters runs two engines that supply enough energy for all of the

plant's needs, and the plant sells the extra energy to the local grid. See http://www.sandiego.gov/mwwd/facilities/ptloma.shtml. In addition, the California Air Resources Board approved the Landfill Methane Capture Strategy as an early action measure. http://www.arb.ca.gov/cc/ccea/landfills/landfills.htm. Numerous landfills in California, such as the Puenta Hills Landfill in Los Angeles County (http://www.lacsd.org/about/solid_waste_facilities/puente_hills/clean_fuels_program.asp), the Scholl Canyon Landfill in the City of Glendale (http://www.glendalewaterandpower.com/the_environment/renewable_energy_development.aspx), and theYolo Landfill in Yolo County, are using captured methane to generate power and reduce the need for other more carbon-intensive energy sources.

51. On April 30, 2007, the Public Utilities Commission authorized a CCA application by the Kings River Conservation District on behalf of San Joaquin Valley Power Authority (SJVPA). SJVPA's Implementation Plan and general CCA program information are available at www.communitychoice.info. See also http://www.co.marin.ca.us/depts/CD/main/comdev/advance/Sustainability/Energy/cca/CCA.cfm. (County of Marin); and http://sfwater.org/mto_main.cfm/MC_ID/12/MSC_ID/138/MTO_ID/237 (San Francisco Public Utilities Commission). See also Public Interest Energy Research, Community Choice Aggregation (fact sheet) (2007), available at http://www.energy.ca.gov/publications/displayOneReport.php?pubNum=CEC-500-2006-082.

52. The Land Use Element designates the type, intensity, and general distribution of uses of land for housing, business, industry, open-space, education, public buildings and grounds, waste disposal facilities, and other categories of public and private uses.

53. The Center for Physical Activity within the California Department of Public Health supports school siting and joint use policies and practices that encourage kids to walk and bike to school; discourage car trips that cause air pollution and damage the environment; and position schools as neighborhood centers that offer residents recreational, civic, social, and health services easily accessible by walking or biking. The Center offers school siting resources on its website at http://www.caphysicalactivity.org/school_siting.html#resources.

54. Samples of local legislation to reduce sprawl are set forth in the U.S. Conference of Mayors' Climate Action Handbook. See http://www.iclei.org/documents/USA/documents/CCP/Climate_Action_Handbook-0906.pdf.

55. For a list and maps related to urban growth boundaries in California, see Urban Growth Boundaries and Urban Line Limits, Association of Bay Area Governments (2006) at http://www.abag.ca.gov/jointpolicy/Urban%20Growth%20Boundaries%20and%20Urban%20Limit%20Lines.pdf.

56. The Circulation Element works with the Land Use element and identifies the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other local public utilities and facilities.

57. See Orange County Transportation Authority, Signal Synchronization at http://www.octa.net/signals.aspx. Measures such as signal synchronization that improve traffic flow

must be paired with other measures that encourage public transit, bicycling and walking so that improved flow does not merely encourage additional use of private vehicles.

58. San Francisco's "Transit First" Policy is listed in its Climate Action Plan, available at http://www.sfenvironment.org/downloads/library/climateactionplan.pdf. The City's policy gives priority to public transit investments and provides public transit street capacity and discourages increases in automobile traffic. This policy has resulted in increased transit service to meet the needs generated by new development.

59. The City of La Mesa has a Sidewalk Master Plan and an associated map that the City uses to prioritize funding. As the City states, "The most important concept for sidewalks is connectivity. For people to want to use a sidewalk, it must conveniently connect them to their intended destination." See http://www.ci.la-mesa.ca.us/index.asp?NID=699. See also Toolkit for Improving Walkability in Alameda County, available at http://www.acta2002.com/ped-toolkit/ped_toolkit_print.pdf ; Centers of Disease Control and Prevention website (list of walkability-related resources) at http://www.cdc.gov/nccdphp/dnpa/hwi/toolkits/walkability/references.htm.

60. See the City of Oakland's Bicycle Parking Requirements ordinance, available at www.oaklandpw.com/assetfactory.aspx?did=3337.

61. San Francisco assesses a Downtown Transportation Impact Fee on new office construction and commercial office space renovation within a designated district. The fee is discussed in the City's Climate Action plan, available at http://www.sfenvironment.org/downloads/library/climateactionplan.pdf.

62. For example, Seattle, Washington maintains a public transportation "ride free" zone in its downtown from 6:00 a.m. to 7:00 p.m. daily. See http://transit.metrokc.gov/tops/accessible/paccessible_map.html#fare.

63. See, for example, Reforming Parking Policies to Support Smart Growth, Metropolitan Transportation Commission (June 2007) at http://www.mtc.ca.gov/planning/smart_growth/parking_seminar/Toolbox-Handbook.pdf; see also the City of Ventura's Downtown Parking and Mobility Plan, available at http://www.cityofventura.net/community_development/resources/mobility_parking_plan.pdf, and its Downtown Parking Management Program, available at http://www.ci.ventura.ca.us/depts/comm_dev/downtownplan/chapters.asp.

64. See Safe Routes to School Toolkit, National Highway Traffic Safety Administration (2002) at www.nhtsa.dot.gov/people/injury/pedbimot/bike/Safe-Routes-2002; see also www.saferoutestoschools.org (Marin County).

65. The Housing Element assesses current and projected housing needs. In addition, it sets policies for providing adequate housing and includes action programs for that purpose.

66. The U.S. Conference of Mayors cites Sacramento's Transit Village Redevelopment as a model of transit-oriented development. More information about this project is available at http://www.cityofsacramento.org/planning/projects/65th-street-village/. The Metropolitan Transportation Commission (MTC) has developed policies and funding programs to foster transit-

oriented development. More information is available at MTC's website: http://www.mtc.ca.gov/planning/smart_growth/#tod. The California Department of Transportation maintains a searchable database of 21 transit-oriented developments at http://transitorienteddevelopment.dot.ca.gov/miscellaneous/NewHome.jsp.

67. The City of Berkeley has endorsed the strategy of reducing developer fees or granting property tax credits for mixed-use developments in its Resource Conservation and Global Warming Abatement Plan. City of Berkeley's Resource Conservation and Global Warming Abatement Plan p. 25 at http://www.baaqmd.gov/pln/GlobalWarming/BerkeleyClimateActionPlan.pdf.

68. The Open Space Element details plans and measures for preserving open space for natural resources, the managed production of resources, outdoor recreation, public health and safety, and the identification of agricultural land. As discussed previously in these Endnotes, there may be substantial overlap in the measures appropriate for the Conservation and Open Space Elements.

69. The Safety Element establishes policies and programs to protect the community from risks associated with seismic, geologic, flood, and wildfire hazards.

10-1 This introduction to the comment letter indicates that members of the California Correctional Peace Officers Association have concerns about the proposed project, especially regarding operational safety. This comment summarizes issues asserted to not be adequately addressed. These issues are addressed below in the responses to the specific comments.

10-2 The comment mischaracterizes both the proposed project and CEQA. Please see Master Response 2 explaining why the proposed project is not part of a single project that should be considered in a program EIR.

10-3 Please see Master Response 2, "Programmatic versus Project-Level Environmental Review."

The CHCF Stockton Project is the whole of the action under consideration. CPR is proposing other projects at other locations throughout California, but they are independent of the CHCF Stockton Project. The proposed project, if approved, would function on its own regardless of whether any of the other projects being considered were built. The proposed project is not linked to other projects being considered by CPR, nor by any other agency, including CDCR, under AB 900. No other project is affected by or requires the construction of CHCF Stockton, including the nearby Northern California Re-entry Facility (NCRF), approved by CDCR. Appropriately, the reentry facility is considered thoroughly in the cumulative impact analysis of the CHCF Stockton DEIR, as is proper and required by CEQA, so that the collective impacts of all projects in the area are considered. Further, the proposed project is no more linked to other projects proposed by CPR or CDCR than a project proposed in one area of California by a home builder is linked to a project by the same home builder or a different home builder in a different part of the state. However, if the projects were sufficiently proximate, the impacts of each may affect and compound effects on the same environmental resources, and would need to be considered in the cumulative impact analysis. Such is the case in the CHCF Stockton EIR, which considers the cumulative effects of CHCF Stockton with the reentry facility, the 29 million square feet of nonresidential development, the more than 15,000 residences, and other development in the region that could combine with the project to produce cumulative impacts. See Chapter 5 of the DEIR.

10-4 The comment suggests that the NCRF and CHCF Stockton should not have been considered as individual projects, and instead should have been evaluated as one programmatic project. The NCRF is proposed by CDCR, which is a different agency than CPR. The projects have independent utility and serve different needs; CDCR's project is for re-entry of inmates into society, while the DPR project is for health care. CDCR has no approval authority over CHCF Stockton and CPR has no approval authority over the NCRF. The NCRF project is evaluated in the cumulative section of the DEIR.

Section 6275 of the California Penal Code authorizes funding for construction of the NCRF. The NCRF project was approved before the CHCF Stockton Project was proposed. A specific source of funding for CHCF Stockton, or any other CPR project, has not yet been confirmed.

Please see Reponses to Comments 10-2 and 10-3 regarding additional discussion of programmatic EIRs and the cumulative impacts of both the CHCF Stockton and NCRF projects.

10-5 This comment asserts that the water supply analysis in the EIR is inadequate and describes concerns related to the Delta Water Supply Project (DWSP). This is one of several comments on the water analysis in the EIR (see Comments 10-5 through 10-18) that suggest that the proposed project relies on uncertain future water.

This is not true. The City of Stockton's General Plan 2035 (adopted December, 2007) projects considerable growth for the City. The actual rate of City growth, however, will be a function of market demand for new development. The impact of the current economic slowdown and foreclosure crisis on the housing market is dramatic and the related reduction in growth for water demand could extend that timeframe. For the purposes of the DEIR's analysis, however, it was conservatively assumed that buildout of the General Plan would occur despite the current recession. To accommodate that long-term growth, as set forth in the City's General Plan, the City would need an additional supply of water. This fact is well documented in the DEIR. Table 4.13-4 of the DEIR (page 4.13-15) shows that the City had a demand of 68,714 afy in 2004 and a supply of 140,171 afy (90,171 afy of surface water and 50,000 afy of groundwater). Supply was 71,457 afy more than demand. Demand is projected to grow to 81,694 afy in 2010 and 85,774 afy in 2015. If these projections hold true, city-wide water demand will continue to be less than total supply, *without the DWSP*, and even less than supply from existing firm surface-water supply during that time period. Add to this the 50,000 afy in groundwater supply, and City supply will exceed city-wide demand for a considerable period of time. In fact, as shown in Table 4.13-4, the City's need for DWSP water to supply long-term buildout of the City's General Plan does not become critical to City water supply until 2025, at which point demand is projected to grow to 137,944 afy, very near the 140,171 combined existing surface and groundwater supply.

As noted, the project demand is projected to be 444 afy. By adding project water to the projected demands (even assuming such a demand was not considered in the City's Water Supply Evaluation prepared for the General Plan), the City would still have a surplus through 2025 assuming full buildout of the General Plan.

The first comment states that the DEIR improperly concludes that the DWSP is a firm supply of water and suggests that this source of water should not be relied upon. It is important to bear in mind that the DEIR was prepared for a proposed construction project, and not for the City of Stockton General Plan. The proposed project would only require 444 afy of City of Stockton water, not up to 137,944 afy (by 2025) as required to meet demand throughout the entire Stockton Municipal Service Area. It would not be until 2025 that the City would require DWSP to meet buildout demands of the City's municipal service area. If buildout of the General Plan did not occur, the City could meet all existing demands with its existing supplies, even with the addition of the proposed project. Nevertheless, in recognition of the City's planned growth as set forth in its General Plan, the DEIR goes to great length to characterize the current status of the DWSP, its current state of permitting, and the numerous provisions that could affect water quantities delivered to the City of Stockton Municipal Service Area through the DWSP. Please see pages 4.13-4 through 4.13-8 of the DEIR.

The City is far along in receiving its final permits for construction of the DWSP. It is reasonably likely that all entitlements necessary to complete and operate the DWSP will be obtained by the year 2025. The City needs to procure two permits for the ultimate operation of the project. Information on the permits was provided by Michelle Stern, Ph.D., the DWSP permitting manager under contract to the City of Stockton (Stern, pers. comm., 2009). The two permits are:

1. *Clean Water Act Section 404:* USACE is responsible for issuing Section 404 permits. USACE has received all critical information it needs to issue the permit. The U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) have issued their

biological opinion (BO), which spells out the measures needed to protect all species protected under the ESA, including Delta smelt, Chinook salmon, and Central Valley steelhead. The BO precedes issuance of a take permit under Section 7 of the ESA; the City has agreed to the conditions provided in the BO. USACE is in the process of preparing an environmental assessment, under the National Environmental Policy Act (NEPA), which it needs to do before issuing the Section 404 permit. Given that the key environmental issues have been met through issuance of the BO, there are no reasonably foreseeable circumstances under which the 404 permit would not be issued. The Section 404 permit is expected to be issued in spring 2009.

2. *Streambed Alteration Agreement:* The California Department of Fish and Game (DFG) is responsible for issuing streambed alteration agreements, and one is needed for the proposed project. Under Section 2080.1 of the CESA, DFG can concur with USFWS and NMFS, if it chooses, in issuing permits to take species that are listed as endangered under both the ESA and the CESA. In the case of the proposed project, DFG did not agree with the BOs issued for Delta smelt and, as a consequence, is undergoing its own consultation with the City for issuance of a take permit, as allowed under Section 2081 of the CESA. As a result of this, DFG agreed to split the streambed alteration agreement into two separate agreements, one for construction of the DWSP, which was issued in July 2008, and one for operation, which will require a CESA Section 2081 permit. An application for a Section 2081 permit for operation of the DWSP was filed by the City in November 2008. The City and DFG are in active discussions about the mitigation program for operation of the DWSP. Although a final mitigation program has not been agreed to, the City and DFG are narrowing the options being considered, and the City believes it will receive authorization under Section 2081 within a reasonable time.

The City has received all other required permits after a long process, including ESA clearance from NMFS and USFWS. Given that the City has expended and continues to expend considerable resources toward achieving the DWSP and resolving key issues with permitting agencies, it is reasonably likely that the City will come to a final resolution with DFG and be able to not only construct, but also operate, the DWSP by 2025 when such water will be needed to meet City water demand. Even without the DWSP, however, existing City water supplies are sufficient to meet *project* water demand with existing City water supplies. The DEIR's water supply analysis, therefore, complies with CEQA's informational mandate. (See *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 438 ["to satisfy CEQA, an EIR for a specific plan need not demonstrate certainty regarding the project's future water supplies." Instead, it is sufficient if the record contains substantial evidence demonstrating a "reasonable likelihood" that the water supply will be available to meet the needs of the project.]; see also *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2007) 157 Cal. App.4th 149 [upholding EIR analysis for a residential subdivision where it was reasonably likely, despite some uncertainty, that future water supplies for the project would become available.].)

10-6 This comment reiterates the discussion in the DEIR of the many factors potentially affecting water supply in California's Sacramento–San Joaquin Delta (Delta). The comment is requesting that the EIR speculate on the potential outcome of litigation regarding water supply in the Delta. As described above, USFWS and NMFS have issued their BO for the DWSP, spelling out the conditions under which the DWSP can operate without causing jeopardy to Delta smelt, Chinook salmon, and Central Valley steelhead. USFWS and NMFS are the agencies responsible for ensuring the continued survival of these ESA-listed species. The commenter is asking that this DEIR, prepared for a prison health care project, second-guess the expertise of these experts on the federal ESA, experts working under the knowledge of the *Kempthorne* and *Gutierrez* cases.

Section 15145 of the State CEQA Guidelines instructs: "If, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact." This EIR cannot determine the outcome of the current and future litigation likely on Delta water issues. That would be speculative. However, the many lawsuits on water issues in the Delta have been reported in the DEIR, and in combination with the information presented herein—including the commenter's concerns—that discloses to the Receiver that there is a degree of uncertainty surrounding Delta water supplies. As noted, DWSP water is not needed to meet project water demand, though the City would require DWSP water under buildout of its general plan. Forward Landfill, moreover, is required to provide City water to the site due to the RWQCB's Cleanup and Abatement Order. (See Response to Comment 6-1.)

Further, the Final EIR for the City of Stockton General Plan 2035 (incorporated herein by reference), provided additional information demonstrating reliability of Phase I DWSP, even with cutbacks resulting from endangered species issues. As explained in a response to comments on the City of Stockton General Plan 2035 Final EIR:

> Phase 1 of the DWSP will meet the Proposed Project's water demands and will only use [Cal. Water Code, § 1485 ("D1485")] water that, by law and existing City water rights, is not subject to Term 91 restrictions [limiting appropriative water right diversions when the Central Valley Project and State Water Project are releasing flows for Delta fisheries]. However, D1485 water is subject to conditions of the Endangered Species Act (ESA) and mitigation for limited diversions during certain times of the year, all of which have been accounted for in the [City of Stockton General Plan 2035] Water Supply Evaluation analysis (citation). California Water Code Section D1485 can be summarized as follows: any municipality disposing of treated wastewater into the San Joaquin River may seek a water right to divert a like amount of water, less losses, from the river or Delta downstream of the point of wastewater discharge.

(City of Stockton, 2035 General Plan, Final EIR p. 3-142, response to comment 110-57, emphasis added.)

In other words, the City's Water Supply Evaluation (incorporated herein by reference and discussed throughout Chapter 4.13 of the D EIR) took into account potential cutbacks of DWSP water resulting from endangered species concerns, and, as explained in the DEIR, found sufficient water supply would be available to meet water demand under buildout of the City's General Plan.

10-7 Please see Response to Comment 10-5, which provides that USFWS has issued a BO for Delta smelt as it relates to the DWSP, and Response to Comment 10-6 regarding the uncertain future of Delta water supplies.

10-8 Please see Response to Comment 10-6 regarding speculation and future water supplies in the Delta.

10-9 Please see Response to Comment 10-5 regarding the permitting status of the DWSP related to Delta smelt. Also, please see Response to Comment 10-5 regarding the reasonable likelihood of the project's long term water supply.

10-10 The comment suggests that the City would not be able to approve the proposed project, if it had the ability to do so, if the project would rely on the DWSP. Please see Response to Comment 10-5. The City's existing water supplies, without DWSP water, would be sufficient to supply the 444 afy needed to supply water to the proposed project in the near-term and long-term.

10-11 This comment suggests that because of the purported uncertainties surrounding the DWSP, the DEIR should have found that the long-term water supply is uncertain and disclosed various options for providing that water, consistent with the *Vineyard Area Citizens v. City of Rancho Cordova* (2007) 40 Cal.4th 412 (*Vineyard*). *Vineyard* involved, in part, a Community Plan with 22,000 residential dwelling units to be constructed over various phases and over the next several decades, and for which new, unprocured water was needed to serve some of the future phases. The *Vineyard* decision, issued by the California Supreme Court, found that when the long-term water supplies to a project are uncertain, the various alternatives to supplying that water must be explored and the results disclosed. This is not the case with the proposed project. The City of Stockton currently has sufficient water to serve the proposed project. The project would be built in one phase, if approved. The ability of the City to serve the site is certain. If the DWSP were not constructed, the City might face difficult decisions about the approval of projects some 15–20 years from now, but sufficient water supplies exist to serve the project. Additionally, the DWSP appears to be a reasonably likely project, as described in Response to Comment 10-5.

10-12 Please refer to responses to comments 10-5 through 10-11, regarding water supply reliability. The comment refers to a summary of information incorporated by reference from a variety of documents that are clearly cited in the DEIR. The comment selectively excerpts phrases from the DEIR to suggest that the analysis is unsupported. Referenced and summarized documents include the *City of Stockton Urban Water Management Plan* (2005), the *Water Supply Evaluation (WSE) for the General Plan Update, Preferred Alternative* (2006), the *Delta Water Supply Feasibility Report* (2003), and the *DWSP Environmental Impact Report* (2005).

The analysis in the DEIR is summarized from thousands of pages, and does the job CEQA sets out to do. As stated in Section 15151 of the State CEQA Guidelines:

> An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the degree of sufficiency of an EIR is to be reviewed in the light of want is reasonably feasible.

The EIR relies on the exhaustive analyses prepared by the City of Stockton, analyses that describe in detail the City's current and future water supplies. The EIR summarizes the information sufficiently to provide the decision makers with the information to make the reasoned decision mandated by CEQA.

The summarized reports are available for review by the commenter. However, this EIR is not an evaluation of the adequacy of the City's long-term water supply; that evaluation was conducted during the City of Stockton General Plan Update. It appropriately analyzes whether the proposed project can receive water from that supply, and whether by doing so, it would result in significant impacts on the City. Further, it must be remembered, as described in Response to Comment 10-5, that the City has sufficient current supplies to serve the proposed project, and that it is future growth within the Stockton city limits that will result in the need for additional water.

As stated on page 4.13-3 of the DEIR:

> The [*Water Supply Evaluations for the General Plan Update, Preferred Alternative*] determined that the [City of Stockton Municipal Area (COSMA)] water purveyors (City of Stockton Municipal Utilities Department, California Water Service Company, and the San Joaquin County Maintenance Districts) cannot currently support the full extent of population growth assumed to occur as part of the General Plan Update without the initial phase of the Delta Water Supply Project (DWSP) (30 [million gallons per day (mgd)]) and the upgrade of the [Stockton East Water District water treatment plant (SEWD WTP)] to 60 mgd. The DWSP, which is expected to be in operation by 2010/2011, along with other available sources (that include water from the SEWD WTP upgrade) will be a viable water supply for meeting the General Plan Update's buildout water demand. The water purveyors made this determination based on the information provided in the WSE and on the following specific facts.
>
> The existing near-term and long-term reliable supplies of SEWD surface water supplies, non-potable water supplies, and indigenous groundwater supplies can deliver a sustainable reliable water supply without significant environmental effects and/or affecting the current stabilization of the groundwater basin underlying the COSMA ([City of] Stockton 2006).
>
> The existing and future conjunctive use program of using surface water and each of the water purveyor's groundwater supplies has been extensively analyzed as part of the DWSP Feasibility Report and EIR and as part of the WSE. All studies show that sufficient water rights and available groundwater supplies will exist for the level of water demand contemplated under the General Plan Update.
>
> The General Plan Update area, including the proposed project area within the COSMA, will be served by water supplies made available through the existing and planned future conjunctive use program within the COSMA water purveyors' service areas.
>
> The diversion structure, raw water pipeline, treatment plant, and treated water pipeline elements of the DWSP are necessary water supply elements in meeting the General Plan Update water demands. For more details on the status of the DWSP, please see the discussion later in this chapter.
>
> New groundwater facilities are necessary to fully implement the conjunctive use program that is currently in effect and contemplated with operation of the DWSP. The use of new wells will take place only in the dry and critical years when SEWD surface water supplies are curtailed, and in no case would groundwater extractions affect the long-term sustainability of the groundwater basin and existing wells ([City of] Stockton 2006). In summary, the COSMA has met and expects to be able to continue to meet (during the planning period of the new General Plan) annual demands during differing hydrologic periods with surface water, groundwater, water conservation, and other potential water supplies such as non-potable supplies from local communities, raw surface water from local irrigation districts, and water from active groundwater storage projects. Currently, the City is pursuing raw surface water transfer agreements with local irrigation districts and municipalities and possible use of tertiary treated recycled water from the City of Lodi for use as a non-potable source for irrigation of public landscape areas. Potable surface water transfer supplies would be diverted for treatment at the SEWD WTP or the DWSP WTP. Water transfers would require mutually agreeable contract terms between the City and another entity transferring water and would require approval from DWR.

> Water purchases, treatment facilities, and conveyance infrastructure would be funded locally through a combination of rates and fees. Timing of water transfers would coincide with water demands such that they do not outpace current supplies through SEWD or the City's water rights.

The DEIR addresses the environmental impacts of the proposed project. The text presented above shows the various programs the City had undertaken and will be pursuing to provide for future needs.

10-13 Citing a comment on the DEIR for the City General Plan, the commenter states that the DEIR for the proposed project inaccurately describes groundwater as a reliable water supply. A well-reasoned and well-substantiated response to this concern was provided in Master Response 5, "Water Supply Issues," in the FEIR for the City General Plan. The City's response is applicable here (see Section 21083.3 of the Public Resources Code, and note that the proposed project is consistent with the land use designations set forth in the City General Plan). As stated in the DEIR (page 4.13-2), the relevant portions of the FEIR for the City General Plan and the water supply evaluation (WSE) are incorporated into this EIR by reference (see Section 15150 of the State CEQA Guidelines). As stated in Master Response 5 of the FEIR for the City General Plan (City of Stockton 2007b:3-22 – 3-23):

> Commenters have also stated…that groundwater is in a current state of overdraft and that the [*City of Stockton General Plan 2035*] will exacerbate the rate of groundwater decline and associated impacts such as saline intrusion, drying up of private wells, etc.
>
> In addressing these concerns, the WSE prepared for the [*City of Stockton General Plan 2035*] incorporates and provides references to many of the individual studies that have been prepared to address these various concerns (see Appendix D of the draft EIR). In addition, there are several on-going studies that are investigating salinity intrusion and source identification with the cooperation of the United States Geological Survey and the California Department of Water Resources along with a variety of other local partners that include [the City of Stockton Municipal Utilities Department (COSMUD)]. The current state of the aquifer has been described in the San Joaquin Groundwater Management Plan (note a copy of this plan can be found on the Northeast San Joaquin County Groundwater Banking Authority web site: http://www.gbawater.org) and through extensive monitoring and modeling completed by COSMUD and the Army Corps of Engineers for the Farmington Recharge Project in partnership with SEWD. COSMUD is participating in the Integrated Regional Water Management Plan for the San Joaquin hydrologic region and will be adopting this plan which will include specific actions to address water supply issues and specifically groundwater recharge in eastern San Joaquin County.
>
> Current groundwater monitoring data indicates that the aquifer is in a state of equilibrium (i.e., natural recharge is equal to extractions) based on groundwater elevation hydrographic illustrating that fluctuations in groundwater elevation are from increased pumping in irrigation months and in-lieu recharge during the winter (or non-irrigation) months. The consecutive normal to above normal year hydrology of the previous ten years indicates a consistent rise in groundwater elevations and not a decline that would indicate an overdraft condition.
>
> Given the current state of equilibrium and apparent recovery due to conservative above normal hydrologic years, planned future use of surface water by either urban or agricultural users will only further increase groundwater elevations and

benefit overall groundwater conditions. As with any groundwater basin that is operated in a conjunctive use manner, the change in groundwater elevations from wet to dry hydrologic conditions will be greater than a groundwater basis that is continuously pumped at a constant rate. The advantage of the proposed conjunctive use program within the City of Stockton is that groundwater elevations underlying and adjacent to City's growth areas will be higher in most years and will not go below an agreed upon managed level in critical years when surface water supplies are curtailed and groundwater that is banked in-lieu of pumping in wet years is extracted. Private well owners benefit in the long term by having reduced pumping costs due to higher groundwater elevations and by overlying a managed groundwater basin.

The COSMA has consistently described its continued use of the aquifer in a very conservative manner as described by many published documents and in the response prepared for [comments on the City of Stockton 2035 General Plan EIR]. Furthermore, the COSMUD has endeavored, and will continue to endeavor, to maintain groundwater extractions within the conservative sustainable yield of the aquifer underlying the COSMA sub-basin of the regional Central Valley groundwater basin. The sub-basin extends from the Mokelumne River to the north, the Stanislaus River to the south, the San Joaquin River and Delta to the west, and the Sierra Nevada foothills to the east. The COSMA also supports regional programs outside the COSMA. The monitoring of groundwater elevations (completed a minimum of twice a year) indicates the recovery and stabilization of the aquifer underlying the COSMA is not critically over-drafted as suggested.

Furthermore, COSMUD's water system is a conjunctive-use water system that depends on varying amounts of each source, based on hydrologic and physical constraints in any given year. This means that the water system will maximize the use of surface water when it is available and purposefully reduce groundwater extractions to minimum operational needs, thereby allowing the groundwater basin to recover to above preexisting conditions. In dry years and dry months, COSMUD's groundwater extractions will increase to compensate for the reduced availability of surface water, but will not extract beyond certain managed thresholds, to avoid local and regional impacts such as degradation of water quality and/or drying up of wells.

As with all water supply assessments within the COSMA, including the WSE prepared for the City General Plan, the modeling used to make a determination of water supply deficiency evaluates the differing uses of each water-supply source over a 70-year historical hydrologic period to ensure that adequate supplies of surface water are available to meet the long-term goals of groundwater management within the COSMA. No one single source can be considered solely for use to meet the demands of the City of Stockton General Plan (and for the proposed project); rather, the current conjunctive-use program and proposed enhancements are sufficient to meet the City's current, near-term, and long-term water demands even with approval of the proposed project.

10-14 The commenter indicates that the DEIR does not disclose climate change–related effects in its analysis of the proposed project's impacts on water supply. This is an incorrect statement. The DEIR includes a substantial discussion addressing this matter under the heading "Global Climate Change and Water Supply" on pages 4.13-10 through 4.13-11. The commenter is referred to the discussion.

10-15 The commenter questions the DEIR's reliance on 10,000 afy of Calaveras County Water District (CCWD) water. The commenter cites a letter from CCWD General Manager David Andres to the City of Stockton as evidence that the DEIR, in the commenter's opinion, overstates the amount of CCWD water that is likely to be available to the City.

The letter cited by the commenter was provided to the City on its EIR for the City General Plan. As stated in the DEIR for the proposed project (page 4.13-2), the portions of the City General Plan EIR addressing water supply are incorporated into this EIR by reference (State CEQA Guidelines, Section 15150). Master Response 5 of the EIR for the City General Plan clarified the nature of CCWD and SEWD water contracts in response to the CCWD letter cited by the commenter. As explained in that master response (City of Stockton 2007b:3-17):

> The question of whether the COSMA can claim unused [CCWD] capacity as a firm water supply is addressed in the following quotation from SEWD's response to [CCWD's] comment letter:
>
> > "There is no alternative use for the [CCWD] New Hogan supply other than development within the New Hogan Place of Use within [CCWD]. The contract among the United States [Bureau of Reclamation], SEWD and [CCWD] expressly prohibits the use of New Hogan water outside the boundaries of the two districts. Further, in Article 10 of the SEWD-[CCWD] contract, [CCWD] expressly agreed that no water from the New Hogan Project shall be used by it or through it by a third party beyond the Place of Use boundaries."
>
> Consequently, it is a viable conclusion that if projected growth within Calaveras County does not require [CCWD's] full water entitlements, any unused [CCWD] water entitlements will be available to SEWD pursuant to the New Hogan agreements. For purposes of [the] WSE, a minimum of 10,000 AF/year [afy] of excess [CCWD] water entitlements appears to exist and will be available for transfer to SEWD for wholesale delivery to the urbanized lands within the City of Stockton. Currently, up to 24,000 AF/year of excess [CCWD] water entitlements is being used by SEWD that will gradually be reduced to 10,000 AF/year over time as demands for Calaveras County water (in accordance with the current Calaveras County General Plan) grow. Additional [CCWD] water demands that may result as a consequence of an updated Calaveras County General Plan could have implications on the amount of available water; however, until an updated general plan is adopted by the County of Calaveras, the above assumptions will be used.

Calaveras County has not adopted a general plan update since the release of the FEIR for the City General Plan. Although Calaveras County is in the process of undertaking background studies as part of a general plan update process, an updated general plan has yet to be released. There is no evidence that Calaveras County will adopt an updated general plan in the near future.

Notably, the population and demographics background report prepared for the *Calaveras County General Plan* update process estimates that population levels will be lower than anticipated in the county's existing general plan (Calaveras County 2008:Table 2-14). Because population levels are expected to be less than anticipated under the existing *Calaveras County General Plan*, the assumption that 10,000 afy will be available for SEWD likely underestimates the amount of water that will actually be available to SEWD. For these reasons, the assumption that 10,000 afy will be available for SEWD (as described above) continues to be based on the best available information.

10-16 The commenter states that it is not clear that the City is authorized to provide DWSP water to the project site because, as noted on page 4.13-6 of the DEIR, the initial phase of the DWSP is confined to the boundary of the City's 1990 general plan. The project site is located within the boundary of the City's 1990 general plan (City of Stockton 2008). Therefore, the proposed project may receive water from the first phase of the DWSP if the DWSP is constructed as planned and the City chooses to use this water to serve the project.

10-17 The commenter asserts that annexation may be necessary before the City may serve the proposed project with City water services. This assertion is not correct. Please refer to Response to Comment 6-1.

10-18 Please see Response to Comment 6-1 concerning the requirement that Forward Landfill replace potable water at the project site, either by treating the contaminated water at the well head or by constructing a water line and serving the site with City water. Forward Landfill and the City have been planning on serving the site with City water. In addition to the population that would be served at the site, the NCYCC site would bring an additional 450 wards under municipal water service as a result of the Central Valley RWQCB's abatement order. The 450 wards are roughly 25% of the population of the proposed CHCF Stockton, and given that the proposed project is projected to consume 444 afy, the rest of the NCYCC would raise this by roughly 110 afy. This additional total (554 afy) can be accommodated under the City's current supply based on total available supply, without DWSP water, by the City through 2025, even assuming the City's growth projections are realized. Please see Response to Comment 10-5.

The requirement to provide this water (or to treat it at the well head, which is not currently proposed) is a result of groundwater contamination from the landfill. Without this contamination, the NCYCC site, including the project site, could be served by the existing well field; the total population at the NCYCC, including the proposed CHCF Stockton (1,734 patients), the wards (450), and the approved NCRF (500 inmates) would total approximately 2,700. This population is far less than the nearly 5,000 inmates and wards served by the well field in the past at the peak of site use, and approximately the same as the population served on the site (2,650 inmates and wards) during the 2001–2006 time frame (see page 4.13-1 of the DEIR). This population total would have been a reasonable baseline to use for analysis of project impacts. It could reasonably be argued that the proposed project, plus other uses at the NCYCC, would use less water than was used when the site operated as a juvenile correctional facility. That analysis, which was not conducted in the DEIR, has been rendered moot by the inability to rely on the contaminated groundwater.

10-19 The comment incorrectly asserts that the DEIR does not disclose the location or impacts associated with installing the 66-inch drainage line and pump station. Chapter 3, "Project Description," of the DEIR (page 3-18) states that "the proposed project includes a new 66-inch storm drain pipe that would convey stormwater flows to a new pump station located adjacent to the existing basin." The proposed drainage line and pump station are also described in Section 4.14, "Public Utilities," where they are clearly indicated in Exhibit 4.14-3, and the impacts of construction of this line are included throughout the DEIR.

10-20 The commenter states that the DEIR improperly concludes that the project would not require construction of new stormwater drainage facilities and that this conclusion is inconsistent with other statements in the DEIR. The DEIR did not conclude that the project would not require construction of new stormwater drainage facilities. Rather, the DEIR concluded that the potential need for stormwater drainage facility construction or expansion would not cause a significant environmental effect (DEIR, p. 4.14-18, Impact UTIL-4). Further, as described in Section 2.5 of

this FEIR, since the publication of the DEIR, it has been determined that expansion of the existing detention basin would not be needed.

The commenter also indicates that Impact UITL-6 (DEIR, p. 4.14-19) improperly concludes that the project would not require construction of new water distribution facilities, although the discussion states that the project would require an extension of a new distribution line down Newcastle Road. The DEIR does not conclude that the project would not require construction of new water distribution facilities; rather the DEIR concludes that the project would not require construction of a new water distribution system *beyond what is currently planned by the City of Stockton* (DEIR, p. 4.14-19). The City of Stockton's comment on the DEIR (see Comment 12-11), which indicates that this extension would be required either by other development adjacent to Newcastle Road (i.e., the CCC Delta Service Center project) or by the proposed project, but the order requires that the water line be constructed regardless of the status of the proposed project. See also response to comment 12-11.

Based on site visits and review of aerial photos, Newcastle Road is paved and lightly traveled, and the water line would be constructed within the road's right-of-way. No sensitive resources would be affected; no significant environmental impacts are expected. No sensitive biological or cultural resources exist within the right-of-way. Construction of the water line would result in minor emissions from construction vehicles; no sensitive noise receptors would be exposed to construction noise, and the mitigation measure for Impact NOI-1 would otherwise mitigate any noise impacts. The analysis in the DEIR assumes that the City (or the Forward Landfill; please see Response to Comment 6-1) would extend the water distribution line down Newcastle Road to serve the site because it is obligated to do so regardless of whether the proposed project is constructed. (The Central Valley RWQCB's cleanup and abatement order has also categorically exempted the water line from CEQA.) 10-21 The commenter indicates that mitigation measures are available that could reduce impacts identified in the DEIR as significant and unavoidable. In response to the comment letter received from Caltrans (included in this FEIR as Letter 26), several changes were made to the traffic analysis methodology, and new mitigation in the form of shift restrictions has been provided that reduces all of the significant and unavoidable impacts to a less-than-significant level. Please see Master Response 5: "Traffic Issues."

10-22 The commenter questions the DEIR's determination that various mitigation measures are out of the CPR's control and suggests requiring additional feasible mitigation. Master Response 5: "Traffic Issues" discusses the issue of mitigation feasibility in light of revised mitigation that eliminates many impacts of the project. Please refer to Master Response 5.

10-23 The commenter suggests additional mitigation measures that would reduce impacts identified in the DEIR. Please see Master Response 5: "Traffic Issues" which describes how Mitigation Measure to Impact TRAF-4 has been revised in response to Caltrans' comment letter (included as Letter 26). The revised mitigation measure requires project traffic to occur only in the off-peak hours and consequently avoids many of the impacts identified in the DEIR. See Master Response 5 for more information.

10-24 The commenter states that the DEIR fails to consider impacts associated with Valley Fever. CEQA requires that EIRs address impacts when they may be significant. As shown in the commenter's referenced Attachment F, and particularly page 14 of 16 of the second report in Attachment F, the project site is not within the endemic area where exposure to the spores that cause coccidioidomycosis occurs. The extent of exposure is the Central Valley, up to southern San Joaquin County. The project site is well north of this area. There is no reason to consider the impacts of exposure to spores because the site is not within the endemic area, and therefore no impacts to human health associated with Coccidioidomycosis would occur.

10-25 Please see Response to Comment 10-24.

10-26 The comment suggests that CPR was a mere recipient of the Valley Fever report. CPR was an active participant in the report's development. Dr. Nadim Khoury, one of the contributing authors (see the first page after the Exhibit F, cover page) is part of CPR's team. Not only is CPR well aware of the concerns surrounding Valley Fever, its staff was involved in establishing recommendations to reduce episodes of this disease.

10-27 The commenter states that the DEIR fails to make a significance determination for long-term emissions of reactive organic gases (ROG) and respirable particulate matter with an aerodynamic diameter of 10 micrometers or less (PM_{10}). Under Impact AIR-2, the DEIR states that "Thresholds for ROG and PM_{10} would not be exceeded" (Section 4.4.4, page 4.4-30). The DEIR further states that operational air quality impacts were determined by comparing modeling results with applicable San Joaquin Valley Air Pollution Control District (SJVAPCD) significance thresholds. The impact would be less than significant.

The comment further suggests that the "less than significant with mitigation" determination for oxides of nitrogen (NO_X) is not supported by substantial evidence. Please see Response to Comment 10-29 below, which addresses a similar comment related to the significance determination for NO_X.

10-28 The comment cites the statement in the DEIR explaining that the exact amount of stationary-source emissions was not quantified but will be additive to the emissions that are quantified. The commenter suggests that there is insufficient evidence to conclude that these (operational) impacts would be less than significant, and that emissions from the cooling plant and other project components could contribute to a violation of SJVAPCD thresholds. Because the project is not fully designed, the precise size of the cooling plant could not be determined.

However, stationary sources would be subject to SJVAPCD Rule 2010, "Permits Required" (please see page 4.4-30 of the DEIR for details). As stated on Page 4.4-31 of the DEIR, new permitted sources emitting more than 2 pounds per day of ROG or NO_X must provide best available control technology (BACT), *and all sources emitting more than the new-source review thresholds must offset all emissions in excess of the thresholds* as per SJVAPCD guidance. Emissions for these sources would not be allowed to exceed the numeric thresholds of significance for ozone precursors, as stated in the SJVAPCD *Guide for Assessing and Mitigating Air Quality Impacts* (GAMAQI) (SJVAPCD 2002:34). Based on this statement, it is evident that this is not a speculative issue; rather, rule compliance *requires* that emissions be offset to a point where the impact would not be significant. If this is not accomplished, the permit would not be issued. Permit compliance for the proposed project would be achieved first by using BACT to reduce potential emissions at the source. If this were unable to achieve reductions below the significance criteria, CPR would pay into a mitigation program, run by SJVAPCD, that is used to offset emissions. Offsets are typically accomplished through such means as retrofits on older, higher emitting motors (water well pumps are a prime target).

Typically air districts do not consider stationary sources complying with BACT and offset requirements as having a significant impact on air quality. For instance, the Sacramento Metropolitan Air Quality Management District's *Guide to Air Quality Assessment* states that "sources of air pollutant emissions complying with applicable Air Districts' regulations pertaining to Best Available Control Technology (BACT) and offset requirements generally will not be considered a significant air quality impact" (SMAQMD 2004:2-9). Quantification of emissions from the proposed stationary sources, when they are more precisely defined, would be required during the permit process; they would be required to comply with BACT requirements;

and they would not be allowed to exceed applicable thresholds (e.g., new-source review and significance).

The comment again suggests that significance of ROG and PM_{10} emissions is not determined. Please see Response to Comment 10-27, which addresses the same comment.

10-29 The commenter indicates that the DEIR relies on a vague statement about improvement in vehicle fleets in the future to ascertain that the proposed project's NO_X emissions would drop beginning in 2012. The proposed project's operational emissions in 2011 and 2012 were calculated using the California Air Resources Board (ARB)–approved URBEMIS 2007, Version 9.2.4, computer program as recommended by SJVAPCD (2002:33). Detailed modeling output files demonstrating the reduction in emissions in 2012 are included in Appendix C of the DEIR. Therefore, the DEIR does not rely on a vague statement; it relies on SJVAPCD-recommended methodology and a calculation tool approved for this use by ARB to determine that project-generated NO_X emissions would be less than the SJVAPCD threshold of significance. URBEMIS is updated regularly, based on another model, EMFAC 2007, to incorporate new rules that are adopted and put into effect, and that would change the emissions levels of vehicles over time. URBEMIS assumes a mix of older and newer (more emission-efficient) vehicles, using a typical vehicle replacement rate based on analysis of vehicle turnover in California.

Regarding the Pavley bill, as correctly pointed out by the commenter the Pavley standards were adopted by California, but they have not been put into effect. Under the Bush administration, EPA rejected California's requested waiver that would have allowed the more restrictive Pavley bill, and California has initiated litigation on this issue. Because these standards are not yet in effect, they are not included in URBEMIS 2007. However, the Obama administration has expressed its desire to take a hard look at granting the waiver. In short, however, URBEMIS, and this EIR, did not underestimate NO_X emissions.

Furthermore, the DEIR states that the proposed project would comply with SJVAPCD's Rule 9510, "Indirect Source Review," which would require CPR to reduce 33.3% of the project's operational baseline NO_X emissions over a period of 10 years, by law. Even though NO_X emissions would be below the 10 tons per year (TPY) threshold for 2012 and beyond, compliance with Rule 9510 is required for projects where NO_X emissions would exceed 2 TPY. This requirement would be met by implementing any combination of on-site emission reduction measures or payment of fees to purchase equipment to offset emissions off-site. Thus the proposed project's operational NO_X emissions would be reduced by 33.3%, beginning in 2011. The mitigated emissions would be below the 10 TPY threshold, and that is the basis for the "less than significant with mitigation" determination.

10-30 The commenter indicates that the mitigation measure for Impact AIR-2, which requires the project to "include as many clean alternative energy features as possible to promote energy self-sufficiency," is limitless and would require significant modifications to the proposed project. The commenter also suggests that the DEIR contains no analysis of the potentially significant impacts from installation of alternative energy features at the project site.

It should be noted that the mitigation measure for Impact AIR-2 refers to promoting energy self-sufficiency by including clean alternative energy features, as opposed to making the project completely self-sufficient as the comment suggests. Typical clean alternative energy features comparable in scale to those listed in the mitigation measure for Impact AIR-2 would occur entirely within the project site and would generally be associated with proposed structures. Photovoltaic panels would be placed on building rooftops. Wind energy turbines are specified as

"small" and would be unobtrusive. Photographs of typical small wind turbines on the roof of a building are shown below (these arrays, produced by Aerovironment, sit on top of the buildings).

The proposed project is located in an area generally devoted to agriculture, but transitioning to industrial uses. If facilities like those described herein and shown in the photographs below were used on the site, they would reduce the energy use from fossil fuels and associated emissions, while being architecturally consistent with project structures and the surrounding environment. The extent to which these facilities would be economically feasible and sufficiently reliable is not known at this time, so the word "possible" was used in the mitigation measure. The requirement of the mitigation measures is to reduce NO_X emissions by 33.3% over a period of 10 years. Use of alternative energy sources is on the menu of what can be used to partially or fully achieve the 33.3% reduction.

10-31 The commenter indicates that the DEIR does not specify how the mitigation measure for Impact AIR-2 would be enforced and on what timeline. The comment suggests that this amounts to an improper deferral of mitigation.

The DEIR specifies under the above-mentioned mitigation measure on page 4.4-32 (and revised in Section 4 of this FEIR) that CPR would submit an air impact assessment application to SJVAPCD prior to construction. This requirement is also outlined in the mitigation measure for Impact AIR-1 on page 4.4-27. The air impact assessment would include the estimated operational baseline emissions and the mitigated emissions for each applicable pollutant for the project and would quantify the off-site fee, if applicable. The measure pertains to compliance with Rule 9510, for which SJVAPCD is the enforcing agency and would make the final determinations regarding mitigation feasibility and effectiveness.

The measure about alternative energy features on which the comment focuses is one of the many measures identified to reduce operational NO_X emissions by 33.3% as per Rule 9510, for which compliance is required by law. The DEIR does not defer mitigation; rather, it clearly defines the enforcing agency and the timeline for implementation of the mitigation measures and also includes performance standards (compliance with SJVAPCD Rule 9510).

10-32 The commenter indicates that the DEIR must analyze and mitigate short-term and long-term impacts from emissions of fine particulate matter with an aerodynamic resistance diameter of 2.5 micrometers or less ($PM_{2.5}$) despite the lack of an adopted threshold by SJVAPCD.

The DEIR makes a good-faith effort to disclose $PM_{2.5}$ emissions in the absence of adopted thresholds (e.g., provides quantified emissions). The commenter suggests that the Receiver, as

lead agency for this prison health care project, should substitute its judgment for the judgment of the agency tasked with regulating this pollutant. For perspective, the project's construction- and operations-related $PM_{2.5}$ emissions were compared with the federal *de minimis* levels for $PM_{2.5}$. The *de minimis* level for $PM_{2.5}$ is 100 TPY (compared to less than 3 TPY for the proposed project). Further, other air districts were queried to determine if any had adopted $PM_{2.5}$ thresholds of significance. The South Coast Air Quality Management District (SCAQMD), which regulates the emissions for the South Coast Air Basin, has established its own interim threshold, as follows:

> Staff is recommending a $PM_{2.5}$ regional significance threshold based on a recent EPA proposal, as explained…
>
> > On September 8, 2005, EPA published in the Federal Register "Proposed Rule to Implement the Fine Particle National Ambient Air Quality Standards," which proposed a significant emission rate for $PM_{2.5}$ of 10 tons per year. Staff is proposing to use EPA's significant emission rate for $PM_{2.5}$ to develop the daily mass emission regional significance threshold for $PM_{2.5}$. (South Coast Air Quality Management District 2006)

Absent any other thresholds, this SCAQMD (and EPA) is used to provide a point of comparison. The proposed project, producing 3 TPY of $PM_{2.5}$, would produce 30% of the emissions considered significant by one California air district and by EPA. There are no data to suggest that another threshold is appropriate, and no data are provided in the comment to suggest a specific threshold. Based on the above described threshold, it can be concluded, that emissions of $PM_{2.5}$ would be less than significant.

10-33 The commenter urges that impacts on previously unidentified subsurface cultural resources be avoided through monitoring or other measures rather than mitigated after the fact. Although the DEIR appropriately analyzes impacts on unidentified cultural resources, and the mitigation measures would adequately reduce impacts and include appropriate performance standards, additional clarification and specificity could help implement the mitigation measure identified. Therefore, the mitigation measure for Impact CUL-2 on pages 1-37 and 4.8-10 of the DEIR has been revised as follows (please also refer to Chapter 4, "Corrections and Revisions to the DEIR"):

> Mitigation Measure(s) for Impact CUL-2:
>
> A qualified professional archaeologist will train construction personnel who will perform ground-disturbing activities, such as grading and excavation, on how to identify cultural materials. The archaeologist will train construction personnel on the nature of subsurface cultural resources that may be present, based on his or her knowledge of the relevant prehistoric and historic archaeology of the region. If cultural materials are inadvertently discovered during project-related construction activities, ground disturbances in the area of the find will cease immediately and the archaeologist will be notified of the discovery. The archaeologist will evaluate the find to determine ~~whether the resource is potentially eligible for listing in the CRHR.~~ whether it constitutes a unique archaeological resource or a historical resource within the meaning of CEQA (Sections 15064.5[a][1] through 15064.5[a][4] of the State CEQA Guidelines). If the archaeologist determines that the find is not a unique archaeological resource or historical resource as defined in the State CEQA Guidelines, construction may commence, and a memorandum shall be prepared documenting the factual basis for this decision. No public circulation or notice is required.

If the archaeologist determines that the discovery is a unique archaeological resource or historical resource, then one of the following actions will occur, in order of priority as described below:

- If possible, the resource will be avoided and preserved in place. This is the preferred treatment under CEQA (California Public Resources Code, Section 21083.2[b][3]).

- If preservation in place is not feasible, CPR shall retain a qualified archaeologist (with qualifications determined by training and experience in the region and relevant research domains) to prepare and implement an excavation plan. This plan will involve retrieving a suitable sample of the physical materials that make the resource significant and qualify the site as a unique archaeological resource or a historical resource under CEQA. The excavation plan will also specify a program of analysis to retrieve and convey the information that makes the resource significant. This plan will specifically refer to the relevant eligibility criteria for listing on the California Register of Historical Resources (CRHR) or the criteria for a unique archaeological site in the State CEQA Guidelines. The plan will summarize the findings of this program of research in an excavation report, which shall be filed at the local information center for the California Historical Resources Information System upon completion, so that the findings inform future archaeological and historical research. This plan will specify how the program of excavation and analysis will recover and convey the portions of the site that convey its significance before project implementation may materially alter or demolish those physical characteristics, as provided in Section 15064.5(b)(2) of the State CEQA Guidelines.

  Ground-disturbing activities may commence again after the excavation required to implement the plan has occurred. Ground-disturbing work may commence before the completion of the analysis and preparation of a report documenting the findings of the excavation plan. ~~If additional as-of-yet-unidentified resources are determined to be eligible for listing, the archaeologist will develop appropriate avoidance measures and assist with project redesign and/or monitoring; or if construction cannot be planned to avoid impacts, the archaeologist will develop appropriate mitigation, which could include such actions as preservation in place, documentation of the find, or data recovery. Mitigation will be fully implemented before construction activities resume in the vicinity of the find.~~

As revised, the mitigation measure more clearly states the performance standards and provides more specific instruction for monitoring during ground-disturbing activities, clearer criteria for determination of significance if resources are found, and if the resources are significant, a clearer process for avoidance, preservation, or capture of values. The standards of significance defined in Section 21083.2 of the Public Resources Code and Section 15064.5 of the State CEQA Guidelines (page 4.8-8 of the DEIR) support a determination that potential impacts on previously unidentified subsurface cultural resources would be less than significant, which is consistent with the conclusion in the DEIR. Therefore, the text change above clarifies a mitigation measure but does not result in any new impacts, nor does it increase the severity of an impact already identified.

10-34 This comment introduces the concept of deferral of impact analysis and mitigation formulation and refers to the California Court of Appeals decision in *Sundstrom v. County of Mendocino* (1988). This concept is addressed below in the responses to the specific comments.

10-35 The comment asserts that the mitigation measure for Impact GEO-2 improperly defers mitigation based on the holdings in *Sundtrom v. County of Mendocino*. The soils report called for in the Mitigation Measure for Impact GEO-2 is an engineering study prepared in accordance with the California Building Code. Therefore, the report would be approved by a licensed engineer. In addition, the facts in the CHCF Stockton project are more similar to those in *Riverwatch v. County of San Diego* (1999) than to the facts in *Sundstrom v. County of Mendocino*. Nothing in the record, including all of the preliminary engineering feasibility studies appended to the DEIR, suggests that expansive soil–related impacts on foundations and underground utilities cannot be mitigated. Potential recommendations in the required soils study are identified in the mitigation measure for Impact GEO-2 and include engineering design solutions for structures, treating existing soil, or replacing existing soil with engineered fill. Any of these methods would remedy soil limitations, and further recommendations are not anticipated. Therefore, the public is not deprived of any new substantial information contained in the required soils report. The DEIR goes further by requiring that a geotechnical or soils engineer be present at the site to monitor earthwork and provide spot determinations for corrective actions. The DEIR commits CPR to a realistic performance standard, the California Building Code.

10-36 The comment suggests that implementing the mitigation measures could result in significant impacts on their own, but does not express what these impacts may be. No impacts other than those already evaluated in the DEIR would occur with the implementation of any of the feasible engineering solutions for soil limitations. Potential environmental impacts were evaluated for construction and operation of the proposed facility, and engineering design solutions for structures would not result in different impacts than what was already evaluated. The DEIR evaluates ground-disturbing activities—mass grading, overexcavation, exporting and disposal of fill, and import of fill material—under the maximum ground disturbance scenario. Therefore, the impacts of treating the soil and replacing existing soil with engineered fill were evaluated.

10-37 The comment asserts that "feasible" mitigation may not be available to remediate a problem common to construction projects throughout California. Nothing in the record suggests that this is the case. Please see Response to Comment 10-35 for the three different feasible solutions to soil limitations. Because the comment does not explain why these methods may not be feasible, an additional response cannot be provided.

10-38 The comment asks why a geologist is not preparing a soils report now and does not provide a timeline for doing so. A soils report is not needed to understand the nature of and mitigation for impacts on geologic hazards, and no comments have been raised to suggest otherwise. Please see Response to Comment 10-35 for a discussion of why there is nothing to suggest that any soil limitations cannot be mitigated or that structures cannot be constructed per California Building Code requirements. Further, please note that the proposed project is under CEQA review and the types of study requested by the commenter are typically conducted at the design stage, after a project has been approved and significant investment in the project can occur. The Receiver is conducting sufficient study to determine the impacts and necessary mitigation for the proposed project, but is not investing more than is necessary to understand the impacts. If the Receiver were to do otherwise, concerns would be expressed that the EIR is a *post hoc* rationalization for a decision already made. The proposed project has not been approved, and unless and until it is, design-level studies will not be initiated.

10-39 The comment states that a deferral strategy was taken for the mitigation measures for Impacts HAZ-2, UTIL-1, and BIO-2. No details were provided to explain why the commenter believes mitigation was deferred, so a specific response is difficult. General responses are provided below for each mitigation measure cited by the commenter.

- *Mitigation Measure for Impact HAZ-2:* Please see Response to Comment 10-35 for a discussion of why there is nothing to suggest that any soil limitations cannot be mitigated. Further, the mitigation measures clearly lay out procedures for removing soils (and their possible extent), removing lead paint, and disposing of asbestos-containing materials.

- *Mitigation Measure for Impact UTIL-1:* The analysis of electricity demand was not deferred. As described on pages 4.14-16 through 4.14-17, demand would range from 9 to 19 megawatts, and Pacific Gas and Electric Company can provide for this additional demand without any environmental impacts.

- *Mitigation Measure for Impact BIO-2:* Pallid bats were not observed during biological site visits. The DEIR discloses that pallid bats could move onto the site before demolition. The purpose of the preconstruction site visit is to ascertain whether the species has occupied the site since the last biological site visit. This is not deferral; rather, this is a prudent measure to determine whether this mobile species has moved to the site, and if so, the steps needed to reduce impacts. The mitigation measure requires that demolition not commence until the lead agency consults with DFG to develop exclusion methods consistent with DFG guidelines. Specific measures likely to be implemented (with DFG concurrence) are listed. No comments were received from DFG, the trustee agency for special-status species, to suggest that this mitigation approach would not be effective.

10-40 The comment argues that the DEIR improperly concludes that it would be speculative to quantify greenhouse gas (GHG) emissions from the production and transport of materials during construction, solid-waste disposal, and end of life of the materials and processes from the proposed project. The comment suggests that the analysis should have included emissions from what might be called the full life cycle of the proposed project (e.g., the milling of trees for wood for framing materials to be used in the construction of the proposed facilities).

To date, most of this information is simply not available for this project or indeed for any project subject to CEQA, nor is it appropriate to include such an analysis. The life-cycle of a project would consider the full extent of how resources are mined, processed, shipped from out of state or within state, and disposed. The EIR considers the direct effects of the project, as well as indirect effects to the degree they can be ascertained.

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 Section 15145 of the State CEQA Guidelines). For example, the request to quantify the emissions from "manufacturing and transporting building materials" assumes that CPR and its consultants have knowledge of, or could obtain knowledge of, the specific wholesale or retail suppliers of all of the building materials that construction companies would use during the project's buildout period; the original source and location of those materials; and the quantities of building materials of various kinds that would be used during the buildout period. At present, CPR has no way of knowing whether the lumber products to be used would be produced in Canada, the Pacific Northwest, the southeastern United States, or somewhere else (e.g., Siberia or Southeast Asia). Nor can CPR reasonably ascertain the locations of the mills where the raw lumber would be turned into building materials. Moreover, to the degree these materials are produced in California, it stands to reason that the emissions associated with producing them have already been accounted for in inventories and environmental analyses that would have been prepared for these projects.

The comment seems to suggest that the models recommended by the California Air Pollution Control Officers Association (CAPCOA) for estimating GHG emissions (i.e., URBEMIS and the California Climate Action Registry Protocol), can be used to quantify emissions from the full life

cycle of the project. CPR and its consultants are very familiar with the types of methodologies available to measure project emissions, including CAPCOA's recommendations; CPR's consultants drafted CAPCOA's recommendations. These models alone will not generate full life-cycle emissions for the proposed project. As explained in the paragraph above, it would require information for the proposed project that is simply not available.

Quantitative information in support of the analysis has been produced in the DEIR wherever feasible. The analysis includes an attempt to quantitatively include the nonspeculative (direct) 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. In fact, the emissions that are included in the analysis were estimated using URBEMIS and the California Climate Action Registry Protocol, as stated on page 5-11 of the DEIR. Given the recent enactment of AB 32 (2006) (California Health and Safety Code, Sections 38500–38599) and SB 97 (2007) (Public Resources Code, Sections 21083.05 and 21097), no adopted methodology is available for quantifying carbon dioxide (CO_2) emissions from general plans or development projects. CPR 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 Chapter 5 of the DEIR represents a sophisticated, good-faith attempt to quantify and disclose emissions using the information that is available.

In summary, although indirect, off-site emissions would occur as a result of the proposed project, it is simply not possible to reliably quantify such sources beyond what has already been set forth in the DEIR, nor is the type of requested analysis appropriate and meaningful. CPR has honestly and forthrightly concluded that, even with all feasible mitigation, GHG emissions would be significant and unavoidable. Furthermore, CPR lacks any power to address many of the emissions of concern to the commenter, occurring as they do in other states or countries, and involving manufacturing and milling activities outside of the project area.

10-41 The commenter suggests that the DEIR defers analysis of indirect emissions from in-state energy production, solid-waste disposal, and wastewater treatment. Table 5-3 on page 5-11 of the DEIR details the direct and indirect emissions of GHGs from the proposed project, which includes indirect emissions from in-state energy production (under "Energy Consumption On-Site") and water consumption (energy for conveyance, treatment, distribution, and wastewater treatment). This information is provided in accordance with the Governor's Office of Planning and Research's technical advisory *CEQA and Climate Change: Addressing Climate Change Through California Environmental Quality Act (CEQA) Review*, which states (OPR 2008:5) that:

> Lead agencies should make a good-faith effort, based on available information, to calculate, model, or estimate the amount of CO_2 and other GHG emissions from a project, including the emissions associated with vehicular traffic, energy consumption, water usage and construction activities.

Please see Response to Comment 10-40, which offers further clarification on the GHG emissions that were quantified for the proposed project. Further, as stated on page 5-11 of the DEIR, indirect emissions associated with in-state energy production, solid-waste disposal, and wastewater treatment would be regulated under AB 32 at the source or facility that would handle these processes. The emissions associated with off-site facilities in California would be closely controlled, capped, and traded under AB 32 and ARB programs. Therefore, this category of emissions would be consistent with AB 32 requirements, helping the state achieve the emissions reduction goals.

Finally, it is questionable whether this project, on a GHG basis, would increase indirect emissions from such sources as solid waste and wastewater treatment. The proposed project would not produce people who generate solid waste or wastewater in California. It would take them from one part of the state (within a prison) and transport them to another (to remain within a health care facility). It is considerations like these that make the type of analysis requested of limited value, and not meaningful to the decision of whether to approve a health care project for existing California inmates.

10-42 The commenter indicates that because of the "significant and unavoidable" finding for the climate change impact, the proposed project may be approved only if CPR adopts a statement of overriding considerations. The comment goes on to suggest that a statement of overriding considerations is not appropriate if feasible mitigation is available that is not incorporated. The commenter, however, does not suggest any additional mitigation measures that would be considered feasible and are not included in the DEIR.

10-43 The commenter suggests that three problems exist with the DEIR's approach to climate change mitigation, which was developed through a review of the climate change mitigation measures suggested by the California Office of the Attorney General, and to adopt a subset of such measures. The commenter states that the first problem is that additional "feasible" mitigation exists but is not included (e.g., light-emitting diode [LED] for outdoor lighting, use of low- or zero-emission construction vehicles, and implementation of a low-carbon-fuel vehicle incentive program). The commenter indicates that even if the proposed project would include all on-site feasible mitigation, CPR should require off-site mitigation to further reduce the impact and to result in zero net increase in GHG emissions.

Regarding the recommended use of LED for outdoor lighting, the feasibility of this mitigation is not known since the outdoor lighting must meet very specific security requirements. Regarding the low/zero carbon construction vehicle mitigation and low-carbon-fuel vehicle incentive program suggested by the commenter, the CPR considers this to be feasible. In response to these recommended mitigation measures, the following revisions have been made to the Climate Change mitigation (DEIR:pp. 5-13 and 5-14) (~~strikethrough~~ = deletion; <u>double-underline</u> = addition):

MITIGATION MEASURES

Implementation of the mitigation measure for Impact AIR-2, which would reduce operational emissions of criteria air pollutants and precursors, would also act to reduce GHG emissions associated with project operation. This mitigation measure is relevant to Impact AIR-2 because emissions of both criteria air pollutants and GHGs are frequently associated with combustion byproducts. In addition, CPR will implement where feasible the following measures to reduce direct and indirect GHG emissions associated with the proposed project. Certain measures could already be considered components of the project, but are provided here for purposes of completeness.

A. Energy Efficiency

- Design buildings to be energy efficient. Site buildings to take advantage of shade, prevailing winds, landscaping and sun screens to reduce energy use.

- Install efficient lighting and lighting control systems. Use daylight as an integral part of lighting systems in buildings. <u>LED lights, or a similar low energy use alternative, shall</u>

be used for outdoor lighting except in places where use of such lights is not consistent with applicable security lighting standards.

- Install light-colored "cool" roofs, cool pavements, and strategically placed shade trees (consistent with mitigation requirements for biological resources in connection with operation of the electrified fences).

- Install energy-efficient heating and cooling systems, appliances and equipment, and control systems.

B. Renewable Energy

- Install solar and wind power systems, solar and tankless hot water heaters, and energy-efficient heating ventilation and air conditioning.

- Improve the thermal integrity of buildings, and reduce the thermal load with automated time clocks or occupant sensors.

- Install solar panels over parking areas.

C. Water Conservation and Efficiency

- Create water-efficient landscapes with native, drought-resistant species.
- Install water-efficient irrigation systems and devices, such as soil moisture–based irrigation controls.
- Design buildings to be water-efficient. Install water-efficient fixtures and appliances.
- Restrict watering methods (e.g., prohibit systems that apply water to nonvegetated surfaces) and control runoff.
- Restrict the use of water for cleaning outdoor surfaces and vehicles.
- Provide education about water conservation and available programs and incentives.

D. Solid Waste Measures

- Reuse and recycle construction and demolition waste (including but not limited to soil, vegetation, concrete, lumber, metal, and cardboard).

- Provide interior and exterior storage areas for recyclables and green waste and adequate recycling containers located in public areas.

E. Transportation and Motor Vehicles

- Limit idling time for commercial vehicles to five minutes, including delivery and construction vehicles.

- Promote ridesharing programs, e.g., by designating a certain percentage of parking spaces for ridesharing vehicles, designating adequate passenger loading and unloading and waiting areas for ridesharing vehicles, and providing a Web site or message board for coordinating rides.

- Create car-sharing programs. Accommodations for such programs include providing parking spaces for the car-share vehicles at convenient locations.

- Implement a low carbon emission vehicle incentive program and pProvide the necessary facilities and infrastructure to encourage the use of low- or zero-emission vehicles (e.g., electric-vehicle charging facilities).

- Use low or zero emission construction vehicles to the extent practicable.

- Provide shuttle service to public transit.

- Provide public transit incentives such as free or low-cost monthly transit passes.

- Join a local transportation management association and prepare employer-based trip reduction plans

The commenter goes on to indicate that the project should also contribute funds to "off-site" programs to help off-set it's carbon emissions to achieve a "zero net increase" in greenhouse gas emissions to support a less-than-significant finding. However, "zero net increase" is not the significance threshold used in the DEIR, nor has any reputable agency, including the California Air Resources Board, adopted or even proposed such a threshold. The DEIR appropriately utilizes compliance with the AB 32 target as the threshold of significance. Furthermore, as stated in the DEIR, the significant and unavoidable finding was reached because, despite a reduction in carbon emissions by implementation of the required mitigation measures, the "exact amount of reduction cannot be quantified at this time" (DEIR:5-12), due to the lack of information regarding the project's specific energy demand. Note that the energy demand factor utilized in the DEIR for the project is anticipated to be extremely conservative, and that the energy consumption accounted for more than 75% of the project's anticipated carbon emissions (see Table 5-3 in the DEIR). With consideration of the CPR's intent to achieve a LEED® Silver rating for this project, as well as the mitigation measures required above (including the 33.3% reduction in NO_X required in Mitigation Measure AIR-2 which would also reduce GHG emissions), the proposed project's carbon emissions may be found to comply with the AB 32 target, once the net energy demand and mitigated carbon emissions can be quantified. It should further be noted that off-set programs are currently not regulated and the California Attorney General has called upon the Federal Trade Commission to review these programs for potential fraud (Department of Justice 2009). Given the lack of regulation of these programs, the quantification of actual (as opposed to claimed) carbon off-set, and therefore the effectiveness of the programs, become much more speculative. These programs are therefore considered to be infeasible in further reducing the project's carbon emissions (which may not require reduction if the project achieves compliance with the AB 32 target).

CPR believes that exhaustive policies, programs, and mitigation measures have been developed to reduce GHG emissions, and that all feasible (i.e., economically, socially, technologically, and within a reasonable amount of time) mitigation has been incorporated, including the on-site mitigation suggested by the commenter. The fact that CPR's mitigation measures substantially track those developed by the California Office of the Attorney General indicates that the proposed project's means to reduce GHG emissions would be effective to mitigate climate change impacts in compliance with CEQA. (See also *Environmental Protection and Information Center v. Cal. Dept. of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 484 [duty to respond to comments does not necessarily extend to considering all non-project-specific secondary materials submitted in support of comments.].)

10-44 This comment is related to Comment 10-43. The commenter asserts that the second problem with the DEIR's mitigation approach is that the mitigation measures proposed for reducing GHG emissions are vague and undefined. The commenter suggests that the measures should be revised

to be more specific. The commenter particularly points out the measures regarding green buildings and shuttle service to public transit.

It should be noted the DEIR states that mitigation measures shall be implemented to the extent feasible. In addition, on page 5-13, the DEIR states that compliance with SJVAPCD Rule 9510, which would result in a reduction in operational ozone precursor emissions by 33.3%, would also reduce GHG emissions to a similar extent. This is because a close correlation exists between emissions of ozone precursors and emissions of GHGs from mobile, area, and stationary sources because both are byproducts of fuel combustion, as explained above. This requirement would be met by implementing any combination of on-site emission reduction measures or payment of off-site mitigation fees. Specific mitigation measures that would achieve these reductions are outlined in Section 4.4, "Air Quality," of the DEIR on page 4.4-32. Thus, a performance standard to reduce operational emissions of ozone precursors would indirectly result in a measurable reduction in GHG emissions, either on- or off-site. CPR and SJVAPCD would determine the efficacy of on-site measures, and off-site mitigation would be implemented as necessary to meet the performance standard for ozone precursors.

As stated in Response to Comment 10-43, the fact that CPR's additional mitigation measures to reduce GHG emissions substantially track those developed by the California Office of the Attorney General indicates that the proposed project's means of reducing GHG emissions would be effective in mitigating climate change impacts in compliance with CEQA. It is acknowledged that the Attorney General's suggested measures are broadly worded. However, because of the dynamic regulatory, legal, and technological environment with respect to climate change, CPR believes that it is appropriate to allow the flexibility to implement the proposed measures and other equivalent measures that would emerge from future technological advances, as feasible. Please also note that the DEIR concludes that the impact of GHG emissions would remain significant and unavoidable.

10-45 The comment states that the third issue with the mitigation approach is that the decision of which mitigation is "feasible" would be made after project approval, which is an inappropriate deferral of mitigation. The commenter argues that CPR should determine the feasibility of these mitigation measures now. Please see Response to Comment 10-43 for the definition of "feasible." This is the definition provided in the CEQA statute, in Section 21061.1 of the California Public Resources Code.

Furthermore, as described under Response to Comment 11-2 (from the CDCR letter), the State CEQA Guidelines (Section 15004[b]) indicate that:

> choosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs…should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.

Because the CEQA process for the proposed project was initiated early enough in the site planning phase to allow flexibility for avoidance and mitigation of environmental impacts, the specific building layout and other design details are unknown. Therefore, although the site design remains flexible enough to allow for many of the measures identified in the DEIR for reduction of GHG emissions, some of these measures may be found infeasible because of operations and other program considerations.

For example, all buildings may not be able to be sited to take full advantage of shade and prevailing winds because some structures may need to be oriented specifically on the site for

operations and program purposes. The structure housing the urgent-care center may, hypothetically, need to be oriented strategically with respect to the sally port to allow quick transport of patients for time-critical medical needs. This may restrict the ability to utilize a more energy-efficient orientation and may cause the mitigation measure to be infeasible for this structure.

As can be seen, for some of the mitigation measures identified, more specific design-level information is needed to determine feasibility. However, if this level of detail were available and analyzed in the DEIR, the proposed project would be designed to a point that design-level avoidance or mitigation would not be feasible, and approval of the proposed project over the alternatives may be considered a foregone conclusion. In the case of the proposed project, this level of detail will not be available until after CPR has approved either the proposed project or one of the identified alternatives.

Although the feasibility of all mitigation measures cannot be entirely ascertained at this point, the DEIR appropriately provides a comprehensive list of mitigation measures. Even if some of the measures cannot be applied for reasons identified under CEQA Section 21061.1, the impact would be reduced to the extent feasible, and as concluded in the DEIR, would remain significant and unavoidable. As indicated in the DEIR (page 3-16), the proposed project is intended to be designed and constructed to achieve a minimum Leadership in Energy and Environmental Design (LEED®) Silver rating, consistent with Executive Order S-20-04; consequently, there is no reason to believe, considering this intent to achieve LEED® Silver, that CPR would dismiss as infeasible any of the mitigation measures identified in the DEIR to reduce GHG emissions for any but the most critical of reasons.

10-46 The commenter incorrectly suggests that the DEIR does not include the California Conservation Corps (CCC) project or CDCR's proposed NCRF in the cumulative analysis. Chapter 5, "Cumulative Impacts," of the DEIR includes a discussion of related projects that were used to analyze cumulative impacts. As part of this discussion, the DEIR (page 5-3) states that:

> two state-sponsored projects have been approved in the immediate vicinity of the project site. The approved California Conservation Corps (CCC) Delta Services Center (Delta Services Center) is located north and west of the site, abutting the O. H. Close Youth Correctional Facility to the north.

The DEIR goes on to describe the two projects and indicates both projects in Exhibit 5-1.

The commenter proceeds to question how the proposed project's cumulative impacts would be "integrated with the others" and that the traffic, air quality, and noise analyses would "benefit from a cumulative approach to mitigation." It is unclear why the commenter has singled out these two state projects from all of the other projects assumed in the DEIR's cumulative impacts analysis; regardless, the cumulative analysis of the DEIR, including cumulative traffic, air quality, and noise, assumes buildout of the City General Plan, including the two projects mentioned above, as well as Mariposa Lakes and dozens of other projects throughout Stockton identified in Table 5-2 of the DEIR.

10-47 The commenter goes on to mention the cumulative operational air quality discussion as an example of a cumulative analysis that should specifically mention the CCC project and the NCRF (again, it is not clear why these two projects are singled out). These projects are not unique from the other cumulative projects included, and there is no reason (and no reason is provided) to segregate the analysis by applicant type, assuming that these projects are singled out because they involve the State of California. The commenter indicates that no data or analysis of the three

projects' cumulative contribution to air quality exists. Once again, however, both of the other projects are described as related projects in the DEIR's cumulative analysis (please see Response to Comment 10-46 for more details), and their impacts are included in the evaluation of all related projects.

With respect to cumulative operational air quality impacts, SJVAPCD's impact assessment guide, the GAMAQI, states (SJVAPCD 2002:29) under "Cumulative Impacts" that:

> any proposed project that would individually have a significant air quality impact (see Section 4.3.2–Thresholds of Significance for Impacts from Project Operations) would also be considered to have a significant cumulative air quality impact. Impacts of local pollutants ([carbon monoxide, hazardous air pollutants]) are cumulatively significant when modeling shows that the combined emissions from the project and other existing and planned projects will exceed air quality standards. See also Section 5.9.

In Section 5.9, the GAMAQI provides guidance for determining whether a project would result in a considerable contribution to a cumulative impact: "Lead Agencies should use the quantification methods described in Section 4 [for analyzing project-specific impacts] to determine if ROG or NO_X emissions exceed SJVAPCD thresholds" (SJVAPCD 2002:53). Therefore, for cumulative analysis the SJVAPCD does not encourage emissions quantification for other projects in the vicinity; rather, SJVAPCD recommends that the determination of whether a project would contribute considerably to a cumulative impact should be based on the project's individual impact.

The cumulative operational air quality impact in the DEIR is consistent with SJVAPCD's guidance. Additionally, the proposed project would be consistent with and would comply with all conditions in the air quality attainment plan (AQAP) (see page 5-10 of the DEIR), which was adopted by SJVAPCD to mitigate the air quality impacts of projects within the San Joaquin Air Basin. As stated in Section 15064(h)(3) of the State CEQA Guidelines:

> A lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan…which provides specific requirements that will avoid or substantially lessen the cumulative problem (e.g., …air quality plan…)…

10-48 The commenter suggests that the traffic mitigation identified in the CEQA documents for the CCC and NCRF projects be coordinated with the mitigation required for the proposed project. As indicated in Response to Comment 10-46 above, the DEIR's cumulative analysis for these projects are included in Chapter 5, "Cumulative Impacts," of the DEIR. Because each of the other two projects were analyzed prior to and independently of the proposed project, the cumulative contribution of these two projects, as analyzed in their respective CEQA documents, does not include the substantial traffic volume generated by the proposed project. The DEIR appropriately includes these projects in the cumulative analysis, but the DEIR cannot impose mitigation measures on approved projects and projects that are not under the purview of CPR. Please see Master Response 5 "Traffic Issues" for information regarding revised mitigation and subsequent avoidance of all significant and unavoidable traffic impacts.

10-49 The commenter states that the DEIR improperly relies on compliance with the AQAP as a metric for determining that the cumulative air quality impacts would be less than significant. SJVAPCD is responsible for the management of the San Joaquin Valley Air Basin, and is required to develop plans (AQAPs) that achieve attainment of air quality standards. Operational activities would not result in project-generated emissions that exceed SJVAPCD's applicable thresholds of

10 TPY (please refer to Impact AIR-2 in the DEIR). The proposed project would also be consistent with land use designations in the City General Plan, and, by definition, would therefore not contribute to an increase in regional emissions that conflict with the budget used for purposes of air quality planning. Thus, project-generated, operation-related emissions would not violate or contribute substantially to an existing or projected air quality violation, expose sensitive receptors to substantial pollutant concentrations, or conflict with air quality planning efforts. The proposed project would not produce emissions greater than the thresholds of significance established by SJVAPCD. Thus, the proposed project would not have a significant direct impact on air quality. Consistency with the applicable AQAP is one of multiple interrelated bases for identifying potentially significant impacts. In short, because the proposed project would not facilitate impacts beyond those analyzed in the City General Plan, the project would be consistent with the AQAP, and no significant impacts would result from the proposed project in terms of attaining the AQAP. SJVAPCD, in its GAMAQI, specifies that a project shall use the same methodology for determining cumulative impacts as it does for project impacts.

The comment further states that the DEIR must identify mitigation measures from the AQAP that are feasible and should specify how they are to be implemented. Please refer to Response to Comment 10-29, which describes mitigation measures that would be implemented to reduce the project's direct and cumulative operational emissions to a less-than-significant level. Because the impact would be less than significant, no further mitigation is required.

The comment goes on to state that the analysis of cumulative air quality impacts is defective because it is limited to other plans for growth only within San Joaquin County. The commenter suggests that cumulative air impacts should not be defined by county boundaries, but rather by projects within the same air basin. With respect to cumulative operational air quality impacts, SJVAPCD's GAMAQI states under "Cumulative Impacts" (SJVAPCD 2002:29) that:

> any proposed project that would individually have a significant air quality impact (see Section 4.3.2–Thresholds of Significance for Impacts from Project Operations) would also be considered to have a significant cumulative air quality impact. Impacts of local pollutants ([carbon monoxide, hazardous air pollutants]) are cumulatively significant when modeling shows that the combined emissions from the project and other existing and planned projects will exceed air quality standards. See also Section 5.9.

In Section 5.9, the GAMAQI provides guidance for determining whether a project would result in a considerable contribution to a cumulative impact: "Lead Agencies should use the quantification methods described in Section 4 [for analyzing project-specific impacts] to determine if ROG or NO_X emissions exceed SJVAPCD thresholds" (SJVAPCD 2002:53).

Therefore, SJVAPCD recommends that the determination of whether a project would contribute considerably to a cumulative impact should be based on the project's individual impact. The cumulative operational air quality impact in the DEIR is consistent with SJVAPCD's guidance. Although the commenter may disagree with the agency responsible for managing the air basin, the comment offers no evidence to suggest that, contrary to SJVAPCD's cumulative thresholds of significance, the proposed project's contributions should be cumulatively considerable and therefore significant. Thus, the analysis of the proposed project's cumulative impacts on air quality is consistent with SJVAPCD's guidance.

Also, please see Response to Comment 10-47.

10-50 This conclusion summarizes the comments made throughout the letter, which are addressed individually above. The comment does not raise any new issues with the DEIR that have not been addressed in the above responses.

11

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENTOF CORRECTIONS & REHABILITATION

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To: Laura Sainz

From: Delorean Walton

Re: Comments on Stockton DEIR

Number of Pages (including cover sheet): 4

Message:

STATE OF CALIFORNIA — DEPARTMENT OF CORRECTIONS AND REHABILITATION ARNOLD SCHWARZENEGGER, GOVERNOR

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December 8, 2008

Ms. Laura Sainz, CEQA Project Manager
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Dear Ms. Sainz:

COMMENTS ON DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE PROPOSED CALIFORNIA HEALTH CARE FACILITY, STOCKTON

Thank you for the opportunity to provide comments on the Draft Environmental Impact Report (DEIR) for the proposed 1,742-bed facility on the grounds of the Department of Corrections and Rehabilitation (CDCR) Northern California Youth Correctional Center (NCYCC) in Stockton, California. These comments are predicated on the Federal Receiver's ability to obtain both authority and funding for the proposed construction of this facility pursuant to the Prison Reform Litigation Act and subsequent actions to be taken by the California State Legislature. Concurrently with that authority should be the unique authority to utilize a design-build approach for design and construction of this proposed facility. At this time, neither funding nor project authority has been established for this project. 11-1

The following are the department's comments on the adequacy of the DEIR for this major medical prison project within the boundaries of NCYCC in the event that the Federal Receiver receives the appropriate authority and funding to proceed.

Level of Detail of Site Plan. Although CDCR recognizes that the Federal Receiver has selected a design-build approach to the medical prison projects, the Draft EIR is based on site plans, elevations, and proposed infrastructure improvements that are presented at a preliminary level of detail. This is sometimes typical of the initial stage of a design-build process – the actual plans for this project would not be available until a design-build construction contractor has been secured and design development documents are completed. However, other methods can be employed such as massing detail to help better communicate the impacts of the project. 11-2

To comply with the provisions of the California Environmental Quality Act (CEQA) that a lead agency must fully disclose all elements of a the project and accurately assess the potential environmental effects of an undertaking, we believe the Federal Receiver should clarify if (1) a more detailed focused or subsequent EIR will be prepared once there is an actual site plan and 11-3

(2) if there will be a public opportunity to review and comment upon the preliminary site plans (including elevations, landscaping, final determination of utility extensions, etc.) for the project. 11-3 Cont'd

Development of Alternatives/Need for NCYCC Facility. The DEIR does not provide a thorough description of how the Federal Receiver arrived at the need for approximately seven medical facilities, and what specific criteria were used to evaluate the 33 state prison sites and other potential state-owned properties for the siting of these facilities. The information in the introductory sections of the EIR and in the alternatives chapter concludes, without adequate analysis, that the construction of seven new facilities is needed, and that the NCYCC property is the superior location for Northern California. The Final EIR needs to provide a thorough evaluation of the many potential sites available for new medical facilities in California, describe how the "seven" priority sites were selected, and explain the approach of constructing large medical prison complexes as opposed to the use of contracted medical services and/or combinations of smaller facilities that may have few significant effects on the environment. 11-4

CDCR also notes that the site plan for the NCYCC facility includes a boxed area indicated as the "Regional Food Service Facility". This suggests that other "facilities" may be served by this kitchen, and the Final EIR must evaluate the potential environmental effects of such service. 11-5

Division of Juvenile Justice Long Range Planning. The DEIR does not acknowledge that the CDCR Division of Juvenile Justice is continuing to evaluate the NCYCC property to meet its court-ordered obligations to improve the care and treatment of wards committed to state custody. Given this is already state-owned property that has historically been a major center for juvenile facilities, it remains a potentially valuable site for new treatment facilities. The draft DJJ Facility Master Plan describes CDCR's interest in this particular location. It also describes future site alterations to accommodate the unique needs of the ward population, in light of CDCR's efforts to satisfy various court requirements relative to the State's juvenile population and facilities. 11-6

Conflict with NCRF Project Site. The exhibits provided in the DEIR suggest that the Federal Receiver plans to use the area directly north of the proposed NCYCC site, which is the same area that CDCR will utilize to stage construction for the fully approved Northern California Reentry Facility. To avoid delays to the NCRF project, the Final EIR should identify and evaluate other areas that could be used for construction staging. 11-7

Proposed Project Staffing Exceeds Latest Facility Program Statement Draft. The proposed number of employees stated in the DEIR is "between 2,400 and 3,000." However, according to the latest version of the Federal Receiver's Facility Program Statement, which outlines the proposed facilities' architectural and staffing requirements (in which this project is included), the staffing was downsized to approximately 1,600. As these different staffing levels represent different, and potentially significant, environmental impacts, the Final EIR should reflect the correct staffing level and evaluate the impacts accordingly. 11-8

Mitigation for Additional Lethal Fence. The DEIR states in the mitigation measures for biological resources that the installation of a lethal electrified fence will be covered by mitigation 11-9

established and implemented under the CDCR agreement with the US Fish and Wildlife Service and California Department of Fish and Game (Page 4.7-20). Although a lethal fence was not constructed for the Northern California Woman's Facility (now the site of the NCRF), CDCR is considering installation of lethal fences at other state prisons. Thus, there is no un-allocated mitigation for the Federal Receiver to assume. The Final EIR needs to clarify that the Federal Receiver is solely responsible for securing an agreement with the USFWS and CDFG for the appropriate design and mitigation of any new lethal electrified fencing that would be employed at the proposed NCYCC facility.

11-9
Cont'd

CDCR appreciates the opportunity to provide comments on the Draft Environmental Impact Report for the proposed California Health Care Facility at Stockton, California. CDCR looks forward to receiving a Final EIR that provides responses to our comments on the DEIR.

If you have any questions about these comments, please contact Robert Sleppy at (916) 801-2899.

Sincerely,

DEBORAH HYSEN
Chief Deputy Secretary
Facility Planning, Construction and Management

cc: Carl Larson
Wendy Saunders, URS/ Bovis

11-1 The comment provides an introduction to CDCR's letter and mentions that the comments are predicated on CPR's ability to obtain funding and authority to implement the proposed project. The comment is noted.

11-2 The commenter indicates that, because of the design-build process, only a preliminary level of detail is provided and suggests that other methods, such as massing diagrams, could have been used to communicate impacts.

The State CEQA Guidelines (Section 15004[b]) state that:

> Choosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs…should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.

The EIR's project description conforms to the technical requirements of State CEQA Guidelines Section 15124, and includes a level of detail appropriate to inform CPR's decision, as well as to inform the public of the proposed project's potential to result in physical adverse effects on the environment.

At this point in the development of the proposed project, sufficient detail exists to evaluate the project's potential environmental effects, but the Receiver has not invested so much in the project that approval of the proposed project is a foregone conclusion. CPR is complying with CEQA by initiating the CEQA process early enough to weigh the environmental considerations, including alternatives, and to make changes to the project to mitigate identified impacts; it is late enough to provide meaningful information for environmental assessment. It is true that elevations are not included; they have not yet been developed. However, the relative size of the site plan, overlain on the aerial photograph that shows the relative size of the site compared with existing prison facilities on the same NCYCC site (DEIR Exhibit 3-5), provides sufficient scale to allow evaluation of the proposed project's impacts.

11-3 The proposed project is sufficiently designed that a plan showing the layout of project facilities is included in the DEIR (see Exhibit 3-5). More detailed site plans are available that provide more detail on such topics as what each building would be used for, but the detail included is sufficient to evaluate the project's impacts, and no comments, here or in any other comment letters received, suggest otherwise. As described in Response to Comment 11-2 above, the level of detail provided by the DEIR is appropriate under the requirements of CEQA Guidelines Section 15004(b). After the proposed project is designed to a greater level of detail, CPR will determine whether the design is within the scope of analysis included in this EIR. This EIR is intended to address the impacts of what may ultimately be constructed on the site, and CPR does not anticipate that further CEQA documents will be prepared for the proposed project. However, if the final design would result in significant impacts not addressed in this EIR, additional CEQA analysis would be provided (see Pub. Resources Code, § 21166; CEQA Guidelines, § 15162).

Regarding the opportunity for the public to comment on the preliminary site plans, it should be noted that several public meetings have been held at which the site plans were presented. Staff

members were available to discuss the site plan with the attendees, and a court reporter and comment cards were provided to record public input. Although project-specific elevations and landscape plans were not yet available, examples of facilities that will serve as models for the appearance of the proposed project were shown at these meetings. No additional public review is planned.

11-4 Please refer to Response to Comment 9-3 regarding the process for evaluating the optimal number of facilities and beds, and refer to Master Response 1, "Alternatives." As to the request for consideration of smaller facilities, the alternatives analysis in the DEIR evaluates an alternative with a smaller footprint than the proposed project (see Section 7.4.2 of the DEIR) and an alternative with 25% fewer patients (see Section 7.4.3). Please see the discussion therein. It is noted that if more, smaller facilities were constructed, rather than the seven currently proposed, impacts at some of the sites would likely be less, but the impacts would occur at a lot more locations.

Regarding the use of contracted services, the comment does not provide details on how this would be implemented, so it is difficult to respond. It is not known whether the comment is suggesting construction of facilities that would be run under contract (similar to private firms that build prisons and take in inmates under an agreement with CDCR), or whether it is suggesting the use of existing facilities that are not prisons. Under the first scenario, it is likely that similar construction and operational impacts would occur; it would be difficult to accommodate the projected 10,000-bed need without a similar level of construction as proposed. If the latter scenario were selected, it is likely that substantial new facilities would still be needed; it is not conceivable that existing CDCR medical facilities could handle the demand for 10,000 beds without substantial expansion and the attendant environmental impacts. Additionally, contract services raise other issues, such as how security for a large number of inmates would be provided. Because this comment does not include additional details to address this issue, no further response can be provided.

11-5 The DEIR indicates that the trayed meals would be transported from the site three times per week, which is included within the number of delivery vehicles (42 per day) analyzed in the traffic section of the DEIR. Furthermore, the three trucks per week analyzed would not result in regional or other off-site impacts. Noise generated from loading docks is analyzed on page 4.5-7 of the DEIR and found to be less than significant. Other operational impacts associated with the proposed regional kitchen are included in the DEIR's analysis of the proposed "central plant," which would provide heating, cooling, gas, and power to the regional kitchen. The regional production kitchen is included in the project description, and the kitchen's potential to result in environmental impacts is appropriately analyzed in the DEIR. Other than this, it is not known what other impacts could result.

11-6 The commenter indicates that the DEIR does not address CDCR's "interest" in the project site and possible site alterations to accommodate the needs of the ward population. However, there are no formal proposals for a Division of Juvenile Justice (DJJ) facility, and no NOP (or other CEQA document) for such a facility has been released. Furthermore, because the proposed project and any DJJ facility proposed in the future could not occupy the same site, they are mutually exclusive; in other words, implementation of one development would prohibit development of the other at that site. Therefore, the DEIR's analysis would not consider development of the DJJ site, except as an alternative to the proposed project.

Note that the DEIR includes discussion of a "Juvenile Corrections Facility Alternative" (page 7-5), which is considered but not analyzed in detail, because CPR has no purview over the development of a youth correctional facility and such a facility would not meet any of the project

objectives. There are no other known DJJ proposals for other locations within the NCYCC facility, and aside from the reference to a potential facility on the site, the comment provides no details of any proposal.

11-7 The commenter points out that the staging area for the proposed project overlaps with the staging area for the proposed NCRF facility north of the site. The commenter is correct. Combining the staging area is the most efficient use of land and would avoid environmental impacts associated with disturbing the soil of a second off-site staging area. The staging area is located and sized appropriately to accommodate both construction projects should both projects undergo construction simultaneously. CPR would coordinate with CDCR during construction to avoid any staging conflicts.

11-8 The comment includes reference to a preliminary program document prepared by CPR that indicates a reduction in staff to 1,600, which the commenter indicates could result in potentially significant impacts. Although the document referenced does reflect a downsizing, the document is still undergoing review and the information contained therein has not been adopted. To remain conservative, CPR considers the project to include up to 3,000 staff members, as indicated in the project description of the DEIR. If fewer staff members are needed, impacts would be less than reported herein because staffing affects traffic and associated air quality and noise impacts; the fewer the staff members, the fewer the vehicles, and the lower the levels of air emissions and noise. The EIR provides a worst-case analysis based on a foreseeable level of staffing.

11-9 This comment is noted. Mitigation Measure for Impact BIO-5 does indicate that CPR is proposing to substitute the fence at the former Northern California Women's Facility, covered under the *Statewide Electrified Fence Habitat Conservation Plan*, with the project fence. The mitigation also states that if coverage under the habitat conservation plan were not authorized, CPR would implement the equivalent level of mitigation. Please see page 4.7-20 of the DEIR.

Crystal McIntyre

12

From: Frances Watson [Frances.Watson@ci.stockton.ca.us]
Sent: Monday, December 08, 2008 4:12 PM
To: PR
Subject: City of Stockton Comments on .....

the Draft Environmental Impact Report for the Proposed California Prison Health Care Facility Stockton

Original to follow in the mail

Fran Watson, Office Assistant I
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December 5, 2008

Laura Sainz
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CITY OF STOCKTON COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE PROPOSED CALIFORNIA PRISON HEALTH CARE FACILITY STOCKTON

Thank you for the opportunity to comment on the Draft Environmental Impact Report for the proposed California Health Care Facility Stockton (CHCF). The proposed project site, which is within the existing Northern California Youth Correctional Center (NCYCC) complex, is located immediately outside City of Stockton boundaries, within unincorporated San Joaquin County. 12-1

We reiterate our comments of July 17, 2008 and September 11, 2008 (attached), and add the following:

1. The document does not address the City of Stockton's conditional requirement for annexation in response to the request from your agency for water and sewer utility services for the subject project. The proposed project lies within the City's Sphere of Influence and is a logical annexation consistent with the General Plan and Local Agency Formation Commission (LAFCO) annexation policies. The Environmental Impact Report must reflect this requirement, as well as the process for annexation into the City. 12-2

2. The project does not adequately address the impacts on City Police and Fire protection services or required mitigation for those impacts. A fiscal assessment and public facilities financing plan should be prepared to evaluate the project's impacts on City services and identify required mitigation measures to ensure that the project pays its proportionate share of the costs of capital facilities, operation, and maintenance costs, including personnel and equipment. 12-3

Stockton All-America City

3. In the event the site is annexed, it will have significant environmental impacts to the Stockton Police Department. The Environmental Impact Report should consider the following:

   - Crimes frequently occur in and around prisons, often including felonious assaults between inmates, and narcotics and weapons offenses perpetrated by visitors seeking to smuggle contraband into the facility. 12-4
   - Unless strong measures to mitigate police operational and cost-recovery requirements are put in place before the project commences, the Stockton Police Department will likely become responsible for investigating virtually any crime and other incidents that occur on or near the property. 12-5
   - The scope of this project is the prison medical facility, which will include 1,800 convicted felons and a staff of more than 3,000. Annexation will also include several hundred beds at the existing youth correctional facilities and 500 new beds at the men's re-entry facility, which will be constructed at the site of the former women's prison. 12-6
   - The Police Department does not have the necessary staffing or equipment to accommodate this, unless it diverts its scarce resources from other areas. 12-7
   - Annexation may also affect the City's crime index, the most accepted measurement of crime in our community. Those that meet FBI Uniform Crime Report criteria may increase the sum of all crimes currently reported to police. 12-8

4. Upon annexation into the City of Stockton, a firehouse with 4 personnel, 24 hours a day/7 days a week would be required per the City of Stockton General Plan. The project will be responsible for all applicable costs, including Public Facility fees and Community Facility District fees at the time of annexation. 12-9

5. Based on review of the Draft EIR, the level of fire service currently available to the project is stated correctly. 12-10

6. **Section 3.4 Description of the Proposed Project. Utilities and Infrastructure/Water:**

   - The extension of the water main on Newcastle Road is not a City of Stockton project, but rather, the extension would occur as part of a development project which would develop adjacent to Newcastle Road. The City cannot guarantee the availability of the infrastructure, and therefore, the Project may be required to extend the water line from the 12-11

intersection of Arch and Newcastle Roads, south to coincide with the NCYCC frontage. 12-11 Cont'd

- In order to support the requested fire suppression flows of over 9,000 gallons per minute, the Project will be required to provide a second point of connection on Austin Road to complete a looped-water distribution system. Any on-site public facilities will require all-weather maintenance access roads and accessibility by City forces. 12-12

7. **Section 4.6.4 Impacts and Mitigation Measures:** The Project may be required to acquire permits for additional storm water discharges into the North Fork of South Little Johns Creek. It is recommended that the Project consult with the County of San Joaquin, and the appropriate state and federal agencies for any regulatory requirements. 12-13

8. **Section 4.14.2 Environmental Setting/Wastewater:** New pump station facilities will be required to install grinders in accordance with the original agreement. 12-14

9. **Figure 4.14-1 Existing and Proposed Water Distribution Systems:** The proposed 16-inch water main connections on Newcastle and Arch Roads shall be downsized to 12-inch diameter connections. In addition, an additional 12-inch water main connection shall be made on Austin Road. Any water main extensions on Arch, Newcastle and/or Austin Roads shall be accomplished by the Project in compliance with the City's Water Master Plan, and Standard Plans and Specifications. 12-15

10. **Page 4.3-11 Fair Share Payment:** For clarification, the City's fair share formula for determining the percent of project traffic contributing to cumulatively affected roadways is the Project Traffic divided by the Cumulative Traffic plus Project Traffic. 12-16

11. **Page 4.3-20 Trip Assignment:** The discussion and subsequent traffic analysis assumes one proposed project driveway located on Austin Road, however, Exhibits 3-4 and 3-5 identify two driveways serving the project from Austin Road. Any request for project access beyond the one driveway that was assumed on Austin Road in the analysis will require further justification and analysis. 12-17

12. **Page 4.3-28 Impact TRAF-4:** A potentially significant impact is identified at Arch Road/Kingsley/East Frontage Road intersection. There is a question as to the accuracy of the intersection configuration assumed for the analysis. The westbound approach should have been assumed as having a separate left turn lane, two through lanes and a shared through/right turn lane, whereas the analysis assumed only two westbound through lanes. Should the revised 12-18

analysis conclude that there is still a significant impact, it is recommended that reconsideration be given to the recommended traffic mitigation in Mitigation Measure for Impact TRAF-4. 12-18 Cont'd

13. **Page 4.3-28 Mitigation Measures for Impact TRAF-4:** Provided the revised analysis concludes there is a potentially significant impact at the Kingsley Road/Arch Road intersection, it is the City's preference to maintain the left turn protection for the southbound to eastbound movement for operational safety purposes. As such, alternate mitigation should be recommended such as providing an additional through lane in the eastbound direction since the project contributes to through traffic on Arch Road and the ultimate configuration is for three through lanes eastbound and westbound on Arch Road. Further, as this impact is triggered in the near term (EPAP plus Project), the project is responsible for the design and construction of the mitigation improvement to assure the mitigation is in place when the project is in operation. Otherwise, the potential impact will not be mitigated. It is also stated that payment of the City of Stockton traffic fee will help fund a fair share of this improvement. Typically, State construction projects are not processed through the local City or County Building Divisions which is generally the mechanism for collecting Public Facility Fees for street improvements. Additionally, it would need to be determined that the recommended mitigation improvement is included in the City's Public Facilities Fee Program and the project developer would need to pay said fees to the City, in order for Fee payment to satisfy a project's fair share. If the mitigation improvement is not included in the City's Public Facilities Fee Program, then the project developer would construct the improvements and may request the City to form an area of benefit to recover costs from future developments for all but the project's proportionate share. 12-19

14. **Page 4.3-38 Mitigation Measures TRAF-7:** Roadway Segment – Austin Road (Arch Road to Proposed Project Driveway): It is stated that the roadway segment would be constructed to its ultimate width of 4 lanes, therefore the project would contribute to a significant and unavoidable cumulative impact. Since this entire roadway segment is fronted by state owned property it would seem reasonable that roadway widening could be assured and would be feasible. Roadway widening to add an additional northbound and southbound lane on Austin Road south of Arch Road is supported by the City's 2035 General Plan which has a reservation identified for additional right of way to accommodate this widening should it be determined necessary. Therefore, it is recommended that project mitigation be provided. 12-20

15. **Page 4.3-38 Mitigation Measures TRAF-7:** Roadway Segment – Arch Road (Newcastle Road to NCWF West Driveway): It is stated that the roadway segment would be constructed to its ultimate width of 4 lanes, therefore the project would contribute to a significant and unavoidable cumulative impact. 12-21

While it is agreed that a significant and unavoidable impact is appropriate, adding another eastbound travel lane is a potentially feasible improvement and should be identified as a mitigation obligation of the project. The southerly boundary of this roadway segment is partially owned by the state and a single ownership property that is currently undeveloped, and as such there is a good possibility the improvement mitigation can be implemented.

12-21
Cont'd

Thank you for the opportunity to comment on this Environmental Impact Report. Should you have any questions regarding this matter, please do not hesitate to contact me at 937-8212 or Community Development Director Mike Niblock at 937-8444.

J. GORDON PALMER, JR.
CITY MANAGER

JGP:MMN:fw

cc: Kerry Sullivan, Community Development Director
San Joaquin County Community Development Department
1810 East Hazelton Avenue
Stockton, CA 95205

emc: Mayor and City Council
Ren Nosky, City Attorney
Guy Petzold, Deputy City Attorney
Mike Niblock, Community Development Director
Barbara Berlin, Deputy Community Development Director/Planning

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12-1 This comment is an introductory paragraph stating that the site of the proposed CHCF Stockton is located near the boundary of the City of Stockton within San Joaquin County. The comment is noted.

12-2 The commenter asserts that the DEIR does not address the City's conditional requirement for annexation. Please refer to Response to Comment 6-1. As explained therein, CPR does not need to seek annexation for the City to provide water and wastewater services to the project site. Thus, annexation is not an entitlement request of this project.

12-3 This comment states that the DEIR does not adequately discuss impacts on City police and fire protection services or required mitigation.

The DEIR analysis focuses on direct impacts on County service providers, because they are the agencies charged with providing services to the site, should such services be needed. The City's request to consider impacts on City police and fire services appears to be tied to the request for annexation of the site, in which case the City would provide direct services. Please see Response to Comment 12-2; annexation of the site is not needed or proposed, so City police and fire services would not be needed absent an unusual situation requiring mutual aid response. Mutual aid has rarely been requested by CDCR (such as in the rare instance where a large-scale riot breaks out), and it is expected that such a case would be even more rare for the CPR at a health care facility with patients who are infirm. Further, it is far more typical that state correctional officers provide mutual aid to local law enforcement and firefighters, such as during wildfires (inmate crews often are on the front line of major fires) and search and rescue efforts, such as when a child is found missing.

The DEIR (pages 4.12-6 through 4.12-9) addresses impacts on City police protection and firefighting services associated with project-related population growth (from new employees who may choose to live in Stockton). Population growth is projected and the number of new officers needed to adequately serve the additional population is calculated in accordance with the City General Plan. The DEIR addresses impacts on fire protection services on page 4.12-8. As with police protection services, the DEIR concludes that additional firefighters would be needed to adequately serve projected population growth. The need for new police officers and firefighters is evaluated in relation to the substantial amount of growth currently approved and anticipated in the City General Plan. The City has approved substantial new development, and personnel associated with the proposed project may choose to reside in some of these homes. Police and firefighting facilities would be implemented during the orderly buildout of the City General Plan, and any additional service needs would likely be the responsibility of the housing developer, which is the typical approach when communities approve new development. Therefore, it was determined that the project would have a less-than-significant impact and no mitigation measures were required.

The comment also states that a fiscal assessment needs to be prepared. A fiscal impact analysis explores the economic costs of providing City (and County) services, balanced against increased revenues. CEQA does not require consideration of the economic effects of a project (see Section 15131 of the State CEQA Guidelines). The DEIR states on pages 4.12-7 and 4.12-8 that if the site were annexed into the City of Stockton, and therefore dependent on City services, then the state subvention for police and fire protection services would be adjusted to reflect the number of

patients housed at the facility (they would be counted as part of Stockton's population) and could be used for capital facilities and operations and maintenance costs. Annexation is not proposed.

See also Master Response 4, "Increased Demand for Local Services."

12-4 This comment states that CHCF Stockton would significantly affect the Stockton Police Department if the facility were annexed into the city. The comment asserts that crimes frequently occur in and around prisons. The commenter presents no substantial evidence, neither factual data nor anecdotal evidence, supporting this assertion. Further, CPR is not proposing to annex the site to the City of Stockton.

Regarding criminal activities at the proposed CHCF Stockton, the DEIR examined the effectiveness of existing law enforcement at CDCR facilities. Captain Gerry Garcia, chief of security for the NCYCC, stated that correctional officers effectively provide security and law enforcement at the facility and that support from the County Sheriff's Department is rarely required (DEIR, page 4.12-1). This experience is typical; the consultants preparing this EIR have prepared EIRs on prison projects throughout California over the past 20 years. Many of the projects are in communities that already have state-run prisons. In no case has a community ever expressed that the prison has substantively increased the burden on local law enforcement. At most, law enforcement is called to occasionally transport a visitor who may try to sneak drugs to an inmate and is detained by a correctional officer, but even that is rare.

The DEIR considered that the approximately 1,000 armed and trained correctional officers proposed to staff CHCF Stockton would be adequate and would avoid any significant impacts on law enforcement services provided by the sheriff's or police department. No improvements to existing sheriff's or police facilities or construction of new facilities would be required; therefore, no potentially significant impacts on the physical environment would occur.

To be considered a significant impact, under Appendix G of the State CEQA Guidelines, increased criminal activity would have to be so substantial that law enforcement entities would have to increase their personnel to the point where improvements would be required to existing facilities or new facilities would need to be constructed, the construction of which could result in significant impacts on the physical environment. There is no evidence supporting the claim that potential criminal activities around the CHCF Stockton site would intensify, and especially not to the level requiring additional facilities. Please see also Master Response 4, and Response to Comment 6-1 regarding annexation.

12-5 Please see Responses to Comments 12-4 and 6-1. Annexation is not proposed, and even if it were, there is no evidence to support the concerns expressed in the comment.

12-6 The comment is noted. Please see Response to Comment 6-1.

12-7 Please see Responses to Comments 12-3, 12-4, and 6-1.

12-8 This comment speculates that annexation of the project site into the City of Stockton may affect the City's position in the Federal Bureau of Investigation's Uniform Crime Report index. This concern is not supported by factual evidence that there would be an increase in crime. Please see Response to Comment 12-4. Further, changes in crime indices are not effects on the physical environment that would fall under the purview of CEQA.

12-9 This comment states that, based on the City General Plan, upon annexation, CHCF Stockton would be required to fund a firehouse staffed with four personnel at all times. However, the commenter does not specify how these exactions were derived from the City General Plan.

Considering that the NCYCC has a fire brigade on-site to serve the project and the City fire department would only be required to comply with the mutual aid agreement per PFS-8.5 and fair-share fees per PFS-8.4, a firehouse and associated staff would be unnecessary. The DEIR states on page 4.12-8 that if the site were annexed into the City of Stockton, and therefore dependent on City services, then the state subvention would be adjusted to reflect the number of patients housed at the facility and could be used for capital facilities and operations and maintenance costs. Also, see Responses to Comments 6-1, 12-3, and 14-1.

12-10 The comment validates the DEIR's analysis regarding the level of fire protection service available to the proposed project. The comment is noted.

12-11 This comment advises that the future City 16-inch water main planned in the Newcastle Road right-of-way, as shown in Exhibit 4.14-1 in the DEIR, is not a City project but rather a condition of a future development. Therefore, if the CHCF Stockton Project proceeds in advance of the development project, then the proposed project would need to install the improvement and expect a proportional reimbursement if the other development proceeds.

Please see Response to Comment 10-20, which explains that even if the proposed project were required to install the water transmission line down Newcastle Road, the conclusions in the DEIR would remain unchanged. See also Response to Comment 6-1, which describes an abatement order from the Central Valley RWQCB requiring that Forward, Inc., operator of the Forward Landfill purchased from the City, either provide a water line to serve the site or provide treatment for the wells on the NCYCC site to ensure that Forward, Inc., provides water that meets potable drinking-water standards. Thus, extending the water line is not the responsibility of CPR, but if it were, there would be no environmental impacts beyond those evaluated in this EIR.

12-12 This comment states that to provide sufficient fire suppression flows, a minimum of 9,000 gallons per minute, a new point of connection with the water main at Austin Road would be required to provide looped-water distribution. The comment is noted. The DEIR indicates a looped system with one connection to the pipeline in Arch Road and one connection to the future City line in Newcastle Road. This issue, however, is ultimately an engineering design concern that would be resolved during the design phase of the project. CPR would coordinate with the City Department of Public Works on specific pipeline connection locations. Regardless of the specific location, the connection to the city pipeline would occur within a paved right-of-way and pipeline extensions would occur within paved roadways or other highly disturbed areas. It is not anticipated that choosing one pipeline connection location over another would alter the proposed project's environmental impacts or result in impacts not disclosed in the DEIR.

12-13 The comment recommends early consultation with federal and state regulatory agencies if the proposed project would change the stormwater discharge regime into the North Fork South Littlejohns Creek. The comment is noted. CPR has been coordinating with the Central Valley RWQCB regarding discharge permit requirements. As indicated in the DEIR, NPDES permits are not currently necessary (page 4.6-19) because the project site is not included within the City of Stockton urbanized area; however, if the project site were ever annexed, the project would be subject to the City and County's joint stormwater permit under the National Pollutant Discharge Elimination System (NPDES). As indicated in the DEIR, the City's stormwater quality control plan would be utilized for the design and implementation of best management practices that would satisfy the City and County's NPDES requirements, even though the proposed project is not currently required to comply with the permit (page 4.6-18).

12-14 The comment states that the proposed pump station would require installation of grinders in accordance with the existing agreement. The comment is noted. The DEIR states on page 4.14-1

that CPR proposes two grinders for CHCF Stockton, which are shown in Exhibit 4.14-2, "Existing and Proposed Sanitary Sewer Systems," of the DEIR. The NCYCC site assessment report (CPR 2008b), Appendix I in Volume III of the DEIR, states that if connection to the city's 20-inch trunk line is the preferred alternative, then the COSMUD would require a comminutor or mechanical bar screen (CPR 2008b:13). Based on Exhibit 4.14-2 of the DEIR, connection with the City's 20-inch trunk line was the preferred alternative that was evaluated. The existing agreement required a mechanical bar screen, which the NCYCC staff replaced with two grinders (CPR 2008b:9). Therefore, it is reasonable that the grinders proposed would be consistent with the agreement. Ultimately, this is an engineering design concern that would be resolved during the design review phase of the project, and not the during the CEQA review process. It is not anticipated that any changes to design would result in environmental impacts not disclosed in the DEIR. If changes to the design would result in any new significant or substantially new significant impacts, subsequent CEQA review would be required. (Pub. Resources Code, § 21166; CEQA Guidelines, § 15162.)

12-15 The comment states that the 16-inch-diameter water mains proposed to connect with water mains at Newcastle and Arch Roads must be downsized to 12 inches in diameter. The comment is noted. This is an engineering design concern that will be resolved during the design review phase of the project, and not the during the CEQA review process. It is not anticipated that a change in the diameter of the water mains would result in environmental impacts not disclosed in the DEIR. If changes to the water main would result in any new significant or substantially new significant impacts, subsequent CEQA review would be required. (Pub. Resources Code, § 21166; CEQA Guidelines, § 15162.)

12-16 The commenter notes that the City's fair share formula differs from the fair share formula stated in the DEIR (which reflected the Caltrans fair share formula, rather than the City's formula). The traffic analysis has been revised (please see Master Response 5 for a detailed discussion and results) and, based on the revised analysis, the only impacts to a City of Stockton facility that requires fair share payment mitigation is the intersection of Austin Road and Arch Road. The project's fair share payment for this intersection is 10%; this percentage was derived using the City's formula identified by the commenter.

12-17 The exhibits of the project site in the DEIR provide a conceptual layout of the proposed project and access to the site. The project driveway would be designed as a single point of access on Austin Road to accommodate a future traffic signal (needed in the 2035 Cumulative condition). Please see Section 4, "Corrections and Revisions to the DEIR" for a revised site plan reflecting the appropriate access point. As the site plan progresses from a conceptual layout to an engineered plan, further detailed engineering analyses would be conducted for the design of the new intersection.

12-18 Please refer to Master Response 5. In response to specific comments (lane and ramp geometrics and signal timing/phasing) from Caltrans on the operational analysis of the SR 99 single-point urban interchange (SPUI)/Arch Road and the closely spaced intersection with Kingsley Road/Arch Road, the queuing and level of service (LOS) analyses have been revised. Based on the revised analysis, a significant project impact was found at Kingsley Road/Arch Road in the EPAP and 2035 Cumulative plus Project scenarios. To mitigate this impact, the mitigation measure for Impact TRAF-4 on pages 1-10 and 4.3-28 of the DEIR has been revised as follows (please also refer to Chapter 4, "Corrections and Revisions to the DEIR"):

Mitigation Measure(s) for Impact TRAF-4

- ~~**Intersection of Kingsley Road (Frontage Road) and Arch Road:** The addition of project-related trips would result in the degradation in LOS from LOS D to LOS E in~~

~~the a.m. peak hour and LOS E to LOS F in the p.m. peak hour, which would be a significant impact. The project's contribution would be cumulative, in combination with EPAP projects. The project would contribute (20.6%) of the traffic to this intersection. CPR will pay the City of Stockton traffic fee to help fund a fair share of this improvement:~~

- ~~change the north-south signal phasing of the intersection from protected left-turn phasing to permissive phasing, convert the southbound left-turn lane to a shared left-through lane;~~

- ~~convert the southbound shared through-right-turn lane to a dedicated right-turn lane.~~

- ~~**Intersection of Newcastle Road and Arch Road:** The addition of project-related trips would result in the degradation in LOS from LOS C to LOS E in the p.m. peak hour, which would be a significant impact. To offset this impact, CPR will add a westbound through lane to the approach and return of the intersection. Because the intersection would operate at an acceptable LOS without the proposed project and the project constitutes the major reason why the intersection would deteriorate, CPR will fund this improvement entirely.~~

The Receiver shall schedule staff shift changes to occur outside of the weekday peak commute periods (7:00 a.m. to 9:00 a.m., and 4:00 p.m. to 6:00 p.m.). Deliveries and visitors to the site shall also be restricted through purchasing contracts or other binding agreements to the hours of 9 a.m. to 3 p.m. and after 6:00 p.m.to minimize project-generated traffic during the a.m. peak hour. Some examples of the off-peak hour staff shift changes could be as follows:

- *8-hour shift:* 5:00 a.m. to 2:00 p.m. and/or 9:00 a.m. to 6:00 p.m.; and late evening/early morning shifts
- 12-hour shift: 6:00 a.m. to 6:00 p.m.

Table 4.3-17 presents the revised project trip generation with the implementation of this measure.

Table 4.3-17
Trip Generation with Off-Peak Shift Timing Mitigation Measure

Variable	Daily Trips	A.M. Peak-Hour Trips			P.M. Peak-Hour Trips		
		In	Out	Total	In	Out	Total
Staff	3,292	0	0	0	0	0	0
Deliveries	42	0	0	0	0	0	0
Visitors	232	0	0	0	0	0	0
Total Trip Generation	**3,566**	**0**	**0**	**0**	**0**	**0**	**0**

Source: Data compiled by DKS Associates in 2009

With the implementation of this measure, the significant impact at Kingsley Road/Arch Road would be reduced to a less-than-significant level in both the peak and off-peak hours. Please see Master Response 5 for a detailed discussion.

12-19 Please see Response to Comment 12-16, 12-18, and Master Response 5: "Traffic Issues". The proposed project would mitigate its impact on the Kingsley Road/Arch Road intersection through the (revised) mitigation measure for Impact TRAF-4. Also, please note that CPR does intend to pay its fair-share fees for cumulative impacts on the City of Stockton, even if CPR is a state agency, as long as there is a nexus between the proposed project and the impact, and the fees are proportionate to the impact.

12-20 Please see Master Response 5: "Traffic Issues". With implementation of revised Mitigation Measure for Impact TRAF-4, which places all project traffic in the off-peak hour, the project would no longer result in significant impacts to roadway segments, and roadway widening would not be necessary.

12-21 See Response to Comment 12-21.

Crystal McIntyre

13

From: Tom Terpstra [tterpstra@thtlaw.com]
Sent: Monday, December 08, 2008 3:19 PM
To: PR
Subject: CEQA Comment letter on behalf of San Joaquin County

Document Locator Path: Document Locator\CPRJV\Documents\Document Control\08 - CHCF - STOCKTON\08.07 - CEQA\08.07.01 - Public Comments\Holding Folder\County of San Joaquin CEQA Comment Letter.pdf

Good afternoon: Please accept these comments on behalf of the County of San Joaquin. I will send this letter, and accompanying materials referenced in the letter, by facsimile as well.

I would request that a reply be sent to confirm receipt of this email.

Thank you.

Thomas H. Terpstra
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CONFIDENTIAL IF CHECKED ☐

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FACSIMILE TRANSMITTAL SHEET

TO: LAURA SAINZ-CEQA PROJECT MANAGER

DATE: DECEMBER 8, 2008 FAX #: 916-779-6399

FROM: THOMAS H. TERPSTRA PAGES: 53

Comments/Notes:

THOMAS H. TERPSTRA

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December 8, 2008

Laura Sainz
CEQA Project Manager for CPR
URS/Bovis Lend Lease Joint Venture
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Re: Comments on Draft EIR for California Health Care Facility Stockton

Dear Ms. Sainz:

This office represents the County of San Joaquin in connection with the above-referenced matter. On behalf of the County, and in coordination with several affected County departments, I hereby submit the following comments on the Draft Environmental Impact Report (the "DEIR") for the California Health Care Facility Stockton project (the "Project"). Based on the comments and concerns outlined below, the County has concluded that the DEIR is deeply flawed, both in terms of its methodology and its conclusions, and must be substantially revised in order to fulfill its informational objective. Further, the DEIR utterly fails to identify and evaluate feasible mitigation measures and alternatives to the proposed Project, leaving the County and its residents to bear the brunt of unmitigated impacts from a project that could, and should, be located elsewhere. 13-1

Since the California Environmental Quality Act ("CEQA") process is an informational device for the disclosure of all potentially significant impacts from a project, for identification of all feasible mitigation measures that can lessen a project's impacts, and a vehicle for the identification of project alternatives that can avoid and lessen significant project impacts, this letter addresses only the adequacy of the DEIR. The EIR serves two basic purposes, "to enable the reviewing agency to make an informed decision and to make the decisionmaker's reasoning accessible to the public, thereby protecting informed self-government." *Laurel Heights Improvement Ass'n v. Regents* (1988) 47 Cal.3d 376, 392. In absence of a complete and adequate EIR, it is improper for the lead agency to certify the EIR or take any action on the project. 13-2

As we note herein, the DEIR is incomplete and inadequate. We respectfully request that the EIR be revised to address the numerous gaps and shortcomings identified in these comments and the written comments of the County's professional staff. We also request that the DEIR be re-circulated to allow a more complete disclosure of the potential environmental consequences of this project, for the public, the applicant, and the decisionmakers that must render judgment on the suitability of this project at this site. 13-3

Preliminarily, you will note that I have attached memoranda from various County department heads and representatives, most of which are summarized in some of the comments below. The County would request that the Final EIR contain responses to not only the summary comments below, but also to each of the comments in the attached memoranda.

1. The DEIR fails to inform the public as to the process for approval of the Project. Given the rather unusual circumstances surrounding the Project, the EIR should disclose exactly how the CPR, as "lead agency", is acting as a state agency, and the process under which CPR will "approve" the Project. Will there be a public hearing prior to Project approval? Are there required findings which must be made in the context of Project approval? If so, what are those findings? The DEIR makes no attempt to provide this vital information to the public. 13-4
2. The DEIR frequently refers to the CPR as a "state agency" or some variation thereof. The authority for this proposition is never stated, and is, in fact, questionable. As a result of CPR's "state agency" status, the DEIR concludes in several areas that CPR is exempt from local land use regulation and environmental standards. However, in other cases, the DEIR conveniently ignores CPR's "status" as a state agency. (see, e.g. the DEIR's air quality chapter, in which the author fails to note CPR's obligation to comply with Executive Order Number 3-05, mandating GHG reductions). CPR was formed as a result of federal action; specifically, as noted on page 3-1 of the DEIR, the federal action was to remove control of the prison medical system from a state agency and vest that control in a federal receiver. CPR is the non-profit organization which was created to house the activities of the federal receiver. From this information, it is not at all clear that CPR is a "state agency". This inaccuracy severely undermines much of the analysis and the conclusions in the DEIR. Moreover, the characterization of the CPR as the "agent" of the federal receiver, while possibly accurate, also results in the Project being subject to the requirements of the National Environmental Policy Act, or "NEPA". 13-5
3. All proposals for "major Federal actions significantly affecting the quality of human environment" are subject to NEPA requirements, unless they are expressly or impliedly exempted from such requirements. 42 U.S.C. § 4332(2)(C). An action is "federal" if it is subject to federal control and responsibility. This definition includes projects that are fully or partially funded, assisted, or regulated by federal agencies, and may include a federal official's failure to act. 40 C.F.R. § 1508.18. Federal actions typically, but are not required to fall within one of the enumerated categories, such as the approval of specific projects by permit or regulatory decision. 40 C.F.R. § 1508.18(b) (e.g., the issuance of a regulatory permit). 13-6
4. The Ninth Circuit appointed the California Prison Health Care Receivership ("CPR"). "The CPR is the non-profit organization created to house the activities of the federal Receiver. CPR is charged with creating a system in which prison custody and health care staff together can guarantee that 13-7

inmates' access to health care and services in California prisons meets constitutional standards." The Ninth Circuit has vested the CPR with all powers vested by law in the Secretary of the California Department of Corrections and Rehabilitation ("CDCR") as they related to the administration, control, management, operation, and financing of the California prison medical health care system. It is completely regulated by the Ninth Circuit and considered a federal receivership; as a result, the CPR is subject to NEPA. 13-7 Cont'd

5. The DEIR fails to accurately list the necessary local, state and federal permits and entitlements which must be obtained prior to construction. For example, and not by way of limitation, Section 2.2 incorrectly lists the San Joaquin County Department of Public Works as a "Local Responsible Agency". While the Department of Public Works' ("DPW") input will, appropriately, be sought by the Lead Agency, DPW is not a "responsible agency" under CEQA within the context of the Project. A "responsible agency" under CEQA is a public agency, other than the Lead Agency, which has discretionary approval authority over the Project. (14 CCR Section 15381) As a result of this error, the reader is left with the mistaken notion that the public will be given another opportunity for input on the Project when DPW evaluates the Project. 13-8
6. A complete and accurate project description is a necessary element of an adequate DEIR. "The project description must contain sufficient specific information about the project to allow the public and reviewing agencies to evaluate and review its environmental impacts." *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th20, 26. "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185,193. "A curtailed, enigmatic or unstable project description draws a red herring across the path of public input." *Id.*, 71 Cal.App.3d at 198. CEQA Guidelines § 15124 directs that an EIR should include information "needed for evaluation and review of the environmental impact." A project description that omits any "integral part of the project" is inadequate. *Dry Creek, supra*, citing *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 829. Against this backdrop, the County notes that the Project Description section of the DEIR is inaccurate, inconsistent and incomplete in the following areas: 13-9
    a. The Project Objectives, found at page 3-2, are too narrowly defined, and by limiting eligible sites to "state-owned property", improperly exclude many otherwise feasible and available sites from consideration. In fact, the DEIR essentially admits, at page 7-5, that no other sites are available which meet the project objectives. This is a violation of CEQA. 13-10
    b. The CPR is currently preparing a "Facility Program Statement" which, according to a November 17, 2008 court filing, will "when it is released to the public…demonstrate the careful planning, cooperation and coordination of the Receiver and the various State agencies involved." The County contends that the Facility Program Statement, 13-11

which ostensibly provides significant details pertaining to the Project, should be included in, or attached to the DEIR in order to provide the public with the full scope of the Project and the interrelationship of the Stockton facility with other planned facilities. 13-11 Cont'd

c. No effort is made within the Project Description to address the distribution of State Correctional Facilities among California's 58 counties. This is important in assessing the regional effects of the Project. Statistics provided by the County's Sheriff-Coroner's Office show that San Joaquin County ranks second in the state with six detention facilities, second only to Los Angeles County's eight such facilities. By contrast, there are 22 California counties with no state correctional facilities. In addition to being a flaw in the Project Description, this is also an environmental justice issue. The Project has the potential to increase traffic, noise and air pollution, to affect already strained public services, and to disproportionately affect lower income communities and communities with a substantial number of people of color. CEQA requires that the demographics of these communities be evaluated, along with the Project's impacts, to determine whether environmental justice concerns are implicated. The DEIR fails to provide this necessary information and analysis. 13-12

d. The Project Description failed to disclose whether the new facility will serve both male and female inmates, and if so, how services to female inmates will be provided. As noted in the August 27, 2008 memorandum from Kenneth Cohen, Director of San Joaquin County Health Care Services (a copy of which is attached), the DEIR does not specify by State licensed category of service, male or female, the specific sub-category of services to be provided. Furthermore, the Project Description does not specify when, or whether, the total number of inmates can be expected to exceed the stated maximum of 1800. In many cases, due to inmate overcrowding, the "maximum" is exceeded. Given this reality, the Project Description should have described the circumstances under which this could occur, and the impact analysis should have included mitigation for the resulting impacts. 13-13

e. The Project Description fails to provide sufficient information regarding other planned facilities proposed by CPR, their size and proximity to the proposed Project, and the estimated timetable for implementation of these related projects. 13-14

7. The Project will cause the net loss of 70 acres of "prime" agricultural lands from active agricultural production. The project-related permanent loss of prime agricultural lands from production and conversion into non-production is both an individual project impact as well as a cumulative impact from the associated losses from other land use projects on agricultural lands and agricultural soils that will be covered by roads offsite to mitigate the project. The San Joaquin Valley is experiencing large amounts of prime agricultural soils lost through land conversion. The DEIR must not only identify the 13-15

impacts, but must also provide "information about how adverse the impacts will be." *Santiago County Water Dist. V. County of Orange* (1981) 118 Cal. App. 3d 818, 831. The DEIR, at page 4.2-6 and 4.2-7 incorrectly assumes that participation in the San Joaquin Multi Species Habitat Conservation Plan is (a) permissible, even though the San Joaquin Council of Governments, which administers the SJMSCP, has not been contacted to ascertain the feasibility of participation, and (b) effective mitigation for the loss of agricultural land, even though local jurisdictions (including San Joaquin County and the City of Stockton) impose an agricultural land fee/conservation easement requirement on projects separate and apart from participation in the SJMSCP. Clearly, local standards dictate that participation in the SJMSCP is not, in itself, adequate mitigation for the loss of prime agricultural lands. The DEIR should be re-circulated with an adequate impacts analysis and new mitigation measures for the loss of agricultural lands. 13-15 Cont'd

8. On page 4.2-8, Impact AG-3 glosses over the growth-inducing impacts associated with extending new infrastructure to areas which are designated on land use maps for future industrial development. These properties, located in the City of Stockton's urban service boundary, were expected to be annexed and developed by 2035. However, by extending critical infrastructure to these areas earlier than previously anticipated, the Project will greatly increase early development pressure. The Lead Agency must never assume that growth in an area is necessarily beneficial or of little significance environmentally, but must make its judgment in this regard only after open-minded analysis. (CEQA Guidelines Section 15126.2(d); *City of Antioch v. City Council of the City of Pittsburg* (1986) 187 Cal.App.3d 1325) 13-16
9. Further, the growth-inducing impacts associated with as many as 3,000 new employees seeking housing, goods and services in San Joaquin County has not been properly evaluated in the DEIR. Rather, the document blithely concludes that since the housing market is weak, it should be no problem for employees to find housing. This, of course, ignores the growth-inducing effects upon schools, hospitals, courts, and other basic governmental services. 13-17
10. The DEIR's traffic analysis is fundamentally flawed. First, the DEIR traffic consultant deliberately chose to apply the more lenient Level of Service standard (LOS "D") of the City of Stockton, even though the Project itself is within the jurisdiction of the County, in an effort to minimize traffic impacts and avoid full mitigation. By failing to evaluate Project impacts and feasible mitigation measures in light of the applicable Level of Service, the DEIR fails in its informational function. This flaw permeates the entire traffic analysis. Specific attention is directed to the November 26, 2008 letter from Mark Hopkins, Environmental Coordinator for the San Joaquin County Department of Public Works to Director Thomas R. Flinn, in which Mr. Hopkins provides numerous examples of where the DEIR's use of the more lenient Level of Service corrupts the traffic analysis. Mr. Hopkins' letter highlights many additional deficiencies in the DEIR's traffic impact analysis, which must also be addressed in a re-circulated Draft EIR. (see, e.g. Comment #8, which states that Austin Road was improperly characterized as a "local street" rather 13-18

than a "rural major collector", and Comment #23, noting a serious trip generation error). 13-18 Cont'd

11. The traffic analysis states, at page 4.3-5, that "the background conditions scenario does not assume development of any phases of the Mariposa Lakes project because it was not approved at the time the Notice of Preparation was released." Yet the Mariposa Lakes project was clearly a "pending" project at the time the NOP was issued, and should have been evaluated as part of the background conditions. 13-19
12. Mr. Hopkins' letter also illustrates the infeasibility of many of the "mitigation measures" suggested by the DEIR author. (see, e.g. Comment #21 in Hopkins letter) The law is clear that the Lead Agency may not rely upon vague, incomplete or untested mitigation measures. The proposed "Construction Traffic Mitigation Plan" is completely untested, speculative and most problematically, unenforceable. The Plan includes a "goal" of average vehicle occupancy of 1.75, rather than a specific standard of performance. This approach has consistently been rejected by the courts. (*Gray v. County of Madera* F053661, filed October 24, 2008) As noted in Mr. Hopkins' letter, absent firm assurances that employees will actually utilize carpooling, alternative routes and shuttle buses, the DEIR cannot assume that these programs will provide effective and feasible mitigation. Thus, the impact is incorrectly characterized as "less than significant". 13-20
13. The traffic analysis improperly relies upon "fair share" contributions, without appropriate assurances that the improvements will actually be constructed. This approach has consistently been rejected by the courts. *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173. The problem is exacerbated by the fact that the DEIR utilized the incorrect applicable Level of Service, thereby assuring that the impacts will not be mitigated even if the "fair share" contribution is actually expended for physical improvements. 13-21
14. The DEIR's air quality analysis is deficient in its failure to correlate increased air emissions to adverse health effects on San Joaquin County residents. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184) In addition, by failing to include a threshold of significance, and by failing to actually quantify the GHF emissions from the Project in relation to the goals established Executive Order Number 03-05, the DEIR fails to properly evaluate and mitigate greenhouse gas emissions from the Project. Finally, the DEIR makes only brief reference to the recent City of Stockton Settlement Agreement with the California Attorney General's office, but makes no attempt to determine how the Project is consistent or inconsistent with the Settlement Agreement, and how the Project's mitigation measures can be tailored to achieve consistency with the goals and objectives of the Settlement Agreement. 13-22
15. Perhaps the most glaring deficiency in the DEIR is its lack of analysis and mitigation for impacts to County services. Affected County services include the San Joaquin County Human Services Agency (see August 20, 2008 and November 25, 2008 memoranda from Joseph E. Chelli, Director), Sheriff- 13-23

Coroner's Office (see Sheriff's Transition Team memorandum dated November 4, 2008), County Health Care Services (see August 27, 2008 Memorandum from Kenneth B. Cohen) and County Public Works Department (see November 26, 2008 Memorandum referenced previously). Each of the memoranda and letters referenced above cite specific examples of the DEIR's shortcomings in evaluating and mitigating effects on vital County services. The obligation for an EIR to comprehensively evaluate a project's effects on public services and utilities is well settled. *Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342. In *Napa Citizens*, the First Appellate District invalidated a Specific Plan and EIR which failed to adequately analyze and mitigate impacts on public services, including the provision of wastewater treatment and water distribution facilities for the project area. By the same token, the DEIR for the Project completely fails to evaluate and mitigate the Project's impacts to vital County services and facilities. On October 21, 2008, the San Joaquin County Board of Supervisors adopted Resolution R-08-624, which outlines up to $105 million in one-time costs to the County, as well as ongoing costs in excess of $25 million from the Project. A copy of Resolution R-08-624 is attached. The DEIR completely ignores these impacts, and the ripple effects associated with decreased County abilities to provide essential public service to its residents. These impacts will contribute to physical impacts on the environment, in the form of more rapidly deteriorating public roads and infrastructure, need for expansion of public facilities (hospitals, health care facilities, jails, courts, administration, etc.) and overall urban decay, as outlined in the December 3, 2008 comment letter submitted by Steven A. Herum on behalf of the Greater Stockton Chamber of Commerce.

13-23 Cont'd

13-24

16. The California Supreme Court has observed that "[t]he core of an EIR is the mitigation and alternatives sections." *Citizens for Goleta Valley*, 52 Cal.3d at 564. "One of [an EIR's] major functions … is to assure that *all reasonable alternatives* to proposed projects are thoroughly assessed by the responsible official." *Id.*, 52 Cal.3d at 565 (citations omitted). The lead agency must independently evaluate and establish the basis for any reasonable alternatives that an applicant summarily contends is infeasible. *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1357. Guidelines § 15126.6(f)(1) describes the factors to be taken into account in determining the feasibility of alternative sites to include "whether the proponent can reasonably acquire, control, or otherwise have access to the alternative site." The nature of the proponent, and their ability to gain control, not just whether they have control of alternative sites, is required to be a focus of the inquiry of the feasibility of alternative sites. Land exchanges are a recognized mechanism for securing alternative sites that must be considered and evaluated by the lead agency and discussed in an EIR. *See, San Bernardino Valley Audubon Society v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 751 (EIR that mentioned but failed to discuss land exchange

13-25

to secure an alternative site found inadequate). The specific circumstances of the site (impacts and the degree to which other sites could serve the project purposes equally or with less adverse impacts), the nature of the proponent (private or private) and the nature of the project (here a regional facility in a community with a number of other regional facilities) must all be considered by decisionmakers to determine if an alternative site is feasible. *Citizens for Goleta Valley*, 52 Cal.3d at 574-75. In this instance, the DEIR improperly limited its discussion to alternatives which could be accomplished within the boundaries of the existing site, and on state-owned property. This was clearly done to maintain consistency with the unnecessarily narrow "project objective" of considering only state-owned property. The DEIR completely ignores, presumably because of expediency, the fact that as a "state agency", CPR could acquire other sites for the Project using the power of eminent domain.

13-25 Cont'd

17. Further, the DEIR fails to evaluate the possibility of providing the necessary 10,000 beds sought by CPR in any manner other than the stated seven health care facilities (see page 1-1). By failing to include analysis of alternative sites for the proposed Project, as well as the alternative of providing the necessary services on a single site, the DEIR is deficient. The reason for this failure is obvious: CPR had already committed to the specifics of this Project well before commencing CEQA review, and alternative sites or configurations do not fit into CPR's preconceived plans. A review of the objectives for the Project reveals that CPR has pre-committed to the notion that the "optimal" size for each facility is between 1,300 and 1,800 beds. But the DEIR never informs the reader why this is the case. Without supplying the basis for this project objective, which is apparently determinative, the DEIR is flawed in that the public is unable to discern why alternatives which deviate from the objective should be excluded or rejected. CPR has also taken active steps to secure financing for the project, including a recent legal proceeding in which the Receiver sought to hold California's Governor in contempt of court for failure to timely fund the Project **before the CEQA process had even run its course.** This provides further evidence that the CEQA review for the Project is little more than an afterthought, a "post-hoc rationalization" which has been expressly rejected by the courts. *Berkeley Keep Jets Over the Bay Comm. V. Board of Port Commissioners* (2001) 91 Cal.App. 4th 1344.

13-26

13-27

18. At page 7-5, the DEIR contains a remarkable admission, confirming that the project objectives are so narrowly drawn that offsite alternatives were not simply considered and rejected, but indeed cannot be evaluated at all!

    "CPR's site selection process for the new medical and mental health care facilities emphasized cost efficiency through two central criteria: (1) Sites had to be close to a sizable job base to ensure that qualified medical staff members and correctional officers could be recruited; and (2) sites had to be located near existing CDCR facilities on state-owned property to avoid the need to purchase land. These criteria, among several other development constraints-property size, access,

13-28

utilities service and infrastructure, site constructability, and land use compatibility-substantially reduced the number of available sites. ***In fact, all sites that have been deemed feasible for construction of medical and mental health facilities and are owned by the state are currently identified for proposed future facilities. Therefore, an Off-Site Location Alternative is considered infeasible because all CDCR sites deemed appropriate to accommodate medical and mental health facilities are currently being pursued for such facilities."***

13-28 Cont'd

Thus, the DEIR forecloses the possibility that suitable alternative sites could be acquired either by land exchanges or eminent domain. Clearly, this renders the alternatives analysis meaningless and a sham. Worse, it is emblematic of the pattern of post-hoc rationalization that permeates the document.

The flaws in the DEIR identified above, as well as within the County departmental memoranda, are serious, and have the effect of depriving the public of vital information concerning the environmental consequences of the Project. The County urges CPR to re-draft and recirculate the DEIR, making a more serious effort to quantify and mitigate the environmental impacts of the Project, and thereby satisfying their statutory obligations.

13-29

Very truly yours,

Law Office of Thomas H. Terpstra

Thomas H. Terpstra
Attorney-at-Law

THT:jv

SAN JOAQUIN COUNTY
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December 3, 2008

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Re: Comment on Draft EIR for California Health Care Facility, Stockton

The comments offered herein by the Community Development Department are in addition to, and in support of, other County agencies and private legal Counsel, whose comments are attached to this letter on the Draft EIR. Further corroborating information may be provided by the County in the public hearings that are expected to be held prior to the lead agency's approval of the Final EIR. 13-30

Mr. Tom Terpstra, private Counsel for the County, raised a noteworthy question of whether NEPA or CEQA, or both, is the appropriate environmental documentation for this project. Please provide your rationale for following the State process instead of the NEPA process. Also, please make text changes so that is made consistently clear throughout the document which process is adhered to. 13-31

On the matter of cumulative impacts, the fact that several impacts remain unavoidably significant after mitigation provides a compelling reason that the project should be developed, at alternative sites, including sites outside of San Joaquin County. This would be similar to the "no project" alternative, which is identified in the DEIR as the environmentally superior alternative. 13-32

On the subject of project alternatives, the DEIR should elaborate on the development of a single-site alternative for the entire state, one that would not cause significant cumulative impacts. Our preference is that the site be located outside of San Joaquin County. I understand that approximately twenty counties of the State do not host a single State adult correctional facility. A little sharing of the responsibility is suggested. It is important to note that the single-site alternative need not sacrifice any of the projects objectives; in fact, there could be significant advantages, such as economies of scale, which could occur under this alternative. During the ongoing period of deteriorating financial conditions in both the private and public sectors, a single-site alternative is attractive because it offers a project that could be completed in a more cost-effective and timely manner than the project that is proposed now. 13-33

The DEIR appropriately identifies several cumulative impacts as "significant and unavoidable." These include impacts on agricultural resources (conversion of significant farmland), traffic volumes, traffic circulation, air quality, climate and noise. The project should be developed at a 13-34

location where the cumulative adverse environmental effects can be avoided or mitigated to a less-than-significant levels. 13-34 Cont'd

The DEIR section on "growth inducement" is inadequate because it is based on false or unreasoned assumptions and misunderstandings. The DEIR states that "The proposed project itself would not substantially increase population in the surrounding region because it would not construct new housing." It is not necessary that a project build new housing in order to induce population growth. It is likely that inducement will occur as thousands of employees (up to 3,000 people) seek to live close to their jobs at the proposed site in San Joaquin County. 13-35

The DEIR states that "based on the wide geographic distribution of residences of existing employees of NCYCC...induced employment is not anticipated to have a substantial effect on population growth." It should be pointed out that the proposed California Health Care Facility, an adult health care facility, is a specialized facility that may have different growth inducement effects than the NCYCC facility, a youth correctional facility. Any differences in the growth inducement effects of the two different types of facilities should be analyzed to support the DEIR's conclusion that new employment "is not anticipated to have a substantial effect on population growth." The statement that "...most induced jobs would require skill levels that could be provided by existing residents of the region... makes it seem as though the prospective project employees will either be unemployed or otherwise available for hire at the time the new facility is completed. The DEIR should scrutinize the subject before conclusions are drawn regarding the project's effect on growth inducement. Finally, the DEIR states that "no new public infrastructure facilities would be installed." The DEIR should identify what qualifies as "public infrastructure," and then examine the effects of any such improvements on growth inducement, before drawing definitive conclusions. 13-36

In DEIR Chapter 4.2, on Agricultural Resources, it is noted that CPR (California Health Care Receivership Corporation) is "acting in the role of a state agency" and, therefore, is not subject to comply with "...countywide plans, policies, or zoning regulations." Under the Map of the San Joaquin County General Plan 2010, the site's land use designation is Public (P). The Zoning classification is Public Facilities (P-F), which is consistent with the General Plan designation. Part of the land included within or surrounding the project site has been devoted for some time to a variety of correctional facilities, all on State-owned property. Refer to DEIR Exhibit 3-3 on page 3-5 for an aerial map depicting land uses in the project vicinity. 13-37

If you have questions concerning these comments, you may contact me at 209-468-3155.

Sincerely,

Harry Islas
Senior Planner

C: Manuel Lopez, County Administrator
Chris Rose, Deputy County Counsel
Tom Terpstra, Attorney-at-Law
Mark Myles, Deputy County Counsel
Kerry Sullivan, Director, Community Development Department
Jon Moore, Chief Deputy Director, Community Development Department

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November 26, 2008

Mr. Harry Islas
San Joaquin County, Community Development Department
1810 East Hazelton Avenue
Stockton, California 95202

SUBJECT: STATE HEALTH CARE FACILITY STOCKTON-DEIR

Dear Mr. Islas:

The San Joaquin County Department of Public Works (Public Works) has reviewed the above referenced document and has the following concerns:

General Comments:

1. An Encroachment Permit shall be required for all work within the road right-of-way.
2. Frontage improvements on Austin Road shall be constructed in conformance with the standards for one-half of a 60-foot right-of-way Local Commercial Street (modified to provide a dedicated acceleration/deceleration lane) along the entire project frontage of Austin Road with additional dedication of right-of-way as required.
3. The driveway approaches on Austin Road shall be improved in accordance with the requirements of San Joaquin County (County) Standards CW-C11 or CW-C12.
4. All offsite improvements in the County shall be in conformance with the current Improvement Standards and Specifications of the County. Offsite improvement plans and specifications are subject to plan check, field inspection fees.
5. Plan check and Encroachment fee shall be required for this project.

13-38

Traffic Comments:

6. The Traffic Impact Mitigation Fee and the Regional Transportation Impact fees shall be required for this development. The fee shall be automatically adjusted July 1 of each year by the Engineering Construction Cost Index, as published by the Engineering News Record.

13-39

7. The final sentence of the first paragraph in Section 4.3.1 states that the impacts were judged by current City of Stockton (City) level of service (LOS) methods – regardless of if the study location is in the City's overall sphere of influence, if it is currently a County jurisdictional roadway or intersection, it should also conform to County LOS requirements. 13-40

8. Section 4.3.2, under Local Access, Austin Road is incorrectly identified as a local street; it is actually a rural major collector between French Camp Road and Mariposa Road. 13-41

9. Section 4.3.2, under Intersection Operating Conditions, the reasons for using the City's Guidelines is explained, even though several study roadways and intersections are outside City jurisdiction. Most notably is Austin Road, which as a major collector, should be held to an LOS standard of C per County Guidelines. 13-42

10. Exhibit 4.3-1, Intersection 6, the northbound leg of the Arch Road/Austin Road intersection incorrectly shows a right-turn lane separate from the through/left lane; while the paved shoulder does widen near the intersection, the striping is for one lane, and there is currently not enough pavement to allow for a second lane without minor widening. Any traffic modeling should be redone with the proper configuration at this location. 13-43

11. Section 4.3.2, under Background Traffic Conditions, the belief is stated that since the proposed project is considered likely (by the applicant) to be operational prior to other approved projects in the area; it can safely ignore short term impacts that may arise and focus only on opening day traffic. What the preparer of this study ignores, however, is the combined impacts from this project and others in the near (5-10 year) future. Many of the other previously approved projects may already have approved traffic studies completed, so this approach, while most likely being adequate for opening day traffic, is likely to underestimate near-term traffic beyond opening day. The process is not about who can open first, but who was approved first and has completed appropriate steps in good faith. Thus, if this approach is to be pursued, this study should also include an interim scenario between opening day and cumulative (2015 or similar) that can address any potential impacts that may arise. 13-44

12. Section 4.3.2, under Background Projects, the pending expansion of the Forward Landfill, just south of the project site, should be included. Even though the traffic generated may not be considered major, most of the traffic generated will be truck traffic, which will potentially have significant impacts to the project driveway on Austin Road, the Austin Road segment analysis, and the Austin Road/Arch Road Intersection. 13-45

13. Exhibit 4.3-2, Intersection 6, the northbound leg of the Arch Road/Austin Road intersection incorrectly shows a right-turn lane separate from the through/left lane – while the paved shoulder does widen near the intersection, the striping is for one lane, and there is currently not enough pavement to allow for a second without minor widening. Any traffic modeling should be redone with the proper configuration at this location. (Same comment as with Section 4.3-1) 13-46

14. Section 4.3.2, under 95th%Percentile Queues..., the study states that the AM eastbound queue will be 43 cars, but since it would be "for only a few signal cycles"; it would not substantially affect the intersection. The first error with this analysis is that the queue length is based solely on 100% average car lengths of 25 feet. This area has large amounts of truck traffic, and the extra lengths of oversized vehicles must be accounted for. The presence of slow accelerating large vehicles will also negatively impact the stated belief that the signal queues will queue quickly. The second error with the analysis appears to be the 13-47

exclusion of the fact that eastbound Arch Road narrows from two lanes through the intersection to one lane quickly after the signal. This will also have a negative impact to the speed with which the queue clears. Lastly, it should be determined how the excess eastbound queue, estimated as being over 400 feet beyond the SPUI signal without any large vehicles included, will affect the operation of the northbound State Highway Route 99 off ramp due to stopped vehicles backing up near the freeway. 13-47 Cont'd

15. Section 4.3.3, Regulatory Considerations, states that no Federal, State, or Local Policies or Regulations relating to transportation are applicable to the proposed project. Please state what Policies or Regulations related to transportation ARE applicable, or that this project is not subject to ANY Policies or Regulations. 13-48

16. Section 4.3.4, under Roadway Segment Analysis, states that roadway segments are being analyzed using the HCM Urban Street Worksheet (Arch Road) or Florida methodology (Austin Road); as Austin Road is classified as a Rural Major Collector, the segment should be analyzed either as a Rural Highway consistent with Chapter 20 of the HCM, or to a LOS threshold of C (not D) per County guidelines. 13-49

17. Section 4.3.4, under Fair-Share Payment, the study states that since "all improvements are in the City, or its sphere of influence", that impacts for Existing plus Project would be judged by the City's criteria. Since the County currently maintains all location within the sphere of influence that have yet to be annexed, these locations shall conform to the more conservative of the City or the County's standards. As pointed out elsewhere in this study regarding the justification to ignore many approved projects, these areas may stay County jurisdiction for some time to come, and the County should not have to be responsible for intersections and roadway segments that are knowingly not brought to County standards. 13-50

18. Section 4.3.4, under Fair-Share Payment, any identified fair-share fees for County roadway segments or intersections shall be paid to the County, not the City. Lastly, any discussion to determine fees between the CPR and the City needs to include the County. 13-51

19. Section 4.3.4, under Significance Criteria, the study incorrectly states that the "analysis for all study area intersections and roadways should be consistent with the City of Stockton's traffic guidelines and significance criteria." For the Cumulative scenarios, any intersection or segment within the City's sphere of influence can be judged by the City's guidelines, for it can be safely assumed that the City will have annexed those locations by that time. For Existing/Background scenarios, engineering judgment must be applied to determine whether a location is pending annexation in the near-term, or will remain in the County's jurisdiction for some time to come. In this case, the intersection of Austin Road/Project driveway, and the segment of Austin Road need to be analyzed to County LOS standard of C for any near-term scenarios. 13-52

20. Section 4.3.4, under Impact TRAF-1, the study automatically assumes that half of all trips to/from the site will occur outside peak commute hours without supplying any justifications. Without some type of acceptable explanation, a more conservative figure needs to be analyzed (at least 70% -75% peak hour trips). 13-53

21. Section 4.3.4, also under Impact TRAF-1, the proposed mitigation measure of a Construction Traffic Mitigation Plan (CTMP) is completely inadequate, being both difficult to implement and impossible to enforce. First, encouraging carpooling, while a noble goal, has no way of being enforced in the implementation method described, likely resulting in little to no reduction in traffic. Second, instructing employees "to (equally) utilize" three other routes is 13-54

also unenforceable with no enforcement available, and will also likely result in little to no reduction in traffic. Lastly, providing shuttle busses, while easily implemented, shows no way of enforcing employees to utilize this method and less than 100 % ridership will result in less reduction in traffic than is stated. These three items combine to render this proposed mitigation as unrealistic with a lack of confidence in the ability of its implementation. As a result, the stated LOS of D (32.1 second delay) needs very little degradation to exceed the 35 second threshold of LOS E. 13-54 Cont'd

22. Section 4.3.4, Table 4.3-8, Existing Conditions columns are incorrectly labeled as Background Conditions. 13-55

23. Section 4.3.4, Trip Generation, this section has a number of errors and unrealistic assumptions that need to be revised to correctly assess traffic impacts to the area. First, the first paragraph states that the analysis based its daily volumes on the maximum number of anticipated employees, 3,000, but Table 4.3-13 states "daily staff trips based on total of 1,646 daily staff", automatically understating project trips by about half. Second, the study goes on to base AM trips only on the 8am – 5pm (353) and 8am – 8pm (57) shifts, which combine to less than 14% of the assumed staffing level of 3,000. This does not show any potential AM trips out for staff going home during the AM peak hour (such as 8pm – 8am shift) for 24 hour operation. Additionally, this assumes that over 85% of the staff will not be working a normal 8am – 5pm shift, which is unrealistic. It seems that at least 50%-75% of all employees would be working during the day (normal business hours), with only minimal staffing overnight for safety reasons. The trip generation also assumes no extra trips offsite other than arrival/departure (1,646 staff x 2 = 3,292 trip ends) – it's natural to assume that a certain %age of employees will want to leave the premises on their lunch hour to eat offsite, run errands, etc, or be dropped off/picked up by others. A daily staff trip generation rate of 2.4 – 2.6 per employee is much more realistic than 2.0. This study needs to justify all assumed staffing levels, and shift distributions similar to the trip distribution model, raise the peak hour trip end numbers to realistic and justifiable levels, and then redo all relevant "plus project" analyses, impacts and mitigations accordingly. 13-56

24. Section 4.3.4, Table 4.3-14, Existing Conditions columns are incorrectly labeled as Background Conditions. 13-57

25. Section 4.3.4, Table 4.3-15, as previously stated, the County's LOS standard for Austin Road is C, not D – appropriate mitigations need to be identified. 13-58

26. Section 4.3.4, Table 4.3-16, Table 4.3-8 shows both intersections along Austin Road (Arch Road and Project driveway) with an unacceptable PM peak LOS of F for Existing plus Construction, yet the EPAP plus Project shows acceptable LOS levels due to a vast understatement of Project Trip generation in Table 4.3-13. Since the Project is expected to generate 1,250 more staff, the impacts to these intersections on this table should be at least as severe as those shown on Table 4.3-8. After the Project Trip Generation is corrected, this table needs to be revised accordingly, and mitigations identified for both Austin Road/ Ach Road and Austin Road/Project driveway. 13-59

27. Exhibit 4.3-6, intersection 6, the northbound leg of the Arch Road/Austin Road intersection incorrectly shows a right-turn lane separate from the through/left lane; while the paved shoulder does widen near the intersection, the striping is for one lane, and there is currently not enough pavement to allow for a second without minor widening. Any traffic modeling should be redone with the proper configuration at this location. (Same comment as with Section 4.3-1) 13-60

28. Exhibit 4.3-7 incorrectly shows the effect of eastbound AM queuing by not showing any impacts to the State Highway Route 99 off-ramps. Per Exhibit 4.3-3, only 28% of the total project traffic will queue in the method shown. Queuing study needs to evaluate the effects to the ramps, including the impact on the northbound ramp that is one lane and STOP controlled, fighting for gaps against two other two-lane signalized approaches. 13-61

29. Section 4.3.4, Mitigation Measure(s) for Impact TRAF-4: After project trip generation numbers are revised, include mitigations for the Austin Road/Arch Road and Austin Road/Project Driveway intersections here. 13-62

30. Section 4.3.4, under Impact TRAF-5, no mitigation is identified for the Austin Road segment, even though the segment falls below the County's LOS threshold of C of collector roadways. In addition, when the project trip generation numbers are revised, the LOS will fall below even the City's acceptable LOS level (based on Table 4.3-9 above). After project trip generation numbers are revised, include mitigations for the Austin Road segment under Mitigation Measure(s) for Impact TRAF-5. 13-63

31. Section 4.3.4, under Mitigation Measure(s) for Impact TRAF-6, the study states that fair-share costs will be covered by fees paid to the City. As the Arch Road/Austin Road signal is located in the County, fair-share fees for this improvement shall be discussed with, and paid to, the County. In addition, if the revised numbers show a need in the EPAP plus Project scenario, the Project shall install the signal at the Project Driveway and Austin Road prior to the opening of the facility. 13-64

32. Section 4.3.4, under Impact TRAF-8, the study incorrectly states a ten (10) lane recommendation for State Highway Route 99 in the project vicinity. The City of Stockton General Plan only calls for ten (10) lanes north of Mariposa Road. In addition, Caltrans currently only calls for eight (8) lanes on State Highway Route 99. 13-65

Utility Comments: 13-66

33. The Water Supply Facilities Impact Mitigation Fee shall be required for this development.

34. The document establishes that "The NCYCC generates approximately one truck full of solid waste per day. NCYCC collects its own solid waste and conveys it to Forward (Austin Road) Landfill. (Vote. pers. comm., 2008) The landfill is estimated to reach its capacity of 51 million cubic yards in 2020. Forward Landfill is permitted to accept agricultural waste, asbestos, ash, construction/demolition, contaminated soil, friable asbestos, green materials, industrial and mixed municipal waste, sludge (bio-solids) , tires and shredded waste (CIWMB 2008)." 13-67

Solid Waste Comments:

- Based on San Joaquin County Ordinance, Title 5, Division 2, Chapter 3, Section 5-2300, the facilities in question are exempted from having to acquire a local collection license to haul refuse). 13-68

- Although the facility in question is exempted from holding a license, Title 5, Division 2, Chapter 3, Section 5-2702 does require that all tons generated from each of the facilities on the compound be directed to a County-owned disposal facility. 13-69

- Please also note that in Title 5, Division, Chapter 3, Section 5-2302 the requirement to use the County facilities extends to construction, and demolition wastes generated during the construction phase. 13-70

- Upcoming ordinance changes will add Chapter 14 of Division 2 of Title 5 regarding construction and demolition debris recycling and diversion, and amend Sections 5-2101 through 5-2304 to expand construction /demolition requirements for the proposed construction activities. 13-71

See referenced code sections below:

5-2300 INDUSTRIAL, COMMERCIAL AND BUSINESS ESTABLISHMENTS.

An industrial, commercial or business establishment operating its own solid waste collection and transportation services, entirely for the benefit of such establishment, under a single ownership with the establishment, and for no other person or establishment, shall not be required to have a commercial/industrial solid waste collection license in order to collect and transport for disposal any solid waste generated on the premises of the establishment. Any industrial, commercial or business establishment which collects and transports waste without a commercial/industrial solid waste collection license, as authorized by this Section, shall comply with all applicable portions of San Joaquin County Ordinance Code and the rules and regulations of the Environmental Health Division. Any such disposal operation, on the premises of the establishment, however, shall comply with all other applicable provisions of this division and with the applicable rules and regulations adopted pursuant to this division. (Ord. 877, 2887, 3440; Ord. 3977 § 8, 1998 13-72

5-2702 USE BY SOLID WASTE COLLECTORS.

The licensed collector shall deposit all solid waste collected from the unincorporated areas of the County, and all solid waste collected from the cities with which the County has a contractual obligation to provide solid waste sites, at a solid waste site as designated by the Director of Public Works, and the licensed collector shall pay to the County the gate fee established by the Board for disposal of solid waste at such designated sites. Failure to use the sites designated by the Director of Public Works will result in the licensed collector paying to the County the full disposal fee which the licensed collector would have paid at the designated County site, plus a five % (5%) per month penalty. Failure to use sites designated by the County shall also be grounds for revoking the license. The dates and times which such designated sites are open to accept such solid waste shall be determined by the Director of Public Works. (Ord. 877; 2532; 2887; 3440; Ord. 3977 § 15, 1998) 13-73

5-2302 BUILDING MATERIALS.

Any person collecting and transporting construction/demolition waste materials resulting from the wreckage, destruction, construction or alteration of buildings shall not be required to have a commercial/industrial solid waste collection license, but shall comply with all other applicable provisions of this division and with the applicable rules and regulations adopted pursuant to this division. (Ord. 877; 2887; Ord. 3977 § 10, 1998) 13-74

Flood and Storm water Comments: 13-75

35. The proposed project is not in a Special Flood Hazard Area: The parcels are within Flood Insurance Rate Maps 060299-0465 and 0470. 13-75 Cont'd

36. A Watercourse Encroachment Permit shall be obtained from Public Works prior to the realignment or alteration of any watercourse, channel, or drainage ditch located within the project site. 13-76

37. A detention pond/terminal drainage system shall be provided for the underlying development to meet the requirements of San Joaquin County, and to provide adequate drainage for the development. Hydrologic and hydraulic analyses shall demonstrate that all property, both downstream and upstream of the discharge, will not be subject to a higher flood level as a result of the proposed drainage. (Development Title Section 9-1135.2) 13-77

38. Any development or significant redevelopment project within the National Pollutant Discharge Elimination System (Phase I or II) Permit areas that disturbs one (1) or more acres of land, or that is part of a larger plan of common development (such as a subdivision), shall be subject to the following conditions: 13-78

- Owner shall file a Notice of Intent with the State Water Resources Control Board and comply with the State "General Permit for Storm Water Discharges Associated with Construction Activity". 13-79
- The Waste Discharge Identification Number, issued by State Water Resources Control Board, shall be submitted to Public Works for file. 13-80
- Owner shall submit a "Storm Water Pollution Prevention Plan" to Public Works for review. A Storm Water Pollution Prevention Plan preparation guide is available at San Joaquin Department of Public Works. 13-81

Thank you for the opportunity to be heard. Should you have questions or need additional information regarding the above comments, please contact me at 468-3085.

Sincerely,

MARK HOPKINS
Environmental Coordinator

MH:rc
TP-8K061-R1

c: Thomas M. Gau, Chief Deputy Director
Alex Chetley, Engineering Services Manager
Mark Connelly, Engineering Services Manager
Maria Hinsey, Management Analyst III
Deni Reno, Integrated Waste Manager
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CalWORKs
Income Maintenance Bureau
Children's Service
Aging & Adult Services
Mary Graham Children's Shelter

November 25, 2008

TO: Kerry Sullivan, Director Community Development

FROM: Joseph E. Chelli, Director

RE: HSA's Final Comments Regarding Environmental Impact Report (EIR) for California Health Care Facility in Stockton

Below, please find final comments by the Human Services Agency regarding the California Health Care Stockton Facility's – EIR.

Children's Services Comments:

- The impact of the prisoner's families on the services provided by HSA will increase CalWORKS and CPS cases. Issues surrounding pregnant inmates and the proper handling of newborns will increase the workload of CPS for investigations. The County of legal residence would be responsible for the CPS placement/court issues. 13-82

Income Maintenance Comments:

- The potential impact is that more people may exercise their right to apply for and receive public assistance (e.g., General Assistance, Food Stamps, TANF; Medi-Cal and even Foster Care). There is a strong probability that the individuals confined in a State Prison hospital, in addition, once released, may remain in our community. 13-83

- Their families may also relocate and may require services. Our ability to service a significant portion of 1,500 inmates and/or families will be greatly affected. 13-84

Aging and Community Services Comments:

- Family members moving into the community. Since many of the "inmates" are expected to be older, with chronic conditions, spouses would potentially need supportive services. 13-85

- Family members would be eligible for all benefits through our department, and some workload increase could be expected 13-86

Our Mission is to lead in the creation and delivery of services that improve the quality of life for our community.

- In conjunction with law enforcement – should family members who are seniors or dependent adults suffer abuse/neglect at the hands of other family members, an increased workload could be expected for APS. 13-87

- Should those same family members also be low income, it is probably that they would require IHSS as well, which would potentially increase county costs for that service at a level that is not currently included in our population growth/service need projections. 13-88

In addition, **Attachment A** summarizes the Department's projected program cost increases to the county associated with the building of the new Health Care Facility in Stockton. 13-89

If you need more information or have any questions, please call me.

ATTACHMENT A

PRISON HEALTH CARE FACILITY MITIGATION

PROGRAM	INFORMATION SOURCE	NEW PROGRAM COSTS			NET COUNTY COST	
General Assistance	Calif. Dept. of Mental Health Solono Co. Dept. of Health & Social Services	Staff	$	150,000	$	150,000
		Benefits	$	440,000	$	440,000
		Total	**$**	**590,000**	**$**	**590,000**
CalWorks SNAP (Food Stamps) Medi-Cal	Human Services Agency Monthly Management Report	Staff	$	150,000	$	150,000
		Benefits	$	2,142,720	$	53,600
		Total	**$**	**2,292,720**	**$**	**203,600**
IHSS	California Dept. of Corrections Website	Staff	$	32,500	$	32,500
		Benefits	$	595,500	$	104,200
		Total	**$**	**628,000**	**$**	**136,700**
APS	California Dept. of Corrections Website	Staff	$	54,000	$	54,000
		Benefits	$	10,000	$	10,000
		Total	**$**	**64,000**	**$**	**64,000**
MSSP	California Dept. of Corrections Website	Staff	$	63,000	$	63,000
		Benefits	$	9,000	$	9,000
		Total	**$**	**72,000**	**$**	**72,000**
CPS	California Welfare Services/ Case Management System	Staff	$	180,000	$	180,000
		Benefits	$	12,000	$	7,200
		Total	**$**	**192,000**	**$**	**187,200**
TOTALS		Staff	$	629,500	$	629,500
		Benefits	$	3,209,220	$	624,000
		Total	$	3,838,720	$ 1,253,500	

Staff costs reflect the fully loaded position costs that would be required to meet the increased workload

Benefits costs reflect the payment of benefits to new recipients that are now in the county due to the Prison Health Facility

13-89
Cont'd

PRISON HEALTH FACILITY COST CALCULATIONS
BACK-UP

GENERAL ASSISTANCE:

It is estimated that there would be an approximate increase of 100 individuals per year that would be eligible for General Assistance. Calculations include the addition of one (1) Eligibility Worker at a fully loaded cost of $150,000.

The Net County Cost is **$150,000**

13-90

Maximum benefits are $367/month or $4404/year/recipient, resulting in an annualized cost of $440,400 rounded down to $440,000.

The Net County Cost is **$440,000**

CALWORKS:

Calculations for staff costs are based on the fully loaded cost of an Eligibility Worker at $150,000. Increased workload estimates are based upon a single full time equivalent position spread among Medi-Cal, Food Stamps (SNAP) and CalWorks, assuming an increase of 180 applications from families of inmates.

As the allocations to support staffing from the federal and state level are already fully obligated, the Net County Cost for this position is 100% or **$150,000.**

13-91

Utilizing the maximum aid payment for the average household of three at $689/family/month plus an average SNAP allowance of $303/family/month yields a monthly cost of $992/family/month or $11,904/family/year. For 180 families this yields an annualized cost of $2,142,720.

The Net County Cost for benefits would be: **$53,568 rounded up to $53,600.**

IN-HOME SUPPORTIVE SERVICES (IHSS):

Calculations assume $179,000 as the fully loaded cost of a social work position. This yields an hourly rate of $86. Enrollment of a new client takes an average of 14 hours, with a cost of $1,204. An estimated 27 cases would yield an increased cost for social worker enrollment of $32,508. County share of the position would be 17.5% of the total.

As the allocations to support staffing from the federal and state level are already fully obligated, the Net County Cost for this position is 100% or **$32,508 rounded down to $32,500.**

13-92

Provider costs (benefits) utilized the average hours of 160/month for severely impaired cases. The current provider wage/benefit cost is $11.48 which would result in a monthly benefit cost of $1837/month, or $22,044/year. The estimated 27 cases would yield an annualized benefits cost of $595,188. County share of these costs would be 17.5%.

The Net County cost: **$104,158 – rounded up to $104,200**

ADULT PROTECTIVE SERVICES (APS):

Calculations assume $179,000 as the fully loaded cost of a social work position. This yields an hourly rate of $86. The average hours/APS case is 34, with an expected 18 additional referrals per year. This yields an annualized cost of $2924/referral rounded to $3,000. The annualized cost for the additional 18 referrals is $54,000.

As the allocations to support staffing from the federal and state level are already fully obligated, the Net County Cost for this position is 100% or **$54,000.**

13-93

Tangible Resources (benefits) are estimated at $555/ case. These benefits include assistance with first/last rental deposits, purchase of necessary clothing, medical items, basic household items etc. Benefits costs are $9,990 rounded to $10,000.

As the allocations to support staffing from the federal and state level are already fully obligated, the Net County Cost for this position is 100% or **$10,000.**

MULTI-PURPOSE SENIOR SERVICES PROGRAM:

MSSP is composed of Nursing Care Managers and Social Work Care Managers. Calculations assume $187,200 as the blended fully loaded cost of the social work and nursing positions. For enrollment and monthly monitoring, the average case requires 39 hours/year or $3510. An estimated increase of 18 clients yields an annualized cost of $63,180 rounded down to $63,000.

As the allocations to support staffing from the federal and state level are already fully obligated, the Net County Cost for this position is 100% or **$63,000.**

13-94

Purchase of Service is estimated to be $500/client/year which yields an annualized cost of $9,000.

As the allocations to support staffing from the federal and state level are already fully obligated, the Net County Cost for this position is 100% or **$9,000.**

CHILD PROTECTIVE SERVICES:

Based on county-wide statistics it would be estimated that there would be an additional 43 reports of abuse/neglect on children requiring investigation, court action, and family case management/intervention. This would require one (1) additional social work position. The fully loaded position cost would be $179,000.

As the allocations to support staffing from the federal and state level are already fully obligated, the Net County Cost for this position is 100% or $179,000 rounded to **$180,000.**

13-95

Of the 43 children served, it is estimated that one (1) would enter the Foster Care system. The average annualized cost of a Foster Care placement would be $12,000.

The Net County Cost for the Foster Care placement would be **$7,200.**

COUNTY OF SAN JOAQUIN

Office of the County Administrator
County Courthouse, Room 707
222 East Weber Avenue
Stockton, California 95202-2778
(209) 468-3203, Fax (209) 468-2875

MANUEL LOPEZ
County Administrator

ROSA LEE
Assistant County Administrator

October 17, 2008

Board of Supervisors
Courthouse
Stockton, CA 95202

Dear Board Members,

Resolution in Opposition to the Proposed State Prison Healthcare Facility in San Joaquin County

Recommendation

It is recommended that the Board of Supervisors approve a resolution in opposition of the proposed 1,800-bed State prison healthcare facility in San Joaquin County **unless** all County requested mitigation measures are adequately addressed in the final Environmental Impact Report.

13-96

Reason for Recommendation

As a result of the class action lawsuits, Plata v. Schwarzenegger and Coleman v. Schwarzenegger, the U.S. District Court found that the quality of California's prison health and mental health care was so poor it violated the U. S. Constitution's Eighth Amendment prohibition against cruel and unusual punishment. When the State failed to comply with the terms of the settlement in the Plata case, the federal court established a receivership to administer the California's prison medical delivery system. The federal receiver plans to construct seven medical, mental and long-term care facilities, providing an additional 10,000 beds by 2013, including an 1,800-bed facility in San Joaquin County which is proposed to be completed by 2011.

The State has expressed its choice for siting its new prison medical facilities to be on or near existing California Department of Corrections and Rehabilitations (CDCR) sites. The State has identified its first proposed facility, which is the 144-acre site located at the Northern California Youth Correctional Center at 7650 South Newcastle Road, Stockton in San Joaquin County. In addition to the proposed 1,800-bed healthcare facility, CDCR is moving forward with the conversion of the Northern California Women's Facility, located at 7150 Arch Road, Stockton, to a 500-bed reentry facility which may open as early as 2009-10.

13-97

At the August 19, 2008 Board of Supervisors meeting, your Board requested that the County Administrator provide a report with recommendations to support or oppose the concept of having a State prison healthcare facility in San Joaquin County. The proposed facility would likely impact services provided by many County departments, including the District Attorney, Public Defender, and the Probation Department. However, within the timeframe available with the State highly accelerated schedule, not all impacts can be readily determined. Consequently, the County

Administrator held meetings with those departments deemed most directly affected by the proposed facility. These departments include the Health Care Services Agency, the Sheriff's Office, the Human Services Agency, the Public Works Department, and the Community Development Department. The departments were asked to identify aspects of the project which are known and using their best judgment to determine the likely impacts that have not yet been identified by the State. A summary of the possible adverse departmental impacts is as follows (costs are based on 2008 dollars):

Department	Possible Impacts	Estimated One-Time Costs	Estimated Annual Costs
Public Works	➢ Increased travel levels		
	1. Roadway improvements	$63.0 million	
Human Services Agency	➢ Increased service demand and caseloads		
	1. Additional staffing		$0.6 million
	2. Client benefits		$1.2 million
Health Care Services	➢ Increased competition on already strained labor pool which will adversely impact the County's recruitment and retention effort		
	➢ Increased medical service demand		
	1. Workforce development	$16.0 million	$2.6 million
	2. Medical unit expansion	$15.3 million	
	3. Competitive wages		$14.7 million
Sheriff's Office	➢ Increased competition on already strained labor pool which will adversely impact the County's recruitment and retention effort		
	➢ Increased coroner and public administrator service demand		
	1. Forensic pathology facility expansion	$3.0 million	
	2. Workforce development	$8.0 million	$1.0 million
	3. Competitive wages		$4.0 million
	4. Additional staffing		$1.3 million

13-97
Cont'd

The items that the County knows about the proposed facility are summarized on Attachment A and the possible impacts and costs to San Joaquin County are shown on Attachment B.

As identified in the chart on page 2, the financial impact to the County could exceed $105 million in one-time costs as well as ongoing annual costs of $25.4 million. Even if the State acknowledges and attempts to remediate its impacts by expanding the County's workforce development capabilities, it is not certain that there will be a large enough pool of skilled professionals to staff the existing and proposed County and State health and correctional facilities in the region. However, it is certain that the County will have difficulty competing for prospective employees with the State's aggressive recruitment effort to fill 3,030 positions required to operate the proposed healthcare facility. The State currently offers significantly higher base salaries and benefits than the County for most of the job classifications with similar qualification requirements.

The State anticipates releasing the draft Environmental Impact Report (EIR) by October 21, 2008. It is recommended that your Board approve the attached resolution in opposition of the proposed 1,800-bed State prison healthcare facility in San Joaquin County unless all County requested mitigation measures are adequately addressed in the final EIR and direct the Community Development Director to include the measures in response to the draft EIR.

13-97
Cont'd

Fiscal Impact

The cost to support the recommendation to oppose the proposed State prison healthcare facility is minimal, consisting mainly of staff time to develop the report and prepare the recommendation for Board consideration.

If the proposed State prison healthcare facility is built in San Joaquin County, the one-time capital/workforce development cost to the County could exceed $105 million and the ongoing annual operating cost is estimated at $25.4 million based on today's dollars.

Action To Be Taken Following Approval

The County Administrator's Office will continue to work with departments most directly affected by the proposed State healthcare facility to further define mitigation measures to protect the County's assets and constituency. Copies of the Resolution with identified mitigation measures will be provided to affected agencies. The Community Development Department will prepare a response to the draft EIR in conformance with the Resolution and any additional Board comments and directions.

Very truly yours,

Manuel Lopez
County Administrator

ML:CRR:abm
Attachments

BL10-09

c: Senator Michael Machado
Escalon City Mayor Gary Haskin
Lathrop City Mayor Kristy Sayles
Lodi City Mayor JoAnne Mounce
Manteca City Mayor Willie Weatherford
Ripon City Mayor Curt Pernice
Stockton City Mayor Edward Chavez
Tracy City Mayor Brent Ives
County Department Heads
Clerk of the Board for 10/21/08 agenda

Before the Board of Supervisors
of the County of San Joaquin, State of California

R-08- 624

Resolution in Opposition to the Proposed State Prison Healthcare Facility

WHEREAS, as a result of the class action lawsuits, Plata v. Schwarzenegger and Coleman v. Schwarzenegger, the U.S. District Court found that the quality of California's prison health and mental health care was so poor it violated the U. S. Constitution's Eighth Amendment prohibition against cruel and unusual punishment; and

WHEREAS, the federal court established a receivership to administer the California's prison medical delivery system; and

WHEREAS, the federal receiver plans to construct seven medical, mental and long-term care facilities, providing an additional 10,000 beds by 2013, including one in San Joaquin County which is proposed to be completed by 2011; and

WHEREAS, the State has identified its first proposed facility, which is the 144-acre site located at the Northern California Youth Correctional Center at 7650 South Newcastle Road, Stockton in San Joaquin County; and 13-98

WHEREAS, in addition to those impacts identified in Attachment A, the proposed facility will likely impact services provided by many County departments, including the District Attorney, Public Defender, and the Probation Department; and

WHEREAS, the financial impact to the County could exceed $105 million in one-time costs as well as ongoing annual costs of $25.4 million; and

WHEREAS, even if the State acknowledges and attempts to remediate its impacts by expanding the County's workforce development capabilities, it is not certain that there will be a large enough pool of skilled professionals to staff the existing and proposed County and State health and correctional facilities in the region; and

WHEREAS, the State anticipates releasing the draft Environmental Impact Report by October 21, 2008; and

NOW, THEREFORE, BE IT RESOLVED that this San Joaquin County Board of Supervisors does hereby opposes the proposed 1,800-bed State prison healthcare facility in San Joaquin County **unless** all County requested mitigation measures noted in Attachment A (as well as others, which may be identified in the normal course of the project review process) are adequately addressed in the final Environmental Impact Report.

R-08- 624

PASSED AND ADOPTED, this 21st day of October, 2008 by the following vote of the Board of Supervisors, to wit:

AYES: Ruhstaller, Ornellas, Gutierrez, Mow, Vogel

NOES: None

ABSENT: None

None

KEN VOGEL, CHAIRMAN
Board of Supervisors
County of San Joaquin
State of California

ATTEST: LOIS M. SAHYOUN
Clerk of the Board of Supervisors
of the County of San Joaquin,
State of California

By Caroline Gunco
Deputy Clerk

13-98
Cont'd

Attachment A

Proposed 1,800-Bed State Prison Healthcare Facility
7650 South Newcastle Road, Stockton, California

Possible Impacts on San Joaquin County	One-time Cost	Annual Cost
A. Public Works		
1. Increase in travel levels		
a. Arch Road to be improved to an eight-lane arterial roadway, between State Highway Route 99 and Austin Road	$5.0 million	
b. Austin Road to be improved to a four-lane roadway between the project's entrance and Austin Road	$3.5 million	
c. Improvements to the signal for the share intersection due to widening of both Arch Road and Austin Road	$1.0 million	
d. Interchange at State Highway Route 99 and French Camp Road	$50.0 million	
2. Traffic Impact Mitigation Fees	$2.0 million	
3. Regional Transportation Impact Fees	$1.0 million	
4. Water Impact Mitigation Fees.	$0.5 million	

13-98
Cont'd

Attachment A

Proposed 1,800-Bed State Prison Healthcare Facility
7650 South Newcastle Road, Stockton, California

Possible Impacts on San Joaquin County	One-time Cost	Annual Cost
B. Human Services Agency		
1. Increase in public assistance service demand and caseloads (cost projection is based on the assumption that 50% or 900 families will follow inmates)		
a. General Assistance programs		
- Additional staffing		$150,000
- Client benefits		$440,000
b. CalWORKs & Food Stamps programs		
- Additional staffing		$150,000
- Client benefits		$180,000
c. In-Home Support Services		
- Additional staffing		$33,000
- Client benefits		$595,000
d. Adult Protective Services programs		
- Additional staffing		$54,000
- Client benefits		$10,000
e. Multipurpose Senior Services Programs		
- Additional staffing		$63,000
- Client benefits		$9,000
f. Child Protective Services programs		
- Additional staffing		$180,000
- Client benefits		$12,000

2

13-98
Cont'd

Attachment A

Proposed 1,800-Bed State Prison Healthcare Facility
7650 South Newcastle Road, Stockton, California

Possible Impacts on San Joaquin County	One-time Cost	Annual Cost
C. Health Care Services		
1. Significant threat to the County's ability to recruit and retain health care/support staff		
2. Increase in medical service demand may require the County to expand its current health care facilities to accommodate the additional State referrals		
Following are the specific mitigation measures and the estimated costs to implement these measures:		
1. San Joaquin General Hospital		
a. Capital cost for a new/remodeled secure acute care medical surgical unit (based on average daily census increase of six inmates)	$15.3 million	
b. Capital cost for a healthcare training facility for 320 students consisting of 80 Registered Nurses, 60 Vocational Nurses, 60 Psychiatric Technicians, and 60 Certified Nursing Assistant	$16.0 million	$2.6 million
c. Competitive compensation/salary escalation (based on 10% wage increase)		$10.0 million
2. Correctional Health Services		
a. Competitive compensation/salary escalation (based on 10% wage increase)		$0.7 million
3. Behavioral Health Services		
a. Competitive compensation/salary escalation (based on 10% wage increase)		$4.0 million

13-98
Cont'd

Attachment A

Proposed 1,800-Bed State Prison Healthcare Facility
7650 South Newcastle Road, Stockton, California

Possible Impacts on San Joaquin County	One-time Cost	Annual Cost
D. Sheriff's Office		
1. Increase in coroner cases may accelerate the need for a replacement County morgue/forensic pathology facility (estimated at 16 death cases per month)		
2. Increase in public administrator service demand		
3. Significant threat on the County's ability to recruit and retain correctional officers. There is a limited number of qualified candidates and training facility for correctional officers.		
4. Adverse impact on the construction cost for the County's expanded jail facility and may jeopardize the County's ability to staff the facility within 90 days of project completion. If the expanded jail facility is not operated within 90 days, the State will take possession of the facility and utilize it for the housing of inmates the State deems necessary.		
Following are the specific mitigation measures and the estimated costs to implement these measures:		
1. Coroner's Office		
a. Pro-rated capital cost for an expanded forensic pathology facility	$3.0 million	
b. Additional staffing		$1.2 million
2. Public Administrator's Office		
a. Additional staffing		$80,000

13-98
Cont'd

Attachment A

Proposed 1,800-Bed State Prison Healthcare Facility
7650 South Newcastle Road, Stockton, California

Possible Impacts on San Joaquin County	One-time Cost	Annual Cost
D. Sheriff's Office (continued)		
3. Custody (County Jail)		
a. Capital cost for a new workforce development facility	$8.0 million	
b. Workforce development		$1.0 million
c. Competitive compensation/salary escalation (based on 10% wage increase)		$4.0 million

13-98
Cont'd

OFFICE OF

SHERIFF – CORONER

INTER-OFFICE MEMO

TO: Sheriff Steve Moore DATE: 11/4/08

FROM: Sheriff's Transition Team

RE: Analysis of the Draft Environmental Impact Report for the CHCFS

As instructed by Assistant Sheriff Kelso, the Sheriff's Transition Team read and analyzed the Draft Environmental Impact Report posted by the State of California. The analysis looked for issues that would specifically impact the Sheriff's Office and its projects. Some of the issues found simply confirm what was said in the Transition Team's previous document on the CHCFS and some issues that were found are new. 13-99

Impacts on the County Jail Expansion Project

Personnel:

The Draft Environmental Impact Report (DEIR) confirms the concerns that the Sheriff's Office has already pointed out in regards to the State's project placing a substantial drain on local qualified professionals in both the fields of Corrections and Medicine. Both the Executive Summary and section 5.5.11 of the DEIR state that the CHCFS will employ 2,400 to 3,000 people. The document further states that at least a third of those employees will be Correctional staff. 13-100

The document confirms in the Executive Summary that Stockton was chosen due to it being a "large urban area with qualified pools of skilled professionals." This "pool" is obviously the same one the Sheriff's Office draws its skilled professionals from. Section 6.3 states that "induced employment" would have little effect on population "given that most induced jobs would require skill levels that could be provided by existing residents of the region (i.e. Stockton and nearby cities)." It is clear that the CHCFS intends to draw from the same local, limited pool of qualified candidates that Sheriff's Office does and this will greatly impact the Office's ability to hire adequate staff for its Jail Expansion Project. 13-101

A further personnel impact was brought to light in Section 6.3 which states that each new position (of the 2,400 to 3,000) creates approximately 0.5 indirect (or secondary) jobs through payrolls and the purchase of local goods and services. Many of these indirect jobs are, once again, at the expense of the Sheriff's Office who would require most of these same goods and services that will be going to the CHCFS instead. 13-102

Construction:

The DEIR states that the Construction period for the CHCFS will be from 2009 through 2011. The Sheriff's Office Jail Expansion Project expects to break ground in 2010 and complete construction in 2013. Both projects, therefore, share a significant amount of congruent time in the construction phase with the CHCFS starting before the 13-103

County project. The local personnel and materials needed for two construction projects of this size will not be available. The DEIR states that 1,700 people per day will be working on the CHCFS during its peak construction period, which will be occurring during the period that we will be breaking ground. 13-103 Cont'd

A demand that size on the local pool of qualified people, as well as the equipment and material needed, will make it very difficult, if not impossible, to fulfill the construction time line, as required by the State of California, that we have committed to. This delay would also increase the cost of the project, possibly beyond the means available to San Joaquin County. 13-104

Other Adverse Effects to the Sheriff's Office

Traffic:

The DEIR's Executive Summary and "Traffic and Circulation" section both claim that the CHCFS project has the potential to greatly impact the smooth flow of traffic on SR-99 as well as Arch Rd. This impact could cause delays in the Sheriff Office's ability to service certain areas of the county. Negative impacts on traffic on Arch Rd. and SR-99 could increase patrol response time to parts of the county and lower the quality of life for residents. 13-105

Increased Service Demands:

Section 5.5.12 of the DEIR identifies that "assistance from other local fire, **law enforcement**, and emergency response agencies could be required if an incident at the site were to exceed the capabilities of on-site personnel and facilities." Not only does this indicate a strain on our ability to service the rest of the county if our personnel are required to respond to a large riot or disturbance at the facility, but this also can be seen as confirmation of the Sheriff's Transition Team's findings that this facility would increase service calls to the Sheriff's Coroners Division. 13-106

A death in custody could very well be one of those incidents that "exceed the capabilities of the on site staff and facilities." This is further confirmed in the DEIR's Executive Summary which states on page 4 and 5 that CHCFS could cause "increase in demand for local hospital services resulting in decreased services and increased wait time." The same logic could be applied to the county's pathology/coroner services. 13-107

Perceived Inaccuracies and Corrections to the DEIR

Competition from the County:

Section 5.4 of the DEIR claims that the Jail Expansion Project will increase the San Joaquin County Jail bed capacity from 1,333 to 2,933 beds. This is not true. Presently the tentative funding awarded to San Joaquin County will allow for an expansion of 1,280 beds. That will give us a total bed count of 2,613. Phase 2 construction may indeed put our total bed count to approximate 2,900+ beds, however as that funding is not available and may never become available the Phase 2 beds should not be included in the DEIR. 13-108

The "Population and Housing" section claims that our Jail Expansion Project will limit "their" pool of qualified employees. In the document previously written by the Sheriff's Transition Team on the CHCFS impacts we clearly showed that the County of San Joaquin can not match the higher pay rates and benefits offered by the State of 13-109

California in both the Medical and Correctional professions. Couple that fact with the fact that the CHCFS will be completing its construction and staffing the facility two years before the County Jail Expansion Project will be and it is very clear that our project will not limit their applicant pool at all but in fact the opposite will be true. The CHCFS will severely impact the available applicants for staffing the County Jail Expansion.

13-109 Cont'd

Omitted Information:

It should be noted that the "Public Services" section of the DEIR does not mention or account for increased calls for service from CHCFS to the Sheriff's Office for Coroners Cases. Again, in the Transition Team's previous document on the subject, research clearly shows there will be a large affect that will need to be mitigated for.

13-110

Neither the Executive Summary nor the "Population and Housing" sections of the DEIR mention any significant increase in county population due to the construction of the CHCFS. This seems to ignore basic logic as well as past examples. The CHCFS will be a correctional facility where a large percentage of its inmates will be sent to it for long term incarceration. Past experience has clearly shown that the construction of a prison facility of this size and the population of that institution being long term residents means that family members of those inmates will often relocate to that area. An increase in population, logically, means an increase in the use of Law Enforcement and other emergency services.

13-111

Cc: Sheriff's Transition Team
Asst. Sheriff M. Kelso

Duane Mykes 11-7-06

SAN JOAQUIN COUNTY
COMMUNITY DEVELOPMENT DEPARTMENT

1810 E. HAZELTON AVE., STOCKTON, CA 95205-6232
PHONE: 209/468-3121 FAX: 209/468-3163

September 11, 2008

Laura Sainz
Project Manager
California Health Care Facility, Stockton

RE: REVISED NOP FOR AN ENVIRONMENTAL IMPACT REPORT

Dear Ms. Sainz:

The enclosure contains comments submitted by San Joaquin County agencies on the revised NOP for the above-referenced project. Please submit to my attention twenty-five (25) copies of the Draft EIR so that further review may proceed.

Thank you for the initial opportunity to comment.

Sincerely,

Harry Islas
Senior Planner

Sheriff's Office:

It appears that there may be a conflict between the proposed State project and the County's planned jail expansion project. The EIR should lay out parallel construction timelines for both projects to determine if potential conflicts regarding staffing and project completion are likely. State mitigation and alternatives should be developed if significant conflicts are foreseeable.

Public Works Department:

It is requested that the EIR contain a terminal drainage system that provides adequate drainage for the project in accordance with County standards. The EIR should contain hydrologic and hydraulic analyses to ensure that properties above- and below-stream are not adversely affected. The EIR should identify the State Waste Discharge Identification Number for the project. The EIR should contain a County Storm Water Pollution Prevention Plan. The EIR should contain an evaluation of whether the project development will require a County Erosion and Sediment Control Permit. If so, the EIR author should coordinate mitigation or alternative measures that can be included in the EIR. The EIR traffic study should contain a traffic study that meets the approval of Public Works and Community Development prior to the Final EIR.

Human Services Agency:

The EIR should address the potential for impacts on the County for the provision of human services beyond current budget, caseload and staffing levels. State commitments for mitigation of such impacts should be contained in the EIR.

County Health Care Services:

The department memorandum dated August 27, 2008, specifies the particulars for the assessment required in the EIR.

Closing Comment:

Copies of the comment letters and contacts from the departments identified above are enclosed with this memorandum. The Community Development Department requests that twenty-five (25) copies of the draft EIR be submitted so that other interested parties and agencies can learn more about the project and to return draft EIR comments, if appropriate.

The proposed State project is a large undertaking, one that will have substantial impacts on various County agencies. The essential point that the State should commit to pay all costs associated with project planning, study, development, operation and maintenance. The County may provide an area where vital State services are made available, but the County will not subsidize a project that is mandated for the State to provide.

Should you wish to contact Mr. Islas, please use the telephone numbers listed above.

SAN JOAQUIN COUNTY
COMMUNITY DEVELOPMENT DEPARTMENT

1810 E. HAZELTON AVE., STOCKTON, CA 95205-6232
PHONE: 209/468-3121 FAX: 209/468-3163

September 9, 2008

MEMORANDUM:

To: Manuel Lopez
County Administrator

From: Kerry Sullivan
Community Development Director

Subject: **California Health Care Facility, Stockton**

Thank you for the opportunity to comment on the project proposed by the State in San Joaquin County.

Project Description:

The project will house up to 1,800 State correctional inmates at a newly constructed facility to provide mental and medical services to male and female inmates. Half of the inmates will be mental health patients and half of the inmates will be medical patients.

The proposed site is 144.2 acres of the Northern California Youth Correctional Center (NCYCC). The specific location will be the Karl Holten Youth Correctional Facility, which now is closed. Existing structures are to be demolished and, soil remediation will occur, as appropriate.

The project will employ 3,030 staff, a significant increase of the1, 890 staff originally proposed. No change in the types of services to be provided has been identified in the revised NOP.

Revised NOP Comments:

The enclosures are revised NOP comments by County agencies: the Sheriff's Office, the Public Works Department, the Human Services Agency, and County Health Care Services and the Community Development Department.

Community Development Department will coordinate County comments. The departmental contact is Harry Islas. His telephone numbers are 209-915-7441 or 209-468-3155.

OFFICE OF
SHERIFF-CORONER
COUNTY OF SAN JOAQUIN
7000 Michael N. Canlis Blvd.
French Camp, California 95231-9781

Steve Moore
Sheriff-Coroner
Public Administrator

SEPTEMBER 5, 2008

PROS & CONS FOR THE CALIFORNIA HEALTH CARE FACILITY STOCKTON PROJECT

PRO:

1. **The California Health Care Facility Stockton (CHCFS) may bring more than 3,000 employment opportunities to San Joaquin County.**
    a. **Individuals relocating to San Joaquin County may:**
        i. **Support the housing market and possibly increase county property values**
        ii. **Increase revenue throughout the county**

CONS:

1. **Should the CHCFS construction project run concurrently with the San Joaquin County Jail Inmate Housing & Infrastructure construction project, it could negatively impact San Joaquin County by:**
    a. **Raising project costs due to:**
        i. **Competition for resources and materials to be used for the San Joaquin County Jail Expansion**
        ii. **Possible lengthening Jail Expansion Project timeline**
    b. **Competing for staffing positions needed for San Joaquin County's project**
        i. **Over 3,000 positions are projected by the state to staff CHCFS**
            1) **May have a negative effect on San Joaquin County's commitment to fully staff the jail expansion project within 90 days of its completion**

2) May cause a higher attrition rate for San Joaquin by employees separating from the county and accepting employment with CDCR
3) Many of the State positions pay at a higher wage while providing competitive benefits

Job Description	Monthly Salary State Range	Monthly Salary County Range
Correctional Officer	$3,050 - $6,144	$4,045 - $4,919
Dental Asst	$2,828 - $5,079	$2,534 - $3,080
Nurses Asst.	$2,193 - $2,862	$2,331 – $2,634
Registered Nurse	$7,285 - $8,431	$5,666 - $6,888

4) Increase the county's current 9% vacancy rate

2. Impact on the San Joaquin County Sheriff's Office

a. Patrol Division
   i. Possible increase of calls for service due to incidents occurring at CHCFS for:
      1) Assaults, escapes, deaths, etc.
         a. Conduct investigation, prepare reports, and court appearances

b. Coroners Division
   i. Possible increase of calls for service as a result of in-custody deaths
      1) Possible increase in Coroners case load

c. Custody Division
   i. Possible increase in inmate population due to housing CHCFS inmates pending court dates as a result of alleged crimes committed at CHCFS
      1) May increase assaults on staff and inmates
      2) Inability to adequately provide housing and services for CHCFS chronically ailing and mentally ill inmates due to overcrowding in the special needs housing units
   ii. CHCFS may negatively impact San Joaquin's ability to provide adequate medical services for county inmates due to:
      1) Loss of qualified medical professionals to CHCFS
         a. Create a burden to routine daily triage and assessments, as a result of a lack of staff and an increased number of "special needs" inmates

2) An increase of Emergency Room transports to hospital via on-site Transportation Unit
   a. Decreasing the number of Security Staff on the compound will:
      i. Jeopardize the safety of officers and inmates

3. A Decrease in the "Quality of Life" for the citizens in San Joaquin County

   a. History indicates, as population increases so does "Criminal Activity"
      I. Response time to citizen calls may increase, due to public safety officers responding to CHCFS

   b. San Joaquin County has a total of six Detention Facilities within it's boarders
      I. Four State Juvenile Detention Facilities
      II. Two State Adult Detention Facilities

   c. San Joaquin County ranks second in the State for total number of State Correctional Facilities

County	Facilities	ADP	County Pop
LOS ANGELES	8	4,967	10,363,850
SAN JOAQUIN	6	3,828	685,660
RIVERSIDE	6	14,712	2,088,322
SAN BERNADINO	5	5,997	2,055,766
SAN DIEGO	5	4,576	3,146,275

   d. In the State of California there are 22 counties that do not house State facilities

   e. Environmental Impact
      i. Increased sewage waste
      ii. Increased medical waste
      iii. Increased refuse to landfills
      iv. Increased carbon footprint
         1) Decrease in Valley air quality
      v. This project will impact county water resources
         1) Current wells on the future CHCFS site are contaminated

THOMAS R. FLINN
DIRECTOR

THOMAS M. GAU
CHIEF DEPUTY DIRECTOR

MANUEL SOLORIO
DEPUTY DIRECTOR

STEVEN WINKLER
DEPUTY DIRECTOR

ROGER JANES
BUSINESS ADMINISTRATOR

Public Works
San Joaquin County
Working for YOU

P. O. BOX 1810 - 1810 E. HAZELTON AVENUE
STOCKTON, CALIFORNIA 95201
(209) 468-3000 FAX (209) 468-2999
www.sjgov.org/pubworks

September 8, 2008

Mr. Harry Islas
San Joaquin County, Community Development Department
1810 East Hazelton Avenue
Stockton, California 95202

SUBJECT: REVISED NOTICE OF PREPARATION FOR THE CALIFORNIA HEALTH CARE FACILITY

The San Joaquin County Department of Public Works has reviewed the above referenced document and our concerns, recommendations, and corrections are as follows:

Flood Management:

1. The proposed project is not in a Special Flood Hazard Area: The parcels are within Flood Insurance Rate Maps 060299-0465 and 0470.

2. A Watercourse Encroachment Permit shall be obtained from the San Joaquin County Department of Public Works prior to the realignment or alteration of any watercourse, channel, or drainage ditch located within the project site.

3. A detention pond/terminal drainage system shall be provided for the underlying development to meet the requirements of the County and to provide adequate drainage for the development. Hydrologic and hydraulic analyses shall demonstrate that all property, both downstream and upstream of the discharge, will not be subject to a higher flood level as a result of the proposed drainage. (Development Title Section 9-1135.2.)

Community Infrastructure:

The proposed project is located in Phase II National Pollutant Discharge Elimination System permit area and is subject to the following conditions:

4. Any development or significant redevelopment project within County National Pollutant Discharge Elimination System permit area that disturbs one or more acres of land or that is part of a larger plan of common development, a Notice of Intent shall be filed with the State Water Resources Control Board to state the intent to comply with the State "General Permit For Storm Water Discharges Associated With Construction Activity".

   a. A Waste Discharge Identification Number, issued by the State Water Resources Control Board, shall be submitted to Public Works to show compliance with this requirement.

5. The developer shall submit a "Storm Water Pollution Prevention Plan" (SWPPP) to Public Works for review. A copy of the SWPPP shall be maintained on the construction site and presented to any County, State or Federal employee on demand. The site Storm Water Pollution Prevention Plan shall include all required records, updates, test results and inspections.

6. A County Erosion and Sediment Control Permit may be required for site grading in advance of final approvals or if no other permit is required.

Transportation Planning:

7. Review the draft traffic study before anything is finalized.

Thank you for the opportunity to be heard. Should you have questions or need additional information regarding the above comments, please contact me at 468-3085.

Sincerely,

MARK HOPKINS
Environmental Coordinator

MH:mk
TP-8I009-M1

c: Mark Connelly, Engineering Services Manager
Marla Hinsey, Management Analyst III
Michael C. Selling, Engineering Services Manager

HSA
HUMAN SERVICES AGENCY

SAN JOAQUIN COUNTY

JOSEPH E. CHELLI
Director

P.O. Box 201056 102 South San Joaquin Street Stockton, CA 95201-3006

Tel (209) 468-1000
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CalWORKs
Children's Services
Aging & Adult Services
Mary Graham Children's Shelter

August 20, 2008

RECEIVED

AUG 22 2008

Community Development Dept.

Memorandum

TO: Kerry Sullivan, Community Development Director

FROM: Joseph E. Chelli, Director

RE: Comments Regarding Environmental Impact Report (EIR) for California Health Care Facility in Stockton

Below please find concerns raised by the Human Services Agency regarding the California Health Care Stockton Facility's – EIR.

Children Services Concerns:

- The impact of the prisoner' families on the services provided by HSA – possible increase in CalWORKs and CPS cases.

- Would both men and women be served? If women served, would pregnant inmates come here for the delivery of their babies? If so, this could increase the workload of CPS for investigations. The County of legal residence would be responsible for the CPS placement/court issues.

Income Maintenance Concerns:

- The potential impact is that more people may exercise their right to apply for and receive public assistance (e.g., General Assistance, Food Stamps, TANF; Medi-Cal, and even Foster Care). There is no way to project this. However, there is a strong probability that the individuals confined in a State Prison Hospital, once released, may remain in our community.

- Their families may also relocate and may require services. Our ability to service a significant portion of 1,800 inmates and/or families will be greatly affected.

Aging and Community Services Concerns:

- Family members moving into the community. Since many of the "inmates" are expected to be older, with chronic conditions, spouses would potentially need supportive services.

- Family members would be eligible for all benefits through our department, and some workload increase could be expected.

- In conjunction with law enforcement – should family members who are seniors or dependent adults suffer abuse/neglect at the hands of other family members, an increased workload could be expected for APS.

- Should those same family members also be low income, it is probably that they would require IHSS as well, which would potentially increase county costs for that service at a level that is not currently included in our population growth/service need projections.

If you need more information, or have any questions, please call me.

JEC:sca

cc: Bobby Magee, Management Analyst III
Gil Gutierrez, Senior Deputy Counsel

San Joaquin County Health Care Services
P.O. Box 1020 • Stockton, CA 95201 • (209)468-6600

MEMORANDUM

To: HARRY ISLAS, COMMUNITY DEVELOPMENT DEPARTMENT

From: Kenneth B. Cohen, Director

Subject: Notice of Preparation for the Proposed California State Prison, Health Care Facility, Stockton

Date: August 27, 2008

cc: Manuel Lopez, County Administrator; Steve Moore, Sheriff/Public Administrator; Ken Vogel, Chair, County Board of Supervisors.

Introduction:

Per your letter dated August 22, 2008, please see the following comments regarding the concerns and interests to be addressed in the Environmental Impact Report for the proposed California State Prison Health Care Facility, Stockton, CA. The construction and operation of an 1800 bed California State Prison Health Care facility that employs 3,030 staff may have a wide spread impact on existing health care resources and facilities in San Joaquin, especially those operated by the County. Nevertheless, there may be several opportunities to work cooperatively with the California Prison Health Care Receivership to address several of the more critical issues that may impact the County. These include collaboration in the area of acute care capacity and facilities, joint recruitment and retention of nurses and physicians, and expansion of existing public medical, nursing, psych tech and other allied health training and education. The facility may also require specialized training programs for their employees that could or may need to be provided locally. The State Prison Health Care Receiver and County may be able to leverage resources and identify mutually acceptable strategies and courses of action to address help address existing shortages and inadequacies in the overall local health care system. These will be addressed via separate correspondence to the Board.

Definition of Project:

Concern:

The project has been defined as a new medical care facility with up to 1,800 beds on a 144.2 acre site. Based upon informal information shared with the public, officials with URS Bovis have indicated that the facility may be comprised of the following: 900 health care and 900 mental health care beds. The formal description of the project also does not specify whether

women's services will be provided in addition to men's. Additional information was subsequently provided informally (but not distributed to the public) that the facility may offer the following sub-categories of services:

Health	Mental Health
80 Skilled Nursing	135 Acute Care
30 Hospice	32 Dementia
180 Assisted Living	108 High Custody
610 Dormitory Style	625 Dormitory Style

The configuration of the "facility" and the array of services provided make a significant difference on the category and number of professional and non professional staff necessary to operate these programs. There is also no assurance that the facility will not operate above the stated 1800 bed capacity, in the future.

Assessment required:

The Environmental Impact Report does not define but it should be required to specify, by State licensed category of service, male or female, the specific sub-category of services that will be provided. This information is critical to identify local impacts and public input. The Environmental Impact Report should address the impact of providing services to a higher number of inmates, if it can reasonably be expected that the number of inmates may exceed 1800 in the future.

Assessment required: Public Services:

The Notice of Preparation indicates that the EIR will evaluate the project's potential to create an adverse impact to schools, and will also evaluate effects on local police and fire services.

Concern:

The definition of public services as outlined above fails to identify and address other critical public services that may be impacted by the project and these are: The San Joaquin General Hospital, The San Joaquin County Department of Behavioral Health, The San Joaquin County Public Health Department and the San Joaquin County Emergency Medical Services Agency. This issue should be specifically addressed under Population and Housing, and the project should also include Delta Community College, Stanislaus State and UC Merced under the definition of public services that may be impacted by the project.

Assessment required:

Emergency Medical Services: The project should be required to identify probable effects on emergency and inter facility ambulance transportation of inmates and its impact on the local Emergency Medical System transportation plan as approved by the Board of Supervisors.

Assessment required:

Public Health: The project should be required to identify probable impacts on Public Health services including: infectious disease surveillance and reporting for the 1800 inmates and 3,030 employees, consultation with the local public health officer when necessary; and the inspection of food service facilities for both employees and inmates.

Assessment required:

Behavioral Health Services: The project should be required to identify probable impacts on public mental health services, including emergency and acute intervention, for both inmates and employees.

Assessment required:

San Joaquin General Hospital: The project should be required to identify probable impacts on public hospital services, including: emergency, acute, outpatient specialty, dialysis, diagnostic and other support services for both the 1800 inmates and the 3,030 employees.

Local Correctional Health Care:

Concern:

The San Joaquin County General Hospital and the Department of Mental Health provide Correctional Health Care services to incarcerated inmates that are in custody of the Sheriff Department or Probation Department. Comprehensive health and mental health care are provided at county adult and juvenile detention facilities and as needed at San Joaquin General Hospital and Mental Health Department facilities.

Assessment required:

The project should identify any probable impacts on the provision of publicly provided health and mental health care services to inmates in custody of either the County Sheriff or Probation departments.

Other Public Services:

Concern:

It is possible that the project may impact local non profit hospitals and health care providers in San Joaquin County. While these are not "public services" as defined by government ownership, these non profit hospitals and facilities are organized and approved by the State and Federal Government as entities operating for the community's benefit.

Assessment required:

The project should be required to identify probable impacts on non profit hospital services, for both employees and inmates, including: emergency, acute, outpatient specialty, dialysis, diagnostic and other support services. Hospitals that may be impacted include: St. Joseph Hospital, Lodi Memorial Hospital and Dameron Hospital.

Population and Housing:

Concern (Employment-General):

The EIR states that it will evaluate the project's potential impact on population and housing in the local area based on projections of project employment and distribution of employees by place of resident. Since the release of the original NOP (dated June 6, 2008), staffing levels have increased from the original projection of 1,890 staff to a new proposed staffing level of 3,030.

Using State published staffing ratios and guidelines, a cursory analysis of staffing requirements for the 1800 bed "facility" using the informal license subcategories outlined above, indicates that approximately 800 direct care staff will be required, as follows: 200 RN, 300 LVN/Psych Tech, 300 Aide. It is likely that over 300 additional staff will be required, at a minimum, but not limited to the following categories: Medical Director, Physicians (primary and specialty), Pharmacy (Pharmacist and Pharmacy Technician), Medical Records (Coding, Filing, Abstraction, and Correspondence), Physical Therapy (Physical Therapist and Physical Therapy Aide), Laboratory (Laboratory Technician), Radiology (Radiology Technician), Plant Maintenance (Electrician, Boiler Mechanic, Air Conditioning, Plumber, and General-all with special knowledge and training in licensed health care facility maintenance), and Housekeeping (Housekeeper). A number of staff will also be required in administration, supervisory and clerical positions.

Concern-Employment, Allied Health:

The Economic and Workforce Development Council, Business and Workforce Performance Improvement Initiative completed a report Allied Health Employment Trends and Opportunities for the Central Valley Region, February 19, 2008. The report was commissioned to identify unmet employee workforce needs and addressed the following health professions: Emergency Medical Technicians and Paramedics, Health Information Technicians, Home Health Aides, Medical Assistants, Medical Laboratory Technicians, Medical Transcriptions, Nursing Aides, Pharmacy Aides, Pharmacy Technicians, Physical Therapy Aides, Physical Therapy Assistants, Radiologic Technologist, Respiratory Therapists, and Surgical Technologists. The report indicates that at least 10,000 more employees in these categories will be needed in the Central Valley by 2014. This high number is due to both new job growth and replacement job projections. A further point of interest in this table is that in most cases, salary ranges in the Central Region are slightly below those of the state as a whole. Of note: the report was compiled prior to the NOP

Assessment required:

The project should be required to identify probable local impacts on providers, schools, colleges, and universities as result of increased demand for and the availability of local resources to fill the jobs noted above, including recruitment, training, retention, and salary escalation.

Concern-Employment, Physician:

According to a December 12, 2005 report completed by the Congressional Research Service, the Library of Congress entitled: California's San Joaquin Valley: A Region in Transition, the number of physicians per 1,000 population in the San Joaquin Valley is exceptionally low. The number of doctors per 1,000 population is one indicator of the availability of health care in a region. For the United States in 2001, there were 2.3 doctors engaged in patient care per 1,000 population. Total active doctors in the United States were 2.6 per 1,000 population. The latter figure includes physicians engaged in teaching, research, and administration as well as patient care physicians. In the San Joaquin Valley, there were 1.3 physicians engaged in patient care per 1,000 population and 1.4 active doctors per 1,000 population in 2001. The State of California in 2001 had 2.2 doctors engaged in patient care per 1,000 population and 2.5 per 1,000 population total.

Concern-Employment, Physician (continued):

In August 2008, The San Joaquin Specialty Access Coalition, San Joaquin County, with assistance from the Camden Group did a comprehensive analysis of Physician to Population Ratios in San Joaquin County. The analysis further demonstrates a significant shortage of physicians in primary care, and medical and surgical specialties and that the shortage will continue to become more acute by 2011. Using several methodologies, the shortage ranges from a low of approximately 125 physicians to a high of as many as 250 physicians may be needed in the next 5-10 years.

Assessment required:

As availability of physicians is already well below national and state norms for physicians per 1,000 population, the project should be required to identify probable local impacts on providers, schools, colleges, and universities as result of increased demand for and the availability of local resources to address professional physician services noted above, including recruitment, training, retention, and salary escalation.

Concern-Employment, Registered Nurses:

The State of California ranks 49th in the nation in Registered Nurses on a per capita basis. A national sample survey of RNs conducted in 2001, indicated that California has 585 RNs per 100,000 population - compared with the national average of 798. Massachusetts leads the nation with 1,190 RNs per 100,000 population. In sheer numbers, California currently has more than 275,000 RNs with active licenses. However, according to the state Economic Development Department (EDD), California faces an additional shortfall of more than 109,600 registered nurses (RNs) by 2010. An additional 25,400 licensed vocational nurses

(LVNs) will be needed by 2010. The state forecast for 2030 predicts that Californians will need 100,000 to 120,000 more nurses than the state will have available to meet health care needs. In 2006, The University of California at San Francisco completed a projection of registered nursing needs for the Central San Joaquin Valley and central Sierras, including the following counties: Alpine, Amador, Calaveras, Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Mono, San Joaquin, Stanislaus, Tulare and Tuolumne counties. The University concluded that there is a substantial shortage of over 3,200 RNs in the Central Valley. And, in order to fill the gap, the region would require an increase of 16 percent FTE RNs.

Assessment required:

As there is already a critical shortage of Registered Nurses in San Joaquin County and the Central Valley, the project should be required to identify probable local impacts on providers, schools, colleges, and universities as result of increased demand for and the availability of local resources to address the impact on Registered Nursing employment as noted above, including availability, recruitment, training, retention, and salary escalation

13-1 This comment is an introductory paragraph stating that the commenter represents the County and that the DEIR is flawed in its evaluation of impacts, mitigation measures, and consideration of alternatives to reduce the severity of impacts. The commenter's specific concerns are addressed in Responses to Comments 13-2 to 13-111 below. The paragraph closes with the statement that the proposed project should be located elsewhere. The comment is noted. Please see Master Response 1, "Alternatives," for a discussion of off-site alternatives.

13-2 Citing *Laurel Heights Improvements Association v. Regents* (1988), this comment describes the purpose of the CEQA process and the facility of an EIR to inform decision makers and the public to protect informed self-government. The paragraph concludes that it would be improper for a lead agency to certify an incomplete or inadequate EIR. The comment is noted.

13-3 This comment asserts that the DEIR is incomplete and inadequate according to the comments in the ensuing letter and that subsequently it should be revised and recirculated. The comment is noted. The comments raised did not identify any new impacts on the environment that were not addressed in the DEIR; the DEIR does not require revision beyond the information and minor text revisions provided in this FEIR. These modifications do not rise to the level of "significant new information" triggering the need to recirculate the DEIR. (CEQA Guidelines, § 15088.5.) Recirculation is not required.

13-4 The commenter inquires into the process for approval of the proposed project and the Receiver's status as lead agency. See Section 1.4 (Project Decision Process). Under the U.S. District Court's order appointing the Receiver, the Receiver is the executive manager of the California prison health care delivery system, with the goals of restructuring day-to-day operations and developing, implementing, and validating a new, sustainable system that provides constitutionally adequate medical care to all class members as soon as practicable. To that end, the Receiver is charged with the duty to control, oversee, supervise, and direct all administrative, personnel, financial, accounting, contractual, legal, and other operational functions of CDCR's medical delivery component.

As executive manager of medical care in the California state prisons, the Receiver acts as a state agency until such time that control over prison health care reverts back to CDCR. In this capacity, the Receiver has the principal responsibility for carrying out and approving the proposed project, as is the responsibility for all lead agencies. Therefore, the Receiver, acting through CPR, is the lead agency for the proposed project under CEQA (see Section 15367 of the State CEQA Guidelines), which is similar to other state and/or CDCR CEQA review processes. The terms "CPR" and "Receiver" are used interchangeably throughout the EIR. For purposes of clarification the Receiver, acting as the lead agency, is obligated to comply with CEQA's substantive and procedural requirements. If the Receiver decides to approve the proposed project, he will be required to make findings under Section 21081 of the Public Resources Code and Section 15091 of the State CEQA Guidelines. He will also be required to certify the FEIR in accordance with Section 15090 of the State CEQA Guidelines. Please see Section 1.4 in this FEIR document, titled "Project Decision Process," for more specific information about the decision process.

13-5 The commenter states that it is unclear how CPR is a "state agency" within the meaning of CEQA because CPR was appointed by a federal district court. The commenter also states that the proposed project is subject to NEPA because CPR is an "'agent' of the federal receiver."

Please refer to Response to Comment 13-4 regarding the Receiver's ability to act as a state agency. Under NEPA, only federal agencies must consider the potential significant adverse environmental impacts of their "major actions" through preparation of an environmental impact statement (EIS). (See 42 United States Code [USC] 4332[B], 4332[C]; *Stycker's Bay Neighborhood Council, Inc. v. Karlen* [1980] 444 U.S. 223, 227–228.) In this case, CPR houses the actions of the court-appointed Receiver. The Receiver, in turn, by nature of the receivership remedy and the federal district court's order, acts as an arm of the federal judiciary, and not as a regulatory agency subject to NEPA. (See Order Appointing Receiver: 2, 6) Courts are not "federal agencies" subject to NEPA (40 CFR 1508.12; see also *United States v. Joseph G. Moretti* [5th Cir. 1973] 478 F.2d 418, 433, which states that NEPA is inapplicable to federal judges). The discretionary approvals of the Receiver, therefore, acting under the authority and jurisdiction of the federal district court, are not subject to NEPA. Instead, for the reasons discussed in Response to Comment 13-4, the proposed project is subject to CEQA.

The commenter also states that the DEIR sometimes ignores the Receiver's/CPR's status as a state agency. In particular, the commenter states that CPR has ignored its duty to comply with Executive Order S-3-05. Executive Order S-3-05 is described in Section 4.4.3 of the DEIR. The executive order established total statewide GHG emissions reduction targets. Specifically, emissions must be reduced to the 2000 level by 2010, the 1990 level by 2020, and to 80% below the 1990 level by 2050. Executive Order S-3-05 applies to statewide GHG emissions, and not just emissions generated by state agencies.

Section 5.5.4 of the DEIR analyzes the proposed project's contribution to GHG emissions in the context of California's ability to achieve the goals established by the California Global Warming Solutions Act of 2006 (Health and Safety Code, Sections 38500–38599) (AB 32). AB 32 is intended to be consistent with the goals of Executive Order S-3-05 and, if effectively implemented, will help enable California to achieve those goals. (See ARB's approved *Climate Change Proposed Scoping Plan: A Framework for Change* [Climate Change Scoping Plan], prepared pursuant to AB 32 [ARB 2008].) CPR has and will continue to comply with state law addressing climate change, including but not limited to compliance with Executive Order S-20-04 (requiring all new or renovated state buildings greater than 10,000 square feet to achieve at least a LEED® Silver rating).

13-6 The comment provides background information about applying NEPA to federal actions. The proposed project would not require federal funding or federal agency approval. Please refer to Response to Comment 13-5, which explains why NEPA does not apply to the proposed project.

13-7 The comment provides background on CPR, which has been created to house the activities of the federal Receiver. The commenter states that if CPR is regulated by the Ninth Circuit and considered a federal receivership, CPR is subject to NEPA. Please refer to Response to Comment 13-5, explaining why NEPA does not apply to the proposed project.

13-8 This comment states that the DEIR incorrectly identifies the County Public Works Agency as a responsible agency under CEQA. The comment concludes that the inclusion of the Public Works Agency as a responsible agency gives the public the impression that the public would have another opportunity to review the proposed project.

The comment is noted. If there was confusion, it was unintentional. The DEIR does not imply that that the public would have another opportunity to review the proposed project. On page 2-1, in the introduction to the lead, responsible, and trustee agencies, the DEIR states that the agencies have the opportunity to review the DEIR and provide comments on the project as it relates to their jurisdiction. It states that the agencies included in the following subsections *may* have jurisdiction that requires permitting or some other approval. It does not state that the public, aside from the public office of the permitting agency, would have another opportunity to review the project during permit processing.

13-9 The commenter states that a complete and accurate project description is a necessary element of an adequate EIR and provides citations to case law interpreting CEQA regarding the same. The comment is noted. The EIR's project description is complete, accurate, and consistent throughout the EIR. The EIR's project description conforms to the technical requirements in Section 15124 of the State CEQA Guidelines. No changes to the EIR are necessary. Responses to the commenter's specific concerns regarding the project description are provided in Responses to Comments 13-10 through 13-14 below.

13-10 Please refer to Master Responses 1 and 2. The commenter states that the project objectives are too narrowly defined. The commenter also states that by including the objective that project sites be located on state-owned property, the DEIR excludes many otherwise feasible and available sites from consideration. As described in Section 3.2, "Project Objectives," the fundamental objective of CPR is to comply with federal district court orders, in an expeditious manner, to provide constitutionally adequate minimum medical health care for inmates in the California prison system. The district court's opinions in *Plata v. Schwarzenegger*, *Perez v. Tilton*, and *Armstrong v. Schwarzenegger* illustrate the pervasive failures within CDCR that undermine its ability to provide constitutionally adequate health care services.

CPR's task is to establish constitutionally adequate prison medical care as quickly as practicable. As part of the overall goal, the project objectives are targeted, in part, toward the proposed project's location, including that it be located in an area that effectively serves inmates, near a metropolitan area where there is access to a large employment base to serve the facility, and on state property, with priority given to existing CDCR facilities.

Such project objectives are not improperly narrowly tailored; instead they are consistent with CPR's court-ordered objective to bring California's prison health care system up to a constitutional level of care as soon as practicable. (See the *Plata* Order Appointing Receiver:2 [attached as Appendix B].) As explained in the DEIR, the range of alternatives available for consideration in the EIR is more restricted than what might be available for a typical development project because of the unique nature of the health care facilities required to serve inmates. Because of the urgency of the court's mandate to provide health care to inmates that meets constitutional standards, CPR has focused efforts on existing state correctional facilities, thereby avoiding the need to acquire private land or take eminent domain action, a process that could take years and cost substantially more to pursue. Siting the facility on state land, particularly with existing CDCR facilities, would be more efficient, less disruptive, and more cost effective, and all other things being equal, it would result in fewer environmental impacts because the facility would be developed on an already disturbed site.

The project objectives, moreover, are not dispositive; they are only one factor CPR may consider in deciding whether to reject alternatives. (See Section 15124[b] of the State CEQA Guidelines, which states that objectives "aid the decisionmakers in preparing findings or a statement of overriding considerations, *if necessary*" [emphasis added].) The project objectives, as drafted, would not prevent CPR from adopting one of the alternatives presented if it determined that such

an alternative would avoid or substantially lessen any of the significant adverse effects of the project. The alternative need only attain *most* of the basic objectives of the project (State CEQA Guidelines, Section 15126.6[a]) [emphasis added]. Please also see Master Responses 1 and 2, "Alternatives" and "Programmatic versus Project-Level Environmental Review," respectively for more information.

13-11 The commenter states that CPR is currently preparing a "facility program statement." The commenter further states that the facility program statement should be included or attached to the DEIR to provide the public with the full scope of the proposed project and the interrelationship of the Stockton facility with other planned facilities. The comment is noted. At the time this FEIR was published, the facility program statement was available on CPR's Web site at <http://www.cphcs.ca.gov/facilities_pgm.aspx>.

To the extent that the commenter is implying that a programmatic EIR should have been prepared for the proposed project or that project alternatives were not sufficiently evaluated, please also see Master Responses 1 and 2.

13-12 The commenter states that the DEIR's project description does not address distribution of state correctional facilities among California's 58 counties. The commenter states that San Joaquin County ranks second in the state with six detention facilities, whereas 22 counties in the state do not house correctional facilities. The commenter further states that the distribution of state correctional facilities is an environmental justice issue, and that the proposed project would disproportionately affect "lower income communities and communities with a substantial number of people of color."

Environmental justice, generally, means the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including a racial, ethnic, or socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.

Meaningful involvement means that (EPA 2009):

- potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health,
- the public's contribution can influence the regulatory agency's decision,
- the concerns of all participants involved will be considered in the decision making process, and
- the decision makers seek out and facilitate the involvement of those potentially affected.

Contrary to the commenter's assertion, environmental justice is not an impact on the physical environment as that term is defined under CEQA (State CEQA Guidelines, Section 15360):

> "Environment" means the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance…The "environment" includes both natural and man-made conditions.

Effects that are solely social or economic in nature do not constitute an effect on the physical environment (see Section 21080[e][2] of the Public Resources Code, which states that "substantial evidence is not…evidence of social or economic impacts that do not contribute to, or are not caused by physical impacts on the environment"). In addition, Section 15131 of the State CEQA Guidelines indicates that there must be a physical change resulting from the project directly or indirectly before CEQA will apply.

Thus, an EIR prepared under CEQA is not required to include an analysis of the environmental justice implications of a particular project. To the extent that people, including residents of Stockton and San Joaquin County, could be affected by project-related impacts on the physical environment, the EIR considers those potential effects (e.g., from air quality, land use, water resources, traffic, and noise on all people).

With regard to the commenter's concern that additional correctional facilities should not be located in Stockton, as explained in Impact POP-3 of the DEIR, a recent study prepared by CDCR found that the location of prisons within communities does not adversely affect property values or crime rates, that a very small number or families move to be near an inmate, and that no evidence exists that such families are more prone toward criminal behavior than the population at large (DEIR, page 4.11-10).

California's prison population is composed primarily of people of color. Three of every four men in prison are nonwhite (of male prisoners 38% are Latino, 29% are African American, and 6% are of another race; of female prisoners 28% are Latina, 29% are African American, and 5% are of another race). Race-specific incarceration rates (i.e., the number of prisoners per 100,000 adults in the population) illustrate that a disproportionate number of African Americans are in prison (Bailey and Hayes 2006:4). Further, California's prison population is aging because of longer prison sentences (Bailey and Hayes 2006:13). As found in a recent study by the Public Policy Institute of California (Bailey and Hayes 2006:20):

> The aging of the prison population, accelerated by the passage of stricter sentencing laws in the previous decade, presages greater health care needs and costs for the near future, especially given already high rates of infectious disease among prisoners. *Because of high turnover in the system every year, these health issues could have a significant effect on the entire California population, especially on the communities from which these prisoners come and to which many eventually return.* [emphasis added]

The Public Policy Institute of California's study found that although the prison population increased in the San Joaquin Valley from 1990 to 2005, the growth in number of prisoners *from* the San Joaquin Valley was far greater (Bailey and Hayes 2006:13). In the long term, adequate prison health care for those prisoners would likely benefit the San Joaquin Valley's population, including Stockton's, because those prisoners would stand a better chance of returning to their communities in good health. By helping to bring prison health care standards up to a constitutionally minimal level, the proposed project would help remedy the social inequities that plague California, not add to those problems.

Furthermore, the existing Karl Holton Youth Correctional Facility is currently vacant and deteriorating. The proposed project would replace the existing deteriorating correctional facility with a new correctional medical facility that would provide up to 3,000 new jobs to the vicinity and the region, which would in all likelihood improve social conditions in Stockton, not worsen them. Please also refer to Master Responses 1 and 2 for more information regarding program EIRs and site alternatives; refer to Master Responses 3 and 4, "Recruitment and Staffing Issues

Resulting from the Proposed Project" and "Increased Demand for Local Services," respectively, regarding economic issues and public services.

13-13 This comment criticizes the project description in the DEIR for not stating definitively whether the health care facility would be a single-gender facility or a combined facility. The description of the housing clusters is ambiguous. Because it was not known at the time whether the proposed CHCF Stockton would be a single-gender facility or a combined facility, both uses were evaluated. Since circulation of the DEIR, it has been determined that the facility would serve only male patients. This does not alter any of the conclusions of the DEIR.

The comment is also critical that potential impacts resulting from an "overcrowding" scenario were not evaluated. An overcrowding scenario was not evaluated because the proposed facility is not intended to overcrowd. Unlike a standard prison, the facility would not be able to overcrowd without compromising health care and violating the mission of the project. Prisons, while not operating under ideal circumstances, can be more easily overcrowded by doubling up cells, using day rooms etc. If this type of overcrowding occurred in the proposed health care facility, it would adversely affect its operation and mission and is therefore not planned. Because treating more people than the design capacity could violate the federal court's mandate to provide constitutionally adequate medical care, it is not reasonably foreseeable to expect overcrowding at CHCF Stockton. Therefore, this scenario does not require evaluation. (See *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437 [CEQA does not require evaluation of a speculative worst-case-scenario].)

13-14 This comment requests information of other projects proposed by CPR and their proximity to the project site. Please see Master Response 2, which explains that the proposed project has independent utility apart from the other proposed prison health care facility projects, and therefore a program EIR was not required.

13-15 This comment asserts that participation in the SJMSCP may not be permissible and even if it is, payment of fees does not exhaust the lead agency's responsibility to implement all feasible mitigation. The mitigation measure for Impact AG-1 on pages 1-8 and 4.2-7 of the DEIR has been revised as follows to ensure conservation of comparable farmland and to provide for timing and a performance standard (please also refer to Chapter 4, "Corrections and Revisions to the DEIR"):

> Mitigation Measure(s) for Impact AG-1:
>
> ~~CPR will implement Mitigation Measure for Impact BIO-1 (See Section 4.7 of the Draft EIR "Biological Resources"), which, in part, requires third-party participation in the SJMSCP and payment of the Natural Lands and Agricultural Habitat Lands Fee as defined in SJMSCP Section 7.4.1.2, "Agricultural Habitat Lands, Non-Vernal Pool Natural Lands, and Multipurpose Open Space Lands." The SJMSCP Joint Powers Authority will determine the fee amount to be paid based on the acreage of disturbance. The total amount could be up to 153.2 acres.~~
>
> At the time that final design is completed, CPR will calculate and document the number of acres of Important Farmland that will be converted for CHCF Stockton improvements, including all facilities, roads, and other rights-of-way. Before initial ground-disturbing activities, CPR will coordinate with the San Joaquin Agricultural Commissioner to locate Important Farmland (as determined by the Land Evaluation and Site Assessment [LESA] Model) where an agricultural conservation easement could be recorded. Before operation of CHCF Stockton, a perpetual agricultural conservation easement or deed shall be

recorded on land that meets the LESA Model score for Important Farmland equal in acreage to the number of Important Farmland converted by the proposed project at a minimum1:1 ratio.

Although this measure, combined with the mitigation measure for Impact BIO-1, could result in the conservation of Important Farmland at a ratio of up to 3:1, the conversion of Important Farmland would still be a significant and unavoidable impact. The DEIR states that the proposed project's conversion of Important Farmland would contribute to a cumulatively considerable impact, resulting in a significant and unavoidable cumulative impact. Cumulative impacts are discussed in Chapter 5 of the DEIR. Given these findings, two project alternatives were evaluated that would reduce the number of acres of Important Farmland converted to urban uses.

13-16 The commenter states that the DEIR inadequately addresses potential conversion of off-site farmland and growth-inducing impacts resulting from that conversion. The DEIR discloses that infrastructure improvements may facilitate the development of industrial uses consistent with the City General Plan. The comment warns that lead agencies must not assume that growth is necessarily beneficial or insignificant. The comment is noted. The DEIR makes no value judgment about the City's plans for urban development, but identifies that the proposed project is consistent with the land use plan and may facilitate its implementation. There is no evidence that conversion of farmland would increase beyond the conversion shown in local land use plans. Regarding the proposed project's growth-inducing impacts, please refer to Section 6.3 of the DEIR.

13-17 The commenter states the opinion that the DEIR does not appropriately analyze growth-inducing impacts and impacts on public services because of an inappropriate analysis of population growth. However, the commenter misrepresents the DEIR's analysis of population growth and impacts on public services in the assertion that the document "blithely concludes that since the housing market is weak, it should be no problem for employees to find housing."

First, the DEIR's analysis of population and housing indicates that the proposed project would result in less-than-significant impacts related to substantial population growth that would require the construction of new housing. This conclusion (page 4.11-12) is based on the current vacancy rate of residential units (more than 20,004 units in the region), the number of already approved residential development projects in the region (17,000 units in the Stockton area alone), and the likelihood that no single community would receive a substantial percentage of the increase in new residents. Therefore, in its analysis of whether the proposed project would induce population growth that would require new housing, the DEIR includes a data-driven discussion reflecting the abundant supply of existing and approved housing stock in the region.

However, to further expound on the DEIR's analysis, in a November 2007 article written by John Schoen of MSNBC, Stockton led the nation with the highest foreclosure rate with one filing for every 31 households (MSNBC 2008). On a regional level, www.realtytrac.com indicates that San Joaquin County, with a foreclosure rate of one in every 64 units, currently follows only Merced County in the highest foreclosure rate in California (according to realtytrac.com, California's foreclosure rate is among the highest in the nation) (Realtytrac.com 2009).

In addition, the commenter mistakenly correlates the DEIR's discussion related to the necessity to construct new housing with the analysis of growth inducement and subsequent impacts on public services. Under Section 6.3, "Growth Inducement," the DEIR explains that although the proposed project would foster some economic and population growth because of new employment opportunities, the growth would be widespread and dispersed in such a manner that any growth would be consistent with the projections of local general plans in the communities surrounding

the site. The DEIR includes a detailed discussion of these local population projections in the environmental setting and under Impact POP-1 in Section 4.11, "Population and Housing."

Furthermore, impacts on public services, including impacts associated with population growth, are addressed in detail in Section 4.12, "Public Services," and the discussions do not rely primarily on the housing market information, but rather assume a worst-case scenario that 100% of staff would be in-migrating to each of the regions according to the assumed distribution pattern (consistent with the existing NCYCC distribution). The analysis in Section 4.12 indicates that even under a worst-case scenario of population increase (no staff hired from local communities), the proposed project would not increase public services such that new facilities would be required that could result in additional environmental impacts.

13-18 The commenter states that flaws exist in the DEIR's traffic analysis. Regarding the study area intersections and roadway segments that need to be analyzed under the County's LOS criteria, please see Master Response 5: "Traffic Issues," which includes the results of a revised traffic analysis. Part of this revised traffic analysis re-evaluates impacts to County traffic facilities using County LOS standards. Regarding the correct street classification of Austin Road, see Response to Comment 13-41. Regarding the project's trip generation, see Response to Comment 13-53.

13-19 Please see Response to Comment 26-18, which describes the rationale for not including the first phase of the Mariposa Lakes project in the traffic analysis.

13-20 Please see Response to Comment 13-54 related to feasibility of the CTMP.

13-21 Please see Response to Comment 13-40 regarding use of County's LOS standards, and Comment 13-39 regarding the payment of traffic impact mitigation fees.

13-22 The commenter states the opinion that the DEIR's air quality analysis is deficient in its failure to correlate increased air emissions to adverse health effects on San Joaquin County residents. Please see Response to Comment 24-3, which addresses similar comments.

The comment further states that, in the commenter's opinion, the DEIR fails to properly evaluate and mitigate GHG emissions from the proposed project by failing to include a threshold of significance, and by failing to quantify GHG emissions from the project in relation to the goals established by Executive Order S-03-05. As explained in the DEIR, no air district or other regulatory agency, including SJVAPCD, has officially adopted a significance threshold for GHG generation by land use development projects to assess the level at which a project's incremental contribution is cumulatively considerable. In the absence of regulatory guidance, the DEIR appropriately includes a defined threshold of significance for GHG emissions (Section 4.4, page 4.4-24):

> In the case of the proposed project, if project implementation would not substantially reduce potential GHG emissions compared to "business-as-usual" emissions, and thereby not help facilitate achieving a GHG emissions level that allows 1990 emissions levels to be attained by the year 2020, then an impact of the proposed project would be considered substantial and cumulatively considerable (significant). Based on a variety of data, including ARB's Climate Change Scoping Plan (ARB 2008), the project would need to produce 30% less GHG emissions that under "business-as-usual" circumstances expected for this type and size of project to attain the efficiency targets that would help the state attain AB 32 goals.

Notably, achievement of the state's GHG reduction goals pursuant to AB 32 would also help enable the state to achieve Executive Order S-03-05's goal of an 80% reduction below 1990 GHG

emissions levels by 2050. (See ARB's Climate Change Scoping Plan.) The proposed project's GHG emissions are quantified and compared to the "business-as-usual" emissions in Chapter 5, pages 5-11 and 5-12.

The comment goes on to state that the DEIR does not determine the proposed project's consistency with the City of Stockton's settlement agreement with the California Office of the Attorney General and does not tailor the project's mitigation measures to achieve consistency with the goals and objectives of the settlement agreement. The settlement agreement pertains to the City General Plan and focuses on the manner in which the City will manage its growth through 2035. The settlement agreement requires the City to prepare a climate action plan to inventory GHG emissions and set target dates for emissions reduction. The agreement also requires the City to reduce sprawl by phasing in development on the city's outskirts, encourage infill growth, adopt green building ordinances, and require transit-friendly development within the city. Thus, the focus of the settlement agreement is on ensuring that development in Stockton occurs in a balanced manner. Because CPR is the lead agency for the proposed project, and not the City of Stockton, CPR is not required to comply with the City's settlement agreement. Furthermore, although the settlement agreement promotes infill development (as opposed to development on the City outskirts), some land uses, such as a correctional medical and mental health care facility, may be considered more appropriate in less populated areas. Finally, a portion of the project site is currently developed and dedicated to correctional uses. Consequently, the proposed project would replace existing development and would be consistent with the existing land use designation in the City General Plan, and therefore would not promote sprawl.

13-23 The commenter states the opinion that the DEIR inadequately analyzes impacts on County services and references several memoranda attached to the comment letter. To more thoroughly address the individual comments attached to the letter, each memorandum has been bracketed and each comment numbered, and individual responses have been provided for each. In addition, please see Master Response 4 related to impacts on local services.

13-24 The commenter refers to the resolution adopted by the County Board of Supervisors opposing the proposed project, included in this FEIR as Letter 1. Please see the individual responses to Letter 1. Also, regarding the physical effects associated with impacts on County services, please see Master Response 4.

13-25 Please refer to Master Response 1 regarding off-site alternatives, the reasonable range of alternatives included in the DEIR, and project objectives.

13-26 Please refer to Master Response 2 regarding whether a programmatic environmental review was required to evaluate the identified need for 10,000 new medical health care beds. As explained therein, CPR has not committed to the specifics of this project, nor any of the other proposed health care facilities, at this time. Please also refer to Master Response 1 regarding project alternatives, which further explains that the Receiver has not committed *post hoc* rationalization of the project.

13-27 Please refer to Master Response 2 regarding programmatic environmental review and Master Response 1 regarding alternatives, explaining that the Receiver has not approved the project. The Receiver has been ordered to bring California's prison health care system up to constitutional minimum standards as soon as practicable. Part of that effort involves constructing new facilities to house beds and refurbish existing facilities. To help fund these efforts, the Receiver has sought to be able to use state funds that were already appropriated by the legislature for prison infrastructure. The fact that the Receiver is seeking means to fund compliance with the U.S. District Court's order does not mean the Receiver has "approved" this project. The Receiver is

still exploring funding options and has not committed to this project or any of the other proposed health care facilities. The Receiver and the courts will continue to explore whether all or any of the proposed health care facilities are required to bring the state's prison health care system up to constitutional compliance. The decision whether or not to approve the proposed project will be made by the Receiver only after CEQA review of the proposed project has been completed and the Receiver has reviewed and considered the information contained in the FEIR (and, if applicable, any supplement thereto).

13-28 Please refer to Master Response 1 regarding an off-site alternative. Based on further communication with CPR staff, the statement in the DEIR on page 7-5, referenced by the commenter has been modified as follows:

> CPR's site selection process for the new medical and mental health care facilities emphasized cost efficiency through two central criteria: (1) Sites had to be close to a sizable job base to ensure that qualified medical staff members and correctional officers could be recruited; and (2) sites had to be located near existing CDCR facilities on state-owned property to avoid the need to purchase land. These criteria, among several other development constraints—property size, access, utilities service and infrastructure, site constructability, and land use compatibility—substantially reduced the number of available sites. ~~In fact, all sites that have been deemed feasible for construction of medical and mental health facilities and are owned by the state are currently identified for proposed future facilities. Therefore, a~~ An Off-Site Location Alternative is considered infeasible because ~~all CDCR sites deemed appropriate to accommodate medical and mental health facilities are currently being pursued for such facilities~~ other state-owned properties close to an urban center were not found to accommodate a facility that would meet the project objectives in a timeframe that meets the primary goal of the Receiver.

(See Chapter 4, "Corrections and Revisions to the DEIR).

13-29 The closing paragraph reiterates the requests for revision and recirculation of the DEIR. Comments raised did not identify any new impacts on the environment that were not addressed in the DEIR; the DEIR does not need revision beyond the information and minor text revisions provided in this FEIR, and therefore recirculation is not required.

13-30 The opening paragraph states that the information in the following letter corroborates the comments provided in the letter to which this letter is attached. The comment is noted.

13-31 The commenter requests CPR's rationale for following CEQA and not NEPA, and requests that CPR make text changes to the EIR to clarify to which environmental review process the EIR adheres. Please refer to Response to Comment 13-5, which explains why NEPA does not apply to the proposed project. As indicated throughout the DEIR, this EIR has been prepared in accordance with CEQA. No textual changes are required.

13-32 Please refer to Master Response 1 regarding off-site alternatives and a single-site alternative. CPR is not aware of any feasible off-site alternative within San Joaquin County that would achieve most of the basic objectives of the project and also likely substantially reduce or avoid any significant environmental impact of the proposed project. See also Response to Comment 13-34.

13-33 Please refer to Master Response 1, which explains why a single health care facility is not feasible.

13-34 The commenter suggests that the proposed project should be developed at an alternate location that would avoid or reduce significant impacts to less-than-significant levels. The DEIR discusses

the consideration of developing the proposed project at other locations (Chapter 7, "Alternatives to the Project") and indicates that the urgency of providing health care to stem the existing crisis has directed the proposed project toward existing state land being used for correctional facilities; it would be more efficient, less disruptive, and more cost effective and, all other things being equal, it would result in fewer environmental impacts to locate a facility of this type on a site already developed with correctional uses than on an undeveloped site. Please see Master Response 1 for additional discussion related to the consideration of an off-site alternative.

Furthermore, for a project of this proposed size and intensity, it is unlikely that any alternative site would avoid or reduce all project-related significant and unavoidable impacts to a less-than-significant level, as the commenter suggests. On the contrary, it is highly likely that other sites could result in more impacts and/or greater impacts. For example, a project of this size located closer to an urban center could result in far greater impacts related to traffic, and depending on the proximity to residential uses, could result in land use conflicts, which is not a significant impact associated with the project site. Alternatively, a project located in a more rural community could result in significant impacts on public utilities and services, and, depending on the nature of the site, could cause more serious impacts related to biological and agricultural resources. Furthermore, a more remote location could increase the level of GHG and other pollutant emissions due to longer commute trips.

13-35 The commenter states the opinion that the DEIR's growth inducement analysis is inadequate, based on a statement made in the DEIR indicating that the proposed project *itself* would not result in substantial population growth because it does not include new housing. The emphasis on the word "itself" has been added here because the statement is not suggesting that the proposed project would not result in any population growth for lack of new housing; rather, the statement indicates that, as a proposed employment center, the proposed project alone could not result in population growth, because it cannot, without housing, directly increase the population of a community. For example, if no housing units were available in Stockton for new employees to reside, the proposed project could not increase the population of the city because the employees could not reside in the city.

Furthermore, the first sentence in the paragraph after the referenced statement in the DEIR (on page 6-7) reads, "Although the proposed project would foster some economic and population growth associated with new employment opportunities at the correctional medical facility, this growth would not substantially affect the ability of public services providers to serve their existing customers, nor would it require the construction of new facilities to serve the project." As noted in this statement, the DEIR does not dismiss the potential for the proposed project to result in population increases resulting from new employment opportunities. The DEIR's growth inducement analysis is consistent with the requirements of CEQA. (See Section 15126.2[d] of the State CEQA Guidelines; see also, e.g., *Napa Citizens for Honest Gov' v. Napa County Bd. of Supervisors* [2001] 91 Cal. App. 4th 342, 369–370 (explaining CEQA's growth inducement analysis requirements).) In addition, a discussion related to impacts associated with population increase is provided under Section 4.11, "Population and Housing," of the DEIR.

13-36 The commenter suggests that, in the commenter's opinion, the DEIR's assumptions regarding employee distribution may not be accurate; therefore, conclusions should not be drawn based on this distribution scenario. The limitations of this assumption are disclosed in the DEIR in the following statement (page 4.11-8):

> Zip codes of the current NCYCC employees were used to identify the general locations where the facility's employees would be expected to live….The range of job types and incomes for the proposed project would differ from the range for the existing NCYCC.

However, when residence location is aggregated to the level of cities, each city offers a range of housing types, housing costs, and neighborhood types to accommodate a range of residents.

However, the statement also indicates that although the proposed project's staff distribution might differ somewhat from that of the NCYCC because of differing job types and income levels, each of the cities identified offers a range housing types/costs and neighborhood types. Therefore, because each city could accommodate the different income levels, there is no reason to believe that the employee distribution would be much different than at the NCYCC.

Furthermore, the DEIR assumed a worst-case scenario under both the population and housing and public services analyses, by assuming 100% of the employees would in-migrate from outside the region (see also Master Response 3, which further describes the employment demand generated by the facility). Finally, the commenter requests clarification related to the statement "no new public infrastructure would be installed." To provide the context of the statement, the entire sentence (from page 6-6 of the DEIR) is provided as follows: "The proposed project would not remove barriers to population growth because no new public infrastructure facilities would be installed." This statement indicates that the proposed project would not induce population growth because it does not include any public infrastructure that would allow development to occur in an area that was previously "barricaded" from development due to lack of public infrastructure (e.g., roads, wastewater service, water service). In other words, the proposed project does not include extension of a roadway, a sewer force main, a public water main, or other public infrastructure to an area that otherwise would remain undevelopable.

13-37 The comment identifies a statement in the DEIR that CPR, acting in the role of state agency, does not need to comply with county plans, policies, or zoning. The commenter then discusses the land use designations and zoning of the project site. However, the comment does not raise issues related to the adequacy of the DEIR or otherwise raise environmental concerns.

13-38 The commenter states that off-site improvements proposed as part of the project would require an encroachment permit for work within the right-of-way and would be subject to County Department of Public Works requirements, approval, and fees. CPR operates as a state agency and does not require encroachment permits for construction within County rights-of-way; however, CPR would coordinate with the County regarding construction activities as well as consistency with County standards.

13-39 The comment indicates that CPR is required to pay various County transportation-related fees. The comment is noted. CPR operates as a state agency and is therefore not required to pay traffic impact fees, except as required by mitigation measures for the proposed project's environmental impacts, as identified in the EIR. A revised traffic analysis was prepared by DKS Associates, and the results are discussed in Master Response 5: "Traffic Issues," which indicate that the project would result in an impact to the intersection of Austin Road and Arch Road in the cumulative 2035 scenario (when the intersection is anticipated to be within the City's jurisdiction) and fair share payment would be provided to the City of Stockton. The project would also be required to contribute to the Regional Transportation Improvement Program, as indicated by the commenter. However, other County traffic impact fees would not be paid by the Receiver. Please see Master Response 5 "Traffic Issues" for more information related to traffic impact fees.

13-40 The commenter suggests using the County's LOS standards for facilities currently under County jurisdiction. Please see Master Response 5: "Traffic Issues," which includes a discussion regarding County LOS standards.

13-41 The commenter points out an incorrect roadway classification in the DEIR. The comment is noted. DKS Associates, the traffic engineer for the DEIR, reviewed this comment and found that the correction in the roadway classification of Austin Road from local street to a rural major collector does not affect the results of the roadway segment analyses, because roadway analysis is based on lane capacity, speed and volumes, and not the General Plan street classification. Because the methodology would not change, the analysis would not change.

13-42 The commenter suggests that facilities within the county should be analyzed using the county's LOS standards. Please see Master Response 5: "Traffic Issues," which includes a discussion regarding County LOS standards.

13-43 The commenter identifies an error in one intersection configuration as shown in the DEIR. DKS Associates reviewed this comment and have corrected the northbound approach geometrics at Austin Road/Arch Road in the traffic analyses for the Existing and EPAP (baseline and plus project) conditions. Based on the revised analysis, the LOS results remain unchanged. The analysis is provided as Appendix D. This geometric correction does not apply to the 2035 Cumulative condition because additional improvements have already been assumed. Please see Master Response 5: "Traffic Issues" for results of the revised traffic analysis performed by DKS.

13-44 The commenter suggests that near-term traffic from other developments in the area was not appropriately considered in the DEIR. DKS Associates, which prepared the traffic impact analysis for the DEIR, has reviewed the comment and found that the analysis correctly analyzes all approved development in the EPAP scenario. The commenter is incorrect that the traffic impact analysis ignores the impacts of this project and others in the near future (5–10 years). In accordance with direction of the City Public Works Department, EPAP peak-hour traffic volumes were to be taken from the *Traffic Study for the Proposed Mariposa Lakes Development* (TJKM Transportation Consultants 2007). The EPAP traffic volumes for the project study area were based on the City's EPAP peak-hour model as referenced in the study by TJKM Transportation Consultants. Based on review of the EPAP peak-hour traffic volumes and the list of approved projects analyzed in the EPAP model, it was determined that the use of the EPAP peak-hour traffic volumes from the TJKM study would be appropriate for this traffic impact analysis.

A total of 23 approved background projects were included in this analysis. These major projects are listed below:

- 29,581,000 square feet of nonresidential development throughout Stockton (including Arch Road Business Parks and the Opus West Logistics Center)
- 15,162 residential dwelling units throughout Stockton
- Cannery Park (450 acres)
- North Stockton Projects Phase 3 (180 acres)
- Westlake Village (681 acres)
- NCWF conversion, including 182 additional employees on 134 acres (per the 2008 DKS traffic study)

Another background project in the vicinity that was added to the list (not included in the Mariposa Lakes study) is the CCC's Delta Service District Center Relocation, located on the southeast corner of Newcastle Road/Arch Road. Based on the project's initial study/mitigated negative declaration, there would be nominal increases in daily and peak-hour trips from this

project. Therefore, the traffic impact analysis and the DEIR appropriately consider near-term development in the traffic analysis.

13-45 The commenter points out a pending expansion of the Forward Landfill in the project vicinity and suggests that it should be included in the DEIR's analysis despite a probable low trip generation. The pending expansion of the Forward Landfill was included as part of the City's EPAP model used for the DEIR's traffic analysis. Therefore, the traffic analysis included this pending project.

13-46 Please see Response to Comment 13-43.

13-47 The comment raises queuing issues. Please see Master Response 5: "Traffic Issues," which includes a discussion of new queuing results based on revised mitigation.

13-48 The commenter requests clarification regarding federal and state regulations that apply to the proposed project. At the time the DEIR was released no off-site improvements were required in Caltrans jurisdiction; however, revisions to Mitigation Measure to Impact TRAF-6 require the CPR to fully fund installation of a traffic signal at the SR 99 northbound off-ramp onto Arch Road, as well as adding queuing capacity to the southbound off-ramp (see Master Response 5: "Traffic Issues"). These improvements would be located within Caltrans jurisdiction and would be subject to Caltrans standards. Furthermore, the federal government does not typically regulate the state's roadway system. The project site and proposed off-site improvements are not located within any roadway under federal jurisdiction; therefore, the federal government has no jurisdiction over the proposed project, and no federal regulations apply. Therefore, the DEIR's statement is appropriate: "No federal plans, policies, regulations, or laws relating to transportation are applicable to the proposed project" (page 4.8-3).

13-49 The commenter again takes issue with a roadway classification and use of City standards. Please see Responses to Comments 13-41, 13-42, and Master Response 5.

13-50 The commenter indicates that County standards should be applied to County facilities. Please see Response to Comment 13-40 and Master Response 5.

13-51 The commenter again identifies County fees required by the project. The comment is noted. Please see Response to Comment 13-39.

13-52 The commenter indicates that County standards should be applied to County facilities. Please see Response to Comment 13-40 and Master Response 5.

13-53 The commenter questions the practicality (and therefore the reality) of the proposed shift changes. The revised mitigation measure for Impact TRAF-4 (see Master Response 5: "Traffic Issues") restricts shift changes. If the proposed project were approved, CPR would be required to adhere to all mitigation measures adopted for the project, including the mitigation measure for Impact TRAF-4. (See e.g., *Lincoln Place Tenants Assn. v. City of Los Angeles* [2007] 155 Cal.App.4th 425, 447–449, (implementation of mitigation measures is mandatory under CEQA).) The mitigation measures would be enforced through the mitigation and monitoring program adopted in connection with the project. The commenter's opinion that CPR would not enforce the mitigation measures is not supported by evidence.

13-54 In the DEIR, the mitigation measure for Impact TRAF-1 required that, during construction, no more than 570 vehicles enter or exit the site to avoid significant impacts on roadways and intersections. The measure required that a qualified traffic engineer be retained to prepare a construction traffic mitigation plan (CTMP) (see page 4.3-15 of the DEIR). The mitigation went on to list four possible measures, which could be used in combination or individually, that could

be used to hit this target, which is equal to 60% of the total potential employees at the construction peak. Three of these measures—carpooling, instructing employees to take certain routes, and shuttling employees in buses—would indeed be difficult to implement, as noted in the comment. They are certainly feasible, however (difficult does not mean infeasible) and would be required to be followed through the mitigation monitoring program and the CTMP. In fact, these are programs commonly used for construction traffic management in congested areas, such as the Bay Area.

However, Mitigation Measure for Impact TRAF-1 has been revised to require that all construction trips occur outside of the peak hour (see Master Response 5: "Traffic Issues" or Chapter 4 for the revised mitigation text and additional discussion). The revised measure also requires limiting construction trips to 333 during any given hour. These measures would be relatively simple to enforce and monitor since the project contractor is easily able to schedule employees/deliveries/trucks so they are limited during each hour. Other measures listed in the original mitigation measure still apply (the AVO requirement would increase to 3.40), and would reduce off-peak trips.

Because the peak hour restriction is simple to implement, and on its own would mitigate the significant peak hour impacts; because the other measures, while perhaps more challenging, would certainly be feasible; and because a CTMP would be prepared and would require effectiveness monitoring, it is evident that this mitigation would be effective in reducing construction traffic impacts to less-than-significant levels.

13-55 The commenter states that Table 4.3-8 is mislabeled. However, the table is labeled correctly. In this case, "background conditions" is used to indicate the condition without the proposed project. This does not affect the analysis or conclusions in the DEIR.

13-56 The comment raises issues with the trip generation assumed for the proposed project. The staffing levels and shift patterns in the DEIR analysis as well as the revised mitigation measure for Impact TRAF-4 (see Master Response 5: "Traffic Issues") have been verified. CPR is planning to employ up to 3,000 staff members at CHCF Stockton; however, because staff is spread over multiple shifts throughout a typical day, only 1,646 employees would be on-site. The remaining staff number of 1,384 would not be on-site because of vacation/sick days, off-days or weekends, leaves of absence, and other types of time off. The trip estimates include the likely trip behavior during that time period for all trip purposes, which may include employees traveling to work, deliveries, visitors, and workers coming and going from the site during their shifts. During the traffic analysis periods in the DEIR and under the revised trip generation (because of the revised schedule required by the revised mitigation measure for Impact TRAF-4, as described under Master Response 5) realistic assumptions were made about shift times and employee arrivals and departures, as well as deliveries and visitors coming and going and their length of stay.

13-57 The commenter states that Table 4.3-14 was mislabeled. However, the table is labeled correctly. In this case "background conditions" is used to indicate the condition without the project. This does not affect the analysis or conclusions in the DEIR.

13-58 The commenter indicates that County standards should be applied to County facilities. Please see Master Response 5: "Traffic Issues."

13-59 The commenter indicates that because there would be more staff than construction workers, that the DEIR's traffic analysis incorrectly indicates fewer impacts in the EPAP plus Project scenario than under the Existing plus Project Construction scenario. However, the commenter has made two faulty assumptions: (1) the Existing plus Project Construction scenario is the same as the

EPAP plus Project scenario; and (2) that number of staff or construction workers is directly proportionate to the number of trips. Regarding the two scenarios, the Existing plus Project Construction scenario assumes the existing condition, plus project construction trips; whereas the EPAP plus Project scenario assumes the existing conditions, plus other approved projects, plus the proposed project. Therefore, these are two very different scenarios, as one includes traffic is already existing from other approved projects in the area and the other does not. Regarding the proportionality of staff/workers to trip generation, as indicated in Response to Comment 13-56, the number of employees anticipated to be at the facility at one time (1,646) is anticipated to be just over half the number of employees of the project (due to vacations, leaves, holidays, etc.) and they are scheduled through multiple shifts so that only a fraction are on site at any one time however, the number of construction workers anticipated to be on the site during the peak construction period (1,700) does not change because the assumption is not based on the total number of construction workers employed by the construction companies, but rather the total number of construction workers anticipated to be on the site at one time. Therefore, there are actually more trips generated by the construction workers than by the employees of the CHCF Stockton. It should also be noted that DKS has prepared a revised traffic analysis; please see Master Response 5: "Traffic Issues" for the results.

13-60 Please see Response to Comment 13-43.

13-61 The commenter raises issues with queuing associated with freeway ramps. Please see Master Response 5: "Traffic Issues," which includes discussion of revised queuing analysis in response to Caltrans comment letter (included as Comment Letter 26), as well as revised Mitigation Measures for TRAF-4 and TRAF-6.

13-62 The commenter states that after trip generation numbers are revised, mitigation measures for the Austin Road/Arch Road and Austin Road/Project Driveway intersections should be revised. The revised mitigation measure for Impact TRAF-4 (see Master Response 5: "Traffic Issues") restricts shift changes. CPR is required to adhere to all mitigation measures adopted for the proposed project (see Response to Comment 13-53). Please see Master Response 5 for more information regarding County LOS standards.

13-63 The commenter again suggests that facilities within the county should be analyzed using the County's LOS standards. Please see Master Response 5: "Traffic Issues."

13-64 The commenter suggests that any mitigation fees resulting from application of County LOS standards for County facilities should be paid to the County. Please see Master Response 5: "Traffic Issues" for discussions related to County LOS standards and mitigation fees. Furthermore, as indicated in the DEIR and Master Response 5, the proposed project is required to install a traffic signal at the intersection of the project driveway and Austin Road prior to operation.

13-65 The commenter suggests that a discrepancy exists between the number of lanes identified in the DEIR for SR 99 and City and Caltrans buildout scenarios. Please see Response to Comment 26-3. According to DKS Associates, the 2035 Cumulative plus Project freeway mainline analysis has been revised with the correct number of lanes: eight total lanes (or four in each direction). Please see Master Response 5: "Traffic Issues" for a discussion of the freeway mainline analysis in light of revises Mitigation Measure TRAF-4, which restricts project traffic to occur only outside the peak hour.

13-66 The commenter states that a mitigation fee under the County's impact mitigation fee program for water supply facilities would be required for the proposed project. As discussed in the project

description on page 3-17 of the DEIR, water supply for the proposed project would be provided by the City, and groundwater well usage at the existing NCYCC facility would be discontinued. Therefore, no County water supply facilities would be affected by the proposed project. Please see Response to Comment 6-1 concerning how water will be supplied to the site.

13-67 The commenter cites solid-waste information presented on page 4.14-13 of the DEIR; however, no comment on the cited information was made, and therefore no response is necessary.

13-68 The commenter states that a local collection license to haul refuse, under County ordinance, would not be required for the proposed project. The comment is noted. As discussed on page 4.14-13 of the DEIR, the NCYCC currently collects its own solid waste and hauls it to the Forward Landfill. The comment will be provided to CPR for consideration.

13-69 The commenter states that solid waste generated by the proposed project should be directed to a County-owned disposal facility under County ordinance. CPR operates as a state agency and is therefore not subject to local ordinance. As stated on page 4.14-19 of the DEIR, the solid waste that would be generated by the proposed project would be transferred to Forward Landfill, which is located in San Joaquin County but not operated by the County. Considering the proximity of Forward Landfill to the site and the fact that NCYCC currently disposes solid waste at this facility, CPR has determined that this facility is the most practical option (both operationally and environmentally) for solid-waste disposal and would reduce air emissions versus transporting materials to a more distant facility.

13-70 The commenter states that a County-owned disposal facility should be used for construction waste disposal. Please see Response to Comment 13-69.

13-71 The commenter states that upcoming changes regarding construction and demolition debris recycling and diversion, and amendments to Sections 5-2101 through 5-2304 of the County Ordinance Code, would expand requirements for disposal of construction and demolition debris for the proposed construction activities. The comment is noted and will be provided to CPR for further consideration. Because this comment does not address the adequacy of the DEIR or otherwise raise environmental issues, no further response is required. Please see Response to Comment 13-69.

13-72 The commenter references Section 5-2300 of the current County Ordinance Code, which covers solid-waste collection and disposal for industrial, commercial, and business establishments. No comment on the cited information was made; therefore, no further response is necessary. Please see Response to Comment 13-69.

13-73 The commenter references the current Section 5-2702 from the County Ordinance Code, which covers licensed collector requirements and the use of landfill sites designated by the county. No comment on the cited information was made; therefore, no further response is necessary. See Response to Comment 13-69.

13-74 The commenter references Section 5-2302 of the County Ordinance Code, which covers the collection and disposal of building construction/demolition waste materials. No comment on the cited information was made; therefore, no further response is necessary. See Response to Comment 13-69.

13-75 The commenter states that the proposed project is not located in a Special Flood Hazard Area and located within Flood Insurance Rate Maps 060299 0465 and 060299 047. The comment is noted. As described on page 4.6-1 of the DEIR, the project area is not within the Federal Emergency Management Agency (FEMA)–designated 100-year flood zone, as determined by Flood

Insurance Rate Map Panels 060299 0465C and 060299 0470B, both dated April 2, 2002, which indicate that the project site and the off-site components of the proposed drainage system are located within Zone C, which is defined as "areas of minimal flooding." The DEIR is consistent with the commenter's statement; therefore, no further response is necessary.

13-76 The commenter states that a watercourse encroachment permit shall be obtained from the County Public Works Department before the realignment or alteration of any watercourse, channel, or drainage ditch located within the project site. As described in Impact HYDRO-2 on page 4.6-15 and Impact UTIL-4 on page 4.14-18 of the DEIR, CPR would file a watercourse encroachment permit with the County before beginning proposed drainage realignment work. Because the DEIR is consistent with the commenter's statement and the comment does not relate to the adequacy of the DEIR or otherwise raise environmental issues, no further response is necessary.

13-77 The commenter states that a detention pond/terminal drainage system shall be provided to meet County requirements, and hydrologic and hydraulic analyses shall demonstrate that all property, both downstream and upstream of the discharge, will not be subject to a higher flood level as a result of the proposed drainage. As described in the discussion of Impact HYDRO-2 on pages 4.6-15 through 4.6-17 of the DEIR, the existing detention basin is being surveyed to more accurately calculate storage capacity. Since the release of the DEIR, the survey has been completed and applied to hydrologic modeling (included in Appendix A) that indicates that the existing detention basin has capacity to handle the 100-year storm (although modifications to the pump timing may be necessary for the 72-hour 100-year event, which would prevent downstream flooding and would therefore not result in an environmental impact). In addition, as indicated on page 4.6-17 of the DEIR, CPR would coordinate with the San Joaquin Area Flood Control Agency and the San Joaquin County Flood Control and Water Conservation District to ensure that the proposed drainage and flood control is consistent with local requirements. Because the DEIR is consistent with the comment and this comment does not address the adequacy of the impact analysis in the DEIR, no further response is required. However, please see Section 4 of this document for text changes related to this impact.

13-78 The commenter states that any development project greater than 1 acre within NPDES (Phase I or II) permit areas is also subject to County conditions. These conditions are described in Comments 13-79 through 13-80.

13-79 The commenter states that a notice of intent (NOI) shall be filed with the State Water Resources Control Board and that the proposed project shall comply with the state "General Permit for Storm Water Discharges Associated with Construction Activity." The comment is noted. As discussed under the mitigation measures for Impact HYDRO-1 on page 4.6-14 of the DEIR, before any construction-related ground disturbance, CPR would consult with County Public Works staff members to ensure that project construction procedures are consistent with County stormwater requirements. Further, in the mitigation measures for Impact HYDRO-1 on page 4.6-14, the DEIR states that CPR would prepare and submit the appropriate NOIs and prepare a stormwater pollution prevention plan and any other necessary engineering plans and specifications for pollution prevention and control. This comment will be provided to CPR for consideration. Because the DEIR is consistent with the comment and this comment does not address the adequacy of the impact analysis in the DEIR, no further response is required.

13-80 The commenter states that the waste discharge identification number issued by the State Water Resources Control Board for the proposed project shall be submitted to the County Public Works Department for file. The comment is noted. Please refer to Response to Comment 13-79.

13-81 The commenter states that a storm water pollution prevention plan shall be submitted to the County Public Works Department for review. The comment is noted. Please refer to Response to Comment 13-79.

13-82 The commenter implies that the proposed CHCF Stockton would cause prisoners' families to move to San Joaquin County and states that the impact of prisoners' families on the services provided by the County Human Services Agency would be to increase workload and number of CalWORKS and Child Protective Services cases. Please see Master Response 4 related to local services. In addition, because of changes to the proposed project since the time of publication of the DEIR, women would no longer be treated at the proposed facility; therefore, issues associated with pregnant women would not occur.

Impact POP-3 on page 4.11-10 of the DEIR includes an evaluation of whether an increase in patient population as a result of the proposed project would increase the population of the surrounding community. As discussed in Impact POP-3, a study performed by CDCR has concluded that a very small number of families move to be near an inmate (less than 0.5% of the total inmate population) residing at a general population facility, and that no evidence exists that such families are more prone toward criminal behavior than the population at large.

The goal of the proposed CHCF Stockton is to provide subacute medical and mental health care designed for someone who has an acute illness, injury, or exacerbation of a disease process. It is goal-oriented treatment rendered immediately after, or instead of, acute hospitalization to treat one or more specific active complex medical conditions, or to administer one or more technically complex treatments, in the context of a person's underlying long-term conditions and overall situation. A portion of the patients would be housed at the facility on a temporary basis while receiving treatment and would be transferred back to a general-population facility upon completion of treatment. Given the unknown time frame of the medical and mental health treatment, and the very small percentage of families that relocate to move near an inmate, it is unlikely that families would relocate to the area as a result of an inmate receiving treatment at the facility. For this reason, and because this comment does not raise specific issues to the adequacy of the impact analysis of the DEIR, no further response is necessary. Please also see the discussion in Master Response 4 related to inmates' families moving to the area.

13-83 The commenter suggests that the proposed project would cause prisoners' families to move to San Joaquin County and further offers an unsubstantiated opinion that prisoners may remain within the community after being released, which would cause more people to exercise their right to apply for and receive public assistance. Please refer to Response to Comment 13-82 and Master Response 4 related to local services. Furthermore, the DEIR states (page 3-10), "in the event that patients complete their sentence while at the facility, they would be bussed back to the location of their original sentencing for final release." Therefore, there is no reason to believe that patients of the CHCF Stockton would reside in the county once released (unless they were originally sentenced or originally resided in San Joaquin County).

Further, to the extent that patients who originally resided in San Joaquin County return to the county once released, the proposed project would likely reduce impacts on County health systems. As explained in Response to Comment 13-12, the long-term, adequate prison health care for those prisoners would likely benefit the San Joaquin Valley's population, including Stockton's, because those prisoners would stand a better chance of returning to their communities in good health. By helping to bring prison health care standards up to a constitutionally minimal level, the proposed project would help remedy the social inequities that plague California, not add to those problems.

13-84 The commenter speculates that that the proposed project would cause prisoners' families who may require public assistance to move to San Joaquin County. The commenter does not provide a basis for its assumption, nor does the commenter provide any reason to believe that any increase in demand for public assistance would lead to adverse physical changes to the environment (State CEQA Guidelines, Section 15131[a]). Please refer to Response to Comment 13-82, which presents evidence that patients' families would not likely move to be near the patient; Comment 13-83, which describes the release of inmates upon completion of sentence; and Master Response 4, which discusses local services.

13-85 The commenter insinuates that the proposed project would cause prisoners' families to move to San Joaquin County and speculates that many of the spouses of prisoners would be older and may require assistance from the Aging and Community Services Department. The commenter does not provide a basis for its assumption, nor does the commenter provide any reason to believe that any increase in public assistance demand would lead to adverse physical changes to the environment (State CEQA Guidelines, Section 15131[a]). Please refer to Response to Comment 13-82, which presents evidence that patients' families would not likely move to be near the patient; Comment 13-83, which describes the release of inmates upon completion of sentence; and Master Response 4, which discusses local services.

13-86 The commenter insinuates that the proposed project would cause benefit-eligible prisoners' families to move to San Joaquin County and that an increase in workload for the Aging and Community Services Department could be expected as a result. The commenter does not provide a basis for its assumption, nor does the commenter provide any reason to believe that any increase in demand for public assistance would lead to adverse physical changes to the environment (State CEQA Guidelines, Section 15131[a]). Please refer to Response to Comment 13-82, which presents evidence that patients' families would not likely move to be near the patient; Comment 13-83, which describes the release of inmates upon completion of sentence; and Master Response 4, which discusses local services.

13-87 The commenter insinuates that the proposed CHCF Stockton would cause benefit-eligible prisoners' families to move to San Joaquin County and that a workload increase could be expected as a result of the proposed project. The commenter does not provide a basis for its assumption, nor does the commenter provide any reason to believe that any increase in demand for public assistance would lead to adverse physical changes to the environment (State CEQA Guidelines, Section 15131[a]). Please refer to Response to Comment 13-82, which presents evidence that patients' families would not likely move to be near the patient; Comment 13-83, which describes the release of inmates upon completion of sentence; and Master Response 4, which discusses local services.

13-88 The commenter indicates that because the prisoners' families could move to San Joaquin County this would potentially increase County costs for in-home supportive services at a level that is not currently included in population growth/service need projections. The commenter does not provide a basis for its assumption, nor does the commenter provide any reason to believe that any increase in demand for public assistance would lead to adverse physical changes to the environment (State CEQA Guidelines, Section 15131[a]). Please refer to Response to Comment 13-82, which presents evidence that patients' families would not likely move to be near the patient; Comment 13-83, which describes the release of inmates upon completion of sentence; and Master Response 4, which discusses local services.

13-89 The commenter provides a summary of the program cost increases to the County that the County believes, based on assumptions without factual support, would be associated with the presumed number of prisoners' families that would move to the County after development of the proposed

project. It appears that the County's assumptions are pure speculation, and therefore are not required to be evaluated in the EIR (see Section 15145 of the State CEQA Guidelines). Moreover, the summary does not indicate that even if the County's assumptions were true, that the increased costs would lead to adverse physical changes to the environment (see Section 15131[a] of the State CEQA Guidelines). Please refer to Response to Comment 13-82, which presents evidence that patients' families would not likely move to be near the patient; Comment 13-83, which describes the release of inmates upon completion of sentence; and Master Response 4, which discusses local services.

13-90 The commenter estimates that there would be an increase of approximately 100 individuals per year who would be eligible for General Assistance and would increase County costs. No calculations or other justification is provided indicating how the specific increase of "100 individuals" was derived. CEQA does not require lead agencies to engage in speculation (State CEQA Guidelines, Section 15145). Moreover, even assuming that the commenter's unjustified opinion that the proposed project would cause an increase in 100 individuals within San Joaquin County eligible for General Assistance, it would be extremely unlikely that this increase would lead to *adverse physical changes to the environment* (see Section 15131[a] of the State CEQA Guidelines). The comment does not state the opinion, let alone provide evidence, that any increase in demand on County General Assistance would foreseeably lead to adverse physical changes in the environment. Please refer to Response to Comment 13-82, which presents evidence that patients' families would not likely move to be near the patient; Comment 13-83, which describes the release of inmates upon completion of sentence; and Master Response 4, which discusses local services. If the commenter is not referring to patients' families, it is not otherwise clear who the "100 individuals" refers to, since the inmates would not be eligible for General Assistance and the staff members of the facility would be employed by the state.

13-91 The commenter estimates that the proposed project would cause increased workload to CalWORKs as a result of in-migrating families of inmates, thus requiring an additional staff person. The commenter does not provide a factual basis for its conclusion that the proposed project would require an additional staff person. Moreover, no evidence is provided indicating that even if a new staff person were required, employing this additional person would lead to adverse physical changes to the environment (State CEQA Guidelines, Section 15131[a]), nor has the commenter alleged that it would. It would be extremely unlikely that the addition of a single staff person to CalWORKS would lead to physical changes in the environment. Please refer to Response to Comment 13-82, which presents evidence that patients' families would not likely move to be near the patient; Comment 13-83, which describes the release of inmates upon completion of sentence; and Master Response 4, which discusses local services.

13-92 The commenter indicates that the proposed project would increase the workload in the Home Supportive Services Department, thus requiring an additional staff person. The commenter does not provide a factual basis for its conclusion that the proposed project would require an additional staff person. Moreover, no evidence is provided indicating that even if a new staff person were required (an assertion for which there is no evidence), employing this additional person would lead to adverse physical changes to the environment (State CEQA Guidelines, Section 15131[a]), nor has the commenter alleged that it would. It would be extremely unlikely that the addition of a single staff person to the Home Supportive Services Department would lead to physical changes in the environment. Please refer to Response to Comment 13-82, which presents evidence that patients' families would not likely move to be near the patient; Comment 13-83, which describes the release of inmates upon completion of sentence; and Master Response 4, which discusses local services.

13-93 The commenter indicates that the proposed project would increase the workload of the Adult Protected Services Department. The commenter does not provide a factual basis for its conclusion that the proposed project would require an additional staff person. Moreover, no evidence is provided indicating that even if a new staff person were required (an assertion for which there is no evidence), employing an additional person would lead to adverse physical changes to the environment (State CEQA Guidelines, Section 15131[a]), nor has the commenter alleged that it would. It would be extremely unlikely that the addition of a single staff person to the Adult Protected Services Department would lead to physical changes in the environment. Please refer to Response to Comment 13-82, which presents evidence that patients' families would not likely move to be near the patient; Comment 13-83, which describes the release of inmates upon completion of sentence; and Master Response 4, which discusses local services.

13-94 The commenter estimates that there would be an increased workload to the Multipurpose Services Program as a result of the proposed project that would require an additional staff person. The commenter does not provide a factual basis for its conclusion that the proposed project would require an additional staff person. Moreover, no evidence is provided indicating that even if a new staff person were required, employing this additional person would lead to adverse physical changes to the environment (State CEQA Guidelines, Section 15131[a]), nor has the commenter alleged that it would. It would be extremely unlikely that the addition of a single staff person to the Multipurpose Services Program would lead to physical changes in the environment. Please refer to Response to Comment 13-82, which presents evidence that patients' families would not likely move to be near the patient; Comment 13-83, which describes the release of inmates upon completion of sentence; and Master Response 4, which discusses local services.

13-95 The commenter estimates that there would be an increased workload for the Child Protective Services as a result of the proposed project that would require an additional staff person. The commenter does not provide a factual basis for its conclusion that the proposed project would require an additional staff person. Moreover, no evidence is provided indicating that even if a new staff person were required, employing an additional person would lead to adverse physical changes to the environment (State CEQA Guidelines, Section 15131[a]), nor has the commenter alleged that it would It would be extremely unlikely that the addition of a single staff person to Child Protective Services would lead to physical changes in the environment. Please refer to Response to Comment 13-82, which presents evidence that patients' families would not likely move to be near the patient; Comment 13-83, which describes the release of inmates upon completion of sentence; and Master Response 4, which discusses local services.

13-96 This comment letter addresses the County Board of Supervisors. This comment recommends adopting a resolution in opposition to the proposed project, unless all mitigation measures suggested in the letter are appropriately addressed in the FEIR. The comment letter proceeds to identify specific impacts and mitigation measures, which are addressed in the responses below.

13-97 The letter describes the instruction from the County Board of Supervisors to the County Administrator to provide a report describing the perceived impacts of the proposed project. Generally, the "impacts" described are fiscal in nature or related to recruitment and staffing, which would be unlikely to lead to adverse physical changes in the environment (State CEQA Guidelines, Section 15131[a]). The letter is generally consistent with the actual resolution adopted and provided in this FEIR as Letter 1. Please see responses to Letter 1 for additional detail, as well as Comment 13-82 and Master Response 4 related to local services.

13-98 This comment comprises the resolution adopted by the County Board of Supervisors in opposition to the proposed project. This resolution is also provided as Letter 1. Please see the responses to Letter 1.

13-99 This comment provides an introduction to the remainder of the letter. No specific issues related to the adequacy of the DEIR or other environmental issues are raised.

13-100 This comment raises issues related to staffing and public services. Please see Master Response 3 and Master Response 4.

13-101 The comment raises issues related to staffing and public services. Please see Master Response 3 and Master Response 4.

13-102 The commenter indicates that the indirect employment generated by the proposed project (i.e., secondary employment generated from the increased need for local goods and services resulting from the addition of up to 3,000 employees in the vicinity) would come "at the expense of the Sheriff's Office who would require most of these same goods and services that will be going to the CHCFS [CHCF Stockton] instead."

Some examples of secondary employment generated by the proposed project would include additional attendants needed at local gas stations, additional clerks at local grocery stores, and additional cashiers at local restaurants. As stated in the DEIR (page 4.11-9), "Secondary jobs are typically in the retail and service industries and would be expected to be filled by local residents, especially given the high local unemployment rate." The unemployment rate in San Joaquin County is 15.1 percent. (Cal. Employment Development Department, Jan. 2009, Maps of Unemployment Rates and Jobs, available at: http://www.calmis.ca.gov/file/lfmonth/lf_ geomaps.pdf (as of FEIR publication). The DEIR indicates that there would not be substantial project-related effects as a result of secondary employment. Furthermore, there is no reason to believe that the provision of "goods and services" to the Sheriff's Office would be restricted because of the increased need for these secondary jobs (DEIR, p. 4.11-9 through 4.11-10). If anything, given San Joaquin County's (and the nation's) current high unemployment rate, the creation of new jobs would benefit the county, not hurt it. The comment does not take issue with the environmental analysis contained in the DEIR or assert that the creation of new jobs would result in any adverse physical changes to the environment (see Section 15131[a] of the State CEQA Guidelines).

13-103 The commenter expresses concern that the large size and abbreviated schedule of the proposed project's construction program would limit the availability of construction workers and materials. The availability of construction staff and materials as it relates to other projects in the region is not a CEQA issue (see Section 15131[a] of the State CEQA Guidelines), and will therefore not be addressed thoroughly; however, it should be noted that the current economic state of California's building industry and the massive unemployment of construction workers in the region would seem to indicate that staff and materials would be readily available for the proposed project and the jail expansion project to be constructed simultaneously.

13-104 Please see Response to Comment 13-103 above.

13-105 The commenter indicates that the proposed project's impacts to the freeway mainline could affect response times of emergency and law enforcement vehicles. Please see Master Response 5: "Traffic Issues," which indicates that revisions to Mitigation Measure to TRAF-4 (requiring all project traffic to occur in the off-peak hour) would avoid project impacts to mainline freeway during peak hours, although the project may contribute to impacts during off-peak hours. However, emergency and law enforcement vehicles are equipped with sirens and lights and are able to maneuver outside of travel lanes, which allows them to move more quickly through congested freeway traffic (which would likely exist with or without the project) than a civilian

vehicle. Therefore, the project would not result in substantial increases in emergency vehicle response times.

13-106 The commenter states that because the proposed project may require assistance from local emergency response agencies should an incident occur beyond the capabilities of on-site personnel or facilities, the project could place a strain on local law enforcement and adverse affects related to coroner's office services. The CHCF Stockton would provide for sufficient security to handle foreseeable events. In fact, based on experience at CDCR facilities, the need for assistance by outside law enforcement is rare. Most instances are associated with such things as an occasional visitor who tries to sneak drugs into a facility and is arrested. But even these sorts of events are infrequent, and require local law enforcement (one patrol car) only a few times each year. Regarding coroner's office services, it is anticipated, based on similar facilities, that coroner's cases at CHCF Stockton would be rare. In addition, CPR would coordinate with the County regarding reimbursement for coroner's services on a case-by-case basis. Also see Master Response 4 related to local services.

13-107 The commenter emphasizes perceived impacts on coroner's services. Please see Response to 13-106 and Master Response 4.

13-108 The comment indicates that the DEIR's discussion in the cumulative analysis slightly overestimates the number of beds for the proposed jail, as funding for Phase 2 of the jail expansion may not become available. The DEIR's cumulative analysis conservatively assumes that Phase 2 of the Jail Expansion would occur. If Phase 2 of the jail expansion is not developed, no new impacts or increase in severity of impacts identified in the DEIR would result.

13-109 The comment raises issues related to staffing. Please see Master Response 3.

13-110 The commenter once again emphasizes perceived impacts on coroner's services. Please see Response to Comment 13-106 and Master Response 4.

13-111 This comment is related to the potential for population increases (and subsequent impacts on public services) associated with families of inmates moving to the vicinity. Please see Response to Comment 13-82 and Master Response 4.

REC'D DEC 0 3 2008

14

CITY OF STOCKTON

FIRE DEPARTMENT
CITY HALL • 425 N. El Dorado Street • Stockton, CA 95202-1997 • 209/937-8801 • Fax 209/937-8836
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November 17, 2008

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DRAFT ENVIRONMENTAL IMPACT REPORT FOR PRISON AT THE NORTHERN CALIFORNIA YOUTH CORRECTION CENTER

The proposed expansion of the Northern California Youth Correction Center at 7540 South Newcastle is not located in the Stockton city limits. If you were considering annexation into the City of Stockton, a firehouse with 4 personnel 24/7 would be required per City of Stockton General Plan. You may be responsible for Public fees and Community Facility District fees should you annex. 14-1

After review of your DEIR, the level of fire service currently available to the project is correct. Should you have any questions of the Stockton Fire Department, please call Division Chief Paul Willette at 209-937-8802. 14-2

RONALD L. HITTLE
FIRE CHIEF

RLH:kg
FD 67651

14-1 Please see Responses to Comments 6-1 and 12-3. As stated, CPR is not proposing annexation of the project site by the City of Stockton, and annexation is not needed. Further, no significant impacts on fire protection services would result.

14-2 This paragraph states that the DEIR correctly describes the current LOS to the project site. The comment is noted.

15

Crystal McIntyre

From: raul sanchez [raulsanchez3558@yahoo.com]
Sent: Friday, December 05, 2008 10:56 PM
To: PR
Subject: DEIR comments

In the Executive Summary under the section Areas of Controversy it is stated ". . . impacts associated with potential shortages in qualified employees to work at both the project and at existing county facilities." I could not find any further discussion of this item. Please explain. 15-1

Does the proposed lethal electrified fence actually discharge a lethal dose of electrical charge upon contact by a human being thus killing that human being? 15-2

15-1 The comment pertains to the statement in the "Areas of Controversy" section (Section 1.4, page 1-5) of the DEIR that there is a concern that the proposed project may result in a shortage of qualified employees to work at both the proposed facility and existing facilities. The DEIR evaluated potential employee shortages to the extent that shortages could result in potentially significant impacts on the physical environment. The threshold of significance for impacts on government facilities, including County facilities, is whether the construction of improvements to existing facilities or of new facilities, in order to maintain acceptable levels of service, results in significant environmental effects (DEIR, page 4.12-6). County staffing shortages would not require the construction of new facilities or modification of existing facilities. Therefore, significant impacts on the environment resulting from construction are not reasonably foreseeable. Please refer to Master Response 3, "Recruitment and Staffing Issues Resulting from the Proposed Project," for additional discussion.

15-2 The comment asks whether the lethal electrified fence would kill a person if he or she touched it. If a person touched the lethal electrified fence, it would kill him or her. The fence is designed to not allow escape from the prison. However, by design, accidental contact is virtually impossible. The lethal electrified fence would be located between two 12-foot, high security, razor-wire topped non-electrified fences. Both sides of the fence would be clearly posted with signage indicating the lethal hazard. In order to access the electrified fence, one would need to be willing to withstand serious injury from the razor wire first. This is not a rational expectation. No instance of accidental human death resulting from a CDCR lethal electrified fence has been recorded.

16

CALIFORNIA HEALTH CARE FACILITY, STOCKTON

Draft Environmental Impact Report Public Meeting

San Joaquin Council of Governments Board Room

Monday, November 10, 2008

REPORTED COMMENTS

Taken before ROBERT R. CUDA, CSR No. 2652

a Certified Shorthand Reporter

for the State of California

---oOo---

APPEARANCES

BILL GOODWIN, concerned citizen.

MANUEL LOPEZ, San Joaquin County Administrator's Office.

MICHAEL SELLING, San Joaquin County Department of Public Works.

DOUGLASS WILHOIT, Greater Stockton Chamber of Commerce.

CYNTHIA M. CLAYS, San Joaquin County Human Resources Division.

SCOTT T. SEAMONS, Hospital Council of Northern & Central California.

ROSALIO ESTRADA, concerned citizen

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I N D E X

---oOo---

California Health Care Facility, Stockton
Draft Environmental Impact Report Public Meeting
San Joaquin Council of Governments Board Room
555 Weber Street, Stockton, California
November 10, 2008.
---oOo---

MR. LOPEZ: My name is Manuel Lopez. I am the County Administrator for San Joaquin County. I am here this evening to reiterate the position taken by the Board of Supervisors on October 21st in opposition to the proposed health care facility unless all identified mitigation measures are complied with by the State. The written document was sent to the Receiver's office, and he had a copy of it. But subsequent to that, I spoke to with Mr. Stapler of the California Prisoners Receivership and advised him of the impact to the county that we are aware of as of now, and we also recognize that there will be other impacts identified over the coming days and weeks. We have already identified in excess of $105 million worth of direct impact to our services and our facilities. In addition to that, we have identified an annual cost of $25 million that we understand will not be forthcoming from the State. 16-1

The discussion with Mr. Stapler focussed on the

opportunity to work with the State in an effort to contract services that will be required by the State in order to help offset some of those costs to the County. While the Board remains opposed to the project unless all mitigation measures are addressed, a big factor in the ultimate decision should be whether or not the California Prisoner Receivership works closely with the County and all of the affected departments to bring about satisfactory contractual relationships that will partially offset those impacts.

The project environmental impact report talks about physical changes to the environment, and while many of those services identified by the County are not physical per se, the ultimate impact to the county could result in physical degradation of our facilities as well as, and clearly, of our services. 16-2

In summary, we look forward to working with Mr. Kelso and Mr. Stapler in bringing those contractual relationships into a form that is beneficial to both the State, the Receiver, and the County.

Thank you.

MR. GOODWIN: I am Bill Goodwin, and I work with the County Office of Education, but I am here on my own. This is me, myself. Okay? It has nothing to do with them. Okay?

16-1 The commenter indicates that the proposed project would result in a $105 million direct impact on County services and facilities, in addition to $25 million annually. This comment is also reflected in the resolution adopted by the County Board of Supervisors, included as Letter 1. Please see responses to Letter 1.

16-2 The commenter indicates that, although the fiscal impacts described would not result primarily in physical impacts on the environment, eventually degradation to County facilities and services could result. The commenter admits that most of the fiscal impacts would not result in physical impacts on the environment

Please see Response to Comment 24-2 for a discussion related to urban decay resulting from economic effects. Please also refer to Master Response 3 regarding staffing issues and Master Response 4 regarding public services.

opportunity to work with the State in an effort to contract services that will be required by the State in order to help offset some of those costs to the County. While the Board remains opposed to the project unless all mitigation measures are addressed, a big factor in the ultimate decision should be whether or not the California Prisoner Receivership works closely with the County and all of the affected departments to bring about satisfactory contractual relationships that will partially offset those impacts.

The project environmental impact report talks about physical changes to the environment, and while many of those services identified by the County are not physical per se, the ultimate impact to the county could result in physical degradation of our facilities as well as, and clearly, of our services.

In summary, we look forward to working with Mr. Kelso and Mr. Stapler in bringing those contractual relationships into a form that is beneficial to both the State, the Receiver, and the County.

17

Thank you.

MR. GOODWIN: I am Bill Goodwin, and I work with the County Office of Education, but I am here on my own. This is me, myself. Okay? It has nothing to do with them. Okay?

I do not think this is a good plan. It won't reduce the recidivism rate, and the plan is too expensive. $8 billion to build housing for 10,000 prisoners is a cost of $800,000 per prisoner. I think that is an outrageous amount. A better plan would be to spend the $8 billion on County jails. At a cost of $160,000 per prisoner, this would make room for 50,000 prisoners. Add this to the fact that all job training is local, we could reduce the recidivism rate by giving all prisoners job training and jobs before they were released. The County jails could hold all prisoners sentenced for three to four years.

I don't know what the number is. I mean, I don't know how many 50,000 is. I don't have that information. Okay? 17-1

They would stay in school until they were all high school graduates and then start job training in the local community colleges six months to one year before they were released. So they would all be on ankle bracelets and come back to the jail each night. This phase into the community and training for a real job that exists would cut the recidivism rate in half. We always will have some people in jail. I mean, there's always going to be some people in jail. They are never going to go away.

Now, how do we spend the $1.2 billion in operations? First we send $1 billion to the counties for running the new jails. Then we send $1 billion to the county hospitals to handle all the sick inmates. This would be $100 million to ten county hospitals, or $50 million to twenty county hospitals. Either way, it's enough money to take care of all the physically ill State prisoners. Then we spend the final $.5 billion on ankle bracelets because everybody that went out to jobs and job training is on ankle bracelets. 17-2

I agree that all prisoners have some form of mental illness. The difference between a prisoner and a homeless person is the homeless person doesn't commit crimes. Okay? So they have more mental illness. Okay? To build jails to help them improve their mental health is not as effective as giving them good prescription medicines and counseling for the inmates. 17-3

MR. SELLING: Michael Selling with San Joaquin County Public Works, Transportation & Planning.

A few comments with regard to infrastructure from the County's perspective. With regard to transportation, the project would be subject to the traffic impact mitigation fee, regional transportation impact fee. Those are both infrastructure fee programs related to transportation impacts.

17-1 The commenter states that the construction of County jails would be more economical and beneficial to the community than the construction of the proposed project. This comment does not address the contents of the DEIR, or otherwise raise environmental issues, so no further response can be provided; however, the comment will be provided to CPR for consideration.

17-2 The commenter presents a scenario in which the construction of County jails would be more economical and beneficial to the community than the construction of the proposed project. Although this comment does not address the contents of the DEIR, or otherwise raise environmental issues, it will be provided to CPR for further consideration.

17-3 The commenter indicates that although he believes that all prisoners have some form of mental illness, building jails to help improve their mental health is not as effective as giving them good prescription medicines and counseling. Although this comment does not address the contents of the DEIR, or otherwise raise environmental issues, it will be provided to CPR for further consideration.

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18

18-1

The project would likely necessitate the widening of Arch Road in the County's portion and Austin Road from Arch Road to the facility's entrance and perhaps somewhat south of the entrance. It will also include frontage improvements and the need for dedication along the project's frontage on Austin Road. 18-2

Another impact that the County foresees is signal and intersection modifications at Arch Road and Austin Road. 18-3

And lastly as far as transportation at least at this time, the project would require an encroachment permit for any work in the county right of way. And the project would also be subject to plan check and field inspection fees for any offsite work in the county's right of way. The County recognizes that the project states that it's within the City of Stockton's sphere of influence; however, until such time as the project area is annexed into the city, the project needs to meet the county's mitigation requirements. 18-4

With regard to utilities and flood control, the project would need to provide a detention pond and terminal drainage system for adequate drainage. And the County would also request to review hydrologic and hydraulic analyses, and the project would need to demonstrate through those analyses that all property 18-5

both downstream and upstream of the discharge will not be subject to a higher flood level as a result of the proposed drainage from the project. The project would be required to pay water impact mitigation fees for the Stockton east area, and the County recognizes that water and sewer services would be provided by the city. We are under that assumption.

Thank you.

MR. WILHOIT: Douglass Wilhoit, CEO, Greater Stockton Chamber of Commerce, representing over 1,700 businesses in Stockton and San Joaquin County.

We are on record as opposed not only to the men's hospital prison, but also the nonpublic processes taking place up until this point and appears it will be continuing to do so. This is no reflection on you as a court reporter, but as a former elected official, a public meeting means there's public input. There's really no public input in a public forum tonight which is a sham and total disrespect to the people of Stockton and San Joaquin County. Again, this is no reflection on the court reporter.

MS. CLAYS: My name is Cynthia Clays. I am with San Joaquin County Human Resources.

I am here to speak on what I consider to be the impact on recruitment and retention of San Joaquin

18-5 Cont'd

18-1 The commenter raises the issue of transportation and traffic fees. Please see Response to Comment 13-39 and Master Response 5: "Traffic Issues," which discuss traffic fees.

18-2 The commenter indicates the need to widen County roadways. Please see Master Response 5: "Traffic Issues," which discusses the elimination of project-related peak hour traffic by revising Mitigation Measure to Impact TRAF-4 to restrict shift changes, visiting hours, and deliveries to occur only in off-peak hours. This avoids project impacts to local roadways.

18-3 The commenter foresees the need for signalization at the Arch Road/Austin Road intersection because of project impacts. Please see Master Response 5 "Traffic Issues."

18-4 The commenter indicates the requirement for an encroachment permit. The comment is noted. Please see Response to Comment 13-38.

18-5 The commenter indicates that the proposed project would require a detention pond and terminal drainage system for adequate drainage and requests that the County review hydrologic and hydraulic analyses. The commenter further states that the proposed project would need to demonstrate through those analyses that all property both downstream and upstream of the discharge would not be subject to a higher flood level as a result of the proposed drainage from the project. In addition, the commenter states that water and sewer services would be provided by the City and that a payment of water impact mitigation fees for the Stockton east area would be required. In response to the comment regarding the proposed drainage for the project, please refer to Response to Comment 13-77. With regard to payment of water impact fees, water supply for the proposed project would be provided by the City of Stockton. Regarding water supply, please see Response to Comment 6-1.

both downstream and upstream of the discharge will not be subject to a higher flood level as a result of the proposed drainage from the project. The project would be required to pay water impact mitigation fees for the Stockton east area, and the County recognizes that water and sewer services would be provided by the city. We are under that assumption.

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I am here to speak on what I consider to be the impact on recruitment and retention of San Joaquin

19

19-1

19-1 The commenter suggests that the public meeting on the DEIR did not allow appropriate public input. CEQA does not require public hearings, unless the planning process of a public agency requires public hearings for the agency's projects. No hearings are required to receive oral comments on a DEIR (State CEQA Guidelines, Section 15202[a]). In the case of the proposed project, the lead agency conducted both a public scoping meeting during the NOP process (because the proposed project is considered to be a project of statewide, regional, or areawide significance, one scoping meeting is required pursuant to Section 15082[c][1]) and held a public hearing on the DEIR to facilitate the purposes and goals of CEQA. A court reporter was provided to accurately record comments. Leave-behind/mail-in comment cards were also provided, as well as an email address, and a contact/address for other written comments.

The format of the hearing was designed to allow members of the public the opportunity to provide comments orally and for the comments to be recorded accurately. CPR chose a more intimate format, where commenters could speak directly to a court reporter, rather than having to stand in front of a roomful of people. There is nothing inherent in the selected format that would stifle public input.

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20

20-1

County employees, specifically in the areas of health care and corrections. Both health care services in San Joaquin County and the Sheriff's Office employ health care staff, and the Sheriff's also employ correctional staff. The new facility and the enormous staffing needs to operate the new facility will directly impact San Joaquin County's ability to retain and recruit similar staff.

The State salaries for correctional officers and medical personnel, such as registered nurses, clinicians, pharmacists, LVNs, psychiatrists, are significantly higher than our County salaries. Coupled with the State-defined retirement plan and in some cases safety retirement for nontraditional safety positions such as RNs will create a staffing crisis for San Joaquin as an agency.

San Joaquin County already experiences challenges in recruitment and retention in many of the medical professional areas as we compete with the private sector hospitals for positions that have a limited supply of qualified applicants such as pharmacists, registered nurses, and licensed social workers. If the County is forced to compete with the State salaries for this position, it may be at the risk of sacrificing other County programs.

20-1 Cont'd

20-1 The comment raises issues related to staffing. Please see Master Response 3, "Recruitment and Staffing Issues Resulting from the Proposed Project."

MR. SEAMONS: My name is Scott Seamons. I am the Regional Vice President for the Hospital Council of Northern & Central California, which is an association representative of our local hospitals particularly in the San Joaquin County and surrounding counties surrounding San Joaquin Valley. My role is to represent the interests of the hospitals on issues such as this issue and other community issues which may be similar to this. And I am also here under the approval and direction of hospital CEOs in San Joaquin County to raise concerns about the description of the project as it currently stands.

The primary concern the hospitals have at this point in time is one of workforce issues, and the workforce situation in San Joaquin County is very delicate and fragile. It has a balance that's has been problematic to stabilize, and particularly as it relates to physicians and specialists, RNs, LVNs, and new therapy employees and students.

The proposed project as we understand it from the EIR stipulates that there will be approximately 3,000 employees hired to staff this new facility. This facility as we look at the job categories that they will be hiring will be potentially hiring over 1,600 health care workers and not counting the correctional officers

21-1

or anything else. I am talking about those job categories that we in the health care community also employ. Sixteen hundred employees in various categories of RNs, LVNs, and nursing and even housekeepers, unit secretaries and the like are currently job categories that we have in place at our hospitals. It's our understanding that the prison system intends to hire these employees at rates, and salary, and benefit packages much higher than the market and community standard, and as a result it will severely impact the workforce currently employed at the hospitals if they are paid 20 to 30 or 40 percent more than what they currently earn at their present location. That kind of impact would have devastating effects on our hospital. And if it's their intent, albeit intentional or unintentional, to recruit those positions out of the rank and file of our hospitals, that would create a workforce crisis in this valley that we can't tolerate.

So our request to the Receiver and the staff, and we are working with them hopefully in a productive manner, to anticipate those specific job functions and job categories that will be hired at the prison and to work within an existing educational structure, programs and services that can train those employees in adequate periods of time to staff the program as it opens in the

21-1
Cont'd

projected timeframe.

The timeframe as we see it, 2011, is not enough time to bring that many employees online. And if they are planning on our educational institutions to produce those students and to have those students qualify for their various new positions under the State-mandated regulations and licensing standards, that's an unrealistic goal. So unless they are planning on educating and recruiting all of these students and new employees outside of our area, we have serious workforce concerns that need to be mitigated, and the Receiver, and the colleges, and the hospitals who will provide clinical sites for at least the licensed nurses need to work together. And so we would request the Receiver to engage all of those elements together in the planning and hiring of the workforce needs. To date that's not happened, and we have serious concerns about that.

21-1 Cont'd

We also feel as hospitals that an important part of this project is a redefinition of what prison health care is and how they intend to provide health care to their inmates, the support and the ability of a prison health care system to provide health care for their own. Traditionally the hospitals have received a certain volume of referrals from the prisons to the hospitals for acute care services. As we look at the

21-2

environmental impact report and the description of the levels of services planned at the health care facilities, it appears to us that they will be doing acute medical care as well as long term custodial care. We think that that will impact the volume to our hospitals. And we are not saying that we oppose that so much as we need to plan together to understand what changes the Health Care Receiver and this project will do in terms of caring for the acute phase of illness for those inmates and anticipate and plan on the hospital side a reduction in that volume were that to occur. So there needs to be communication and collaboration between the hospitals and the Receiver on the levels of care changes that are anticipated with this project.

21-2 Cont'd

Those are our two primary concerns.

We also want to support the community as a whole in terms of resolving the concerns that they are raising before this project moves forward in its final stages. So we appreciate continued engagement by the Receiver with those County agencies.

MR. GOODWIN: I am Bill Goodwin, and they said that they couldn't mitigate the CO_2 emission problems from this portion of the CEQA, and that's totally untrue. They could put enough solar panels on there that they wouldn't have any CO_2 emissions from the

21-1 The comment raises issues related to medical staffing. Please see Master Response 3, "Recruitment and Staffing Issues Resulting from the Proposed Project." Please also see Master Response 4, related to public services. Additionally, CPR appreciates the sensitivity of this situation and fully intends to develop a partnership with the local health care providers, public and private alike, to train and recruit a broader pool of personnel so that both the project and existing health care providers have adequate staff. As described in the DEIR (see pages 4.11-7 through 4.11-9), a systemwide shortage of health care providers exists in California, and this shortage is expected to worsen over time. The proposed project would not exacerbate this issue; the inmates would require adequate health care in California, whether at the project site or elsewhere. Even if they were not incarcerated, these individuals would require health care. The proposed project does, however, place a geographic focus on this issue, not only in Stockton, but in other communities where project facilities are proposed.

It is the Receiver's charge to improve health care for California's 170,000 inmates so that the state meets constitutional standards. This will only be accomplished by providing adequate facilities and by hiring qualified personnel. There is a shortage of qualified personnel already. In response, the Receiver plans to develop training that would benefit the community at large, as well as provide for a qualified workforce.

21-2 The commenter suggests that the proposed project could reduce the volume of prison referrals to local hospitals and that CPR should coordinate with local hospitals to help plan for any such changes in volume. As prison health care facilities are constructed, it is likely that demands of those hospitals that have provided care for state inmates would be less than under current conditions. In places like San Joaquin County, where substantial population growth is projected, this may slightly slow the need to construct new medical facilities. Also, please see Response to Comment 21-1 with respect to CPR working with local health care providers and Master Response 3 related to staffing and recruitment issues.

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22

MR. GOODWIN: I am Bill Goodwin, and they said that they couldn't mitigate the CO_2 emission problems from this portion of the CEQA, and that's totally untrue. They could put enough solar panels on there that they wouldn't have any CO_2 emissions from the

22-1

facility. It would supply all of their electrical power.

MR. ESTRADA: My name is Rosalio Estrada. My address is 735 West Rose Street in Stockton, California 95203. My telephone number is area code (209) 471-0978.

I am here this evening because I have been asked to come by some concerned citizens, and also I saw the notice in the local newspaper this morning that the meeting was going to be held today. I have been following this development of the medical facility for the prisoners of the state of California in Stockton, I guess, since last spring when it first was mentioned. And I would like to say that at this point here today, November 10th, a Monday, I looked at the draft EIR on the counter on one of the tables here, and I found it to be deficient. However, I will address that issue in written comments to the Board. I think that the CEQA response is inadequate, and I think that a lawsuit should be filed to stop it until certain issues will be addressed.

However, I would like to make some comments regarding the facility. I think that I am for President Obama. I am for John McCain. I am for the United States Government. I believe that we should have universal health care, and I think those rights should

22-1
Cont'd

22-1 This comment challenges the DEIR's finding that impacts resulting from CO_2 emissions could not be mitigated to a less-than-significant level and recommends that the proposed project install solar panels on the facility for electricity.

The DEIR concluded that CO_2 emissions would have a significant unavoidable impact because insufficient data were available to demonstrate through modeling that emissions would be adequately reduced. The DEIR discusses two sources of CO_2 emissions, mobile sources (e.g., cars traveling to and from the facility) and stationary sources. Three specific mitigation measures are required for the operations phase of CHCF Stockton (DEIR, page 4.4-32): implementing a rideshare program, offering preferential parking for carpools, and including as many clean alternative energy features as feasible, including photovoltaic cells and solar thermal energy. The first two measures are designed to address mobile-source emissions and the third is designed to address direct and indirect stationary-source emissions (such as emissions from power stations). The degree to which alternative energy sources can be relied upon has not yet been determined and will not be until further design is completed. However, required mitigation for NO_X emissions, which mandates a 33.3% reduction (see page 4.4-32 of the DEIR), would similarly reduce CO_2 emissions because both are generated by combustion of fossil fuels.

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However, I would like to make some comments regarding the facility. I think that I am for President Obama. I am for John McCain. I am for the United States Government. I believe that we should have universal health care, and I think those rights should 23-2

be extended to every citizen. And for those unfortunate citizens that are locked up in prison, they should receive some semblance of humanly means taken care of by medical professionals. However, I feel that the fact that we are building a facility here, because we have a facility for juvenile delinquents, and the CYA's facility, Carl Holton School, and the women's prison here, I think that we have put a lot of emphasis on incarceration. However, being a citizen of Stockton for the last sixty years, I have noticed that the state of California has moved in many ways around this and in many good ways. I think the UC Davis Medical Facility, I think the Sacramento State College, I think Stanislaus State College, I think Hayward State College, I think Sonoma State College, I think San Francisco State College, I think San Jose State College, I think Fresno State College, I think that all the state colleges in Northern California and the university, UC at Merced, that great progress is being made in terms of educational facilities. However, Stockton with its 54% dropout rate for high school students, I think we have enough prison and prison guards as role models here in this community that it's prevented a lot of people or has given a lot of people desperate ideas about leaving.

And I think what we need to do here, I would

23-2 Cont'd

like to see a teaching facility, some kind of medical school, either that the county hospitals set up in conjunction with this project or maybe with another state college in Stockton that would primarily be concerned with medical issues that could bring people aboard in terms of training them, and then having a facility for them to work, and using this facility as a transit facility, which it's going to be, for treating people that would be in the community to get well and leave. We could also be training our local population here to be able to help these people help themselves.

I think in terms of a farming community, I would say that what we are doing here is like tearing up some ground, and planting some carrots, but not putting the water there. It's not going to grow. So we have some austere projects here in the DVI, the Deuel Vocational Institution. That's a prison in Tracy. We have the women's prison which is closed down. We have the CYA under court order that said close down with Carl Holton and the other juvenile facilities. And we also have the Mule Creek facility, and we have the Ione facilities. So we have these state prisons, and we are surrounded by prisoners. I think what we need to do is do something positive. I think we need to spend some money. I know the federal receiver is primarily

23-2 Cont'd

concerned with medical care, but I think the state needs to look to the political leadership of this area and needs to look at doing something in conjunction with just putting prisoners here. We have to educate the public and get the public people behind us, the schools, the universities, the state colleges. Because what we fail to do here, and we are getting a lot of opposition locally, is we just get prisoners here, bring them back just to take care of them. And then when the prisoner leaves and the doctors leave, we're stuck with carrots again. But like I said, it's like planting carrots without the water. You need people to staff these institutions. Those people should be trained, and they should be trained to take care of prisoners. Prisoners get sick just like everybody else. If you are in prison or at home, you can have a heart attack. If you are in prison or at home, you can have a cavity. All the problems that the prisoners have in general are reflected in our community.

The fact is, we have a community here that needs some training, some educational assistance, and I think this is an opportunity to educate the people here in terms of providing health care not only for the community but for the state. We have a lot of people here.

23-2
Cont'd

Then, again, I would say that in terms of addressing the issues contained in the CEQA statements, I read that one section on public services, and I found it to be deficient. So I will be writing comments to that.

But, again, I am in favor of this project if we can also like plant carrots, we also put a little water to go with the carrots to make sure they grow. We need some educational facilities here. Maybe a state college here, Stockton State College, that would train people to be nurses, and how to take people's blood, how to take their pressure, you know, work in pharmacies, have something where people in a year or two can come out and get jobs in the medical field.

23-2
Cont'd

So with that, I appreciate being able to speak, and I would like to see those issues addressed in terms of how are we going to get people to work here and using the local resources, not just the ground, but the people who live here on a 24/7-basis.

Thank you.

---oOo---

CERTIFICATE OF REPORTER

I, ROBERT R. CUDA, a Certified Shorthand Reporter in and for the State of California do hereby certify:

That said proceedings was taken in shorthand by me, a Certified Shorthand Reporter of the State of California, at said time and place and was thereafter transcribed into typewriting; that the foregoing transcript constitutes a full, true and correct reporting of said proceedings which took place; and that I am a disinterested person to the said action.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of November 2008.

ROBERT R. CUDA, CSR No. 2652

23-1 The commenter states, without elaborating further, that the EIR is inadequate. Because no specific comments are included about the contents of the DEIR, no response can be provided.

23-2 The commenter is in favor of the proposed project, if the project would also provide educational or training opportunities for the community. The commenter also expresses that the Public Services section of the DEIR is deficient, but does not explain why. Because the rationale explaining why the analysis is inadequate has not been provided, no response can be provided.

HERUM\CRABTREE
ATTORNEYS

04277

24

Steven A. Herum
sherum@herumcrabtree.com

December 4, 2008

Ms. Laura Sainz
CEQA Project Manager for CPR
URS/Bovis Lend Lease Joint Venture
2400 Del Paso Road
Suite 255
Sacramento, California 95834

Re: Draft Environmental Impact Report
California Health Care Facility (Stockton)
October 2008

Dear Ms. Sainz:

This office represents the Greater Stockton Chamber of Commerce. The Greater Stockton Chamber of Commerce (Chamber) includes 1,680 members who employ over 40,000 employees in the Stockton area. Its members are taxpayers, voters and residents of Stockton and San Joaquin County. The Chamber is vitally interested in the quality of life and economic opportunities available in Stockton and San Joaquin County.

Given this vital and central mission the Chamber asked me to offer their comments concerning the Draft Environmental Impact Report for the California Health Care Facility (Stockton) (October 2009) ("DEIR"). This DEIR purports to evaluate the significant environmental effects caused by the construction and operation of a "subacute medical and mental health care facility on the project site with up to 1,734 beds." DEIR at 3-9 (hereinafter "Project").

24-1

To start with, CEQA is to be expansively interpreted in order to provide maximum evaluation and consideration of potential direct and indirect environmental effects. Title 14 California Code of Regulation § 15003(f) [hereinafter CEQA Guideline]; *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247,259. In keeping with this expansive statutory mandate the "EIR requirement is the heart of CEQA." CEQA Guideline § 15003(a); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795.

24-2

More specifically, an EIR must consider both direct and indirect environmental effects (CEQA Guideline § 15064(e)) including secondary environmental effects resulting from direct economic effects. The expansive interpretation of this rule was presented in

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Bakersfield Citizens for Local Control v. City of Bakersfield (2004) 124 Cal.App.4th 1184, 1205-1206 and illustrates the meaningful relationship between socio-economic direct effects to secondary or indirect environmental effects:

> Guidelines section 15131, subdivision (a) provides, "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 in turn caused by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes."
>
> Case law already has established that in appropriate circumstances CEQA requires urban decay or deterioration to be considered as an indirect environmental effect of a proposed project. The relevant line of authority begins with *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 217 Cal.Rptr. 893 (*Bishop*). There, the appellate court held that adoption of multiple negative declarations for different aspects of the same large regional shopping center violated CEQA. (*Id.* at p. 167, 217 Cal.Rptr. 893.) The court also agreed with appellant that on remand "the lead agency must consider whether the proposed shopping center will take business away from the downtown shopping area and thereby cause business closures and eventual physical deterioration of downtown Bishop." (*Id.* at p. 169, 217 Cal.Rptr. 893.) Citing Guidelines section 15064, the court found that the lead agency had an affirmative duty to consider whether the new shopping center would start an economic chain reaction that would lead to physical deterioration of the downtown area. (*Id.* at p. 170, 217 Cal.Rptr. 893.) Therefore, "[o]n remand the lead agency should consider physical deterioration of the downtown area to the extent that potential is demonstrated to be an indirect environmental effect of the proposed shopping center." (*Id.* at p. 171, 217 Cal.Rptr. 893.)

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Accordingly, in *Bakersfield Citizens* the socio-economic impact of store closures required the two EIRs to study in depth the potential that this non-environmental effect could start a "chain of events" leading to urban decay, a recognized environmental effect.

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The DEIR Did Not Correlate the Project's Adverse Air Quality Impacts to Resultant Adverse Health Effects.

Failing to correlate the Project's adverse air quality impacts to increased incidents of health ailments constitutes a prejudicial abuse of discretion. Health problems caused by a project must be addressed in an EIR, including health effects caused by increases in air pollution. *Bakersfield* at 1220. Specifically, CEQA requires an EIR to discuss "health and safety problems caused by the physical changes" by the proposal. §15126.2(a). In order to meet CEQA's disclosure requirement, an EIR must "*correlate* the identified adverse air quality impacts to resultant adverse health effects." *Bakersfield* at 1219 (italics added). "Correlate" is defined as: "to bring (a thing) into mutual relation (*with* another thing); **calculate** or show the reciprocal relation between; specif., to bring (one or two related or interdependent **quantities**, sets of statistics, etc.) into contrast (*with* the other)." Webster's New World Dictionary 319 (2d College ed. 1985) (italics in original; bold added).

Thus, the court in *Bakersfield* used "correlate" to mean an EIR must disclose the proportional relationship between increased tonnages in air pollution and increased incidents of health ailments. The DEIR fails to comply with this necessary informational disclosure requirement. Indeed, *Bakersfield* teaches us a truncated analysis involving a bare statement that increased air pollution tonnages means more people get ill fails to satisfy CEQA's information disclosure requirement. In *Bakersfield*, the two EIRs at issue calculated the approximate increased tonnage of air pollution and then baldly concluded that more air pollution means more health and respiratory ailments. *Id.* at 1220. According to *Bakersfield,* this embryonic level of detail is insufficient and resulted in the Appellate Court rejecting the air quality analyses for failing to quantify or correlate the relationship between increased health ailments and increased air pollution. *Id.* at 1220-1221. Accordingly, it is not enough for an EIR to simplistically conclude air pollution will increase and then supply a laundry list of pollutants and related health effects. Rather, CEQA is satisfied only when an EIR discloses and quantifies anticipated increases of health ailment events resulting from a project's increases in air pollution tonnages. 24-3

The DEIR essentially suffers the same affliction as the *Bakersfield* EIRs and likewise fails to satisfy CEQA. DEIR subchapter 4.4. The DEIR discloses the Project will increase the total tonnage of air pollution in the region and incorporates a table estimating the increase in "Criteria Air Pollutants and Precursors from Project Operations", including reactive organic gases, nitrogen oxides, and particulate matter. DEIR Table 4.4-6 at 4.4-31. **However the analysis deliberately omitted any quantification of the amount of ROG, NO_x, or particulate matter**. (DEIR at 4.4-31 "The exact amount of emissions were not quantified for the purposes of this analysis...".) The amount of air pollution emitted from the Project was omitted because the project features were "speculative". (DEIR 4.4-31 "in complete (sic) cooling plant design specifications and operation requirements".) The uncertain project

description concerning key features of the Project resulted in a significant omission of relevant information from the DEIR in the form of the amount air pollution emitted by the Project and the projected number of air pollution related health problems.

The DEIR concludes, "Based on calculations shown in Table 4.4-6, project-related activities in 2011 would generate emissions of NO_x exceeding SJVAPCD's applicable threshold of 10 TPY. The proposed project would therefore have the potential to violate or contribute substantially to an existing or projected air quality violation, expose sensitive receptors to substantial pollutant concentrations, and conflict with air quality planning efforts. As a result, this impact would be significant." DEIR at 4.4-32.

The analysis is cut off artificially at this point, however, and fails to quantify the increases in "known adverse health effects" produced by the Project's "significant and unavoidable" increase in air pollutants. By stopping short, the DEIR prevents the public from having a reasonable idea how much worse our health will be if the Project is constructed and operates. 24-3 Cont'd

The DEIR does not disclose the magnitude of public health effects resulting from the anticipated increase in ozone and particulate matter generated by the Project. This simply does not provide the public and decision makers with relevant information essential to determining the exacerbated health consequences caused by a significant and unavoidable increase in pollutants in the San Joaquin Valley nonattainment air basin.

Indeed, even the TAC health risk analysis, contrary to most environmental impact reports, failed to correlate increased TAC emissions to incidents of public health problems. This constitutes a serious omission of information that is routinely and customarily included in EIRs. See, DEIR at 4.4-9. 24-4

In order to foster this critical review, we append as Attachment 1 copies of the deficient air quality analyses from the *Bakersfield* EIRs and explained that this DEIR does less than the disapproved *Bakersfield* approach to studying and disclosing respiratory health effects. We also append as Attachment 2 qualified medical journal studies demonstrating the scientific and technical capabilities of studying the causal link between increased tonnages of air pollution caused by new development and increased incidents of air pollution caused illnesses. Yet this DEIR contains a dearth of information explaining why information correlating increases in air pollution to anticipated increases in cardiovascular disease was omitted. ["The EIR does not explain in even minimum detail the basis for the omission and provides no reasoned analysis clarifying why complete reliance on the AQNP is justified when this major omission exists." *Citizens to Preserve the Ojai* at 430.] Indeed, *Ojai* teaches us that this DEIR is deficient unless it expressed reasons for omitting a study correlating the adverse air quality impacts to resultant adverse health effects. But alas, the 24-5

only evidence is the multiple scientific studies we introduced illustrating that the requisite correlation of effect and harm is both feasible and practical. 24-5 Cont'd

The DEIR's air quality analysis ignores glaring omissions and falls short of fulfilling the disclosure requirement. This truncated analysis violates CEQA by omitting a correlation between adverse air quality impacts and resultant adverse health effects and does not disclose the severity of the Project's environmental impacts. As *Bakersfield* holds, brief references to, or the listing of, potential respiratory illnesses do not satisfy CEQA. *Bakersfield* at 1220. It is only when correct and feasible scientific analysis is conducted and the EIR calculates the significance of the impact in terms of increased events of disease and suffering, are the public and decision makers notified of a project's true impacts. This correlation information is scientifically possible) and legally required (*Bakersfield* at 1220), and the omission amounts to a prejudicial failure to proceed in the manner required by law. 24-6

The DEIR Failed to Satisfy Appendix F of the CEQA Guidelines.

The DEIR's actual disclosures fail to comply with CEQA's "Appendix F" energy disclosure and mitigation standards. Public agencies are directed to evaluate, disclose, and mitigate a project's energy implications in their environmental analyses, and the "[f]ailure to include a detailed statement setting forth mitigation measures proposed to reduce wasteful energy consumption as required by Pub. Res. C. §21100 (b)(3) may render an EIR legally inadequate." *CEB CEQA Treatise*, §14.14 at 711. "In order to assure that energy implications are considered in project decisions, the California Environmental Quality Act requires that EIRs include a discussion of the potential energy impacts of proposed projects, with particular emphasis on avoiding or reducing inefficient, wasteful and unnecessary consumption of energy." Guidelines Appendix F(I)(underline added) (see §15126.4).

Appendix F implements this CEQA mandate by instructing public agencies that "[p]otentially significant energy implications of a project should be considered in an EIR," and describing several energy-related issues to be evaluated such as energy efficiency, effects to energy supplies, effects on peak and base period demands, compliance with existing energy standards, and transportation energy consumption. *Id.* at (II)(C). Appendix F explains that compliance starts with the EIR's project description. To produce a legally sufficient analysis, the Guidelines direct an EIR's project description to include a discussion of: 24-7

- energy consuming equipment to be used by the project (App. F II.A.1.);
- energy requirements of the project by fuel type (App. F II.A.2.);
- energy conservation equipment (App. F II.A.3.);
- energy costs (App F. II.A.4.); and
- energy consumption per vehicle trip (App F. II.A.5.).

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Likewise, Appendix F suggests an EIR's "environmental setting" section "include existing energy supplies and energy use patterns in the region and locality." *Id.*

The DEIR omits any discussion of energy consuming equipment to be used by the Project, energy requirements of the Project by fuel type, energy conservation equipment, energy costs, or energy consumption per vehicle trip in the "Project Description" section as required by the Guidelines. See DEIR at 3-1 through 3-9. Further, the environmental setting fails to disclose existing energy supply and use patterns in Stockton or the surrounding region. Rather, the "Project Description" includes a list of service providers the Project will use for gas and electric service. DEIR 3-7. Moreover, the DEIR does not include the baseline information listed in Appendix F. 24-7 Cont'd

In short, the DEIR's analysis is limited to a series of evidence-starved conclusions offering no analysis or information produced by following Appendix F's procedure. This failure to proceed in a manner required by law is fatal to the DEIR's legal sufficiency.

When evaluating an agency's failure to meaningfully consider a potential impact due to omitted relevant information, "[t]he relevant question is whether the lead agency failed to proceed in the manner required by law." *Bakersfield* at 1208. Here, the DEIR's abject failure to adequately describe and mitigate the Project's energy impacts in compliance with Appendix F prejudices the decision-making process. The DEIR unlawfully dispensed with the energy evaluation and mitigation measures of Public Resources Code §21100, Guidelines §15126.5, and Appendix F. In addition, in light of California's ongoing energy supply crisis, which has resulted in inflated fuel prices, skyrocketing heating and air-conditioning bills, and regular summertime threats of "rolling blackouts", it is critical that the DEIR contain all necessary information relating to the Project's energy consumption. After reviewing the DEIR, neither the public nor decision makers know the extent to which the *entire* Project consumes energy, whether such consumption is inefficient and wasteful, and whether the impacts can be reduced or mitigated to less-than-significant levels. 24-8

THE DEIR'S EVALUATION OF THE PROJECT'S DIRECT AND INDIRECT IMPACT TO GLOBAL WARMING IS LEGALLY DEFICIENT

Public agencies are encouraged to adopt thresholds of significance. CEQA Guideline § 15064.7. For evaluating individual projects the State of California and regional state agencies offered multiple thresholds of significance for global warming. For instance, the South Coast Air District believes a project emitting three tons of GHG a year is significant. South Coast Air Quality Management District, "Draft Guidance Document—Interim CEQA Greenhouse Gas (GHG) Significance Threshold (October 2008). AB 32 establishes a state goal of reducing GHG emissions to 1990 levels by 2020 (a reduction of approximately 25 percent from forecast emission levels). 24-9

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Recently the State Air Resources Board concluded that the threshold should either be a zero threshold or, if a non-zero threshold is employed it "must be sufficiently stringent to make substantial contributions to reducing the State's GHG emission peak, to causing that peak to occur sooner or to putting California on the right track to meet its interim (2020) and long term (2050) emissions reduction targets." California Air Resources Board. Preliminary Draft Staff Proposal, Recommended Approaches for Setting Interim Significant Thresholds for Greenhouse Gases under the California Environmental Quality Act (October 24, 2008). In any event, the threshold is either a net no increase in emitting GHG or "stringent" steps to foster attaining the 2020 and 2050 goals. 24-10

Most importantly, since the CPR identifies itself as "acting in the capacity of a state agency" (DEIR at 2-1), it is bound by Executive Order Number 3-05 (June 1, 2005) calling for a reduction in GHG emissions to 1990 levels by 2020 and for an 80 percent reduction in GHG emissions to 1990 levels by 2050. This Executive Order constitutes a mandatory duty to all state agencies and constitutes a threshold of significance whenever a state agency is reviewing a proposal. 24-11

At least two fatal flaws are embedded in the Project's direct impact section concerning GHG. First, the section lacks a threshold of significance. Hence, the reader is unable to determine whether the impact is significant or not. Instead, the section, without any evidentiary support, concludes that the "emissions of alone single project will not cause globe climate change". DEIR at 4.4-24. Yet the various thresholds of significance discussed earlier, and ignored by the Draft EIR, do not focus on this question. Instead, the thresholds of significance focus on whether the proposal helps or hurts efforts to meet the 2020 and 2050 goals. Without a threshold of significance statement the entire analysis lacks an intellectual context and results in omitting relevant information. 24-12

Indeed, an EIR's sketchy treatment of the threshold or method to conclude whether an environmental effect is significant renders such an EIR legal deficient. In *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099. The court discussed the use of thresholds in determining (1) whether to prepare an EIR and (2) whether any of the possible significant environmental effects of the project will, in fact, be significant. *Id.* at 1106-09. The court held that "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...a threshold of significance cannot be applied in a way that would foreclose the consideration of other substantial evidence tending to show the environmental effect to which the threshold relates might be significant." *Id.* at 1109. 24-13

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In the EIR, the Amador Water Agency set forth various standards of significance, which mirrored Appendix G sample questions. The agency determined that the reduced stream flows "are insignificant since the thresholds developed from the standardized Appendix G checklist make it so." *Id.* at 1111. Petitioner asserted the agency abused its discretion by adopting narrow and irrelevant thresholds of significance which did not address the particular physical change the project would have on the seasonal reduction of surface flow in local streams.

The court did not even address petitioner's claim because "contrary to CEQA requirements, the EIR fails to explain the reasons *why* the Agency found the reduction in stream flow would not be significant." *Id.* at 1111. The court held that the EIR provided nothing but a "bare conclusion" because it simply explained how construction would affect existing local hydrology by reducing surface flow and then baldly concluded the impact would not be significant. *Id.* Since the EIR lacked a "statement of reasons", the court was unable to determine whether the agency reached its "less than significant" conclusion based on substantial evidence in the record or because it applied standards of significance that did not address reduction in stream flow as a potential environmental effect of the project. *Id.* at 1112. Either way, the agency abused its discretion by omitting the required statement of reasons. *Id.* 24-14

Second, the section does not provide information about the amount of GHG produced by the Project and whether the amount emitted facilitates meeting the 2020 and 2050 goals. However, in the cumulative analysis section we learn that the project would generate "twice the business-as-usual calculations" (DEIR 5-12) and "the proposed project would generate nearly 20,000 metric tons per year of GHGs, approximately 1.4 times the business-as-usual scenario." DEIR at 5-13. In short, rather than contribute to reducing GHG emissions to 1990 standard this project has the individual characteristic of making the GHG situation substantially worse. Amazingly, the DEIR bluntly concludes: "Although mitigation measures are required...the project could not meet the reduction targets necessary to attain consistency with goals established AB 32." DEIR at 6-5. This means, according to the Governor's Executive Order, that the Project has a direct significant environmental effect to GHG. 24-15

Accordingly, under any of the proposed and adopted thresholds of significance discussed earlier, the Project's individual impact on GHG is significant. The DEIR omits relevant information and data and reaches the wrong conclusion about whether the impact is significant or not.

Moreover, the DEIR failed to discuss the feasibility of multiple mitigation measures that could be imposed to reduce this significant effect. CEQA requires all feasible mitigation measures to be incorporated into a project, even if the environmental effect remains 24-16

significant. The State of California, Office of the Governor, Office of Planning and Research, has identified thirty three feasible mitigation measures to reduce GHG and attain the 2020 and 2050 goals. See State of California, Office of Planning & Research. "CEQA and Climate Change: Addressing Climate Change Through California Environmental Quality Act (CEQA) Review (June 19,2008) at Attachment 3. Each mitigation measure is feasible for the proposal and the DEIR has a duty to identify and discuss each proposed measure. Failing to perform this task results in an omission of information and failure to proceed in a manner required by law.

24-16 Cont'd

THE DEIR'S EVALUTION OF PROVISIONS FOR MUNICIPAL UTILITIES IS FACTUALLY INACCURATE

The DEIR contains a factual misrepresentation concerning the delivery of utility services and this misrepresentation results in the omission of information. According to the DEIR the City of Stockton will provide domestic water (DEIR 4.13-3) and waste water (DEIR 4.14-1) service. Yet the Project site is outside the municipal boundaries of the City of Stockton (DEIR 3.2) and extending this extra-jurisdictional service requires the approval of the San Joaquin Local Agency Formation Commission. Government Code §56133. Yet the DEIR does not identify nor does it discuss the potential impacts from expanding the extra-jurisdictional provision of service from the City of Stockton.

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THE DEIR'S EVALUATION OF TRAFFIC IMPACTS FAILED TO CORRELATE THE STUDY AREA TO THE PROJECT'S ACTIVITIES, INCLUDING TRANSPORTING FOOD TO OTHER FACILITIES, AS WELL AS FAILED TO CORRELATE THE TRAFFIC STUDY AREA TO THE RESIDENTS OF THE PROJECT'S EMPLOYEES

The scope and nature of the DEIR's traffic study must correlate to the commuter traffic patterns of the Project's employees and the traffic patterns of vendors and food transporters. At page 4.11-1 of the DEIR the report offers a distribution of employees to the adjoining communities and this Table 4.11-1 forms the basis for one end of each commuter trip for each employee. Yet the traffic study did not incorporate Table 4.11-1 and therefore there is a facial conflict between the area studied, the volume of traffic and the projected residents of Project workers. This results in relevant information concerning the traffic impact and the need for mitigation measures to be omitted from the DEIR.

24-18

THE DEIR'S EVALUATION OF GROWTH INDUCING IMPACTS WERE LEGALLY DEFICIENT

The DEIR provides an insufficient analysis of the potential for growth inducing impacts. The introduction of the use may result in increased pressure to urbanize areas around the facility, especially as offices and warehouses for vendors and service providers. The expansion of municipal water and wastewater services will further contribute to the

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pressure for urbanization. See, for instance, *Stanislaus Audubon Society v. County of Stanislaus* (1996) 48 Cal.App.4th 182. In particular *Stanislaus Audubon* teaches us that land use regulations, such as Williamson Act contract limitations and zoning restrictions are not sufficient barriers to growth pressures caused by development.

24-19 Cont'd

The DEIR points out that the various cities, in particular Stockton, have planned for future growth and therefore this Project cannot be responsible for a significant environmental effect. However, this theory misses the mark by a wide margin. The unexpected introduction of this Project to the planning area has the potential to alter and accelerate the rate and nature of growth in the planning area. This potential impact is not considered in the DEIR. Here the Project has the potential of altering the pattern and timing of development. This potential environmental effect should have been addressed in the DEIR, *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, and the failure to do so results in the omission of relevant information.

24-20

THE DEIR'S EVALUATION OF THE PROJECT'S CONFLICT WITH AGRICULTURAL OPERATIONS AND THE PROPOSED MITIGATION MEASURE ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE BUT INSTEAD ARE MERE SPECULATION

The DEIR concludes that imposing a three hundred foot buffer fully mitigates the potential conflict between the Project and contiguous agricultural operations. DEIR at 4.2-8. Impliedly the DEIR concludes that since agricultural operations occur three hundred feet from the Project's operation this is a sufficient buffer to mitigate the potential impact. However, the DEIR conducted no studies to support this conclusion. As a result this conclusion is naked and devoid of any evidentiary support. Interestingly, the DEIR concedes that it never contacted the County Agricultural Commissioner to obtain his opinion on this matter. DEIR 9-1 through 9-2. Accordingly the DEIR does not provide any information to support a conclusion that a three hundred foot area of separation is sufficient to lessen the conflict between the project and agricultural operations to less than significant.

24-21

THE DEIR'S CONSIDERATION OF ALTERNATIVES IS LEGALLY DEFICIENT AND ARTIFICALLY TRUNCATED THE TYPE OF ANALYSIS REQUIRED BY THE CEQA GUIDELINES

The EIR must study in detail alternatives to the project and to the location of the project. CEQA Guideline §15126.6. Specifically an EIR shall describe a range of alternatives to the project and to the project's location. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376. In this instance the project is not limited to a specified geographic location. Indeed, the project could be located anywhere in the state of California. Therefore potential locations outside of San Joaquin County must be meaningfully addressed within the alternatives analysis. A significant factor is identifying

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alternative sites is "whether the proponent can reasonably acquire, control or otherwise have access to the alternate site". CEQA Guideline §15126.6(f)(1). Certainly the State of California either owns other lands suitable for this use or is capable of acquiring suitable land through the condemnation process.

24-22 Cont'd

The need to include a comprehensive range of alternative locations is emphasized by the CEB Treatise on CEQA:

> The importance of an evaluation of alternative sites for many public agency projects is readily apparent. When a public agency proposes to build a new facility, the key policy question often is not whether the project should be built, but where. See, *e.g. Stand Tall on Principles v. Shasta Union High School District* (1991) 235 CA3d 772...The ability to acquire property by eminent domain and access to public lands may give public agencies a broad range of feasible siting options. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 C3d 553.

Kostka & Zischke, Practice Under the California Environmental Quality Act §15.27 at p. 756.

(While some might argue that the proposed site is more economical this perspective is irrelevant to CEQA in at least two ways. First, the Project Description reveals that the present government buildings would be demolished. ["All structures associated with the existing youth correctional facilities would be demolished, and trees removed." Notice of Preparation June 2008 page 7.] Thus, the fact the site includes existing government buildings is an irrelevant factor when evaluating feasible alternatives since existing buildings will be demolished. To put a finer point on it, the site is recognized as vacant land. Second, an alternative shall not be omitted on the basis of cost. An EIR must consider an alternative location "capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives...would be more costly." CEQA Guideline §15126.6(b).)

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Thus, other vacant land, either presently owned by the State of California or capable of being acquired, should have been included in the DEIR's analysis of alternatives and this artificial constrain results in omitting relevant information.

Furthermore, the DEIR emphasized limiting "site location criteria" rather than environmental considerations in identifying and evaluating alternatives. DEIR at 7-5. The Reduced Footprint Alternative was found to be environmentally superior and was not found to be infeasible. DEIR 7-14. Yet it was not recommended instead of the sponsor's preferred project. Instead the DEIR implies that it would be more expensive (although no evidence is presented about cost, assuming that cost is a valid basis to reject an alternative) and limit optimized "access to outdoor areas" even though the criteria was not offered as part of the

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Project Objectives. Hence, the implied rejection of this alternative is not within the permitted scope of CEQA. The same is true of the Reduced Intensity Alternative. Again this alternative is rejected based upon unsupported cost considerations and newly introduced Project objectives.

24-24 Cont'd

THE CEQA PROCESS IS FLAWED AND REPRESENTS AN IMPERMISSABLE POST-HOC ANALYSIS DRIVEN BY THE POLITICAL AND BUREAUCRATIC MOMENTUM IN FAVOR OF THE PROJECT

CEQA compliance is required at the "earliest feasible time" when there is sufficient detail known about a project to "provide meaningful information for environmental assessment." Guideline §15004. In fact, CEQA calls for "[environmental] review at an early stage in *any* process that will lead to an impact on the environment." *Friends of Sierra, supra,* 147 Cal. App. 4th at 654 (emphasis added). For a public project, the moment of "project conceptualization, design, and planning" is the threshold triggering environmental review. Guideline §15004(b)(1). Once a proposed activity exceeds this low threshold, CEQA compliance is *mandatory*.

Guideline §15004(b)(1) specifically provides, at the earliest feasible time, "project sponsors *shall* incorporate environmental considerations into project *conceptualization*, design, and planning." (Emphasis added). The term "shall" "identifies a mandatory element which all public agencies are required to follow." Guideline §15005(a). Thus, in delineating the time for environmental review, CEQA mandates that an agency proposing to carry out any public project *must* conduct environmental review at the conceptualization, design, and planning stage.

24-25

CEQA does not define the term "conceptualize." The dictionary, however, sheds light on its meaning. *See Leavitt v. County of Madera*, 123 Cal. App. 4th 1502, 1514, 1516 (2004) ("[b]ecause of the lack of definitions in the statutes, Guidelines and rules, [the court] turn[s] to the ordinary and usual meaning of the words used by the Legislature...To determine the usual and ordinary meaning of a word or phrase, a court may refer to the definitions contained in a dictionary."). Webster's Dictionary defines "conceptualize" as "to *form* a concept or idea of." Webster's New World Dictionary at 293 (2d College ed. 1985) (emphasis added). It is virtually impossible to identify and express an earlier point in time in creating an idea than at the point the idea is "formed." (The CEQA Guidelines call out when a CEQA term differs from the dictionary definition. *See e.g.,* Guideline §15002(d).)

The conceptualization rule is rooted in the notion that agencies must conduct environmental review as early as possible so as to affect, and indeed, shape a proposed project. *See e.g., Bozung v. Local Agency Formation Comm'n*, 13 Cal. 3d 263, 282 (1975). Thus, "EIR's should be prepared as early in the planning process as possible to enable

environmental considerations to influence project, program, or design." *Id.* at 282; *see also Fullerton Joint Union High Sch. Dist. v. State Bd. of Educ.*, 32 Cal. 3d 779, 797 (1982) ("The fundamental purpose of CEQA is to ensure 'that environmental considerations play a significant role in governmental decision-making.'").

CEQA's "examination is intended to provide the fullest information reasonably available upon which the decision makers and the public they serve can rely in determining whether or not to start the project at all, not merely to decide whether to finish it." *Natural Res. Def. Council, Inc. v. City of Los Angeles*, 103 Cal. App. 4th 268, 271 (2002) (internal citation omitted). Submitting an environmental document when a proposed project reaches the conceptualization, design and planning threshold makes environmental information available at the "critical juncture" when the relevant decision-makers are deciding "whether to proceed with [a] project[] at all." *Fullerton* at 798 at n.17. Once a project exceeds the conceptualization threshold, postponing environmental review violates CEQA's procedures and constitutes a failure to proceed in the manner required by law. Guideline §§15002(e), 15004(b)(1).

The history of this project contains telling evidence that the Project, exceeded the conceptualization, design and planning threshold. The CPR, however, wholly ignored this evidence, and dispensed with CEQA compliance and continued planning the project and arranging funding. Indeed, the most pointed example of this error is the decision to file a contempt of court motion against the State's Governor for failing to fund a Project that had yet satisfied the requirements of CEQA. This comment letter incorporates by reference the motion, moving papers and transcript of the hearing about the Governor's alleged contempt of court. Unfortunately for CPR, such an approach runs afoul of *Save Tara. See Save Tara v. City of West Hollywood* __ Cal.4th __ (2008 WL 4741084) at *6, *14 (surrounding circumstances relevant to determine proper time for CEQA compliance). 24-25 Cont'd

Prior to submitting the DEIR for public comment, the Project was much more than merely a "gleam in a planner's eye." *Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comm'rs*, 91 Cal. App. 4th 1344, 1362 (2001). After many years of study, the Project concept was fully formed. The CPR and various consultants had undertaken numerous studies, including traffic, air quality, biological resources, and public infrastructure analyses. Such a well-defined project provided sufficient information to make CEQA review meaningful at a much earlier time and well before irrevocable bureaucratic momentum was attained.

The decision to require these facilities coupled with governmental action to compel financing of the Project prior to CEQA review makes this DEIR a post-hoc rational for the previously made decision. The Fifth District's decision in *Friends of Sierra* addresses when environmental review is premature and provides useful guidance in this case. There, the court held that the transfer of an historical railroad right-of-way to an Indian Tribe was not a

project requiring CEQA review because, although some development of the property surrounding the historical resource was reasonably foreseeable, CEQA review would have been premature in the absence of any concrete development proposals by the Tribe affecting the right-of-way. *See id.* at 647. The Tribe made the "strategic decision not to present [its development plans] until after the termination of the litigation." *Id.* at 657. In other words, "no specific plans were on the table." *Id.*

In this case, by contrast, the CPR, whether by choice or necessity, made the exact *opposite* decision. The CPR set forth the Project in detail and actively sought financing prior to completing CEQA compliance. In *Citizens for Responsible Gov't v. City of Albany*, 56 Cal. App. 4th 1199, 1221 (1997), the court held the City violated CEQA because it did not conduct environmental review at the earliest possible time, which was during the negotiation of a development agreement when the location and general dimensions of a proposed gambling facility were known. The court noted that "[d]ecisions reflecting environmental considerations could most easily be made when other basic decisions were made, that is during the early stages of 'project conceptualization, design and planning.'" *Id.* The appropriate time to introduce environmental considerations into the decision making process in this case was before requiring these facilities and before seeking to compel financing of the facilities' construction. Like *Citizens for Responsible Government*, environmental considerations should have been integrated into the process well *before* all major deal points and projects terms and financing were developed.

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The CPR was bound to address environmental considerations at an earlier date. *See Friends of Sierra* at 654, 647; *see also Citizens for Responsible Government* at 1221; *see also Bozung* at 282 (holding CEQA prohibited LAFCO from approving an annexation proposal without first conducting CEQA review). CEQA's procedures, as set forth in Guideline §15004, require environmental review when an activity exceeds the conceptualization threshold. Because the Project exceeded this threshold, the CPR's failure to perform environmental review abrogates any conceivable validity of the DEIR. In other words, CEQA compliance was a condition precedent to the CPR exercising its discretion to approve the Project and DEIR, not the other way around.

The circumstances surrounding the Project, as evidenced in the history of the project, demonstrate the CPR is committed to a definite course of action and foreclosed project alternatives and mitigation measures, including the no project alternative. Thus the DEIR faces the fact that the CPR has already made a commitment to the Project thus constitutes the first governmental approval of, and the agency's earliest commitment to, the Project. The CPR was therefore required to prepare and consider an environmental document evaluating the Project's effects *before* committing to the Project.

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"If an action is a "project" within the meaning of CEQA and not exempt, a public agency intending to approve it must first engage in environmental review, meaning that an environmental impact report or a negative declaration...must be prepared and must be considered by the agency." *Friends of Sierra* at 653; *Save Tara* at *1 ("a public agency must prepare an [EIR] on any project the agency proposes to 'carry out or approve' if that project may have significant environmental effects."). The reason for the rule is simple: "[i]f postapproval environmental review were allowed, EIR's would likely become nothing more than *post hoc* rationalizations to support action already taken." *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.*, 47 Cal. 3d 376, 394 (1988).

A public agency "approves" a project, for purposes of CEQA, when the agency's decision "commits the agency to a definite course of action in regard to a project." *Save Tara* at *7; Guideline §15352(a). An agency's "favoring of and assistance to a project ripen[s] into a commit[ment]," if, as a practical matter, and in light of all the surrounding circumstances, "an agency has committed itself to a project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project." *See Save Tara* at *7, *14.

In this case, the CPR's commitment coupled with the demand for immediate financing and other surrounding circumstances establish the CPR "approved" the Project or was substantially involved in the conceptualization of the Project before approving the EIR. Since environmental review did not precede this approval, the County failed to proceed as required by law. 24-25 Cont'd

The CPR is committed to the Project and adopted a Definite Course of Action and Foreclosing Alternatives and Mitigation Measures. The circumstances surrounding the Project confirm the CPR's steadfast commitment. The record is replete with examples of the CPR publicly defending the Project, putting its official weight behind it, devoting substantial public resources to it, and announcing its firm commitment to proceed with the Project, leaving little doubt that the County would take whatever steps are necessary toward the Project's final approval. *See Save Tara* at *11.

Like the City in *Save Tara,* which approved a property sale and $1 million in financial aid to support the developer's HUD grant application (*Save Tara* at *16), the CPR has publicly endorsed the Project and filed a motion with the Federal District Court to compel the state to finance the Project's construction. The Supreme Court found similar evidence compelling in *Save Tara* where City officials told residents opposed to the project that the City was required by a $4.2 million HUD grant to "continue on a path that fulfills [the] obligation to redevelop the property with senior housing." *Save Tara* at *16.

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CPR officials also made numerous public statements evincing the CPR's commitment to the Project. Such statements are akin to the public announcements and statements the Supreme Court cited as evidence of the City's "commitment" for the redevelopment project in *Save Tara*. *See e.g., Save Tara* at *16 (citing the city manager's statements to HUD that the City "will commit" up to $1 million in financial aid; the mayor's announcement that the HUD money "will be used" for the developer's project, and a City newsletter stating the City and developer would use the grant to "redevelop the property."). This letter incorporates by reference all public statements made by Mr. Kelso, the CPR or agents of the CPR regarding the Project.

CEQA requires compliance at the earliest possible moment in a project's approval process, and not the last moment. CEQA defines approval as the agency's "earliest commitment" to a project. *See Save Tara* at *11; Guideline §15352. "Just as CEQA itself requires environmental review before a project's approval, not necessarily its *final* approval, so the guideline defines 'approval' as occurring when the agency first exercises its discretion to execute a contract or grant financial assistance, not when the last such discretionary decision is made." *Id.* (internal citations omitted). The concept, rearticulated by the Supreme Court in *Save Tara*, that CEQA review may not always be postponed until the last governmental step is taken, is well established. *See e.g., Muzzy Ranch,* supra, 41 Cal. 4th at 383 (although "further governmental decisions need to be made before a land use measure's actual environmental impacts can be determined with precision does not necessarily prevent the measure from qualifying as a project."); *Bozung, supra*, 13 Cal. 3d at 279 (the need for additional approvals does not "turn a project into a nonproject."); *Fullerton, supra,* 32 Cal. 3d at 795.

24-25
Cont'd

In this case, the CPR's actions already constitute the *earliest* commitment to the Project. Simply put, the CPR's actions open the door for the Project. *See Friends of Sierra* at 654. The fact that this commitment represents the first, rather than the final, governmental approval does not make mandatory CEQA compliance optional.

Courts have long recognized that dispensing with CEQA compliance at the earliest possible moment "generate[s] substantial economic and psychological pressures in favor of" a development proposal. *Bakersfield Citizens for Local Control v. City of Bakersfield*, 124 Cal. App. 4th 1184, 1203 (2004); *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus*, 27 Cal. App. 4th 713 (1994). This is so because "the later the environmental review process begins, the more bureaucratic and financial momentum there is behind a proposed project, thus providing a strong incentive to ignore environmental concerns that could be dealt with more easily at an early stage of the project." *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.*, 47 Cal.3d 376, 390 (1988)). The CPR's firm

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commitment to the Project, which essentially gives impetus to the Project by opening the door for its development. 24-25 Cont'd

Very truly yours,

STEVEN A. HERUM
Attorney-at-Law

SAH:lac

Attachments

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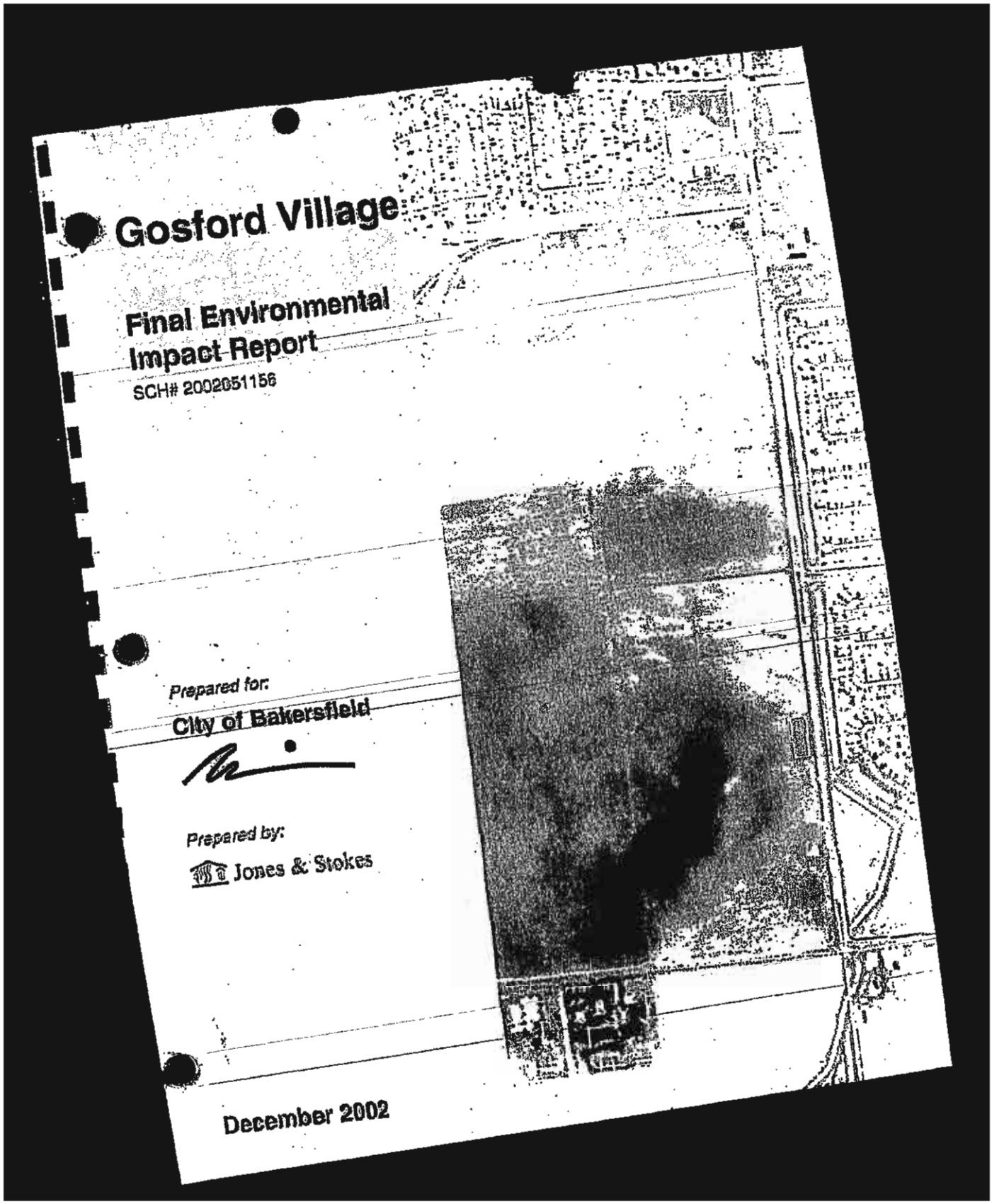
Attachment 1


Gosford Village
Final Environmental Impact Report
SCH# 2002051156
Prepared for:
City of Bakersfield
Prepared by:
Jones & Stokes
December 2002

Chapter 3B
Air Quality

Introduction

This section describes the setting and potential air quality impacts of the proposed land development project known as Gosford Village, located in the western part of the City of Bakersfield. Specifically, it focuses on the relationship between topography and climate, discusses federal and state ambient air quality standards and existing air quality conditions in the proposed project area, describes the overall regulatory framework for air quality management in California and the region, and identifies sensitive receptors in the proposed project area. This section then identifies the potential air quality impacts of the proposed project and proposes mitigation measures to reduce any significant impacts to less-than-significant levels. This analysis is primarily based on the Air Quality Impact Study prepared for the project by WZI Inc. (2002) (Appendix C).

Environmental Setting

Regional Climate and Meteorology

The proposed project site is located in Kern County, and lies within the San Joaquin Valley Air Basin (SJVAB). The SJVAB includes a portion of Kern County and all of San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, and Tulare Counties. The San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) has jurisdiction over air quality issues throughout the 8-county San Joaquin Valley Air Basin. It administers air quality regulations developed at the federal, state, and local levels. Federal, state, and local air quality regulations applicable to the proposed project are described below.

The SJVAB, which is approximately 250 miles long and averages 35 miles wide, is the second largest air basin in the state. The SJVAB is defined by the Sierra Nevada mountains in the east (8,000–14,000 feet in elevation), the Coast Ranges in the west (averaging 3,000 feet in elevation), and the Tehachapi Mountains in the south (6,000–8,000 feet in elevation). The topography of the air basin includes foothills and mountain ranges to the east, west and south, and a relatively flat valley floor with a slight downward gradient to the northwest. The topography of the project area is flat at an elevation of approximately 365 feet above mean sea level as shown on the U. S. Geological Survey topographical

map, Gosford, California, Quadrangle. The valley opens to the sea at the Carquinez Straits where the San Joaquin-Sacramento Delta empties into San Francisco Bay. The San Joaquin Valley (SJV), thus, could be considered a "bowl" open only to the north.

The SJVAB has an "inland Mediterranean" climate averaging over 260 sunny days per year. The valley floor experiences warm, dry summers and cool, wet, winters. Summer high temperatures often exceed 100°F, averaging in the low 90s in the northern valley and high 90s in the south. In the entire SJV, high daily temperature readings in summer average 95°F. Over the last 30 years, the SJV averaged 106 days a year at 90°F or hotter, and 40 days a year at 100°F or hotter. The daily summer temperature variation can be as high as 30°F.

In winter, as the cyclonic storm track moves southward, the storm systems moving in from the Pacific Ocean bring a maritime influence to the SJV. The high mountains to the east prevent the cold, continental air masses of the interior from influencing the valley. Winters are mild and humid. Temperatures below freezing are unusual. Average high temperatures in the winter are in the 50s, but highs in the 30s and 40s can occur on days with persistent fog and low cloudiness. The average daily low temperature is 45°F.

Although marine air generally flows into the basin from the San Joaquin River Delta, the region's topographic features restrict air movement through and out of the basin. The Coastal Range hinders wind access into the SJV from the west, the Tehachapis prevent southerly passage of airflow, and the high Sierra Nevada range is a significant barrier to the east. These topographic features result in weak airflow, which becomes blocked vertically by high barometric pressure over the SJV. As a result, the SJVAB is highly susceptible to pollutant accumulation over time. Most of the surrounding mountains are above the normal height of summer inversion layers (1,500–3,000 feet).

Criteria Pollutants and Local Air Quality

Description of Pollutants

The federal and state governments have established ambient air quality standards for six criteria pollutants: ozone, carbon dioxide (CO), nitrogen dioxide (NO_2), sulfur dioxide (SO_2), particulate matter smaller than 10 microns in diameter (PM_{10}), and lead. Ozone and PM_{10} are generally considered to be "regional" pollutants, as these pollutants or their precursors affect air quality on a regional scale. Pollutants such as CO, NO_2, SO_2, and lead are considered to be local pollutants that tend to accumulate in the air locally. PM_{10} is considered to be a localized pollutant as well as a regional pollutant. In the area where the proposed project is located, PM_{10} and ozone are of particular concern.

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Ozone

Ozone is a respiratory irritant and an oxidant that increases susceptibility to respiratory infections and can cause substantial damage to vegetation and other materials. Ozone is a severe eye, nose, and throat irritant. Ozone also attacks synthetic rubber, textiles, plants, and other materials. Ozone causes extensive damage to plants by leaf discoloration and cell damage.

Ozone is not emitted directly into the air, but is formed by a photochemical reaction in the atmosphere. Ozone precursors, which include reactive organic gases (ROG) and oxides of nitrogen (NO_x), react in the atmosphere in the presence of sunlight to form ozone. Because photochemical reaction rates depend on the intensity of ultraviolet light and air temperature, ozone is primarily a summer air pollution problem. The ozone precursors, ROG and NOx, are emitted by mobile sources and by stationary combustion equipment.

State and federal standards for ozone have been set for a 1-hour averaging time. The state 1-hour ozone standard is 0.09 parts per million (ppm), not to be exceeded. The federal 1-hour ozone standard is 0.12 ppm, not to be exceeded more than three times in any 3-year period.

The Bakersfield California Avenue monitoring station has recorded 131 exceedances of the state ozone standard and two exceedances of the federal ozone standard during the three most recent years for which data are available (1998-2000) (Table 3B-1).

Carbon Monoxide

CO is essentially inert to plants and materials but can have significant effects on human health. CO is a public health concern because it combines readily with hemoglobin and thus reduces the amount of oxygen transported in the bloodstream. Effects on humans range from slight headaches to nausea to death.

Motor vehicles are the dominant source of CO emissions in most areas. High CO levels develop primarily during winter when periods of light winds combine with the formation of ground level temperature inversions (typically from the evening through early morning). These conditions result in reduced dispersion of vehicle emissions. Motor vehicles also exhibit increased CO emission rates at low air temperatures.

State and federal CO standards have been set for both 1-hour and 8-hour averaging times. The state 1-hour standard is 20 ppm by volume, and the federal 1-hour standard is 35 ppm. Both state and federal standards are 9 ppm for the 8-hour averaging period.

The Bakersfield California Avenue monitoring station has recorded no exceedances of the state or federal CO standard during the three most recent years for which data are available (1998-2000) (Table 3B-1).

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PM_{10}

Health concerns associated with suspended particulate matter focus on those particles small enough to reach the lungs when inhaled. Particulates can damage human health and retard plant growth. Particulates also reduce visibility, and soil buildings and other materials, and corrode materials.

PM_{10} emissions are generated by a wide variety of sources including agricultural activities, industrial emissions, dust suspended by vehicle traffic, and secondary aerosols formed by reactions in the atmosphere.

The state PM_{10} standards are 50 micrograms per cubic meter as a 24-hour average and 20 micrograms per cubic meter as an annual geometric mean. The federal PM_{10} standards are 150 micrograms per cubic meter as a 24-hour average and 50 micrograms per cubic meter as an annual arithmetic mean.

The Bakersfield California Avenue monitoring station has recorded 324 exceedances of the state PM_{10} standard and nine exceedances of the federal PM_{10} standard during the three most recent years for which data are available (1998-2000) (Table 3B-1).

:ing Air Quality Conditions

The existing air quality conditions in the proposed project area can be characterized by monitoring data collected in the region. PM_{10}, CO, and ozone concentrations are measured at several north bay monitoring stations. These are the pollutants of greatest concentration within the SJVUAPCD and are the pollutants of most concern from the proposed project. Air quality monitoring data for the last three years are presented in Table 3B-1. The closest monitoring station is located at the California Avenue monitoring station in the City of Bakersfield.

Areas such as the San Joaquin Valley are classified as either *attainment* or *non-attainment* with respect to state and federal ambient air quality standards. These classifications are determined by comparing actual monitored air pollutant concentrations to state and federal standards. The pollutants of greatest concern in this valley are ozone and inhalable particulate matter. As seen from Table 3B-1, the project area has experienced violations of the state and federal ozone standards and state PM_{10} standards during the last three years. Table 3B-1 also indicates that the federal and state CO standards have not been exceeded.

The State of California has designated the SJVUAPCD as being in severe non-attainment for ozone and in non-attainment for PM_{10}. The SJVUAPCD has adopted an air quality improvement plan that addresses NO_x and ROGs, both of which are ozone precursors and contribute to PM_{10}. The plan specifies that regional air quality standards for ozone and PM_{10} concentrations can be met through the use of additional source controls and trip reduction strategies. It also establishes emissions budgets for transportation and stationary sources. Those

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Table 3B-1. Ambient Air Quality Monitoring Data from Bakersfield- California Avenue Monitoring Station

Pollutant Standards	1999	2000	2001
Ozone (O_3)			
Maximum 1-hour concentration (ppm)	0.116	0.125	0.129
No. Days Standard Exceeded			
CAAQS (1-hour) > 0.09 ppm	44	41	46
NAAQS (1-hour) >.0.12 ppm	0	1	1
Carbon Monoxide (CO)			
Maximum 8-hour concentration (ppm)	4.51	4.89	3.41
Maximum 1-hour concentration (ppm)	5.8	6.9	5.8
No. Days Standard Exceeded			
CAAQS (8-hour) ≥ 9.0 ppm	0	0	0
NAAQS (8-hour) ≥ 9.0 ppm	0	0	0
CAAQS (1-hour) ≥ 20 ppm	0	0	0
NAAQS (1-hour) ≥ 35 ppm	0	0	0
Particulate Matter (PM10)			
Maximum 24-hour concentration ($\mu g/m^3$)	143.0	140.0	190.0
2nd Highest 24-hour concentration ($\mu g/m^3$)	138.0	133.0	186.0
Average geometric mean concentration ($\mu g/m^3$)	40	39	43
Average arithmetic mean concentration ($\mu g/m^3$)	47	45	47
No. Days Standard Exceeded*			
CAAQS (24-hour) > 50 $\mu g/m^3$	108	102	114
NAAQS (24-hour) > 150 $\mu g/m^3$	0	0	9

* Calculated exceedances based on measurements taken every six days.

Source: California Air Resources Board 2002 and Environmental Protection Agency 2002

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budgets, developed through air quality modeling, reveal how much air pollution can occur in an area before national ambient air quality standards are violated.

The EPA has designated the SJVUAPCD as being in severe non-attainment for ozone and in serious non-attainment for PM_{10}. The San Joaquin Valley Air Basin did not attain the federal 1-hour ozone standards by November 1999; as a result, EPA redesignated the San Joaquin Valley Air Basin as a *severe* ozone non-attainment area. Under the *serious* designation, the SJVUAPCD had until November 1999 to reach the federal 1-hour ozone standards. The redesignation as a *severe* non-attainment area gives the SJVUAPCD more time (until 2005) to conform to the health-based standards. However, the redesignation also will require that more stringent and expensive control measures be imposed on industry and will bring thousands of businesses under EPA Title I requirements. If the SJVUAPCD fails to attain the standards by 2005, sanctions and a *de facto* growth moratorium could be imposed in the air basin.

Under the severe designation, transportation control measures are no longer voluntary. Reasonably available transportation control measures must be implemented unless a demonstration can be made that a measure is either financially or technologically infeasible, or would not contribute to attainment, or does not apply to a local area. Non-attainment has already forced local transportation control measures, air district controls on industrial emissions and enhanced vehicle emissions testing. Prolonged non-attainment could also result in the implementation of federal controls on interstate truck, train, and plane travel, as well as additional controls on stationary and mobile sources (Stanislaus Council of Governments [StanCOG] 2001a).

The EPA has mandated that the SJVUAPCD submit a Severe Area Ozone Plan by May 31, 2002 (StanCOG 2001a). In addition, the SJVUAPCD must adopt and implement by November 15, 2002, the six measures committed to in the federally approved State Implementation Plan (SIP), or revise its SIP. Failure to address the nonimplementation finding within this deadline will trigger the Clean Air Act sanctions 18 months after the effective date of the October 23, 2001 action. The Valley Regional Transportation Planning Agencies (RTPAs) are already in the process of evaluating transportation control measures for the SIP development process in response to the severe nonattainment status. At present, applicable SIPs submitted to and approved by EPA include ozone (under a serious classification) and CO (a maintenance plan). Approved motor vehicle emission budgets for volatile organic compounds (VOCs), NO_X, and CO are in place. The EPA has found the submitted PM_{10} plan budgets to be inadequate (which included PM_{10}, VOC, and NO_X) (StanCOG 2001b).

Sensitive Land Uses

Sensitive land uses are generally defined as locations where people reside or where the presence of air emissions could adversely affect the use of the land. Typical sensitive receptors include residents, school children, hospital patients, the elderly, etc.

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Sensitive land uses in the vicinity of the project area include:

- the "Campus Park" single-family residential subdivision located north of the project site across Pacheco Road and adjacent to the Southern Pacific Railroad (SPRR) tracks;
- the "Silver Creek" single-family residential subdivision located east of the project site across Gosford Road;
- Reimer's Garden Center plant nursery located east of the project site at the southeast corner of Gosford Road and Pacheco Road; and
- Sing Lum School, which is located west on 4600 Chaney Lane, approximately 0.25-mile from the project site.

Applicable Regulations

Both the State of California and the federal government have established ambient air quality standards for several different pollutants. For some pollutants, separate standards have been set for different periods. Most standards have been set to protect public health. For some pollutants, standards have been based on other values (such as protection of crops, protection of materials, or avoidance of nuisance conditions). The pollutants of greatest concern in the Bakersfield area are CO, ozone, and PM_{10}. Table 3B-2 shows the state and federal standards for a variety of pollutants.

Federal Regulations

Federal Clean Air Act

The federal Clean Air Act, promulgated in 1970 and amended twice thereafter (including the 1990 amendment), establishes the framework for modern air pollution control. The Act directs the EPA to establish ambient air standards for six pollutants: ozone, carbon monoxide, lead, nitrogen dioxide, particulate matter, and sulphur dioxide. The standards are divided into primary and secondary standards; the former are set to protect human health within an adequate margin of safety and the latter to protect environmental values, such as plant and animal life.

The primary legislation that governs federal air quality regulations is the Clean Air Act Amendments of 1990 (CAAA). The CAAA delegates primary responsibility for clean air to the EPA. The EPA develops rules and regulations to preserve and improve air quality, as well as delegating specific responsibilities to state and local agencies.

The EPA has established National Ambient Air Quality Standards for criteria pollutants (Table 3B-2). Criteria pollutants include CO, NO_2, SO_2, ozone, PM_{10}, and lead.

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Table 3B-2. Federal and State Ambient Air Quality Standards

Pollutant	Averaging Time	Concentration	
		State Standards	Federal Standards
Ozone	8 hours	NA[a]	0.08 ppm
	1 hour	0.09 ppm (180 µg/m^3)	0.12 ppm (235µg/m^3)
Carbon Monoxide	8 hours	9.0 ppm (10 mg/m^3)	9 ppm (10 mg/m^3)
	1 hour	20 ppm (23 mg/m^3)	35 ppm (40 mg/m^3)
Nitrogen Dioxide	Annual average	NA[a]	0.053 ppm (100 µg/m^3)
	1 hour	0.25 ppm (470 µg/m^3)	NA[a]
Sulfur Dioxide	Annual average	NA[a]	80 µg/m^3 (0.03 ppm)
	24 hours	0.04 ppm (105 µg/m^3)	365 µg/m^3 (0.14 ppm)
	1 hour	0.25 ppm (655 µg/m^3)	NA[a]
Particulate Matter (PM_{10})	Annual arithmetic mean	NA[a]	50 µg/m^3
	Annual geometric mean	20 µg/m^3	NA[a]
	24 hours	50 µg/m^3	150 µg/m^3
Particulate Matter – Fine ($PM_{2.5}$)	Annual arithmetic mean	NA[a]	12 µg/m^3
	24 hours	NA[a]	65 µg/m^3
Sulfates	24 hours	25 µg/m^3	NA[a]
Lead	Calendar quarter	NA[a]	1.5 µg/m^3
	30 days	1.5 µg/m^3	NA[a]
Hydrogen Sulfide	1 hour	0.03 ppm (2 µg/m^3)	NA[a]
Vinyl Chloride (chloroethene)	24 hours	0.010 ppm (26 µg/m^3)	NA[a]
Visibility Reducing Particles (VRP)	8 hours (10 a.m.–6 p.m. PST)	Particles in sufficient amount to produce an extinction coefficient of 0.23 per kilometer when the relative humidity is less than 70%.[b]	NA[a]

Notes: ppm = parts per million
mg/m^3 = milligrams per cubic meter
µg/m^3 = micrograms per cubic meter
PST = Pacific Standard Time

[a] No standard implemented.

[b] Statewide VRP Standard applies statewide except in Lake Tahoe Air Basin. This standard is intended to limit the frequency and severity of visibility impairment due to regional haze and is equivalent to a 10-mile nominal visual range.

Source: WZI Inc. 2002

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If an area does not meet the federal NAAQS shown in Table 3B-2 are called "nonattainment" areas. For these nonattainment areas, the federal Clean Air Act requires states to develop and adopt SIPs, which are air quality plans showing how air quality standards will be attained. The SIP, which is reviewed and approved by the EPA, must demonstrate how the federal standards will be achieved. Failing to submit a plan or secure approval could lead to denial of federal funding and permits for such improvements as highway construction and sewage treatment plants. In cases where the SIP is submitted by the State but fails to demonstrate achievement of the standards, the EPA is directed to prepare a Federal Implementation Plan. In California, the EPA has delegated authority to prepare SIPs to the California Air Resources Board (ARB), which, in turn, has delegated that authority to individual air districts.

State Regulations

California Clean Air Act

Responsibility for achieving California's standards, which are more stringent than federal standards, is placed on the ARB and local air pollution control districts, and is to be achieved through district-level air quality management plans that will be incorporated into the SIP. In California, the EPA has delegated authority to prepare SIPs to the ARB, which, in turn, has delegated that authority to individual air districts

The ARB has traditionally established state air quality standards, maintaining oversight authority in air quality planning, developing programs for reducing emissions from motor vehicles, developing air emission inventories, collecting air quality and meteorological data, and approving state implementation plans.

Responsibilities of air districts include overseeing stationary source emissions, approving permits, maintaining emissions inventories, maintaining air quality stations, overseeing agricultural burning permits, and reviewing air quality–related sections of environmental documents required by CEQA.

The California CAA of 1988 substantially added to the authority and responsibilities of air districts. The California CAA designates air districts as lead air quality planning agencies, requires air districts to prepare air quality plans, and grants air districts authority to implement transportation control measures. The California CAA focuses on attainment of the state ambient air quality standards, which, for certain pollutants and averaging periods, are more stringent than the comparable federal standards.

The California CAA requires designation of attainment and nonattainment areas with respect to state ambient air quality standards. The California CAA also requires that local and regional air districts expeditiously adopt and prepare an air quality attainment plan if the district violates state air quality standards for CO, SO_2, NO_2, or ozone. These Clean Air Plans are specifically designed to attain these standards and must be designed to achieve an annual five percent reduction in districtwide emissions of each nonattainment pollutant or its precursors. No

locally prepared attainment plans are required for areas that violate the state PM_{10} standards.

The California CAA requires that the state air quality standards be met as expeditiously as practicable but, unlike the federal CAA, does not set precise attainment deadlines. Instead, the act established increasingly stringent requirements for areas that will require more time to achieve the standards.

The California CAA emphasizes the control of "indirect and area-wide sources" of air pollutant emissions. The California Clean Air Act gives local air pollution control districts explicit authority to regulate indirect sources of air pollution and to establish traffic control measures (TCM). The California CAA does not define *indirect and area-wide sources*. However, Section 110 of the federal CAA defines an indirect source as

> "a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution. Such term includes parking lots, parking garages, and other facilities subject to any measure for management of parking supply...."

TCMs are defined in the California CAA as "any strategy to reduce trips, vehicle use, vehicle miles traveled, vehicle idling, or traffic congestion for the purpose of reducing vehicle emissions."

Recently enacted amendments to the California Clean Air act impose additional requirements designed to ensure an improvement in air quality within the next five years. More specifically, local districts with moderate air pollution that do not achieve "transitional nonattainment" status by December 31, 1997, must implement the more stringent measures applicable to districts with serious air pollution.

California Air Resources Board Diesel Exhaust Control Program

In August 1998, the ARB identified air particulate emissions from diesel-fueled engines (diesel PM) as toxic air contaminants based on their potential to cause cancer and other adverse health effects. The ARB then conducted a risk management evaluation to identify whether a need for further control of diesel PM was warranted (California Air Resources Board 2001).

The ARB developed the *Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles*, and *Risk Management Guidance for the Permitting of New Stationary Diesel-Fueled Engines*. The Board approved these documents on September 28, 2000, paving the way for the next step in the regulatory process: the control measure phase (California Air Resources Board 2001).

During the control measure phase, specific statewide regulations designed to further reduce diesel PM emissions from diesel-fueled engines and vehicles are

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to be evaluated and developed. The goal of each regulation is to make diesel engines as clean as possible by establishing state-of-the-art technology requirements or emission standards to reduce diesel PM emissions. The regulations will be developed in an open and public process where availability, applicability, and cost of technology will all be evaluated. The interested members of the public, manufacturers, and other stakeholders will be asked to participate in the development of all proposed regulations (California Air Resources Board 2001).

Currently, the ARB is still in the process of developing Air Toxics Control Measures for diesel engines. A public hearing for the ARB's diesel emission control strategy verification procedure for on-road, off-road, and stationary diesel-fueled vehicles and equipment has been scheduled to take place in Sacramento, California. Some of the diesel control measures identified by the ARB that will be addressed at the public hearing include diesel oxidation catalysts, diesel particulate filters, fuel additives, alternative diesel fuels, and NO_X control strategies. A further discussion of these diesel control measures identified by the ARB is presented in Appendix D (California Air Resources Board 2002b). Please reference the final recommendation of the ARB evaluation prepared in August 1998.

Local Regulations

San Joaquin Valley Unified Air Pollution Control District

At the local level, the SJVUAPCD is responsible for establishing and enforcing local air quality rules and regulations that address the requirements of federal and state air quality laws. Air quality is also managed through land use and development planning practices. These practices are implemented in Kern County through the general planning process.

The District regulates air quality in the Bakersfield area. The predicted emissions associated with vehicular traffic (mobile sources) are not subject to the District's permit requirements. However, the District is responsible for overseeing efforts to improve air quality within the San Joaquin Valley. The District has prepared an Air Quality Attainment Plan to bring the San Joaquin Valley into compliance with the California Ambient Air Quality Standard for ozone. The District reviews land use changes to evaluate the potential impact on air quality.

San Joaquin Valley Air Pollution Control District Regulation VIII

San Joaquin Valley Air Pollution Control District Regulation VIII specifies control measures for specified outdoor sources of fugitive particulate matter emissions. The District does not require a permit for these activities, but does impose measures to control fugitive dust, such as the application of water or a

chemical dust suppressant. The rules contained in Regulation VIII are listed below.

- Rule 8010 Fugitive dust administrative requirement for control of fine particulate matter.
- Rule 8020 Fugitive dust requirements for control of fine particulate matter from construction, demolition, excavation and extraction activities.
- Rule 8070 Fugitive dust requirements for control of fine particulate matter from vehicle and/or equipment parking, shipping, receiving, transfer, fueling and service areas one acre or larger.

In addition, the facility shall include the following as requirements of local zoning regulations.

- Water sprays or chemical suppressants must be used in all unpaved areas to control fugitive emissions.
- All access roads and parking areas must be covered with asphalt-concrete paving.

Compliance with District Regulation VIII and the local zoning code will reduce particulate emission impacts to levels that are considered "less than significant."

Impacts and Mitigation

Methodology

Construction Emissions

Construction will also result in exhaust emissions from diesel-powered heavy equipment. Exhaust emissions from construction include emissions associated with the transport of machinery and supplies to and from the site, emissions produced onsite as the equipment is used, and emissions from trucks transporting excavated materials from the site and fill soils to the site.

Emissions due to construction activities include CO, ROG, NO_X, SO_X, and PM_{10}. Emissions from construction activities were calculated using the URBEMIS 7G air quality model. Model inputs included five pieces of earthmoving equipment, two trucks, four miscellaneous mobile units, one fork-lift, seven construction workers commuting to the site, 30 days of grading, and a six-month construction period. The model output is available upon request at the City of Bakersfield Planning Department as part of the WZI Inc. report (WZI Inc 2002).

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Operational Emissions

Mobile Source Emissions

Vehicle emissions have been estimated for the year 2020 (expected completion date of this project) using the URBEMIS 7G computer model from the California Air Resources Board. This model predicts carbon monoxide, total hydrocarbons, nitrogen oxides, oxides of sulfur, and particulate matter emissions from motor vehicle traffic associated with new or modified land uses. The URBEMIS 7G modeling results are available upon request at the City of Bakersfield Planning Department as part of the WZI Inc. report (WZI Inc 2002).

Carbon monoxide emissions are a function of vehicle idling time and, thus, under normal meteorological conditions depend on traffic flow conditions. Carbon monoxide transport is extremely limited; it disperses rapidly with distance from the source. Under certain extreme meteorological conditions, however, CO concentrations close to a congested roadway or intersection may reach unhealthful levels, affecting sensitive receptors (residents, school children, hospital patients, the elderly, etc.). Typically, high CO concentrations are associated with roadways or intersections operating at an unacceptable Level of Service (LOS). CO "Hot Spot" modeling is required if a traffic study reveals that the project will reduce the LOS on one or more streets to E or F; or, if the project will worsen an existing LOS F.

The impact of the proposed project on local carbon monoxide levels was assessed at these intersections with the Caltrans CALINE-4 Air Quality Model, which allows microscale CO concentrations to be estimated along each roadway corridor or near intersections. This model is designed to identify localized concentrations of carbon monoxide, often termed "hot spots." Year 2020 traffic data as predicted by the traffic study was used in the CALINE-4 model.

A traffic study was prepared by McIntosh & Associates for the Gosford Village project. The study indicates that nine intersections warrant a CO Hot Spot analysis:

- Gosford Road and Stockdale Highway,
- Gosford Road and Ming Avenue,
- Ashe Road and Ming Avenue,
- Ashe Road and White Lane,
- Stine Road and White Lane,
- Ashe Road and Harris Road,
- Gosford Road and Panama Lane,
- Ashe Road and Panama Lane, and
- Gosford Road and Taft Highway (PM hours).

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The modeling analysis was performed for worst-case wind angle and windspeed. The assumptions are shown below.

- Due to lack of specific receptor locations for CO hot spot analysis, locations near the most impacted intersections were used for this analysis. Selected modeling locations represent the intersections that would potentially experience LOS F or worse in year 2020. Receptor locations with the possibility of extended outdoor exposure are located between 21–51 meters from the roadway centerlines.
- Four receptor locations at each intersection, under worst-case wind angle conditions, were modeled to determine carbon monoxide dispersion concentrations. CO concentrations were modeled at these locations to assess the potential maximum CO exposure that would occur in year 2020.
- The calculations assume a meteorological condition of almost no wind (0.5 m/s), a flat topological condition between the source and the receptor, and a mixing height of 1,000 meters.
- CO concentrations are calculated for the one-hour averaging period, and then compared to the state one-hour CO standard. CO eight-hour averages are extrapolated using techniques outlined by the U.S. Environmental Protection Agency and compared to the carbon monoxide eight-hour standards.
- Emission factors for year 2020 were used in the model. Caltrans has indicated in its Transportation Project-Level Carbon Monoxide Protocol (Caltrans, revised 1997) that the "intersection" option of CALINE-4 should not be used because it calculates model emissions based on an algorithm developed for an outdated vehicle fleet. The "at-grade" option has been used in this analysis. Emission factors for approach and departure links were based on approach and departure average speeds as a function of traffic volume, average cruise speed, and percentage of red time.
- Concentrations are given in parts per million (ppm) at each of the receptor locations.
- Future year ambient CO concentrations were derived by averaging the last two years' CO levels monitored at Bakersfield's California Avenue station. Actual future ambient CO levels may be lower due to emissions control strategies that will be implemented between now and year 2020.

The input and output data for Caline-4 modeling is available upon request at the City of Bakersfield Planning Department as part of the WZI Inc. report (WZI Inc 2002).

Area Source Emissions

Area source emissions result from fuel and personal product use. Electricity and natural gas are utilized by almost every commercial and residential development. The URBEMIS 7G computer model predicted the following emissions from natural gas usage and landscape maintenance. The model output is available upon request at the City of Bakersfield Planning Department as part of the WZI Inc. report (WZI Inc 2002). The numbers shown below are from typical energy

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consumption and do not include fireplaces and consumer products such as hairspray.

Criteria for Determining Significance

Based on the State CEQA Guidelines and standard professional practice, the proposed project would result in a significant impact on air quality if it would:

- conflict with or obstruct implementation of the applicable air quality management plan;
- violate any air quality standard or contribute substantially to an existing or projected air quality violation;
- result in a cumulatively considerable net increase of any criteria pollutant for which the project region is nonattainment under an applicable federal or state ambient air quality standard (including releasing emissions that exceed quantitative thresholds for ozone precursors);
- expose sensitive receptors to substantial pollutant concentrations; or
- create objectionable odors affecting a substantial number of people.

In addition to the above significant criteria, emission thresholds are contained in the *Guide for Assessing and Mitigating Air Quality Impacts* produced by the SJVUAPCD (SJVUAPCD 2002). According to the SJVUAPCD, impacts would be significant if the project would:

- expose sensitive receptors to substantial pollutant concentrations,
- produce greater than 10 tons/year ROG,
- produce greater than 10 tons/year NO_x,
- exceed National or California Ambient Air Quality Standard for CO (9 ppm 8-hr average; 20 ppm 1-hr average), or
- not comply with the San Joaquin Valley Air Pollution Control's Regulation VIII regarding particulate matter emissions from construction activities. Compliance with District Regulation VIII and the local zoning code will reduce particulate emission impacts to levels that are considered less-than-significant by the SJVUAPCD.

Additionally, the SJVUAPCD has not established a significance threshold for PM_{10}. However, because the San Joaquin Valley Air Basin is classified as a severe PM_{10} nonattainment area for the federal standard, emissions exceeding the SJVUAPCD's New Source Review threshold of 15 tons per year are considered a significant impact (Mitchell pers. comm.).

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Project Impacts

Impact B-1. Conflict With or Obstruct Implementation of Air Quality Attainment Plan

The California CAA requires non-attainment districts with severe air quality problems to provide for a five percent reduction in non-attainment emissions per year. The SJVAPCD prepared an Air Quality Attainment Plan for the SJVAB in compliance with the requirements of the Act. The plan requires best available retrofit technology on specific types of stationary sources to reduce emissions. The California CAA and the Air Quality Attainment Plan also identify transportation control measures as methods of reducing emissions from mobile sources. The California CAA defines transportation control measures as, "any strategy to reduce vehicle trips, vehicle use, vehicle miles traveled, vehicle idling or traffic congestion for the purpose of reducing motor vehicle emissions." The Air Quality Attainment Plan for the SJVAB identifies the provisions to accommodate the use of bicycles, public transportation and traffic flow improvements as transportation control measures.

The emissions of reactive organic gases and nitrogen oxides predicted by the model exceed the District's interim threshold levels; however, Golden Empire Transit (GET) provides public (bus) transportation in the Bakersfield metropolitan area. The project area is undeveloped; therefore, it is not currently served by GET. However, GET does provide service to the general area. The project could easily be serviced by GET upon completion. A "Traffic Impact Study" was prepared by McIntosh & Associates to evaluate impacts on the surrounding local roadway system due to traffic generated by the proposed development. The Traffic Impact Study recommends mitigation measures, such as street improvements or traffic signals, for intersections and street segments which fall below an acceptable LOS due to the impact of future traffic. The study allocates a proportionate share of the mitigation measures to the project. The proposed mitigation measures are traffic flow improvements, which are recognized transportation control measures in compliance with the Air Quality Attainment Plan.

The Air Quality Attainment Plan recognized growth of the population and economy within the air basin. The plan predicted the workforce in Kern County to increase 40 percent and housing to increase 30 percent from 1990 to 2000. This project can be viewed as growth that was anticipated by the plan and will not conflict with or obstruct implementation of the air quality plan. Consequently, this impact is considered less-than-significant.

Mitigation Measures

No mitigation is required.

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Residual Impacts

Impacts would be less than significant.

Impact B-2. Violation of Air Quality Standards or Substantial Contribution to an Existing or Projected Air Quality Violation

Construction-Related Emissions

Construction of the project would result in the temporary generation of emissions of ROG, NO_x, and PM_{10}. Construction-related emissions would result from construction equipment exhaust, construction employee vehicle exhaust, dust from land clearing, wind erosion of exposed soil, and volatile organic compound (VOC) emissions from painting, and asphalt paving. Construction-related emissions would vary substantially, depending on the level of activity, length of construction period, the specific construction operations, types of equipment, number of personnel, wind and precipitation conditions, and soil moisture content.

Table 3B-3 summarizes maximum daily construction emissions. Construction activities were divided into separate phases and analyzed separately. Consequently, project significance is not a comparison of the sum of all construction phases to the SJVUAPCD threshold levels. Instead, if one phase of construction is found to have a significant impact, than the entire project is considered to have a significant air quality impact.

The construction of the proposed project would result in the generation of fugitive dust. Compliance with SJVUAPCD Regulation VIII and the City of Bakersfield air quality regulations would result in no significant fugitive dust emissions. To ensure compliance, mitigation measures B-1 and B-2 below shall be implemented.

Additionally, as indicated in Table 3B-3, emissions from architectural coatings exceed the SJVUAPCD's ROG threshold of 10 tons per year. Mitigation will further reduce ROG levels, but not to levels below the significance threshold of 10 tons per year. Consequently, this impact is considered significant and unavoidable.

Operation-Related Emissions

The proposed project would generate motor-vehicle trips that would in turn generate operation-related air emissions. Emission calculations for with-project conditions are based on the daily trip generation data provided by McIntosh & Associates. In addition, area source emissions were calculated based on land-use characteristics. Area source emissions result from fuel and personal product use. Electricity and natural gas are utilized by almost every commercial and

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residential development. Table 3B-4 summarizes the results of project operational emissions.

Table 3B-4 indicates that emissions resulting from project operations will exceed the SJVUAPCD's ROG and NO_X thresholds of 10 tons per year; and this impact is considered significant. Implementation of the following mitigation measures will reduce operational emissions, but not to a less-than-significant level. Consequently, this impact is considered significant and unavoidable.

Mitigation Measures

Construction-Related Mitigation Measures

Mitigation Measure B-1. Prior to approval of a grading plan, the project applicant shall submit a letter to the City of Bakersfield Planning Department from SJVUAPCD stating the dust suppression measures that shall be completed during construction activities to comply with the SJVUAPCD Regulation VIII.

Mitigation Measure B-2. In addition to compliance with Regulation VIII, the following measures shall be incorporated into building plans and implemented during construction activities to further reduce fugitive dust emissions associated with the project.

- Cover all access roads and parking areas with asphalt-concrete paving.
- Ensure that asphalt-concrete paving complies with SJVUAPCD Rule 4641 and restrict the use of cutback, slow-cure, and emulsified asphalt paving materials.
- Use water sprays or chemical suppressants on all unpaved areas to control fugitive dust emissions.
- Enclose, cover, or water all stockpiled soils to reduce fugitive dust emissions.
- Cease grading activities during periods of high winds (greater than 20 mph over a one-hour period).
- Limit construction-related vehicle speeds to 15 mph on all unpaved areas at the construction site.
- Cover all haul trucks when transporting loads of soils.
- Wash off construction and haul trucks to minimize the removal of mud and dirt from the project site.
- Shut down equipment when not in use for extended periods of time to reduce emissions associated with idling engines.
- Encourage ride sharing and use of transit transportation for construction employees commuting to the project site.
- Use electric equipment for construction whenever possible instead of fossil fuel-fired equipment.

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Table 3B-3. Emissions from Construction Activities

Construction Phase	Unmitigated				Mitigated			
	ROG (tons/year)	NO_X (tons/year)	PM_{10} (tons/year)	CO (tons/year)	ROG (tons/year)	NO_X (tons/year)	PM_{10} (tons/year)	CO (tons/year)
Site Grading	0.15	2.16	--	2.47	0.15	2.06	--	1.09
Construction Worker Trips	0.17	0.23	0.44	0.04	0.17	0.23	0.44	0.04
Stationary Equipment	0.33	0.27	--	0.02	0.33	0.27	--	0.02
Mobile Equipment- Gas	1.88	1.26	--	0.13	0	--	--	--
Mobile Equipment- Diesel	0.52	6.82	--	0.51	0.49	6.48	--	0.49
Architectural Coatings	12.95	--	--	--	12.3	--	--	--
Asphalt Offgassing	0.02	--	--	--	0.02	--	--	--
Total[1]	16.02	10.74	0.44	3.17	13.46	9.04	0.44	1.64
Threshold	10	10	15	NA[2]	10	10	15	NA[2]

1. Totals for construction emissions are presented for informational purposes only. Project significance is not a comparison of the sum total of all construction phases to the SJVUAPCD threshold levels. Rather, if one phase of construction is found to have a significant impact, than the entire project is considered to have a significant air quality impact.

2. The SJVUAPCD does not have a significance criteria for CO

Table 3B-4. Emissions from Project Operation

Operational Phase	ROG (tons/year)	NO_X (tons/year)	PM_{10} (tons/year)	CO (tons/year)
Area Source Emissions				
Natural Gas	0.09	1.24	0.0	0.49
Landscaping	0.01	0.0	0.0	0.06
Vehicular Emissions	12.21	34.98	1.4	119.77
Total	12.31	36.22	1.4	120.32
Threshold	10	10	15	NA[1]

1. The SJVUAPCD does not have a significance criteria for CO

Operational-Related Mitigation Measures
These projects will be required to comply with Title 24 of the California Code of Regulations regarding energy conservation standards. The applicant shall incorporate these requirements, along with the following mitigation measures, into the building plans:

Mitigation Measure B-3
Use low-NO_x emission water heaters.

Mitigation Measure B-4
Provide shade trees to reduce building cooling requirements consistent with the current landscaping ordinance requirements.

Mitigation Measure B-5
Install energy-efficient and automated air conditioners.

Mitigation Measure B-6
Exterior windows should all be double-paned glass.

Mitigation Measure B-7
Energy-efficient metal halide parking lights will be used.

Mitigation Measure B-8
Use EPA-approved wood burning stoves, fireplace inserts, or pellet stoves instead of conventional fireplaces.

Residual Impacts

Impacts would be significant and unavoidable.

Impact B-3. Cumulatively Considerable Net Increases of Criteria Pollutants

The State of California and EPA have designated the SJVAB as being in severe non-attainment for ozone. As seen in Table 3B-4, the project will result in cumulatively considerable net increases in ozone precursor (ROG and NO_X) emissions above the District thresholds of 10 tons per year. Consequently, this impact is considered significant. Additionally, construction-related emissions exceed District thresholds and are considered cumulatively considerable. Implementation of Mitigation Measures B-1 through B-8 will reduce air quality emissions, but not to a less-than-significant level. Consequently, this impact is considered significant and unavoidable.

Mitigation Measures

Mitigation Measures B-1 through B-8.

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Residual Impacts

Impacts would be significant and unavoidable.

Impact B-4. Expose Use of Sensitive Receptors to Substantial Pollutant Concentrations of CO

The impact of the proposed project on local carbon monoxide levels was assessed at these intersections with the CalTrans CALINE-4 Air Quality Model, which allows microscale CO concentrations to be estimated along each roadway corridor or near intersections. This model is designed to identify localized concentrations of carbon monoxide, often termed "hot spots." Year 2020 traffic data as predicted by the traffic study was used in the CALINE-4 model. Table 3B-5 summarizes CALINE-4 modeling results.

The CO air quality impact of this project is not likely to affect sensitive receptors. Sensitive receptors are areas where young children, chronically ill individuals, or other individuals more sensitive than the general population are located. Examples of sensitive receptors are schools, day care centers, and hospitals.

Table 3B-5 indicates that the proposed project will not create any significant localized concentrations of carbon monoxide in excess of the California ambient air quality standards of 9 ppm on an 8-hour average and 20 ppm on a 1-hour average. Neither standard would be equaled or exceeded at any of the intersections studied. As such, the CO impacts from the project are considered less than significant.

The potential ambient air quality impacts from this project are related to increased in traffic. The project is not expected to result in localized impacts, such as CO hot spots, and is not expected to impact nearby sensitive receptors. Therefore, this impact is considered less-than-significant.

Mitigation Measures

No mitigation is required.

Residual Impacts

Impacts would be less than significant.

Impact B-5. Creation of Objectionable Odors Affecting A Substantial Number Of People

The project consists of general commercial land uses. The generation of odors is generally associated with certain types of industrial and agricultural activities and is not anticipated to result from the proposed project. Therefore, the project is

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Table 3B-5. CALINE-4 Maximum Predicted Carbon Monoxide Concentrations

Intersection	Year 2020 w/ Project		Year 2020 w/o Project		Project Increase	
	1 hr[1] (ppm)	8 hr[2] (ppm)	1 hr[1] (ppm)	8 hr[2] (ppm)	1 hr[1] (ppm)	8 hr[2] (ppm)
Gosford Road & Stockdale Highway	12.7	8.9	12.7	8.9	0.0	0.0
Gosford Road & Ming Avenue	11.5	8.1	11.4	8.0	0.1	0.07
Ashe Road & Ming Avenue	9.5	6.7	9.5	6.7	0.0	0.0
Ashe Road & White Lane	11.7	8.2	11.5	8.1	0.2	0.14
Stine Road & White Lane	11.9	8.3	11.9	8.3	0.0	0.0
Ashe Road & Harris Road	9.2	6.4	9.2	6.4	0.0	0.0
Gosford Road & Panama Lane	9.5	6.7	9.1	6.4	0.0	0.0
Ashe Road & Panama Lane	8.6	6.0	8.5	6.0	0.1	0.07
Gosford Road & Taft Highway	7.8	5.5	7.8	5.5	0.0	0.0

Notes:

Predicted concentrations modeled using "worst case" option

[1] 1-hour concentrations include ambient CO of 6 ppm (extrapolated from 2 year, 8-hour average).

[2] Eight 1-hour concentrations were obtained by multiplying the 1-hour concentration by a factor of 0.7, as referenced in *Screening Procedures for Estimating the Air Quality Impact of Stationary Sources*, USEPA, October 1992.

[3] parts per million

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not expected to result in the generation of odors and impacts are considered less-than-significant.

Mitigation Measures

No mitigation is required.

Residual Impacts

Impacts would be less than significant.

Cumulative Impacts

This Air Quality Impact Study considered the affects of the project, as defined by the Traffic Study, with the cumulative impacts of growth in the area.

The *Guide for Assessing and Mitigating Air Quality Impacts* (SJVUAPCD 2002) under CEQA defines cumulative impacts as two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.

This report considered the following cumulative impacts.

- Cumulative Ozone Impacts – Ozone impacts are the result of the cumulative emissions from numerous sources in the region and transport from outside the region. Ozone is in chemical reactions involving ROG, NO_X, and sunlight.
- Cumulative PM_{10} Impacts – PM_{10} has the potential to cause significant local problems during periods of dry conditions accompanied by high winds, and during periods of heavy earth disturbing activities. PM_{10} may have cumulative local impacts, if, for example, several unrelated grading or earth moving projects are underway simultaneously at nearby sites.
- Cumulative CO Impacts – Cumulative carbon monoxide impacts are accounted for in the CO Hotspot Analysis described earlier in the assessment. Traffic levels were used to determine if the proposed project would have a significant cumulative impact.
- Cumulative Hazardous Air Pollutant (HAP) Impacts – Cumulative analysis for HAPs focused on local impacts on sensitive receptors. The District recommends screening a radius of 1 mile for HAP cumulative impacts.

The existing and proposed projects within one mile of the proposed project are shown in Figure 2-5. Three proposed residential development projects have been identified and modeled using the URBEMIS7G computer model to predict cumulative impacts. Emissions for the operational phase of these proposed projects were based on housing lot totals provided by the City of Bakersfield Planning Department (WZI Inc. 2002). The predicted model outputs, including the Gosford Village project, are summarized in Tables 3B-6 and 3B-7.

City of Bakersfield Planning Department has advised that no other proposed or existing project, besides the three that have been previously identified, exist within a 1-mile radius of the project (WZI Inc. 2002). Therefore, the cumulative impacts for ROG and NO_X attributable to this project are considered cumulatively considerable based on the District's levels of significance as summarized in Table 3B-7.

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Table 3B-6. Cumulative Impact Model Results

Project Name	Number of Lots	Emissions Source	Mitigated Emissions ROG (tons/year)	NO_X (tons/year)	PM_{10} (tons/year)	CO (tons/year)
South Pacific District	95	Area	5.26	0.38	0.66	5.00
Christian & Mission Alliance		Vehicle	1.09	3.20	0.13	11.12
Burlington Homes	269	Area	14.84	1.07	1.87	14.16
		Vehicle	2.87	8.27	0.34	28.77
Coleman Homes, Inc.	267	Area	14.73	1.06	1.85	14.05
		Vehicle	2.87	8.30	0.34	28.86

Table 3B-7. Cumulative Impact Model Emissions Totals

Project Name	ROG (tons/year)	NO_X (tons/year)	PM_{10} (tons/year)	CO (tons/year)
South Pacific District	6.33	3.58	0.79	16.12
Christian & Mission Alliance				
Burlington Homes	17.71	9.34	2.21	42.93
Coleman Homes, Inc.	17.6	9.36	2.19	42.91
Gosford Village	14.81	43.95	1.67	146.13
Totals	56.45	66.23	6.86	248.09
Threshold	**10**	**10**	**15**	**NA[1]**

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FINAL

Environmental Impact Repor

General Plan Amendment / Zone Change #02-0193

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5.4 AIR QUALITY

This Section evaluates air quality associated with short and long-term impacts resulting from buildout of the proposed Project. Information in this Section is based on the *Air Quality Impact Study* prepared by WZI Inc. (June 2002), which is included as Appendix 15.3, *Air Quality Data*, of this document. RBF Consulting conducted a peer review of the WZI report which was prepared pursuant to the San Joaquin Valley Air Pollution Control District's *Guide for Assessing and Mitigating Air Quality Impacts*, January 10, 2002 Revision.

EXISTING CONDITIONS

ENVIRONMENTAL SETTING

The proposed Project site is located in the San Joaquin Valley Air Basin, within the City of Bakersfield, and within the jurisdiction of the San Joaquin Valley Air Pollution Control District. The topography of the air basin includes foothills and mountain ranges to the east, west, and south, and a relatively flat valley floor. The valley is characterized by long, hot, dry summers, and short, foggy winters. The features of the valley produce climatic episodes such as frequent temperature inversions. The topography of the Project area is flat at an elevation of approximately 365 feet above mean sea level.

STATE AND NATIONAL AMBIENT AIR QUALITY STANDARDS

National Ambient Air Quality Standards (NAAQS) are assigned as the result of provisions of the Federal Clean Air Act. The NAAQS establish acceptable pollutant concentrations which may be equaled continuously or exceeded only once per year. California Ambient Air Quality Standards (CAAQS) are limits set by the California Air Resources Board (CARB) that cannot be equaled or exceeded. An air pollution control district must prepare an Air Quality Attainment Plan if the standards are not met. The California and National Ambient Air Quality Standards are outlined in Table 5.4-1, *Ambient Air Quality Standards.*

The following is a summary of the characteristics of primary and secondary pollutants.

Ozone (O_3)

Ozone is a pungent, colorless toxic gas. Ozone makes up 90 percent of the group of pollutants known as photochemical oxidants. Ozone and other photochemical oxidants are products of atmospheric reaction of nitrogen oxides and reactive organic gases with ultraviolet light. High ozone levels can adversely affect plants, and in humans, can cause respiratory irritation.

Carbon Monoxide (CO)

Carbon monoxide is an odorless, colorless toxic gas produced by incomplete combustion of carbon-containing substances. Carbon monoxide interferes with the transfer of fresh oxygen from blood into body tissues.

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Table 5.4-1
Ambient Air Quality Standards

Pollutant	Averaging Time	California Standards		Federal Standards		
		Concentration	Method	Primary	Secondary	Method
Ozone (O3)	1 Hour	0.09 ppm (180 µg/m³)	Ultraviolet Photometry	0.12 ppm (235 µg/m³)	Same as Primary Standard	Ethylene Chemiluminescence
	8 Hour	—		0.08 ppm (157 µg/m³)		
Respirable Particulate Matter (PM10)	Annual Geometric Mean	30 µg/m³	Size Selective Inlet Sampler ARB Method P (8/22/85)	—	Same as Primary Standard	Inertial Separation Gravimetric Analysis
	24 Hour	50 µg/m³		150 µg/m³		
	Annual Arithmetic Mean	—		50 µg/m³		
Fine Particulate Matter (PM 2.5)	24 Hour	No Separate State Standard		65 µg/m³	Same as Primary Standard	Inertial Separation Gravimetric Analysis
	Annual Arithmetic Mean			15 µg/m³		
Carbon Monoxide (CO)	8 Hour	9.0 ppm (10 µg/m³)	Non-dispersive Infrared Photometry (NDIR)	9.0 ppm (10 µg/m³)	None	Non-Dispersive Infrared Photometry (NDIR)
	1 Hour	20 ppm (23 µg/m³)		35 ppm (40 µg/m³)		
	8 Hour (Lake Tahoe)	6 ppm (7 µg/m³)		—		
Nitrogen Dioxide (NO2)	Annual Arithmetic Mean	—	Gas Phase Chemiluminescence	0.053 ppm (100 µg/m³)	Same as Primary Standard	Gas Phase Chemiluminescence
	1 Hour	0.25 ppm (470 µg/m³)		—		
Lead	30 days average	1.5 µg/m³	Atl. Method 54 (12/74) Atomic Absorption	—	—	High Volume Sampler and Atomic Absorption
	Calendar Quarter	—		1.5 µg/m³	Same as Primary Standard	
Sulfur Dioxide (SO2)	Annual Arithmetic Mean	—	Fluorescence	0.04 ppm (105 µg/m³)	—	Pararosaniline
	24 Hour	0.04 ppm (105 µg/m³)		0.04 ppm (105 µg/m³)	—	
	3 Hour	—		—	0.05 ppm (1300 µg/m³)	
	1 Hour	0.25 ppm (655 µg/m³)		—	—	
Visibility Reducing Particles	8 Hour (10 a.m. to 6 p.m., PST)	Insufficient amount to produce an extinction coefficient of 0.23 per kilometer-visibility of ten miles or more (0.07-30 miles or more for Lake Tahoe) due to particles when the relative humidity is less than 70 percent. Method: ARB Method V (8/18/89).		No Federal Standards		
Sulfates	24 Hour	25 µg/m³	Turbidimetric Barium Sulfate-Atl-tL Method 61 (2/76)			
Hydrogen Sulfide	1 Hour	0.03 ppm (42 µg/m³)	Cadmium Hydroxide STRactan			

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Nitrogen Oxides (NOx)

Nitrogen oxides are formed from nitrogen and oxygen at high combustion temperatures and further reacts to form other oxides of nitrogen, such as nitrogen dioxide. Nitrogen dioxide reacts with ultraviolet light to initiate reactions producing photochemical smog, and it reacts in air to form nitrate particulates. Nitrogen dioxide significantly affects visibility.

Sulfur Oxides (SOx)

Sulfur dioxide is a colorless, pungent gas primarily formed by combustion of sulfur-containing fossil fuels. High sulfur dioxide concentrations irritate the upper respiratory tract, while low concentrations of sulfur dioxide injure lung tissues. Sulfur oxides can react to form sulfates which significantly reduce visibility.

Particulates (PM_{10})

Dust, aerosols, soot, mists, and fumes make up atmospheric particulates. Sources of particulates include industrial and agricultural operations, combustion, and photochemical actions of pollutants in the atmosphere. Particulates substantially reduce visibility and adversely affect the respiratory tract. PM_{10} is made up of finely divided particulate matter less than 10 microns in diameter.

Reactive Organic Gases (ROG)

Organic compounds are composed primarily of carbon and hydrogen. Motor vehicle emissions and evaporation of organic compounds produce hydrocarbon emissions. Hydrocarbon levels can affect plant growth. Many hydrocarbon species react in the atmosphere to form photochemical smog.

Air Quality - Basin-wide: The San Joaquin Valley Air Pollution Control District has jurisdiction in eight counties located in the San Joaquin Valley, including the Bakersfield area. The San Joaquin Valley Air Basin has been designated as attainment for carbon monoxide and non-attainment for ozone and particulate matter (PM_{10}) by federal and California standards. The California Clean Air Act requires that all reasonable stationary and mobile source control measures be implemented in non-attainment areas to help achieve a mandated, five percent per year reduction in ozone precursors, and to reduce population exposures. Table 5.4-2, *Ambient Air Quality Classifications Project Area of the San Joaquin Valley*, contains the ambient air quality classifications for the Bakersfield area.

Table 5.4-2
Ambient Air Quality Classifications Project Area of the San Joaquin Valley

Pollutant	State	Federal
Carbon Monoxide	Attainment	Attainment
Ozone	Non-Attainment/Severe	Non-Attainment/Severe
Oxides of Nitrogen	Attainment	Attainment
Sulfur Dioxide	Attainment	Attainment
Particulate Matter <10 microns	Non-Attainment	Non-Attainment/Serious

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Air Monitoring Station. The closest air monitoring station to the Project site is the Bakersfield Station located at 5558 California Avenue. The station monitors particulates, ozone, carbon monoxide, and nitrogen dioxide.

Table 5.4-3, *Maximum Pollutant Levels at Bakersfield's California Avenue Monitoring Station*, contains the maximum pollutant levels detected during 1999 through 2001 (the latest data available).

Table 5.4-3
Maximum Pollutant Levels at Bakersfield's California Avenue Monitoring Station

Pollutant	Time Averaging	1999 Maximums	2000 Maximums	2001 Maximums	Standards	
					National	State
Ozone (O_3)	1 Hour	0.116 ppm	0.125 ppm	0.129 ppm	0.12 ppm	0.09 ppm
Ozone (O_3)	8 Hour	0.101 ppm	0.106 ppm	0.115 ppm	0.08 ppm	—
Carbon Monoxide (CO)	8 Hour	4.51 ppm	4.89 ppm	3.41 ppm	9 ppm	9 ppm
Nitrogen Dioxide (NO_2)	1 Hour	0.107 ppm	0.089 ppm	0.115 ppm	—	0.25 ppm
Nitrogen Dioxide (NO_2)	1 Hour Annual Average	0.025 ppm	0.024 ppm	—	0.053 ppm	—
Particulates (PM_{10})	24 Hour	143 µg/m³	140 µg/m³	190 µg/m³	150 µg/m³	50 µg/m³
	Federal Annual Geometric Mean	47 µg/m³	45 µg/m³	47 µg/m³	50 µg/m³	—
	State Annual Geometric Mean	40 µg/m³	39 µg/m³	43 µg/m³	—	30 µg/m³
Sulfur Dioxide (SO_2)	24 Hour	0.006 ppm	0.003 ppm	0.005 ppm	0.14 ppm	0.04 ppm

Notes: ppm = parts per million
µg/m³ = micrograms per cubic meter
— = no applicable

Source: CARB Website, 2002.

SENSITIVE RECEPTORS

Air quality impacts of this Project are not likely to affect sensitive receptors. Sensitive receptors are areas where young children, chronically ill individuals, or other individuals more sensitive than the general population are located. Examples of sensitive receptors are schools, day care centers, and hospitals.

The nearest receptor is W.A. Kendrick School, which is located approximately 0.5-miles north of the Project site. There are also a residential areas bordering the Project site to the north and east, which could contain sensitive receptors.

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STANDARDS OF SIGNIFICANCE

SIGNIFICANCE CRITERIA

In accordance with CEQA, the effects of a Project are evaluated to determine if they will result in a significant impact on the environment. An EIR is required to focus on these effects and offer mitigation measures to reduce or avoid any significant impacts which are identified. The criteria, or standards, used to determine the significance of impacts may vary depending on the nature of the Project. Air quality impacts resulting from the implementation of the proposed Project could be considered significant if they cause any of the following to occur:

- Conflict with or obstruct implementation of the applicable air quality plan (refer to Impact Statement 5.4-4);
- Violate any air quality standard or contribute substantially to an existing or Projected air quality violation (refer to Impact Statements5.4-1 and 5.4-2);
- Result in a cumulatively considerable net increase of any criteria pollutant for which the Project region is non-attainment under an applicable Federal or State ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors) (refer to Impact Statement 5.4-5);
- Exposes sensitive receptors to substantial pollutant concentrations (refer to Impact Statement5.4-2 and 5.4-3); and/or
- Create objectionable odors affecting a substantial number of people (refer to Section 10.0, *Effect Found Not to be Significant*).

Potential impacts associated with the proposed Project have been identified. The impacts are categorized according to topic then numbered consecutively under each category. Mitigation measures at the end of this Section directly correspond to the numbered impact statements below.

IMPACTS

SHORT-TERM EMISSIONS

5.4-1 *Significant short-term air quality impacts may occur during site preparation and project construction. These impacts are considered less than significant with implementation of the recommended mitigation measures. (Mitigation in this instance refers to applicable City Development Code Sections and SJV APCD Rules.)*

Short-term impacts from the Projects would primarily result in fugitive particulate matter emissions during construction. Grading, excavation, trenching, filling, and other construction activities result in increased dust emissions. Regulation VIII of the San Joaquin Valley Unified Air Pollution Control District specifies control measures for specified outdoor sources of fugitive particulate matter emissions. Rule 8010

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contains administration requirements, Rule 8020 applies to construction activities, and Rule 8070 applies to vehicle and equipment parking, fueling, and service areas. The Air District does not require a permit for these activities, but does impose measures to control fugitive dust, such as the application of water or a chemical dust suppressant.

Construction would also result in exhaust emissions from diesel-powered heavy equipment. Exhaust emissions from construction include emissions associated with the transport of machinery and supplies to and from the site, emissions produced onsite as the equipment is used and emissions from trucks transporting excavated materials from the site and fill soils to the site. Examples of these emissions include CO, ROG, NOx, SOx, and PM_{10}.

The proposed Project may have potentially significant short-term construction equipment emission impacts, which could exceed the Air District threshold levels for several criteria pollutants. Exhaust emission factors for typical diesel-powered heavy equipment, are found in U.S. EPA AP-42, Volume II, Table II-7.1 (1985) (refer to Table 5.4-4, *Emission Factors for Heavy-Duty Diesel-Powered Equipment*). Exhaust emissions would vary substantially from day to day. Numerous variables factored into estimating total construction emissions include: level of activity, length of construction period, number of pieces and types of equipment in use, site characteristics, weather conditions, number of construction personnel, and amount of materials to be transported on/offsite. Additional exhaust emissions would be associated with the transport of workers and materials. Because the specific mix of construction equipment needed for future development is not presently known, equipment emissions cannot be accurately quantified. This data is not available until the construction of specific project components is undertaken. The construction equipment should be properly and routinely maintained, as recommended by manufacturer manuals, to control exhaust emissions.

Table 5.4-4
Emission Factors for Heavy-Duty Diesel-Powered Equipment

Type of Equipment	Pollutant (lb/hr)			
	ROC	NO	CO	PM
Track-Type Tractor	0.12	1.26	0.35	0.11
Wheeled Tractor	0.18	1.27	3.59	0.14
Wheeled Dozer	0.19	4.17	1.79	0.17
Scraper	0.27	3.84	1.26	0.41
Motor Grader	0.039	0.71	0.15	0.061
Wheeled Loader	0.23	1.89	0.57	0.17
Track-Type Loader	0.095	0.83	0.20	0.059
Off-Highway Truck	0.19	4.17	1.79	0.26
Roller	0.065	0.86	0.30	0.050
Miscellaneous	0.15	1.69	0.68	0.14

Source: U.S. EPA AP-42, Volume II, Table II-7.1, 1985.

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The Bakersfield area and the San Joaquin Valley are non-attainment for particulates. Although the proposed land uses are not considered a potential source for significant particulate emissions, fugitive particulate emissions would occur during construction. Construction activity has the potential to generate 1.2 tons of total suspended particulates per acre per month of activity.[1] The proposed Project involves development of 37.52 acres. Fugitive construction emissions have the potential to cause a significant impact on air quality. The application of water, or other dust suppressant, could significantly reduce emissions. Doubling the moisture content could reduce emissions on unpaved roads by 75 percent[2] and use of a chemical dust suppressant on storage piles could reduce emissions by approximately 90 percent.[3] Assuming that the total suspended particulates are comprised of 50 percent PM_{10} and that the application of water controls emissions by 50 percent, fugitive PM_{10} emissions during construction could be reduced to 0.3 tons per acre per month of activity. Actual emissions would depend on the level of activity and the type of control being used. A construction schedule for each project component would be required to develop accurate emission estimates from construction. Control measures required and enforced by the San Joaquin Valley Air Pollution Control District under Regulation VIII would control these short-term emission sources to a level that is considered less than significant provided a limited amount of acres is disturbed at any one time. The following three rules related to fugitive dust control apply to this project:

- Rule 8010 Fugitive dust administrative requirements for control of fine particulate matter.
- Rule 8020 Fugitive dust requirements for control of fine particulate matter from construction, demolition, excavation and extraction activities.
- Rule 8070 Fugitive dust requirements for control of fine particulate matter from vehicle and/or equipment parking, shipping, receiving, transfer, fueling and service areas one acre or larger.

In addition, the Project shall include the following as required by the Bakersfield Zoning Code.

- Water sprays or chemical suppressants must be used in all unpaved areas to control fugitive emissions.
- All access roads and parking areas must be covered with asphalt-concrete paving.

[1] EPA, *Compilation of Air Pollutant Emission Factors*, Volume I: Stationary Point and Area Sources, EPA Publication No. AP-42, Fifth Edition, GPO Stock No. 055-000-00251-7, January 1995; Section 13.2.3, Heavy Construction Operations.

[2] United States Environmental Protection Agency, *Control of Open Fugitive Dust Sources*, EPA-450/3-88-008, September 1988.

[3] Ibid.

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Compliance with Regulation VIII of the San Joaquin Valley Unified Air Pollution Control District and the Bakersfield Zoning Code would reduce particulate emission impacts to levels that are considered less than significant.

LONG-TERM OPERATIONAL EMISSIONS

5.4-2 *The Project may result in an overall increase in the local and regional pollutant load due to direct impacts from vehicle emissions and indirect impacts from electricity and natural gas consumption. This impact is considered significant and unavoidable for ROG and NOx.*

Long-term air quality impacts would consist of mobile source emissions generated from project-related traffic and area source emissions generated directly from the natural gas consumed and indirectly from the power plant providing electricity to the Project site. Emissions associated with each of these sources are discussed and calculated below.

Mobile Source - Ozone

The Bakersfield area is a non-attainment area for federal air quality standards for ozone and particulates. Nitrogen oxides and reactive organic gases are regulated as ozone precursors. A precursor is defined by the District as "a directly emitted air contaminant that, when released into the atmosphere, forms or causes to be formed or contributes to the formation of a secondary air contaminant for which an ambient air quality standard has been adopted..."

The District regulates air quality in the Bakersfield area. The predicted emissions associated with vehicular traffic (mobile sources) are not subject to the District's permit requirements. However, the District is responsible for overseeing efforts to improve air quality within the San Joaquin Valley. The District has prepared an Air Quality Attainment Plan to bring the San Joaquin Valley into compliance with the California Ambient Air Quality Standard for ozone. The District reviews land use changes to evaluate the potential impact on air quality. The District has established a significance level for ROG and NOx of 10 tons per year each, but has no established levels of significance for other pollutants.

Vehicle emissions have been estimated for the year 2020 using the URBEMIS 7G computer model from the California Air Resources Board. This model predicts carbon monoxide, total hydrocarbons, nitrogen oxides, oxides of sulfur, and particulate matter emissions from motor vehicle traffic associated with new or modified land uses. Appendix 15.3, *Air Quality Data*, contains the URBEMIS 7G modeling results.

Project-related mobile source mitigated emissions for ROG and NOx would be considered significant based on the District's levels of significance as summarized on Table 5.4-5, *Long-Term Project Emissions*.

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Table 5.4-5
Long-Term Project Emissions

Project	ROG (tons/year)	NO_x (tons/year)	CO (tons/year)	PM_{10} (tons/year)
Project Buildout				
▪ Mobile Source Emissions	10.39	30.9	105	1.24
▪ Area Source Emissions (Mitigated)	00.06	00.71	0.33	0.00
Total Mitigated Emissions	10.45	31.61	105.33	1.24
SJVAPCD Significance Threshold	10	10	N/A	N/A
Is Threshold Exceeded? (Significant Impact?)	Yes	Yes	N/A	N/A

ROG = reactive organic gases
NO_x = nitrogen oxides
CO = carbon monoxide
PM_{10} = fine particulate matter

Area Source Emissions

The proposed Project would result in personal product use, and would create electrical demands and heating demands resulting in natural gas combustion. Electrical demand would result in electrical generation emissions from local power plants. The URBEMIS 7G computer model predicted emissions from typical energy consumption, gas usage, landscape maintenance, and consumer products. The model output is included in Appendix 15.3, Air Quality Data. As indicated in Table 5.4-5, *Long-Term Project Emissions*, area source emissions generated by the Project at buildout would not individually exceed SJVAPCD thresholds. However, as discussed below, area source emissions combined with vehicular emissions would cause operational emissions to exceed SJVAPCD thresholds for ROG and NO_x.

Potential Effect on Sensitive Receptors

Air quality impacts of the Project are not likely to affect sensitive receptors. Sensitive receptors are areas where young children, chronically ill individuals, or other individuals more sensitive than the general population are located. Examples of sensitive receptors are schools, day care centers, and hospitals.

The nearest receptor is W.A. Kendrick School, which is located approximately 0.5-mile north of the Project site. There is also a residential area bordering the Project site to the north and east, which could contain sensitive receptors.

The potential ambient air quality impacts from the Project are related to increases in traffic. The Project is not expected to result in localized impacts, such as CO hot spots, and is not expected to impact nearby sensitive receptors.

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Potential Impacts from Odors and Hazardous Air Pollutants

The Project consists of general commercial land uses. The generation of odors and hazardous air pollutants is generally associated with certain types of industrial and agricultural activities. Therefore, the Project is not expected to result in the generation of odors or hazardous air pollutants.

Total Project Operational Emissions

As shown in Table 5.4-5, the mobile source and area emissions associated with the proposed Project would generate pollutant emissions in excess of SJVAPCD thresholds. Thus, implementation of the proposed Project would create a significant and unavoidable individual Project impact from ROG and NOx emissions.

LOCALIZED CO EMISSIONS

5.4-3 *The Project may expose sensitive receptors to substantial pollutant concentrations. Analysis has concluded that a less than significant impact would occur in this regard.*

Mobile Source - Carbon Monoxide

Carbon monoxide emissions are a function of vehicle idling time and, thus, under normal meteorological conditions, depend on traffic flow conditions. Carbon monoxide transport is extremely limited; it disperses rapidly with distance from the source. Under certain extreme meteorological conditions, however, CO concentrations close to a congested roadway or intersection may reach unhealthful levels, affecting sensitive receptors (residents, school children, hospital patients, the elderly, etc.). Typically, high CO concentrations are associated with roadways or intersections operating at an unacceptable Level of Service (LOS). CO "Hot Spot" modeling is required if a traffic study reveals that the project will reduce the LOS on one or more streets to E or F; or, if the project will worsen an existing LOS F.

A traffic study was prepared by Ruettgers & Schuler for the proposed Project. The study indicates that twelve unsignalized intersections (based on Year 2020 + projections) warrant a CO Hot Spot analysis:

- South H Street at McKee Road*
- Hosking Road at Wible Road*
- Hosking Road at South H Street*
- Berkshire Road at South H Street*
- Panama Lane at Gosford Road*
- Panama Lane at Monitor Street*
- White Lane at State Road 99 North Bound Ramp*
- Berkshire Road at Wible Road*
- White Lane at Wible Road
- White Lane at State Road 99 South Bound Ramps
- Panama Lane at Wible Road
- Wible Road at Harris Road

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*Denotes intersections for which the CO analysis was based on mitigation measures proposed in the Traffic Study.

The impact of the proposed Project on local carbon monoxide levels was assessed at these intersections with the Caltrans CALINE-4 Air Quality Model, which allows microscale CO concentrations to be estimated along each roadway corridor or near intersections. This model is designed to identify localized concentrations of carbon monoxide, often termed "hot spots". Year 2020 traffic as predicted by the Traffic Study was used in the CALINE-4 model.

The modeling analysis was performed for worst-case wind angle and windspeed. The assumptions used in conducting the modeling analysis are provided in Appendix 15.3, *Air Quality Data*.

The results of the modeling analysis are shown in Table 5.4-6, *CALINE-4 Predicted Carbon Monoxide (CO) Concentrations*. The modeling results were compared to the California ambient air quality standards for carbon monoxide of 9 ppm on an 8-hour average and 20 ppm on a 1-hour average. Neither standard would be equaled or exceeded at any of the intersections studied. As such, the CO impacts from the proposed Project are considered less than significant. The input and output data is contained in Appendix 15.3, *Air Quality Data*.

Table 5.4-6
CALINE-4 Predicted Carbon Monoxide (CO) Concentrations

Intersection	Maximum Modeled Impact Year 2020 Without Project		Maximum Modeled Impact Year 2020 With Project		Project Increase	
	1-HR (ppm)	8-HR (ppm)	1-HR (ppm)	8-HR (ppm)	1-HR (ppm)	8-HR (ppm)
South H Street at Mckee Road	8.3	5.8	8.2	5.7	0.1	0.07
Hosking Road at Wible Road	8.2	5.7	8.2	5.7	0.0	0.00
Hosking Road at South H Street	7.7	5.4	7.7	5.4	0.0	0.00
Berkshire Road at South H Street	7.6	5.3	7.5	5.3	0.1	0.07
Panama Lane at Gosford Road	8.4	5.9	8.4	5.9	0.0	0.00
Panama Lane at Monitor Street	9.5	6.7	9.3	6.5	0.2	0.14
White Lane at State Road 99 North Bound Ramp	9.2	6.4	9.1	6.4	0.1	0.07
Berkshire Road at Wible Road	7.9	5.5	7.8	5.5	0.1	0.07
White Lane at Wible Road	12.1	8.5	12.0	8.4	0.1	0.07
White Lane at State Road 99 South Bound Ramps	11.1	7.8	11.1	7.8	0.0	0.00
Panama Lane at Wible Road	11.5	8.1	11.0	7.7	0.5	0.35
Wible Road at Harris Road	9.8	6.9	9.7	6.8	0.1	0.07

Notes: 1. 1-hour concentrations include ambient CO of 6.8 ppm (second highest 2 year impact, 8-hour average corrected upwards for 1-hour averaging period).
2. 8-hour concentrations were obtained by multiplying the 1-hour concentration by a factor of 0.7, as referenced in *Screening Procedures for Estimating the Air Quality Impact of Stationary Sources*, USEPA, October, 1992. Predicted concentrations modeled using "worst case" option.

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CONFORMITY WITH AIR QUALITY ATTAINMENT PLAN

5.4-4 *The Project has the potential to conflict with the Air Quality Attainment Plan. Analysis has concluded that a less than significant impact would occur in this regard.*

As noted above under the Significance Criteria discussion, a potentially significant impact to air quality would occur if the Project would conflict with or obstruct implementation of the applicable air quality plan. Although the Project would represent an incremental negative impact to air quality in the Basin, of primary concern is that Project-related impacts have been properly anticipated in the regional air quality planning process and reduced whenever feasible. Therefore, it is necessary to assess the Project's Conformity with the AQMP.

Conformity with the Air Quality Attainment Plan

The California Clean Air Act requires non-attainment districts with severe air quality problems to provide for a five percent reduction in non-attainment emissions per year. The San Joaquin Valley Air Pollution Control District prepared an Air Quality Attainment Plan for the San Joaquin Valley Air Basin in compliance with the requirements of the Act. The plan requires best available retrofit technology on specific types of stationary sources to reduce emissions. The California Clean Air Act and the Air Quality Attainment Plan also identify transportation control measures as methods of reducing emissions from mobile sources. The California Clean Air Act defines transportation control measures as "any strategy to reduce vehicle trips, vehicle use, vehicle miles traveled, vehicle idling or traffic congestion for the purpose of reducing motor vehicle emissions." The Air Quality Attainment Plan for the San Joaquin Valley Air Basin identifies the provisions to accommodate the use of bicycles, public transportation, and traffic flow improvements as transportation control measures.

The ROG and NOx emissions predicted by the model exceed the District's interim threshold levels. Golden Empire Transit (GET) provides public (bus) transportation in the Metropolitan Bakersfield area. The Project area is located near two separate GET bus routes. The possibility exists that when the Project is completed, the City would increase the level of service to the Project area, thereby reducing the operational (vehicular) emissions attributable to the Project.

The "traffic impact study" prepared by Ruettgers & Schuler recommends mitigation measures, such as street improvements and traffic signals, for intersections and street segments which fall below an acceptable Level of Service due to the impact of future traffic. The study allocates a proportionate share of the mitigation measures to the Project. The proposed mitigation measures are traffic flow improvements that are recognized transportation control measures in compliance with the Air Quality Attainment Plan.

The Air Quality Attainment Plan recognized growth of the population and economy within the air basin. The Plan predicted the workforce in Kern County to increase 40 percent and housing to increase 30 percent from 1990 to 2000. Although the proposed project was not anticipated by the Plan, it is consistent with growth

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projections in the County. Thus, the Project is considered consistent with the Air Quality Attainment Plan.

CUMULATIVE IMPACTS

5.4-5 *Impacts to regional air quality resulting from cumulative development may significantly impact existing air quality levels. Analysis has concluded that a less than significant impact would occur in this regard.*

This Air Quality Impact Study considered the affects of the Project, as defined by the Traffic Study, with the cumulative impacts of growth in the area.

The *Guide for Assessing and Mitigating Air Quality Impacts*[4] under CEQA defines cumulative impacts as two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. The document also states that "any proposed project that would individually have a significant air quality impact... would also be considered to have a significant cumulative air quality impact."[5]

This study considered the following cumulative impacts:

- Cumulative Ozone Impacts. Ozone impacts are the result of the cumulative emissions from numerous sources in the region and transport from outside the region. Ozone is in chemical reactions involving ROG, NOx, and sunlight.
- Cumulative PM_{10} Impacts. PM_{10} has the potential to cause significant local problems during periods of dry conditions accompanied by high winds, and during periods of heavy earth disturbing activities. PM_{10} may have cumulative local impacts, if for example, several unrelated grading or earth moving projects are underway simultaneously at nearby sites.
- Cumulative CO Impacts. Cumulative carbon monoxide impacts are accounted for in the CO Hotspot Analysis described earlier in this assessment. Traffic levels were used to determine if the proposed Project would have a significant cumulative impact.
- Cumulative Hazardous Air Pollutant (HAP) Impacts. Cumulative analysis for HAPs focused on local impacts on sensitive receptors. The District recommends screening a radius of one mile for HAP cumulative impacts.

The existing and proposed projects within one mile of the proposed Project are illustrated on Exhibit 4-1, *Cumulative Projects Location Map*. Six proposed residential development projects have been identified and modeled using the URBEMIS 7G computer model to predict cumulative impacts. Emissions for the operational phase of the proposed projects were based on housing lot totals provided by the City of Bakersfield Planning Department.[6] In accordance with district

[4] CARB Guide for Assessing and Mitigating Air Quality Impacts, revised January 10, 2002.

[5] City of Bakersfield, Active Tentative Tracts, David Dow, last updated April 25, 2002.

[6] CARB Guide for Assessing and Mitigating Air Quality Impacts, revised January 10, 2002

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guidance, fireplaces were not considered since they are seasonal in nature. The predicted model outputs, including the proposed Project, are summarized in Table 5.4-7, *Cumulative Impact Model Results*, and Table 5.4-8, *Cumulative Impact Emission Totals*, and are included in Appendix 16.3, *Air Quality Data*.

Table 5.4-7
Cumulative Impact Model Results

Subdivision Name	Number of Lots	Emission Source	ROG (ton/yr)		NOx (ton/yr)		CO (ton/yr)		PM10 (ton/yr)	
			Unmitigated	Mitigated	Unmitigated	Mitigated	Unmitigated	Mitigated	Unmitigated	Mitigated
T5327R – Genevieve Myers	93	Area Source	0.87	0.36	0.29	0.00				
		Vehicle Source	3.45	5.03	28.98	0.19				
T5738 – John Giumarra, Jr.	504	Area Source	4.74	1.93	1.57	0.01				
		Vehicle Source	16.6	23.8	137	0.92				
T5762R – R-M Development, Inc.	143	Area Source	1.34	0.55	0.44	0.00				
		Vehicle Source	5.14	7.47	43.0	0.29				
T5941 – Cemland Development	240	Area Source	2.26	0.92	0.75	0.00				
		Vehicle Source	8.33	12.0	69.4	0.47				
T6064 – Summerwind Group, Inc.	188	Area Source	1.77	0.72	0.58	0.00				
		Vehicle Source	6.64	9.62	55.4	0.37				
T6092 – Cemland Development	187	Area Source	1.76	0.72	0.58	0.00				
		Vehicle Source	6.60	9.57	55.1	0.37				

The *Guide for Assessing and Mitigating Air Quality Impacts*[7] states, "impacts of local pollutants (CO, HAPs) are cumulatively significant when modeling shows that the combined emissions from the project and other existing and planned projects will exceed air quality standards." The project is not expected to cause a cumulative impact in excess of the California Ambient Air Quality Standards (CAAQS) for several reasons. CO "hot spot" modeling demonstrated that the ambient air quality standards for CO would not be exceeded as a result of the Project. Also, the Project is not a source of HAP emissions and therefore cannot have a significant impact from HAPs.

For ROG and NOx, the only significance thresholds exceeded would be from the Project's mobile source emissions. The Project was below the thresholds for both ROG and NOx for stationary source emissions. Therefore the Project is considered to be cumulatively less than significant for ROG and NOx. PM_{10} emissions from the Project are minimal and are expected to be less than significant.

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[7] *CARB Guide for Assessing and Mitigating Air Quality Impacts*, revised January 10, 2002, p. 29.

Table 5.4-8
Cumulative Impact Emission Totals

Subdivider Name	ROG (tons/yr)	NOx (tons/yr)	CO (tons/yr)	PM10 (tons/yr)
Area Source Emissions				
T5327R – Genevieve Myers	0.87	0.36	0.29	0.00
T5738 – John Glumarra, Jr.	4.74	1.93	1.57	0.01
T5762R – R-M Development, Inc.	1.34	0.55	0.44	0.00
T5941 – Cemland Development	2.26	0.92	0.75	0.00
T6064 – Summerwind Group, Inc.	1.77	0.72	0.58	0.00
T6092 – Cemland Development	1.76	0.72	0.58	0.00
Panama 99 Properties, LLC	0.06	0.71	0.33	0.00
Totals	*12.8*	*5.91*	*4.54*	*0.01*
Vehicular Source Emissions				
T5327R – Genevieve Myers	3.45	5.03	28.98	0.19
T5738 – John Glumarra, Jr.	16.6	23.8	137	0.92
T5762R – R-M Development, Inc.	5.14	7.47	43.0	0.29
T5941 – Cemland Development	8.33	12.0	69.4	0.47
T6064 – Summerwind Group, Inc.	6.64	9.62	55.4	0.37
T6092 – Cemland Development	6.60	9.57	55.1	0.37
Panama 99 Properties, LLC	10.4	30.9	105	1.24
Totals	*57.2*	*98.4*	*494*	*3.85*
Cumulative Total	70.0	104	498	3.86

Cumulative operational impacts associated with the Project are also expected to be less than significant. For the most part, the cumulative vehicular emissions from the Project would not occur at the site, but would be distributed throughout an area surrounding the Project site. This would minimize the impact from the vehicular sources due to the large area in which the pollutants are emitted and the mixing that traffic creates. Overall, cumulative impacts are expected to be less than the CAAQS and, therefore, would be considered less than significant.

MITIGATION MEASURES

This section directly corresponds to the identified Impact Statements in the impacts subsection.

SHORT-TERM EMISSIONS

5.4-1a The following mitigation measures shall be utilized during the construction phase of the Project to reduce construction exhaust emissions:

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- Properly and routinely maintain all construction equipment, as recommended by manufacturer manuals, to control exhaust emissions.
- Shut down equipment when not in use for extended periods of time to reduce emissions associated with idling engines.
- Encourage ride sharing and use of transit transportation for construction employee commuting to the project sites.
- Use electric equipment for construction whenever possible in lieu of fossil fuel-fired equipment.
- Curtail construction during periods of high ambient pollutant concentrations; this may include ceasing of construction activity during the peak-hour of vehicular traffic on adjacent roadways.

5.4-1b Construction of the project requires the implementation of control measures set forth under Regulation VIII, Fugitive PM_{10} Prohibitions of the San Joaquin Valley Air Pollution Control District. The following mitigation measures, in addition to those required under Regulation VIII, shall be implemented to reduce fugitive dust emissions associated with the Project:

- All disturbed areas, including storage piles, which are not being actively utilized for construction purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizer/ suppressant, covered with a tarp or other suitable cover, or vegetative ground cover.
- All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant.
- All land clearing, grubbing, scraping, excavation, land leveling, grading, cut & fill, and demolition activities shall be effectively controlled of fugitive dust emissions utilizing application of water or by presoaking.
- When materials are transported off-site, all material shall be covered, or effectively wetted to limit visible dust emissions, and at least six inches of freeboard space from the top of the container shall be maintained.
- All operations shall limit or expeditiously remove the accumulation of mud or dirt from adjacent public streets at the end of each workday. (The use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions. Use of blower devices is expressly forbidden)

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- Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, said piles shall be ~~effectively stabilized of fugitive dust emissions utilizing sufficient water~~ or chemical stabilizer/suppressant.

- Within urban areas, trackout shall be immediately removed when it extends 50 or more feet from the site and at the end of each workday.

- Any site with 150 or more vehicle trips per day shall prevent carryout and trackout.

- Asphalt-concrete paving shall comply with San Joaquin Valley Air Pollution Control District Rule 4641 and restrict the use of cutback, slow-cure and emulsified asphalt paving materials.

- Grading activities shall cease during periods of high winds (greater than 20 mph over a one-hour period).

- Construction-related vehicle speeds shall be limited to 15 mph on all unpaved areas at the construction site.

- Wash off construction and haul trucks to minimize the removal of mud and dirt from the project sites.

LONG-TERM OPERATIONAL EMISSIONS

5.4-2a The Project shall comply with Title 24 of the California Energy Efficient Standards for Residential and Non-Residential Buildings. These requirements, along with the following mitigation measures, shall be incorporated into the project design:

- Use of low-NOx emission water heaters.
- Provision of shade trees to reduce building cooling requirements.
- Installation of energy-efficient and automated air conditioners.
- Exterior windows shall all be double-paned glass.
- Energy-efficient ~~(low-sodium)~~ parking lights shall be used.

5.4-2b Transportation control measures and design features shall be incorporated into the Project to reduce emissions from mobile sources. The following control measure is recommended to provide a strategy to reduce vehicle trips, vehicle use, vehicle miles traveled, and vehicle idling and traffic congestion for the purpose of reducing motor vehicle emissions: Streets and traffic signals for intersections and street segments that may impact the surrounding local roadway system due to Project-generated traffic shall be improved. Specific mitigation measures for improving the level of service on congested roadways is presented in Section 5.3, *Traffic and Circulation*.

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LOCALIZED CO EMISSIONS

5.4-3 No mitigation measures are recommended.

CONFORMITY WITH AIR QUALITY MANAGEMENT PLAN

5.4-4 No mitigation measures are recommended.

CUMULATIVE IMPACTS

5.4-5 No mitigation measures are recommended.

LEVEL OF SIGNIFICANCE AFTER MITIGATION

ROG and NOx emissions from Project operations would remain significant and unavoidable following mitigation.

If the City of Bakersfield approves the Project, the City would be required to cite their findings in accordance with Section 15091 of the CEQA Guidelines and prepare a Statement of Overriding Considerations in accordance with Section 15093 of the CEQA Guidelines.

Attachment 2

Access via PURCHASE ACCESS

Vol. 287 No. 9, March 6, 2002

Original Contribution

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Lung Cancer, Cardiopulmonary Mortality, and Long-term Exposure to Fine Particulate Air Pollution

C. Arden Pope III, PhD; Richard T. Burnett, PhD; Michael J. Thun, MD; Eugenia E. Calle, PhD; Daniel Krewski, PhD; Kazuhiko Ito, PhD; George D. Thurston, ScD

JAMA. 2002;287:1132-1141.

ABSTRACT

Context Associations have been found between day-to-day particulate air pollution and increased risk of various adverse health outcomes, including cardiopulmonary mortality. However, studies of health effects of long-term particulate air pollution have been less conclusive.

Objective To assess the relationship between long-term exposure to fine particulate air pollution and all-cause, lung cancer, and cardiopulmonary mortality.

Design, Setting, and Participants Vital status and cause of death data were collected by the American Cancer Society as part of the Cancer Prevention II study, an ongoing prospective mortality study, which enrolled approximately 1.2 million adults in 1982. Participants completed a questionnaire detailing individual risk factor data (age, sex, race, weight, height, smoking history, education, marital status, diet, alcohol consumption, and occupational exposures). The risk factor data for approximately 500 000 adults were linked with air pollution data for metropolitan areas throughout the United States and combined with vital status and cause of death data through December 31, 1998.

Retrieval System (AIRS). The mean concentration of each pollutant from all available monitoring sites was calculated for each metropolitan area during the 1 to 2 years prior to enrollment.[17]

Additional information on ambient pollution during the follow-up period was extracted from the AIRS database as quarterly mean values for each routinely monitored pollutant for 1982 through 1998. All quarterly averages met summary criteria imposed by the Environmental Protection Agency and were based on observations made on at least 50% of the scheduled sampling days at each site. The quarterly mean values for all stations in each metropolitan area were calculated across the study years using daily average values for each pollutant except ozone. For ozone, daily 1-hour maximums were used and were calculated for the full year and for the third quarter only (ie, July, August, September). While gaseous pollutants generally had recorded data throughout the entire follow-up period of interest, the particulate matter monitoring protocol changed in the late 1980s from total suspended particles to particles measuring less than 10 μm in diameter (PM_{10}), resulting in the majority of total suspended particle data being available in the early to mid-1980s and PM_{10} data being mostly available in the early to mid-1990s.

As a consequence of the new $PM_{2.5}$ standard, a large number of sites began collecting $PM_{2.5}$ data in 1999. Daily $PM_{2.5}$ data were extracted from the AIRS database for 1999 and the first 3 quarters of 2000. For each site, quarterly averages for each of the 2 years were computed. The 4 quarters were averaged when at least 1 of the 2 corresponding quarters for each year had at least 50% of the sixth-day samples and at least 45 total sampling days available. Measurements were averaged first by site and then by metropolitan area. Although no network of $PM_{2.5}$ monitoring existed in the United States between the early 1980s and the late 1990s, the integrated average of $PM_{2.5}$ concentrations during the period was estimated by averaging the $PM_{2.5}$ concentration for early and later periods.

Mean sulfate concentrations for 1980-1981 were available for many cities based on data from the Inhalable Particle Monitoring Network and the National Aerometric Database. Recognizing that sulfate was artifactually overestimated due to glass fiber filters used at that time, season and region-specific adjustments were made.[17] Since few states analyzed particulate samples for sulfates after the early 1980s, individual states were directly contacted for data regarding filter use. Ion chromatography was used to analyze PM_{10} filters and this data could be obtained from metropolitan areas across the United States. Filters were collected for a single reference year (1990) in the middle of the 1982-1998 study period. The use of quartz filters virtually eliminated the historical overestimation of sulfate. Mean sulfate concentrations for 1990 were estimated using sulfate from AIRS, data reported directly from individual states, and analysis of archived filters.

Statistical Analysis

The basic statistical approach used in this analysis is an extension of the standard Cox proportional hazards survival model,[21] which has been used for risk estimates of pollution-related mortality in previous longitudinal cohort studies.[15-16] The standard Cox model implicitly assumes that observations are statistically independent after controlling for available risk factors, resulting in 2

concerns with regard to risk estimates of pollution-related mortality.[22] First, if the assumption of statistical independence is not valid, the uncertainty in the risk estimates of pollution-related mortality may be misstated. Second, even after controlling for available risk factors, survival times of participants living in communities closer together may be more similar than participants living in communities farther apart, which results in spatial autocorrelation. If this spatial autocorrelation is due to missing or systematically mismeasured risk factors that are spatially correlated with air pollution, then the risk estimates of pollution-related mortality may be biased due to inadequate control of these factors. Therefore, in this analysis, the Cox proportional hazards model was extended by incorporating a spatial random-effects component, which provided accurate estimates of the uncertainty of effect estimates. The model also evaluated spatial autocorrelation and incorporated a nonparametric spatial smooth component (to account for unexplained spatial structure). A more detailed description of this modeling approach is provided elsewhere.[22]

The baseline analysis in this study estimated adjusted relative risk (RR) ratios for mortality by using a Cox proportional hazards model with inclusion of a metropolitan-based random-effects component. Model fitting involved a 2-stage process. In the first stage, survival data were modeled using the standard Cox proportional hazards model, including individual level covariates and indicator variables for each metropolitan area (without pollution variables). Output from stage 1 provided estimates of the metropolitan-specific logarithm of the RRs of mortality (relative to an arbitrary reference community), which were adjusted for individual risk factors. The correlation between these values, which was induced by using the same reference community, was then removed.[23] In the second stage, the estimates of adjusted metropolitan-specific health responses were related to fine particulate air pollution using a linear random-effects regression model.[24] The time variable used in the models was survival time from the date of enrollment. Survival times of participants who did not die were censored at the end of the study period. To control for age, sex, and race, all of the models were stratified by 1-year age categories, sex, and race (white vs other), which allowed each category to have its own baseline hazard. Models were estimated for all-cause mortality and for 3 separate mortality categories: cardiopulmonary (*ICD-9* 401-440 and 460-519), lung cancer (*ICD-9* 162), and all others.

Models were estimated separately for each of the 3 fine particle variables, $PM_{2.5}$ (1979-1983), $PM_{2.5}$ (1999-2000), and $PM_{2.5}$ (average). Individual level covariates were included in the models to adjust for various important individual risk factors. All of these variables were classified as either indicator (ie, yes/no, binary, dummy) variables or continuous variables. Variables used to control for tobacco smoke, for example, included both indicator and continuous variables. The smoking indicator variables included: current cigarette smoker, former cigarette smoker, and a pipe or cigar smoker only (all vs never smoking) along with indicator variables for starting smoking before or after age 18 years. The continuous smoking variables included: current smoker's years of smoking, current smoker's years of smoking squared, current smoker's cigarettes per day, current smoker's cigarettes per day squared, former smoker's years of smoking, former smoker's years of smoking squared, former smoker's cigarettes per day, former smoker's cigarettes per day squared, and the number of hours per day exposed to passive cigarette smoke.

To control for education, 2 indicator variables, which indicated completion of high school or education beyond high school, were included. Marital status variables included indicator variables for single and other vs married. Both body mass index (BMI) values and BMI values squared were included as continuous variables. Indicator variables for beer, liquor, and wine drinkers and

nonresponders vs nondrinkers were included to adjust for alcohol consumption. Occupational exposure was controlled for using various indicator variables: regular occupational exposure to asbestos, chemicals/acids/solvents, coal or stone dusts, coal tar/pitch/asphalt, diesel engine exhaust, or formaldehyde, and additional indicator variables that indicated 9 different rankings of an occupational dirtiness index that has been developed and described elsewhere.[17, 25] Two diet indices that accounted for fat consumption and consumption of vegetables, citrus, and high-fiber grains were derived based on information given in the enrollment questionnaire.[18] Quintile indicator variables for each of these diet indices were also included in the models.[18]

In addition to the baseline analysis, several additional sets of analysis were conducted. First, to more fully evaluate the shape of the concentration-response function, a robust locally weighted regression smoother[26] (within the generalized additive model framework[27]) was used to estimate the relationship between particulate air pollution and mortality in the second stage of model fitting. Second, the sensitivity of the fine particle mortality risk estimates compared with alternative modeling approaches and assumptions was evaluated. Standard Cox proportional hazards models were fit to the data including particulate air pollution as a predictor of mortality and sequentially adding (in a controlled forward stepwise process) groups of variables to control for smoking, education, marital status, BMI, alcohol consumption, occupational exposures, and diet.

In addition, to evaluate the sensitivity of the estimated pollution effect while more aggressively controlling for spatial differences in mortality, a 2-dimensional term to account for spatial trends was added to the models and was estimated using a locally weighted regression smoother. The "span" parameter, which controls the complexity of the surface smooth, was set at 3 different settings to allow for increasingly aggressive fitting of the spatial structure. These included a default span of 50%, the span that resulted in the lowest unexplained variance in mortality rate between metropolitan areas, and the span that resulted in the strongest evidence (highest *P* value) to suggest no residual spatial structure. The risk estimates and SEs (and thus the confidence intervals) were estimated using generalized additive modeling[27] with S-Plus statistical software,[28] which provides unbiased effect estimates, but may underestimate SEs if there is significant spatial autocorrelation and significant correlations between air pollution and the smoothed surface of mortality. Therefore, evidence of spatial autocorrelation was carefully evaluated and tested using the Bartlett test.[29] The correlations of residual mortality with distance between metropolitan areas were graphically examined.

Analyses were also conducted of effect modification by age, sex, smoking status, occupational exposure, and education. Finally, models were fit using a variety of alternative pollution indices, including gaseous pollutants. Specifically, models were estimated separately for each of the pollution variables listed in Table 1, while also including all of the other risk factor variables.

RESULTS

Fine particulate air pollution generally declined in the United States during the follow-up period of this study. Figure 1 plots mean $PM_{2.5}$ concentrations for 1999-2000 over mean $PM_{2.5}$ concentrations for 1979-

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1983 for the 51 cities in which paired data were available. The concentrations of $PM_{2.5}$ were lower in 1999-2000 than in 1979-1983 for most cities, with the largest reduction observed in the cities with the highest concentrations of pollution during 1979-1983. Mean $PM_{2.5}$ levels in the 2 periods were highly correlated (r = 0.78). The rank ordering of cities by relative pollution levels remained nearly the same. Therefore, the relative levels of fine particle concentrations were similar whether based on measurements at the beginning of the study period, shortly following the study period, or an average of the 2.

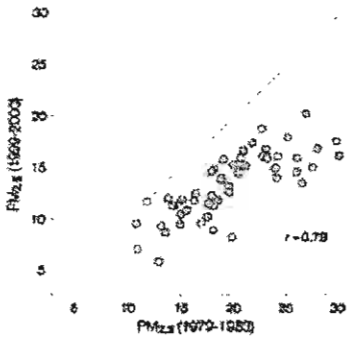

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Figure 1. Mean Fine Particles Measuring Less Than 2.5 µm in Diameter ($PM_{2.5}$)

Mean $PM_{2.5}$ concentrations in micrograms per meters cubed for 1999-2000 are plotted along with concentrations for 1979-1983 for the 51 metropolitan areas with paired pollution data. The dotted line is a reference 45°-equality line.

As reported in Table 2, all 3 indices of fine particulate air pollution were associated with all-cause, cardiopulmonary, and lung cancer mortality, but not mortality from all other causes combined. Figure 2 presents the nonparametric smoothed exposure response relationships between cause-specific mortality and $PM_{2.5}$ (average). The log RRs for all-cause, cardiopulmonary, and lung cancer mortality increased across the gradient of fine particulate matter. Goodness-of-fit tests indicated that the associations were not significantly different from linear associations (P>.20).

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Table 2. Adjusted Mortality Relative Risk (RR) Associated With a 10-µg/m^3 Change in Fine Particles Measuring Less Than 2.5 µm in Diameter

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Figure 2. Nonparametric Smoothed Exposure Response Relationship

Vertical lines along x-axes indicate rug or frequency plot of mean fine particulate pollution; $PM_{2.5}$, mean fine particles measuring less than 2.5 µm in diameter; RR, relative risk; and CI, confidence interval.

The fine particle mortality RR ratios from various alternative modeling approaches and assumptions are presented in Figure 3. After controlling for smoking, education, and marital status, the controlled forward stepwise inclusion of additional covariates had little influence on the estimated associations with fine particulate air pollution on cardiopulmonary and lung cancer mortality. As expected, cigarette smoking was highly significantly associated with elevated risk of all-cause, cardiopulmonary, and lung cancer mortality ($P<.001$). Estimated RRs for an average current smoker (men and women combined, 22 cigarettes/day for 33.5 years, with initiation before age 18 years) were equal to 2.58, 2.89, and 14.80 for all-cause, cardiopulmonary, and lung cancer mortality, respectively. Statistically significant, but substantially smaller and less robust associations, were also observed for education, marital status, BMI, alcohol consumption, occupational exposure, and diet variables. Although many of these covariates were also statistically associated with mortality, the risk estimates of pollution-related mortality were not highly sensitive to the inclusion of these additional covariates.

Figure 3. Mortality Relative Risk (RR) Ratio Associated With 10-µg/m^3 Differences of $PM_{2.5}$ Concentrations

Data presented are for 1979-1983 for the different causes of death, with various levels of controlling for individual risk factors, and using alternative modeling approaches. The 3 models with spatial smoothing allow for increasingly aggressive fitting of the spatial structure. Plus sign indicates model included previous variables (ie, smoking included stratification by age, sex, and race); $PM_{2.5}$, mean fine particles measuring less than 2.5 µm in diameter; and CI, confidence interval.

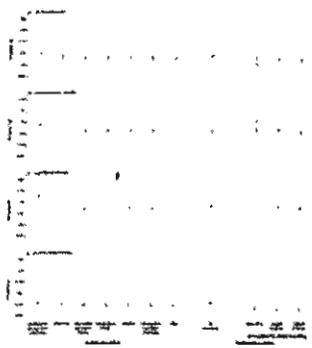

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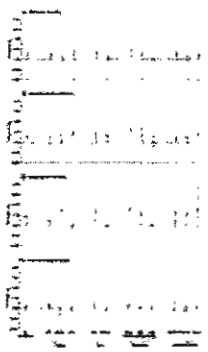
Figure 3 also demonstrates that the introduction of the random-effects component to the model resulted in larger SEs of the estimates and, therefore, somewhat wider 95% confidence intervals. There was no evidence of statistically significant spatial autocorrelation in the survival data based on the Bartlett test ($P>.20$) after controlling for fine particulate air pollution and the various individual risk factors. Furthermore, graphical examination of the correlations of the residual mortality with distance between metropolitan areas did not reveal significant spatial autocorrelation (results not shown). Nevertheless, the incorporation of spatial smoothing was included to further investigate the robustness of the estimated particulate pollution effect. Effect estimates were not highly sensitive to the incorporation of spatial smoothing to account for regional clustering or other spatial patterns in the data.

Figure 4 presents fine particle air pollution–related mortality RR ratios after stratifying by age, sex, education, and smoking status, and adjusting for all other risk factors. The differences across age and sex strata were not generally consistent or statistically significant. However, a consistent pattern emerged from this stratified analysis: the association with particulate pollution was stronger for both cardiopulmonary and lung cancer mortality for participants with less education. Also, for both cardiopulmonary and lung cancer mortality, the RR estimates were higher for nonsmokers.

Figure 4. Adjusted Mortality Relative Risk (RR) Ratio Associated With 10-$\mu g/m^3$ Differences of $PM_{2.5}$ Concentrations



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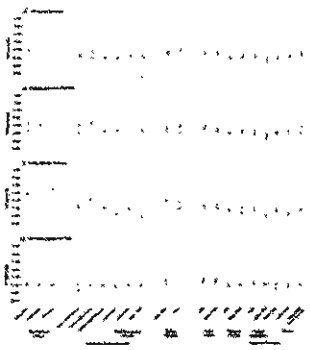
Data presented are for 1979-1983 for the different causes of death stratified by age, sex, education, and smoking status. $PM_{2.5}$ indicates mean fine particles measuring less than 2.5 μm in diameter; CI, confidence interval.

Figure 5 summarizes the associations between mortality risk and air pollutant concentrations listed in Table 1. Statistically significant and relatively consistent mortality associations existed for all measures of fine particulate exposure, including $PM_{2.5}$ and sulfate particles. Weaker less consistent mortality associations were observed with PM_{10} and PM_{15}. Measures of the coarse particle fraction ($PM_{15-2.5}$) and total suspended particles were not consistently associated with mortality. Of the gaseous pollutants, only sulfur dioxide was associated with elevated mortality risk. Interestingly, measures of $PM_{2.5}$ were associated with all-cause cardiopulmonary, and lung cancer mortality, but not with all other mortality. However, sulfur oxide pollution (as measured by sulfate particles and/or sulfur dioxide) was significantly associated with mortality from all other causes in addition to all-cause, cardiopulmonary, and lung cancer mortality.

Figure 5. Adjusted Mortality Relative Risk (RR) Ratio Evaluated at Subject-Weighted Mean Concentrations

$PM_{2.5}$ indicates particles measuring less than 2.5 μm in diameter; PM_{10}, particles measuring less than 10 μm in diameter; PM_{15}, particles measuring less than 15 μm in diameter; $PM_{15-2.5}$, particles measuring between 2.5 and 15 μm in diameter; and CI, confidence interval.



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This study demonstrated associations between ambient fine particulate air pollution and elevated risks of both cardiopulmonary and lung cancer mortality. Each 10-$\mu g/m^3$ elevation in long-term average $PM_{2.5}$ ambient concentrations was associated with approximately a 4%, 6%, and 8% increased risk of all-cause, cardiopulmonary, and lung cancer mortality, respectively, although the magnitude of the effect somewhat depended on the time frame of pollution monitoring. In addition, this analysis addresses many of the important questions concerning the earlier, more limited analysis of the large CPS-II cohort, including the following issues.

First, does the apparent association between pollution and mortality persist with longer follow-up and as the cohort ages and dies? The present analysis more than doubled the follow-up time to more than 16 years, resulting in approximately triple the number of deaths, yet the associations between pollution and mortality persisted.

Second, can the association between fine particulate air pollution and increased cardiopulmonary and lung cancer mortality be due to inadequate control of important individual risk factors? After aggressively controlling for smoking, the estimated fine particulate pollution effect on mortality was remarkably robust. When the analysis was stratified by smoking status, the estimated pollution effect on both cardiopulmonary and lung cancer mortality was strongest for never smokers vs former or current smokers. This analysis also controlled for education, marital status, BMI, and alcohol consumption. This analysis used improved variables to control for occupational exposures and incorporated diet variables that accounted for total fat consumption, as well as for

consumption of vegetables, citrus, and high-fiber grains. The mortality associations with fine particulate air pollution were largely unaffected by the inclusion of these individual risk factors in the models. The data on smoking and other individual risk factors, however, were obtained directly by questionnaire at time of enrollment and do not reflect changes that may have occurred following enrollment. The lack of risk factor follow-up data results in some misclassification of exposure, reduces the precision of control for risk factors, and constrains our ability to differentiate time dependency.

Third, are the associations between fine particulate air pollution and mortality due to regional or other spatial differences that are not adequately controlled for in the analysis? If there are unmeasured or inadequately modeled risk factors that are different across locations, then spatial clustering will occur. If this clustering is independent or random across metropolitan areas, then the spatial clustering can be modeled by adding a random-effects component to the Cox proportional hazards model as was done in our analysis. The clustering may not be independent or random across metropolitan areas due to inadequately measured or modeled risk factors (either individual or ecological). If these inadequately measured or modeled risk factors are also spatially correlated with air pollution, then biased pollution effects estimates may occur due to confounding. However, in this analysis, significant spatial autocorrelation was not observed after controlling for fine particulate air pollution and the various individual risk factors. Furthermore, to minimize any potential confounding bias, sensitivity analyses, which directly modeled spatial trends using nonparametric smoothing techniques, were conducted. A contribution of this analysis is that it included the incorporation of both random effects and nonparametric spatial smoothing components to the Cox proportional hazards model. Even after accounting for random effects across metropolitan areas and aggressively modeling a spatial structure that accounts for regional differences, the association between fine particulate air pollution and cardiopulmonary and lung cancer mortality persists.

Fourth, is mortality associated primarily with fine particulate air pollution or is mortality also associated with other measures of particulate air pollution, such as PM_{10}, total suspended particles, or with various gaseous pollutants? Elevated mortality risks were associated primarily with measures of fine particulate and sulfur oxide pollution. Coarse particles and gaseous pollutants, except for sulfur dioxide, were generally not significantly associated with elevated mortality risk.

Fifth, what is the shape of the concentration-response function? Within the range of pollution observed in this analysis, the concentration-response function appears to be monotonic and nearly linear. However, this does not preclude a leveling off (or even steepening) at much higher levels of air pollution.

Sixth, how large is the estimated mortality effect of exposure to fine particulate air pollution relative to other risk factors? A detailed description and interpretation of the many individual risk factors that are controlled for in the analysis goes well beyond the scope of this report. However, the mortality risk associated with cigarette smoking has been well documented using the CPS-II cohort.[16] The risk imposed by exposure to fine particulate air pollution is obviously much smaller than the risk of cigarette smoking. Another risk factor that has been well documented using the CPS-II cohort data is body mass as measured by BMI.[30] The Word Health Organization has categorized BMI values between 18.5-24.9 kg/m^2 as normal; 25-29.9 kg/m^2, grade 1 overweight; 30-39.9 kg/m^2, grade 2 overweight; and 40 kg/m^2 or higher, grade 3 overweight.[31] In the present analysis, BMI

values and BMI values squared were included in the proportional hazards models. Consistent with previous ACS analysis,[30] BMI was significantly associated with mortality, optimal BMI was between approximately 23.5 and 24.9 kg/m^2, and the RR of mortality for different BMI values relative to the optimal were dependent on sex and smoking status. For example, the RRs associated with BMI values between 30.0 and 31.9 kg/m^2(vs optimal) would be up to approximately 1.33 for never smokers. Based on these calculations, mortality risks associated with fine particulate air pollution at levels found in more polluted US metropolitan areas are less than those associated with substantial obesity (grade 3 overweight), but comparable with the estimated effect of being moderately overweight (grade 1 to 2).

In conclusion, the findings of this study provide the strongest evidence to date that long-term exposure to fine particulate air pollution common to many metropolitan areas is an important risk factor for cardiopulmonary mortality. In addition, the large cohort and extended follow-up have provided an unprecedented opportunity to evaluate associations between air pollution and lung cancer mortality. Elevated fine particulate air pollution exposures were associated with significant increases in lung cancer mortality. Although potential effects of other unaccounted for factors cannot be excluded with certainty, the associations between fine particulate air pollution and lung cancer mortality, as well as cardiopulmonary mortality, are observed even after controlling for cigarette smoking, BMI, diet, occupational exposure, other individual risk factors, and after controlling for regional and other spatial differences.

AUTHOR INFORMATION

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Author Contributions: *Study concept and design:* Pope, Burnett, Krewski, Thurston.

Acquisition of data: Thun, Calle, Krewski, Ito, Thurston.

Analysis and interpretation of data: Pope, Burnett, Krewski, Thurston.

Drafting of the manuscript: Pope, Burnett, Ito, Thurston.

Critical revision of the manuscript for important intellectual content: Pope, Thun, Calle, Krewski, Thurston.

Statistical expertise: Pope, Burnett, Krewski.

Obtained funding: Pope, Thun, Thurston.

Administrative, technical, or material support: Pope, Calle, Krewski, Ito, Thurston.

Study supervision: Pope, Krewski.

Funding/Support: The research for this article was supported largely by grant ES09560-01A1 from the National Institutes of Health/National Institute of Environmental Health Sciences (NIEHS). It was also supported in part by grant ES00260 from the New York University Center/NIEHS, grant R-827351 from the Environmental Protection Agency PM Health Effects Research Center, and funding from the R. Samuel McLaughlin Centre for Population Health Risk Assessment at the University of Ottawa.

Acknowledgment: We thank Morton Lippmann, PhD, for his help in developing the research grant application and various comments and suggestions and Yuanli Shi, MD, for computer programming and statistical analysis support.

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Vol. 290 No. 14, October 8, 2003

Original Contribution

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Association of Low-Level Ozone and Fine Particles With Respiratory Symptoms in Children With Asthma

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JAMA. 2003;290:1859-1867.

ABSTRACT

Context Exposure to ozone and particulate matter of 2.5 μm or less ($PM_{2.5}$) in air at levels above current US Environmental Protection Agency (EPA) standards is a risk factor for respiratory symptoms in children with asthma.

Objective To examine simultaneous effects of ozone and $PM_{2.5}$ at levels below EPA standards on daily respiratory symptoms and rescue medication use among children with asthma.

Design, Setting, and Participants Daily respiratory symptoms and medication use were examined prospectively for 271 children younger than 12 years with physician-diagnosed, active asthma residing in southern New England. Exposure to ambient concentrations of ozone and $PM_{2.5}$ from April 1 through September 30, 2001, was assessed using ozone (peak 1-hour and 8-hour) and 24-hour $PM_{2.5}$. Logistic regression analyses using generalized estimating equations were performed separately for maintenance medication users (n = 130) and nonusers (n = 141). Associations between pollutants (adjusted for temperature, controlling for

same- and previous-day levels) and respiratory symptoms and use of rescue medication were evaluated.

Main Outcome Measures Respiratory symptoms and rescue medication use recorded on calendars by subjects' mothers.

Results Mean (SD) levels were 59 (19) ppb (1-hour average) and 51 (16) ppb (8-hour average) for ozone and 13 (8) $\mu g/m^3$ for $PM_{2.5}$. In copollutant models, ozone level but not $PM_{2.5}$ was significantly associated with respiratory symptoms and rescue medication use among children using maintenance medication; a 50-ppb increase in 1-hour ozone was associated with increased likelihood of wheeze (by 35%) and chest tightness (by 47%). The highest levels of ozone (1-hour or 8-hour averages) were associated with increased shortness of breath and rescue medication use. No significant, exposure-dependent associations were observed for any outcome by any pollutant among children who did not use maintenance medication.

Conclusion Asthmatic children using maintenance medication are particularly vulnerable to ozone, controlling for exposure to fine particles, at levels below EPA standards.

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Children with asthma are particularly vulnerable to the adverse health effects of high levels of **air pollution**. Studies of children with asthma living in some of the most highly polluted regions of the world conclude that exposure to levels of ozone or particulate matter (especially particles ≤2.5 µm in diameter [$PM_{2.5}$]) regularly in excess of US Environmental Protection Agency (EPA) air quality standards (120 ppb [1-hour average] and 80 ppb [8-hour average] for ozone and 65 $\mu g/m^3$ for 24-hour $PM_{2.5}$) significantly enhances the risk of respiratory symptoms, asthma medication use, and reduced lung function.[1-5]

Studies of children with asthma living in regions with levels of pollution within or near compliance with EPA air quality standards suggest that the current standards do not protect these more vulnerable members of the population.[6-10] Asthma severity, as measured by symptoms, medication use, restrictions in activity, or use of medical services, has been shown to be affected by exposure to ozone (1-hour maximum measurement[6-10] or 8-hour average[6-9]), particles 10 µm or smaller (PM_{10}),[6, 8] or $PM_{2.5}$ (12-hour total).[6]

Of interest in many recent studies of children with asthma are the simultaneous effects of ozone and particulates on asthma severity.[2-3,8] Simultaneous exposure to high levels of both ozone and $PM_{2.5}$ (fine particles)[2] or PM_{10}(coarse particles)[3] found in Mexico City, Mexico, contributed to increased respiratory symptoms among children with asthma. In a region of lower pollution, asthma symptoms were associated with both ozone and course particles.[8] In the current study, we examined the simultaneous

effects of ozone and fine particles on daily respiratory symptoms and rescue medication use of children with asthma residing in southern New England during spring and summer 2001.

METHODS

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Participants

The study participants were 271 children from a cohort of families living in Connecticut and the Springfield area of Massachusetts who were participating in a study of asthma development.[11-12] From 1997 through 1999, 1002 infants born to families with at least 1 child with physician-diagnosed asthma were enrolled in the original birth cohort. Beginning in 2000, eligible asthmatic siblings (1 per cohort family) were identified and invited to participate in a 1-year prospective study of asthma severity. Eligibility criteria were that the child was younger than 12 years at the time of enrollment and had exhibited respiratory symptoms or used asthma medication within the previous 12 months. Included in the current analysis are subjects enrolled for all or part of the 183-day sampling period (April 1 through September 30, 2001), which includes the summertime, high-ozone pollution months in this region. Of 357 children identified as being eligible for inclusion in the current analysis, 56 refused follow-up, 16 were lost to follow-up, and 14 withdrew before April 1, 2001, leaving a total of 271 (76%). The Human Investigation Committee of Yale University, New Haven, Conn, approved this study, and all respondents (mothers of study subjects) gave informed consent before participation.

Data Collection

Demographic information and medical histories were collected during a home interview with the mother at enrollment. Daily respiratory symptoms (wheeze, persistent cough, chest tightness, shortness of breath) and medication use (maintenance medications, including inhaled or systemic steroids, cromolyn sodium, and leukotriene inhibitors, and rescue medications, including bronchodilators) were recorded on symptom and medication calendars by the child's mother and collected through monthly telephone interviews. Additional information about the previous 12 months was collected at an exit interview (eg, dates the child had been away from the southern New England region during the study year).

Air Quality Assessment

Study subjects resided in a 6691-square mile area in Connecticut and the Springfield area of Massachusetts. All ambient air quality monitoring sites (14 sites for ozone, 10 in Connecticut and 4 in Massachusetts; 4 sites for daily $PM_{2.5}$, 2 in Connecticut and 2 in Massachusetts; 13 temperature sites, 12 in Connecticut and 1 in Massachusetts) were located within a 52.5-mile radius centered at Southington, Conn (14 miles southwest of Hartford). The maximum distance between sites was 105 miles; the minimum distance was 4 miles. The Departments of Environmental Protection (DEPs) of Connecticut and Massachusetts provided measurements for hourly ozone concentrations and temperatures and daily 24-hour $PM_{2.5}$ (total $PM_{2.5}$ accumulated during 24

hours). Since both ozone and fine particle pollutants, as well as meteorological variables, tend to be regional,[13] the maximum daily 1-hour average (mean over 1 hour) and the 8-hour rolling average (mean over previous 8 hours) for ozone, daily $PM_{2.5}$ concentration, and maximum daily temperature were averaged across monitoring sites. Between-site correlation coefficients (Pearson *r*) were high for the 4 daily $PM_{2.5}$ sites (median $r = 0.91$; range, 0.84-0.95) and the 13 temperature sites (median $r = 0.97$; range, 0.85-0.99). There was more variability among the 14 ozone monitoring sites (median $r = 0.83$; range, 0.50-0.97 for the 1-hour average; and median $r = 0.81$; range, 0.47-0.97 for the 8-hour average). For technical details on ambient air quality monitoring, see the Web sites for the Connecticut DEP[14] and the Massachusetts DEP.[15]

Data Analysis

To examine the effects of ozone and $PM_{2.5}$ on children with different degrees of asthma severity, children were divided into 2 groups: those who used any maintenance medication during the 183-day observation period (n = 130) and those who did not (n = 141). Use of maintenance medication was used as a proxy for asthma severity to avoid using the outcome measures (respiratory symptoms and rescue medication use) in the assessment of severity. Logistic regression analyses, using generalized estimating equations (PROC GENMOD with AR1 autoregressive structure in SAS statistical software)[16-18] and adjusted for maximum daily temperature, were used to evaluate the association between levels of ozone and $PM_{2.5}$, with presence or absence of specific respiratory symptoms or rescue medication use. Using a repeated-measures technique permitted each subject to serve as his or her own control; therefore, personal variables (eg, race and other sociodemographic factors) that would not change during the study were not included in the models. Subgroup analysis, which included either 17 160 observations (an average of 132 days of data for 130 users of maintenance medication) or 19 035 observations (135 days for 141 nonusers of maintenance medication), focused directly on the association between exposures and health effects.

Exposure variables were categorized into quintiles, then entered into the model as dummy variables. The reference category for each was the lowest quintile. Both same-day and previous-day levels of ozone and $PM_{2.5}$ were examined. Analyses were performed separately for each severity group and each outcome. In single-pollutant models, a test for linear trend was performed by examining the model when the pollutant was entered as a continuous variable instead of as quintiles. In copollutant models, a test for goodness of fit was performed using the Hosmer-Lemeshow statistic for logistic regression. Significance level for all tests was set at .05.

RESULTS

Descriptive Statistics

Levels of ozone, $PM_{2.5}$, and temperature from April through September 2001 are summarized in Table 1 and Figure 1. The EPA 1-hour standard (120 ppb) was exceeded on 3 days, and the 8-hour ozone standard

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(80 ppb) was exceeded on 10 days of the 183 days of observation. There were no days when the level of $PM_{2.5}$ exceeded the EPA 24-hour standard of 65 $\mu g/m^3$. There was a strong correlation between ozone and fine particles ($PM_{2.5}$ vs 1-hour average ozone $r = 0.77$ vs 8-hour average $r = 0.74$) (Table 2).

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Table 1. Ozone, Particulate Matter of 2.5 µm or Less ($PM_{2.5}$), and Temperature in Southern New England, April 1 to September 30, 2001

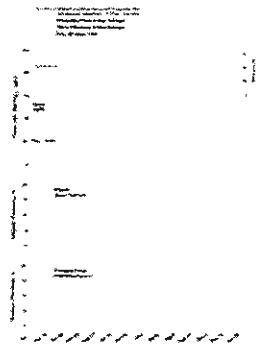

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Figure. Daily Levels of Ozone (Both 1-Hour Average and 8-Hour Average), Particulate Matter of 2.5 µm or Less ($PM_{2.5}$), and Daily Maximum Temperature, With Daily Prevalence of Respiratory Symptoms for Users of Asthma Maintenance Medication (n = 130) for Southern New England, April 1 through September 30, 2001

Dotted lines at 80 ppb and 120 ppb indicate Environmental Protection Agency standards for 8-hour average and 1-hour average ozone, respectively. Note that daily exposure levels shown here are the result of averaging over regional monitoring sites (14 ozone, 4 $PM_{2.5}$, and 13 temperature sites).

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Table 2. Pearson Correlation Coefficients for Same Day and Previous Day Levels of Ozone and Particulate Matter of 2.5 µm or Less ($PM_{2.5}$)

There were no significant differences between the users (n = 130) of maintenance medication and nonusers (n = 141) for mean (SD) age of study subjects (age on April 1, 2001, for users, 8.8 [2.0] years [range, 2.4-12.7 years]; age of nonusers, 8.3 [2.2] years [range, 2.0-12.6 years]; t test $P = .71$) or mean days of participation (mean participation for users, 132 [48] days [range, 3-183 days]; mean participation for nonusers, 135 [51] days [range, 5-183 days]; t test $P = .50$). Sex and ethnicity did not differ by medication use. Nearly two thirds of each group were male (users, 64.6%; nonusers, 64.5%; χ^2 test $P = .99$), and most

children in each group were white, with smaller numbers of black and Hispanic children (users, 80.0%, 8.5%, and 11.5%, respectively; nonusers, 70.9%, 11.4%, and 17.7%, respectively; X^2 test $P = .22$). Compared with nonusers of maintenance medication, users had significantly more days of all respiratory symptoms and rescue medication use: 50% of this group experienced approximately 1 week of persistent cough or wheeze, had 2 to 3 days of chest tightness or shortness of breath, and used rescue medication for nearly 3 weeks during the 26-week study period. At least half of all nonusers experienced no symptoms and did not use rescue medication during this same period (Table 3). Daily prevalence of symptoms for users of maintenance medication is shown in Figure 1. With the exception of somewhat higher rates of symptoms in the early spring and late summer when the temperatures tended to be lowest, there was overall conformity of reporting all 4 symptoms across the observation period.

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Table 3. Rates of Respiratory Symptoms and Rescue Medication Use for Study Subjects Stratified by Use of Maintenance Medication (Southern New England, April 1-September 30, 2001)*

Single-Pollutant Models for Users of Maintenance Medication

Ozone (1-Hour Average). An ozone concentration of 51.6 ppb or higher (the top 3 quintiles of the distribution of the maximum 1-hour average) on the same day as the reported symptom was the only exposure variable associated with an increased likelihood of wheeze (by 16%, 16%, and 22%, respectively) (Table 4, model 1). A 4% increase in bronchodilator use was also associated with same-day levels of ozone (51.6-58.8 ppb) (Table 4, model 1). Previous-day levels of maximum 1-hour average ozone were associated with increased likelihoods of persistent cough (16% increase for levels ≥72.7 ppb), chest tightness (by 21%, 30%, and 37% for levels ≥51.6 ppb), and shortness of breath (by 22% and 30% for levels ≥58.9 ppb) (Table 4, Model 2). The effects of previous-day levels on chest tightness and shortness of breath were significant in an exposure-dependent way: for each 50-ppb increase in previous-day, 1-hour ozone levels, the likelihood of these symptoms increased by 26% (odds ratio [OR], 1.26; 95% confidence interval [CI], 1.0-1.48) and 22% (OR, 1.22; 95% CI, 1.02-1.45), respectively.

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Table 4. Odds Ratios From 6 Single-Pollutant Logistic Regression Models of Respiratory Symptoms or Rescue Medication Use of Maintenance Medication Users (n = 130) (Southern New England, April 1 to September 30, 2001)*

Ozone (8-Hour Average). An ozone concentration of 63.3 ppb or higher, measured as the maximum 8-hour average on the same day as the reported symptom, was associated with a 30% increase in chest tightness (Table 4, model 3). Previous-day levels of 52.1 ppb or higher were associated with increased chest tightness, persistent cough, and shortness of breath (Table 4, model 4). As was the case with 1-hour ozone levels, the associations with the symptoms of chest tightness and shortness of

breath were exposure dependent: a 50-ppb increase in previous-day, 8-hour ozone level increased the likelihood of chest tightness (OR, 1.33; 95% CI, 1.09-1.62) and shortness of breath (OR, 1.30; 95% CI, 1.05-1.61).

$PM_{2.5}$. Increased likelihood of chest tightness was associated with same-day levels of $PM_{2.5}$ from 12.1 to 18.9 $\mu g/m^3$ (Table 4, model 5). Previous-day levels of 19.0 $\mu g/m^3$ or higher were associated with persistent cough, chest tightness, and shortness of breath (Table 4, model 6).

Copollutant Models for Users of Maintenance Medication

In logistic regression models of both ozone and fine particles for children taking maintenance medication, an increased likelihood of respiratory symptoms was associated with levels of ozone on the same day, previous day, or both; and increased bronchodilator use was associated with the highest level of same-day ozone. Neither respiratory symptoms nor bronchodilator use were associated with level of fine particles.

Ozone (1-Hour Average) and $PM_{2.5}$. Increased likelihood of wheeze was associated with same-day levels of 1-hour average ozone of 43.2 ppb or higher in an exposure-dependent manner (Table 5). When ozone is entered into this same model as a continuous variable, a 50-ppb increase in same-day ozone increases the likelihood of wheeze by 35% (OR, 1.35; 95% CI, 1.11-1.65). None of the exposure variables was associated with an increased likelihood of persistent cough, and only 1-hour average ozone levels between 43.2 and 51.5 ppb were associated with a decreased likelihood of cough (OR, 0.88; 95% CI, 0.78-0.99). The likelihood of chest tightness was significantly increased by same-day (≥58.9 ppb) and previous-day (≥51.6 ppb) levels of ozone in an exposure-dependent way. The likelihood of chest tightness increases by 47% (OR, 1.47; 95% CI, 1.18-1.84) for each 50-ppb increase in same-day levels of ozone, and by 42% (OR, 1.42; 95% CI, 1.14-1.78) for each 50-ppb increase in previous-day levels. Shortness of breath and ozone were similarly associated; likelihood of the symptom was increased by same-day levels of 72.7 ppb or higher and previous-day levels from 58.9 to 72.6 ppb (by 32%). Increased likelihood of bronchodilator use was associated with same-day levels of 72.7 ppb or higher (Table 5).

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Table 5. Odds Ratios From the Copollutant Logistic Regression Model for Same-Day and Previous-Day Levels of Ozone (1-Hour Average) and Particulate Matter of 2.5 µm or Less ($PM_{2.5}$) Related to Each Respiratory Symptom or Rescue Medication Use of Maintenance Medication Users (n = 130) (Southern New England, April 1 to September 30, 2001)*

Ozone (8-Hour Average) and $PM^{2.5}$. For 8-hour average ozone levels, the likelihood of chest tightness was increased by same-day (OR, 1.64; 95% CI, 1.23-2.17) and previous-day (OR, 1.45; 95% CI, 1.10-1.92) levels of 63.3 ppb or higher. Shortness of breath was similarly associated; likelihood of the symptom was increased by same-day (OR, 1.45; 95% CI, 1.10-1.91) and

previous-day (OR, 1.31; 95% CI, 1.00-1.71) levels of 63.3 ppb or higher. As seen for the highest 1-hour ozone level, increased bronchodilator use was associated with same-day levels of 63.3 ppb or higher for 8-hour ozone measurements (OR, 1.09; 95% CI, 1.02-1.17).

Nonusers of Maintenance Medication

Single-Pollutant Models. Similar analyses for nonusers of maintenance medication revealed no significant associations among the top 3 concentration quintiles for the exposure variables and respiratory symptoms or bronchodilator use. For example, chest tightness was not significantly associated with same-day, 1-hour ozone levels of 72.7 ppb or higher (OR, 0.92; 95% CI, 0.68-1.25), same-day, 8-hour ozone levels of 63.3 ppb or higher (OR, 1.17; 95% CI, 0.72-1.92), or previous-day, 8-hour ozone levels of 63.3 ppb or higher (OR, 0.99; 95% CI, 0.74-1.35). The only significant association was an increased likelihood of wheeze (OR, 1.20; 95% CI, 1.00-1.43) in the presence of previous-day, 8-hour average ozone between 39.1 and 45.8 ppb (the second quintile).

Copollutant Models. For the children who were not users of asthma maintenance medication, neither fine particles nor 1-hour average ozone levels were associated with increased likelihoods of respiratory symptoms in copollutant models. Increased bronchodilator use was associated with previous-day fine particle concentrations between 9.0 and 12.0 $\mu g/m^3$ in the model with 1-hour ozone levels (Table 6) and with these same levels in the model with 8-hour ozone (OR, 1.30; 95% CI, 1.02-1.65). An increase in the likelihood of wheeze was associated with 8-hour ozone, but only for concentrations between 39.1 and 45.8 ppb on the same day (OR, 1.33; 95% CI, 1.00-1.77) or the previous day (OR, 1.31; 95% CI, 1.05-1.63) and between 52.1 and 63.2 ppb for same-day levels (OR, 1.35; 95% CI, 1.00-1.81).

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Table 6. Odds Ratios From the Copollutant Logistic Regression Model for Same-Day and Previous-Day Levels of Ozone (1-Hour Average) and Particulate Matter of 2.5 µm or Less ($PM_{2.5}$) Related to Respiratory Symptoms and Rescue Medication Use of Maintenance Medication Nonusers (n = 141) (Southern New England, April 1 to September 30, 2001)*

COMMENT

In models controlling for ambient fine particle concentration and typically at levels below EPA air quality standards, daily ambient ozone was found to be significantly associated with increased risk of respiratory symptoms and increased use of rescue medication among children with asthma severe enough to require maintenance medication. Study strengths include frequent telephone follow-up to collect information on daily calendar-recorded symptoms and medication use; absence of reporting bias between symptoms and

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regionally collected ambient air quality data; the use of both the maximum 1-hour average (sensitive to spikes in concentration) and 8-hour average (a measure of short-term, cumulative exposure) to assess daily ambient ozone levels; use of $PM_{2.5}$ levels measured daily; and examination of the simultaneous effects of ozone and $PM_{2.5}$ at levels near or below current EPA ambient standards. Our results contribute to the limited literature examining the simultaneous effects of ozone and suspended particles on daily respiratory symptoms for a sensitive subpopulation in models adjusted for daily temperature.

One potential limitation of the study is that ambient ozone and particle concentrations were represented as means over regional sites. For the 14 ozone sites on any particular day, the mean (SD) ratio of maximum to minimum reading was 1.70 (0.50), which is similar to the mean ratio of upper to lower limit of each quintile of the summer ozone distribution of 1.38 (0.30) from our study. This suggests that the analysis using quintiles of the ozone distribution captures the variability that exists in the study region. Variability among $PM_{2.5}$ sites was less, but a potential limitation is that there were only 4 sites with daily measurements. However, a comparison between readings from these 4 sites and readings from the 10 sites with $PM_{2.5}$ readings every 3 days revealed good agreement. For the 61 days all sites had in common, the 10-site mean (SD) was 13.8 (8.2) compared with 12.8 (7.7) $\mu g/m^3$ for the 4 sites, and the Pearson correlation was 0.97.

Another potential limitation is the lack of personal variables (eg, race) in the regression models. However, by taking advantage of the repeated measurements we had for each subject, we were able to use each subject as his or her own control. The sample of 271 children contributed 36 195 person-days of observations to the analyses. Our within-subjects analytic approach permitted a strong test of the associations between ambient **air pollution** and health outcomes, and personal variables, since they would not vary within subjects, could be excluded from the models.

In this study, we did not consider medical care utilization as an outcome. Since this was not a clinic-based study, we did not have access to records to confirm medical visit dates. However, medical records are not necessarily more objective than reports of symptoms and medication use, since a number of factors unrelated to symptom severity also influence utilization. Symptoms and medication use vary from day to day and may be a more sensitive indicator of the effects of daily changes in **air pollution** on respiratory health, since not all symptoms result in a physician visit.

In our copollutant models, ozone but not fine particles significantly predicted increased risk of respiratory symptoms and rescue medication use among children using asthma maintenance medication. We found an immediate (same-day) effect of ozone on wheeze (with the 1-hour ozone metric), chest tightness, and shortness of breath (with both the 1-hour and 8-hour ozone metrics). We also found that previous-day levels of ozone (both metrics) were significantly associated with increased risk of chest tightness and shortness of breath. Goodness-of-fit tests for copollutant models suggest that the models with significant findings (wheeze, chest tightness, and shortness of breath) are reasonably good fits to the data. There were no systematic patterns to the lack of fit for models for persistent cough and bronchodilator use. However, because of repeated measurements, observations were not independent in any of the models, which may affect the interpretation of the Hosmer-Lemeshow statistic. It is possible that the

more frequently reported events of persistent cough and bronchodilator use may be associated with ambient **air pollution** in combination with other factors (eg, activity level) not included in the current study.

Effects of 1-hour ozone among children using asthma maintenance medication, especially the association of same-day ozone with wheeze and previous-day ozone with chest tightness, appear to be more exposure dependent than the effects of small particles. In copollutant models for wheeze and chest tightness, a 50-ppb increase in same-day, 1-hour ozone level increased the likelihood of wheeze by 35% and chest tightness by 47%. However, since particles and ozone were positively correlated, it is difficult to separate their effects in the copollutant models. In the single-pollutant model for chest tightness, a 50-ppb increase in previous-day levels of 1-hour ozone resulted in a 26% increase in the likelihood of having the symptom. When same-day levels of 1-hour ozone were added to the model, the likelihood of this symptom went up to 32%. In the copollutant model, a 50-ppb increase in previous-day, 1-hour ozone level increased the likelihood of chest tightness by 42%. Levels of $PM_{2.5}$ happened to be relatively low and never exceeded EPA standards for the duration of the study period, which likely contributed to the lack of significant particle effects observed in the copollutant models. For our region, an examination of the association between symptoms and particle levels in winter months when ozone is not a factor would help us better understand the role of exposure to small particles on respiratory health.

There is little doubt that children with asthma are especially vulnerable to high levels of **air pollution.** Among a group of asthmatic children (n = 71) living in Mexico City, where levels of ozone have regularly exceeded the EPA standard, multivariate regression analyses of same-day ambient **air pollution** and separate models of previous-day pollution all revealed significant effects of ozone and fine particles on the likelihood of cough (an increase of 8% for each 50-ppb increase in ozone on either the same day or previous day; an increase of 6% or 8% for each 10-$\mu g/m^3$ increase in $PM_{2.5}$ on the same day or previous day) and lower respiratory tract illness (by 7% for each pollutant on the same day or previous day).[2] The effects seen for $PM_{2.5}$ in Mexico City, but not in our study, could be explained by the large difference between the mean (SD) 24-hour concentration of $PM_{2.5}$ in Mexico City (85.7 [30.2] $\mu g/m^3$), which was above the EPA standard of 65 $\mu g/m^3$ and was well above the mean of 13.1 (7.9) $\mu g/m^3$ observed in the current study. In addition, the chemical composition of the fine particles in each region may be different.[2, 10] The larger effect of 1-hour ozone that we found could be explained in part by the fact that we stratified our analysis by asthma severity, thereby observing a consistent pattern of increased likelihood of some symptoms of more than 40% in the group with more severe disease and no significant effects among the group with less severe disease.

Our results are consistent with recent studies[7, 10] that suggest exposure to lower levels of ozone is associated with respiratory symptoms in children with asthma. Children with asthma who attended a week-long asthma summer camp (a total of 166 children during three 1-week periods compared with our 183-day observation period) in the Connecticut River Valley (the same geographic area as the current study) were exposed to levels of ozone somewhat higher than the current study (mean [SD] 1-hour average, 84 [38] ppb; range, 20-160 ppb). In single-pollutant models, daily levels of same-day ozone were significantly associated with increased chest symptoms, β-agonist use, and decreased lung function.[10] These associations did not change when same-day

levels of sulfate (a primary constituent of $PM_{2.5}$ in this region) were added to the model. In a recent study[7] of 846 children with asthma living in 8 urban areas around the country, ozone at levels comparable to those observed in the current study (mean 8-hour average of 48 ppb compared with our mean of 51 ppb with <5% of the days exceeding the EPA standard of 80 ppb in both studies) was associated, in single-pollutant models, with morning respiratory symptoms (wheeze, cough, or chest tightness). Although the data were not shown, the authors of each study also noted that adding copollutants to their models did not appreciably confound the effect of ozone. Both studies concluded that ozone, even at levels lower than current EPA standards, is strongly associated with adverse respiratory health effects in children with asthma.

Previous environmental chamber studies[19-21] of adults with asthma exposed to ozone for 1 to a few hours have shown relatively little effect on symptoms or lung function. On the other hand, short-term exposure to elevated levels of ozone and particulates in outdoor air has been associated with reduced pulmonary function in otherwise healthy children.[1, 22-23] Our study of asthmatic children under ambient exposure conditions in areas of lower pollution suggests that the more prolonged exposures associated with summertime ozone produce a greater stimulus than chamber exposures, that asthmatic children are more susceptible than asthmatic adults, that effects are delayed and not captured by short-term chamber studies, or that coexposures to other unidentified constituents of ambient air enhance the response to ozone. A recent study supporting this view examined the impact of traffic-reducing changes in Atlanta, Ga, during the 1996 summer Olympic Games.[24] Significant reductions in ozone and particles were associated with significant reductions in acute asthma care events (physician, clinic, or hospital visits) among children aged 1 to 16 years. In analyses including days before, during, and after the Olympics, an increase in daily acute asthma events was associated with levels of 1-hour ozone concentrations beginning at 60 to 89 ppb. Our findings indicate that comparable levels were associated with an increased likelihood of wheeze (≥58.9 ppb), chest tightness (≥58.9 ppb), shortness of breath, and rescue medication use (≥72.7 ppb).

In our study, we defined 2 levels of asthma severity based on maintenance medication use. We reasoned that since we were examining the association of **air pollution** and symptoms, we did not want to use symptoms to define severity. Instead, we used maintenance medication as a proxy for disease severity even though medication use and symptoms will be related. Maintenance medication users had significantly more wheeze, persistent cough, chest tightness, and shortness of breath than the nonusers and used rescue medication significantly more often. Our results strongly suggest that this definition of asthma severity divides the group into 2 levels of vulnerability to **air pollution**.

Our study is a unique combination of a sample of asthmatic children with detailed symptom and medication use followed for a long period and well-measured daily ambient copollutants. These results add to others that suggest that, even at low levels of ambient ozone and controlling for ambient fine particle concentration, children with severe asthma are at a significantly increased risk of experiencing respiratory symptoms.

AUTHOR INFORMATION

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Funding/Support: Work on this study was funded by grants ES07456, ES05410, ES11013, and ES01247 from the National Institute of Environmental Health Sciences.

Acknowledgment: We thank the Departments of Environmental Protection in the states of Connecticut and Massachusetts for their cooperation in providing air quality measurements.

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Environmental Health Perspectives Volume 113, Number 2 February 2005

Research Article

Ambient Air Pollution and Atherosclerosis in Los Angeles

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Abstract

Associations have been found between long-term exposure to ambient air pollution and cardiovascular morbidity and mortality. The contribution of air pollution to atherosclerosis that underlies many cardiovascular diseases has not been investigated. Animal data suggest that ambient particulate matter (PM) may contribute to atherogenesis. We used data on 798 participants from two clinical trials to investigate the association between atherosclerosis and long-term exposure to ambient PM up to 2.5 μm in aerodynamic diameter ($PM_{2.5}$). Baseline data included assessment of the carotid intima-media thickness (CIMT), a measure of subclinical atherosclerosis. We geocoded subjects' residential areas to assign annual mean concentrations of ambient $PM_{2.5}$. Exposure values were assigned from a $PM_{2.5}$ surface derived from a geostatistical model. Individually assigned annual mean $PM_{2.5}$ concentrations ranged from 5.2 to 26.9 μg/m^3 (mean, 20.3). For a cross-sectional exposure contrast of 10 μg/m^3 $PM_{2.5}$, CIMT increased by 5.9% (95% confidence interval, 1-11%). Adjustment for age reduced the coefficients, but further adjustment for covariates indicated robust estimates in the range of 3.9-4.3% (p-values, 0.05-0.1). Among older subjects (≥ 60 years of age), women, never smokers, and those reporting lipid-lowering treatment at baseline, the associations of $PM_{2.5}$ and CIMT were larger with the strongest associations in women ≥ 60 years of age (15.7%, 5.7-26.6%). These results represent the first epidemiologic evidence of an association between atherosclerosis and ambient air pollution. Given the leading role of cardiovascular disease as a cause of death and the large populations exposed to ambient $PM_{2.5}$, these findings may be important and need further confirmation. *Key words:* air pollution, atherosclerosis, particulate matter. *Environ Health Perspect* 113:201-206 (2005). doi:10.1289/ehp.7523 available via http://dx.doi.org/ [Online 22 November 2004]

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This work was supported in part by the National Institute on Aging [grants R01AG-13860 (Vitamin E Atherosclerosis Prevention Study) and R01AG-17160 (B-Vitamin Atherosclerosis Intervention Trial)], the National Institute of Environmental Health Sciences (grants P30 ES07048, 5P01ES11627), the Wright Foundation, the Hastings Foundation, and the Health Effects Institute.

The authors declare they have no competing financial interests.

Received 26 August 2004; accepted 22 November 2004.

Introduction

A large body of epidemiologic evidence suggests associations between ambient air pollution and cardiovascular mortality and morbidity (Peters and Pope 2002; Pope et al. 2004). All of these studies focus on events occurring at a late stage of vascular disease processes. The impact of air pollution on the underlying preclinical conditions remains poorly understood.

We hypothesize that current levels of ambient particulate matter (PM) up to 2 5 μm in aerodynamic diameter ($PM_{2.5}$) may contribute to atherosclerosis, leading to subclinical anatomical changes that play a major role in cardiovascular morbidity and mortality later in life. Animal studies support our hypothesis by showing that inhalation of ambient PM promotes oxidative lung damage, including alveolar and systemic inflammatory responses (Becker et al. 1996; Dye et al. 2001; Fujii et al. 2002; Goto et al. 2004; Suwa et al. 2002; van Eeden et al. 2001).

We investigated the association between residential ambient $PM_{2.5}$ and carotid artery intima-media thickness (CIMT) using prerandomization baseline data from two recent clinical trials conducted in Los Angeles, California (Hodis et al. 2002). CIMT is a well-established quantitative measure of generalized atherosclerosis that correlates well with all of the major cardiovascular risk factors, with coronary artery atherosclerosis, and with clinical cardiovascular events (Mack et al. 2000). It is an established tool for investigating the contribution of long-term exposures such as smoking or passive smoking to subclinical stages of atherosclerosis at any given age (Diez-Roux et al. 1995; Howard et al. 1994, 1998). This is the first study to assess the association of atherosclerosis with air pollution.

Materials and Methods

Population and health assessment. We used baseline health data from two randomized, double-blind, placebo-controlled clinical trials conducted at the University of Southern California Atherosclerosis Research Unit (Hodis et al. 2002). The Vitamin E Atherosclerosis Progression Study (VEAPS) investigated the effects of vitamin E on the progression of atherosclerosis measured by CIMT. The B-Vitamin Atherosclerosis Intervention Trial (BVAIT) focused on the effect of vitamin B supplements on the progression of atherosclerosis (trial in progress). Baseline assessment in both trials included CIMT measured between 1998 and 2003 using the same standardized methods (Hodis et al. 2002; Selzer et al. 1994, 2001). Recruitment of volunteers occurred over the entire Los Angeles Basin, covering a geographic area of approximately 64,000 km^2.

Eligible subjects for the VEAPS trial (n = 353) were men and women ≥ 40 years of age with slightly increased LDL cholesterol (≥ 3.37 mmol/L) but with no clinical signs or symptoms of cardiovascular disease (CVD) (Hodis et al. 2002). Subjects with diabetes, diastolic blood pressure > 100 mm Hg, thyroid disease, serum creatinine > 0.065 mmol/L, life-threatening diseases, or high alcohol intake were excluded.

BVAIT (n = 506) had a similar design to that of VEAPS. Men and women > 40 years of age were prescreened to meet study criteria (fasting plasma homocysteine ≥ 8.5 μmol/L; postmenopausal for women; no evidence of diabetes, heart disease, stroke, or cancer). Subjects were excluded on the basis of any clinical signs or symptoms of CVD, diabetes or fasting serum glucose ≥ 140 mg/dL, triglyceride levels ≥ 150 mg/dL, serum creatinine > 1.6 mg/dL, high blood pressure, untreated thyroid disease, life-threatening disease with prognosis < 5 years, or high alcohol intake.

Thus, our study included "healthy" subjects with biomarkers (elevated LDL cholesterol or homocysteine) that suggested an increased risk of future CVDs (n = 859). Fifty-eight subjects were excluded in the exposure assignment process because they lived outside the area with $PM_{2.5}$ data. Three subjects had missing data in at least one of the covariates used in the models. Our total sample consisted of 798 participants.

Health measures, including CIMT. Our main outcome of interest is CIMT. In both trials, high-resolution B-mode ultrasound images of the right common carotid artery were obtained before the intervention (baseline) with a 7.5-MHz linear array transducer attached to an ATL Ultramark-4 Plus Ultrasound System (Ultramark, Bothell, WA). We used this baseline CIMT measurement as the outcome. Details of this highly reproducible method are published (Hodis et al. 2002; Selzer et al. 1994, 2001). Blood pressure, height, and weight were measured with standard procedures.

The baseline questionnaires included an assessment of all major CVD risk factors and covariates, including clinical events, diet, use of prescription medications, physical activity, current and past smoking and passive smoking, and vitamin supplements. Age, education, and other sociodemographic factors were available for each subject. Fasting blood samples were also drawn for lipid measurements. Data used in our analyses were collected with the same tools in both trials.

Exposure assignment. To assess exposure we chose a novel approach derived from a geographic information system (GIS) and geostatistics. This method allows for assignment of long-term mean ambient concentrations of $PM_{2.5}$ to the ZIP code area of each subject's residential address (Künzli and Tager 2000). The resulting surface of $PM_{2.5}$ covered the entire Los Angeles metropolitan area. The surface is derived from a geostatistical model and data from 23 state and local district monitoring stations (during 2000). These monitors are located across the Los Angeles region to characterize urban levels of pollution. To assign exposure, $PM_{2.5}$ data were interpolated using a combination of a universal kriging model

with a quadratic drift and a multiquadric radial basis function model (Bailey and Gatrell 1995; Burrough and McDonnell 1998). We averaged the two surfaces based on 25-m grid cells. Examination of errors from the universal model showed that > 50% of the study area had assigned values within 15% of monitored concentrations, whereas 67% were within 20%. The larger errors were on the periphery of our study area, where the density of study participants was the lowest. We linked the ZIP code centroids of each subject with the exposure surface through a geocoding database [Environmental Systems Research Institute (ESRI) 2004]. Figure 1 illustrates the $PM_{2.5}$ surface with the geolocated ZIP codes. Individually assigned $PM_{2.5}$ data had a range from 5.2 to 26.9 $\mu g/m^3$ (mean, 20.3), thus exceeding the range observed across 156 metropolitan areas used in the largest cohort study of air pollution and mortality (Pope et al. 2002). All models were implemented with ArcScript from ESRI (Redlands, CA).

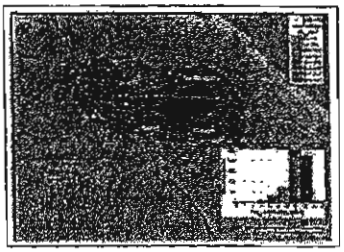


Figure 1. ZIP code locations of the study population geocoded on the $PM_{2.5}$ surface, modeled with 2000 $PM_{2.5}$ data, and distribution of individually assigned concentrations.

Statistical analyses. We tested the univariate and multivariate associations between CIMT and ambient $PM_{2.5}$ using linear regression analyses. Extensive residual diagnostics indicated some heteroskedasticity, which was rectified with the natural log-transformed CIMT. We adjusted for factors that were statistically associated with both CIMT and ambient $PM_{2.5}$ (age, male sex, low education, and low income). Next, we expanded the models using covariates that were associated with either $PM_{2.5}$ or CIMT, including indicator variables for current second-hand smoke exposure and current and former personal smoking. We then added covariates that play a role in atherosclerosis such as blood pressure, LDL cholesterol, or proxy measures such as reporting treatment with antihypertensives or lipid-lowering medications at study entry. These factors may affect the pathophysiologic pathways linking air pollution exposure and atherosclerosis (Ross 1999); thus, such models may overadjust the coefficients We chose this conservative approach to test the sensitivity of the effect estimates under a broad range of model assumptions.

There is increasing evidence that host factors such as age, sex, or underlying disease and risk profiles may modify the effects of air pollution (Pope et al. 2002; Zanobetti and Schwartz 2002). Furthermore, the finding of atherosclerosis in PM-exposed rabbits was based on a hyperlipidemic trait (Suwa et al. 2002). Therefore, we also stratified by sex, age (< 60 years, ≥ 60 years), smoking status, and lipid-lowering drug therapy.

Results

Table 1 summarizes the main characteristics of the study population and among main subgroups. Table 2 presents the percent change in CIMT in association with a 10 $\mu g/m^3$ contrast in ambient $PM_{2.5}$ concentrations for three cross-sectional regression models. The unadjusted model indicates a 5.8% [95% confidence interval (CI), 1-11%] increase in CIMT per 10 $\mu g/m^3$ $PM_{2.5}$. For the observed contrast between lowest and highest exposure (20 $\mu g/m^3$ $PM_{2.5}$), this corresponds to a 12.1% (2.0-23.1%) increase in CIMT. The only covariate with a substantial effect on the point estimate was age, which reduced the effect from 5.9 to 4.3% (0.4-9%) per 10 $\mu g/m^3$ $PM_{2.5}$. This change agrees with the age-related effect modification. Otherwise, effect estimates across the models remained robust, in the range of 3.9-4.3% with *p*-values from 0.05 to 0.1. To corroborate the exposure-response relationship, we also categorized $PM_{2.5}$ levels into quartiles. Figure 2 shows the adjusted mean CIMT across these four groups of equal sample size at the mean levels of the covariates (age, sex, education, and income). The trend across the exposure groups was statistically significant ($p = 0.041$). The unadjusted means of CIMT among these quartiles of exposure were 734, 753, 758, and 774 µm, respectively.

Table 1.

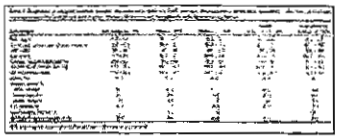
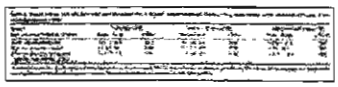
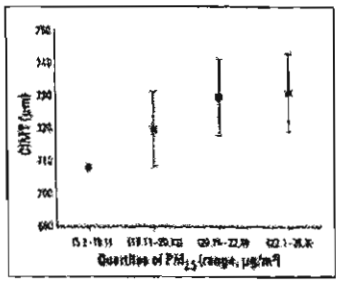


Table 2.





The associations between CIMT and $PM_{2.5}$ were substantially stronger among 109 subjects reporting lipid-lowering medication at study entry, both in men and in women (Table 2, Figure 3). The crude effect reached 15.8% (2-31%) per 10 $\mu g/m^3$ $PM_{2.5}$, with adjusted values ranging between 12 and 16%. Despite the small sample size, *p*-values of all models were mostly < 0.1 and often < 0.05.

Results also suggest significant age and sex interactions, with much larger effects in women and in the older age group (Figure 3). Effect estimates in

women were statistically significant and typically in the range of 6-9% per 10 μg/m^3 $PM_{2.5}$. Associations were strongest among women ≥ 60 years of age (n = 186), leading to crude estimates of 19.2% (9-31%). Adjusted coefficients ranged from 14 to 19%, being statistically significant in all models and sensitivity analyses.

Among never smokers (n = 502), the effect estimate reached 6.6% (1.0-12.3%). The estimate was small and not significant in current (n = 30) and former smokers (n = 265).

Discussion

Our study presents the first evidence for an association between CIMT and long-term exposure to ambient air pollution. As recently reviewed in a statement of the American Heart Association (Brook et al. 2004) substantial epidemiologic and experimental evidence suggests a contribution of ambient air pollutants on cardiovascular mortality and morbidity. However, these studies focus on acute and subacute effects on cardiac autonomic function, inflammatory or thrombogenic markers, arrhythmia, myocardial infarction, cardiovascular hospital admission, and death. The only outcome considered in long-term air pollution studies has been mortality. The relative risks for acute effects on mortality have been substantially smaller than those observed for long-term associations (Pope et al. 2002; Samet et al. 2000). As shown previously, cohort studies are capable of capturing acute and chronic effects of air pollution on the course of diseases that ultimately lead to premature death (Künzli et al. 2001). In contrast, time-series and panel studies investigate only the associations of event occurrence with the most recent exposure (Künzli et al. 2001). Thus, if air pollution has both acute and cumulative long-term effects, one expects larger mortality coefficients in cohort studies. CIMT reflects long-term past exposure; thus, we provide the first evidence for chronic effects of air pollution on atherogenesis that may in part explain the above mentioned discrepancy between acute and long-term risk estimates (Pope et al. 2002; Samet et al. 2000).

Figure 2. Mean CIMT ± 1 SE among quartiles of the $PM_{2.5}$ distribution. The y-axis shows mean CIMT levels at the population average of the adjustment covariates (age, sex, education, and income). The first quartile is the reference group.

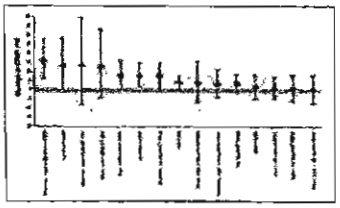


Figure 3. Percent difference and 95% CI in CIMT associated with a 10 μg/m^3 contrast in ambient $PM_{2.5}$ in all subjects and in subgroups. Lipid-LT, lipid-lowering therapy. All estimates are based on the cross-sectional linear model with log intima-media thickness as the dependent variable and home outdoor $PM_{2.5}$ as the independent variable, adjusted for sex, age, education, and income. Numbers in parentheses are numbers of subjects per group. Data are ordered by size of point estimate; the null effect line is indicated by a dash.

There are several major aspects to be considered in the interpretation of this new finding, mainly the strength in the exposure assignment, the limited evidence for bias, the differences in effects within subgroups, and plausibility.

Exposure assignment. The individual residence-based assignment of exposure represents a substantial improvement over most studies that have relied on central monitors or on binary road buffers combined with basic interpolation (Hoek et al. 2002; Pope et al. 2004). As a sensitivity analysis, we used weighted least-squares models with the weights specified as the inverse of the standard errors from the universal kriging model to down-weight estimates with larger error. In addition, we implemented models based solely on the universal kriging estimate. In both instances results were robust and similar to what we found with our main model.

Time-activity studies show that people spend most of their time in or around home, and our restriction of exposure assessment on residential address captures the most relevant part of exposure (Leech et al. 2002). $PM_{2.5}$ generally displays spatially homogeneous distributions across small areas such as neighborhoods and blocks, and as a result, the ambient conditions at the ZIP code centroid likely reflect the levels expected at home outdoors (Roosli et al. 2000). $PM_{2.5}$ of outdoor origin will also penetrate indoors, and correlations between long-term outdoor PM concentrations and indoor levels of PM from outdoor origin is high (Sarnat et al. 2000). Exposure to ambient air pollution while working and during commute are not included in our exposure term but are considered to be a relevant source of exposure (Riediker et al. 2003). Although most likely a random misclassification with biases toward the null, the errors may affect subgroups differently, thus explaining part of the observed interactions.

In Los Angeles, no clear trends have been observed in $PM_{2.5}$ concentrations over the past 5-10 years. The year 2000 surface characterizes the prevailing mean $PM_{2.5}$ concentrations across several years and can be considered a measure of long-term past exposure. This year also sits in the middle of the baseline recruitment period. Overall, the various limitations in our exposure assignment may add some random error, biasing results toward weaker associations (Thomas et al. 1993).

We also assigned ambient ozone to ZIP code centroids. Inclusion of ozone in the models had no impact on the $PM_{2.5}$ coefficients or the SEs. Ozone and $PM_{2.5}$ were not correlated (r = -0.17), and the $PM_{2.5}$ estimates were not substantially

different in low- and high-ozone regions. The estimates of association for ozone were positive but not statistically significant and much smaller than for $PM_{2.5}$. This finding must be put in context of the specific challenges in determining long-term exposure to ozone, which are substantially different than in the case of PM exposure. In contrast to $PM_{2.5}$ from outdoor origin, ambient ozone levels have lower correlations with personal exposure (Avol et al. 1998; Sarnat et al. 2000, 2002); therefore, the ability to detect effects of ozone will likely be reduced due to greater misclassification.

Biases. Our subjects were a nonrandom sample of "healthy" volunteers with above-average education, meeting strict inclusion criteria for the two clinical trials. Although we cannot exclude some systematic selection biases affecting the cross-sectional data, it is unlikely that subjects with preclinical signs of atherosclerosis would have been more likely to volunteer if they lived in more polluted areas. Although the selection of subjects limits the generalization to other populations, we do not expect this to lead to over- or underestimating the cross-sectional associations. The two trials recruited subjects independently; thus, the effects may be compared across trials to evaluate the potential influence of selecting volunteers. The populations differed with regard to age, smoking habits, baseline LDL and treatment, blood pressure, active and passive smoking, and other relevant factors; thus, the $PM_{2.5}$ coefficients were smaller and were not statistically significant in the VEAPS trial with its younger population. However, after taking these factors into account, the associations with ambient $PM_{2.5}$ were similar. For example, among elderly women of VEAPS (n = 70) and BVAIT (n = 116), the effect estimate was 18.1% (-0.1 to 36.3.%) and 13.6% (2.8-24.4.%), respectively. There is some evidence for larger effects in subjects with cardiovascular risk factors, indicated by prescriptions of lipid-lowering treatment. Our trials excluded subjects with clinically manifest CVDs. Moreover, if air pollution amplifies systemic inflammation among those prone to atherosclerosis, exclusion of subjects with high LDL may be a source of bias. One may expect effect estimates in a less selected, less healthy population to be larger than those reported.

The wealth of baseline data from these clinical trials offered the opportunity to control for a broad array of covariates. Apart from the effect of age adjustment, estimates were robust to numerous combinations of covariates, including income, education, active and passive tobacco smoke, cardiovascular prescriptions, vitamin intake, and physical activity. Uncontrolled or residual confounding appears to be an unlikely explanation for these results. Among women, adjustment for hormone replacement therapies did not affect the $PM_{2.5}$ estimates.

In previous studies, we found that spatial autocorrelation in the residuals could affect the size and significance of pollution coefficients (Jerrett et al. 2003a). We investigated spatial autocorrelation of the unstandardized residuals. We assessed autocorrelation with first-order, adjusted first-order, and second-order spatial weight matrices based on nearest neighbor contiguity, but we found no evidence of spatial autocorrelation. This supports the conclusion that the models supply efficient unbiased estimates (Jerrett et al. 2003b). As part of our sensitivity analyses, we also derived $PM_{2.5}$ surfaces using different interpolations and weighted least squares with weights equal to the inverse of the standard error of the exposure estimate. All approaches produced very similar results.

Evidence for effect modification. The data suggest substantial interactions with age, sex, smoking, and underlying cardiovascular risk factors. Given the reduced sample size among subgroups, the recruitment of volunteers, and the cross-sectional nature of the data, it is difficult to fully explore the causes of the observed modifications of associations and to establish susceptibility profiles. If the exposure misclassifications differed across subgroups, part of the interactions may be explained by differential exposure error. The sex and age difference could also be an artifact due to measurement error in the assigned exposure because time spent in commuting and location of work places may be different in men and women and in the young and elderly. Empirical studies on mobility suggest women have smaller activity spaces than men and younger groups, meaning they tend to spend more time in and around the home (Kwan and Lee 2004), and the same is probably true of the elderly compared with younger groups. Exposure measurement error may be reduced in those spending more time at home, leading to stronger effects (Thomas et al. 1993). Moreover, differences in statistical power may play a role as well; as shown at least for the 25-40-year age range, power to detect effects on CIMT is larger in women than in men (Stein et al. 2004).

The finding that those reporting prescriptions of lipid-lowering medications at baseline showed stronger associations of CIMT with $PM_{2.5}$ merits further investigation. This result agrees with the observed effects of PM on atherosclerosis in experiments conducted in hyperlipidemic rabbits (Goto et al. 2004; Suwa et al. 2002). The systemic inflammatory and atherogenic reaction in these rabbits was related to the amount of PM contained in the alveolar macrophages. In our study, being under lipid-lowering therapy is an indicator for risk profiles prone to atherogenesis. Those subjects were mostly men (64%) and, on average, older, more often active or passive smokers, and almost twice as likely to report antihypertensive treatment. The systemic response to ambient PM may amplify and expand the oxidation of LDL cholesterol among these susceptible subjects, consequently contributing to injury in the artery wall (Goto et al. 2004; Ross 1999). Investigations of short-term effects of ambient air pollution on mortality also suggest that underlying risk profiles such as diabetes may amplify susceptibility to ambient PM (Zanobetti and Schwartz 2002), and similar findings have been shown with smoking and diabetes mellitus in association with CIMT (Karim et al. 2005). To clarify the relevance of lipid status, it would be interesting to investigate our hypothesis among cohorts with familial hypercholesteremia (Wiegman et al. 2004; Wittekoek et al. 1999).

As shown in Figure 3, the size of the point estimate was larger among the older subjects. Future research needs to clarify whether air pollution contributes to atherosclerosis only after a certain age or early on. Effects of air pollution on lung development have been observed during adolescence and may be a result of both pulmonary and chronic systemic inflammatory effects (Gauderman et al. 2002); thus, it is conceivable that atherogenic responses may occur early in life. The age dependence of the effects may also be codetermined by genetic factors (Humphries and Morgan 2004; Ross 1999).

We also observed larger effects in women. If other cardiovascular risk factors such as occupational exposures dominate atherosclerosis in men, we would expect a smaller effect signal and less precision in the estimates among men. We also hypothesize that interactions may reflect biologic causes. If premenopausal women are protected against atherosclerosis by endogenous hormones, loss of hormonal protection would lead to increased vulnerability after menopause (Kannel et al. 1976). This could explain part of the interaction by both age and sex.

Active and passive smoking did not confound results in either the total sample or among subgroups. Adjustment for active tobacco smoke led to a slight increase in the effect estimate; thus, residual confounding is unlikely to overestimate the effects. However, $PM_{2.5}$ associations were clearly stronger in never smokers compared with smokers (data not shown). This gradient was also observed in all subgroups with significant $PM_{2.5}$ associations (Figure 3). Oxidative and inflammatory effects of smoking may dominate to such an extent that the additional exposure to ambient air pollutants may not further enhance effects along the same pathways. The difference in the effects of $PM_{2.5}$ in smokers and nonsmokers needs further investigation. The American Cancer Society cohort study does not reveal a clear pattern of a smoking interaction for the association of ambient air pollution and cardiovascular death (Krewski et al. 2004; Pope et al. 2004). In the Study on Air Pollution and Lung Diseases in Adults (SAPALDIA), associations between air pollution and level of pulmonary function did not differ by smoking status (Ackermann-Liebrich et al. 1997).

Some U.S. studies indicate effect modification of air pollution by socioeconomic status (SES) with much stronger effects among the less educated (Pope et al. 2002). The cause of this interaction pattern is not well understood. SES status was rather homogeneous in these mostly well-educated volunteers, providing little power to investigate interactions of pollution with SES. If lower SES also positively modifies effects of air pollution on atherosclerosis, our population would provide an underestimate of the health effects in the general population (O'Neill et al. 2003). Further research on samples representative of the population will be needed to assess whether the high SES in the clinical trials biases the effects toward the null.

Future research should focus on identifying factors that determine susceptibility to $PM_{2.5}$. We are initiating studies on subjects with inflammatory metabolic syndromes prone to accelerated atherosclerosis such as postmenopausal women, diabetics, or obese or physically inactive people. To corroborate the cross-sectional findings, follow-up studies are ultimately needed to investigate the association of concurrent levels of air pollution exposure with the progression of CIMT.

Plausibility. From a biologic perspective, our results support the hypothesis that long-term exposure to ambient PM contributes to systemic inflammatory pathways, which are a relevant aspect of atherogenesis (Ross 1999). The findings indicate a biologically plausible link between the observed acute effects of ambient air pollution on systemic inflammation (Glantz 2002) and the long-term consequences of sustained vascular inflammation leading to increased atherosclerosis and, ultimately, cardiovascular death (Hoek et al. 2002; Pope et al. 2004). Among susceptible people, this may lead to artery wall lesions similar to those observed in the rabbit model (Fujii et al. 2002; Suwa et al. 2002). In these hyperlipidemic rabbits, 4-week PM exposure was associated with the progression of atherosclerotic lesions, coupled with an enhanced release of bone marrow monocytes. These precursors of macrophages play an important role in the atherogenic inflammatory responses (Goto et al. 2004; Ross 1999; Suwa et al. 2002). Given the central role of oxidized LDL in the initiation and progression of atherogenesis, suggestions that the plasma of automotive workers with high exposure to traffic exhaust is more susceptible to oxidation is also of interest (Sharman et al. 2002).

As a quantitative plausibility check, we compared the size of the $PM_{2.5}$ effects with effects of other risk factors on CIMT. Using smoking and environmental tobacco smoke (ETS) as a model for air pollution exposure, the size of our estimates appear plausible (Diez-Roux et al. 1995; Howard et al. 1994). Associations of ETS and current levels of air pollution with various respiratory outcomes are similar and support the notion of common underlying pathways (Künzli 2002). Smoking and ETS associate with stiffer and thicker artery walls, reflecting the systemic effect of these exposures (Howard et al. 1994; Mack et al. 2003). Exposure to ETS was associated with 2-3% thicker intima-media, which approximate the effects observed for a 10 $\mu g/m^3$ change in $PM_{2.5}$ (Diez-Roux et al. 1995; Howard et al. 1994). Using never smokers without ETS exposure as the referent group in our data, never smokers with ETS at home had 0.9% (-2.7 to 4.5%) thicker artery walls; former smokers' CIMT was increased on average by 3.4% (0.7-6.3%), and the 30 current smokers had 5% (-1.5 to 11.6%) thicker CIMT. The trend across these four categories of tobacco exposure was statistically significant. As shown in Table 1, smokers were underrepresented in these volunteers of well-educated participants.

The observed percent change in CIMT corresponds to an increase in the thickness of approximately 20-40 μm per 10

$\mu g/m^3$ contrast in $PM_{2.5}$. This difference in CIMT translates into some 3-6% increase in the long-term risk for myocardial infarction (O'Leary et al. 1999). Pope et al. (2004) reported that long-term exposure to $PM_{2.5}$ was associated with an 18% (14-23%) increase in ischemic heart disease. Effect sizes reported here concur with these findings, indicating that a fraction of the total effect of ambient PM on cardiovascular mortality may be mediated through sustained long-term effects of air pollution on atherosclerosis (Künzli et al. 2001). This is in line with the proposed model (Künzli et al. 2001) in which some of the effects observed in cohort studies must reflect long-term contributions of air pollution to the underlying disease progression, whereas in other cases, air pollution contributes only to triggering of cardiovascular events or death (Bell et al. 2004; Künzli et al. 2001; Peters and Pope 2002).

From a biologic and policy perspective, we emphasize that $PM_{2.5}$ probably serves as a surrogate for the mixture of urban air pollution and constituents of PM. It is premature to conclude that $PM_{2.5}$ and its constituents are the atherogenic culprit per se. Atherosclerosis results from complex processes that may include a combination of various urban pollutants, host factors, and pathways that ultimately lead to the findings of a CIMT-$PM_{2.5}$ association.

In conclusion, we have presented the first epidemiologic evidence supporting the idea of a chronic vascular response to respiratory and systemic effects of PM exposure. Given the leading role of heart disease as a cause of death in most westernized countries and the growing contribution in developing countries, these findings may be of high public health relevance. Further investigations need to focus on susceptible groups and follow-up of cohorts to investigate the effect of air pollution on the progression of CIMT.

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Last Updated January 12, 2005

Attachment 3

Technical Advisory

CEQA AND CLIMATE CHANGE: Addressing Climate Change Through California Environmental Quality Act (CEQA) Review

This technical advisory is one in a series of advisories provided by the Governor's Office of Planning and Research (OPR) as a service to professional planners, land use officials and CEQA practitioners. OPR issues technical guidance from time to time on issues that broadly affect the practice of CEQA and land use planning. The emerging role of CEQA in addressing climate change and greenhouse gas emissions has been the topic of much discussion and debate in recent months. This document provides OPR's perspective on the issue.

I. PURPOSE

General scientific consensus and increasing public awareness regarding global warming and climate change have placed new focus on the California Environmental Quality Act (CEQA) review process as a means to address the effects of greenhouse gas (GHG) emissions from proposed projects on climate change. Many public agencies—along with academic, business, and community organizations—are striving to determine the appropriate means by which to evaluate and mitigate the impacts of proposed projects on climate change. Approaches and methodologies for calculating GHG emissions and addressing the environmental impacts through CEQA review are rapidly evolving and are increasingly available to assist public agencies to prepare their CEQA documents and make informed decisions.

JUNE 19, 2008

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The Governor's Office of Planning and Research (OPR) will develop, and the California Resources Agency (Resources Agency) will certify and adopt amendments to the Guidelines implementing the California Environmental Quality Act ("CEQA Guidelines"), on or before January 1, 2010, pursuant to Senate Bill 97 (Dutton, 2007). These new CEQA Guidelines will provide regulatory guidance on the analysis and mitigation of GHG emissions in CEQA documents. In the interim, OPR offers the following informal guidance regarding the steps lead agencies should take to address climate change in their CEQA documents. This guidance was developed in cooperation with the Resources Agency, the California Environmental Protection Agency (Cal/EPA), and the California Air Resources Board (ARB).

II. BACKGROUND

Climate change refers to any significant change in measures of climate, such as average temperature, precipitation, or wind patterns over a period of time. Climate change may result from natural factors, natural processes, and human activities that change the composition of the atmosphere and alter the surface and features of the land. Significant changes in global climate patterns have recently been associated with global warming, an average increase in the temperature of the atmosphere near the Earth's surface, attributed to accumulation of GHG emissions in the atmosphere. Greenhouse gases trap heat in the atmosphere, which in turn heats the surface of the Earth. Some GHGs occur naturally and are emitted to the atmosphere through natural processes, while others are created and emitted solely through human activities. The emission of GHGs through the combustion of fossil fuels (i.e., fuels containing carbon) in conjunction with other human activities, appears to be closely associated with global warming.

State law defines GHG to include the following: carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride (Health and Safety Code, section 38505(g).) The most common GHG that results from human activity is carbon dioxide, followed by methane and nitrous oxide.

Requirements of AB 32 and SB 97

Assembly Bill 32 (AB 32), the California Global Warming Solutions Act of 2006 (Nunez, 2006), recognizes that California is the source of substantial amounts of GHG emissions. The statute begins with several legislative findings and declarations of intent, including the following:

> Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snow pack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems. (Health and Safety Code, section 38501.)

In order to avert these consequences, AB 32 establishes a state goal of reducing GHG emissions to 1990 levels by the year 2020 (a reduction of approximately 25 percent from forecast emission levels) with further reductions to follow. The law requires the ARB to establish a program to track and report GHG emissions; approve a scoping plan for achieving the maximum technologically feasible and cost effective reductions from sources of GHG emissions; adopt early reduction measures to begin moving forward; and adopt, implement and enforce regulations – including market mechanisms such as "cap-and-trade" programs – to ensure the required reductions occur. The ARB recently adopted a statewide GHG emissions limit and an emissions inventory, along with requirements to measure, track, and report GHG emissions by the industries it determined to be significant sources of GHG emissions.

CEQA requires public agencies to identify the potentially significant effects on the environment of projects they intend to carry out or approve, and to mitigate significant effects whenever it is feasible to do so. While AB 32 did not amend CEQA to require new analytic processes to account for the environmental impacts of GHG emissions from projects subject to CEQA, it does acknowledge that such emissions cause significant adverse impacts to human health and the environment.

Senate Bill 97, enacted in 2007, amends the CEQA statute to clearly establish that GHG emissions and the effects of GHG emissions are appropriate subjects for CEQA analysis. It directs OPR to develop draft CEQA Guidelines "for the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions" by July 1, 2009 and directs the Resources Agency to certify and adopt the CEQA Guidelines by January 1, 2010.

Requirements of CEQA

CEQA is a public disclosure law that requires public agencies to make a

good-faith, reasoned effort, based upon available information, to identify the potentially significant direct and indirect environmental impacts—including cumulative impacts— of a proposed project or activity. The CEQA process is intended to inform the public of the potential environmental effects of proposed government decisions and to encourage informed decision-making by public agencies. In addition, CEQA obligates public agencies to consider less environmentally-damaging alternatives and adopt feasible mitigation measures to reduce or avoid a project's significant impacts.

The lead agency is required to prepare an Environmental Impact Report (EIR), a Mitigated Negative Declaration, or equivalent document, when it determines that the project's impacts on the environment are potentially significant. This determination of significance must be based upon substantial evidence in light of all the information before the agency.

Although the CEQA Guidelines, at Appendix G, provide a checklist of suggested issues that should be addressed in an EIR, neither the CEQA statute nor the CEQA Guidelines prescribe thresholds of significance or particular methodologies for performing an impact analysis. This is left to lead agency judgment and discretion, based upon factual data and guidance from regulatory agencies and other sources where available and applicable. A threshold of significance is essentially a regulatory standard or set of criteria that represent the level at which a lead agency finds a particular environmental effect of a project to be significant. Compliance with a given threshold means the effect normally will be considered less than significant. Public agencies are encouraged but not required to adopt thresholds of significance for environmental impacts. Even in the absence of clearly defined thresholds for GHG emissions, the law requires that such emissions from CEQA projects must be disclosed and mitigated to the extent feasible whenever the lead agency determines that the project contributes to a significant, cumulative climate change impact.

We realize that perhaps the most difficult part of the climate change analysis will be the determination of significance. Although lead agencies typically rely on local or regional definitions of significance for most environmental issues, the global nature of climate change warrants investigation of a statewide threshold of significance for GHG emissions. To this end, OPR has asked ARB technical staff to recommend a method for setting thresholds which will encourage consistency and uniformity in the CEQA analysis of GHG emissions throughout the state. Until such time as state guidance is available on thresholds of significance for GHG emissions, we recommend the following approach to your CEQA analysis.

III. RECOMMENDED APPROACH

Each public agency that is a lead agency for complying with CEQA needs to develop its own approach to performing a climate change analysis for projects that generate GHG emissions. A consistent approach should be applied for the analysis of all such projects, and the analysis must be based on best available information. For these projects, compliance with CEQA entails three basic steps: identify and quantify the GHG emissions; assess the significance of the impact on climate change; and if the impact is found to be significant, identify alternatives and/or mitigation measures that will reduce the impact below significance.

Lead agencies should determine whether greenhouse gases may be generated by a proposed project, and if so, quantify or estimate the GHG emissions by type and source. Second, the lead agency must assess whether those emissions are individually or cumulatively significant. When assessing whether a project's effects on climate change are "cumulatively considerable" even though its GHG contribution may be individually limited, the lead agency must consider the impact of the project when viewed in connection with the effects of past, current, and probable future projects. Finally, if the lead agency determines that the GHG emissions from the project as proposed are potentially significant, it must investigate and implement ways to avoid, reduce, or otherwise mitigate the impacts of those emissions. Although the scientific knowledge and understanding of how best to perform this analysis is rudimentary and still evolving, many useful resources are available (see Attachment 1).

Until such time as further state guidance is available on thresholds of significance, public agencies should consider the following general factors when analyzing whether a proposed project has the potential to cause a significant climate change impact on the environment.

Identify GHG Emissions

- Lead agencies should make a good-faith effort, based on available information, to calculate, model, or estimate the amount of CO_2 and other GHG emissions from a project, including the emissions associated with vehicular traffic, energy consumption, water usage and construction activities.
- Technical resources, including a variety of modeling tools, are available to assist public agencies to quantify GHG emissions. OPR recognizes that more sophisticated emissions models for particular types of projects are continually being developed and that the state-of-the-art quantification

models are rapidly changing. OPR will periodically update the examples of modeling tools identified in Attachment 2.

- There is no standard format for including the analysis in a CEQA document. A GHG/climate change analysis can be included in one or more of the typical sections of an EIR (e.g., air quality, transportation, energy) or may be provided in a separate section on cumulative impacts or climate change.

Determine Significance

- When assessing a project's GHG emissions, lead agencies must describe the existing environmental conditions or setting, without the project, which normally constitutes the baseline physical conditions for determining whether a project's impacts are significant.
- As with any environmental impact, lead agencies must determine what constitutes a significant impact. In the absence of regulatory standards for GHG emissions or other scientific data to clearly define what constitutes a "significant impact", individual lead agencies may undertake a project-by-project analysis, consistent with available guidance and current CEQA practice.
- The potential effects of a project may be individually limited but cumulatively considerable. Lead agencies should not dismiss a proposed project's direct and/or indirect climate change impacts without careful consideration, supported by substantial evidence. Documentation of available information and analysis should be provided for any project that may significantly contribute new GHG emissions, either individually or cumulatively, directly or indirectly (e.g., transportation impacts).
- Although climate change is ultimately a cumulative impact, not every individual project that emits GHGs must necessarily be found to contribute to a significant cumulative impact on the environment. CEQA authorizes reliance on previously approved plans and mitigation programs that have adequately analyzed and mitigated GHG emissions to a less than significant level as a means to avoid or substantially reduce the cumulative impact of a project.

Mitigate Impacts

- Mitigation measures will vary with the type of project being contemplated, but may include alternative project designs or locations that conserve energy and water, measures that reduce vehicle miles traveled

(VMT) by fossil-fueled vehicles, measures that contribute to established regional or programmatic mitigation strategies, and measures that sequester carbon to offset the emissions from the project.

- The lead agency must impose all mitigation measures that are necessary to reduce GHG emissions to a less than significant level. CEQA does not require mitigation measures that are infeasible for specific legal, economic, technological, or other reasons. A lead agency is not responsible for wholly eliminating all GHG emissions from a project; the CEQA standard is to mitigate to a level that is "less than significant".
- If there are not sufficient mitigation measures that the lead agency determines are feasible to achieve the less than significant level, the lead agency should adopt those measures that are feasible, and adopt a Statement of Overriding Considerations that explains why further mitigation is not feasible. A Statement of Overriding Considerations must be prepared when the lead agency has determined to approve a project for which certain impacts are unavoidable. These statements should explain the reasons why the impacts cannot be adequately mitigated in sufficient detail, and must be based on specific facts, so as not to be conclusory.
- Agencies are encouraged to develop standard GHG emission reduction or mitigation measures that can be applied on a project-by-project basis. Attachment 3 contains a preliminary menu of measures that lead agencies may wish to consider. This list is by no means exhaustive or prescriptive. Lead agencies are encouraged to develop their own measures and/or propose project alternatives to reduce GHG emissions, either at a programmatic level or on a case-by-case review.
- In some cases GHG emission reduction measures will not be feasible or may not be effective at a project level. Rather, it may be more appropriate and more effective to develop and adopt program-level plans, policies and measures that will result in a reduction of GHG emissions on a regional level.

IV. ADDITIONAL LAND USE CONSIDERATIONS

CEQA can be a more effective tool for GHG emissions analysis and mitigation if it is supported and supplemented by sound development policies and practices that will reduce GHG emissions on a broad planning scale and that can provide the basis for a programmatic approach to project-specific CEQA analysis and mitigation.

Local governments with land use authority are beginning to establish policies that result in land use patterns and practices that will result in less energy use and reduce GHG emissions. For example, some cities and counties have adopted general plans and policies that encourage the development of compact, mixed-use, transit-oriented development that reduces VMT; encourage alternative fuel vehicle use; conserve energy and water usage; and promote carbon sequestration. Models of such developments exist throughout the state (see OPR climate change website for examples of city and county plans and policies, referenced in Attachment 1).

For local government lead agencies, adoption of general plan policies and certification of general plan EIRs that analyze broad jurisdiction-wide impacts of GHG emissions can be part of an effective strategy for addressing cumulative impacts and for streamlining later project-specific CEQA reviews.

International, national, and statewide organizations such as ICLEI (Local Governments for Sustainability), the Cities for Climate Protection, and the Clean Cities Coalition —to name just a few — have published guidebooks to help local governments reduce GHG emissions through land use planning techniques and improved municipal operations. Links to these resources are provided at the end of this advisory.

Regional agencies can also employ a variety of strategies to reduce GHG emissions through their planning processes. For example, regional transportation planning agencies adopt plans and programs that address congestion relief, jobs-to-housing balance, reduction of vehicle miles traveled (VMT), and other issues that have implications for GHG emission reductions.

State agencies are also tackling the issue of climate change. Some have adopted or support policies and programs that take climate change into account, including the Department of Water Resources' State Water Plan; the Department of Transportation's State Transportation Plan; and the Business, Housing and Transportation Agency's Regional Blueprint Planning Program. These efforts not only raise public awareness of climate change and how the State can reduce GHG emissions, but also offer specific information and resources for lead agencies to consider.

V. NEXT STEPS

OPR has asked ARB technical staff to recommend a method for setting a threshold of significance for GHG emissions. OPR has requested that the ARB identify a range of feasible options, including qualitative and quantitative options.

OPR is actively seeking input from the public and stakeholder groups, as it develops draft CEQA Guidelines for GHG emissions. OPR is engaged with the Resources Agency and other expert state agencies, local governments, builders and developers, environmental organizations, and others with expertise or an interest in the development of the Guidelines.

OPR will conduct public workshops later this year to receive input on the scope and content of the CEQA Guidelines amendments. It is OPR's intent to release a preliminary draft of the CEQA Guidelines amendments for public review and comment in the fall. This will enable OPR to deliver a proposed package of CEQA Guidelines amendments to the Resources Agency as early as January 2009, well before the statutory due date of July 1, 2009.

We encourage public agencies and the public to refer to the OPR website at www.opr.ca.gov for information about the CEQA Guidelines development process and to subscribe to OPR's notification system for announcements and updates.

For more information about this technical advisory and assistance in addressing the impacts of GHG emissions on the environment, please contact:

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ATTACHMENTS

1. References and Information Sources
2. Technical Resources/Modeling Tools to Estimate GHG Emissions
3. Examples of GHG Reduction Measures

Attachment 1

References and Information Sources

The following is a list of websites of organizations that can offer additional information regarding methods to characterize, quantify, assess and reduce GHG emissions. In addition, a list of useful resources and reference materials is provided on the subject of climate change and greenhouse gases.

ORGANIZATIONS

- Governor's Office of Planning and Research
  http://www.opr.ca.gov
- California Climate Action Team
  http://www.climatechange.ca.gov/climate_action_team/
- California Climate Change Portal
  http://www.climatechange.ca.gov

- California Climate Action Registry
  http://www.climateregistry.org/
- California Department of Water Resources, Climate Change and California Water Plan Website
  http://www.waterplan.water.ca.gov/climate/
- California Energy Commission Climate Change Proceedings
  http://www.energy.ca.gov/global_climate_change/index.html
- California Public Utilities Commission, Climate Change Website
  http://www.cpuc.ca.gov/static/energy/electric/climate+change/_index.htm
- Green California Website
  http://www.green.ca.gov/default.htm
- Western Climate Initiative
  http://www.westernclimateinitiative.org

- California Air Pollution Control Officers Association
  http://www.capcoa.org
- Local Governments for Sustainability (ICLEI)
  http://www.iclei.org/
- ICLEI Cities for Climate Protection (CCP)
  http://www.iclei.org/index.php?id=800
- United Nations Framework Convention on Climate Change
  http://unfccc.int/2860.php
- Intergovernmental Panel on Climate Change
  http://www.ipcc.ch
- United States Environmental Protection Agency
  http://www.epa.gov/climatechange/
- City of Seattle U.S. Mayors Climate Protection Agreement
  http://www.seattle.gov/mayor/climate/
- Mayors for Climate Protection
  http://www..coolmayors.com
- U.S. Conference of Mayors Climate Protection Web Page
  http://usmayors.org/climateprotection
- Institute for Local Government California Climate Action Network
  http://www.ca-ilg.org/climatechange

STATUTES, REGULATIONS, AND EXECUTIVE ORDERS

- SB 97
  http://opr.ca.gov/ceqa/pdfs/SB_97_bill_20070824_chaptered.pdf
- SB 97 Governor's Signing Message
  http://opr.ca.gov/ceqa/pdfs/SB-97-signing-message.pdf
- AB 32
  http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_0001-0050/ab_32_bill_20060927_chaptered.pdf
- AB 1493
  http://www.leginfo.ca.gov/pub/01-02/bill/asm/ab_1451-1500/ab_1493_bill_20020722_chaptered.pdf

- Regulations implementing AB 1493

  http://www.arb.ca.gov/regact/grnhsgas/revfro.pdf and http://www.arb.ca.gov/regact/grnhsgas/revtp.pdf
- SB 1368

  http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb_1351-1400/sb_1368_bill_20060929_chaptered.pdf
- Executive Order S-01-07 regarding low carbon standard for transportation fuels

  http://gov.ca.gov/index.php?/executive-order/5172/
- Executive Order S-20-06 regarding implementation of AB 32

  http://gov.ca.gov/index.php?/executive-order/4484/
- Executive Order S-3-05 regarding greenhouse gas goals

  http://gov.ca.gov/index.php?/executive-order/1861/
- Executive Order S-20-04 regarding energy conservation by state

  http://gov.ca.gov/index.php?/executive-order/3360/

REPORTS

- OPR List of Environmental Documents Addressing Climate Change

  http://opr.ca.gov/ceqa/pdfs/Environmental_Assessment_Climate_Change.pdf
- OPR List of Local Plans Addressing Climate Change

  http://opr.ca.gov/ceqa/pdfs/City_and_County_Plans_Addressing_Climate_Change.pdf
- *Climate Action Team Proposed Early Action Measures to Mitigate Climate Change in California*, April 2007

  http://www.climatechange.ca.gov/climate_action_team/reports/2007-04-20_CAT_REPORT.PDF
- California Air Resources Board, *Early Action Items to Mitigate Climate Change in California*, October 2007

  http://www.arb.ca.gov/cc/ccea/meetings/ea_final_report.pdf
- California Air Resourced Board, *Draft Greenhouse Gas Inventory*, November 2007

  http://www.arb.ca.gov/cc/inventory/data/tables/rpt_Inventory_IPCC_All_2007-11-19.pdf
- *Climate Action Team Report to the Governor and Legislature*, March 2006, http://www.climatechange.ca.gov/climate_action_team/reports/index.html

- California Climate Change Center, *Our Changing Planet: Assessing the Risks to California - Summary Report*

  http://www.energy.ca.gov/2006publications/CEC-500-2006-077/CEC-500-2006-077.PDF

  Detailed reports available at: http://www.climatechange.ca.gov/biennial_reports/2006report/index.html
- California Energy Commission, *2007 Integrated Energy Policy Report Update*

  http://www.energy.ca.gov/2007publications/CEC-100-2007-008/CEC-100-2007-008-CMF.PDF
- California Department of Water Resources, *Progress on Incorporating Climate Change into Management of California's Water Resources*

  http://baydeltaoffice.water.ca.gov/climatechange/DWRClimateChangeJuly06.pdf - pagemode=bookmarks&page=1
- *Climate Action Program at Caltrans*, December 2006

  http://www.dot.ca.gov/docs/ClimateReport.pdf
- California Air Pollution Control Officers Association, *CEQA & Climate Change*, January 2008

  http://www.capcoa.org/ceqa/CAPCOA%20White%20Paper%20-%20CEQA%20and%20Climate%20Change.pdf
- West Coast Governors' Global Warming Initiative, November 2004

  http://www.climatechange.ca.gov/westcoast/documents/2004-11_final_report/2004-11-18_STAFF_RECOMMENDS.PDF
- Western Climate Initiative Work Plan, October 2007

  http://www.westernclimateinitiative.org/ewebeditpro/items/O104F13792.pdf
- California Climate Change Center, University of California at Berkeley, *Managing Greenhouse Gas Emissions in California*, 2007

  http://calclimate.berkeley.edu/managing_GHGs_in_CA.html
- U.S. Conference of Mayors, *Energy & Environment Best Practices*

  http://www.usmayors.org/climateprotection/AtlantaEESummitCDROMVersion.pdf
- *U.S. Mayors Climate Protection Agreement Climate Action Handbook*, 2006

  http://www.seattle.gov/climate/docs/ClimateActionHandbook.pdf
- Natural Capitalism Solutions *Climate Protection Manual for Cities*, June 2007

  http://www.climatemanual.org

- National Governor's Association Center for Best Practices *Growing with Less Greenhouse Gases*, November 2002
  http://www.nga.org/cda/files/112002ghg.pdf
- National Governor's Association Center for Best Practices *State and Regional Greenhouse Gas* Initiatives, October 2006
  http://www.nga.org/Files/pdf/0610GREENHOUSE.PDF
- United States Climate Change Program *The Effects of Climate Change on Agriculture, Land Resources, Water Resources, and Biodiversity in the United States*, May 2008
  http://www.usda.gov/oce/global_change/sap_2007_FinalReport.htm

Attachment 2

Technical Resources/Modeling Tools to Estimate GHG Emissions

TOOL	AVAILABILITY	SCOPE LOCAL/ REGIONAL	SCOPE TRANSPORTATION/ BUILDINGS	DATA INPUT REQUIREMENTS	DATA OUTPUT
URBEMIS	• Download • Public domain (free)	• Local project level	• Transportation • Some building (area source) outputs • Construction	• Land use information • Construction, area source, and transportation assumptions	• CO2 (pounds per day) • Mitigation impacts
Clean Air and Climate Protection (CACP) Software	• Download • Available to public agencies (free)	• Local project level	• Buildings • Communities • Governments	• Energy usage • Waste generation and disposal • Transportation fuel usage or VMT	• CO2e (tons per year)
Sustainable Communities Model (SCM)	• Custom model	• Regional • Scalable to site level	• Transportation • Buildings • Neighborhoods • Master planned communities	• Location and site specific information • Transportation assumptions • On-site energy usage	• CO2e (tons per year)
Internet-accessed Planning for Community Energy, Economic and Environmental Sustainability I-PLACE^{3}S	• Web-based • Small access fee • Full model now available in eight CA counties	• Regional • Scalable to site level	• Transportation • Housing • Land Use • Buildings • Energy • Economics	• Parcel level land use data (ability to work with less data) • Project-level data for alternative comparisons	• CO2 (any quantity over any time)

Climate Action Registry Reporting On-Line Tool (CARROT)	• Web-based
	• Available to Registry members
	• General public can view entity reports
		• Regional, scalable to entity and facility level	• General Reporting and Certification Protocols
			  o Transportation
			  o Buildings/facilities
			• Specific protocols for some sectors
				• Mobile source combustion (VMT or fuel usage)
				• Stationary combustion (fuel usage)
				• Indirect emissions (electricity usage)
					• Each GHG and CO2e (tons per year)

EMFAC	• Download • Public domain (free)	• Statewide • Regional (air basin level)	• Transportation emission factors	• Travel activity data to calculate CO2 from projects.	• CO2 and methane (grams per mile) emission factors

VMT = Vehicle miles traveled
eCO2 = Carbon dioxide equivalent emissions
Note: This is not meant to be a definitive list of modeling tools to estimate climate change emissions impacts. Other tools may be available.

Description of Modeling Tools

URBEMIS

The Urban Emissions Model is used extensively during the CEQA process by local air districts and consultants to determine the impacts of projects on criteria pollutants. It was recently updated to calculate CO2 emissions as well. Future updates will include additional greenhouse gases. URBEMIS uses the ITE Trip Generation Rate Manual and the Air Resources Board's (ARB) motor vehicle emissions model (EMFAC) to calculate transportation-related CO2 emissions and ARB's OFFROAD2007 model for CO2 emissions from off-road equipment. Area source outputs include natural gas use, landscaping equipment, consumer products, architectural coatings, and fireplaces. It also estimates construction impacts and impacts of mitigation options. Web site: http://www.urbemis.com.

Clean Air and Climate Protection (CACP) software

This tool is available to state and local governments and members of ICLEI, NACAA, NASEO and NARUC to determine greenhouse gas and criteria pollutant emissions from government operations and communities as a whole. The user must input aggregate information about energy (usage), waste (quantity and type generated, disposal method, and methane recovery rate) and transportation (VMT) for community analyses. CACP uses emission factors from EPA, DOE, and DOT to translate the energy, waste and transportation inputs into greenhouse gas (in carbon dioxide equivalents) and criteria air pollutant emissions. If associated energy, waste and transportation reduction are provided, the model can also calculate emission reductions and money saved from policy alternatives. Web site: http://cacpsoftware.org.

Sustainable Communities Model (SCM)

This model quantifies total CO2e emissions allowing communities the ability to optimize planning decisions that result in the greatest environmental benefit for the least cost. Total CO2e emissions are based on emissions from energy usage, water consumption and transportation. The model provides an interactive comparison of various scenarios to provide environmental performance, economic performance, and cost benefit analysis.

Web site: www.ctg-net.com/energetics/documents/doc_SCM_070731.pdf

UPLANS

This model is an internet-accessed land use and transportation model designed specifically for regional and local governments to help understand how their growth and development decisions can contribute to improved sustainability. It estimates CO2, criteria pollutant and energy impacts on a neighborhood or

regional level for existing, long-term baseline and alternative land use plans. The data input requirements are extensive and require a fiscal commitment from the Metropolitan Planning Organization and its member local governments. Once the data is available, the IPLACES tool can be developed for that region relatively quickly, in approximately one week. The benefits include a multifunctional tool that provides immediate outputs to compare alternatives during public meetings, multilevel password protected on-line access, as well as providing access for local development project CEQA analyses. This tool also supports regional travel models and integrated land use and transportation assessments. Web site: http://www.sacregionblueprint.org/sacregionblueprint/the_project/technology.cfm and http://www.places.energy.ca.gov/places

CARROT

The California Climate Action Registry offers the Climate Action Registry Reporting On-Line Tool (CARROT) for Registry members to calculate and report annual greenhouse gas (GHG) emissions. CARROT calculates direct and indirect GHG emissions for the following emission categories by source: stationary combustion, process emissions, mobile source combustion, fugitive emissions and electricity use by source. It calculates emissions using entity collected data such as fuel purchase records, VMT and utility bills. While reporting and certification through CARROT is only available to members, the public may access entity reports online. Reporting protocols are also available to the public, including the General Reporting Protocol (www.climateregistry.org/docs/PROTOCOLS/GRP%20V2-March2007_web.pdf) and cement, forestry and power/utility sector protocols. Additional sector protocols are under development. Website: www.climateregistry.org/CARROT/

EMFAC

The Air Resources Board's EMission FACtors (EMFAC) model is used to calculate emission rates from all motor vehicles in California. The emission factors are combined with data on vehicle activity (miles traveled and average speeds) to assess emission impacts. The URBEMIS model described above uses EMFAC to calculate the transportation emission impacts of local projects. Web site: http://www.arb.ca.gov/msei/onroad/onroad.htm

Attachment 3

Examples of GHG Reduction Measures

The following are examples of measures that have been employed by some public agencies to reduce greenhouse gas emissions, either as general development policies or on a project-by-project basis. These are provided for illustrative purposes only.

LAND USE AND TRANSPORTATION

- Implement land use strategies to encourage jobs/housing proximity, promote transit-oriented development, and encourage high density development along transit corridors. Encourage compact, mixed-use projects, forming urban villages designed to maximize affordable housing and encourage walking, bicycling and the use of public transit systems.
- Encourage infill, redevelopment, and higher density development, whether in incorporated or unincorporated settings
- Encourage new developments to integrate housing, civic and retail amenities (jobs, schools, parks, shopping opportunities) to help reduce VMT resulting from discretionary automobile trips.
- Apply advanced technology systems and management strategies to improve operational efficiency of transportation systems and movement of people, goods and services.
- Incorporate features into project design that would accommodate the supply of frequent, reliable and convenient public transit.
- Implement street improvements that are designed to relieve pressure on a region's most congested roadways and intersections.
- Limit idling time for commercial vehicles, including delivery and construction vehicles.

URBAN FORESTRY

- Plant trees and vegetation near structures to shade buildings and reduce energy requirements for heating/cooling.
- Preserve or replace onsite trees (that are removed due to development) as a means of providing carbon storage.

GREEN BUILDINGS

- Encourage public and private construction of LEED (Leadership in Energy and Environmental Design) certified (or equivalent) buildings.

ENERGY CONSERVATION POLICIES AND ACTIONS

- Recognize and promote energy saving measures beyond Title 24 requirements for residential and commercial projects
- Where feasible, include in new buildings facilities to support the use of low/zero carbon fueled vehicles, such as the charging of electric vehicles from green electricity sources.
- Educate the public, schools, other jurisdictions, professional associations, business and industry about reducing GHG emissions.
- Replace traffic lights, street lights, and other electrical uses to energy efficient bulbs and appliances.
- Purchase Energy Star equipment and appliances for public agency use.
- Incorporate on-site renewable energy production, including installation of photovoltaic cells or other solar options.
- Execute an Energy Savings Performance Contract with a private entity to retrofit public buildings. This type of contract allows the private entity to fund all energy improvements in exchange for a share of the energy savings over a period of time.
- Design, build, and operate schools that meet the Collaborative for High Performance Schools (CHPS) best practices.
- Retrofit municipal water and wastewater systems with energy efficient motors, pumps and other equipment, and recover wastewater treatment methane for energy production.
- Convert landfill gas into energy sources for use in fueling vehicles, operating equipment, and heating buildings.
- Purchase government vehicles and buses that use alternatives fuels or technology, such as electric hybrids, biodiesel, and ethanol. Where feasible, require fleet vehicles to be low emission vehicles. Promote the use of these vehicles in the general community.
- Offer government incentives to private businesses for developing buildings with energy and water efficient features and recycled materials. The incentives can include expedited plan checks and reduced permit fees.
- Offer rebates and low-interest loans to residents that make energy-saving improvements on their homes.

- Create bicycle lanes and walking paths directed to the location of schools, parks and other destination points.

PROGRAMS TO REDUCE VEHICLE MILES TRAVELED

- Offer government employees financial incentives to carpool, use public transportation, or use other modes of travel for daily commutes.
- Encourage large businesses to develop commute trip reduction plans that encourage employees who commute alone to consider alternative transportation modes.
- Develop shuttle systems around business district parking garages to reduce congestion and create shorter commutes.
- Create an online ridesharing program that matches potential carpoolers immediately through email.
- Develop a Safe Routes to School program that allows and promotes bicycling and walking to school.

PROGRAMS TO REDUCE SOLID WASTE

- Create incentives to increase recycling and reduce generation of solid waste by residential users.
- Implement a Construction and Demolition Waste Recycling Ordinance to reduce the solid waste created by new development.
- Add residential/commercial food waste collection to existing greenwaste collection programs.

24-1 These introductory paragraphs disclose that the comments on the CHCF Stockton DEIR are provided on behalf of the Greater Stockton Chamber of Commerce. The comment is noted.

24-2 The commenter presents isolated CEQA sections and case law related to the requirements of an EIR to analyze direct and indirect impacts, especially with respect to economic impacts that lead to adverse physical effects on the environment and urban decay. The comment does not raise any issues about the adequacy of the DEIR; however, given the context of the comment letter, it is assumed that the commenter is implying that the DEIR's analysis of economic impacts (and subsequently urban decay) is inadequate.

Several other comment letters, especially those submitted by County staff, the County Board of Supervisors, and legal representatives, have suggested that the proposed project would cost the County hundreds of millions of dollars. This perceived economic impact is supported only by memoranda submitted by various departments, which, it would seem, had been asked to provide such memoranda. These comments suggest various reasons for the economic impact—increased demand for staffing, increased cost related to infrastructure improvements, and increased demand for services—although the nexus between these impacts and the proposed project is cursory at best. For example, it is not reasonably foreseeable that the project-related increase in demand for medical staffing (fully disclosed in the DEIR) would result in economic impacts on the County. It is not clearly shown, nor is it conceivable, how potential recruitment difficulty would translate into millions of dollars of public funds.

Most importantly, however, none of these comments address the potential beneficial economic effects of placing nearly 3,000 new medical and correctional employees in a region that is currently in an economic downturn, as well as the potential positive economic effects related to placing as many as 1,700 construction workers back into the local workforce. Large employment-generating facilities, such as the proposed project, do not typically have adverse effects on a local economy.

For more discussion related to the staffing issue, please see Master Response 3, "Recruitment and Staffing Issues Resulting from the Proposed Project."

As noted by the commenter, CEQA states (in Section 15131[a] of the State CEQA Guidelines) that:

> an EIR may trace a chain of cause and effect from a proposed project to physical changes caused in turn by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes.

Not only is there little support for the speculative claim that the proposed project would result in economic impacts, but no chain of events is identified that would lead to the conclusion that a reasonably foreseeable physical impact on the environment would occur as a result of the proposed project.

Finally, consistent with the principles set forth in *Citizens Association for Sensible Development of the Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151 and *Bakersfield Citizens for*

Local Control v. City of Bakersfield (2004) 124 Cal.App.4th 1184 (*Bakersfield Citizens*), the DEIR does address the potential for physical effects on the environment related to urban decay. In both cases cited above, the respondent agency refused to evaluate the potential environmental impacts of the addition of large shopping centers to the project area. In contrast, here, the chain of events evaluated was related to the perceived negative presence of a correctional medical facility located on the site, as well as the potential for relocation of patients' families to the vicinity, to result in socioeconomic downturn and eventual urban decay and deterioration of the community. The DEIR concludes (on page 4.11-11) that the impact would not be significant, based in part on a 2008 CDCR study evaluating the effects of inmates' families relocating, and on the fact that the proposed project would replace a vacant, deteriorating correctional facility with a new facility that would provide up to 3,000 new jobs to the vicinity and the region.

Please see also Master Response 3, regarding staffing issues and Mater Response 4, regarding public services.

24-3 The comment argues that the DEIR fails to correlate the proposed project's contribution to increases in air pollution to increased health effects in the affected population. Table 4.4-1 (page 4.4-5) of the DEIR summarizes the California ambient air quality standards (CAAQS) and national ambient air quality standards (NAAQS), which are health-based standards for criteria air pollutants identified in the California Clean Air Act and the federal Clean Air Act. Overwhelming scientific evidence has shown that exposure of members of the public to concentrations of these pollutants in excess of these standards can result in the adverse health effects described in detail on pages 4.4-2 through 4.4-5 of the DEIR.

Unlike the EIRs at issue in *Bakersfield Citizens*, the EIR acknowledges the consequences to health that result from the identified significant air quality impacts. Contrary to the commenter's implication, *Bakersfield Citizens* did not hold that an EIR must quantify increases in known adverse health effects resulting from significant and unavoidable air quality impacts. Rather, the court faulted the EIRs at issue in that case for never acknowledging the well-known connection between reduction in air quality and increases in respiratory conditions and illnesses (*Bakersfield Citizens*:1219–1220), In contrast, here, pages 4.4-2 through 4.4-5 of the DEIR are dedicated to acknowledging and describing the health consequences of air quality impacts. No such discussion is contained in Attachment 1 of Letter 24, which, according to the commenter (Comment 24-5) is the actual air quality analysis at issue in *Bakersfield Citizens*.

SJVAPCD regulates emissions of criteria air pollutants and precursors in the San Joaquin Valley Air Basin through a variety of control measures, regulations, and emissions limits with the goal of attaining the CAAQS and NAAQS by the earliest practical date. SJVAPCD's CEQA thresholds of significance (i.e., 10 TPY of ROG and NO_X, which are precursors to secondary pollutant formation of ozone—a criteria air pollutant for which the San Joaquin Valley Air Basin is in nonattainment—and 15 TPY of PM_{10}) are designed to limit emissions from new development to a level that would be consistent with attainment planning efforts (i.e., accounted for in emissions inventory projections for the air basin; see Table 4.4-3 for a list of applicable attainment plans in SJVAPCD's jurisdiction). Projects that would exceed these emissions thresholds would not be considered compliant with SJVAPCD air quality planning efforts, and would be considered to result in a substantial contribution to a violation of the CAAQS and NAAQS and/or expose members of the public to concentrations of pollutants from which adverse health effects could result.

As explained in the DEIR (page 4.4-31), and consistent with Sections 15144 and 15145 of the State CEQA Guidelines, the exact amount of stationary-source emissions was not quantified because doing so would have been speculative at this point in the proposed project, given the lack

of design specifications. In preparing the DEIR, CPR has, in good faith, found out and disclosed all that it reasonably could. The DEIR has not omitted any analysis of the increase in pollutant emissions that would occur associated with project implementation (see Tables 4.4-5 and 4.4-6) and has conducted the correct level of analysis to correlate project-generated emissions with health effects on the public. The DEIR also includes, as a threshold of significance, short- and long-term exposure of sensitive receptors to substantial emissions of TACs (in excess of 10 in one million for excess cancer risk or one hazard index for noncancer risk at the maximally exposed individual) (DEIR p. 4.4-23). For the reasons set forth in the DEIR, and based on substantial evidence, Impacts AIR-1 and AIR-2 were found to be significant, and the mitigation measures for these impacts were proposed to minimize those impacts to the extent feasible.

24-4 This comment is similar to Comment 24-3 and states that the health risk analysis for toxic air contaminants (TACs) failed to correlate TAC emissions to incidents of public health problems, which the commenter suggests is omission of information. The commenter refers to page 4.4-9 in this comment, as though this were the impact analysis for exposure of sensitive receptors to TAC emissions. Page 4.4-9 is part of the environmental setting and not part of the analysis of environmental impacts. Instead, see page 4.4-34 of the DEIR for the analysis of the proposed project's contribution of TACs and land use compatibility with off-site sources. The analysis is supported by scientific evidence that the types and quantities of emissions sources would result in less-than-significant impacts. See also Response to Comment 24-3.

24-5 This comment is similar to the previous comments and asserts that the DEIR omits information correlating increases in air pollution to anticipated increases in cardiovascular diseases and does not explain the reason. Please see Responses to Comments 24-3 and 24-4.

24-6 The commenter suggests that the analysis violates CEQA by omitting a correlation between adverse air quality impacts and resultant adverse health effects and does not disclose the severity of the proposed project's environmental impacts. Please see Responses to Comments 24-3 through 24-5.

24-7 The commenter suggests that the DEIR does not comply with Appendix F of the State CEQA Guidelines. Nothing in CEQA requires compliance with Appendix F. Appendix F provides *examples* of how an EIR might evaluate energy-related impacts (State CEQA Guidelines, Section 15126.4[a][1][C]). Although the DEIR does not follow the example provided under Appendix F, the DEIR appropriately analyzes the energy-related impacts in Section 4.14, "Public Utilities." See pages 4.14-16 and 4.14-17 of the DEIR for a discussion of the impacts associated with increased energy demand and the provision of energy. Also, energy consumption is tied very closely to the issue of GHG emissions, and a substantial discussion of energy consumption is included under Section 5.5.4, "Air Quality and Climate," in the "Cumulative Impacts" discussion. A list of mitigation measures is included in this section, which requires a variety of energy conservation measures and renewable energy provisions. Therefore, although the DEIR does not follow the *example* format of Appendix F, the DEIR complies with the CEQA requirement for evaluating and mitigating energy-related impacts (see State CEQA Guidelines, Section 15126.4[a][1][C]).

24-8 The commenter continues the insinuation that the DEIR does not address impacts related to energy. Please see Response to Comment 24-7.

24-9 The commenter discusses Section 15064.7 of the State CEQA Guidelines regarding thresholds of significance. It also mentions certain state statutes and air district (SCAQMD) efforts to establish a threshold of significance for GHGs. The comment does not raise issues related to the adequacy of the DEIR.

24-10 The comment references various types of thresholds of significance that could be used to evaluate a project's impacts on GHG emissions. Please see Response to Comment 13-22, which discusses the GHG threshold used to evaluate the proposed project's cumulative contribution to the climate change impact. It constitutes achieving a GHG emissions level that allows 1990 emissions levels to be attained by the year 2020, helping the state to achieve AB 32 goals.

24-11 The commenter states that CPR is bound by Executive Order 3-05, which calls for a reduction in GHG emissions to 1990 levels by 2020 and for an 80% reduction in GHG emissions to 1990 levels by 2050. The commenter suggests that this constitutes the threshold of significance. Although it is true that the executive order sets GHG reduction targets for California, it does not establish a threshold for CEQA analyses. The DEIR uses a threshold that evaluates the proposed project's contribution toward achieving GHG emissions levels that help the state achieve reduction targets set by AB 32. Please see Response to Comment 13-22.

24-12 The comment suggests that the direct impacts section concerning GHGs lacks a threshold of significance. Please see Response to Comment 13-22 for a discussion of the threshold of significance. The commenter refers to a statement in the DEIR that mentions that no individual project alone can generate enough GHG emissions to significantly influence global climate change. The commenter suggests that the statement constitutes the DEIR's conclusion regarding climate change impacts, meaning that by its very nature, global climate change is a cumulative impact. The very next statement in the DEIR, on page 5-10, states that "the proposed project would participate in this potential impact through its incremental contribution." The DEIR specifies a threshold to determine the significance of this incremental contribution on page 4.4-24.

The commenter asserts that the thresholds of significance should focus on whether a project helps or hurts efforts to meet the state's 2020 and 2050 goals for GHG emissions. The threshold used in the DEIR does precisely that by determining whether the project achieves a GHG emissions level that allows 1990 emissions levels to be attained by the year 2020. Please see Response to Comment 13-22 for details on the threshold and also a discussion of Executive Order 3-05.

24-13 This is another comment regarding the GHG threshold of significance, which the commenter contends is lacking in the DEIR. As explained in response to earlier comments, the DEIR uses a well defined threshold of significance for the project's cumulative contribution to the climate change impact. Unlike the respondent water agency in *Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099 (*Amador Waterways*), CPR has not reflexively relied on the questions contained in the Appendix G checklist to establish its thresholds of significance. Rather, consistent with the court's holding in that case, CPR has identified a threshold of significance for the proposed project's potential contribution to GHG emissions, even though Appendix G does not include a threshold of significance for GHG emissions, nor has any air quality regulatory agency adopted a formal threshold of significance for GHG emissions. Please see Response to Comment 13-22 for details.

24-14 The comment again references *Amador Waterways* regarding narrow and irrelevant thresholds of significance. Please see Response to Comment 24-13, which distinguishes that case. Please see Response to Comment 13-22 regarding the DEIR's threshold of significance for GHG emissions.

24-15 The commenter argues that the DEIR does not provide information about the amount of GHG emissions produced by the proposed project and whether the amount emitted facilitates meeting the 2020 and 2050 goals. Please see Responses to Comments 10-40, 10-41, and 13-22 for the amount of GHG emissions generated by the proposed project and their contribution to climate change. The comment goes on to state that the impact of the proposed project on climate change

would be significant and suggests that the DEIR reaches the wrong conclusion about whether the impact would be significant. The DEIR, in fact, reaches the same conclusion on page 5-13 ("Determining Whether the Project's Contribution to GHG Emissions is Considerable"—considerable contribution to the significant cumulative impact of global climate change) and page 5-15 ("Significance after Mitigation"—significant and unavoidable).

24-16 The comment suggests that the DEIR does not discuss the feasibility of multiple mitigation measures to reduce the significant impact related to climate change. Page 5-13 of the DEIR discusses mitigation measures to reduce the proposed project's GHG emissions, including compliance with SJVAPCD Rule 9510 and mitigation measures suggested by the California Office of the Attorney General.

Rather than suggest mitigation measures that the commenter believes would be more effective at reducing or avoiding the proposed project's impacts related to global climate change, the commenter references OPR's June 19, 2008, technical advisory entitled *CEQA and Climate Change: Addressing Climate Change Through California Environmental Quality Act (CEQA) Review* (OPR 2008). CPR does not necessarily have a duty to respond to "the non-project-specific secondary materials submitted in support of the comments" (*Environmental Protection and Information Center v. Cal. Dept. of Forestry and Fire Protection* [2008] 44 Cal.4th 459, 484). Nevertheless, it is worth noting that the mitigation measures recommended in the DEIR are consistent with the examples of mitigation measures (which are largely merely hortatory) recommended in the technical advisory, as shown in Table 3-3 below.

Table 3-3
Consistency of GHG Mitigation Measures Recommended in the DEIR with OPR's Advisory Recommendations

OPR Examples of GHG Reduction Measures	Consistency with OPR Measures, and Mitigation Measures Recommended in the DEIR (with DEIR page number, where applicable)
Implement land use strategies to encourage job/housing proximity, promote transit-oriented development, and encourage high-density development along transit corridors. Encourage compact, mixed-use projects, forming urban villages designed to maximize affordable housing and encourage walking, bicycling, and the use of public transit systems.	This recommendation pertains to broad land use policies, such as those commonly found in a city or county general plan or a specific plan. Because the proposed project is located near an urban area (as opposed to a rural area requiring lengthy commutes), it is generally consistent with this recommendation. Because the project proposes a correctional facility, other impacts, such as land use conflicts, would likely occur were the proposed project developed in the middle of a dense urban area.
Encourage infill, redevelopment, and higher density development whether in incorporated or unincorporated settings.	Because the proposed project would replace an existing facility and related structure(s) on a mostly already developed site, it would be consistent with this recommendation.
Encourage new developments to integrate housing, civic, and retail amenities (jobs, schools, parks, shopping opportunities) to help reduce VMT resulting from discretionary automobile trips.	As a correctional facility, the proposed project could not incorporate housing, retail amenities, etc.

Table 3-3
Consistency of GHG Mitigation Measures Recommended in the DEIR with OPR's Advisory Recommendations

OPR Examples of GHG Reduction Measures	Consistency with OPR Measures, and Mitigation Measures Recommended in the DEIR (with DEIR page number, where applicable)
Apply advanced technology systems and management strategies to improve operational efficiency of transportation systems and movement of people, goods, and services.	This recommendation appears to pertain to broad-scale land use planning (e.g., a city or county general plan) and not to specific development projects. The mitigation measures identified for global climate change include transportation and motor vehicle mitigation measures. (Page 5-14)
Incorporate features into project design that would accommodate the supply of frequent reliable and convenient public transit.	The mitigation measures identified in the DEIR to reduce GHG emissions include features that would accommodate the supply of frequent reliable and convenient public transit, including providing shuttle service to public transit and providing public transit incentives. (Page 5-14)
Implement street improvements that are designed to relieve pressure on a region's most congested roadways and intersections.	The mitigation measures identified in the DEIR to reduce or avoid the proposed project's traffic and circulation impacts would help relieve pressure on the region's roadways and intersections. (Page 5-14)
Limit idling time for commercial vehicles, including delivery and construction vehicles.	The mitigation measures identified in the DEIR to reduce the proposed project's GHG emissions include limiting idling time for commercial vehicles to 5 minutes, including delivery and construction vehicles. (Page 5-14)
Plant trees and vegetation near structures to shade buildings and reduce energy requirements for heating/cooling.	The mitigation measures identified in the DEIR to reduce the proposed project's GHG emissions include siting buildings to take advantage of shade, prevailing winds, landscaping, and sun screens to reduce energy use. (Page 5-13)
Preserve or replace on-site trees (that are removed due to development) as a means of providing carbon storage.	Trees will be included in the landscape plan currently being prepared.
Encourage public and private construction of LEED® certified (or equivalent) buildings.	The proposed project is intended to be designed and constructed to achieve a minimum LEED® Silver rating (Page 3-16) and consistent with Executive Order S-20-04.
Recognize and promote energy-saving measures beyond Title 24 requirements for residential and commercial projects.	The proposed project is intended to be designed and constructed to achieve a minimum LEED® Silver rating. (DEIR, p. 3-16) which would include energy saving measures beyond Title 24 requirements.
Where feasible, include in new buildings facilities to support the use of low/zero carbon fueled vehicles, such as the charging of electric vehicles from green electricity sources.	The mitigation measures identified in the DEIR to reduce the project's GHG emissions include the provision of the necessary facilities and infrastructure to encourage the use of low- or zero-emission vehicles (e.g., electric-vehicle charging stations). (Page 5-14)

Table 3-3
Consistency of GHG Mitigation Measures Recommended in the DEIR with OPR's Advisory Recommendations

OPR Examples of GHG Reduction Measures	Consistency with OPR Measures, and Mitigation Measures Recommended in the DEIR (with DEIR page number, where applicable)
Educate the public, schools, other jurisdictions, professional associations, business, and industry about reducing GHG emissions.	This recommendation does not apply to the proposed project because the project is a prison health care facility, and not a typical public organization that would provide education to the public.
Purchase Energy Star® equipment and appliances for public agency use.	This information will be included in the procurement section for equipment and appliances
Incorporate on-site renewable energy production, including installation of photovoltaic cells or other solar options.	The mitigation measures identified in the DEIR to reduce the proposed project's GHG emissions include the installation of solar and/or wind power systems as well as the installation of solar panels over parking areas.
Execute an Energy Savings Performance Contract with a private entity to retrofit public buildings. This type of contract allows the private entity to fund all energy improvements in exchange for a share of the energy savings over a period of time.	The proposed project does not include a retrofit of an existing public building. Therefore, the recommendation is not applicable to the proposed project.
Design, build, and operate schools that meet the Collaborative for High Performance Schools best practices.	CPR/CDCR does not operate schools. The recommendation does not apply to the proposed project.
Convert landfill gas into energy sources for use in fueling vehicles, operating equipment, and heating buildings.	CPR/CDCR does not have control over landfill operations. The recommendation does not apply to the proposed project.
Purchase government vehicles and buses that use alternative fuels or technology, such as electric hybrids, biodiesel, and ethanol. Where feasible, require fleet vehicles to be low-emission vehicles. Promote the use of these vehicles in the general community.	The mitigation measures identified in the DEIR to reduce the proposed project's GHG emissions include the promotion of low- or zero-emission vehicles, including the provision of necessary facilities and infrastructure for such vehicles. (Page 5-14)
Offer government incentives to private businesses for developing buildings with energy and water efficient features and recycled materials. The incentives can include expedited plan checks and reduced permit fees.	The recommendation pertains to agencies with jurisdiction over private businesses (e.g., a city or county) and not to CPR/CDCR. The recommendation does not apply to the proposed project.
Offer government employees financial incentives to carpool, use public transportation, or use other modes of travel for daily commutes.	The mitigation measures identified in the DEIR to reduce the proposed project's GHG emissions include the creation of car-sharing programs, and the provision of public-transit incentives. (Page 5-14)
Encourage large businesses to develop commute trip reduction plans that encourage employees who commute alone to consider alternative transportation modes.	The mitigation measures identified in the DEIR to reduce the proposed project's GHG emissions include the creation of car-sharing programs, and the provision of public-transit incentives. (Page 5-14)

Table 3-3
Consistency of GHG Mitigation Measures Recommended in the DEIR with OPR's Advisory Recommendations

OPR Examples of GHG Reduction Measures	Consistency with OPR Measures, and Mitigation Measures Recommended in the DEIR (with DEIR page number, where applicable)
Develop shuttle systems around business district parking garages to reduce congestion and create shorter commutes.	The mitigation measures identified in the DEIR to reduce the proposed project's GHG emissions include the provision of shuttle service to public transit. (Page 5-14)
Create an online ridesharing program that matches potential carpoolers immediately through e-mail.	The mitigation measures identified in the DEIR to reduce the proposed project's GHG emissions include the creation of car-sharing programs, and the provision of public-transit incentives. (Page 5-14)
Add residential/commercial food waste collection to existing green waste collection programs.	CPR/CDCR does not control a waste collection program. The recommendation does not apply to the proposed project.

Notes:
CDCR = California Department of Corrections and Rehabilitation; CPR = California Prison Health Care Receivership Corporation; DEIR = draft environmental impact report; GHG = greenhouse gas; LEED® = Leadership in Energy and Environmental Design; OPR = Governor's Office of Planning and Research; VMT = vehicle miles traveled
Source: Data compiled by EDAW in 2009

Please see Responses to Comments 10-43 through 10-45 for more details on the mitigation measures and their feasibility.

24-17 The commenter indicates that the DEIR contains a factual misrepresentation because annexation by the San Joaquin LAFCO is not included as part of the proposed project as a requirement for providing utilities. The NCYCC (project site) currently receives wastewater service from the City under a 50-year contractual agreement (see page 4.14-2 of the DEIR). Therefore, wastewater service is already provided to the project site without annexation. Furthermore, the project site is required under Central Valley RWQCB Cleanup and Abatement Order R5-2008-0714 to receive water service. Please see Response to Comment 6-1 for more information regarding annexation and water service.

24-18 This comment requests that the trip distribution percentages on pages 4.3-18 and 4.3-19 in the traffic section of the DEIR correlate with the projected employee distribution percentages shown in Table 4.1-11 in the "Population and Housing" section. These two estimates are not correlated because they serve two separate analyses.

The methodologies for estimating the percentages are appropriate for the topic being analyzed. Consistent with standard practice in traffic impact studies, the trip distribution percentages were based on a review of existing traffic counts (Spencer, pers. comm., 2009). The trip generation methodology employed in the DEIR is appropriate for a localized traffic analysis of local intersections. The population distribution percentages were based on existing employee zip code data for personnel at the NCYCC facility. Even though this method of estimating where new employees may end up living could be different because CHCF Stockton would have different types of personnel than the NCYCC facility, the method represents the best information available for a regional analysis for estimating impacts related to housing and public services (schools, police protection, and firefighting services). It is not possible to make a definitive correlation between the population projections and the trip patterns because there are often several trip patterns that can lead to and from a particular area (e.g., SR 99, Interstate 5, local roadways).

Because the methodology used for localized traffic impacts is standard professional practice and the methodology used for regional population-related impacts is reasonable and based on sound logic, the findings disclosed in the impacts sections for traffic and population and housing do not need to be correlated or revised.

24-19 The commenter states the opinion that the DEIR does not appropriately evaluate growth inducement impacts related to the proposed project, specifically those related to secondary growth and removal of barriers to development. However, the DEIR specifically addresses growth from secondary employment on page 6-6. The DEIR analysis indicates that although an estimated 0.5 indirect job would be created for every project-related position, secondary employment is not anticipated to have a substantial effect on growth because of the wide geographic distribution of employees and because most of the secondary jobs would require skill levels that could be provided by existing residents.

Furthermore, the DEIR clearly indicates (page 6-6) that the proposed project would not remove any barriers to development because no new public infrastructure facilities would be installed. The example provided in the State CEQA Guidelines of "projects which would remove obstacles to population growth" is a major expansion of a wastewater treatment plant, which might allow for more construction in service areas. Although the proposed project would extend utility lines to serve the site, the lines would not be sized to accommodate additional growth. The project, proposed on an already developed property, would not extend or expand any roadways or other infrastructure to currently undeveloped areas.

It should also be noted that the project site is located within a developing industrial area, and it is assumed that property in the project vicinity is already under development pressure from industrial uses. The addition of a correctional medical facility would not substantially increase the extant pressure to develop surrounding vacant properties so that growth-inducing impacts would occur as a result of the proposed project.

24-20 The commenter suggests that the DEIR does not address a potential impact of the proposed project related to altering the pattern and timing of development in the region and indicates that consistency with planned growth of local communities does not adequately address the impact.

First, it is unclear what the commenter means by "altering the pattern and timing of development." This is not an issue identified in the CEQA statutes or the State CEQA Guidelines. Second, it is questionable whether altering the pattern and timing of development (in the regional sense, as suggested by the commenter) would constitute a direct or indirect physical impact on the environment.

In the case presented by the commenter, *City of Redlands v. County of Riverside*, the dispute was over a negative declaration prepared for Riverside County's general plan amendments for land within the City of Redlands's sphere of influence. This case involved a very specific area in which altering the planned pattern of development could result in physical environmental impacts, whereas the commenter fallaciously suggests that the regional distribution of employees from the proposed project would similarly alter the pattern and timing of development.

Development of the communities in question is guided by the local land use plans (typically general plans), which are based on population projections. Section 4.11, "Population and Housing," of the DEIR clearly and appropriately shows that the employees generated by the proposed project would fall within the growth projections for these communities, even assuming that 100% would in-migrate from outside the region. The proposed project would not alter the pattern of growth anticipated in the various land use plans adopted for these communities. The

project also would not alter the timing of development, except that it may spur development of approved but dormant housing and retail projects in the region, which would have already been considered part of the growth of these communities as expressed in the local land use plans. This scenario is unlikely to occur given the current recession and number of existing residential vacancies in the region.

24-21 The comment requests evidentiary support that the more than 300-foot setback of the facility from existing agricultural uses to the east would not affect existing agricultural practices. Although the proposed project includes the development of the agricultural property into urban uses, the properties adjacent to the project site to the east would likely remain in agricultural production and would remain designated and zoned for agriculture by the County. In some cases, conversion of adjacent agricultural land to urban uses could result in certain limitations to the existing agricultural operations, such as distances required for applying pesticides. In this case, however, the agricultural properties are currently adjacent to the NCRF to the north (Exhibit 3-4, "Proposed Site Plan," on page 3-11 of the DEIR). Any increased restrictions caused by the proposed project would not likely exceed those currently in place because of the existing adjacent prison facility. For these reasons, the impact is considered less than significant.

24-22 The commenter states that the DEIR must study in detail alternatives to the proposed project and to its location. In particular, the commenter states that an alternative site must be evaluated. Please refer to Master Response 1, "Alternatives," which addresses, among other things, the rationale behind not analyzing an off-site alternative in the DEIR. See also Section 15126.2(a) of the State CEQA Guidelines, which states that "An 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." (Emphasis added).

24-23 Without providing specific examples of alternative locations that the commenter believes should be evaluated, the commenter states that an off-site alternative should have been evaluated. The commenter also states that the fact that the proposed site may be more economical than other sites is irrelevant because the existing closed youth facility would be demolished and because CEQA requires the evaluation of alternatives, which includes off-site alternatives.

CEQA does not mandate that off-site alternatives be evaluated in all circumstances. CEQA requires that an EIR describe a reasonable range of 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" (State CEQA Guidelines, Section 15126.6). As explained in Master Response 1, the DEIR fulfills this requirement.

Further, it is unclear why the commenter believes that the fact that the existing closed youth facility would be demolished to make way for the proposed project necessitates the evaluation of an off-site alternative. It is efficient, and from an environmental standpoint, advantageous to replace an existing dilapidated building rather than siting the project on a previously undisturbed site or a building that is currently occupied. See Master Response 1, which explains why the DEIR's alternative analysis fully complies with CEQA.

24-24 The commenter mistakenly asserts that the Reduced Footprint Alternative and Reduced Intensity Alternative analyzed within Chapter 7 of the DEIR are "rejected" and not "recommended" in the DEIR. These two alternatives were evaluated objectively alongside the proposed project and have not been rejected from consideration by CPR, nor has the proposed project been "recommended" in the DEIR. The decision about whether any of the alternatives presented in the DEIR is feasible

lies with the Receiver and will be made at the time the Receiver issues findings. The DEIR does present some inconsistencies in objectives and constraints for development and program implementation for the two alternatives, as compared to the proposed project; however, it is up to the Receiver's discretion whether to approve the project or one of the alternatives evaluated.

24-25 The commenter claims that the Receiver has already approved the proposed project, but does not offer any specific facts to support this belief. Please refer to Master Response 2 and Master Response 1, "Programmatic Versus Project-Level Environmental Review" and "Alternatives," which explain that the Receiver has not "approved" the proposed project. Although the Receiver is pursuing means to finance the construction projects needed to implement Goal 6 of the Turnaround Plan of Action, the Receiver has not committed to funding or building this project or any of the other proposed health care facilities. The decision about whether to approve the proposed project will be made only after CEQA review for the proposed project is completed and the Receiver has considered the content of this EIR and the administrative record.

Lastly, the commenter is incorrect that CEQA requires an EIR to be prepared at the point that an idea is "formed." Rather, as explained in Master Response 2, CEQA mandates that "EIRs…should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment" (State CEQA Guidelines, Section 15004[b]). As explained in Master Response 2,that is exactly what occurred here.

25

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO CA 95814-2922

REPLY TO
ATTENTION OF

December 30, 2008

Regulatory Division (SPK-2008-1576)

Laura Sainz
CEQA Project Manager
California Prison Health Care Receivership Corporation
2400 Del Paso Road, Suite 25
Sacramento, California 95834

Dear Ms. Sainz:

We are responding to your October 24, 2008 request for comments on the California Health Care Facility Stockton Draft Environmental Impact Report. This project is located at Latitude 37.898569° N, Longitude 121.186881° W, Section 35, Township 1 N, Range 7 E, MDB&M, near Stockton, in San Joaquin County, California. Your identification number is SPK-2008-1576. 25-1

The Corps of Engineers' jurisdiction within the study area is under the authority of Section 404 of the Clean Water Act for the discharge of dredged or fill material into waters of the United States. Waters of the United States include, but are not limited to, rivers, perennial or intermittent streams, lakes, ponds, wetlands, vernal pools, marshes, wet meadows, and seeps. Project features that result in the discharge of dredged or fill material into waters of the United States will require Department of the Army authorization prior to starting work. 25-2

To ascertain the extent of waters on the project site, the applicant should prepare a wetland delineation, in accordance with the "Minimum Standards for Acceptance of Preliminary Wetland Delineations", under "Jurisdiction" on our website at the address below, and submit it to this office for verification. A list of consultants that prepare wetland delineations and permit application documents is also available on our website at the same location.

The range of alternatives considered for this project should include alternatives that avoid impacts to wetlands or other waters of the United States. Every effort should be made to avoid project features which require the discharge of dredged or fill material into waters of the United States. In the event it can be clearly demonstrated there are no practicable alternatives to filling waters of the United States, mitigation plans should be developed to compensate for the unavoidable losses resulting from project implementation. 25-3

Please refer to identification number SPK-2008-1576 in any correspondence concerning this project. If you have any questions, please contact Zachary Simmons at our Sacramento Office, 1325 J Street, Room 1480, email *Zachary.M.Simmons@usace.army.mil*, or telephone 916.557.6746. You may also find additional information on our website: *www.spk.usace.army.mil/regulatory.html*. 25-4

Sincerely,

Zachary Simmons
Regulatory Project Manager

25-1 This comment is an introductory paragraph that provides project location information and the USACE regulatory number assigned to the project. The comment is noted.

25-2 This paragraph explains USACE jurisdiction over waters of the United States and its authority to regulate the discharge of dredged or fill material into jurisdictional waters. As reported in the DEIR (see pages 4.7-21 through 4.7-22), there was a potential that the onsite drainage basin would be modified, with the potential for filling jurisdictional waters of the US and associated permitting. Since publication of the DEIR, engineering studies prepared by Kimley-Horn and Associates (see Appendix A) have concluded that the existing retention basin has sufficient capacity to serve the CHCF Stockton and the existing NCYCC facilities. The project as proposed would not directly or indirectly discharge fill or dredged material into jurisdictional waters of the United States and no authorization from the USACE is required.

25-3 This comment provides USACE's instructions on how to determine the lateral extent of its jurisdiction.

The commenter suggests that the range of alternatives include a project that avoids impacts on jurisdictional wetlands and waters. The comment is noted. Since publication of the DEIR, engineering studies (Appendix A) have demonstrated that no improvements to the existing retention basin are needed. The existing retention basin has sufficient capacity to serve CHCF Stockton and the existing NCYCC facilities. Therefore, the project description has been revised to eliminate the basin expansion. The project as revised would not directly or indirectly discharge dredged or fill material into jurisdictional waters of the United States and no authorization from USACE is required.

25-4 This comment is the closing paragraph that provides contact information about USACE's regulatory project manager. The comment is noted.

26

DEPARTMENT OF TRANSPORTATION
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Flex your power!
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January 16, 2009

10-SJ-99-14.5
Draft EIR
SCH#2008062056
California Health Care Facility
Stockton

Ms. Laura Sainz
California Prison Health Care Receivership (CPR)
2400 Del Paso Road, Suite 255
Sacramento, CA 95834

Dear Ms. Sainz:

The California Department of Transportation (Department) appreciates the opportunity to have reviewed the Draft Environmental Impact Report (DEIR) for the California Health Care Facility located at 7650 South New Castle Road in unincorporated San Joaquin County. Comments from various branches of the Department are provided below on the following pages:

Travel Forecast Comments

1. Page 4 of the TIS (Appendix B) mentions there are 3,030 full time employees at this facility; but, page 1-7 and page 3-9 of the DEIR mentions there are 2,400 – 3,000 staff. Which of these is the correct number?

   Table 4.3-13 on page 4.3-18 of the DEIR shows the project daily trip generation is 3,566, which includes 3,292 staff, 42 delivery, and 232 visitors. The daily total trip generation of 3,566 is only for 1,646 staff. Paragraph two just above Table 4.3-13 states "For this analysis, daily volumes were based on staff distribution by shift for the maximum number of anticipated employees (3,000 employees)." Please explain the use of 1,646 daily staff instead of 3,000. 26-1

2. The Travel Demand Model for the Mariposa Lakes Project should be provided in this report, since it was primarily used to assess the model for review of the travel forecasting work. 26-2

3. Table 4.3-23 on page 4.3-39 and Table 4.3-24 on page 4.3-40 from the DEIR show AM and PM peak hour volumes for the SJ-99 freeway segment 2035 cumulative conditions "without project" and the 2035 cumulative conditions "with-project". They do not match the values shown in Table 18 (Freeway Segments LOS Summary – No Project Conditions) on page 41 and Table 19 (Freeway Segments LOS Summary – With Project Conditions) on page 42 from the Traffic Impact Study (Appendix B). Please revise and resubmit for the 26-3

Department's review and comment. 26-3 (Cont.)

4. Exhibit 4.3-3 on page 4.3-19 of the Draft Environmental Impact Report (DEIR) shows the trip distribution pattern of 28% going to EB Arch Road from Arch Airport Road, which may be a little high for this particular location. Please provide justification for the use of this percentage. 26-4

5. Existing Conditions:

   - Figure 1 on page 11 of the Traffic Impact Study (Appendix B), the PM peak hour ramp volumes of NB SJ-99 and SB SJ-99 off to Arch Road are 246 and 349, respectively. The 2008 Caltrans peak hour volumes for these locations were estimated by using 2001 Caltrans data and applying a linear growth rate resulting in ramp volumes of 330 and 520, respectively. These values appear to be lower than Caltrans traffic volumes. Please explain/provide justification for the lower ramp volumes. 26-5

   - Table 18 on page 41 of the TIS shows the PM peak hour mainline volumes North and South of Arch Road are 5910 and 6315, respectively. The 2007 Caltrans traffic volumes book shows the peak hour volume for these locations are 8000 and 7600 respectively. These values appear to be lower than the Caltrans traffic volumes. Please explain/provide justification for the lower mainline volumes. 26-6

6. Background Conditions – Existing Plus Approved Projects (EPAP)

   Table 18 on page 41 of the TIS shows the PM peak hour mainline volume, South of Arch Road is 5861. This value is lower than the 2007 Caltrans traffic volume of 7600. Please explain/provide justification for the lower mainline volumes. 26-7

7. Existing Plus Project Conditions:

   - Figure 4 on page 21 of the TIS (Appendix B), the PM peak hour ramp volumes of NB SJ-99 and SB SJ-99 off to Arch Road are 256 and 363, respectively. The 2008 Caltrans peak hour volumes for these ramps were estimated by using 2001 Caltrans data and applying a linear growth rate resulting in ramp volumes of 330 and 520, respectively. These values appear to be lower than Caltrans traffic volumes. Please explain/provide justification for the lower ramp volumes. 26-8

   - Table 19 on page 42 of the TIS shows the PM peak hour mainline volumes of North and South of Arch Road are 6062 and 6427, respectively. The 2007 Caltrans traffic volumes book shows the peak hour volume for these locations are 8000 and 7600, respectively. These values appear to be lower than the Caltrans traffic volumes. Please explain/provide justification for the lower mainline volumes 26-9

8. EPAP Plus Project:

   Table 19 on page 42 of the TIS shows the PM peak mainline volume, South of Arch Road is 5973. This value is lower than the 20007 Caltrans traffic volume of 7600. Please explain/provide justification for the lower mainline volume. 26-10

9. Cumulative 2035 General Plan (with Mariposa Lakes) – No Project:

   Figure 9 on page 32 of the TIS (Appendix B), the PM peak hour ramp volume of SB SJ-99 on from Arch Road is 499. The 2008 Caltrans peak hour volume for this ramp was estimated by using 2001 Caltrans data and applying a linear growth rate resulting in ramp volume of 690. The ramp volume for this location appears to be lower than the Caltrans value. Please explain/provide justification for the lower ramp volume. 26-11

10. Figure 19 on page 42 of the Traffic Impact Study (Appendix B) shows the SJ-99 mainline segment traffic volumes North and South of Arch Road (NB and SB SJ-99) are smaller than the Mariposa Lakes traffic volumes (Table 16 – Freeway Level of Service – All Scenarios of the Traffic Impact Study) for the EPAP plus Project and the 2035 Cumulative Condition plus Project. Please explain why it is lower if the Mariposa Lakes Model was used for this project. 26-12

Air Quality

The Notice of Completion and Environmental Document Transmittal page shows the Environmental Impact Report has not been sent to the San Joaquin Valley Air Pollution Control District (SJVAPCD). We recommend sending the DEIR to the SJVAPCD for review. 26-13

Traffic Operations Comments Pertaining to SimTraffic7 Analysis at SJ-99/Arch Road Provided 12/30/08 and 12/31/08

The following two Sim Traffic7 analysis files for the roadway network at the SR-99/Arch Road SPUI and Arch Road/Kingsley Intersection were provided by DKS Associates on the following dates: 26-14

- 12/30/08 EPAP, and EPAP+Project
- 12/31/08 EPAP+Project, and EPAP+Project (with signal coordination mitigation)

The provided Sim Traffic files also included an e-mail summary of the resultant vehicle delays (LOS) and estimated queue lengths.

The provided e-mail summary for the information provided on 12/30/08 shows that for the AM Peak Hour condition at the SR-99/Arch Road SPUI, vehicle delay has an acceptable LOS D(37.6

sec) for the EPAP condition. The addition of the project to the baseline EPAP condition increases the vehicle delay; however, the level of service remains within the range for LOS D (54.9 sec). 26-14 (Cont.)

The NB off-ramp is "Stop" controlled and, therefore, the vehicle delay is reported separately from the overall average vehicle delay for the signalized portion of the SPUI.
The Sim Traffic analysis files and summary indicate that the NB off-ramp "Stop" controlled delay for the AM Peak Hour EPAP condition is LOS F (261 sec). The addition of the project to this EPAP condition increases the vehicle delay to LOS F (835 sec). Even though the level of service is still considered a LOS F since there is no maximum limit to the LOS F range, it needs to be noted that the estimated vehicle delay has increased significantly by 300% to an unacceptable time. 26-15

The addition of the project's traffic has significantly increased the estimated vehicle delays at the NB off-ramp; however, the reported queue lengths have remained essentially constant at approximately 875 feet. The non-increasing queue length versus the 300% increase in vehicle delay is counterintuitive and would require more detailed investigation. A review of the Sim Traffic electronic files reveals that the sum of the road segment links which comprise the NB off-ramp are 390 feet, 98 feet, and 384 feet. These link segments total to 872 feet. It should be noted that Sim Traffic queues are constrained by the link lengths since the software in general will not report a maximum queue length which is longer than the available link lengths. This is a potential explanation for the essentially fixed reported queues at the NB off-ramp. As a result of how a Sim Traffic network report queues, the queues are most likely increasing, however, the software will only report up to the approximate length of the constrained links. This potential reason is supported by the Sim Traffic analysis summary which reveals "denied entry" of vehicles into the network. 26-16

In summary, with the Sim Traffic information provided as is, Caltrans would have a comment that the proposed California Health Care Facility has significantly impacted (vehicle delay, and queues) the NB off-ramp at the SR-99/Arch Road SPUI which will require mitigation. The proposal to mitigate using signal coordination is ineffective and inadequate with respect to the project's impact at the NB off-ramp. 26-17

Traffic Operations Comments Pertaining to DEIR

1. Existing Plus Approved Projects (EPAP) 26-18

   The TIS analyzes the EPAP scenario without including traffic from the Mariposa Lakes (Phase 1) development. However, the TIS states on page 5 that it uses EPAP traffic volumes obtained from the Mariposa Lakes Traffic analysis (TJKM, 2007) and the Northern California Women's Facility (NCWF) Traffic Impact Analysis (DKS, 2008).

   The Mariposa Lakes development has been approved by the City of Stockton. The TIS states

that the traffic related to the Mariposa Lakes (Phase 1) development is not included in the EPAP scenario based on discussions with the City and State California Prison Receivership (CPR). Referring to the Mariposa Lakes EIR, it states that Phase 1 is proposed to be built over a 9-year period (2007 – 2016) which would be in the same general time frame as this proposed health care facility which proposes to start construction in March, 2009 and to complete in March 2011. Since both projects are within the same general time frame, it would seem reasonable to have included the Mariposa Lakes (Phase 1) traffic in the EPAP scenario analysis. However, the TIS does not explain or discuss the specific reasons for omitting this traffic. Please provide appropriate justification for this omission. 26-18 (Cont.)

The Mariposa Lakes project (Phase 1) traffic will impact both the State Route (SR) 99/Arch Road single-point urban interchange (SPUI), and the Arch Road/Kingsley Road intersection. As an example, at the Arch Road/Kingsley Road intersection, a review of the Mariposa Lakes "EPAP + Phase 1 Project Turning Movement Volumes" (Mariposa Lakes Traffic Study, TJKM, Figure 12) shows that with Mariposa Lakes (Phase 1) project that there are substantially increased volumes when compared to omitting Mariposa Lakes (Phase 1) as shown in the California Health Care Facility "EPAP + Existing + Project Conditions" (DEIR Exhibit 4.3-6) as follows: 26-19

Arch Road / Kingsley Road Intersection		CA Health Care Facility DEIR	Mariposa Lakes DEIR
Approach	Peak Hour	(Vehicles)	(Vehicles)
EB Thru	AM	2525	2289
	PM	**1410**	**2035**
WB Thru	AM	**754**	**1525**
	PM	2575	2325

As the above example demonstrates, omitting Mariposa Lakes (Phase 1) in the EPAP scenario would greatly underestimate the traffic volumes at several intersections and road segments and provide incorrect information to the approving agency.

2. Highway Capacity Manual (HCM) Analysis

A review of the TIS analysis reveals several significant errors in the HCM level of service (LOS) analysis, and queue lengths. The SR-99/Arch Road interchange and the adjacent Arch Road/Kingsley Road intersection were reviewed because the SR-99/Arch Road single point interchange is a Caltrans facility. The Arch Road/Kingsley Road intersection was reviewed because this intersection is closely adjacent to the SR-99/Arch Road interchange and will potentially interact with the Single Point Urban Interchange due to the close spacing. 26-20

a. SJ-99/Arch Road SPUI. The lane configuration is incorrect. A review of the Traffix Analysis to calculate the level of service (LOS) shows that Northbound (NB) off-ramp right turn was coded as "ignore" which assumes it is a "fee-right" which then 26-21

excludes the right-turning volumes from the HCM analysis. However, this is incorrect since this NB right-turn lane is a "Stop-controlled" right turn. Therefore, the analysis is incorrect by ignoring the significant right turn vehicle volumes. The result of the TIS coding these right turn vehicles as "ignore" will result in false vehicle delays LOS and underestimate queue lengths. Please revise and resubmit for the Department's review and comment. 26-21 (Cont.)

b. Arch Road/Kingsley Road intersection. The lane configuration is incorrect. A review of the Traffix analysis performed to calculate the LOS shows that the Westbound (WB) approach to the intersection is coded and analyzed with a dedicated left-turn lane, two dedicated through lanes, and a dedicated right-turn lane. The actual field condition does not have a dedicated right-turn lane, but is a dedicated left-turn lane, one dedicated through lane, one shared through & right-turn lane. Please revise and resubmit for the Department's review and comment. 26-22

c. The Traffix analysis was done using an unreasonable peak hour factor (PHF). Using a PHF=1.0 is contrary to recommended practice for HCM intersection analysis. Using a 1.0 PHF will result in underestimating the intersections' LOS. Please justify this PHF or revise and resubmit for the Department's review and comment. 26-23

d. The Traffix analysis was performed assuming a "Yellow+All Red" time of 4.0 seconds. However, the intersection size of a SPUI requires a much longer "All Red" time. The current signal timing of the SPUI has a Yellow+All Red time of approximately 7 seconds. The 7 seconds should be used in the Traffix analysis to take into account the much longer "lost time". Please revise and resubmit for the Department's review and comment. 26-24

e. The SJ-99/Arch Road interchange and adjacent intersections on Arch Road have a very high percentage of heavy vehicles (i.e. trucks) due to the adjacent airport, industrial developments and warehouses. Heavy vehicle percentages decrease the capacity of these signalized intersections. A review of the Traffix electronic analysis files provided for these intersections indicates that the TIS analysis ignored heavy vehicle volumes, which does not follow HCM 2000 methods. This would impact the intersection capacity, and further degrade the resultant vehicle delays and level of service. Please justify why this was done or revise and resubmit for the Department's review and comment. 26-25

A review of the Traffix files HCM Saturation Calculation menu shows that all of the approaches to the intersections have the truck percentage set at 0%. Additionally, the Traffix file global intersection parameters show the truck percentage was also set at 0%. Therefore, the claimed intersection vehicle delays and LOS values are inaccurate since the TIS analysis has not accounted for the significant percentage of truck traffic at intersections which would degrade the calculated LOS much more than only using 26-26

26-26 (Cont.)

passenger cars. Please justify why this was done or revise to an appropriate % and resubmit for the Department's review and comment.

As an example, refer to the Traffix analysis files for the SJ-99/Arach Road, and the Arch Road/Kingsley Road intersections. A recent field review of the PM traffic at these intersections was done to provide an estimate of the heavy vehicle percentages.

The field review indicated various movements where the heavy vehicle percentages are significantly greater than those used in the Traffix analysis as summarized in the following tables:

SJ-99 / Arch Road SPUI		Truck Percentage	
Approach	Movement	Field %	Traffix Analysis %
NB Off-Ramp	Lt	13	0
	Rt	25	0
SB Off-Ramp	Lt	16	0
	Rt	9	0
EB Arch Road	Lt	4	0
	Thru	8	0
	Rt	n/a	0
WB Arch Road	Lt	15	0
	Thru	14	0
	Rt	11	0

26-27

Arch Road / Kingsley Road Intersection		Truck Percentage	
Approach	Movement	Field %	Traffix Analysis %
NB Kingsley	Lt	6	0
	Thru	0	0
	Rt	0	0
SB Kingsley	Lt	40	0
	Thru	11	0
	Rt	3	0
EB Arch Road	Lt	8	0
	Thru	35	0
	Rt	10	0
WB Arch Road	Lt	10	0
	Thru	15	0
	Rt	13	0

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From the above comparison, the DEIR/TIS needs to verify the heavy vehicle percentages used in the analysis. The zero truck percentages used in the analysis cannot be supported or justified, then the TIS should obtain vehicle classification counts and reanalyze the intersections using realistic heavy vehicle percentages. 26-27 (Cont.)

f. The DEIR/TIS discussions regarding the 95th percentile queue for the various scenarios are incorrect since the claimed 95th percentile queues are actually the 50th percentile average queues. The Traffix analysis printouts in the Appendix show that the queue lengths reported are an average queue. For example, refer to the printouts for Intersection #1 SR-99/Arch, and Intersection #2 Arch/Frontage Road for the various scenarios. The Traffix printouts in the last line show the description, "HCM2kAvgQ" which indicates that the average queue (i.e. 50th percentile) was calculated, not the 95th percentile queue as the TIS claims it is reporting.

For a more specific example, refer to the TIS, page 26, which states that the EP queue at AM and PM peak hours is forecast to be 64 cars and 17 cars respectively. This would represent the calculated queue stopped at the EB direction at the intersection of Arch Road/Kingsley Road. Now refer to the corresponding Traffix printout shown in the appendix for "EPAP AM w/o Mariposa+Project" at the Arch Road/Kingsley Road intersection. The EB thru and the EB shared thru & right lane shows the vehicle queues of 64 cars in each lane. Again, however, the description in the printout indicates that the reported vehicle queues are the 50th percentile, not the 95th percentile as claimed in the TIS discussion. The same error is true with the 17 vehicle queue claimed for the EPAP PM. 26-28

Correcting the Traffix analysis options menu to report a 95th percentile queue and rerunning the "EPAP AM w/o Mariposa+Project" at the Arch Road/Kingsley Road intersection results in a calculated 92 vehicle queue instead of the claimed 64 vehicle queue, which is an increase of 43% more vehicles.

g. Another result of ignoring the percentage of truck traffic is related to the calculated 95th percentile queue lengths. The TIS on the discussion section for the various scenarios states, "HCM assumes an average car length as 25 feet". However, the TIS performed its queue analysis ignoring the high truck percentages which would lead to a resultant longer queue length due to the longer vehicle length of a truck. 26-29

A review of the Traffix analysis file indicates in the global parameters menu that the queue lengths are based solely on an average vehicle length of 25 ft. Therefore, the TIS queue analysis ignores increased queue lengths which will be a result of longer truck lengths. As such, the claimed vehicles queue cannot be simply multiplied by 25 ft. to estimate a queue length in feet.

h. Refer to TIS, page 15, regarding the 95th percentile queues on Arch Road between SR99 and Kingsley Road. The TIS states in the discussion:

> *"However the eastbound queue of 43 cars (1,075 feet) would exceed the 670 foot distance between the intersections and would queue beyond the intersection at the SR99 SPUI. Since both intersections are forecast to operate with satisfactory LOS, it is likely that the peak queues would occur occur for only a few signal cycles during the peak hour and would therefore not have a significant queuing impact."*

The aforementioned statement which dismisses the significant queuing impact is incorrect. The TIS is ignoring the conditions and assumptions that HCM 2000, Chapter 16 assumes in its' analysis methods and the calculated results. The HCM analysis method assumes unlimited storage, isolated intersections, with no queue blocking, and no interaction between adjacent intersections. 26-30

Since the resultant 95th percentile queues will significantly exceed the available turn pocket storage length, and road segment lengths, this will result in queue blocking and interaction between these adjacent intersections. Due to these conditions, using a HCM methodology will result in calculating a better LOS than would actually occur due to the queue blocking. However, the TIS and provided analysis files indicate the operational analysis and subsequent LOS values were based solely on HCM methodology and then the TIS goes on to conclude that the queues will not be significant due to a calculated satisfactory LOS. This claim that the queues will not be significant is erroneous and directly contrary to what will occur. Since the calculated queues result in queue blocking and interaction between intersections, then the calculated satisfactory LOS using HCM methods would be incorrect since the basic assumptions and limitations of the HCM analysis method have not been followed.

Even assuming an HCM analysis, the above problems with the Traffix analysis inputs of the aforementioned issues such as NB off-ramp Stop Control, Lane assignments, Heavy Vehicle Percentages, Peak Hour Factor, Signal All-Red Time, etc. would result in a significant difference in the calculated LOS values. As a comparison, a HCM analysis was run using Synchro 7 because of certain limitations with the allowable lane assignments and truck percentages in the Traffix software. 26-31

- As an example, refer to the TIS, Table 8, "Intersection Capacity Analysis: Existing Plus Project Conditions". The table shows the SR-99/Arch Road SPUI will operate with the Project Conditions during the PM at a LOS C. However, entering the corresponding date and above corrections into a Synchro 7 analysis results in a calculated LOS E.

- As another example, refer to the TIS, Table 8, "Intersection Capacity Analysis: Existing Plus Project Conditions". The table shows the Arch Road/Kingsley Road intersection will operate with the Project Conditions during the AM at a LOSE. However, entering the corresponding date and above corrections into a Synchro 7 analysis results in a calculated LOS F. 26-32

3. Mitigations

The DEIR's discussion of Impacts TRAF-1, TRAF-2, TRAF-3, TRAF-4, TRAF-5, TRAF-6 and TRAF-7 and the subsequent Mitigation Measures which summarize needed intersection improvements and roadway segment improvements are premature since the traffic impacts and necessary mitigation improvements are ultimately dependent on a corrected traffic analysis. 26-33

4. Summary

In summary, the DEIR and the supporting TIS have substantial errors in the transportation analysis. 26-34

A determination needs to be made as to whether it was reasonable and prudent to omit the traffic generation from the Mariposa Lakes (Phase 1) development from the DEIR/TIS EPAP forecast.

The traffic analysis for the intersection LOS needs to be corrected based on the above mentioned problems and the resultant LOS and queues reanalyzed for potential significant impact. Additionally, the currently underestimated queues indicate the SR-99/Arch Road Interchange and the Arch Road/Kingsley Road intersection will be subject to queue blocking and interaction between these two intersections. This brings into question the validity of calculating and reporting the intersection levels of service based solely on using a HCM 2000, Chapter 26 method of analysis. If so, other methods of intersection analysis which account for queue blocking and interaction between adjacent intersections may be necessary. 26-35

Once the intersection analysis method is resolved, the DEIR/TIS should take a closer look at the vehicle queues which will occur at the NB off-ramp, and the SB off-ramp of the SR-99/Arch Road Interchange. 26-36

The DEIR needs to correct its supporting traffic impact study and re-evaluate Chapter 4.3, "Traffic Circulation". Once the DEIR corrects the traffic impact analysis and re-evaluates this section, if there are additional undisclosed significant impacts, the affected agencies and the public should be given the opportunity to review and comment on the DEIR's revised transportation impacts and mitigations. 26-37

We truly appreciate your cooperation and meeting with us to further clarify some of our questions and look forward to working with you and your staff to resolve the questions above If you have any questions or would like to discuss our comments in more detail, please contact Barbara Hempstead at (209) 948-3909 (e-mail: barbara_hempstead@dot.ca.gov) or me at (209) 941-1921. 26-38

Sincerely,

TOM DUMAS, Chief
Office of Metropolitan Planning

"Caltrans improves mobility across California"

CC: TDumas
MHonma – Traffic
NMagsayo – Permits
THuynh - Forecasting

26-1 The traffic impact study for the proposed project analyzed a total full-time equivalent staff of 3,030; after completion of the study but before publication of the DEIR, changes to the program revealed that no more than 3,000 staff members would be needed (between 2,400 and 3,000 staff members would be employed). These changes were made in the DEIR, but not in the traffic impact study (as seen in Appendix B of the DEIR).

An estimated 1,646 staff members would be on-site on a typical day at any time (this assumption did not change), based on the analysis of daily staffing needs by shift. The total number of employees distributed across the daily shift schedule would not equal the total number of full-time equivalent staff members because the facility operates 24 hours a day, 7 days a week, and 365 days a year. On any given day, there will be a number of employees who will not be present because of regular scheduled days off, vacation, etc.

26-2 The actual travel demand model for the Mariposa Lakes project was not used for the traffic impact study. The traffic volume data provided in the *Traffic Study for the Proposed Mariposa Lakes Development* (TJKM Transportation Consultants 2007) was used for the traffic analysis. Upon consultation with the City before initiation of the traffic impact analysis, the City directed the traffic consultant for this project, DKS Associates, to use the Existing Plus Approved Projects (EPAP) and 2035 Cumulative scenario traffic data as the baseline traffic data to analyze the proposed project.

26-3 The commenter is correct, and the analysis has been revised. Table 3-8 below presents the corrected freeway mainline analysis for the 2035 Cumulative Baseline and 2035 Cumulative plus Project conditions.

Table 3-8
Freeway Mainline Analysis—2035 Cumulative Baseline and 2035 Cumulative Plus Project Conditions (Corrected)

Scenario	SR 99 Segment Location	Total Lanes	Dir.	A.M. Peak Hour						P.M. Peak Hour					
				Baseline Condition			Baseline + Project			Baseline Condition			Baseline + Project		
				Volume	V/C	LOS	Volume	V/C	LOS	Volume	V/C	LOS	Volume	V/C	LOS
2035 Cumulative	North of Arch Road	8	SB	7,975	1.08	**F**	8,133	1.10	**F**	6,125	0.83	D	6,135	0.83	D
			NB	5,207	0.70	C	5,221	0.71	C	8,350	1.13	**F**	8,488	1.15	**F**
	South of Arch Road	8	SB	5,992	0.81	D	6,002	0.81	D	5,635	0.76	D	5,737	0.78	D
			NB	5,450	0.74	C	5,568	0.75	D	6,787	0.92	**E**	6,797	0.92	**E**

Notes:
Boldface and shading indicates a significant impact.
Dir. = direction; LOS = level of service; NB = northbound; SB = southbound; SR = State Route: V/C = volume-to-capacity ratio
Source: Data compiled by DKS Associates in 2009

As indicated in Table 3-8, although the proposed project would contribute slightly to deficient LOS for the SR 99 mainline north and south of Arch Road in 2035 conditions, because conditions

are already operating at LOS E or worse on some segments, the contribution of the proposed project to this cumulative impact would be considerable and therefore significant. This is the same conclusion that was reached in the discussion of Impact TRAF-8 in the DEIR. Note that the above table does not reflect revised Mitigation Measure to Impact TRAF-4, which removes all project traffic from the peak hour. Please see Master Response 5: "Traffic Issues," which describes impacts to the freeway mainline taking into consideration the revised mitigation measure.

26-4 The direction of project trips to and from the project site was based on the existing travel and commute patterns during the peak hours from data collected at the study intersections in November 2007. Based on these data, it was found that 28% of trips would come from Arch Airport Road, west of SR 99. These trips are likely commuters from the northern and central Stockton areas who would use surface streets to travel to the project site, rather than using SR 99, which is congested during the peak hours. The distribution percentages for project trips are based on sound assumptions rooted in observations and data on existing patterns. 26-5 The Caltrans 2008 peak-hour volumes were estimated using a linear growth rate from 2001 traffic counts. DKS Associates collected actual peak-hour traffic counts at the SR 99/Arch Road interchange in November 2007, and more recently, in January 2009. The 2007 peak-hour counts were used in the traffic impact analysis. The 2007 and 2009 peak-hour counts showed no significant changes in volumes. Therefore, use of the actual 2007 peak-hour traffic volumes was appropriate for the traffic impact analysis.

26-6 The peak-hour traffic volumes on the SR 99 mainline north and south of Arch Road for the existing, EPAP, and 2035 cumulative conditions were taken from the approved Mariposa Lakes traffic study (TJKM Transportation Consultants 2007) and adjusted with additional trips from the approved NCRF project (which was not included in the TJKM traffic impact analysis). Volumes from the Mariposa Lakes traffic study were appropriate for use in the traffic impact analysis for the proposed project. However, based on Caltrans' comment letter and coordination with Caltrans since the release of the DEIR, the traffic modeling was revised. Master Response 5: "Traffic Issues" describes the results of the revised modeling, as well as revisions made to Mitigation Measure for Impact TRAF-4, which restricts schedule changes, deliveries, and visiting hours to off-peak traffic hours, effectually eliminating all project traffic from the peak hour, including on mainline SR 99. However, as described in further detail in Master Response 5, with consideration of potential off-peak impacts, the impact to SR 99 mainline remains significant.

26-7 Please see Response to Comment 26-6 describing the accuracy of the peak hour mainline volumes used in the DEIR. See Master Response 5: "Traffic Issues", for results of the revised traffic analysis.

26-8 Please see Response to Comment 26-5 describing the accuracy of the peak hour interchange volumes used in the DEIR and Master Response 5: "Traffic Issues" for results of the revised traffic analysis.

26-9 Please see Response to Comment 26-6 describing the accuracy of the peak hour mainline volumes used in the DEIR and Master Response 5: "Traffic Issues" for results of the revised traffic analysis.

26-10 Please see Response to Comment 26-6 describing the accuracy of the peak hour mainline volumes used in the DEIR and Master Response 5: "Traffic Issues" for results of the revised traffic analysis.

26-11 Please see Response to Comment 26-5 describing the accuracy of the peak hour interchange volumes used in the DEIR and Master Response 5: "Traffic Issues" for results of the revised traffic analysis.

26-12 Please see Response to Comment 26-6 describing the accuracy of the peak hour mainline volumes used in the DEIR and Master Response 5: "Traffic Issues" for results of the revised traffic analysis.

26-13 Local air districts are not necessarily identified on the notice of completion form and are not typically included as part of OPR's routing. However, the notice of availability was mailed individually to SJVAPCD and a certified-mail receipt dated October 30, 2008, was received.

26-14 The comment is noted. Based on a conference call between the EIR preparer (EDAW), the project traffic engineer (DKS), and Caltrans District 10 Traffic Operations in December 2008, the LOS and queuing analyses for the intersections of the SR 99 single-point urban interchange (SPUI)/Arch Road and Kingsley (frontage) Road/Arch Road were updated. Please see Master Response 5 "Traffic Issues" for results of the revised analysis and revised mitigation measures.

26-15 This comment, in particular, raised the issue with the SR 99 northbound off-ramp, which, as pointed out in the comment, is a seriously impacted traffic facility in the EPAP and cumulative 2035 conditions. The northbound off-ramp was analyzed in detail following Caltrans' recommended methodology, which, as the comment suggests, substantially increases project-induced delay in the EPAP condition (although the off-ramp would already operate at a deficient LOS F without addition of project traffic). In order to address this impact, Mitigation Measure to Impact TRAF-4 has been revised to restrict all project traffic (shift changes, deliveries, and visiting hours) to off-peak hours, thereby avoiding a significant impact in the peak hour. Mitigation measure to Impact TRAF-6 has also been revised to reduce potential off-peak impacts, including impacts at northbound and southbound SR 99 off-ramps. Please see Master Response 5 "Traffic Issues" for results of the revised analysis and revisions to the mitigation measures.

26-17 Please see Master Response 5: "Traffic Issues". Mitigation Measure for Impact TRAF-4 has been revised to eliminate the project's peak hour traffic, and Mitigation Measure for Impact TRAF-6 has been revised to reduce off-peak impacts. These revised mitigation measures sufficiently mitigate the significant impacts of the operation of the proposed project to less-than-significant levels; the only exceptions are the near term project impact to the project driveway's intersection with Austin Road and the project's contribution to cumulative 2035 off-peak impacts at the intersection of Arch Road and Austin Road, as well as SR 99 mainline. These impacts were also found to be significant in the DEIR.

26-18 At of the time of release of both the NOP and the DEIR for the proposed CHCF Stockton, the Mariposa Lakes Project had not been approved. Furthermore, as Caltrans notes in its comment letter, the DEIR for Mariposa Lakes indicates that Phase I would be developed over 9 years, from 2007 through 2016. The proposed project, on the other hand, is proposed to be completed and operational by 2011. Mariposa Lakes (all phases) is included in the long-term cumulative analysis, so its effects are fully considered in the EIR. Simply, Phase 1 is not assumed within the 2011 (short-term) time frame.

There is good reason for this assumption. First, the Mariposa Lakes Project was not approved by the City until October 2008. The Mariposa Lakes project site will require annexation to the City of Stockton, but an application for annexation has not yet been filed with the San Joaquin LAFCO. According to the City's project planning manager, an application to the San Joaquin LAFCO is expected to be filed in spring 2009 and LAFCO action is expected in summer 2009.

After that time, the first subdivision map can legally be filed, but not before (Stagnaro, pers. comm., 2009). Using the 9-year timeline laid out in the comment, the first phase, *if* started in summer 2009, would not build out until 2018, if it followed the same pace of development assumed in the EIR, which was drafted prior to the current recession. Even if construction were started in 2009, the first units would not likely be put up for sale until 2010 at the earliest. This assumption ignores two important factors:

- The United States is in a deep, national recession that is characterized, among other factors, by a tremendous amount of home foreclosures. This is not the type of environment in which new housing development is started, unless local conditions were unusually favorable to housing development. Conditions are not unusually favorable to housing development in the City of Stockton or San Joaquin County.

- The short-term cumulative analysis already assumes development of more than 15,000 dwelling units in Stockton in the short term. Considering the current economic conditions, this assumption is generous.

The goal of environmental review should always be to avoid an artificial analysis that disguises a project's real environmental impacts, and to undertake instead an analysis that accurately assesses a project's real effects on the environment. Here there is much reason to believe that development of this largely residential phase of the project (more than 4,000 residential units) will not begin immediately, or even in the next few years, considering the housing market in Stockton and the region, as well as the current economic recession. In a November 2007 article written by John Schoen of MSNBC, Stockton led the nation with the highest foreclosure rate, with one filing for every 31 households (MSNBC 2008). On a regional level, www.realtytrac.com indicates that San Joaquin County, with a foreclosure rate of one in every 64 units, currently follows only Merced County in the highest foreclosure rate in California (according to realtytrac.com, California's foreclosure rate is among the highest in the nation) (Realtytrac.com 2009). Residential developers in California are selling off entitled property once regarded as highly valuable, and once-ubiquitous home builders are quickly diminishing. It is not reasonably foreseeable that Mariposa Lakes would develop in the short term, at least not both that project *and* the other 15,000 dwelling units approved by the City and included in the EPAP. Therefore, although the Mariposa Lakes Project has recently been approved, it was not realistic to consider Phase I as originally proposed to buildout in the near-term. Other development is assumed, and the cumulative traffic analysis shows substantial growth in short-term traffic from cumulative development. Most importantly, the entire Mariposa Lakes development is included in the 2035 cumulative scenario of the DEIR's traffic analysis.

This issue requires a great deal of speculation. CEQA requires that the cumulative analysis include a list of projects that are planned or proposed that could, in combination with the project, result in a significant impacts. The DEIR does this by including and evaluating Mariposa Lakes and the other proposed and approved development (including more than 30,000 residential units by 2035, more than 1,000 new dwelling units per year over the next 25 years). It is a matter of timing, rather than whether or not Mariposa Lakes is included.

26-19 Please see Response to Comment 26-18. The volumes in the traffic impact analysis reflect EPAP without Mariposa Lakes Phase 1. Mariposa Lakes Phase 1 also assumes certain roadway improvements (funded primarily by the Mariposa project) required as a result of project mitigation, and those improvements also are not assumed in the short term for purposes of the EIR's analysis.

26-20 As a result of subsequent discussions with Caltrans, the Highway Capacity Software analysis for the closely spaced intersections of SR 99 SPUI/Arch Road and Kingsley (frontage) Road/Arch Road has been revised using Synchro/SimTraffic software (TRAFFIX software was used in the DEIR). It should be noted that both software packages are consistent with the *Highway Capacity Manual* (Transportation Research Board 2000). The Synchro/SimTraffic software provides a more detailed and concise analysis of the traffic operations and queues of the closely spaced intersections than the TRAFFIX software previously reported. See Master Response 5: "Traffic Issues," which describes the results of the queue analysis and the revised the mitigation measure for Impact TRAF-4 and other mitigation measures to mitigate impacts at these locations.

26-21 Please see Response to Comment 26-15 and Master Response 5: "Traffic Issues," which discusses the revisions to the intersection configurations based on Caltrans comments.

26-22 The lane configuration at Arch Road/Kingsley Road was revised in response to Caltrans comments. Please see Master Response 5: "Traffic Issues" for the results of this change.

26-23 Please see Master Response 5: "Traffic Issues," which describes the revised peak hour factor.

26-24 The clearance time at Arch Road/SR 99 SPUI was changed in response to Caltrans comments. Please see Master Response 5: "Traffic Issues" for the results of this change.

26-25 Please see Master Response 5: "Traffic Issues," which discusses the revised heavy vehicle mix, based on truck percentages provided by Caltrans.

26-26 Please see Master Response 5: "Traffic Issues," which discusses the revised heavy vehicle mix, based on truck percentages provided by Caltrans.

26-27 Please see Master Response 5: "Traffic Issues," which discusses the revised heavy vehicle mix, based on truck percentages provided by Caltrans.

26-28 Synchro/SimTraffic (Version 7) analysis software was used in the revised traffic analysis to analyze the queue at Arch Road/SR 99 SPUI and Arch Road/Kingsley Road. Please see Master Response 5: "Traffic Issues" for the results of this change.

26-29 The percentages of heavy vehicles provided by Caltrans (Comment 26-27) were coded into Synchro/SimTraffic (Version 7). Please see Master Response 5: "Traffic Issues" for the results of this change.

26-30 Please see Master Response 5: "Traffic Issues" for the results of the revised queuing analysis.

26-31 Please see Master Response 5: "Traffic Issues," which describes the results of the revised traffic analysis using Synchro/SimTraffic (Version 7).

26-32 Please see Master Response 5: "Traffic Issues," which describes the results of the revised traffic analysis using Synchro/SimTraffic (Version 7).

26-33 Please see Master Response 5: "Traffic Issues," which describes the results of the revised traffic analysis and revised mitigation measures. Table 3-7 lays out a comparison of the original analysis in the DEIR, the revised analysis (based on Synchro and revised configurations), and the off-peak analysis (in response to the peak hour mitigation).

26-34 Please see Response to Comment 26-18, which describes the reason for not including the first phase of Mariposa Lakes in the EPAP scenario, and please also see Master Response 5: "Traffic

Issues," which describes the results of the revised traffic analysis using Synchro/SimTraffic (Version 7).

26-35 Please see Master Response 5: "Traffic Issues," which describes updated LOS and queuing analyses using the Synchro/SimTraffic model (Version 7).

26-36 Please see Master Response 5: "Traffic Issues," which describes the results of the revised traffic analysis and revised mitigation measure, which reduce project impacts to a less-than-significant level. CEQA Guidelines Section 15088.5 requires a lead agency to recirculate an EIR for further review and comment when significant new information is added to the EIR after public notice is given of the availability of the draft EIR but before certification of the Final EIR. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect that the project proponent declines to implement. The CEQA Guidelines provide the following examples of significant new information under this standard:

- A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- A substantial increase in the severity of an environmental impact would result unless mitigation are adopted that reduce the impact to a level of insignificance.
- A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.
- The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition v. Fish and Game Com*. (1989) 214 Cal.App.3d 1043).

(CEQA Guidelines, § 15088.5, subd. (a).)

Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. (CEQA Guidelines, § 15088.5, subd. (b).) Here, no new significant or substantially more severe environmental impacts have been identified as a result of the updated traffic analysis. Nor have any feasibly project alternative or mitigation measure been analyzed which would clearly lessen the project's environmental impacts but which the Receiver has declined to adopt. With respect to the fourth example of circumstances triggering recirculation a "fundamentally and basically inadequate" Draft EIR – the Supreme Court has stated the obligation to recirculate is triggered by new information showing that an EIR was so deficient as to render public comment "in effect meaningless." (*Laurel Heights Improvement Assn. v. Regents of the Univ. of California* (1993) 6 Cal.4th 1112, 1130) Here, the modifications to the Draft EIR were made in response to comments received on the DEIR and did not identify any new significant impact of the project. Therefore, it cannot be said that the changes have rendered public comment in effect meaningless. Rather, the changes illustrate the CEQA process at work in that the comments received on the DEIR prompted CPR and its environmental consultants to undertake additional CEQA analysis to fully inform the public and decisionmakers of the environmental consequences of the proposed project. Thus, the information added to the DEIR does not meet the definition of "significant new information" requiring recirculation.

26-37 The comment is noted. CPR's consulting team, including its consulting traffic engineer (DKS Associates), has been in contact with Caltrans District 10 staff during the review process. DKS Associates revised the Highway Capacity Software analysis for the closely spaced intersections of SR 99 SPUI/Arch Road and Kingsley (frontage) Road/Arch Road using the Synchro/SimTraffic software (please see Master Response 5: "Traffic Issues" for results). The use of the Synchro/SimTraffic software provided a more detailed and concise analysis of the closely spaced intersections than what TRAFFIX previously reported. Please see Master Response 5: "Traffic Issues," which summarizes the results of the revised traffic analysis and includes revised mitigation measures.

26-38 The comment is noted. The project applicant's consulting team, including its consulting traffic engineer, has been in contact with Caltrans District 10 staff during the review process.

27

From: danadodson@comcast.net
Sent: Tuesday, November 11, 2008 12:55 PM
To: PR
Subject: medical facility

I am strongly against the Inmate Medical Facility that is planned for Stockton. I am so very grateful that a federal appeals court granted us a "stay" of execution. Many data resources such as Trend Graphics show Stockton and San Joaquin county to be one of the most economically "challenged" areas of California as well as the U.S. And this facility will only add to the economic problems that already exist here. Our property values are quickly approaching 50% to the downside. But our crime rate isn't plunging. It's going up. There are many great things about Stockton and many reasons why people want to live here. But that new medical facility isn't one of them. I stongly urge the citizens of Stockton and San Jaoquin County to fight this mandate and do everything that we can to save our streets and our property values and our image. Dana Dodson Docter& Docter Realtors
878 W. Benjamin Holt Drive Stockton, CA 95207

27-1

27-1 The commenter raises social and economic issues and does not raise any potential impacts to the environment or any issues related to the adequacy of the DEIR. Please refer to Master Responses 3 and 4. The comment will be forwarded to the Receiver for consideration.

4 CORRECTIONS AND REVISIONS TO THE DEIR

4.1 INTRODUCTION

This chapter presents specific text changes made to the DEIR since its publication and public review. The changes are presented in the order in which they appear in the original DEIR and are identified by the DEIR page number. Text deletions are shown in strikethrough (~~strikethrough~~), and text additions are shown in double-underline (double-underline).

4.2 CORRECTIONS AND REVISIONS

SECTION 2, "INTRODUCTION"

Due to the revised traffic mitigation, the following revisions have been made to page 2-2 of the DEIR:

2.2.3 STATE RESPONSIBLE AGENCIES

California Department of Fish and Game (DFG): Considers potential impacts on species listed under the California ESA (CESA). If there is a reasonably foreseeable possibility of a take of any CESA-listed species, DFG would use this EIR for the issuance of a CESA take permit.

State Water Resources Control Board (SWRCB): A responsible agency for issuance of a statewide National Pollutant Discharge Elimination System stormwater permit for general construction activity. The SWRCB would also be a responsible agency for issuance of a Section 401 water quality certification through the Central Valley Regional Water Quality Control Board (RWQCB).

Central Valley RWQCB: A responsible agency for issuance of a Section 401 water quality certification.

California Department of Toxic Substances Control: Reviews an environmental site assessment for a property and provides recommendations for further investigation.

Caltrans: A responsible agency for construction of the traffic signal at the SR-99 northbound off-ramp onto Arch Road and the southbound ramp widening required under Mitigation Measure to TRAF-6, as revised in this FEIR document. These improvements would occur within Caltrans jurisdiction and therefore require Caltrans approval.

SECTION 3, "PROJECT DESCRIPTION"

Exhibit 3-4 on page 3-11 of the DEIR has been revised to show a single access point (consistent with the DEIR's traffic analysis). See revised Exhibit 3-4 below.

SECTION 4.2, "AGRICULTURAL RESOURCES"

The mitigation measure for Impact AG-1 on pages 1-8 and 4.2-7 of the DEIR has been revised as follows:

> Mitigation Measure(s) for Impact AG-1:
>
> ~~CPR will implement Mitigation Measure for Impact BIO-1 (See Section 4.7 of the Draft EIR "Biological Resources"), which, in part, requires third-party participation in the SJMSCP and payment of the Natural Lands and Agricultural Habitat Lands Fee as defined in SJMSCP Section 7.4.1.2, "Agricultural Habitat Lands, Non-Vernal Pool Natural Lands, and Multipurpose Open~~

~~Space Lands." The SJMSCP Joint Powers Authority will determine the fee amount to be paid based on the acreage of disturbance. The total amount could be up to 153.2 acres.~~

At the time that final design is completed, CPR will calculate and document the number of acres of Important Farmland that will be converted for CHCF Stockton improvements, including all facilities, roads, and other rights-of-way. Before initial ground-disturbing activities, CPR will coordinate with the San Joaquin Agricultural Commissioner to locate Important Farmland (as determined by the Land Evaluation and Site Assessment [LESA] Model) where an agricultural conservation easement could be recorded. Before operation of CHCF Stockton, a perpetual agricultural conservation easement or deed shall be recorded on land that meets the LESA Model score for Important Farmland equal in acreage to the number of Important Farmland converted by the proposed project at a minimum1:1 ratio.

SECTION 4.3, "TRAFFIC AND CIRCULATION"

The mitigation measure for Impact TRAF-1 on pages 1-9 and 4.3-15 of the DEIR has been revised as follows:

Mitigation Measure(s) for Impact TRAF-1

CPR will hire a qualified traffic consultant to prepare a Construction Traffic Mitigation Plan (CTMP) for the proposed project.

The CTMP will ~~establish a target of reducing~~ eliminate construction traffic ~~by 40~~% in each peak traffic hour during which construction would occur~~, based on the total number of trips calculated to occur during the peak construction period. As shown in Table 4.3-7, peak traffic is 933 vehicles, so the maximum peak hour target number of vehicles that could enter or exit the site during any single peak hour would be 570.~~ The CTMP shall require all construction workers to be on the site prior to 6 a.m. or after 10 a.m. and they shall not leave the site between the hours of 4 p.m. and 6 p.m. In addition, to reduce construction traffic in the off-peak hours, ~~This will be accomplished by one or~~ the CTMP shall include a combination of the following measures:

- Encourage construction workers to carpool with a goal of ~~1.75~~ 3.40 average vehicle occupancy at all times during the construction period.

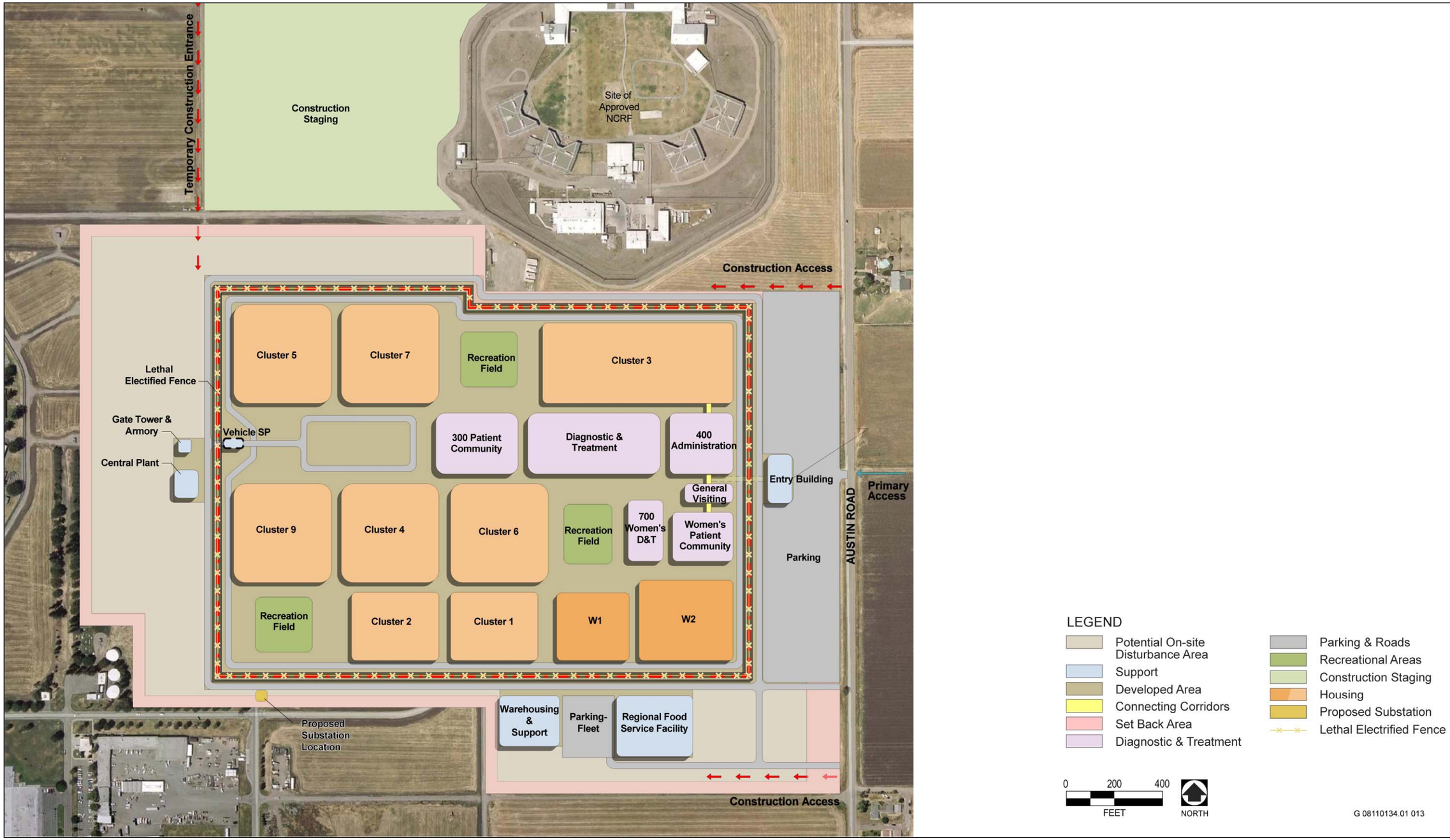
- ~~Stage construction hours to offset traffic during peak traffic hours.~~

- Instruct construction employees to (equally) utilize three separate east-west routes to the project site: 1) Mariposa Road; 2) Arch Road; and 3) French Camp Road. This would disperse construction trips from Arch Road and SR 99 north and south of Arch Road.

- Provide shuttle buses (seating capacity = 40) to pick up construction workers from four remote locations. These four pick up locations would ideally be located in north Stockton, two in central Stockton and one in the south towards the City of Modesto.

  In addition to these measures, the CPR will include the following to improve operations near the site:

- A flagman or other traffic control will be placed at the intersection of Arch Road/Austin Road and the project access driveway during peak arrival/departure whenever there is significant congestion at this intersection.



Proposed Site Plan

Exhibit 3-4 (Revised)

The mitigation measure for Impact TRAF-4 on pages 1-10 and 4.3-28 of the DEIR has been revised as follows, with subsequent tables in Section 4.3 renumbered to reflect the new table:

Mitigation Measure(s) for Impact TRAF-4

- ~~**Intersection of Kingsley Road (Frontage Road) and Arch Road:** The addition of project-related trips would result in the degradation in LOS from LOS D to LOS E in the a.m. peak hour and LOS E to LOS F in the p.m. peak hour, which would be a significant impact. The project's contribution would be cumulative, in combination with EPAP projects. The project would contribute (20.6%) of the traffic to this intersection. CPR will pay the City of Stockton traffic fee to help fund a fair share of this improvement:~~

  - ~~change the north-south signal phasing of the intersection from protected left-turn phasing to permissive phasing, convert the southbound left-turn lane to a shared left-through lane;~~

  - ~~convert the southbound shared through-right-turn lane to a dedicated right-turn lane.~~

- ~~**Intersection of Newcastle Road and Arch Road:** The addition of project-related trips would result in the degradation in LOS from LOS C to LOS E in the p.m. peak hour, which would be a significant impact. To offset this impact, CPR will add a westbound through lane to the approach and return of the intersection. Because the intersection would operate at an acceptable LOS without the proposed project and the project constitutes the major reason why the intersection would deteriorate, CPR will fund this improvement entirely.~~

The Receiver shall schedule staff shift changes to occur outside of the weekday peak commute periods (7:00 a.m. to 9:00 a.m., and 4:00 p.m. to 6:00 p.m.). Deliveries and visitors to the site shall also be restricted through purchasing contracts or other binding agreements to the hours of 9 a.m. to 3 p.m. and after 6:00 p.m.to minimize project-generated traffic during the a.m. peak hour. Some examples of the off-peak hour staff shift changes could be as follows:

- *8-hour shift:* 5:00 a.m. to 2:00 p.m. and/or 9:00 a.m. to 6:00 p.m.; and late evening/early morning shifts
- 12-hour shift: 6:00 a.m. to 6:00 p.m.

Table 4.3-17 presents the revised project trip generation with the implementation of this measure.

Table 4.3-17
Trip Generation with Off-Peak Shift Timing Mitigation Measure

Variable	Daily Trips	A.M. Peak-Hour Trips			P.M. Peak-Hour Trips		
		In	Out	Total	In	Out	Total
Staff	3,292	0	0	0	0	0	0
Deliveries	42	0	0	0	0	0	0
Visitors	232	0	0	0	0	0	0
Total Trip Generation	**3,566**	**0**	**0**	**0**	**0**	**0**	**0**

Source: Data compiled by DKS Associates in 2009

The mitigation measure for Impact TRAF-6 on pages 1-11 to 1-12 and 4.3-35 to 4.3-36 of the DEIR has been revised as follows:

Mitigation Measure(s) for Impact TRAF-6:

Prior to initiating construction, CPR shall coordinate, as appropriate, with the County of San Joaquin's and City of Stockton's departments of public works and Caltrans for implementation of the following measures: ~~The fees to be paid by the CPR into the City of Stockton fee program would be intended to cover the fair share of improvements associated with the project's contribution to cumulative impacts. However, no feasible improvements are available for the following intersections, since they are assumed to be constructed to their ultimate widths and fully improved in 2035:~~

- **Intersection of Arch Road and SR 99 Northbound~~/Southbound~~ Access:** The CPR shall fully fund the installation of a traffic signal at the intersection of Arch Road and the northbound SR 99 SPUI off-ramp. ~~Improvements that would reduce the impact to a less-than-significant impact are not feasible, due to right-of-way constraints, infrastructure, and utilities. The project would contribute 5.6% of the new (cumulative) traffic that affects this intersection.~~

- **Southbound SR 99 Off-ramp:** The CPR shall fully fund the expansion of the northbound SR 99 off-ramp to add 131 feet of capacity by widening the two-lane segment of the off-ramp to three lanes prior to where the off-ramp splits into two lefts and one right turn lane.

- **Intersection of Arch Road and Austin Road:** The addition of an additional eastbound left-turn lane (to create triple eastbound left-turn lanes) ~~and an additional southbound right-turn lane (triple southbound right-turn lanes)~~ would offset the project's impact in the year 2035. Because of right-of-way constraints and the City's design standards, these improvements would not be feasible. The project would contribute 10.0~~11.7~~% of the new (cumulative) traffic that affects this intersection. CPR shall pay its fair share, based on the estimated (10 %) contribution into the City's the Regional Transportation Improvement Program (RTIP).

~~CPR will improve the following intersection as described below.~~

- **Intersection of the Proposed Project Driveway and Austin Road**: CPR will install a traffic signal on Austin Road at the proposed project driveway to offset the project's impact. The project results in this impact and is fully responsible for mitigation.

SECTION 4.4, "AIR QUALITY"

The mitigation measure for Impact AIR-1 on pages 1-13 and 4.4-27 of the DEIR has been revised as follows:

Mitigation Measure(s) for Impact AIR-1:

Reduction of Emissions of Ozone Precursors during Construction. CPR will comply with SJVAPCD's Rule 9510, "Indirect Source Review," as required by SJVAPCD based on the project's specifications. Rule 9510 applies to any applicant that seeks to gain a final discretionary approval for a development project, or any portion thereof, that upon full buildout would include 50 residential units, 2,000 square feet of commercial space, 25,000 square feet of light-industrial space, or 9,000 square feet of any space, as well as similar minima for other land use types.

CPR will submit an air impact assessment (AIA) application to SJVAPCD ~~no later than the date on which CPR receives final discretionary approvals for the project~~ prior to initiating construction. Nothing in Rule 9510 precludes CPR from submitting an AIA application before final discretionary approval of the project. CPR will submit the AIA application as early as possible in the process. The AIA application will be submitted on a form provided by SJVAPCD and will contain, at a minimum, the contact name and address for CPR, a detailed project description, an on-site emission reduction checklist, a monitoring and reporting schedule, and an AIA. The AIA will quantify NO_X and PM_{10} emissions associated with project construction. This assessment will include the estimated construction baseline emissions, and the mitigated emissions for each applicable pollutant for project construction, or each phase thereof, and will quantify the off-site fee, if applicable. CPR will comply with the following general mitigation requirements for construction emissions, as contained in the ISR rule: [the remainder of the mitigation measure remains the same as in the DEIR].

The mitigation measure for Impact AIR-2 on pages 1-17 and 4.4-27 of the DEIR has been revised as follows:

Mitigation Measure(s) for Impact AIR-2:

CPR will comply with SJVAPCD's Rule 9510, "Indirect Source Review." Although NO_X emissions would be below the 10-TPY threshold for 2012 and beyond, compliance with Rule 9510 is required for projects where NO_X emissions would exceed 2 TPY. CPR will submit an AIA application to SJVAPCD ~~no later than the date on which CPR receives any final discretionary approvals for the project~~ prior to initiating construction, as described in the mitigation measure "Reduction of Emissions of Ozone Precursors during Construction" for Impact AIR-1. The AIA will quantify operational emissions of NO_X and PM_{10} exhaust associated with the project. The AIA will include the estimated operational baseline emissions and the mitigated emissions for each applicable pollutant for the project and will quantify the off-site fee, if applicable. CPR will comply with the following general mitigation requirements for operations emissions, as contained in SJVAPCD Rule 9510: [the remainder of the mitigation measure remains the same as in the DEIR].

SECTION 4.6, "HYDROLOGY AND WATER QUALITY"

Because the project no longer requires expansion of the existing detention basin, Impact HYDRO-2 on page 4.6-15 has been revised as follows:

IMPACT HYDRO-2 Increase in Surface Runoff Potentially Exceeding the Capacity of Existing or Planned Stormwater Drainage Systems. *The proposed project would increase surface runoff, which would result in an increase in both the total volume and the peak discharge rate of stormwater runoff, and therefore could result in greater potential for on- and off-site flooding. However, the project's drainage system, which would utilize the existing detention basin volume, would be designed to accommodate project-generated stormwater runoff from a 100-year storm event. (Less than significant)*

SECTION 4.7, "BIOLOGICAL RESOURCES"

Because the project no longer requires expansion of the existing detention basin, Impact BIO-3 on page 4.7-16 has been revised as follows:

IMPACT BIO-3 Injury or Mortality of Special-Status Reptile Species. *Implementation of the proposed project ~~could~~ would not result in injury and mortality of giant garter snakes and northwestern pond turtles in upland areas around Littlejohns Creek and the existing stormwater detention basin, which would not be disturbed as a result of the proposed project. (~~Significant, I~~Less than significant ~~with mitigation~~)*

Because the project no longer requires expansion of the existing detention basin, Impact BIO-4 on page 4.7-18 has been revised as follows:

IMPACT BIO-4 Injury or Mortality of Tricolored Blackbirds. *Expansion of the stormwater detention basin is not required and the project would, therefore, not ~~could~~ result in injury ~~and~~ or mortality of tricolored blackbirds ~~should a breeding colony occur in the basin. (Significant, I~~Less than significant ~~with mitigation~~)*

Because the project no longer requires expansion of the existing detention basin, Impact BIO-6 on page 4.7-21 has been revised as follows:

IMPACT BIO-6 Short-Term Disturbance of Jurisdictional Waters. *Expansion of the capacity of the stormwater detention basin is not required and the project would not result in the short-term disturbance of jurisdictional waters of the United States, which is considered a sensitive habitat by USACE. ~~This short-term, temporary impact would be significant. (Significant, I~~Less than significant ~~with mitigation~~)*

SECTION 4.8, "CULTURAL RESOURCES"

The mitigation measure for Impact CUL-2 on pages 1-37 and 4.8-10 of the DEIR has been revised as follows:

Mitigation Measure(s) for Impact CUL-2:

A qualified professional archaeologist will train construction personnel who will perform ground-disturbing activities, such as grading and excavation, on how to identify cultural materials. The archaeologist will train construction personnel on the nature of subsurface cultural resources that may be present, based on his or her knowledge of the relevant prehistoric and historic archaeology of the region. If cultural materials are inadvertently discovered during project-related construction activities, ground disturbances in the area of the find will cease immediately and the archaeologist will be notified of the discovery. The archaeologist will evaluate the find to determine ~~whether the resource is potentially eligible for listing in the CRHR.~~ whether it constitutes a unique archaeological resource or a historical resource within the meaning of CEQA (Sections 15064.5[a][1] through 15064.5[a][4] of the State CEQA Guidelines). If the archaeologist determines that the find is not a unique archaeological resource or historical resource as defined in the State CEQA Guidelines, construction may commence, and a memorandum shall be prepared documenting the factual basis for this decision. No public circulation or notice is required.

If the archaeologist determines that the discovery is a unique archaeological resource or historical resource then one of the following actions will occur, in order of priority as described below:

- If possible, the resource will be avoided and preserved in place. This is the preferred treatment under CEQA (California Public Resources Code, Section 21083.2[b][3]).

- If preservation in place is not feasible, CPR shall retain a qualified archaeologist (with qualifications determined by training and experience in the region and relevant research domains) to prepare and implement an excavation plan. This plan will involve retrieving a suitable sample of the physical materials that make the resource significant and qualify the site as a unique archaeological resource or a historical resource under CEQA. The excavation plan will also specify a program of analysis to retrieve and convey the information that makes the resource significant. This plan will specifically refer to the relevant eligibility criteria for listing on the California Register of Historical Resources (CRHR) or the criteria for a unique archaeological site in the State CEQA Guidelines. The plan will summarize the findings of this program of research in an excavation report, which shall be filed at the local information center for the California Historical Resources Information System upon completion, so that the findings inform future archaeological and historical research. This plan will specify how the program of excavation and analysis will recover and convey the portions of the site that convey its significance before project implementation may materially alter or demolish those physical characteristics, as provided in Section 15064.5(b)(2) of the State CEQA Guidelines.

Ground-disturbing activities may commence again after the excavation required to implement the plan has occurred. Ground-disturbing work may commence before the completion of the analysis and preparation of a report documenting the findings of the excavation plan. ~~If additional as-of-yet-unidentified resources are determined to be eligible for listing, the archaeologist will develop appropriate avoidance measures and assist with project redesign and/or monitoring; or if construction cannot be planned to avoid impacts, the archaeologist will develop appropriate mitigation, which could include such actions as preservation in place, documentation of the find, or data recovery. Mitigation will be fully implemented before construction activities resume in the vicinity of the find.~~

SECTION 4.14, "PUBLIC UTILITIES"

Because the project no longer requires expansion of the existing detention basin, Impact UTIL-4 on page 4.14-18 has been revised as follows:

IMPACT UTIL-4 **Potential Need for Stormwater Drainage Facility Construction or Expansion that Would Cause Significant Environmental Effects.** *The proposed project would increase impervious surfaces on the project site, which would increase the rate of stormwater runoff. The existing detention/retention basin on the project site would ~~be expanded to~~ accommodate the increased runoff and prevent a~~n~~ substantial increase in the amount of discharge into the adjacent creek. Therefore, the proposed project would not result in the need for other new or expanded stormwater drainage facilities. (Less than significant)*

SECTION 5, "CUMULATIVE IMPACTS"

The mitigation measure for the cumulative climate change impact on pages 1-46 to 1-48 and 5-13 to 5-14 of the DEIR has been revised as follows:

MITIGATION MEASURES

Implementation of the mitigation measure for Impact AIR-2, which would reduce operational emissions of criteria air pollutants and precursors, would also act to reduce GHG emissions

associated with project operation. This mitigation measure is relevant to Impact AIR-2 because emissions of both criteria air pollutants and GHGs are frequently associated with combustion byproducts. In addition, CPR will implement where feasible the following measures to reduce direct and indirect GHG emissions associated with the proposed project. Certain measures could already be considered components of the project, but are provided here for purposes of completeness.

A. Energy Efficiency

- Design buildings to be energy efficient. Site buildings to take advantage of shade, prevailing winds, landscaping and sun screens to reduce energy use.

- Install efficient lighting and lighting control systems. Use daylight as an integral part of lighting systems in buildings. LED lights, or a similar low energy use alternative, shall be used for outdoor lighting except in places where use of such lights is not consistent with applicable security lighting standards.

- Install light-colored "cool" roofs, cool pavements, and strategically placed shade trees (consistent with mitigation requirements for biological resources in connection with operation of the electrified fences).

- Install energy-efficient heating and cooling systems, appliances and equipment, and control systems.

B. Renewable Energy

- Install solar and wind power systems, solar and tankless hot water heaters, and energy-efficient heating ventilation and air conditioning.

- Improve the thermal integrity of buildings, and reduce the thermal load with automated time clocks or occupant sensors.

- Install solar panels over parking areas.

C. Water Conservation and Efficiency

- Create water-efficient landscapes with native, drought-resistant species.
- Install water-efficient irrigation systems and devices, such as soil moisture–based irrigation controls.
- Design buildings to be water-efficient. Install water-efficient fixtures and appliances.
- Restrict watering methods (e.g., prohibit systems that apply water to nonvegetated surfaces) and control runoff.
- Restrict the use of water for cleaning outdoor surfaces and vehicles.
- Provide education about water conservation and available programs and incentives.

D. Solid Waste Measures

- Reuse and recycle construction and demolition waste (including but not limited to soil, vegetation, concrete, lumber, metal, and cardboard).

- Provide interior and exterior storage areas for recyclables and green waste and adequate recycling containers located in public areas.

E. Transportation and Motor Vehicles

- Limit idling time for commercial vehicles to five minutes, including delivery and construction vehicles.
- Promote ridesharing programs, e.g., by designating a certain percentage of parking spaces for ridesharing vehicles, designating adequate passenger loading and unloading and waiting areas for ridesharing vehicles, and providing a Web site or message board for coordinating rides.
- Create car-sharing programs. Accommodations for such programs include providing parking spaces for the car-share vehicles at convenient locations.
- Implement a low carbon emission vehicle incentive program and p~~P~~rovide the necessary facilities and infrastructure to encourage the use of low- or zero-emission vehicles (e.g., electric-vehicle charging facilities).
- Use low or zero emission construction vehicles to the extent practicable.
- Provide shuttle service to public transit.
- Provide public transit incentives such as free or low-cost monthly transit passes.
- Join a local transportation management association and prepare employer-based trip reduction plans

SECTION 7, "ALTERNATIVES TO THE PROJECT"

The discussion under 7.3.1 Off-Site Location Alternative has been changed as follows:

CPR's site selection process for the new medical and mental health care facilities emphasized cost efficiency through two central criteria: (1) Sites had to be close to a sizable job base to ensure that qualified medical staff members and correctional officers could be recruited; and (2) sites had to be located near existing CDCR facilities on state-owned property to avoid the need to purchase land. These criteria, among several other development constraints—property size, access, utilities service and infrastructure, site constructability, and land use compatibility—substantially reduced the number of available sites. ~~In fact, all sites that have been deemed feasible for construction of medical and mental health facilities and are owned by the state are currently identified for proposed future facilities. Therefore, a~~ An Off-Site Location Alternative is considered infeasible because ~~all CDCR sites deemed appropriate to accommodate medical and mental health facilities are currently being pursued for such facilities~~ other state-owned properties close to an urban center were not found to accommodate a facility that would meet the project objectives in a timeframe that meets the primary goal of the Receiver.

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CHAPTER 2, "SUMMARY OF THE PROJECT DESCRIPTION"

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