

CITY COUNCIL / LRA BOARD

Mayor/Chair
Richard D. O'Brien
Council/Authority Members:
District 1 -Luis Uribe
District 2- Rachel Hernandez
District 3- Vacant
District 4 -Darlene Barber-Martinez



CITY OF RIVERBANK

**Regular City Council and
Local Redevelopment Authority
Board Meetings**

Council Chambers, 6707 Third St
Suite B
Riverbank, CA 95367



TUESDAY, NOVEMBER 12, 2024 – 6:00 P.M.

(THE AGENDA PACKET IS ONLINE AT [HTTP://WWW.RIVERBANK.ORG/AGENDACENTER](http://www.riverbank.org/agendacenter))

1. **CALL TO ORDER** - Mayor / Chair O'Brien called the meeting to order at 6:00 P.M.
2. **FLAG SALUTE** – Mayor O'Brien led the pledge of allegiance.
3. **INVOCATION** – Reverend Randy Richardson provided the invocation.
4. **ROLL CALL** – City Clerk Hernandez conducted Roll Call.

Members of the City Council / Local Redevelopment Authority Board present:
Council Member / Authority Member District 2 Rachel Hernandez
Council Member/ Authority Member District 3-VACANT
Council Member / Authority Member District 4 Darlene Barber-Martinez
Vice Mayor / Vice Chair District 1 Luis Uribe
Mayor / Chair Richard D. O'Brien

5. AGENDA CHANGES

None.

6. CONFLICT OF INTEREST

Any Council/Authority Member or Staff who has a direct Conflict of Interest on any scheduled agenda item to be considered is to declare their conflict at this time.

Councilmember Barber-Martinez declared a conflict of interest with items 9.3 & 9.5.

7. PRESENTATIONS (Informational only)

Item 7.1 **Proclamation- Native American Heritage Month-** It is recommended that the City Council read a Proclamation declaring November as Native American Heritage Month and present to City of Riverbank Employee Gerrick Figueroa.

Mayor O'Brien read and presented the proclamation to City of Riverbank Employee Gerrick Figueroa in honor of Native American Heritage Month.

Item 7.2 **Proclamation- Ruby Bridges Walk to School Day-** It is recommended that the City Council read the Proclamation for Ruby Bridges Walk to School Day and present to Crossroads Elementary School Administration, PTA, and Students.

Mayor O'Brien read and presented the proclamation to Crossroads Elementary Staff, PTA, and students in honor of Ruby Bridges Walk to School Day.

8. PUBLIC COMMENTS (No action can be taken)

*At this time, members of the public may comment on any item not appearing on the agenda, and within the subject matter jurisdiction of the City Council/LRA Board. Individual comments will be limited to a **maximum of 3 minutes (or as stated by the presiding Officer)** and time cannot be yielded to another person. Under State Law, matters presented during the public comment period cannot be discussed or acted upon.*

Mayor O'Brien Opened Public Comment at 6:16 P.M

Olivia Arambula, Chamber of Commerce to provide an update about upcoming events.

Lorrie Faile, Riverbank Small Business Owner to extend an invitation to the community for small business Saturday which she will host at her home.

Daryl Daniel, Riverbank Resident to express his concern regarding reckless drivers in his neighborhood. Opposed to the River Walk Project.

Olivia Arambula, Timeless Real Estate to extend an invitation to an open house that will be held at Timeless Real Estate.

Randy Richardson, Riverbank Resident to extend his appreciation to all Veterans.

There being no further public comments, Mayor O'Brien closed the Public Comment period 6:27 P.M.

9. CONSENT CALENDAR

All items listed on the Consent Calendar are to be acted upon by a single action of the City Council/LRA Board unless requested by an individual Council/Authority Member or member of the public for special consideration. Otherwise, the recommendation of staff will be accepted and acted upon by motion of the City Council/LRA Board.

Item 9.1 **Waive Readings.** All Readings of ordinances and resolutions, except by title, are waived.

Item 9.2 **Approval** of the City Council and Local Redevelopment Authority Board Minutes for the October 22, 2024.

Item 9.3 **Resolution** to Waive the Community Center Rental Fee for Central Valley Community Resources, Inc. for Toys for Tots Event.

Item 9.4 **Resolution 2024-103** to Waive the Community Center Rental Fee for the Riverbank Federated Women's Club for a Fundraiser Event.

Item 9.5 **Resolution** Authorizing an Application To and Participation In the Behavioral Health Continuum Infrastructure Program (BHCIP).

Item 9.3 and Item 9.5 were pulled due to Councilmember Barber-Martinez having a Conflict of Interest.

There being no public comments, Mayor O'Brien brought the item back to City Council.

ACTION: By motion moved and seconded (Uribe / Hernandez 4/0) to approve Consent Calendar **Items 9.1, 9.2, and 9.4 as presented.**

*Motion carried by unanimous City Council and LRA Board roll call vote:
AYES: Uribe, Hernandez, Barber-Martinez, and Mayor O'Brien
NAYS: None / ABSENT: None / ABSTAINED: None*

Item 9.3 **Resolution 2024-104** to Waive the Community Center Rental Fee for Central Valley Community Resources, Inc. for Toys for Tots Event.

Item 9.5 **Resolution 2024-105** Authorizing an Application To and Participation In the Behavioral Health Continuum Infrastructure Program (BHCIP).

There being no public comments, Mayor O'Brien brought the item back to City Council.

ACTION: By motion moved and seconded (Hernandez / Uribe 3/0) to approve Consent Calendar **Items 9.3 and Item 9.5 as presented.**

*Motion carried by unanimous City Council and LRA Board roll call vote:
AYES: Uribe, Hernandez, and Mayor O'Brien
NAYS: None / ABSENT: None / ABSTAINED: None*

10. PUBLIC HEARING-No Items Scheduled.

11. NEW BUSINESS

Item 11.1 **Resolution to Authorize Staff to Submit the Draft Sixth Cycle Housing Element to the Department of Housing and Community Development for the Mandated 90-day Compliance Evaluation with State Laws.** - It is recommended that the City Council adopt a Resolution to authorize staff to submit the Draft Sixth Cycle Housing Element to the Department of Housing and Community Development for the mandated 90-day compliance evaluation with State laws.

David Niskanen, Planner with JB Anderson Land Use Planning gave a comprehensive staff report and power point presentation on the Draft Sixth Cycle Housing Element to be submitted to the Department of Housing and Community Development.

City Council Discussed item with City Staff.

Karen Conrotto, County Resident to express her concerns in regards to the Housing Element.

Daryl Daniel, Riverbank Resident to express his thoughts on the types of housing that can be offered in Riverbank.

Evelyn Halbert, Riverbank Resident to express her concerns in regards to the current Downtown Specific Plan and the City's future housing plans.

Matt Beekman, Farmland Working Group to express concern on the Housing Element.

Solouri Meserve, Law Corp (Submitted Written Comment as Attached)

There being no further public comment, Mayor O'Brien brought the item back to City Council.

ACTION: *By motion moved and seconded (Uribe / Barber-Martinez 4/0) to approve Resolution 2024-106 the submission of the Draft Sixth Cycle Housing Element to the Department of Housing and Community Development for the Mandated 90-day Compliance Evaluation with State Laws.*

Motion carried by unanimous City Council and LRA Board roll call vote:

AYES: Uribe, Hernandez, Barber-Martinez, and Mayor O'Brien

NAYS: None / ABSENT: None / ABSTAINED: None

12. COMMENTS/REPORTS

A brief report on notable attendance of a meeting or conference or other notable topics of City business shall be made. The Brown Act does not allow for discussion or action of items by the City Council/LRA Board during this time.

Item 12.1 Staff

City Manager Garcia reported on the following:

- *Join us for a special city Council meeting on Monday, November 18th when City Council will be interviewing candidates for the District 3 vacancy. The City has received a total of seven applications for consideration.*
- *The deadline to apply for the Downtown Façade Improvement Program is Monday, November 25th at 5:00 pm. Information and application are available on our website.*
- *All city offices will be closed November 28th and 29th for the upcoming Thanksgiving holiday.*
- *Register for Notify Me on our website to receive updates on upcoming city Council meetings, special events and road closures.*

Item 12.2 Council/Authority Member

Councilmember Hernandez reported on the following:

- Thank you to Parks and Recreation for the continued events that have been improving every time.

Councilmember Barber-Martinez reported on the following:

- I think we all can agree that the Housing Element is something that is difficult, something that we need to pay close attention to and do our best to try to understand it and our staff is always available. If anybody has any questions, whether you're a council member or resident, but they're always available. So, I appreciate trying to help us get through that process.
- I also want to personally thank all of our Veterans, their families and those who are currently serving in the military for our freedom.
- Registrations are now being accepted for our Toys for Tots giveaway on December 21st until November 22nd. You have to call Casa del Rio to sign up, and it's any resident that is in Riverbank is eligible to sign up.
- We're also going to have a toy drive and car show on December 1st, and that will be with our Toys for Tots and the Marines. And again, that is for all of our Riverbank residents. And it's going to be at SaveMart Crossroads from 9am to 2pm. I don't know if you're familiar with the big red cart, but we're going to try to fill it up. It's huge, it makes a lot of noise, but we're going to try our best to fill it up on that day.
- We are going to have breakfast with Santa that will be on December 21st in the morning. And that we're doing in collaboration with the City of Riverbank, Casa del Rio and Central Valley Community Resources. It will be at the Community Center. You do need to sign up through Casa del Rio, and we do need volunteers, so we're asking for anybody that wants to help out with breakfast with Santa. If you're available, please contact Central Valley Community Resources at (209) 896-3055.
- Remember to support small businesses on the Saturday after the black Friday weekend. And last but not least, Happy Thanksgiving to everyone.

Vice Mayor Uribe reported on the following:

- I don't have any of the fun announcements as Darlene did. So, let's talk about State Law, but just very briefly. So, Senate Bill 1215 it's looking to enhance electronic recycling waste kind of historically in the United States, we've been sending large amounts of waste to countries like Malaysia. Come January all that's going to come to a stop. We do fortunately have a business coming into Riverbank. It's 3R Technology. Their equipment's in route had a tour with the incoming Councilmember Cindy Fosi this morning they're shooting for a ribbon cutting in March. So very excited to see that. I will keep you guys posted on that.
- The Sister City committee will be meeting this Friday at Pizza Plus at 6:00pm. We are going to be focusing on we are really close to our goal of sending the youth to the Youth Summit in DC in 2025. We have a deadline of March. We're right there. So, we're going to have a discussion everyone's feel free to come by, join us, have a discussion with us. It is open to the public. Happy Thanksgiving to everybody.

Item 12.3 Mayor/Chair

Mayor O'Brien reported on the following:



tel: 916.455.7300 • fax: 916.244.7300
510 8th Street • Sacramento, CA 95814

November 12, 2024

SENT VIA EMAIL
(cityclerk@riverbank.org)

City Council
City of Riverbank
6707 Third Street, Suite A
Riverbank, California 95367

**Re: Agenda Item No. 11.1 (November 12, 2024 City Council Meeting)
Submission of Draft Sixth Cycle Housing Element to
Department of Housing and Community Development**

Dear Mayor Richard D. O'Brien and Members of the City Council:

This firm represents Riverbank residents Annabel Gammon and Dr. J. Allen Gammon. The City's October 2024 Draft Sixth Cycle Housing Element fails to disclose the significant environmental, public services and infrastructure, Williamson Act, and other constraints associated with development of the River Walk Specific Plan. (Draft Housing Element, pp. VI-12-VI-14.) It should not be assumed that significant siting and other constraints can be overcome for this 1,522-acre site, about two-thirds of which is outside City limits. Attached are detailed comments and an expert report on ecology and wildlife submitted in May 2024 that explain some of the inadequacies of the January 2024 River Walk Specific Plan Draft Environmental Impact Report ("Draft EIR"). These and other comments received on the Draft EIR,¹ indicate that the River Walk Specific Plan should not be considered "suitable for residential development" by the City. (See, e.g., Gov. Code, §§ 65883, 65583.2.)

We request that the River Walk Specific Plan should be removed from the City's Housing Element prior to submission to the Department of Housing and Community Development.

¹ There has been no indication of when or if the City's planning and environmental review process for the River Walk Specific Plan will continue beyond the Draft EIR stage. (See <https://www.riverbank.org/609/River-Walk-Project>.)

City Council, City of Riverbank
November 12, 2024
Page 2 of 2

Very truly yours,

SOLURI MESERVE
A Law Corporation

By: 
Osha R. Meserve

Attachment: May 16, 2024, Comments on the River Walk Specific Plan and DEIR

Sent via email to City Council Members:

Richard D. O'Brien, Mayor, robrien@riverbank.org
Leanne Jones Cruz, Vice Mayor, District 3, ljonescruz@riverbank.org
Luis Uribe, Councilmember, District 1, luribe@riverbank.org
Rachel Hernandez, Councilmember, District 2, rhernandez@riverbank.org
Darlene Barber-Martinez, Councilmember, District 4, dbmartinez@riverbank.org

cc: City of Riverbank, Housing Element
riverbankhousing@riverbank.org
Department of Housing and Community Development
HousingElements@hcd.ca.gov, Emily.Hovda@hcd.ca.gov
Annabel Gammon and Dr. J. Allen Gammon
annabel.gammon@gmail.com

ATTACHMENT

**to Comments submitted on November 12, 2024
Regarding Agenda Item No. 11.1**



tel: 916.455.7300 • fax: 916.244.7300
510 8th Street • Sacramento, CA 95814

May 16, 2024

SENT VIA EMAIL
(riverwalk@riverbank.org)

Miguel Galvez, Contract City Planner
City of Riverbank
6707 3rd Street, Suite A
Riverbank, California 95367

**Re: Comments on River Walk Specific Plan and
Draft Environmental Impact Report**

Dear Mr. Galvez:

These comments, submitted on behalf of Riverbank residents Annabel Gammon and Dr. J. Allen Gammon, pertain to the Draft Environmental Impact Report (“DEIR”) and the River Walk Specific Plan (“RWSP” or “Project”) prepared by the City of Riverbank (“City”).¹ The Project includes the expansion of the City of Riverbank’s Sphere of Influence (“SOI”), among other approvals. Under the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq. [“CEQA”]), the term “project” refers to the “whole of an action, which has the potential for resulting in a direct physical change or a reasonably foreseeable indirect physical change in the environment.” (Cal. Code Regs., tit. 14, § 15000 et seq. [“CEQA Guidelines”], § 15378, subd. (a).) The Project objectives include expansion of the Riverbank SOI by approximately 1,522 acres, annexation of approximately 993 acres into the Riverbank City limits, extension of infrastructure to the annexed area to serve development, and the subsequent development of the annexed area for low-, medium- and high-density residential, mixed-use, and parks, including all infrastructure and utilities necessary to service the development. The Project area is located outside the northwestern boundary of the City SOI, within the unincorporated area of Stanislaus County.

The Project would involve large-scale changes to the environment and to the pattern of growth in the region. These comments focus on the failure of the DEIR’s to adequately analyze and disclose the Project’s impacts to biological resources, water

¹ These comments pertain to both the RWSP, which is the Project, as well as to the DEIR. The Final EIR should list these comments as being from Annabel Gammon and Dr. J. Allen Gammon; the DEIR mistakenly lists their DEIR Notice of Preparation (“NOP”) comments as being submitted on behalf of Soluri Meserve, which is incorrect.

supply and water quality, as well as significant land use changes. Our review of the DEIR and RWSP was informed by the review of the DEIR and site visits by Dr. Shawn Smallwood, an expert in ecology and wildlife biology, whose comments and qualifications are included as Attachment 1.²

The DEIR fails to adequately analyze the environmental impacts associated with changes that would occur as a result of the Project, and for the reasons described herein, as well as other public comments, the DEIR cannot lawfully be certified and the RWSP should not be approved.

I. THE PROJECT DESCRIPTION IS INADEQUATE

The overriding and primary goal of CEQA is the protection of the environment. (Pub. Resources Code, §§ 21000–21189.3; see §§ 21000–21002.) The purpose of an EIR is to provide the public with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project. (Pub. Resources Code, §§ 21061, 21002.1, subd. (a).) An EIR should inform the public and its responsible officials of the environmental consequences of decisions before they are made and should provide “the basis on which its responsible officials either approve or reject environmentally significant action,” so that the public, “being duly informed, can respond accordingly to action with which it disagrees.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123 [*Laurel Heights II*]; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392 [*Laurel Heights I*].)

This means that an EIR must include analysis of “all phases of a project” and all “reasonably foreseeable consequences” of a project. (CEQA Guidelines, § 15126 [EIR’s impact analysis must consider all phases of a project]; *Laurel Heights I, supra*, 47 Cal.3d. at 396 [EIR must analyze “reasonably foreseeable consequence” of a project].) An EIR must also consider the cumulative impacts of past, present and probable future projects. (Pub. Resources Code, § 21083, subd. (b); *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1024–1025.)

The Project Description provided in the DEIR fails to provide consistent information necessary to understand the full extent of the Project, or its impacts on the environment. The DEIR claims to be a hybrid programmatic and project-level EIR,

² Letter from Dr. Shawn Smallwood to Miguel Galvez, re: River Walk Specific Plan DEIR, dated April 17, 2024 (“Smallwood Report”). It is requested that the Smallwood Report be responded to separately in the Final EIR.

described as both a “Program EIR pursuant to CEQA Guidelines Section 15168, but in some areas of the document it also serves as a Project-level EIR.” (DEIR, p. 1.0-1.) This leads to a confusing depiction of Project scope, making it nearly impossible for the public and decisionmakers to fully understand the Project’s impacts.

For example, some statements in the DEIR indicate that “[t]he proposed project includes the expansion of the City of Riverbank Sphere of Influence, and approval and subsequent implementation of the Specific Plan as a means of increasing the housing supply in Stanislaus County.” (DEIR, p. ES-2.) These explanations fail to provide the requisite clarity needed for the public and decisionmakers to evaluate the Project’s scope. Examples of inconsistencies in the DEIR’s description of the Project include:

- Inconsistent statements defining the whole of the Project as the approval of the RWSP, while at other times appearing to define the Project as the combination of the adoption of the RWSP and the expansion of the SOI. This renders an assessment of the adequacy of sufficient water supplies impossible, because it is unclear whether these water supplies apply to meet the demands of only the RWSP or to the entire expansion of the SOI, including reasonably foreseeable future development that is not specifically contemplated in DEIR’s impacts analyses.
- Contradictory statements asserting that:
 - “A component of the proposed Project that includes a Specific Plan includes a very high level of design detail for that portion of the proposed Project.” (DEIR, p. 1.0-2.)

And alternately:

- “The proposed Project (Project), also referred to as the River Walk Specific Plan (RWSP), is an approximately 993-acre development of residential, open space, park, and commercial land uses to the west of the City’s current City limits.” (RWSP Water Supply Assessment (“WSA”), p. 2.)

And:

- “The entire Project Vicinity includes approximately 1,522 acres within the unincorporated county adjacent to the City of Riverbank. The Specific Plan Project area (i.e., the RWSP or Project) includes a 993-acre area proposed to be annexed and subsequently developed. The remaining land within the Project

Vicinity is part of the SOI Amendment and would be held as Reserve land for possible long-range planning at some future time.” (WSA, p. 4.)

And:

- Discussions of the Project Area as “the proposed Project includes approximately 1,522 acres encompassing: (1) the Specific Plan Area that includes a total of 997 acres, including the Berghill Boundary, and (2) the SOI Expansion Boundary, which makes up the entire Project Area.” (DEIR, p. 2.0-1.).

And:

- “The Environmental Impact Report is intended to be a project-level analysis of the Specific Plan area.” (NOP, p. 11.)

And:

- “The proposed Project would result in an expansion of an SOI boundary to areas not previously planned for development, as well as an extension of services for urban development in an area (the Specific Plan Area) that the City has envisioned for growth in their adopted General Plan. The areas outside the Specific Plan Area, but within the SOI boundary, would not be developed under the proposed Project, and would not have services provided to this area. Any future development of the areas outside the Specific Plan Area, but within the SOI boundary, would require a Specific Plan to be prepared.” (DEIR, p. 3.10-17.)

These inconsistencies render the DEIR insufficient as an informational document meant to “enable those who did not participate in its preparation to understand and ‘meaningfully’ consider the issues raised by the proposed project.” (*Santa Clarita Org. for Planning v. County of L.A.* (2003) 106 Cal.App.4th 715, 721 [*Santa Clarita*].) An “EIR is intended to serve as an informative document to make government action transparent. Transparency is impossible without a clear and complete explanation of the circumstances surrounding the reliability of the water supply.” (*Ibid.*, citing *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1238 [*California Oak Foundation*].) The standard requiring an informative discussion of project impacts “is not met in the absence of a forthright discussion of a significant factor that could affect water supplies.” (*California Oak Foundation, supra*, 133 Cal.App.4th at 1237.)

Under CEQA, a project description must include all relevant parts of a project, including future expansion or later phases of the project that will foreseeably result from project approval. (*Laurel Heights I, supra*, 47 Cal.3d at 396; see also CEQA Guidelines, § 15126 [EIR's impact analysis must consider all phases of project].) The DEIR impermissibly omits analysis of development of the "Reserve" area from its discussions of impacts, claiming that it is not planned for development at this time. However, it is clear by the history of the City's accelerated growth (the City last applied for an expansion of its SOI in 2016, and last annexed territory into its boundaries in 2019) that it plans to develop the land included in the SOI expansion proposed as part of the Project. The DEIR must analyze the impacts of development of land within the Project area.

II. THE DEIR FAILS TO FULLY ANALYZE AND DISCLOSE THE BIOLOGICAL IMPACTS OF THE PROJECT (DEIR CHAPTER 3.4)

It is the policy of the state, in accordance with CEQA, to "[p]revent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities" (Pub. Resources Code, § 21001, subd. (c).)

The CEQA Guidelines include a definition of "endangered, rare, or threatened species" that provides that a species is presumed to be endangered, rare, or threatened when it is listed under California endangered species regulations (Cal. Code Regs., tit. 14, §§ 670.2, 670.5) or under the federal endangered species regulations (50 C.F.R. §§ 17.11–17.12; CEQA Guidelines, § 15380.) A species that is not listed must be considered endangered, rare, or threatened if the species meets specified criteria. (CEQA Guidelines, § 15380, subd. (d).) A species is considered endangered if its survival and reproduction in the wild are in immediate jeopardy as a result of loss of habitat, change in habitat, overexploitation, predation, competition, disease, or other factors. (CEQA Guidelines, § 15380, subd. (b)(1).) A species that is not threatened with extinction is considered rare if it is existing in such small numbers in all or a significant portion of its range that it may become endangered if its environment worsens. (CEQA Guidelines, § 15380, subd. (b)(2)(A).) A species is also considered rare if it is likely to become endangered within the foreseeable future in all or a significant portion of its range and may be considered threatened within the meaning of the federal Endangered Species Act of 1973 ("ESA") (16 U.S.C. §§ 1531–1544). (CEQA Guidelines, § 15380, subd. (b)(2)(B).)

Dr. Smallwood surveyed the Project site for a total of 7.75 hours over two visits in February and April 2024. He observed 53 species in February and 64 species in April, for a total of 75 different species of vertebrate wildlife, including 13 special-status species. (Smallwood Report, p. 7; Table 1, pp. 8-10.) Dr. Smallwood concluded that the Project

site supports a rich diversity of wildlife species far in excess of other project sites he has surveyed in the Sacramento-San Joaquin Valley region. The nature of the reconnaissance surveys he conducted, furthermore, though useful for “realistically representing the species richness of the site at the time of a survey, it cannot represent the species richness throughout the year or across multiple years because many species are seasonal or even multi-annual in their movement patterns and in their occupancy of habitat.” (*Id.* at 31.) The site, therefore, likely supports a much broader diversity of species than he could even detect during his reconnaissance surveys.

To put his observations at the Project site in context, Dr. Smallwood compared a robust data set from an earlier, much larger survey, during which he performed 721 hours of surveys at 46 stations at the Altamont Pass Wind Resource Area from 2015 to 2019. Using the numbers he observed at the Project site in a model developed for his time spent at Altamont Pass, he concluded that the species he observed during his surveys at Altamont Pass represented just 38.2 percent of the species he encountered during a comparable time period at the Project site. (Smallwood Report, p. 31.) On average, Dr. Smallwood detected just 21.8 species over the first 7.75 hours of surveys at Altamont Pass (similar to the time he spent at the Project site), compared to the 75 species he saw at the Specific Plan Area. (*Ibid.*) Calculating this small sample of time to a larger survey window, Dr. Smallwood predicted that he would likely have detected 196 species of vertebrate wildlife at the site given the chance to conduct repeat surveys throughout the year. (*Ibid.*) Using the same method of calculation and a ratio of special-status to non-special-status species, Dr. Smallwood predicted he would have eventually detected 34 special-status species of vertebrate wildlife at the Project site. (*Ibid.*)

To check the accuracy of these predictions, Dr. Smallwood performed a similar analytical bridge comparing the Specific Plan Area to a site along the American River in Rancho Cordova, which he had visited 41 times, and which featured a natural environment similar to that of the Project site, such as a walnut orchard adjacent to a riparian woodland. The model returned the same prediction: 196 species observed during surveys conducted over a year or more, including 34 special-status species. (*Id.* at 32.) This type of reconnaissance survey, however, has its limitations. These surveys, derived from a visual daytime scan, would not detect nocturnal birds and mammals such as owls and bats. The site, Dr. Smallwood noted, supports many species of wildlife, including many more than he could detect during his reconnaissance surveys. And this method of modeling and surveying, though useful for realistically representing the species richness of the site at the time of a survey. (*Id.* at 31.) Because Dr. Smallwood surveyed only in winter/spring, he was unlikely to see some of the species that would use the site in summer or fall. As Dr. Smallwood explained:

The true number of species composing the wildlife community of the site must be larger. One or two reconnaissance surveys should serve only as a starting point toward characterization of a site's wildlife community, but this level of effort certainly cannot alone inform of the inventory of species that use the site.

(Smallwood Report, p. 32.) Therefore, the Smallwood Report likely undercounts the number of species in the Project area.

A. The DEIR's Assessment of the Existing Environmental Setting Is Inaccurate and Unsupported by Substantial Evidence

"An EIR must include a description of the physical environmental conditions in the vicinity of the project. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant," providing "the public and decision makers the most accurate and understandable picture practically possible of the project's likely near-term and long-term impacts," and allowing "for the significant effects of the project to be considered in the full environmental context." (CEQA Guidelines, § 15125, subds. (a), (c).) "Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project." (CEQA Guidelines, § 15125, subd. (c).)

This statutory mandate to fully investigate and present an accurate representation of existing conditions in the vicinity of a proposed project is the first and necessary step to fulfilling CEQA's "fundamental goal of [] inform[ing] decision makers and the public of any significant adverse effects a project is likely to have on the physical environment." (Pub. Resources Code, § 21061; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 428 [*Vineyard*].) "To make such an assessment, an EIR must delineate environmental conditions prevailing absent the project, defining a baseline against which predicted effects can be described and quantified." (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 447; *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 315.)

Provided an agency's assessment and discussion of existing conditions are sufficiently robust and based on accurate information, the analyses of project impacts that follow will inevitably elicit more reliable conclusions. Conversely, in the event an EIR's assessment of existing conditions in the project vicinity is incomplete, inadequate, or based on flawed reporting methods or misapplied factual data, the subsequent analyses will be unavoidably distorted, rendering any impacts determinations legally inadequate and "preclud[ing] a determination that substantial evidence supports [the agency's

conclusions.]” (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 729 [*San Joaquin Raptor*].) Indeed, this frustrates the very purpose of CEQA. Ample case law states that “[w]hen an EIR contains an inadequate description of the environmental setting for a project, ‘a proper analysis of project impacts [is] impossible.’” (*Save North Petaluma River and Wetlands v. City of Petaluma* (2022) 86 Cal.App.5th 207, 217; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1122 [invalidating EIR containing only passing references to surrounding viticulture].)

To satisfy this crucial first step and lay the groundwork for an adequate impacts analysis of the Project, the DEIR must “accurately characterize the existing environmental setting, including the biological species that use the site, their relative abundances, how they use the site, key ecological relationships, and known and ongoing threats to those species with special status.” (Smallwood Report, p. 32.) Provided a reasonably accurate characterization of the environmental setting, the agency—and later, the public and decision makers evaluating the Project—will have a solid foundation “for determining whether the site holds habitat value to wildlife, as well as a baseline against which to analyze potential project impacts.” (*Ibid.*) Dr. Smallwood noted that scientifically accepted methods of assessing the environmental setting include “(1) surveys of the site for biological resources, and (2) reviews of literature, databases and local experts for documented occurrences of special-status species.” (*Id.* at 33.) The DEIR, as discussed below, fails to complete these necessary steps. Instead, readers are presented with an inadequate and misleading picture of the existing environmental setting, and thus an unsupported impacts analysis based on a flawed foundation.

1. *The DEIR fails to disclose details necessary to meaningfully evaluate its analysis of the existing environmental setting, leaving readers to rely on conclusory statements and questionable data*

The DEIR summarized the four reconnaissance surveys that were reportedly conducted by Steve McMurtry in 2019 and 2020, including the numerous and ambitious objectives and the questionable claims that (1) the surveys were “timed to detect breeding birds and amphibians, and active reptiles;” (2) a record was kept of all signs of wildlife including tracks; and (3) “CDFW’s (2018) plant survey guidelines were followed.”³

³ Dr. Smallwood’s Report notes: “According to the DEIR (page 3.4-1), Steve McMurtry completed at least four reconnaissance-level surveys in December 2019 and in March, May and June 2020. In a reply communication to Osha Meserve, the City of Riverbank (Miguel Galvez email of 7 March 2024) reports that no technical report of the McMurtry’s surveys has been prepared. Were the DEIR to include all of the technical data and reporting needed to achieve the public disclosure objective of CEQA, then the

(Smallwood Report, p. 33.) To achieve all of the listed objectives, Dr. Smallwood asserted that “many hours of surveys over many days on the very large River Walk Specific Plan area, as well as the extended Sphere of Influence” would have been necessary. (*Ibid.*) The DEIR, however, “fails to report the dates McMurtry surveyed, at what times of day he began his surveys, and how long his surveys lasted. The reader of the DEIR is provided no information to ascertain whether or to what degree McMurtry could have achieved the stated objectives.” (*Ibid.*)

The DEIR does not report whether McMurtry surveyed reference sites for special-status species of plants, which is a key CDFW (2018) standard. Nor does the DEIR report key details needed to interpret the survey results, such as the survey start times and the survey durations. No explanation is reported of how McMurtry inspected or evaluated the site to document the site’s potential to support special-status species. Did the biologist carry a checklist of resources needed by each special-status species? The DEIR fails to summarize McMurtry’s qualifications for conducting the surveys for special- status species of plants and animals. In short, the DEIR neglects to report the most essential methodological details the reader needs to know in order to accurately interpret McMurtry’s survey findings.

(Smallwood Report, p. 33.)

The Smallwood Report explains in detail the information missing from the DEIR, including any record or discussion of the detection probabilities associated with any of the special-status species that are typical of reconnaissance surveys. The DEIR only reports some of the species “commonly seen,” but fails to include a list of species that were detected. (*Id.* at 34.) No protocol-level detection surveys were completed for special-status species, even though, as Dr. Smallwood reported, “there was cause to expect the presence of special-status species including, but not limited to, valley elderberry longhorn beetle, Swainson’s hawk, giant garter snake, burrowing owl, tricolored blackbird, western and Crotch’s bumble bees, monarch and other special-status species.” (*Ibid.*) Yet, the DEIR claims that the “Project Area provides habitat for both common and *a few special-status wildlife populations.*” (DEIR, p. 3.4-8; emphasis added.)

lack of a technical report from McMurtry would be of no consequence. However, the DEIR fails to disclose salient information, such as methodological details needed by the reader to determine whether McMurtry achieved the minimum plant survey standards of CDFW (2018), and such as the species of wildlife detected by McMurtry.” (Smallwood Report, p. 33.)

The DEIR asserts that preconstruction take-avoidance surveys would be completed prior to construction of each village, after approval of the Project. As explained by Dr. Smallwood, “Preconstruction take-avoidance surveys do not provide anywhere close to the same detection probabilities as do detection surveys, because such surveys are initiated only if construction commences within specific times of the year (see the mitigation measures for timing details), they are constrained to narrow date-ranges, and they are not performed to the same standards of effort.” (Smallwood Report, p. 35.)

The dearth of information needed to meaningfully review the DEIR’s assessment of the existing environmental setting is troubling. No context is provided that would allow the reader to interpret conclusions regarding detections or lack of detections of wildlife and plant species in the Project area. There is no discussion of the detection probabilities associated with any of the special-status species that are typical of reconnaissance surveys. (Smallwood Report, p. 34.) The DEIR fails to comply with CEQA’s public disclosure requirement, and the resulting impacts analyses derived from its flawed and incomplete baseline assessment are necessarily unsubstantiated.

2. *The DEIR improperly uses information and misapplies data from wildlife databases, further obscuring its analysis of the Project’s environmental setting*

An important step in a sufficient and competent analysis of a site’s breadth of species diversity, Dr. Smallwood noted, is thorough and proper review of appropriate databases and literature “to inform the reconnaissance-level survey, to augment it, and to help determine which protocol-level detection surveys should be implemented.” (Smallwood Report, p. 35.) This information is necessary “to identify which species are known to have occurred at or near the project site, and to identify which other special-status species could conceivably occur at the site due to geographic range overlap and site conditions.” (*Ibid.*) Reconnaissance surveys, Dr. Smallwood explained, do not detect all of the species of wildlife that make use of the site. Performing a competent review of the appropriate databases and literature “can identify those species yet to be detected at the site but which have been documented to occur nearby or whose available habitat associations are consistent with site conditions. Some special-status species can be ruled out of further analysis, *but only if compelling evidence is available in support of such determinations.*” (*Ibid.*, emphasis added)

The City’s review of databases and literature was fundamentally flawed. The City relied on data that was not only outdated, but also misapplied and used to form baseless conclusions that distort the Project’s true impacts. (Smallwood Report, pp. 35-37.) Supplemental information (an email), which was not available in the DEIR or

appendices, indicated that the City relied on a record search of two documents in its analysis of biological resources: (1) a two-page California Natural Diversity Data Base (“CNDDDB”) database query dated January 5, 2022; and (2) the automated US Fish and Wildlife Service (“USFWS”) report: “List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project,” also dated January 5, 2022. (Smallwood Report, p. 35.) Dr. Smallwood explained:

These standard documents are designed to inform project applicants regarding potential species that may occupy the locale, and their status at the time of data request. These documents are not intended to be definitive species or habitat descriptors. Indeed, the FWS document states on page 2 that it suggests that a Biological Assessment or biological evaluation “be prepared to determine whether the project may effect listed or proposed species and/or designated or proposed critical habitat.” No Biological Assessment or biological evaluation was provided.

(*Ibid.*)

The information provided in the CNDDDB report, to start, is outdated. The report itself indicates that the data it contains expires July 1, 2022. The use of this expired—and therefore, inaccurate—information resulted in, as Dr. Smallwood pointed out, “a chain of defective analyses, starting with the misrepresentation of the legal status of 2 species of bumble bees on DEIR pages 3.4-34 and 35. The species’ status was in review in 2021 and updated by the State on September 30, 2022, long before the 2024 DEIR. The 2024 DEIR erroneously states that the bees ‘are not specifically protected under state or federal law.’ (DEIR, p. 3.4-35.) This is incorrect.” (Smallwood Report, pp. 35-36.)⁴ *Almond Alliance of California v. Fish & Game Commission* (2022) 79 Cal.App.5th 337, 341, confirmed that these species may be listed under Fish and Game Code section 45, and gives the Fish and Game Commission the authority to list invertebrates as endangered or threatened species.

Furthermore, the DEIR fundamentally misuses the CNDDDB database, applying the information it provides improperly to reach flawed conclusions that cannot be supported by substantial evidence. An initial lineup of special-status species to be considered in the DEIR’s analysis of species at the Project site was drawn from the database’s occurrence records—a use for which the CNDDDB database is explicitly inappropriate. Dr. Smallwood explained:

⁴ An updated record of listed species is found at:
<https://wildlife.ca.gov/Data/CNDDDB/News/updates-to-the-legal-status-of-bumble-bees-in-california#gsc.tab=0>.

CNDDDB is not designed to support absence determinations or to screen out species from characterization of a site's wildlife community. As noted by CNDDDB, "*The CNDDDB is a positive sighting database. It does not predict where something may be found. We map occurrences only where we have documentation that the species was found at the site. There are many areas of the state where no surveys have been conducted and therefore there is nothing on the map. That does not mean that there are no special status species present.*"

(*Id.* at p. 36; emphasis in original.)

The CNDDDB database, which relies entirely on volunteer or permit reporting from biologists, includes only records of those surveys voluntarily reported, and only from properties to which access was granted. The database, therefore, represents only a fraction of the state's wildlife population and diversity profile: many properties have never been surveyed, while others may have been surveyed but only partially reported, and still others surveyed but never reported at all. (Smallwood Report, p. 36.) More importantly, CNDDDB's records include sighted observations of currently listed special-status species only. Species that have more recently been assigned special status will have been reported far fewer times, or not at all, to CNDDDB than those that have been listed for many years. (*Ibid.*) "The lack of CNDDDB records for species only recently assigned special status would have been due to insufficient time having elapsed since the assignments. And because negative findings are not reported to CNDDDB, CNDDDB cannot provide the basis for estimating occurrence likelihoods, either. The DEIR's analysis of special-status species occurrence likelihoods is fundamentally flawed." (*Ibid.*)

Dr. Smallwood's assessment, based on controlled, thorough, and well-documented site visits, along with properly conducted reviews of the relevant databases and literature, revealed that 101 special-status species of wildlife are known to occur near enough to the site to warrant further analysis for their potential to occur at the site. (Smallwood Report, Table 2, pp. 38-42.). Of these, 13 (13%) were confirmed on the site by his survey visits, and 27 (27%) have been documented in databases within 1.5 miles of the site ("very close"), 11 (11%) within 1.5 and 4 miles ("nearby"), and another 40 (40%) within 4 to 30 miles ("in region"). Half (51) of the special-status species in Table 2 have been reportedly seen within 4 miles of the project site. "On any given day, one or more yet-to-be documented special-status species likely make use of the project site," Dr. Smallwood concluded, and the site likely supports many special-status species of wildlife, which would require multiple surveys to sufficiently detect. (*Ibid.*; see Tables 1 and 2, Smallwood Report, pp. 30, 32.) "Reconnaissance surveys are not designed to support absence determinations of any of these species. Therefore, sufficient survey effort should

be directed to the site to either confirm that the species in Table 2 use the site or to support absence determinations.” (Smallwood Report, p. 36.)

In contrast to Dr. Smallwood’s conclusions following his on-site surveys and review of the relevant literature, the DEIR makes the unsupported claim that the “Project Area provides habitat for both common and *a few special-status wildlife populations.*” (DEIR, p. 3.4-8; emphasis added.) Of the 101 special-status species that Dr. Smallwood determined were likely to have some potential to occur at the site, the DEIR analyzed occurrence likelihoods of only 24. (Smallwood Report, p. 36.) Moreover, the conclusions reached in the DEIR, which are unsupported by substantial evidence, are often found to conflict with the data. For example, though it determined that four of the special-status species are absent, records showing at least one of these has been observed nearby. The DEIR concludes that six of the species may potentially occur, in contrast to the record which shows one is very close. Other conclusions are misleading or ambiguous, such as the determination that one species has “limited habitat,” which is not a characterization of habitat availability generally accepted by the scientific community, nor is it explained in the DEIR. (DEIR, p. 3.4-18; Smallwood Report, p. 36.) Regarding the omission of any analysis of other species observed at the site, Dr. Smallwood explained:

Of the 77 special-status species whose occurrence likelihoods are not analyzed in the DEIR, ten have been documented on the Specific Plan area, 23 have been documented within 1.5 miles, seven have been documented between 1.5 and 4 miles, and 34 have been documented between 4 and 30 miles. The DEIR neglects to analyze the occurrence likelihoods of nine special-status species that actually occur, as well as 68 others that likely occur on the River Walk Specific Plan area. The DEIR is inadequate.

(Smallwood Report, p. 37.)

B. The DEIR’s Flawed Analysis of Potentially Significant Impacts to Biological Resources Results in Erroneous and Inaccurate Findings

Courts have held that an EIR’s unsubstantiated conclusion that an impact is not significant, without supporting information or explanatory analysis, is insufficient; the reasoning supporting the determination of insignificance must be disclosed. (See *City of Maywood v. Los Angeles Unified Sch. Dist.* (2012) 208 Cal.App.4th 362, 393; *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1111; *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 432.) Though an agency is not required to perform a quantified analysis of biological impacts, the supporting biological studies or analyses on which the agency’s conclusions

are based must be “sufficiently credible” to support the EIR conclusions. (*Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1468.)

The DEIR’s reliance on an incomplete and largely inaccurate assessment of the environmental setting—derived from unreported and unavailable survey results paired with a flawed review of misconstrued data—results in findings regarding the Project’s potentially significant impacts that are wholly unsupported and necessarily inaccurate. The DEIR’s conclusory statements and unsubstantiated determinations are drawn from misapplication of facts and misinterpretation of how to appropriately use data, and as such cannot reasonably be considered “sufficiently credible.”

Moreover, the DEIR’s discussion of impacts contains statements that are misleading or inaccurate, as well as conclusions that are misleading or misinterpreted. For example, Dr. Smallwood pointed out, the DEIR (p. 3.4-35) makes the claim that the special-status species of bumble bees observed at the site “are not specifically protected under state or federal law.” (Smallwood Report, p. 37.) “To the contrary, Western bumble bee and Crotch’s bumble bee are candidate endangered species under the California Endangered Species Act. Candidate species are protected to the same degree as species listed as threatened or endangered (see Fish & Game Code section 2052.1).” (*Ibid.*) Other misleading or inaccurate statements include:

- Attributing the decline of the Western bumble bee to a parasite and to honeybees. Substantial evidence exists that habitat loss and pesticide use have contributed considerably to its decline. (Smallwood Report, p. 37.) If Western bumble bee occurs in the Specific Plan area, “habitat loss caused by the development of the River Walk Specific Plan could contribute substantially to the extirpation of Western bumble bee.” (*Ibid.*)
- Assertions that habitat for the three special-status species of bumble bee would be created by yards of new homes, parks, and along the river corridor. (DEIR, p. 3.4-36.) “However, the river corridor would not create new habitat because the river corridor already exists.” There is no evidence that yards or parks have ever provided habitat to the three special-status species of bumble bee. (Smallwood Report, p. 37.)
- Use of unreliable and unsubstantiated data to support its conclusions, such as inaccurate nesting and migratory information regarding the protected Swainson’s hawk, including a map purporting to show potential nesting sites for the hawk that is incomplete and inaccurate, omitting significant portions of the area that are clearly appropriate nesting sites, such as stands of large oak trees. (Smallwood Report, p. 43.)

- Claims that the levee shows no evidence of small mammal burrows and is thus less ideal for burrowing owl foraging. Dr. Smallwood's observations during his site visits, in contrast, returned evidence of numerous small mammals on the levee: burrows of ground squirrels, Botta's pocket gophers and California voles, including numerous vole runways through the grass on the levee. (Smallwood Report, p. 43.)
- Conclusory statements based on patently false data, including the spurious claim that although California ground squirrel burrows exist on the Specific Plan area, none of the burrows were large enough to support burrowing owls. Dr. Smallwood, who during his nearly 40 years of conducting wildlife surveys all over the state has never encountered ground squirrel burrows too small to support burrowing owls, observed numerous ground squirrel burrows at the site, including one next to a poison bait dispenser, all large enough to support burrowing owls. (Smallwood Report, photo 41, p. 44.)
- Flawed conclusions drawn from misinterpreted information, such as the determination that the Project would only have an "indirect impact" on burrowing owls and other species, despite the substantial loss of habitat and habitat fragmentation that will result from the Project. Loss of habitat is a direct impact that is "directly translatable to loss of individuals, because the environment's capacity to support those individuals is eliminated." (Smallwood Report, p. 44.)

The Project would unquestionably result in significant impacts to biological resources, many of which the DEIR fails to even mention, let alone discuss in detail. For example, the DEIR's downplays considerably the Project's adverse impacts to biological resources by offering only a limited discussion of its substantial contribution to habitat loss in the area. (Smallwood Report, pp. 44-45.) The DEIR neglects entirely to discuss Project impacts to wildlife resulting from habitat fragmentation and the ensuing loss of productive capacity. (*Ibid.*) "Habitat loss not only results in the immediate numerical decline of wildlife, but it also results in permanent loss of productive capacity. Habitat fragmentation multiplies the negative effects of habitat loss on the productive capacities of biological species (Smallwood 2015). None of these impacts, however, are specifically addressed in the DEIR." (*Id.* at p. 45.) Analyses of other impacts, such as impacts to wildlife movement, depredation by house cats, window and road collisions, are inadequately discussed or entirely omitted from the DEIR.

1. *The DEIR understates or wholly omits the Project's contribution to cumulative impacts in the region*

An EIR must discuss a cumulative impact if the project's incremental effects are "cumulatively considerable" when viewed "in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (CEQA Guidelines, §§ 15130, subd. (a), 15065, subd. (a)(3).) "[A] project-specific impact may be insignificant but its contribution to a cumulative impact may be cumulatively considerable." (*League to Save Lake Tahoe v. County of Placer* (2022) 75 Cal.App.5th 63, 148.) A lead agency has "an obligation to consider the present project in the context of a realistic historical account of relevant prior activities that have had significant environmental impacts." (*Environmental Protection Information Center v. California Dept. of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 524.)

An EIR may determine that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. A project's contribution is less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure, or measures designed to alleviate the cumulative impact. The lead agency *shall identify facts and analysis supporting its conclusion that the contribution will be rendered less than cumulatively considerable*. (CEQA Guidelines, § 15130, subd. (a)(3); emphasis added.) "A cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decisionmaker's perspective concerning the environmental consequences of the project, the necessity for mitigation measures, and the appropriateness of project approval." (*Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 431.)

Courts have found an EIR's discussion of cumulative impacts inadequate as a matter of law when they failed to include the requisite list of "past, present and reasonably anticipated future projects," or a summary of projections contained in an adopted general plan for a summary of cumulative development as is required by section 15130 of the Guidelines. (*San Joaquin Raptor, supra*, 27 Cal.App.4th at 740.) In *San Joaquin Raptor*, the court cited the EIR's assertion that "nonspecific 'cumulative development' will change the character of the community, increase light and glare and lead to the loss of agricultural land." (*Ibid.*) The determination that followed, which found "that although there has been a 'vast reduction in wildlife habitat areas, particularly wetlands,' due to 'encroachment into natural areas . . . as a result of urban expansion,' the '[c]umulative development of this and other projects within the Grayson Area will not contribute to that trend'" was "inexplicabl[e], [and] without any supporting facts or analysis." (*Ibid.*)

Similarly, the DEIR for the River Walk Specific Plan makes several contradictory assertions and conclusory statements unsupported by any facts or analysis. For example, the DEIR concedes that “[d]evelopment of the proposed Project would eliminate opportunities for movement habitat through the Specific Plan Area, along with any upland habitat adjacent to the movement corridors” and admits that the “proposed project would have cumulatively considerable impacts associated with biological resources.” (DEIR, p. 4.0–8.) However, the DEIR simultaneously insists, without any discussion or analysis, that the Project, “when considered alongside all past, present, and probable future projects (inclusive of buildout of the various General Plans within Stanislaus County), would not be expected to cause significant cumulative impacts” because “mitigation has been presented that would reduce any cumulative impact to a less than significant level.” (DEIR, p. 4.0–8.)

As required by section 15130 of the CEQA Guidelines, an EIR must include facts and analysis supporting its conclusion that a project’s contribution will be rendered less than cumulatively considerable such as a discussion of projections contained in an adopted general plan that summarize cumulative developments and their impacts. The only such discussion of cumulative impacts on biological resources in the DEIR is the statement that “[t]he local General Plan(s), in addition to regional, State, and federal regulations, includes policies and measures that mitigate impacts to biological resources associated with General Plan buildout.” (DEIR, pp. 4.0–7-8.)

Moreover, the DEIR, asserting that “[a]ll biological resources impacts were determined to be less-than-significant or less-than-significant with mitigation” seems to equate the mitigation of project-level impacts with reduction of cumulative impacts to less-than-significant levels. “Thus, the DEIR implies that cumulative effects are simply residual impacts of incomplete mitigation of project-level impacts, and that no residual impacts would remain. . . . Even if project-level mitigation is implemented, development projects cause cumulative impacts.” (Smallwood Report, p. 55.) Impacts may be mitigated to less-than-significant levels, but still cumulatively considerable when considered with other projects.

Dr. Smallwood notes that despite the “devastatingly large numbers of direct impacts to wildlife just at the River Walk Specific Plan alone,” which would unquestionably “add to the tolls at the other projects recently completed, underway or foreseeable,” the DEIR, without any supporting facts or analysis, falsely insists that “impacts related to biological resources would result in a less than cumulatively considerable contribution.” (DEIR, pp. 4.0–8-9.) “The DEIR does not provide a serious analysis. A fair argument can be made for the need to revise the DEIR to appropriately analyze potential cumulative impacts.” (Smallwood Report, p. 56.)

C. The DEIR Provides Inadequate Mitigation for Project Impacts to Biological Resources

An EIR shall describe feasible measures which could minimize significant adverse impacts. Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments. (CEQA Guidelines, § 15126.4, subd. (a)(1), (2).) “Formulation of mitigation measures shall not be deferred until some future time.” (Guidelines, § 15126.4, subd. (a)(1)(B).)

“Deferral of the specifics of mitigation is permissible where the local entity commits itself to mitigation and lists the alternatives to be considered, analyzed and possibly incorporated in the mitigation plan. On the other hand, an agency goes too far when it simply requires a project applicant to obtain a biological report and then comply with any recommendations that may be made in the report.” (*King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 856 [*King & Gardiner Farms*]; *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275.)

An EIR cannot avoid studying impacts to biological resources by proposing a plan to mitigate presumed impacts based on future studies unless the mitigation measures and mitigation performance standards are identified. (*San Joaquin Raptor Rescue Ctr. v County of Merced* (2007) 149 CA4th 645, 671 [*San Joaquin Raptor Rescue Center*].)

In *San Joaquin Raptor Rescue Center, supra*, 149 Cal.App.4th at 668, the court found the EIR’s proposed mitigation of impacts to special-status species inadequate because the agency improperly deferred formulation of significant aspects of mitigation, and therefore failed to comply with CEQA’s informational requirements. The EIR in that case imposed a 300-foot buffer around areas where special-status species were presumed to occur, and conditioned future activity at those locations upon the completion of either a protocol-level survey to demonstrate the absence of such species at the site or “implementation of a Management Plan developed by a qualified biologist in consultation with appropriate jurisdictional agencies including California Department of Fish & Game and U.S. Fish and Wildlife Service.” (*Id.* at 669.)

The court found the EIR impermissibly deferred mitigation because it allowed for future formulation of land management aspects of the mitigation measures, and therefore impermissibly deferred the development of important mitigation measures until after project approval. (*Id.* at 669.) The court found the mitigation measures only contemplated a “generalized goal of maintaining the integrity” of species habitat, which did not satisfy CEQA’s requirement that specific criteria or performance standards be enumerated in order to find deferral of mitigation proper. (*Id.* at 70.) The EIR’s promise of future land management plans left “the reader in the dark about what land management steps will be

taken, or what specific criteria or performance standard will be met, if this presumption is confirmed by the later protocol studies.” (*Ibid.*)

The court indicated that the EIR in *San Joaquin Raptor Rescue Center* did include “many valid mitigation measures,” such as “various erosion controls and monitoring measures . . . [and] [p]reconstruction mitigation measures . . . to allow mobile animal species to vacate” areas where project activity would take place, as well as some details of what a land management plan to mitigate impacts might include, such as “periodic mowing, rotational grazing, and weed abatement.” (*San Joaquin Raptor Rescue Center, supra*, 149 Cal.App.4th at 669-670.) Ultimately, however, it found that the “success or failure of mitigation efforts in regard to impacts on such [special-status] species may largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review within the EIR. The fact that the future management plans would be prepared only after consultation with wildlife agencies does not cure these basic errors under CEQA, since no adequate criteria or standards are set forth.” (*Id.* at 670.)

Similarly, the DEIR defers mitigation of impacts to special-status species to just before the commencement of construction, and proposes, following the completion of preconstruction surveys, to establish “appropriate buffers” around those sites. (DEIR, p. 3.4-48.) The mitigation described in the DEIR, however, includes far fewer details than the EIR in *San Joaquin Raptor Rescue Center*, which included specifics as to buffer size and minimum setbacks, as well as specified conditions to be met prior to the commencement of any project activity within those zones. Any discussion of what is considered an “appropriate” buffer, such as size and shape, as well as any specifics regarding avoidance measures, are entirely omitted from the DEIR. (DEIR, pp. 3.4-47–50.) The document falls far short of even the mitigation found inadequate in *San Joaquin Raptor Rescue Center*, stating only that “[m]onitoring shall be conducted to confirm that project activity is not resulting in detectable adverse effects” on species. (DEIR, p. 3.4-48.) The DEIR commits only to the completion of preconstruction surveys to confirm the presence of species of concern, rather than the more stringent and accurate protocol-level surveys proposed in *San Joaquin Raptor Rescue Center*. While the lead agency in *San Joaquin Raptor Rescue Center* presumed the presence of special-status species in locations they were likely to occur—even when initial reconnaissance surveys failed to detect them—and proposed implementation of mitigation at those sites as a precautionary measure, the DEIR omits from its list of potentially impacted species a majority of the species that Dr. Smallwood observed during his site surveys or that are indicated as likely to occur by wildlife agencies’ reports and databases.

By deferring surveys to the time of future construction of each village, Dr. Smallwood notes, “the DEIR effectively skips detection surveys altogether, and only

pretends that preconstruction, take-avoidance surveys are detection surveys.” (Smallwood Report, p. 35.)

This flawed approach fails to disclose the potential impacts of the project on biological resources, and fails to protect the species at the time of construction as well, because these species are generally the most difficult to detect and are least likely to be detected by preconstruction surveys due to the weaker protocols and timing of these types of surveys. Implementing preconstruction surveys as surrogates for detection surveys is therefore inadequate mitigation.

(*Ibid.*)

Performing these surveys, furthermore, just days before construction is set to begin makes the effort all but useless. Dr. Smallwood noted that take-avoidance surveys to avoid impacts to active nesting bird species would require a sizable force of biologists conducting many surveys on many dates throughout the breeding season on a site as large as the Project area. (Smallwood Report, p. 58.) Dr. Smallwood’s own efforts to conduct nesting surveys on another site that was only 12.74 acres in size, for instance, required at least 30 surveys over a partial breeding season, and the nests of most small birds that nest in trees, shrubs and on the ground still evaded detection. (*Id.* at pp. 58-59.)

The DEIR fails to base its efforts at mitigation on accurate factual data, improperly defers formulation of mitigation measures until after the EIR has been certified and the Project has been approved, and/or provides confounding information that renders a meaningful review of its ability to minimize or avoid impacts to species impossible. For example:

- The DEIR proposes to conduct preconstruction surveys “within 14 days before commencement of any construction activities that occur during the nesting season (February 15 to August 31)” for mitigation of impacts to any protected bird species. (DEIR, p. 3.4-49.) As indicated by Dr. Smallwood, the “avian breeding season recognized by the CDFW is now 1 February through 15 September. The DEIR should be revised accordingly.” (Smallwood Report, p. 58.)
- “Finding all of the active bird nests on the project site would require a phenomenal effort by many qualified biologists working together throughout the breeding season.” (*Id.* at 60.) Surveying a site 116 acres in size that contains more than 600 trees is infeasible and guaranteed to be ineffective at mitigating impacts to nesting bird species.

- The DEIR's improper deferral of mitigation and the language used to describe future mitigation efforts "allows a single individual to make a subjective decision, outside the public's view, to determine the buffer area for any given species. This measure lacks objective criteria, and is unenforceable." (*Id.* at 60.)
- The DEIR provides incomplete, confounding, and misleading information relating to impacts to biological resources and the proposed mitigation of those impacts. For example, in a discussion about compensatory mitigation, the DEIR lists a range of ratios to be used to determine the size of land conserved to compensate for the permanent loss of habitat caused by the Project. (DEIR, p. 3.4-49.) The DEIR indicates that these ratios are based on a 30-year-old CDFW staff report but does not offer any explanation or discussion of the facts or analysis that make this staff report an appropriate reference for the Project.
- The DEIR fails to provide substantial evidence or factual support for its determination that implementation of proposed mitigation will "ensure that potential impacts [to all biological resources at the Project site] are reduced to a less than significant level." (DEIR, pp. 3.4-50-68.)
- Mitigation measure 3.4-9 is not a mitigation measure at all, but rather a description of the administrative and regulatory steps that should have been taken before a determination of impacts to the environment (which should have happened before the DEIR was circulated for public review). (DEIR, p. 3.4-56; Smallwood Report, p. 60.)
- The DEIR fails to propose mitigation for riparian habitat and wetlands because it erroneously—and without substantial evidence or factual support—concluded that the Project would have no impacts on these resources or that they are not subject to the protections afforded to federal or state jurisdictional waters. (DEIR, pp. 3.4-55-57.) Dr. Smallwood describes, for example, evidence in the National Wetland Inventory, a publicly available U.S. Fish and Wildlife Service website that provides maps and classifies wetland features. The site showed a classified wetland "readily visible in the aerial photos of the property, [that] is never discussed in the DEIR. This wetland is likely to be impacted by property development and is a potential ecological hotspot for listed species. Yet the DEIR fails to include mitigation associated with project impacts, such as drainage increasing or decreasing as a result of construction and stormwater management, or impacts to wildlife species." (Smallwood Report, p. 61)
- The DEIR proposes to compensate for the permanent loss of burrowing owl foraging habitat "by preservation and management of foraging habitat of at least a

similar quality and equivalent acreage at a biologically appropriate location. An example of similar quality shall be cropland for cropland, grassland for grassland, etc.” (DEIR, p. 3.4-48.) Dr. Smallwood points out that this is a misguided metric by which to measure “appropriate” habitat to compensate for this loss.

“Appropriate would be protecting lands known to provide habitat to burrowing owls, whether that land be used in crop production or it is grassland or something else. This is important because most cropland in California is no longer occupied by burrowing owls, which are rapidly disappearing from California.” (Smallwood Report, p. 58.)

Based on all of the above, the DEIR fails to provide the bare minimum required by CEQA, such as facts and analysis, not bare conclusions and opinions. (*King & Gardiner Farms, supra*, 45 Cal.App.5th at 869.) Dr. Smallwood concluded that the DEIR “insufficiently discloses wildlife and plant resources on the Specific Plan area and the expanded Sphere of Influence.” (Smallwood Report, p. 34.) “The DEIR needs to be withdrawn from public circulation and revised after the completion of appropriate surveys.” (Smallwood Report, p. 44.)

III. THE DEIR FAILS TO FULLY ANALYZE AND DISCLOSE PROJECT IMPACTS TO WATER SUPPLY (DEIR CHAPTER 3.9)

The fundamental purpose of an EIR is to “provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment.” (Pub. Resources Code, § 21061.) An EIR shall include a detailed statement setting forth all significant effects on the environment of the proposed project. (Pub. Resources Code, § 21100, subd. (b)(1).) “The informational purposes of [CEQA] are not satisfied by an environmental impact report that simply ignores or assumes a solution to the problem of supplying water to a proposed land use project. Decision makers must, under the law, be presented with sufficient facts to evaluate the pros and cons of supplying the amount of water that the project will need.” (*Vineyard, supra*, 40 Cal.4th at 413.)

A. Groundwater Conditions and Impacts are Misreported

The City of Riverbank is located within the San Joaquin Valley and the Modesto Groundwater Subbasin, which is designated a high-priority basin by the Department of Water Resources (“DWR”). (DEIR, p. 3.9-21.) Current uses in the Project area are predominantly agricultural with some residential use. Modesto Irrigation District (“MID”) provides water supply for agricultural operations in the region and maintains two easements in the Project area.

The City's sole source of water supply is groundwater delivered through a pressurized distribution system from nine wells and two one-million-gallon storage tanks located in the north-central portion of the Subbasin; it produced about 4,452 AF of groundwater in 2020 according to the DEIR. The DEIR estimates that "at full build-out, for the entire City Planning Area (i.e. future demand within the City limits and General Plan areas), the projected water demand will be 14,610 AFY, or 3.2 times the 2020 production." (DEIR, p. 3.9-9.)

According to the WSA prepared for the Project, water demands for the Project would be served using only the City's existing groundwater supplies, and no other supply source is evaluated. (WSA, DEIR Appendix H, p. 9.) The City participated in the development of the Groundwater Sustainability Plan ("GSP") for the Modesto Subbasin in January 2022 as part of the Stanislaus and Tuolumne Rivers Groundwater Basin Association ("STRGBA"), in which the City's supplies of groundwater were declared sufficient to meet current and projected future demands. (Modesto Subbasin GSP, p. 2-14.)⁵

The WSA determined that, based on the findings in the GSP, as well as those of "various groundwater investigations performed on groundwater availability in the subbasin . . . , the City's *groundwater supplies are expected to be highly reliable* for serving a future development such as the Proposed Project." (*Ibid.*; WSA, p. 18; emphasis added.) This depiction of a "highly reliable" groundwater basin, however, is a considerable departure from the description provided by DWR in a January 2024 Staff Report in which DWR rejected the GSP as incomplete. DWR indicated that the GSP offered a wildly inaccurate depiction of the condition of the Subbasin, instead characterizing the Subbasin as dangerously depleted and in a state of continued overdraft.⁶ DWR staff rejected the GSP due, in part, to its insufficient assessment of impacts to the subbasin from this continued overdraft and inadequate analyses of the number and location of wells anticipated to go dry during the 20-year implementation period and resulting impacts to land uses and property interests. (*Id.* at 2.)

⁵ Available at:

<https://www.strgba.org/Content/Documents/Documents/Modesto%20Subbasin%20GSP%2020220130.pdf>.

⁶ Specifically, DWR found "the Subbasin's Plan does not satisfy the objectives of the Sustainable Groundwater Management Act nor substantially comply with the GSP Regulations." (Letter from DWR to Eric Thorburn, Oakdale Irrigation District re: Sustainable Groundwater Management Office Evaluation of Modesto Subbasin 2022 GSP, dated January 18, 2024, p. 1, attached as Attachment 2.)

Questioning the GSP's proposed management actions that "would allow a portion of the Subbasin to operate below minimum thresholds for an extended duration during the 20-year implementation period" without explaining how this approach would avoid undesirable results, the Staff Report concluded that:

It does not appear from the GSP that the GSA considered lasting impacts that may occur even if groundwater levels improve after years of being below minimum threshold levels, such as permanent changes in land use practices (e.g., farmland fallowed, converted, or sold), decreased property values and population changes associated with years of inadequate or unreliable groundwater supplies (because below existing well or pump depths), and impacts or damage to, or abandonment of, domestic or agricultural wells whose productivity decreases or ceases at groundwater levels below minimum thresholds.

(DWR Staff Report, p. 11.)

Noting that the substantial and well-documented impacts resulting from widespread over-pumping in the Central Valley are acknowledged in the GSP, the DWR Staff Report expressed concern that the GSP nonetheless proposed a management approach with the "potential to cause lasting or irreversible undesirable results related to land subsidence, water quality, and interconnected surface water in the Subbasin even if groundwater levels recover above the minimum thresholds after 20 years of Plan implementation." (DWR Staff Report, p. 11.) The GSP contained no indication that these impacts were considered by the GSA or disclosed to interested parties. (*Ibid.*)

Despite likewise acknowledging the "well-documented" impacts of pumping from the basin volumes of groundwater greater than could be reasonably replenished, the DEIR asserts that "the Modesto Subbasin is not at risk of depleting a large percentage of its total volume of groundwater supply," before conceding that overdraft conditions will "require[] mitigation to meet the Subbasin sustainability goal." (DEIR, p. 3.9-9.) The City claims in both the DEIR and the WSA that these overdraft conditions, according to the GSP, are "occurring primarily in the eastern Subbasin – not the central Subbasin where the City is located," perhaps implying that future development in the City cannot contribute to overdraft conditions in the Subbasin. (*Ibid.*; WSA, p. 18.) Nevertheless, the documents assert, "many mitigation measures are presented in the GSP to ensure long-term sustainability of the Modesto Subbasin and will be implemented over the coming years." (WSA, p. 18.)

The DWR Staff Report directly refutes the claim that these mitigation measures will "ensure long-term sustainability" of the Subbasin. Specifically, the DWR Staff

Report explains that the GSP “does not appear to provide reasonable means to mitigate actual overdraft.” (DWR Staff Report, p. 13.) Notably, the DWR Staff Report identified significant inaccuracies in the GSP’s estimates of the Subbasin’s projected overdraft, such as the baseline overdraft—upon which the extent of mitigation needed to achieve sustainability would be based—which was determined, without explanation, to be more than 10 times lower than actual overdraft values reported for the Subbasin in recent annual reports. (*Ibid.*) Against this inconceivably diminished baseline, the DWR Staff Report estimated that the Subbasin would need 218 years of full implementation of the GSP’s projects proposed to mitigate overdraft, combined with conditions requiring no additional overdraft, to offset the actual loss of storage reported to have been experienced in the Subbasin in two recent years of annual reporting. (*Id.* at 14.)

According to the WSA prepared for the Project, “the total projected water supplies documented to be available for the Project during Normal, Single Dry, and Multiple Dry water years during a 20-year projection are more than sufficient to meet the projected water demand associated with the Project, in addition to existing and planned future uses.” (WSA, p. 22.) The WSA does not address, however, whether additional pumping of Subbasin groundwater to meet Project demands would have cumulative impacts on the basin and other groundwater users when considered together with other reasonably foreseeable demands on its diminishing groundwater levels.

The DEIR concedes that construction proposed by the Project would result in significant increases in impervious surface area at the site and reduced surfaces with moderate to high infiltration rates, resulting in reduced rainwater infiltration and groundwater recharge. (DEIR, p. 3.9-31.) As noted in the DEIR, the site contains a range of soil types with low, moderate, and high infiltration rates. “In general, sandy soils have higher infiltration rates and can contribute to significant amounts of groundwater recharge; clay soils tend to have lower percolation potential; and impervious surfaces such as pavement significantly reduce infiltration capacity and increase surface water runoff.” (*Ibid.*)

Evidence of the adverse impacts on groundwater recharge likely to result from Project development is found throughout the DEIR, such as in the statement that “the proposed Project would reduce the amount of pervious surfaces within the Project Area, [while] much of the site would be converted to impervious surface,” conceding that the Project would result in reduced groundwater recharge by decreasing surfaces with infiltration potential.⁷ (DEIR, p. 3.9-34.) The construction of new municipal water wells

⁷ Confusingly, the DEIR follows this statement with the erroneous finding that “[t]his would result in opportunities for groundwater recharge after the Project Area is fully developed.” (DEIR, p. 3.9-34.)

to meet Project demands will increase the capacity of available water and will eventually flow from the proposed Project wells to the rest of the City system—wells that were not included in the analysis provided in the WSA—would result in further depletion of the Subbasin’s available groundwater, contributing to its continued overdraft. (DEIR, p. 3.9-33.)

The Project also proposes to convert land in agricultural production to urban uses, further decreasing the available surface area that currently contributes to groundwater recharge. Development of the greater Project area with impervious surfaces, and the subsequent collection of rainwater from those impervious surfaces which will be routed into the proposed Project’s storm drainage system and eventually flow into the Stanislaus River or other downstream aquatic facilities will further reduce rainwater infiltration and groundwater recharge. In addition, future development that is highly likely to occur in the City’s expanded SOI, in the Reserve area for example, would increase water supply demands and decrease recharge opportunities further.⁸ These impacts were omitted from any discussion of impacts and assessments of available water supply. The findings reached by the DEIR and WSA that the proposed Project would not cause the substantial depletion of groundwater supplies or interfere substantially with groundwater recharge, were based in large part on the erroneous conclusions of the GSP and related water supply investigations, which concluded that “the groundwater supplies are expected to be highly reliable” and which were summarily rejected as inaccurate and misleading by DWR’s GSP Staff Report. (See DEIR, p. 3.9-32; WAS, pp. 9, 18; GSP Staff Report, p. 13.)

CEQA’s requirement that an EIR provide information adequate to inform the public of a project’s significant impacts are not, as discussed above, satisfied by assumptions or unsupported conclusions regarding provision of water supply to a proposed project. (*Vineyard, supra*, 40 Cal.4th at 434.) “Decision makers must, under the law, be presented with sufficient facts to ‘evaluate the pros and cons of supplying the amount of water that the [project] will need.’” (*Ibid.*, citing *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d at 829.) “The ultimate question under CEQA . . . is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable impacts of supplying water to the project.” (*Ibid.*) Here, the DEIR’s conclusions regarding the adequacy of a water supply are contrary to

⁸ “The entire Project Vicinity includes approximately 1,522 acres within the unincorporated county adjacent to the City of Riverbank. The Specific Plan Project area (i.e., the RWSP or Project) includes a 993-acre area proposed to be annexed and subsequently developed. The remaining land within the Project Vicinity is part of the SOI Amendment and would be held as Reserve land for possible long-range planning at some future time.” (WSA, p. 4.)

readily available information regarding the status of the groundwater Subbasin. (See Attachment 2.)

B. Future Water Supply Impacts are Not Analyzed

An EIR must consider, among other impacts, the cumulative impact of past, present and probable future projects. (Pub. Resources Code, § 21083, subd. (b); *Santa Clarita*, *supra*, 106 Cal.App.4th at 721.) Large or long-term developments such as the proposed Project have been scrutinized for the adequacy of their analysis of future projects on impacts to water supplies:

An adequate environmental impact analysis for a large project, to be built and occupied over a number of years, cannot be limited to the water supply for the first stage or the first few years. While proper tiering of environmental review allows an agency to defer analysis of certain details of later phases of long-term linked or complex projects until those phases are up for approval, CEQA's demand for meaningful information "is not satisfied by simply stating information will be provided in the future."

(*Vineyard*, *supra*, 40 Cal.4th at 431; citing *Santa Clarita*, *supra*, 106 Cal.App.4th at 723.)

"Tiering" of environmental review to defer analysis of projects that occur at multiple stages is encouraged and is appropriate when impacts and mitigation measures cannot be adequately determined during the first phase of analysis but are specific to later phases. Tiering, however, "does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration." (CEQA Guidelines, § 15152, subd. (b)). Certain mitigation or impacts analyses may be impractical when a large-scale project is in the initial approval stages. "But the future water sources for a large land use project and the impacts of exploiting those sources are not the type of information that can be deferred for future analysis. An EIR evaluating a planned land use project must assume that all phases of the project will eventually be built and will need water, and must analyze, to the extent reasonably possible, the impacts of providing water to the entire proposed project." (*Vineyard*, *supra*, 40 Cal.4th at p. 431; citing *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 206 [*Stanislaus Natural Heritage*].)

Additionally, "the future water supplies identified and analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic allocations ('paper water') are insufficient bases for decisionmaking under CEQA." (*Vineyard*, *supra*, 40 Cal.4th at 432.) "Where, despite a full discussion, it is impossible to

confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies.” (*Ibid.*) Here, DWR’s rejection of the STRGBA GSP noted that the projected overdraft estimates included in the GSP were significantly lower than the actual overdraft figures reported to DWR, indicating that the subbasin is being severely overdrafted, contrary to what Project proponents would have decisionmakers believe. As the Subbasin does not in fact offer a “highly reliable” water supply, as the DEIR and WSA insist, CEQA mandates discussion of an alternate supply to meet the Project’s demands.

C. Water Quality Impacts are Overlooked

The Project proposes planned urbanization of the Project area, which would result in “changes to land use, natural vegetation, and infiltration characteristics, and would introduce new sources of water pollutants,” such as sediment, oxygen-demanding substances (e.g., organic matter), nutrients (primarily nitrogen and phosphorus), heavy metals, bacteria, oil and grease, and toxic chemicals that can degrade receiving waters. (DEIR, p. 3.9-34.) Project-related increases in urban stormwater runoff may stem from erosion of disturbed areas, deposition of atmospheric particles derived from automobile or industrial sources, corrosion or decay of building materials, rainfall contact with toxic substances, decomposing plant materials, animal excrement, and spills of toxic materials on surfaces which receive rainfall and generate runoff. (DEIR, p. 3.9-35.) The DEIR identifies new sources of Project-related urban runoff, such as new residential uses within the Project area such as streets, driveways and parking areas, fertilizer wastes and bacterial contamination from yards, and hazardous materials storage constructed to serve new commercial development. (*Ibid.*)

These non-point source pollutants, such as automotive petroleum products, household hazardous materials, heavy metals, pesticides, herbicides, fertilizers, and sediment, could result in both temporary and long-term impacts. (DEIR, p. 3.9-29.) Both the construction and long-term operations of the Project, combined with increases in impervious surface area at the site resulting from increased urban development, are likely to contribute to degradations in water quality as these pollutants become more ubiquitous with Project-induced population growth.

To address potential impacts to water quality from discharge of pollutants and stormwater runoff resulting from new development, the DEIR proposes the construction of a new storm drainage collection and conveyance system, which may or may not include a water quality system with detention basins, a system of drainage swales to treat and convey collected stormwater, and facilities designed to address water quality standards and requirements; this system would allegedly be designed to function

independently from surrounding developments. (DEIR, p. 3.9-29.) Much of the system's details, including potential locations of detention basins and suggested layout of the system of collection and conveyance pipes, which may run "along the streets and within properties," is deferred until the design phase. (*Ibid.*)

Installation of the proposed storm drainage system would be realized via use of "MID-owned facilities for storm drainage discharge pending an agreement with MID." (DEIR, p. 3.9-35.) Should the City fail to reach an agreement with MID, the City would need to devise an entirely new system through which to discharge stormwater by way of retention within basins and infiltration into the subsurface soils through infiltration trenches. (*Ibid.*) An agreement with MID, the provisions of which, such as discharge flowrate limitations, maintenance obligations, fees, and other terms, have not yet been established, will "likely also allow the MID to temporarily restrict stormwater discharges to the canals, which may result in longer storage periods for volume within the basins." (DEIR, p. 3.9-36.) Adequate flood protection must be provided, by demonstrating that basins that have the capacity to store the volume sufficient to protect building pads from inundation from a 50-year design storm, as well as that of a higher-runoff storm event, such as the 100-year design storm storage volume, in the event that pumped discharge into the MID is temporarily restricted.

For the reasons discussed throughout the above sections, the DEIR fails as an informational document and fails to support its conclusions of Project-related impacts with substantial evidence as required under CEQA.

IV. THE DEIR FAILS TO FULLY ANALYZE AND DISCLOSE IMPACTS TO LAND USE (DEIR CHAPTER 3.10)

A specific plan EIR should contain analysis specific enough to reflect the level of detail in the plan. (CEQA Guidelines, § 15146.) However, analysis of significant effects "may not be deferred to later development under the specific plan, nor deferred to later tiered EIRs." (*Stanislaus Natural Heritage, supra*, 48 Cal.App.4th at 199.)

No specific plan may be adopted or amended unless it is consistent with the general plan. (Gov. Code, § 65454.) An inconsistency between a general plan and a specific plan occurs not only when there is a direct conflict, but also when a specific plan is indirectly in conflict with the general plan because it would "frustrate the general plan's goals and policies." (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 379; California Land Use Practice (Cal. CEB 2023), § 2.55.)

It is declared state policy that Local Agency Formation Commissions (“LAFCOs”), tasked with guiding development in each county by regulating the boundary changes of cities and districts, do so by “discouraging urban sprawl, preserving open-space and prime agricultural lands, encouraging the efficient provision of government services, and encouraging the orderly formation and development of local agencies.” (Gov. Code, § 56301). Any formation of a new district, incorporation of a city, annexation to or detachment from a city or district, . . . or merger or establishment of a subsidiary district is a “change of organization” that must be approved by a LAFCO. (See Gov. Code, §§ 56021, 56375.)

Stanislaus LAFCO, in keeping with this directive, embodies in its General Powers and Policy Guidelines the vital importance of agriculture in the County through policies directing that “boundary changes for urban development should only be proposed, evaluated, and approved in a manner which, to the fullest extent feasible, is consistent with the continuing growth and vitality of agriculture within the County.” (Stanislaus LAFCO General Powers and Policy Guidelines, Policy 22 – Agricultural Preservation Policy.) In line with the state requirement to consider the “effect of the [boundary change] proposal on maintaining the physical and economic integrity of agricultural lands” (Gov. Code, § 56668, subd. (e)), Stanislaus LAFCO’s mandates for the preservation of agricultural lands in the County include:

- Guide development away from agricultural lands where possible and encourage efficient development of existing vacant lands and infill properties within an agency’s boundaries prior to conversion of additional agricultural lands.
- Fully consider the impacts a proposal will have on existing agricultural lands.
- Minimize the conversion of agricultural land to other uses.
- Promote preservation of agricultural lands for continued agricultural uses while balancing the need for planned, orderly development, and the efficient provision of services.

(Stanislaus LAFCO General Powers and Policy Guidelines, Policy 22 – Agricultural Preservation Policy.)

The Project, including both the RWSP and the SOI expansion, fails to comply with several of the directives listed above, as explained below.

A. Failure to Preserve Agricultural Lands and Seek Reasonable Alternatives

Stanislaus LAFCO expressed numerous concerns in comments to the City on the NOP for the DEIR. Among those was the prevention of urban sprawl—a valid cause for concern, given the City’s accelerated growth. A city’s SOI, according to Stanislaus LAFCO policies, is territory “eligible for annexation and the extension of urban services within a twenty-year period,” while a Primary Area within the SOI is “eligible for annexation and extension of urban services within a zero to ten-year period.” (Stanislaus LAFCO Response to NOP – River Walk Specific Plan, June 29, 2021, p. 1.) The City of Riverbank, meanwhile, last sought approval for an SOI expansion from LAFCO, for which it added “approximately 1,479 acres intended to accommodate the City’s growth over the next 20 years,” in 2016. (*Ibid.*) In 2019, the City annexed approximately 400 acres of this area “for residential and commercial uses.” (*Ibid.*)

LAFCO, tasked with the goal to “protect and promote agriculture,” has adopted policies directing that “development should be guided away from agricultural lands, including prime agricultural land.” Contrary to this policy, “[i]t appears that the majority of the 1,535-acre sphere of influence expansion area is also considered prime farmland.” (Stanislaus LAFCO NOP comments, p. 2.) LAFCO requested in its comments on the NOP that the City include in the DEIR a full description of land within the Project area considered prime agricultural land by both the Department of Conservation and LAFCO, as well as “a range of alternatives to the proposal, including alternatives that focus on lands already within the sphere of influence and non-prime lands.” (*Ibid.*)

In addition to the above, Stanislaus LAFCO specifically requested that the City include in the DEIR a discussion of the following:

- Amendment proposals involving Sphere expansion that contain prime agricultural land will not be approved by LAFCO if there is sufficient alternative land available for annexation within the existing Sphere of Influence. The City’s analysis should identify undeveloped areas already within the City limits and Sphere of Influence that could be developed with similar uses.
- Territory not in need of urban services, including open space, agriculture, non-protested, or protested and not upheld Williamson Act contracted lands, shall not be assigned to an agency’s sphere of influence, unless the area’s exclusion would impede the planned orderly and efficient development of this area.

- Sphere of influence boundaries shall, to the extent possible, maintain a separation between existing communities to protect open space and agricultural lands and the identity of an individual community.

(Stanislaus LAFCO NOP comments, p. 2.)

Development of the proposed Project would result in the permanent conversion of approximately 661.33 acres of Prime Farmland, plus an additional 165.80 acres of land designated as Farmland of Statewide Importance by the state. (DEIR, p. 3.10-29.) The Project proposes to eliminate all of the land in the Project area currently designated as Agricultural Resource Conservation area. (DEIR, Table 3.10-5, p. 3.10-20.) Furthermore, the Project Area contains nine parcels under a Williamson Act contract. (DEIR, p. 3.10-29.)

Far from a full discussion of the Stanislaus LAFCO requests, the DEIR instead includes vague descriptions and dubious explanations of its unfettered destruction of prime farmland in the County. For example, instead of devising alternatives to the proposed Project that would not conflict with land under a Williamson Act contract, the DEIR instead offers to the landowners under Williamson Act contracts the following solutions: “[1] file a notice of nonrenewal and wait nine years for the contract to expire, [2] cancel with the payment of fees equal to 12.5% of the property value, or [3] complete an agricultural easement exchange.” (DEIR, p. 3.10-29.) Though this does not offer any viable solution to the landowner, the City seems to think it brings the Project into compliance with LAFCO policies: “A proper cancellation and/or agricultural easement exchange would ensure that there is no conflict with a Williamson Act contract.” (DEIR, p. 3.10-30.)

Regarding the request to consider sufficient alternative land available within the existing SOI for the development of the Project’s proposed 2,432 dwelling units, the DEIR offers only the following paragraph:

The Riverbank Housing Element identifies development potential within the city limit (1,870 units) and 4,842 units within the SOI. These units may include developable areas on prime farmlands, but exclude lands with Williamson act contracts. However, it should be noted that development opportunities throughout the city limits and SOI do not provide for contiguous parcels that provide opportunities for large areas of master planned development similar to that proposed by the Specific Plan.

(DEIR, p. 3.10-30.) No further discussion of why this land would be inappropriate for the proposed development is offered.

- *You know, we don't take our responsibilities lightly. We look at the totality of the City. We have capacities that we have to consider. We have a lot of other issues that we have to consider. The Housing Element is just one. We also need a new General Plan, which we've been advocating now for some time until we can afford it and all of that will go together. A lot of the people that have issued comments, either for or against some of the proposals, are the ones that were actually built this General Plan, and I want everyone to understand the General Plan is the City saying, we want you to come here and develop this is our RFP. And if we say we're going to turn our back on it, what are we saying to businesses coming here? I'm sorry, we're not going to entertain it because it doesn't fit us today. But that General Plan is an RFP for property owners and for developers and for all of that to work together, they have to consider all the other necessary the capacity of roads, the capacity of a sewer, capacity for water, everything else that goes along with that. So, we take our responsibilities very seriously. We just don't throw ideas out or discard them. We are committed to what we say we are going to do. With that. I want to wish everyone a Happy Thanksgiving and to all the other Veterans, thank you for your service. For me, it was my honor to serve this great country. Thank you.*

13. CLOSED SESSION

The public will have a limit of **3 minutes** to comment on Closed Session item(s) as set forth on the agenda prior to the City Council/LRA Board recessing to Closed Session.

No Items Scheduled.

14. ADJOURNMENT OF THE REGULAR MEETING

There being no further business, Mayor / Chair O'Brien adjourned the regular meeting at 7:18 P.M. to the next regular scheduled City Council / LRA Meeting of December 10, 2024 at 6:00 P.M.

ATTEST: (Adopted 12/10/2024)

APPROVED:



Gabriela Hernandez, CMC
City Clerk / LRA Recorder



Richard D. O'Brien
Mayor/ Chair