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VIA HAND DELIVERY

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RECEIVED

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SACRAMENTO LOCAL AGENCY
FORMATION COMMISSION

Re: Comments on the Draft Environmental Impact Report for the
Amendment of the Sphere of Influence for SMUD and Annexation
by SMUD of the Cities of West Sacramento, Davis, and Woodland and
Portions of Unincorporated Areas of Yolo County

Dear Mr. Brundage:

On behalf of the Coalition of California Utility Employees ("CUE"), this letter provides comments on the January 2006 Draft Environmental Impact Report ("DEIR") for the proposed Amendment of the Sphere of Influence for the Sacramento Municipal Utility District ("SMUD") and Annexation by SMUD of the Cities of West Sacramento, Davis, and Woodland and Portions of Unincorporated Areas of Yolo County ("Project"). CUE is a coalition of unions whose members work at essentially all of the electric utilities in California, both investor owned and publicly owned. The unions include the International Brotherhood of Electrical Workers, Local 1245, whose members work at both SMUD and the Pacific Gas and Electric Company ("PG&E"). CUE provides these comments based on concerns that the proposed Project may result in adverse environmental impacts affecting the areas where the members of the unions in CUE live and work.

SMUD has proposed to expand its sphere of influence to provide retail electric service to the cities of West Sacramento, Davis, and Woodland and portions of the unincorporated areas of Yolo County. SMUD plans to acquire the existing electric distribution facilities within the annexation area presently owned and

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operated by PG&E. In addition, SMUD proposes to construct, modify or upgrade the facilities and equipment necessary to separate the electric distribution system from PG&E's remaining system to bring the system up to a higher standard of reliability.¹ The Sacramento Local Agency Formation Commission ("LAFCo") has prepared the DEIR as the lead agency under the California Environmental Quality Act ("CEQA"). The DEIR examines the potential impacts resulting from construction and operation of the Project.

As these comments will demonstrate, the DEIR fails to comply with the requirements of CEQA and may not be used as the basis for approving the Project. It fails in significant aspects to perform its function as an informational document that is meant "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" and "to list ways in which the significant effects of such a project might be minimized."²

First, the DEIR fails to provide an accurate and complete description of the Project. The DEIR fails to describe and evaluate the relationship of the proposed annexation with the Roseville Energy Plant.

Second, the DEIR fails to adequately evaluate the Project's potential construction impacts on air quality. Sacramento and Yolo Counties are designated as non-attainment for specific ambient air quality standards. As a result of this problem, it is vital that potential criteria air pollutant emissions from Project activities be appropriately analyzed and mitigated.

Third, the DEIR fails to identify and mitigate potentially significant indirect air quality impacts resulting from the Project leading to increased operation of the Cosumnes Power Plant ("CPP").

Fourth, the DEIR fails to adequately disclose, evaluate and mitigate the Project's potential impacts on biological resources.

Fifth, the DEIR fails to accurately evaluate the Project's potential to induce increased pumping of water for irrigation. Increased pumping of irrigated water may have significant impacts on the groundwater table.

¹ DEIR at pp. ES-1/ES-2.

² *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391.

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Sixth, the DEIR improperly concludes that the Project will not place sensitive equipment in a flood zone.

Seventh, the DEIR's evaluation of the Project's potential impacts on energy conservation and consumption is inadequate.

Eighth, the DEIR is deficient because it fails to evaluate the potential impact that SMUD's annexation of PG&E territory may have on the ability to respond to power outages within the annexation area. Longer power outages may increase the risk of attendant health, safety and environmental impacts.

Ninth, the DEIR proposes mitigation measures for agricultural impacts that are insufficient and inconsistent with the City of Davis Municipal Code.

Tenth, the DEIR fails to adequately analyze cumulative impacts.

Eleventh, the DEIR improperly identifies numerous significant impacts as "unavoidable" without any discussion of potential mitigation measures.

Twelfth, the DEIR fails to adequately examine the Project's potential to induce growth.

The DEIR must be revised to correct these failures and must then be re-circulated for public review and comment.

We have prepared these comments with the assistance of technical experts, including air quality expert Dr. Phyllis Fox, biologist Ellen Berryman, energy consultant David Marcus and land use and water expert Tom Reid. The comments of these experts are appended hereto as Exhibit A (*Dr. Fox Comments*), Exhibit B (*Berryman Comments*), Exhibit C (*Marcus Comments*) and Exhibit D (*Reid Comments*). Their *curriculum vitae* are attached as Exhibits E through H. Please note that these experts' comments supplement the issues addressed below and should be addressed and responded to separately.

I. CEQA REQUIRES IDENTIFYING ALL POTENTIALLY SIGNIFICANT PROJECT IMPACTS AND INCORPORATING FEASIBLE MITIGATION MEASURES

CEQA has two basic purposes. First, CEQA is designed to inform decisionmakers and the public about the potential, significant environmental effects of a project.³ Except in certain limited circumstances, CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR").⁴ An EIR's purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, an EIR "protects not only the environment but also informed self-government."⁵

To fulfill this function, the discussion of impacts in an EIR must be detailed, complete, and "reflect a good faith effort at full disclosure."⁶ An adequate EIR must contain facts and analysis, not just an agency's conclusions.⁷ CEQA requires an EIR to disclose all potential direct and indirect, significant environmental impacts of a project.⁸ A significant environmental impact is "a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance."⁹

The second purpose of CEQA is to require public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures.¹⁰ If an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures sufficient to minimize these impacts.¹¹ This requirement is the heart of CEQA. CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project

³ 14 Cal. Code Regs. ("CEQA Guidelines") § 15002, subd. (a)(1).

⁴ See, e.g., Pub. Resources Code § 21100.

⁵ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

⁶ CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

⁷ See *Citizens of Goleta Valley v. Board of Supervisors*, *supra*, 52 Cal.3d at 568.

⁸ Pub. Resources Code § 21100, subd. (b)(1); CEQA Guidelines § 15126.2, subd. (a).

⁹ CEQA Guidelines § 15382.

¹⁰ CEQA Guidelines § 15002, subs. (a)(2)-(3); see also, *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors*, *supra*, 52 Cal.3d at 564; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376, 400.

¹¹ Pub. Resources Code §§ 21002.1, subd. (a), 21100, subd. (b)(3).

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alternatives or mitigation measures.¹² Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the EIR to meet this obligation.

Mitigation measures must be designed to minimize, reduce or avoid an identified environmental impact or to rectify or compensate for that impact.¹³ A public agency may not rely on mitigation measures of uncertain efficacy or feasibility.¹⁴ "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors.¹⁵ Mitigation measures must be specific and fully enforceable through permit conditions, agreements or other legally binding instruments.¹⁶ Mitigation measures that are vague or so undefined that it is impossible to evaluate their effectiveness are legally inadequate.¹⁷

II. THE DEIR FAILS TO DESCRIBE THE PROJECT'S RELATIONSHIP TO THE ROSEVILLE ENERGY PARK POWER PLANT

The SMUD Annexation application states that the 160 MW Roseville Energy Park power plant must be commissioned in order to have adequate load serving capacity in the annexation territory.¹⁸ The DEIR, however, fails to disclose or evaluate the relationship between SMUD and the Roseville Energy Park power plant.

An accurate project description is the *sine qua non* of an informative, legally adequate EIR.¹⁹ A legally sufficient project description must contain a "general description of the project's technical, economic, and environmental characteristics,

¹² Pub Resources Code §§ 21002-21002.1.

¹³ CEQA Guidelines § 15370.

¹⁴ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation measure because no record evidence existed that replacement water was available).

¹⁵ CEQA Guidelines § 15364.

¹⁶ CEQA Guidelines § 15126.4, subd. (a)(2).

¹⁷ *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 79.

¹⁸ SMUD Annexation Application at p. 55.

¹⁹ *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192.

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considering the principal engineering proposals if any and supporting public service facilities."²⁰

While an EIR need not contain design-level description of the Project, it must contain sufficient, specific information about the Project to allow an evaluation and review of its environmental impacts.²¹ Without an accurate description on which to base an EIR's analysis, CEQA's objective of furthering public disclosure and informed environmental decision-making would be impossible and consideration of mitigation measures and alternatives would be rendered useless.²²

As a result of the failure to identify the relationship of the Roseville Power Plant to the Project, the DEIR fails to disclose and evaluate significant environmental impacts. Increased or intensified operation of the Roseville Power Plant due to its relationship to the annexation may result in significant air pollutant emissions.

If key Project features are not described, then the related direct, indirect and cumulative impacts cannot be evaluated; mitigation measures cannot be imposed; and alternatives cannot be effectively evaluated. The omission of the Project's relationship to the Roseville Power Plant in the description of the Project must be corrected in a revised DEIR. Because such revisions would be significant, the revised DEIR must also be recirculated for public review and comment.²³

III. THE DEIR'S EVALUATION OF AIR QUALITY IMPACTS IS LEGALLY DEFICIENT

The Sacramento Valley Air Basin is designated as non-attainment for specific ambient air quality standards.²⁴ As a result of this problem, it is vital that potential criteria air pollutant emissions from Project activities and resulting impacts on ambient air quality be appropriately analyzed. In particular, the potential impact from construction-related emissions must be accurately evaluated and appropriate mitigation measures must be proposed. The DEIR's evaluation of

²⁰ CEQA Guidelines § 15124, subd. (c).

²¹ *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20.

²² *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193, 197-198, 203.

²³ Pub. Resources Code § 21092.1; CEQA Guidelines § 15088.5; *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.*, *supra*, 6 Cal.4th at 1129.

²⁴ Dr. Fox Comments.

construction emissions, however, is inaccurate, lacks foundation, and fails to identify adequate mitigation.

A. The DEIR's Description of the Project's Construction Activities Is Inadequate

An EIR must provide enough analysis and detail about environmental impacts to enable decisionmakers to make intelligent judgments in light of the environmental consequences of their decisions.²⁵ Under the law, the lead agency must make a good faith effort to fully disclose the environmental impacts of the project. This requirement cannot be met unless the project is adequately described and existing setting information is complete.²⁶ Both the public and decisionmakers need to fully understand the implications of the choices presented by the Project, mitigation measures, and alternatives.²⁷

The purpose of reviewing and evaluating an EIR include disclosing agency analyses, checking for accuracy, and detecting omissions.²⁸ This objective can only be accomplished if the EIR contains sufficiently detailed information regarding its methodologies, assumptions, inputs, and results. As discussed below, the DEIR fails to provide sufficient information to enable informed decision-making by LAFCo, the public, and the permitting agencies.

1. The DEIR Lacks a Construction Schedule and Provides No Information on the Project's Buildout Horizon

Impacts on air quality from construction and operation depend on the duration and phasing of the various Project components.²⁹ Yet the DEIR lacks any information on the anticipated buildout horizon of the proposed Project components. The DEIR analyzes the physical Components 4, 5, and 9 at the project level, yet defers analysis of physical Components 6, 7, and 8 to a later date. The DEIR vaguely refers to a "preliminary construction schedule" used for its air quality analysis, yet fails to include this schedule.³⁰ Further, the DEIR contains no

²⁵ See CEQA Guidelines § 15151; *Kings County Farm Bureau v. City of Hanford*, *supra*, 221 Cal.App.3d 692.

²⁶ See *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199.

²⁷ See *Laurel Heights Improvement Ass'n v. Regents of University of California*, *supra*, 6 Cal.4th at 1123.

²⁸ CEQA Guidelines §§ 15200(a)-(c).

²⁹ The DEIR refers to the Project components as "Program Components."

³⁰ DEIR at p. IV-32.

information whatsoever on the anticipated duration of construction activities or buildout horizon for any of the individual Project components as well as the entire Project.

The lack of a detailed construction schedule, particularly the overlap of construction phases, prevents adequate review of the DEIR's air quality analysis. The DEIR must be revised to include a detailed construction schedule for those Project components that were reviewed at the project level showing the phasing of construction activities for the various Project components. Further, the DEIR should contain a construction schedule for the remaining Components 6, 7, and 8 with a projected buildout horizon for each component.

2. The DEIR Fails to Provide Adequate Support for Fugitive Dust Emission Estimates from Construction

The DEIR presents fugitive dust emissions based on "an approximate release of 10 lb/acre-day, and on estimates of the maximum areas of disturbance for each infrastructure component." The DEIR concludes that fugitive dust emissions from construction of each component would be below the 150 lb/day threshold used by the Yolo-Solano Air Quality Management District ("YSAQMD") and would therefore constitute a less than significant impact.³¹ The DEIR fails to provide any support for its assumptions and calculations, such as the estimates of the maximum area of disturbance of each component or the origin of the emissions factor.

CEQA requires conclusions in an EIR to be supported by substantial evidence.³² Furthermore, an EIR must provide the reader with the analytic bridge between its ultimate findings and the facts in the record.³³ By failing to provide any support for its fugitive dust emission estimates, the DEIR's findings lack foundation. The DEIR should be revised to include all assumptions and calculations for fugitive dust emissions.

³¹ *Id.*

³² Pub. Resources Code § 21081.5; CEQA Guidelines § 15091, subd. (b).

³³ *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506; see CEQA Guidelines, § 15091.

B. The DEIR Improperly Defers Construction Air Quality Impact Analysis for Project Components 6, 7, and 8

The DEIR analyzes Components 1, 2, 3, 4, 5, and 9 at the project level but analyzes future Components 6, 7, and 8, a new transmission line, a new substation, and distribution system upgrades, at the program level only. The DEIR maintains that “[i]t is premature for this EIR to develop specific alignments for Program Component 6 or specific locations for Program Component 7.”³⁴ Specifically, the DEIR states that “SMUD will determine the exact locations and configurations of such facilities only after preparation of site-specific environmental analyses, which will be contained in one or more subsequent environmental documents.”³⁵ The DEIR justifies this approach on the grounds that “[c]onsistent with the tiering approach adopted by this Program and encouraged by CEQA, future environmental analyses for projects associated with this Program will concentrate on the environmental effects that may be mitigated or avoided in connection with the decision on each later project.”³⁶ The DEIR further elaborates that “SMUD ... would have to prepare one or more additional environmental document(s) to analyze the impacts of these Program components on the environment at a project level.”³⁷

Despite its assertion that additional environmental documents would be prepared, it appears that LAFCo attempts to evade, rather than “tier” the environmental review for the Project, thereby never quantifying total emissions from the Project. Deferred analysis of the remaining components, as proposed in the DEIR, would potentially fail to identify and, consequently, adequately mitigate potential, significant impacts.

First, the DEIR indicates that SMUD will prepare a detailed construction schedule and updated emissions inventory before construction of the substation and proposes mitigation measures that would be required in the event that emission of ozone precursors, when added to the other infrastructure construction anticipated at the same time, would exceed 85 lb/day, the Sacramento Metropolitan Air Quality Management District’s (“SMAQMD”) CEQA significance thresholds.³⁸ Yet no such analysis with associated, required mitigation is proposed for Component 6, the

³⁴ DEIR at p. II-20.

³⁵ DEIR at p. II-4.

³⁶ DEIR at p. II-6.

³⁷ DEIR at p. ES-2.

³⁸ DEIR at p. IV-33. SMAQMD recommends only a quantitative significance threshold for NO_x but not for ROG. Further, the DEIR should have required YSAQMD’s lower significance thresholds of 82 lb/day to determine significance of ozone precursors.

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Woodland-Elverta Transmission Line. It appears that the DEIR attempts to evade environmental review for this component.

Second, the DEIR recognizes that "specific construction details of the Willow Slough substation or revisions to the construction schedule could result in NOx construction emissions exceeding the threshold" and that this "would be a significant impact."³⁹ Despite this recognition, the DEIR, at this point, declares no significant impact from construction of Project components that are constructed simultaneously and defers further analysis to subsequent environmental review.⁴⁰

Moreover, the DEIR's construction emissions inventory, based on a preliminary construction schedule provided by SMUD, shows that construction of the Willow Slough substation is anticipated concurrently with Component 4, the Power Inn Road to Hedge Substation Transmission Line.⁴¹

According to the DEIR, Project construction is anticipated to occur "generally between May 1 and September 30" and is projected to begin in 2006.⁴² Clearly, the time period between the anticipated certification of the Final EIR for the Project and the anticipated start of construction on May 1, 2006 would not allow for enough time to complete a separate, detailed project level individual environmental review for the Willow Slough substation, as proposed by the DEIR. Thus, a detailed project level environmental review for this Project component should have been included in the DEIR.

In sum, there are several indications that an adequate supplemental environmental review of the Project and all its components will not be guaranteed if the DEIR is certified, as proposed. The DEIR should be revised to include a project level air quality analysis for all Project components that can reasonably be anticipated to have overlapping construction phases, particularly, the Willow Slough substation.

³⁹ DEIR at p. IV-32.

⁴⁰ DEIR at p. IV-33.

⁴¹ DEIR at p. IV-31.

⁴² DEIR at pp. II-21 and G-6/G-7.

C. The DEIR's Air Quality Analysis Underestimates Construction Emissions and Fails to Identify Significant Impacts

As demonstrated by air quality expert Dr. Phyllis Fox's attached comments, the DEIR's air quality analysis considerably underestimates construction emissions. As a consequence, it fails to identify and adequately mitigate significant impacts from construction diesel exhaust emissions and fugitive dust emissions. If estimated correctly, NOx and PM10 emissions from construction of the Project would exceed even the YSAQMD's and SMAQMD's quantitative daily significance thresholds.⁴³

1. The DEIR Improperly Reduces SMAQMD's Recommended Emission Factors for Off-road Equipment and, Thus, Fails to Identify Significant NOx Emissions

For its construction emission estimates, the DEIR's air quality analysis relies on predicted emission factors for diesel exhaust from off-road construction equipment for the year 2006 contained in SMAQMD's Guide to Air Quality Assessment.⁴⁴ SMAQMD's predicted emission factors for off-road equipment are provided in pounds of pollutants per day.⁴⁵ The DEIR's air quality analysis reduces these emission factors for all off-road equipment by 20%, assuming an "80% active cycle."⁴⁶

This reduction is improper because typical load factors and typical daily hours of operation of the equipment at a construction site are already factored into the emission factors developed by SMAQMD.⁴⁷ The procedure recommended by SMAQMD simply requires multiplying the predicted emission rate in pounds per day for pollutant by target year times the number of pieces of equipment.⁴⁸

Dr. Fox has estimated emissions from Project construction adjusting the emission factors for off-road equipment to 100% of the SMAQMD-recommended emission factors and otherwise using all of the DEIR's assumptions. Her attached comment letter presents the detailed calculations.

⁴³ Dr. Fox Comments at p. 5.

⁴⁴ DEIR at pp. G-6 and G 7.

⁴⁵ SMAQMD, A Guide to Air Quality Assessment in Sacramento County (July 2004) at p. 3-6, Table 3-2.

⁴⁶ DEIR at pp. G-7 through G-10.

⁴⁷ Dr. Fox Comments at p. 5.

⁴⁸ *Id.*

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Dr. Fox's calculations demonstrate that NOx emissions from construction would exceed the YSAQMD's significance threshold of 82 lb/day as well as the SMAQMD's significance threshold of 85 lb/day.⁴⁹ By introducing a fictitious "active load factor," the DEIR reduced estimated emissions from construction to below both Districts' NOx significance thresholds.

Therefore, the DEIR erroneously concluded that Project construction would not result in significant adverse impacts on air quality. If using the correct calculation procedure, NOx emissions would considerably exceed both Districts' significance thresholds. The DEIR's air quality analysis must be revised to address this error and the DEIR must require adequate mitigation to reduce or eliminate the significant impact from NOx emissions.

2. Actual Construction Activities May Be Inconsistent With the SMAQMD Assumptions Used to Develop Emission Factors, Resulting in Higher Actual Emissions Than Estimated

The DEIR's air quality analysis relies on predicted emission factors for diesel exhaust from off-road construction equipment contained in the SMAQMD Guide to Air Quality Assessment for the Year 2006.⁵⁰ The SMAQMD's predicted emission factors were developed to reflect average emissions from construction equipment in future years, taking into account the composition of the entire construction vehicle fleet, including a certain fraction of newer vehicles that comply with the California Air Resources Board ("CARB") Tier 1 or Tier 2 emission standards.⁵¹

Nevertheless, the Project's construction fleet may not reflect the predicted average construction fleet assumed for developing SMAQMD's construction emission factors for off-road equipment. Given the long life of diesel engines, pre-1996 equipment may remain in use for decades without any retrofitting and may therefore be used extensively by the crews contracted for construction of the Project.⁵²

⁴⁹ Dr. Fox Comments at p. 6.

⁵⁰ DEIR at pp. G-6/G 7.

⁵¹ Dr. Fox Comments at p. 7.

⁵² *Id.*

The DEIR cannot rely on 2006 emission factors unless it specifically requires as an enforceable mitigation measure that the construction equipment meet the assumptions built into SMAQMD's emission factors.⁵³ To ensure that a project's construction emissions do not exceed emission estimates using these emission factors, SMAQMD's guidelines require explicitly that the lead agency should include the following conditions for construction activities:⁵⁴

- The number of pieces of equipment operating at the construction site should be limited to the number used in the emission calculations.
- The amount of grading on any one day should be limited to the area used in the emission calculations.
- If the emission calculations are based on the use of newer, low-emitting equipment, then the Project construction should be limited to using only the low emission equipment.
- Maintain heavy-duty earthmoving, stationary and mobile equipment in optimum running condition, because emission estimates assume proper engine tuning.

The DEIR does not contain any of the above-listed provisions. Thus, actual diesel exhaust emissions from equipment used on site may be considerably higher than those presented in the DEIR. Project construction activities and equipment are not required to incorporate these control measures. Nor are they required to comply with any other of the assumptions relied on to develop SMAQMD's predicted emission factors such as the percentage of the fleet mix meeting Tier 1 or Tier 2 standards.

Therefore, the DEIR should be revised to reflect either the potential use of pre-Tier 1 construction equipment or, alternatively, to include mitigation measures requiring construction contractor fleets to meet the SMAQMD's 2006 emission factors as well as SMAQMD's above-cited conditions.

⁵³ *Id.*

⁵⁴ *Id.*

3. The DEIR's Assumptions for Phasing Construction Emissions Are Flawed, Resulting in Underestimates of Diesel Exhaust Emissions and Failure to Identify Significant Impacts on Air Quality

The DEIR's conclusion that emissions of all pollutants would be below YSAQMD's daily significance thresholds lacks sufficient evidentiary support.⁵⁵ The DEIR determined that the construction phases involving the largest emissions that may overlap would be construction of foundations and installation of poles for Project Component 4, the Power Inn Road to Hedge Substation Transmission Line Reconstruction, and the grading/underground work for Project Component 7, the Willow Slough substation.

The DEIR, however, provides neither SMUD's preliminary construction schedule nor any other support for its assumption that none of the other construction phases would be constructed concurrently. Further, the DEIR contains contradictory information with respect to the potential overlap of Project Component construction phases. On the one hand, the DEIR states that "[e]ach phase is such that, at any given location, one phase must be complete before the next can occur."⁵⁶ On the other hand, the summary of daily emissions contains emissions from two phases of one Project component, i.e. Phase 1, construction of foundations, and Phase 2, installation of poles, for Project Component 4, the Power Inn Road to Hedge Substation Transmission Line.⁵⁷ No explanation is provided for this discrepancy.

The DEIR estimated potential NO_x emissions from construction of Phase 1 and 2 of Project Component 4 plus emissions from Phase I of Project Component 7 at 74.9 lb/day. From the DEIR's Project description, it appears that Project Component 5, the North City Interconnection would be constructed concurrently with Project Component 4. (See Comment II.) Phase 1 (construction of foundation) of Project Component 5, has been estimated by the DEIR's air quality analysis at 14.9 lb/day. Thus, total NO_x emissions from construction of these four phases would be 89.8 lb/day (74.9 lb/day + 14.9 lb/day, exceeding YSAQMD's and quantitative daily significance threshold for NO_x of 82 lb/day. Simultaneous

⁵⁵ DEIR at p. IV-31.

⁵⁶ DEIR at p. IV-31.

⁵⁷ DEIR at p. IV-31, Table IV.C-3.

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construction of any other construction phase of Project Component 5 would similarly result in exceedance of YSAQMD's significance threshold.⁵⁸

In aggregate, the individual flaws in the DEIR's air quality analysis present pervasive evidence that construction emissions presented in the DEIR are considerably underestimated.⁵⁹ As a result, the DEIR fails to identify and adequately mitigate significant impacts. The DEIR should be revised to address the above-mentioned problems and be recirculated for public review.

D. The DEIR Fails to Identify Potential Significant Impacts from Construction Fugitive Dust Emissions

The DEIR's fugitive dust emission estimates for Project construction are based on the maximum daily acreage disturbed for each infrastructure component and an average emission factor of 10 lb/acre-day of PM10. Estimated emissions for Project Components 4, 5, 6, and 7 are 1.1 lb/day, 0.07 lb/day, 113 lb/day, and 5 lb/day of PM10, respectively. The DEIR concludes that fugitive dust emissions would be below YSAQMD's significance threshold of 150 lb/day of PM10 and therefore less than significant.⁶⁰ However, as discussed in the attached comments of Dr. Fox, fugitive dust emissions could potentially be substantially higher.⁶¹

The emission factor of 10 lb/acre-day of PM10 for fugitive dust emissions from construction sites appears to be based on the average fugitive dust emission factor for construction activities contained in the computer model URBEMIS.⁶² This is the modeling program recommended by SMAQMD's Guide to Air Quality Analysis to estimate emissions from Project construction and operation. The URBEMIS model also provides a worst-case emissions factor of 38.2 lb/day of PM10.⁶³ Using this model, Dr. Fox estimates that fugitive dust emissions from Project construction could potentially be up to 3.82 times higher than estimated by the DEIR.⁶⁴ Conditions at the construction site that would generate emissions of 13.3 lb/acre-day of PM10, only marginally higher than the average emissions factor of

⁵⁸ Dr. Fox Comments at p. 8.

⁵⁹ *Id.*

⁶⁰ DEIR at p. IV-32.

⁶¹ Dr. Fox Comments at p. 9.

⁶² URBEMIS is a computer program that can be used to estimate emissions associated with land development projects in California. URBEMIS stands for "Urban Emissions Model."

⁶³ Software User's Guide: URBEMIS2002 for Windows with Enhanced Construction Module, Version 8.7, Emissions Estimation for Land Use Development Projects (April 2005) at p. 25.

⁶⁴ Dr. Fox Comments at p. 9.

10 lb/acre-day of PM₁₀, would result in exceedance of YSAQMD's daily quantitative significance threshold of 150 lb/day of PM₁₀.⁶⁵ Construction of the Willow Slough substation could, under worst-case conditions such as windy days, result in fugitive dust emissions of 431.7 lb/day of PM₁₀.⁶⁶ This would substantially exceed YSAMQD's significance threshold.

Thus, the DEIR fails to identify and adequately mitigate the potential for significant daily dust emission impacts. These emissions would contribute to the existing violations of PM₁₀ ambient air quality standards in the Sacramento Valley air basin.⁶⁷ The DEIR must be revised to identify this potential significant impact and require adequate mitigation.

E. The DEIR's Operational Emission Estimate Fails to Include Entrained Road Dust and Fails to Identify a Potential Significant Impact

The DEIR's emission estimates for the operational phase of the Project, namely service and maintenance emissions, includes only diesel exhaust emissions. However, diesel exhaust emissions are not the only emissions from SMUD's vehicle fleet. When vehicles travel on paved or unpaved road, particles are: pulverized by the force of the wheels; lifted and dropped from the rolling wheels; and lifted from the road surface due to strong air currents in turbulent shear with the surface behind the vehicle.⁶⁸ This entrained road dust can be a considerable source of emissions from vehicle travel on paved and unpaved roads. Road dust originates from many sources, including: atmospheric fallout; windblown dust; brake and tire wear; and loose materials along the shoulders of the road which is entrained by mechanical turbulence created by vehicles.⁶⁹ The DEIR fails to include an emissions estimate for entrained road dust particulate matter emissions from SMUD's operational vehicle fleet.⁷⁰

The U.S. EPA has developed empirical formulas for calculating entrained road dust from vehicle travel on paved and unpaved roads, which were incorporated into the URBEMIS computer model recommended by SMAQMD for estimating

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Dr. Fox Comments at p. 10.

⁶⁸ *Id.*

⁶⁹ H. Moosmuller *et al.*, Particulate Emission Rates for Unpaved Shoulders Along a Paved Road, *Journal of the Air & Waste Management Association*, v. 48, 1998, pp. 398-407.

⁷⁰ See DEIR at App. G, Table G-8.

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emissions.⁷¹ CARB has developed an emission factor for unpaved roads of 2.27 pounds of PM10 per vehicle mile traveled ("VMT").⁷²

Daily entrained road dust emissions from SMUD's vehicle fleet could potentially exceed YSAQMD's 150 lb/day significance threshold and result in a significant impact that was not identified in the DEIR. Using the total daily mileage for SMUD's daily service and maintenance trips, 388.6 VMT/day⁷³, and assuming 20% travel on unpaved roads along the Project's transmission lines, would result in 176.4 lb/day of PM10 from entrained road dust based on the CARB's emission factor of 2.27 lb/VMT.⁷⁴ This would exceed YSAQMD's quantitative daily significance threshold.⁷⁵ Additional weekly trips for substation maintenance would add to the total entrained road dust emissions attributable to vehicle travel.⁷⁶

These emission estimates only serve as an example of the potential magnitude of entrained road dust emissions. The DEIR does not contain sufficient information on the percentages traveled by SMUD's vehicle fleet on paved and unpaved roads.⁷⁷ However, these estimates illustrate that YSAQMD's significance threshold could be exceeded. Thus, construction fugitive dust emissions could potentially result in a significant impact that was not identified in the DEIR. Therefore, the DEIR's operational emission estimates must be revised to include entrained road dust emissions attributable to maintenance and operational vehicle travel.

F. The DEIR Fails to Require Adequate Mitigation for Significant Adverse Impacts on Air Quality

The DEIR finds several significant and unavoidable, adverse impacts on air quality from construction and operation of the Project. These include diesel exhaust particulate matter emissions from construction equipment and vehicle travel for service and maintenance activities during the operational phase of the Program.⁷⁸

⁷¹ Software User's Guide: URBEMIS2002 for Windows with Enhanced Construction Module, Version 8.7, Emissions Estimation for Land Use Development Projects (April 2005) at pp. c-2 to c-4.

⁷² Dr. Fox Comments at p. 10.

⁷³ 83.0 VMT/day (2 line trucks) + 83.0 VMT/day (2 foreman trucks) + 93.0 VMT/day (2 trouble shooters) + 129.5 VMT/day (3 meter readers) = 388.6 VMT/day.

⁷⁴ Dr. Fox Comments at p. 10.

⁷⁵ Dr. Fox Comments at p. 11.

⁷⁶ See DEIR at Table G-8.

⁷⁷ Dr. Fox Comments at p. 11.

⁷⁸ DEIR at pp. IV-34/IV-35.

Because of the severe air quality problems in the region, LAFCo cannot adopt a statement of overriding considerations for significant and unavoidable impacts on air quality unless it first requires all feasible mitigation to reduce or eliminate these significant impacts, which it did not, as discussed in the following comments. The DEIR must be revised to require adequate mitigation for all potential, significant adverse impacts on air quality.

1. The DEIR Fails to Require Mitigation for Significant Impacts from Diesel Exhaust Particulate Matter Emissions from Construction

The DEIR finds significant and unavoidable impacts for diesel exhaust particulate matter emissions from construction yet fails to require adequate mitigation to ensure a reduction of these emissions.⁷⁹ Mitigation measure AQ-1, includes a reduction of particulate matter emissions by 45% and controlling visible emissions from off-road, diesel-powered equipment to not exceed 40% opacity. However, this reduction would only be required if any of the proposed subsequent environmental documents for Project components 6, 7, or 8 determined that ozone precursor emissions would exceed SMAQMD's significance thresholds for ozone precursors of 85 lb/day.⁸⁰ Thus, if these documents were to determine no significant impact for ozone precursor emissions, the significant diesel exhaust particulate matter emissions identified in the DEIR would remain unmitigated.⁸¹

A number of feasible control options are available to reduce construction diesel exhaust particulate matter emissions. These mitigation measures are described in detail in the attached comments of Dr. Fox. These measures should be evaluated and required in a revised EIR.

2. The DEIR Fails to Require Adequate Mitigation for Construction Diesel Exhaust NOx Emissions

The DEIR states that SMUD will prepare a detailed construction schedule and updated emissions inventory before construction of the Willow Slough substation. This schedule and inventory will be used to determine whether the emissions from this construction, when added to any other infrastructure

⁷⁹ DEIR at p. IV-34.

⁸⁰ DEIR at p. IV-33.

⁸¹ Dr. Fox Comments at p. 12.

construction anticipated at the same time, will result in the emission of ozone precursors in excess of 85 lb/day. In the event that the limit would be exceeded, SMUD would require the incorporation of mitigation measures. These measures, incorporated into air quality mitigation measure AQ-1, include reduction of NO_x and PM₁₀ emissions and control of visible emissions from diesel-powered construction equipment.⁸²

Mitigation measure AQ-1(i) provides that “[b]efore construction of the Willow Slough substation, SMUD will provide a plan for approval by LAFCo, in consultation with SMAQMD, demonstrating that the heavy-duty (> 50 horsepower) off-road vehicles to be used in the construction program, including owned, leased, and subcontractor vehicles, will achieve a programwide, fleet-average, 20% NO_x reduction and 45% particulate reduction, compared to the most recent CARB fleet average at the time of construction.”⁸³ Considerably lower emissions reductions can be achieved through a variety of emission controls. As discussed in the attached comments of Dr. Fox, reductions of over 90% of NO_x, ROG, and PM₁₀ is feasible and should be required.⁸⁴

G. The DEIR Fails to Require Mitigation for Cumulative Impacts on Air Quality from Construction and Operation of the Program

In recognition of the severe non-attainment status of the Sacramento Federal Ozone Nonattainment Area, the DEIR properly concludes that the Project would have significant cumulative impacts on air quality due to a change in existing power plant operations, construction emissions, and operation and maintenance emissions. The DEIR, however, improperly identifies the Project’s cumulative air quality impacts as “unavoidable” without any evaluation of reasonable options for mitigating these impacts.

The DEIR states that: “the cumulative effect of any increases in emissions of the precursors to ozone may be considered a significant cumulative impact that cannot be mitigated feasibly until attainment status has been achieved.”⁸⁵ This statement lacks factual support and is simply incorrect. As is demonstrated in the attached comments of Dr. Fox, numerous feasible mitigation measures exist to

⁸² DEIR at p. IV-33.

⁸³ DEIR at p. IV-33.

⁸⁴ Dr. Fox Comments at pp. 12, 14-19.

⁸⁵ DEIR at pp. IV-36, V-8, and VII-2.

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reduce these cumulative impacts.⁸⁶ SMAQMD Guide to Air Quality Assessment also contains a long list of mitigation measures.⁸⁷

CEQA requires that the discussion of cumulative impacts include full consideration of all feasible mitigation measures that could reduce or avoid any significant cumulative effects of a proposed project.⁸⁸ SMAQMD's Guide to Air Quality Assessment, for example, specifically recommends that "[a]n EIR shall examine reasonable options for mitigating or avoiding any significant cumulative effects of a proposed project."⁸⁹

The DEIR's failure to examine reasonable mitigation options therefore invalidates its cumulative impact conclusions. The DEIR should be revised to evaluate the feasibility of mitigation measures to reduce its significant impacts from its operation.

H. The Inadequate and Inaccurate Air Quality Analysis Must Be Corrected in a Revised DEIR

The deficiencies of the DEIR's air quality analysis render the DEIR inadequate under CEQA. Extensive revision of this section is required. Because the required revisions would be significant, the revised DEIR must be recirculated for public review and comment.⁹⁰

IV. THE DEIR FAILS TO IDENTIFY OR EXAMINE POTENTIALLY SIGNIFICANT IMPACTS RESULTING FROM THE INCREASED OPERATION OF THE COSUMNES POWER PLANT

The DEIR's conclusion that the CPP will operate "as often as possible, regardless of the proposed annexation" is incorrect and lacks evidentiary support. Because of the way the energy market operates, there will likely be hours when the

⁸⁶ Dr. Fox Comments at pp. 13-21; see also, *infra*, Table XIII-2.

⁸⁷ Sacramento Metropolitan Air Pollution Control District, A Guide to Air Quality Assessment in Sacramento County (July 2004) at Table E-2.

⁸⁸ CEQA Guidelines 15130, subd. (b)(5).

⁸⁹ Sacramento Metropolitan Air Pollution Control District, A Guide to Air Quality Assessment in Sacramento County (July 2004) at p. A-8.

⁹⁰ Pub. Resources Code § 21092.1; CEQA Guidelines § 15088.5; *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.*, *supra*, 6 Cal.4th at 1129.

CPP would not operate under current conditions, but would operate under the annexation Project.⁹¹

Even though the CPP is more efficient than most other gas-fired power plants in California, it will likely still be more expensive to operate than new gas-fired combined cycle power plants in the Pacific Northwest.⁹² Gas sold in California is largely imported from Canada, the Rocky Mountains, or New Mexico.⁹³ Canadian gas sold in California must travel farther than the same gas sold in the Pacific Northwest. As a result of the lower transmission costs, natural gas imported from Canada is cheaper in the Pacific Northwest than in California. Platts Energy Daily and other trade press publications publish daily data that verifies this price difference.⁹⁴

Moreover, the CPP will not be as cheap to operate as coal, nuclear, wind, hydro, or geothermal power plants.⁹⁵ For geothermal, wind and hydro, there are negligible fuel costs. As a result, they are cheaper to operate once built than gas-fired power plants.⁹⁶ Coal and nuclear power plants have more substantive fuel costs, but monthly data from the Federal Energy Information Administration confirm that these costs are lower than natural gas costs.⁹⁷

Because power plants with less expensive operating costs will be able to provide less expensive energy when demand is low, there will be hours during the year when the marginal cost of electricity in the spot power market will be less than the marginal cost of operating the CPP. During such hours, the CPP will not operate.⁹⁸

The marginal cost of operating the CPP will be the cost of gas fuel in (\$/MMBtu) times the CPP heat rate of 7000 to 8000 Btu/kwh.⁹⁹ The market price of electricity in the spot market is reported daily in the Wall Street Journal and other sources. The market price divided by the price of gas gives an "implicit heat rate"

⁹¹ Marcus Comments at p. 1.

⁹² *Id.* at p. 2.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

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for market-priced generation.¹⁰⁰ Implicit heat rate data is published in the energy trade press. When the implicit heat rate is lower than the CPP heat rate, it means that the market price of electricity is probably lower than the marginal cost of CPP generation.¹⁰¹ Implicit heat rates below 7000 Btu/kwh are routinely reported to occur in California every year, particularly during spring months and off-peak periods.¹⁰²

The periods of inoperation caused by these market forces will differ under the Project. PG&E currently transmits power from generators to load in the annexation area using the grid controlled by the California Independent System Operator ("ISO").¹⁰³ Power transmitted over the ISO-controlled grid is subject to a transmission surcharge. Because SMUD receives power directly from the CPP without using the ISO-controlled grid, the power it receives from the CPP is not subject to the ISO transmission surcharge.¹⁰⁴

If the Project is approved, the non-surcharge market available to purchase CPP power will expand by the inclusion of the annexation area. In other words, the annexation area will also be able to receive power from the CPP without paying the ISO surcharge. Because its non-surcharge market will expand under the Project, the CPP will operate more often if the annexation passes.¹⁰⁵

David Marcus, an independent energy consultant, has evaluated the impact of expanding the no-surcharge market available to the CPP.¹⁰⁶ In his attached letter, Mr. Marcus concludes that, as a result of the annexation, the CPP will operate longer and more intensively than if PG&E continued to provide retail electric service in the area.¹⁰⁷

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ ISO is the Federal Energy Regulatory Commission regulated control area operator of the ISO transmission grid. Its responsibilities include: providing non-discriminatory access to the grid; managing congestion; maintaining the reliability and security of the grid; and providing billing and settlement services. ISO has no affiliation with any market participant. See <http://www.caiso.com/>.

¹⁰⁴ Marcus Comments at p. 2.

¹⁰⁵ *Id.* at p. 3.

¹⁰⁶ Mr. Marcus has an M.A. in energy and resources from the University of California at Berkeley. He has over twenty years of experience as a consultant on energy issues for state attorney generals, electric utilities, environmental groups, labor unions and others. See Curriculum Vitae of David Marcus.

¹⁰⁷ Marcus Comments at p. 3.

The DEIR sidesteps analysis of this impact when it states "When the CPP generates more power than is required to serve SMUD's existing area, surplus power will be sold to the energy marketplace or to the Annexation Territory.¹⁰⁸" This statement is misleading. It incorrectly implies that such sales will be equal, so that the emissions from the CPP will be the same whether or not the annexation takes place.

Consider a situation with the following likely variables:

- CPP generation costs \$55 per Mwh to produce (natural gas at \$6.85/MMBtu, the approximate price on 2/10/06¹⁰⁹).
- Gas delivery costs of \$0.15/MMBtu.
- A heat rate of 7500 Btu/kwh.
- A marginal operating and maintenance cost of \$2.50/Mwh.

If CPP generation is surplus to SMUD's current customers' power needs, then SMUD will have a choice of operating the CPP to serve annexation territory needs or meeting annexation territory needs with power purchased from the market. Purchases from the market will have to be delivered to the annexation territory via the ISO control area, but deliveries to the annexation territory from the CPP will not need to use the ISO-controlled grid.¹¹⁰ This is the key distinction the DEIR fails to make, although it was previously pointed out in CUE's EIR scoping comments.

The savings from avoiding the ISO transmission charge will directly affect the economics of operating the CPP. If the ISO transmission charge adds \$3/Mwh to the cost of energy, then CPP generation at \$55/Mwh will be the more economical source of energy for the annexation territory whenever the market price is above \$52/Mwh.¹¹¹ On the other hand, if the annexation does not take place, then surplus CPP generation that is sold into the market will face ISO wheeling charges to reach its buyer. Thus, the market price would have to be at least \$55/Mwh, and possibly \$58/Mwh, before the buyer would choose to buy from the CPP rather than other market choices.¹¹²

¹⁰⁸ DEIR at p. IV-29.

¹⁰⁹ See Marcus Comments at p.3.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

Because the market price will be above \$52/Mwh more often than it will be above \$55-58/Mwh, the CPP will be operated more often if SMUD is serving annexation territory loads than if PG&E is serving those loads.¹¹³ The DEIR fails to examine the incremental operation of the CPP due to the effect of annexation on the transmission cost of delivering CPP generation outside of the current SMUD service area. As a result, the DEIR's air quality analysis fails to take into account the incremental emissions that will accompany that extra generation.

The DEIR also fails to evaluate the increased emissions from the CPP resulting from the increased demand for power and reduced incentive for energy conservation if SMUD achieves its goal of reducing electric rates to annexation customers. (See Section VIII below.) This increase in demand for power will also expand the CPP's no-surcharge market. As discussed above, the expansion of the CPP's no-surcharge market will result in the increased operation of the CPP.

The increased operation of the CPP will result in greater local environmental impacts, particularly increased air pollutant emissions.¹¹⁴ These additional emissions would contribute to the already dismal air quality in the Sacramento Valley air basin.¹¹⁵ The Sacramento Valley air basin has been designated "serious non-attainment" for ozone due to its ongoing violations of the federal 8-hour and state 1-hour and 8-hour ambient air quality standards for ozone.¹¹⁶ In addition, the Sacramento Valley air basin is also in non-attainment of the state ambient air quality standards for PM10 and PM2.5.¹¹⁷

For each additional hour of steady state operation of the Cosumnes plant, there would be emissions of 27 pounds of NOx, 2.9 pounds of Sox, 49.4 pounds of CO, 6.6 pounds of VOC, and 18 pounds of PM10.¹¹⁸ In addition, each additional time that one of the plant's turbines is started, there would be up to three hours of start-up emissions.¹¹⁹ Start-up emissions at the Cosumnes plant result in hourly emissions of 93.5 pounds of NOx, 2.9 pounds of Sox, 926.7 pounds of CO, 19.3 pounds of VOC and 18 pounds of PM10. These additional emissions would cause significant cumulative air quality impacts.

¹¹³ *Id.*

¹¹⁴ See Dr. Fox Comments at p. 22.

¹¹⁵ *Id.*

¹¹⁶ DEIR at p. IV-25.

¹¹⁷ DEIR at p. IV-31.

¹¹⁸ California Energy Commission, Final Staff Assessment, Cosumnes Power Plant Project, Part 1 (01-AFC-19) (Feb. 2003) at p. 4.1-11, Air Quality Table 3.

¹¹⁹ *Id.*

The significant, indirect air quality impacts that may result from the increased operation of the CPP must be disclosed and evaluated in a recirculated DEIR. Furthermore, measures to mitigate this potential impact must be identified and adopted, where feasible.

V. THE DEIR FAILS TO ADEQUATELY IDENTIFY AND MITIGATE THE POTENTIAL BIOLOGICAL IMPACTS OF THE PROJECT ON WILDLIFE AND HABITAT

The DEIR fails to adequately disclose, evaluate and mitigate the Project's potential impacts on biological resources. CEQA requires the DEIR to identify and describe the presence of biological resources that may be impacted by the Project. Once the potential presence of biological resources has been identified, the DEIR must then analyze how the direct and indirect impacts of the Project would affect these resources.¹²⁰ Direct and indirect significant effects of the Project on the environment must be clearly identified and described, giving due consideration to both short-term and long-term effects.¹²¹ The discussion should include relevant specifics of the area, the resources involved, physical changes and alterations to the ecological systems.¹²² Where potential impacts are identified, specific and enforceable measures must be described to mitigate these impacts.¹²³

A. Best Management Practice 2 Misleads the Public into Believing that Impacts on Rare Plants and Sensitive Habitat Will Be Avoided

Table I-1 of the DEIR indicates that impacts to biological resources will be less than significant with implementation of Best Management Practice 2 ("BMP-2"), Biological Resource Avoidance."¹²⁴ The term "avoidance," when applied to biological resource impact analyses, typically indicates that a project is designed to prevent impacts to resources.¹²⁵ The use of this term is misleading for BMP-2, which requires avoidance of rare plants or sensitive habitat, *where feasible*, but stipulates that

¹²⁰ CEQA Guidelines § 15126, subd. (a).

¹²¹ *Id.*

¹²² *Id.*

¹²³ CEQA Guidelines § 15126.4.

¹²⁴ DEIR at p. I-5.

¹²⁵ Berryman Comments at p. 1.

unavoidable impacts will be mitigated.¹²⁶ As a result, the general public is misled into believing that the Project will have no impact on the environment other than impacts that are mitigated.

B. The Preconstruction Survey Requirements in BMP-2 Are Not Sufficient to Determine the Presence or Absence of Many Special Status Species

BMP-2 relies on preconstruction surveys for special status species to determine whether impacts should be mitigated.¹²⁷ The preconstruction survey requirements in BMP-2 are not sufficient to determine the presence or absence of many special status species, such as annual plants, that are only observable several months out of the year and do not germinate every year.¹²⁸ Accordingly, preconstruction surveys should not be relied upon to determine whether special status species are present.

Instead, the DEIR should require special status plant species surveys consistent with California Department of Fish and Game ("CDFG") protocol prior to impacting habitats typically supporting special status plant species.¹²⁹ For special status animal species, the DEIR should assume they are present in suitable habitat unless surveys consistent with CDFG and/or United States Fish and Wildlife Service ("USFWS") protocol determine otherwise.¹³⁰ Impacts to habitat for special status species should then be mitigated accordingly.

C. BMP-2 Improperly Defers Mitigation Without Establishing Sufficient Performance Standards

Under BMP-2, the DEIR defers formulation of mitigation measures until coordination with CDFG, USFWS, and/or the United States Army Corps of Engineers ("USACE") have taken place. BMP-2 states that if special status species are affected, then CDFG or USFWS will be contacted and mitigation will be negotiated with these agencies.¹³¹ Similarly, the DEIR states that any impacts to

¹²⁶ DEIR at p. II-21, II-22.

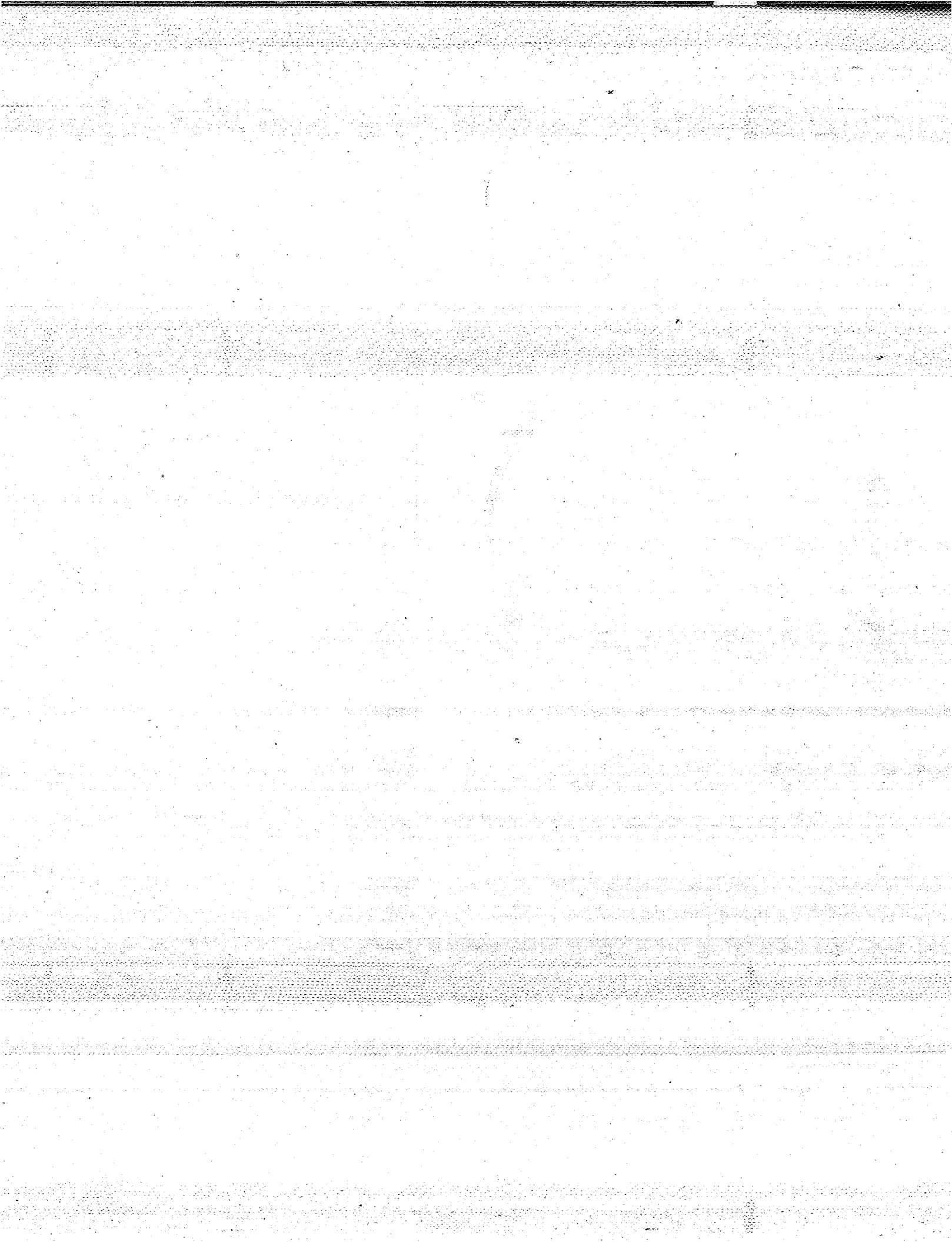
¹²⁷ DEIR at p. II-21.

¹²⁸ Berryman Comments at p. 2.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ DEIR at p. II-22.



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wetlands will be mitigated as determined in the future in partnership with USACE.¹³²

Deferral of the formulation of mitigation measures to post-approval studies is generally not permissible.¹³³ Mitigation measures adopted *after* Project approval deny the public the opportunity to comment on the Project as modified to mitigate impacts.¹³⁴ An agency, however, may defer the formulation of mitigation measures when it "recognizes the significance of the potential environmental effect, commits itself to mitigating its impact, and articulates *specific performance criteria* for the future mitigation."¹³⁵

If the DEIR is to rely on deferred mitigation, it must establish performance standards for the specific desired future conditions, and provide a range of options from which SMUD can choose to achieve each performance standard. The DEIR should formulate impact avoidance and mitigation measures for specific special status species and habitat types based upon existing local, state, and federal standards and guidelines.¹³⁶

BMP-2 articulates specific performance criteria for mitigation of impacts to some of the listed species identified as potentially occurring in the Project area, but fails to provide such standards for the vast majority of these species. BMP-2, for example, describes in detail standard mitigation measures and guidelines that have been established by CDFG for burrowing owls and Swainson's hawks.

Similar standard avoidance and mitigation measures are also available for other biological resources that may be impacted by the Project. For example, USFWS has established impact avoidance and minimization guidelines and programmatic conservation ratios for small levels of impact to giant garter snake, valley elderberry longhorn beetle and federally listed vernal pool crustaceans.¹³⁷ The DEIR should provide these standard measures for species and habitats, where available.

¹³² *Id.*

¹³³ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; Public Res. Code § 21061.

¹³⁴ *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393; *Quail Botanical Gardens Foundation v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1604, fn. 5.

¹³⁵ *Gentry v. City of Murrieta*, *supra*, 36 Cal.App.4th at 1411 (emphasis provided), citing *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1028-1029.

¹³⁶ Berryman Comments at p. 2.

¹³⁷ *Id.*

BMP-2 also fails to provide measures to address take of state or federally listed species. The Project potentially results in take of a number of listed species, including, but not necessarily limited to, valley elderberry longhorn beetle, giant garter snake, palmate-bracted bird's beak, and listed vernal pool crustaceans.¹³⁸ Any activity that results in take of federally listed wildlife species is prohibited under Section 9 of the Federal Environmental Species Act ("FESA") unless a take has been authorized pursuant to Section 7 or 10 of FESA. Similarly, take of state listed plant or wildlife species must be authorized under Section 2081 or 2080.1 of California Fish and Game Code. BMP-2 must be revised to articulate the measures that must be taken in the event Project activities take a listed species.

D. The DEIR Fails to Adequately Assess the Potential for Special Status Species to Occur in the Study Area

Section IV.D.1.d(2) of the DEIR fails to provide a sufficient foundation to support its assessment of the potential for various special status species to occur in the study area. CEQA requires conclusions in an EIR to be supported by substantial evidence.¹³⁹ Furthermore, an EIR must explain how it made the analytic jump between its ultimate conclusions and the facts in the record.¹⁴⁰

Table IV.D-2 of the DEIR lists species evaluated for potential to occur in the Project study area.¹⁴¹ This table indicates whether a species has "potential to occur" or is "not likely to occur." Many of the species in this table are designated as "not likely to occur," presumably because the Project study area does not support suitable habitat for these species. However, the DEIR does not provide explicit reasoning as to why each of these species is indicated as not likely to occur.

The DEIR must provide a clear line of reasoning as to why some species were considered but then determined not likely to occur in the study area. The DEIR must assess the potential for each species to occur in the study area based on the best available information regarding the species' distribution, habitat requirements, dispersal capabilities, and other relevant factors.

¹³⁸ *Id.* at p. 3.

¹³⁹ Pub. Resources Code § 21081.5; CEQA Guidelines § 15091, subd. (b).

¹⁴⁰ *Topanga Association for a Scenic Community v. County of Los Angeles*, supra, 11 Cal.3d 506; see CEQA Guidelines, § 15091.

¹⁴¹ DEIR at pp. IV-46 through IV-59.

E. The DEIR Fails to Adequately Assess the Potential for Jurisdictional Wetlands to Be Found Within the Woodland-Elverta Transmission Line Study Area

The DEIR's statement that no jurisdictional wetlands are found within the Woodland-Elverta transmission line study area lacks foundation and is inconsistent with the evidence cited.¹⁴² The DEIR states that the Woodland-Elverta transmission line study area contains all the vegetation communities described in "Table IV.D-2."¹⁴³

The reference to Table IV.D-2 appears to be an error since Table IV.D-2 lists "Potential Special Status Species Within the Program Study Area." This list describes potential habitat of special status species including numerous vegetation communities that are not present in the study area. Nonetheless, even if the DEIR correctly referenced this table, it lists numerous types of wetland habitats.

The DEIR most likely intended to reference Table IV.D-1, which lists "Habitat Types and Subtypes in the Project Areas." However, Table IV.D-1 also contains several wetland habitat types. The DEIR should clarify why and how it was determined that no jurisdictional wetlands were found within the Project study area even though wetland vegetation communities are present.

F. The DEIR Fails to Adequately Evaluate Potential Operation and Maintenance Activity Disturbances

The DEIR fails to adequately evaluate temporary disturbances from operation and maintenance activities in the study area that may result in significant impacts to biological resources. For example, PG&E easements currently cross through important habitat areas in Yolo County, including alkaline grassland habitat supporting the state and federally listed palmate-bracted bird's beak.¹⁴⁴ The DEIR fails to evaluate the potential conflicts that exist between operation and maintenance activities within these utility easements and the need to protect populations of this rare species, including populations that are in conservation easements.

¹⁴² DEIR at p. IV-76.

¹⁴³ *Id.*

¹⁴⁴ Berryman Comments at p. 4.

Once the Project is approved, most of the ongoing operation and maintenance of the Project will not require further CEQA review. The DEIR must address potentially significant impacts to palmate-bracted bird's beak and other special status species that may be affected by SMUD operations and maintenance activities. A possible measure to avoid impacts to critical populations of special status species would be to realign utility easements around these sensitive areas, or to replace underground lines with overhead lines to minimize the need for ground disturbance during line maintenance.¹⁴⁵

G. The DEIR Fails to Evaluate Temporary Impacts to Alkaline Habitats Supporting Special Status Species

The DEIR addresses temporary impacts to a number of habitat types supporting special status species, but fails to include temporary impacts to alkaline habitats supporting special status plant species such as palmate-bracted bird's beak, Ferris' milk-vetch, San Joaquin spearscale and brittlescale. The DEIR acknowledges that such alkaline habitats occur throughout the Project area.¹⁴⁶ Due to the high number of rare, narrow endemic plant species found in alkaline soils within the study area, temporary impacts to this habitat type must be specifically addressed.¹⁴⁷

H. The DEIR Improperly Relies on BMP-2 to Avoid Temporary Impacts to Vernal Pool Habitat, Grasslands, Agricultural Lands, Marshes, Riparian Areas and Woodland

The DEIR states that temporary impacts to vernal pool habitat, grasslands, agricultural lands, marshes, riparian areas, and woodland are considered significant. The DEIR then states that BMP-2 will ensure avoidance of adverse effects to these habitats and therefore the Project will have less than significant impacts after compliance with these measures.¹⁴⁸ BMP-2, however, neither ensures impact avoidance nor provides for mitigation to a level below significance.¹⁴⁹ As discussed above, performance standards should provide either specific performance standards or a range of mitigation options that could be implemented to mitigate

¹⁴⁵ *Id.*

¹⁴⁶ DEIR at pp. IV-71, IV-81 & IV-91.

¹⁴⁷ Berryman Comments at p. 5.

¹⁴⁸ DEIR at p. IV-86.

¹⁴⁹ Berryman Comments at p. 5.

impacts. These should be provided for each habitat type supporting special status species.

At a minimum, the DEIR should require active restoration of temporarily disturbed habitats.¹⁵⁰ The DEIR, as written, only specifies active restoration (i.e., replanting rather than allowing vegetation to establish on its own) for grassland habitat, and does not require active restoration for the other habitat types. The DEIR states that: vernal pools and marshes will recover on their own within one to four seasons after disturbance; grasslands will recover within one season; and woodlands will take a decade or more to recover.¹⁵¹

Relying solely on passive restoration following disturbance increases the risk of invasive species entering the disturbed area, preventing establishment of native vegetation.¹⁵² Furthermore, passive restoration does not address the possibility that small, localized colonies of rare plant species could potentially be extirpated through temporary disturbances.¹⁵³ The DEIR fails to consider the impact to special status species that may result from temporal habitat loss during the recovery period.

The DEIR should impose active restoration measures for all habitats. These measures should include recontouring prior to planting, monitoring to ensure success criteria are met, and contingency measures to be implemented if success criteria are not met.¹⁵⁴

I. The DEIR Fails to Provide Sufficient Measures to Mitigate the Impact of the Willow Slough Substation on Special Status Species

The DEIR states that although the land that will be used for the Willow Slough substation is largely in agriculture, its construction could impact several special status plant species that inhabit alkali soils, including alkali milk vetch, brittlescale, and San Joaquin spearscale. The DEIR indicates that the total loss of habitat that could be used by these species would range from 2.8 to 4.8 acres. The

¹⁵⁰ *Id.*

¹⁵¹ DEIR at IV-90.

¹⁵² Berryman Comments at p. 5.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

DEIR concludes that this impact will be mitigated to a level below significance by the implementation of BMP-2.

BMP-2, however, only requires mitigation if special status species are found during preconstruction surveys. As discussed above, these preconstruction surveys are not sufficient to determine presence or absence of special status species.

In addition the DEIR fails to evaluate the potential for the state and federally endangered palmate-bracted bird's beak to occur in the proposed construction area for the Willow Slough substation. According to biologist Ellen Berryman, the northernmost known population of this species occurs in the Willow Slough vicinity, and a very limited amount of habitat remains.¹⁵⁵ Permanent impacts to this species in the Willow Slough area are potentially significant, and adequate mitigation land may be difficult to acquire because of the limited distribution of this species.¹⁵⁶

J. The DEIR Fails to Identify and Evaluate Mitigation Measures to Address the Cumulative Impacts of the Project

Table I-2 of the DEIR indicates that the Project will result in significant and unavoidable cumulative impacts to biological resources, including: (1) temporary impacts to special status species that use vernal pools and swales; (2) temporary impacts to special status species that inhabit grasslands and agricultural lands; (3) temporary impacts to special status species that inhabit marsh, riparian areas, and woodlands; (4) permanent loss of habitat used by special status species; (5) loss of special status bird species from collisions with transmission lines; (6) impacts to sensitive natural communities; (7) impacts to wetlands; (8) interference with fish and wildlife movement; (9) conflict with local policies or ordinances; and (10) conflict with habitat conservation plans.

The DEIR fails to identify and evaluate feasible mitigation measures to address these cumulative biological impacts. At a minimum, the DEIR should evaluate ways to partner with the regional conservation planning efforts that are underway in Sacramento, Yolo, Sutter, and western Placer Counties. SMUD could also provide funding and additional assistance as needed for completion of the Yolo County Habitat Conservation Plan to mitigate cumulative impacts in Yolo County.

¹⁵⁵ Berryman Comments at p. 6.

¹⁵⁶ *Id.*

VI. THE DEIR FAILS TO ADEQUATELY EXAMINE THE POTENTIAL IMPACT ON GROUNDWATER WITHIN THE ANNEXATION TERRITORY

The DEIR incorrectly analyzes the potentially significant environmental impact of changed electricity rate structure on groundwater pumping in the service area. In doing so, the EIR fails to identify the groundwater impact as significant and fails to evaluate feasible mitigation measures.

The stated objective for the Project is to decrease electricity costs in the annexation area. The DEIR estimates that the Project may reduce electricity rates by over 25%.¹⁵⁷ Should the Project achieve this goal,¹⁵⁸ the reduction in rates may induce farmers to significantly increase the amount of water they pump for irrigation.¹⁵⁹ This increased use of groundwater for irrigation may cause overdraft of the aquifers within the annexation territory during dry years.¹⁶⁰

The high value agricultural practices in the annexation area all require irrigation. The amount of irrigated water required generally may range from 1.5 to 3.5 acre-feet/acre per year.¹⁶¹ The cost of providing adequate water is a significant factor in agricultural economics.¹⁶²

Most farmers in the annexation area have a choice between groundwater pumped from their own wells or receipt of irrigation water.¹⁶³ In making this choice of sources, the farmer has to weigh the ease of access, quality and most of all the cost of supply.

Although well water is readily available, there is a high electrical cost for pumping.¹⁶⁴ One acre-foot of water weighs 1360 tons. The energy cost is roughly proportional to the depth of the well because lifting the weight of water from deeper wells requires more work. Under typical conditions it takes 65 kw-hr to pump one

¹⁵⁷ DEIR at pp. ES-5, II-9.

¹⁵⁸ *Id.*

¹⁵⁹ Reid Comments at p. 1.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at p. 3.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

acre-foot from a depth of 10 feet, 105 kw-hr to pump from 30 feet, 144 kw-hr from 50 feet and 183 kw-hr from 70 feet depth.

Thus, at \$0.10 per kw-hr, the electrical cost for pumping will range from \$6.50 to \$18.30 each acre-foot as depth to groundwater goes from 10 feet to 70 feet.¹⁶⁵ Given that a quarter section field will need on the order of 350 acre-feet of irrigation, annual costs would range from \$2,275 to \$6,405.¹⁶⁶ These are significant costs to a farmer and are directly proportional to the cost of electricity. Reduced electrical cost will allow exploitation of deeper water in lieu of receiving irrigation water.

Groundwater overuse has significant environmental implications. As depth to groundwater increases, pumping energy cost increases. Reducing electricity cost will allow exploitation of deeper groundwater resources, leading to groundwater overuse.¹⁶⁷

The DEIR attempts to show that the reduced electrical rates will produce a minor overall reduction in cost of agricultural production and hence would be an insignificant stimulus to increase agricultural consumption of irrigation water.¹⁶⁸ This approach is flawed because it does not examine the interchangeability of irrigation sources. A decrease in groundwater cost of 10% to 25% could result in a complete switch to groundwater in many cases.¹⁶⁹ Net water use may increase only slightly, but the proportion from groundwater may increase dramatically.

The Department of Water Resources' assessment of groundwater monitoring well data shows that groundwater levels in the annexation area are vulnerable to overdraft in dry years.¹⁷⁰ The Department attributes the current stability of the groundwater basin to the use of surface water. On average, agriculture in Yolo County gets 57% of its irrigation water from surface water and 43% from groundwater.¹⁷¹ Significant changes in pumping could alter that status quo.

Yolo County wetlands are formed where high groundwater meets the surface. Although wetland persistence is a seasonal function of rainfall, generally lowering

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at p. 4.

¹⁶⁸ DEIR at p. IV-133.

¹⁶⁹ Reid Comments at p. 3.

¹⁷⁰ *Id.* at p. 2.

¹⁷¹ *Id.* at p. 3.

groundwater in the area from agricultural use will cumulatively limit the extent and duration of wetland and riparian habitats.¹⁷² Groundwater overuse will have: impacts on the groundwater basin itself; impacts on irrigation and agricultural drainage water quality; and impacts on waterfowl, streams and aquatic habitats.¹⁷³

Increased pumping may also have indirect impacts on energy efficiency and energy supply.¹⁷⁴ Because pumping costs are so high, where there is a choice of irrigation water sources, even a change of a few percent in electricity costs can tip the economic choice in favor of one source or another.¹⁷⁵

As a result, a 25% decrease in cost could allow as much as a 25% increase in consumption with sources and still have no increase in the user's electricity bill.¹⁷⁶ In fact, reduced cost may stimulate even greater consumption in the long term. Not only will cheaper electricity encourage more groundwater pumping, but the cumulative impact of lowering SMUD groundwater levels will also result in a greater demand for energy to pump the water.¹⁷⁷

The failure to evaluate the Project's potential groundwater impacts prevents the DEIR from fulfilling its role as an informational document. The DEIR must be revised to identify the potential for the Project to induce increased irrigation within the SMUD service area. Furthermore, the potential impacts resulting from the increased drawdown of the groundwater table in this area must also be evaluated and feasible mitigation measures identified. The revised DEIR must then be recirculated for review and comment.¹⁷⁸

VII. THE DEIR FAILS TO IMPOSE MITIGATION MEASURES TO ADDRESS IDENTIFIED FLOODING RISKS

The DEIR is deficient because, without imposing any mitigation, it improperly concludes that the Project will have no flooding impacts. CEQA requires

¹⁷² *Id.*

¹⁷³ *Id.* at p. 1.

¹⁷⁴ *Id.* at p.4.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Pub. Resources Code § 21092.1; CEQA Guidelines § 15088.5; *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.*, *supra*, 6 Cal.4th at 1129.

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conclusions in an EIR to be supported by substantial evidence.¹⁷⁹ The DEIR's conclusion that the Project will not have flooding impacts, however, is inconsistent with the evidence and the analysis contained within the DEIR.

The DEIR states that, based on Federal Emergency Management Agency flood insurance maps, all of the Project components, except the Willow Slough substation area, will be at least partially located in the 100-year floodplain of the American River, Sacramento River, Yolo Bypass, or Cache Creek.¹⁸⁰ Project components to be built within the flood plain include transmission towers carrying high-voltage lines.

The DEIR, however, concludes that the Project "will not place sensitive equipment in a 100-year floodplain." This conclusion lacks foundation and is contrary to the facts presented in the DEIR.

The DEIR bases this conclusion entirely on its statement that "the design of transmission towers and their foundations will take into account forces generated by floodwaters." Such an assertion, however, does not support the DEIR's conclusion that sensitive equipment will not be placed in a 100-year floodplain. Rather, this assertion admits mitigation measures (in the form of reinforced foundations) are necessary to protect the transmission towers that are placed in a 100-year floodplain.

By failing to openly recognize that the Project will place sensitive equipment in a 100-year floodplain, the DEIR fails to impose the very mitigation measures that it relies on in its analysis. The DEIR should be revised to recognize flooding impacts as potentially significant and to require reinforced foundations and other flood-proofing measures as mitigation.

VIII. THE DEIR FAILS TO ADEQUATELY ANALYZE THE PROJECT'S POTENTIAL IMPACT ON ENERGY CONSERVATION

CEQA requires an EIR to evaluate the potential energy conservation impacts of a proposed project.¹⁸¹ Impacts that must be examined include the potential effects of the Project on peak and base period demands for electricity.¹⁸²

¹⁷⁹ Pub. Resources Code § 21081.5; CEQA Guidelines § 15091, subd. (b).

¹⁸⁰ DEIR at p. IV-134.

¹⁸¹ CEQA Guidelines, Appendix F; see Pub. Resources Code § 21100, subd. (b)(3).

The DEIR's evaluation of the Project's potential impact on energy conservation is deficient in a number of areas. In particular, the DEIR fails to adequately evaluate the potential for the Project's goal of a 20% reduction in electric rates to create a reduced incentive for energy conservation.¹⁸³ This reduced incentive for energy conservation may translate into increased and more wasteful energy consumption within the annexation area.

The DEIR admits that "[i]t is possible that, overall, customers in the annexation territory will consume more power after annexation because of SMUD's lower rates." Nonetheless, the DEIR concludes that the Project will not result in reduced energy conservation: (1) because some customers may choose to spend their energy savings in other ways, and (2) because of the success of SMUD's demand response and energy efficiency programs. This conclusion relies on unsupported assumptions and fails to consider other important factors.

First, the DEIR assumes that all customers will choose to spend their energy savings in other ways and thus no customers will increase their energy consumption habits in response to the lower electric prices. This assumption simply has no foundation. The DEIR cites the statements of a few commercial customers and school district personnel, but offers no evidence that these persons speak for any other customers in the annexation area. Furthermore, the attached comments of Thomas Reid demonstrate that, at a minimum, lower electric rates will likely increase the energy that agricultural customers consume for pumping irrigation water from wells.¹⁸⁴

The DEIR also assumes that SMUD's demand response and energy efficiency programs will be more effective than the energy conservation measures that PG&E would offer the service area if the Project was not approved. As will be discussed in more detail below, the DEIR fails to provide sufficient evidence to demonstrate the truth of this assumption. To the contrary, the scope and variety of PG&E's demand response and energy efficiency programs suggest that SMUD's programs may be less effective than PG&E's.

¹⁸² CEQA Guidelines, Appendix F, § II, subd. (D).

¹⁸³ The DEIR estimates that the Project may reduce electrical costs in the annexation territory by as much as 20% to 25% (although the reduction may be only 2% for the first five or so years, as SMUD pays off its annexation expenses). DEIR at pp. II-10 & IV-133.

¹⁸⁴ Reid Comments at p. 4.

In addition, the DEIR fails to consider that the growth-inducing effects of the Project's lower electric rates may result in further increases in both overall and per capita power demand.¹⁸⁵ A 2004 study by Area Development magazine, found that lower electric rates are one of the key factors that businesses consider when relocating.¹⁸⁶ Moreover, the study found that the businesses most likely to be attracted to areas with lower electric rates are those with more intensive energy needs.¹⁸⁷ Thus, not only may the Project increase the growth rate of business and residential power consumers, the new businesses attracted by the Project may consume significantly more power than businesses that would locate in the annexation area without the Project.

While the DEIR fails to acknowledge the Project's direct impacts on energy consumption, it does conclude in Table VII-1 that the Project may have a "significant and unavoidable" *cumulative* impact on increased overall per capita energy consumption. The DEIR, however, fails to discuss this impact in any detail and fails to identify or evaluate any potential mitigation measures.

Because the Project may have cumulative and potentially direct impacts on energy use, specific energy conservation measures must be identified to mitigate this impact.¹⁸⁸ CEQA Guidelines declare that such mitigation measures should include measures to reduce wasteful, inefficient and unnecessary consumption of energy.¹⁸⁹ Mitigation measures should include "measures for reducing peak energy demands" and other "energy conservation" measures.¹⁹⁰ Moreover, to be effective, mitigation measures must go above and beyond the energy conservation measures that PG&E would offer the service area if the Project was not approved.

In addition to its failure to properly evaluate the impact that the asserted rate reduction may have on energy consumption and conservation habits, the DEIR also fails to meaningfully analyze the potential impact on energy consumption and conservation that may result from the changeover to SMUD's energy conservation programs from PG&E's energy conservation programs.

¹⁸⁵ CEQA Guidelines, Appendix F, § II, subd. (I) ("Growth-inducing effects may include the estimated energy consumption of growth induced by the project").

¹⁸⁶ Area Development Magazine, 19th Annual Corporate Survey (December, 2004) at p. 6.

¹⁸⁷ *Id.* at p. 8.

¹⁸⁸ CEQA Guidelines § 15126.4, subd. (a)(1)(C).

¹⁸⁹ Pub. Resources Code § 21100, subd. (b)(3).

¹⁹⁰ CEQA Guidelines, Appendix F, § II, subd. (D).

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The DEIR does discuss the Project's impact on the type and effectiveness of demand response and energy conservation programs offered within the annexation area, but its analysis is incomplete, misleading and uninformative. Throughout the discussion of these issues, the DEIR compares PG&E's past programs with SMUD's future programs. This "apples and oranges" comparison fails to provide a proper foundation for the DEIR's conclusions. A proper analysis would compare PG&E's projected future programs with SMUD's projected future programs.

For example, the DEIR fails to take into account PG&E's ongoing implementation of demand response programs to achieve the California Public Utilities Commission ("CPUC") mandated goal of 5% "price-based" demand response by 2007. Furthermore, it fails to consider the programs PG&E is implementing in addition to those that fall under the 5% demand response mandate, such as reliability-focused demand response programs like PG&E's E-BIP and "non-firm" programs.

Similarly, the DEIR fails to take into account PG&E's future commitments to energy efficiency. For example: PG&E is a partner in the California Solar Initiative; PG&E's Self Generation Incentive Program provides rebates for solar, wind, fuel cells, biomass and cogeneration; PG&E's Solar Schools Program installs solar electric systems at underserved schools; and PG&E's Solar Habitat Program funds the installation of solar electric systems on Habitat for Humanity homes for low-income families. SMUD will not participate in the California Solar Initiative or any of these other programs.

Furthermore, PG&E is obligated by order of the CPUC to provide 20% of its electricity from renewable generation by 2010. SMUD states that it will also provide the annexation area with 20% renewables, but it admits that this won't happen until after 2011.¹⁹¹ Moreover, unless imposed as a condition of annexation, SMUD's 20% goal is neither enforceable nor certain. In the Resolution analyzing the potential impacts of the proposed Project, CPUC acknowledged that the annexation may impact compliance with the State's Energy Action Plan policies since SMUD would not be required to adhere to these policies.¹⁹²

A genuine evaluation of the Project's impact on energy conservation must start with a comparison of PG&E's projected energy conservation programs with the energy conservation programs that SMUD shall provide as a condition of Project

¹⁹¹ DEIR at p. IV-198.

¹⁹² CPUC, Energy Division, Resolution E-3952 (Nov. 18, 2005) at p. 14.

approval. Without such a comparison, the impact of the Project on energy efficiency cannot be meaningfully evaluated and the DEIR is rendered legally inadequate.¹⁹³ A sufficient analysis must compare the scope and effectiveness of these programs.

The DEIR must be revised to identify the potential impacts of the Project on energy consumption. A revised DEIR must set forth specific energy conservation measures and ensure that such measures exceed the programs that would be offered by PG&E if the Project did not proceed. In addition, if the DEIR relies upon SMUD's energy conservation programs and renewable goals to support a finding of no significant energy impacts, the energy conservation programs and renewable goals must be identified as enforceable mitigation measures.

IX. THE DEIR FAILS TO EXAMINE THE POTENTIAL IMPACT THAT THE PROJECT MAY HAVE ON THE ABILITY TO RESPOND QUICKLY TO POWER OUTAGES

The DEIR fails to evaluate the potential impact that SMUD's annexation may have on the ability to respond to power outages within the annexation territory. The ability to respond to power outages within the annexation territory may be adversely affected by the proposed Project due to changes in: (1) proximity of service centers; (2) availability of resources; and (3) familiarity of responders to the annexation area electric system.

SMUD's financial analysis of annexation costs does not include any costs for a new service center. Accordingly, SMUD's outage response center will remain in its current service center located off Highway 50 in Sacramento.

Conversely, PG&E currently has response centers located in Woodland, Davis and Sacramento. SMUD's response center is located significantly farther away from the majority of the annexation area than PG&E's current response centers. As a result, the Project may cause longer delays in responding to outages.

An outage problem in Woodland is at least a forty-minute drive from SMUD's closest response center. The same problem, however, is only five-minutes from PG&E's response center. As a result, an outage response in Woodland will likely experience at least thirty-five minute longer outages if the Project is approved. If several trips are required back and forth to the response center in order to correct

¹⁹³ See, e.g., *People v. County of Kern* (1976) 62 Cal.App.3d 761, 774.

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an outage problem in Woodland, the outages may last hours longer. Moreover, the highways and interchanges located between SMUD's response center and the annexation area are often congested with traffic, further delaying response time.

The Project will also result in the loss of PG&E's ability to pool its much greater resources to respond to widespread outages rapidly and efficiently. The scope and size of PG&E's operations provides the flexibility and resources to respond quickly to major outages in multiple locations. SMUD, in turn, has fewer options and less flexibility in the case of widespread outages in the annexation area. PG&E's three local service centers, along with its ability to draw on service employees from throughout its system, provide the ability to respond to widespread outages in the area more quickly and more efficiently than SMUD. Project approval would decrease this response capability from the annexation area.

SMUD's lack of familiarity with PG&E's existing circuitry in the annexation area will also adversely affect its ability to respond quickly to power outages. The annexation will result in a transitional period during which SMUD must learn the circuits and systems it has acquired. During this transitional period, SMUD will likely require significantly increased time to locate trouble on these unfamiliar circuits. Switching from a retail electric service provider who is familiar with the distribution systems in the annexation area to a provider who lacks familiarity with this system may thus result in significantly longer outages during the transitional period.

The annexation may also result in increased outages due to its cumulative impacts on the reliability of the Western Interconnection. CPUC raised this very issue in its November 18, 2005 Resolution analyzing the potential impacts of the Project. The Commission stated that they were "concerned about the risks posed by fragmentation of the ISO grid on the reliability of the Western Interconnection."¹⁹⁴ The Commission, however, stated that such cumulative impacts were not within the scope of their review of SMUD's proposal under Government Code Section 56131.

CEQA, on the other hand, expressly requires the consideration of cumulative impacts.¹⁹⁵ Accordingly, the DEIR must be revised to evaluate the potential cumulative impact of the Project on the reliability of the Western Interconnection.

¹⁹⁴ CPUC, Energy Division, Resolution E-3952 (Nov. 18, 2005) at p. 14.

¹⁹⁵ CEQA Guidelines § 15130.

In summary, PG&E's current outage response system offers significant advantages in proximity, flexibility and familiarity over SMUD's outage response systems. As a consequence, outages after annexation may last significantly longer and result in significantly greater public health, safety and environmental impacts.

Impacts associated with electrical outages include:

- Interference with emergency and medical services.
- Food spoilage, medicine spoilage.
- Heat-related illnesses and fatalities due to lack of air conditioning for the elderly and infirm.
- Failure of sewage and water treatment systems.
- Failure of home health devices such as ventilators, respirators and dialysis machines.
- Increased accidents due to lack of lighting.
- Risks to workers operating machines and engaged in chemical processes.
- Failure of pollution control systems that may lead to exposure of chemicals or the release of untreated air pollutants into the environment.
- Increased solid and hazardous waste generation due to interrupted manufacturing processes resulting in product quality failures, spoilage and spills.

The DEIR must be revised to disclose and evaluate the impacts that may result from the Project's potential to increase outage response time. Where feasible, measures to mitigate this potential impact must be identified and adopted.

X. THE DEIR PROPOSES MITIGATION MEASURES FOR AGRICULTURAL IMPACTS THAT ARE INSUFFICIENT AND INCONSISTENT WITH THE CITY OF DAVIS MUNICIPAL CODE

The DEIR's evaluation of agricultural impacts is deficient for a number of reasons. First, it incorrectly concludes that the mitigation measure it proposes will reduce the Project's direct impact on loss of prime, unique or important farmland to less than significant. Second, its proposed mitigation is inconsistent with and violates the City of Davis Municipal Code. Third, it fails to identify or evaluate mitigation measures for cumulative and growth-inducing impacts on the loss of farmland.

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The DEIR finds that the Project will convert 2.5 to 4.5 acres of prime or unique farmland or farmland of statewide importance to other uses.¹⁹⁶ The DEIR concludes that this will be a significant impact, but that the impact will be reduced to less than significant by the implementation of Mitigation Measure AG-1. Mitigation Measure AG-1 states that:

“ SMUD will enter into a conservation mitigation banking agreement established to preserve land currently in agricultural production at a ratio equal to the estimated loss of prime or unique farmland or farmland of statewide importance (i.e, 1:1).”

Because Mitigation Measure AG-1 will only preserve existing agricultural land and won't replace the agricultural land that is lost, this measure cannot reduce the impact of lost farmland to a level of insignificance.

Moreover, this mitigation measure is inconsistent with, and directly violates, the City of Davis Municipal Code requirement to mitigate farmland loss with a two-to-one replacement ratio. The City of Davis Municipal Code section 40A.03.030 requires that “Two times as many acres of agricultural land shall be protected as was changed to a nonagricultural use in order to mitigate the loss of agricultural land.” or “payment of a fee based upon a two-to-one replacement for a farmland conservation easement.”

Under CEQA, a project results in a significant effect on the environment if the project is inconsistent with an applicable land use plan, policy or regulation adopted for the purpose of avoiding or mitigating one or more of these environmental impacts.¹⁹⁷ The one-to-one ratio of agricultural land preservation required by Mitigation Measure AG-1 is inconsistent with the two-to-one ratio of farmland preservation required by the City of Davis Municipal Code. This inconsistency is substantial evidence of a significant environmental impact. The DEIR must be revised to identify, and if feasible, rectify this inconsistency with the City of Davis Municipal Code.

In addition to the direct impact from the Project's conversion of 2.5 to 4.5 acres of farmland, the DEIR also concludes that the Project will contribute to the

¹⁹⁶ DEIR at p. IV-12.

¹⁹⁷ CEQA Guidelines, Appendix G, section IX(b).

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conversion of agricultural land by stimulating growth through lower electric costs.¹⁹⁸ As a result, the DEIR finds that the Project will have a significant cumulative impact on agricultural resources.

The DEIR's discussion of these cumulative agricultural impacts, however, is deficient because it improperly identifies these impacts as "unavoidable" without any discussion of potential mitigation measures.

As discussed in more detail below, an EIR must identify and evaluate reasonable options for mitigating or avoiding the Project's contribution to cumulative impacts.¹⁹⁹ An EIR may not declare an impact "unavoidable" unless substantial evidence supports a finding that no feasible mitigation exists.²⁰⁰

The DEIR must be revised and recirculated to identify and evaluate mitigation measures to reduce or avoid the Project's cumulative agricultural impact. Such measures may include increasing the ratio of agricultural mitigation requirements to two-to-one or three-to-one for all future SMUD projects in the annexation area.²⁰¹

XI. THE DEIR'S IDENTIFICATION OF CUMULATIVE IMPACTS IS INCONSISTENT THROUGHOUT THE DOCUMENT

The DEIR's discussion of cumulative impacts is deficient because its description of these impacts varies and is inconsistent throughout the document. Without an accurate and stable description of a project and its impacts, CEQA's objective of furthering public disclosure and informed environmental decision-making would be thwarted. Further, meaningful consideration of mitigation measures and alternatives would be impossible.²⁰²

The DEIR summarizes the potential "significant and unavoidable" cumulative environmental impacts of the Project in two separate tables: Table I-2 and Table VII-1. These two tables contain significant discrepancies.

¹⁹⁸ DEIR at p. IV-13.

¹⁹⁹ CEQA Guidelines 15130, subd. (b)(5).

²⁰⁰ See *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 374.

²⁰¹ See City of Davis Municipal Code § 40A.03.030.

²⁰² *County of Inyo v. City of Los Angeles, supra*, 71 Cal.App.3d at 192-193, 197-198, 203.

The DEIR's discussion of cumulative impacts in Chapter IV also varies widely from the discussion of cumulative impacts in Table I-2, Table VII-1, the DEIR Executive Summary at pages ES-4 and ES-5, and the Cumulative Impact discussion of Chapter V.

A. The DEIR's Summary Impact Tables Are Inconsistent

Table I-2 and Table VII-1 each assert on their face to provide the casual reader with a complete summary of the Project's "significant and unavoidable" cumulative environmental impacts. A close review of these tables, however, reveals that they each fail to include significant impacts that the other identifies.

Table I-2 identifies two cumulative impacts that Table VII-1 fails to list. First, Table I-2 identifies cumulative impacts with the policies of the Sacramento County General Plan as "significant and unavoidable." Table VII-1 fails to identify this impact. Table I-2 also identifies "Noise from the construction of the North City interconnection" as a "significant and unavoidable" cumulative impact. Table VII-1 does not identify this impact.

Likewise, Table VII-1 identifies two cumulative impacts that Table I-2 fails to identify. Table VII-1 identifies cumulative air quality impacts from the change in existing power plant operations as "significant and unavoidable." Table I-2 does not list this impact. Table VII-1 identifies increased overall per capita energy consumption as a "significant and unavoidable" cumulative impact. Table I-2 also fails to identify this impact.

B. The DEIR's Summary Tables Fail to Include Significant Cumulative Impacts Identified in the Chapter IV Discussion on Public Services

Tables I-2 and IV-1 fail to identify the Project's cumulative impacts on "schools and parks," despite the DEIR's identification of this impact as significant in its Chapter IV discussion of public services impacts. On page IV-174, the DEIR discusses cumulative public services impacts and concludes that the Project will contribute to significant, unavoidable adverse impacts to fire and police services, schools and parks. Tables I-2 and IV-1, however, only identify the Project's cumulative impacts to fire and police services. The Project's impacts to schools and parks are thus left undisclosed to the average reader who relies upon these summary tables.

C. Chapter IV's Evaluation of Cumulative Land Use and Planning Impacts Is Inconsistent with the DEIR's Executive Summary and Summary Tables

The DEIR's Executive Summary states that the Project may have significant cumulative land use and planning impacts. Tables I-2 and IV-1 state that these significant cumulative land use and planning impacts include: (1) conflicts with policies of Sacramento County General Plan, and (2) conflicts with Measure M, the Natomas Joint Vision Plan, and the Sacramento International Airport Master Plan.

Chapter IV, Section H, contains a discussion of cumulative land use and planning impacts, but this discussion fails to identify any cumulative effects from the Project. The entire discussion of cumulative impacts in Section H simply states that there would be no cumulative impacts associated with the Western Area Power Administration ("WAPA") plan to construct a new transmission line to provide voltage support for the Sacramento area. By failing to identify cumulative impacts in this section, this section implies that no cumulative land use and planning impacts exist. As a result, this section is inconsistent with the conclusion in the Executive Summary and in the summary tables.

D. Chapter IV's Evaluation of Cumulative Noise Impacts Is Inconsistent with the DEIR's Executive Summary and Summary Tables

The DEIR's Executive Summary declares that the Project may have significant cumulative noise impacts. Tables I-2 and IV-1 state that these significant cumulative noise impacts include: (1) noise from construction of the North City interconnection; (2) noise from new transmission lines; and (3) noise from operation of the Willow Slough substation.

The noise discussion in Chapter IV, Section I, however, provides the opposite conclusion. Section I concludes the Project's contribution to cumulative noise levels will be "minor" and "not significant."²⁰³ Accordingly, this section conflicts with the conclusion in the Executive Summary and in the summary tables.

²⁰³ DEIR at p. VII-161.

E. Chapter IV's Evaluation of Cumulative Population and Housing Impacts Is Inconsistent with the DEIR's Executive Summary and Summary Tables

The DEIR's Executive Summary concludes that the Project may result in significant cumulative impacts on population and housing. Tables I-2 and IV-1 state that these significant cumulative population and housing impacts include: (1) increased population growth; (2) increased housing demand; and (3) preemption of housing on land planned for housing development.

The discussion of population and housing in Chapter IV, Section J, includes a discussion of future projects and growth generally, but lacks any analysis or *conclusion* as to cumulative impacts.²⁰⁴ By failing to identify any cumulative impacts in this section, this section implies that no cumulative population and housing impacts exist. This section is thus inconsistent with the Executive Summary and the summary tables.

F. Chapter IV's Evaluation of Cumulative Recreation Resources Impacts Is Inconsistent with the DEIR's Executive Summary and Summary Tables

The Executive Summary declares that the Project may have significant cumulative impacts on recreation resources. Tables I-2 and IV-1 state that these significant recreation impacts include impacts to public recreational facilities.

The evaluation of recreation resources in Chapter IV, Section L, however, reaches the opposite conclusion. Section L concludes "the cumulative impacts on recreational facilities will be less than significant."²⁰⁵ As a result, this section is in conflict with the conclusion in the Executive Summary and the summary tables.

G. Chapter IV's Evaluation of Cumulative Transportation and Traffic Impacts Is Partially Inconsistent with the DEIR's Executive Summary and Summary Tables

Tables I-2 and IV-1 declare that the Project will have significant cumulative transportation and traffic impacts, including: (1) construction traffic impacts, and (2) operation and maintenance traffic impacts.

²⁰⁴ DEIR at pp. IV-166 & IV-167.

²⁰⁵ DEIR at p. IV-179.

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The discussion of transportation and traffic impacts in Chapter IV, Section M, concludes that operational and maintenance trips associated with the Project will contribute to the significant cumulative impact on traffic congestion.²⁰⁶ However, it fails to identify or to discuss cumulative impacts from construction traffic impacts. As a result, this section conflicts with the summary tables.

H. Chapter IV's Evaluation of Cumulative Utilities, Service Systems and Energy Conservation Impacts Is Partially Inconsistent with the DEIR's Executive Summary and Summary Tables

Tables I-2 and IV-1 declare that the Project will have significant cumulative utilities, service systems and energy conservation impacts, including: (1) increased overall per capita energy consumption, and (2) impacts on solid waste disposal facilities.

Chapter IV, Section N, evaluates the Project's utilities, service systems and energy conservation impacts. Section N concludes that the Project will contribute to the increased demand for solid waste disposal in the region and that this will result in a significant cumulative impact.²⁰⁷ Section N, however, fails to identify or discuss cumulative impacts on increased overall per capita energy consumption. As a result, this section conflicts with the summary tables.

XII. THE DEIR FAILS TO DESCRIBE THE PROJECT'S CUMULATIVE IMPACTS WITH SUFFICIENT DETAIL TO ALLOW MEANINGFUL REVIEW

The DEIR concludes that the Project "will have significant cumulative impacts in the areas of aesthetics, agricultural resources, air quality, biological resources, cultural resources, hazards and hazardous materials, hydrology and water quality, land use, noise, population and housing, public services, recreation, transportation and traffic, and utilities/service systems/energy conservation."²⁰⁸ The DEIR fails, however, to provide the exact character and nature of these

²⁰⁶ DEIR at p. IV- 187.

²⁰⁷ DEIR at pp. IV -198-199.

²⁰⁸ DEIR at p. ES-4.

cumulative impacts. Instead, these cumulative impacts are described in vague and general terms, with no analysis of the scope or type of impact.

Tables I-2 and VII-2 provide some subcategories to these areas of cumulative impact, but these subcategories are also vague and general in term. For example, these summary tables conclude that the Project may result in cumulative hydrology and water quality impacts, including: (1) impacts on storm water quality, and (2) impacts to groundwater hydrology. The nature, cause and scope of these impacts, however, are not revealed. The discussions of cumulative impacts in Chapter IV are equally lacking in detail for each of the identified areas of cumulative impacts.

It is not enough merely to say that a significant impact will occur; there must also be some analysis of that impact to guide decisionmakers and the public.²⁰⁹ By not including such analysis, the EIR fails to apprise the decisionmakers and the public as to the scope and type of impacts that will worsen as a result of the Project. Furthermore, such failure prevents any meaningful analysis of feasible mitigation measures to reduce or avoid these impacts.

XIII. THE DEIR FAILS TO REQUIRE ADEQUATE MITIGATION FOR IMPACTS IDENTIFIED AS SIGNIFICANT

The DEIR is deficient because it improperly identifies numerous significant impacts as "unavoidable" without any discussion of potential mitigation measures.

An EIR must identify mitigation measures for each significant environmental effect identified in the EIR.²¹⁰ Cumulative impacts are not an exception to this requirement. An EIR must examine reasonable options for mitigating or avoiding the Project's contribution to cumulative impacts.²¹¹

This requirement to identify mitigation measures is the core of an EIR.²¹² CEQA imposes an affirmative obligation on agencies to avoid or reduce

²⁰⁹ *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831; *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 195-97; *Kings County Farm Bureau v. City of Hanford, supra*, 221 Cal.App.3d at 724 & 733.

²¹⁰ Pub. Resources Code § 21002.1, subd. (a); CEQA Guidelines § 15126.4.

²¹¹ CEQA Guidelines 15130, subd. (b)(5).

²¹² See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564-565.

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environmental harm by adopting feasible project alternatives or mitigation measures.²¹³ Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying on the EIR to meet this obligation.

A legally adequate EIR must identify “[m]itigation measures proposed to minimize the significant effects on the environment.”²¹⁴ Mitigation measures must be capable of: (a) “[a]voiding the impact altogether by not taking a certain action or parts of an action;” (b) “[m]inimizing impacts by limiting the degree or magnitude of the action and its implementation;” (c) “[r]ectifying the impact by repairing, rehabilitating, or restoring the impacted environment;” (d) “[r]educing or eliminating the impact over time by preservation and maintenance operations during the life of the action;” or (e) “[c]ompensating for the impact by replacing or providing substitute resources or environments.”²¹⁵

In this case, the DEIR has identified numerous significant environmental impacts.²¹⁶ For the majority of these impacts, however, the DEIR fails to identify mitigation measures. Instead, the DEIR simply declares these impacts to be “unavoidable.”

This approach violates both the letter and the intent of CEQA. An EIR may not avoid this requirement by simply declaring an impact “unavoidable.” Public Resources Code Section 21081 requires identification of specific economic, legal, social, technological or other barriers prior to declaring mitigation infeasible. Furthermore, a finding that no feasible mitigation exists must be accompanied by supporting facts and analysis.²¹⁷

Here, the DEIR consistently fails to identify feasible mitigation measures capable of mitigating the Project’s significant environmental impacts. Furthermore, the DEIR fails to provide any evidence or analysis to demonstrate that no such mitigation exists.

²¹³ Pub Resources Code §§ 21002-21002.1.

²¹⁴ Pub. Resources Code § 21100, subd. (b)(3).

²¹⁵ CEQA Guidelines § 15370.

²¹⁶ See, e.g., DEIR at Tables I-1 & I-2.

²¹⁷ *Rio Vista Farm Bureau Center v. County of Solano*, *supra*, 5 Cal.App.4th at 374.

In particular, the DEIR fails to provide any mitigation analysis whatsoever relating to the following potential cumulative impacts that have been identified as "significant and unavoidable":

- Cumulative aesthetic impacts including: (1) cumulative visual impact to scenic corridors designated in Yolo County General Plan, and (2) cumulative conflict with scenic policies of the Yolo County and Sacramento County General Plans.
- Cumulative agricultural resources impacts, including: (1) acquisition or easement across adopted agricultural preserve or Williamson Act contract land; (2) conversion of prime farmland, unique farmland, or farmland of statewide importance to non-agricultural uses; and (3) conflict with existing zoning for agricultural use or a Williamson Act contract.
- Cumulative air quality impacts, including: (1) change in existing power plant operations; (2) construction emissions; and (3) operation and maintenance emissions.
- Cumulative biological resources impacts, including: (1) temporary impacts to special status species that use vernal pools and swales; (2) temporary impacts to special status species that inhabit grasslands and agricultural lands; (3) temporary impacts to special status species that inhabit marsh, riparian areas, and woodland; (4) permanent loss of habitat used by special status species; (5) loss of special status bird species from collisions with transmission lines; (6) impacts to sensitive natural communities; (7) impacts to wetlands; (8) interference with fish or wildlife movement; (9) conflict with local policies or ordinances; and (10) conflict with habitat conservation plans.
- Cumulative cultural resources impacts, including: (1) cultural resource impacts from reconstruction of the Power Inn Road to Hedge substation transmission line; (2) cultural resources impacts from construction of the North City interconnection; (3) cultural resources impacts from construction of the Woodland-Elverta transmission line; (4) cultural resources impacts from construction of the Willow Slough substation; (5) cultural resources impacts from reconductoring in the annexation territory; and (6) impacts to paleontological resources from construction of Project components.

- Cumulative hazards and hazardous materials impacts, including:
(1) exposing people or property to hazardous materials or conditions;
(2) conflicts with airport comprehensive plans; and (3) increased risk of wildfire.
- Cumulative hydrology / water quality impacts, including: (1) impacts on storm water quality, and (2) impacts to groundwater hydrology.
- Cumulative land use / planning impacts, including: (1) conflicts with policies of Sacramento County General Plan, and (2) conflicts with Measure M, the Natomas Joint Vision Plan, and the Sacramento International Airport Master Plan.
- Cumulative noise impacts, including: (1) noise from construction of the North City interconnection; (2) noise from new transmission lines; and (3) noise from Willow Slough substation.
- Cumulative population / housing impacts, including: (1) increased population growth; (2) increased housing demand; and (3) preemption of housing on land planned for housing development.
- Cumulative public resources impacts, including: (1) desired fire and police response times, and (2) increased demand for schools and parks.
- Cumulative recreation resources impacts, including impacts to public recreational facilities.
- Cumulative transportation and traffic impacts, including: (1) construction traffic impacts, and (2) operation and maintenance traffic impacts.
- Cumulative utilities / service systems / energy conservation impacts, including: (1) increased overall per capita energy consumption, and (2) impacts on solid waste disposal facilities.
- Cumulative growth inducing impacts caused by lowering rates and improved reliability.

In addition to these cumulative impacts, the DEIR identifies a number of other direct and indirect Project impacts as "significant and unavoidable." As with

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the cumulative impacts, the DEIR fails to adequately consider potential mitigation measures for these direct and indirect project impacts. These impacts include:

- Significant visual impacts to scenic corridors designated in the Yolo County General Plan.
- Significant diesel emissions from Project construction, operation and maintenance.
- Significant short-term noise impacts from various construction and reconductoring activities.
- Significant growth-inducing impact caused by lowering rates and improved reliability.

The failure to describe and evaluate mitigation measures for these significant impacts renders the DEIR legally inadequate. The DEIR must be revised to identify potential mitigation measures for each of these impacts or to provide substantial evidence that no such measures exist.

A. Lack of Control Over Land-Use Development in Local Jurisdictions Does Not Excuse SMUD and LAFCo from Evaluating Mitigation Measures for Cumulative Impacts

In the analysis of a number of the cumulative impacts, the DEIR implies that the reason it has not identified any mitigation measures to address the cumulative impact is that "SMUD and LAFCo have no control over land-use development in local jurisdictions."²¹⁸ CEQA, however, does not permit a lead agency to refuse to try to mitigate significant environmental effects of a project simply because another agency may have greater power to address the impact.²¹⁹

In *Citizens for Quality Growth*, the EIR failed to consider feasible measures to mitigate the project's impacts on wetlands. The City argued that it had no duty to consider mitigation measures for wetland impacts because the USACE had ultimate regulatory authority over the wetlands. The Court of Appeal disagreed, concluding that because the City's proposed Project (a general plan amendment and

²¹⁸ DEIR at p. IV-6.

²¹⁹ *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 443; see also *Lexington Hills v. State of Calif.* (1988) 200 Cal.App.3d 415, 433-435.

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rezone) would significantly impact the wetlands, the City was required to consider whatever potentially feasible mitigation measures lay within its authority and power.

Citizens for Quality Growth emphasized that an agency must consider whatever potentially feasible mitigation measures lay within its authority and power to mitigate an impact. Compliance with CEQA requires evaluating potential mitigation measures for significant impacts. An agency cannot simply refrain from considering mitigation measures.

B. Feasible Mitigation Measures for the Project's Significant Impacts Exist and Should Be Required

If an impact is found to be significant, then the EIR must analyze all but facially infeasible means of mitigating that impact.²²⁰ For each of the impacts identified by the EIR as "significant and unavoidable," numerous feasible mitigations exist. In the chart below, we provide a list of just some of the potential measures that could be imposed to reduce or eliminate these impacts. The lead agency should also request that responsible agencies examine these impacts and provide their own mitigation suggestions. Each of these suggestions is feasible and has, in fact, been adopted as mitigation measures in other projects in California. Consequently, CEQA *requires* that LAFCo adopt these mitigation measures.

²²⁰ *Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029.

TABLE XIII-1: Direct Environmental Impacts Identified by DEIR as Significant and Unavoidable²²¹

Potential Impacts	Description of Potential Impact	Cumulative Effects	Feasible Mitigation
Aesthetics Impact AES-1	(Chapter IV, Section A) Visual impact to scenic corridors designated in Yolo County General Plan	Significant and unavoidable	<ul style="list-style-type: none"> • Where feasible, route electric utility lines to avoid areas considered scenic. • Electric lines impacting scenic corridors shall be installed underground unless underground lines would interfere with agricultural activities. • Electric utility lines shall be constructed using H-frame poles or wood to blend in with the natural surroundings. • Prior to development of any electric utility lines, SMUD shall create and implement a "right-of-way" management ("ROW") plan to mitigate aesthetic impacts by planting vegetative screens to block views of the line, leaving the ROW in a natural state at road crossings, creating curved or wavy ROW boundaries, pruning trees to create a feathered effect, and screening and piling brush from the cleared ROW so that it provides wildlife habitat. • Set aside view easements along scenic corridors and roadways; place conservation easements on parcels restricting use of land from more intensive purposes. (See, CalTrans Community Impact Assessment Handbook, Vol. 4, p. 48 (June 1997) (hereinafter, "CalTrans Community Impact"); Draft EIR for Lincoln Bypass, Placer County, Route 65. (Jan. 2002), p. 4-15.) • Place fencing around construction staging areas to block views of stored materials and equipment. • Perform weekly cleanup of the construction areas. • Construction contracts shall clearly delineate boundaries of staging areas and define acceptable work practices, including requirements for fencing and noise barriers.

²²¹ The following acronyms are used in this listing of mitigation measures: ADEQ = Arizona Department of Environmental Quality; BCAQMD = Butte County Air Quality Management District; CCHD = Clark County (Nevada) Health District; MBUAPCD = Monterey Bay Unified Air Pollution Control District; SBCAPCD = Santa Barbara County Air Pollution Control District; SJVUAPCD = San Joaquin Valley Air Pollution Control District; and SLOCAPCD = San Luis Obispo County Air Pollution Control District.

<p>Air Quality Impact AQ-2</p>	<p>(Chapter IV, Section C) Construction emissions of diesel particulate</p>	<p>Significant and unavoidable</p>	<p>Diesel Exhaust Mitigation</p> <ul style="list-style-type: none"> • The idling time of all construction equipment shall not exceed five minutes. • Limit the hours of operation of heavy-duty equipment and the amount of equipment in use. (BAAQMD 12/99, p. 53.) • All equipment shall be properly tuned and maintained in accordance with the manufacturer's specifications. • Conversion to cleaner engines. • Gasoline powered equipment shall be equipped with catalytic converters. • Use the minimum practical engine size for construction equipment. • Alternative fueled or electrical construction equipment shall be used at the Project site. • Use of ultra low sulfur fuel, alternative diesel formulations, compressed natural gas, liquefied natural gas or propane as alternatives to diesel-powered construction equipment. • Use diesel particulate exhaust filters. • Substitution of gasoline-powered for diesel-powered construction equipment. • Installation of high-pressure injectors on diesel construction equipment. • Implementation of activity management techniques including: a) development of a comprehensive construction management plan designed to minimize the number of large construction equipment operating during any given time period; b) scheduling of construction truck trips during non-peak hours to reduce peak hour emissions; c) limitation of the length of construction work-day period; and d) phasing of construction activities. • Installation of catalytic converters on gasoline-powered equipment, if feasible. • Minimization of construction worker trips by requiring carpooling and by providing for lunch onsite. • Lengthening of construction period during smog season (May through October), so as to minimize the number of vehicles and equipment operating at the same time. • Utilization of new technologies to control ozone precursor emissions as they become available and feasible.
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<p>Impact AQ-4</p>	<p>Operation and maintenance emissions of diesel particulate</p>	<p>Significant and unavoidable</p>	<ul style="list-style-type: none"> • Use electricity from power poles rather than temporary diesel power generators. • Emission offsets if ROG or NOx emissions exceed 6.0 tons/quarter. <p>Sensitive Receptors. Projects proposed within one mile of sensitive receptors with the potential to generate odors or toxic pollutants shall be required to conduct an odor and health risk assessment to evaluate the project's compatibility with the sensitive receptor. A sufficient buffer zone shall be provided when necessary.</p> <p>Examples of Projects Requiring Compliance with Diesel Exhaust Mitigation Measures:</p> <ul style="list-style-type: none"> • The Stanford University Community Plan EIR required a range of measures to minimize diesel engine exhaust, including catalytic converters and particulate traps. (Santa Clara County, Stanford University Draft Community Plan and General Use Permit Application Draft EIR (June 23, 2000) at p. 4.11-10.) • The City of San Diego in the Padres Ballpark Final EIR required the control of 95% of engine exhaust emissions, using, among others, oxidation catalysts, particulate filters, and "Blue Sky" low-emission engines. (City of San Diego, Final Subsequent Environmental Impact Report, Ballpark and Ancillary Development Projects (Sept. 13, 1999) and Draft Subsequent EIR (May 12, 1999) at pp. IV-262, I8.A.89.) • Similarly, the Port of Oakland required the use of new engines or post-combustion controls on trucks serving its Vision 2000 expansion project. (See Port of Oakland, Summary Report #5, Vision 2000 Air Quality Mitigation Program, February 2002.) The Port's air quality mitigation program is now partially in place and has been very successful in reducing emissions.
			<ul style="list-style-type: none"> • See Proposed Mitigation measures for Impact AQ-2. • Use electric lawn and garden equipment for landscaping. (BAAQMD.) • Use electrically, CNG-powered or propane specialty equipment, e.g., forklifts, utility carts. (BAAQMD.) • Use lighting controls and energy-efficient interior and exterior lighting. (SLOAPCD, SCAQMD, SBAPCD, BCAQMD.) • Secure emission offsets.

<p>Noise Impact NOI-1a</p>	<p>(Chapter IV, Section I) Noise from reconstruction of the Power Inn Road to Hedge Substation Transmission Line</p>	<p>Significant and unavoidable</p>	<ul style="list-style-type: none"> • Landscape with drought-resistant species, and use groundcovers rather than pavement to reduce heat reflection. • Provide electric maintenance equipment.
<p>Noise Impact NOI-1b</p>	<p>Noise from construction of the Woodland to Elverta Transmission Line</p>	<p>Significant and unavoidable</p>	<ul style="list-style-type: none"> • Limit construction activity to weekdays between 7:00 a.m. and 7:00 p.m., with no construction on Sundays. • Require that all internal combustion engine-driven equipment is equipped with high-efficiency mufflers, which are in good condition and appropriate for the equipment. • Locate stationary noise-generating equipment as far as possible from sensitive receptors when sensitive receptors adjoin or are near a construction project area. • Construct sound walls or other noise reduction measures prior to developing the project site. • Define maximum equipment noise levels to assure mufflers are working properly. • Monitor noise levels at locations of sensitive receptors <p>See Proposed Mitigation measures for Impact NOI-1a.</p>
<p>Noise Impact NOI-2b</p>	<p>Noise from construction of the Willow Slough substation</p>	<p>Significant and unavoidable</p>	<p>See Proposed Mitigation measures for Impact NOI-1a.</p>
<p>Noise Impact NOI-2c</p>	<p>Noise from reconductoring in the annexation territory</p>	<p>Significant and unavoidable</p>	<p>See Proposed Mitigation measures for Impact NOI-1a.</p>

TABLE XIII-2: Cumulative Environmental Impacts Identified by DEIR as Significant and Unavoidable

Potential Impacts	Description of Potential Impact	Cumulative Effects	Feasible Mitigation
Impact AES-1 Aesthetics	(Chapter IV, Section A) Visual impact to scenic corridors designated in Yolo County General Plan	Significant and unavoidable	<ul style="list-style-type: none"> Where feasible, route electric utility lines to avoid areas considered scenic. Electric lines impacting scenic corridors shall be installed underground unless underground lines would interfere with agricultural activities. Electric utility lines shall be constructed using H-frame poles or wood to blend in with the natural surroundings. Prior to development of any electric utility lines, SMUD shall create and implement a "right-of-way" management ("ROW") plan to mitigate aesthetic impacts by planting vegetative screens to block views of the line, leaving the ROW in a natural state at road crossings, creating curved or wavy ROW boundaries, pruning trees to create a feathered effect, and screening and piling brush from the cleared ROW so that it provides wildlife habitat. Set aside view easements along scenic corridors and roadways. place conservation easements on parcels restricting use of land from more intensive purposes. (See, CalTrans Community Impact Assessment Handbook, Vol. 4, p. 48 (June 1997) (hereinafter, "CalTrans Community Impact"). Draft EIR for Lincoln Bypass, Placer County, Route 65 (Jan. 2002), p. 4-15.) Place fencing around construction staging areas to block views of stored materials and equipment. Perform weekly cleanup of the construction areas. Construction contracts shall clearly delineate boundaries of staging areas and define acceptable work practices, including requirements for fencing and noise barriers.
Impact AES-2	Conflict with scenic policies of the Yolo County and Sacramento County General Plans	Significant and unavoidable	See Proposed Mitigation measures for Impact AES-1.

Agricultural Resources	(Chapter IV, Section B)		
Impact AG-2	Acquisition or easement across adopted agricultural preserve or Williamson Act contract land	Significant and unavoidable	<ul style="list-style-type: none"> • Increase agricultural mitigation requirements to two-to-one or three-to-one. (See City of Davis Municipal Code § 40A.03.030.) • Require that soil quality of agricultural mitigation land shall be better than the land, which is converted to a non-agricultural use. • Require that the agricultural mitigation land shall have an adequate water supply for the purposes of irrigation protected through legal instrument to ensure that the water rights remain with the mitigated land. • Require that the mitigation land shall be located in or adjacent to the Project area. • Require that the agricultural mitigation land be set aside prior to commencement of any development activity. • Lease roadside right-of-way for agricultural purposes; place conservation easements on parcels restricting use of agricultural land from more intensive purposes. (See, CalTrans Community Impact, p. 48; Draft EIR for Lincoln Bypass, Placer County, Route 65 (Jan. 2002), p. 4-15.) • Use single pole structures and place lines along fences lines or adjacent to roads. If the structure is not a single-pole, it shall be oriented with the plowing pattern. • If a field must be crossed, larger structures with longer spans shall be used.
Impact AG-3	Conversion of prime farmland, unique farmland, or farmland of statewide importance to non-agricultural uses	Significant and unavoidable	See Proposed Mitigation measures for Impact AG-2.
Impact AG-4	Conflict with existing zoning for agricultural use or a Williamson Act contract	Significant and unavoidable	See Proposed Mitigation measures for Impact AG-2.

<p>Air Quality, Impact AQ-1</p>	<p>(Chapter IV, Section C) Change existing power plant operations</p>	<p>Significant and unavoidable</p>	<p>Increases in airborne emissions should be offset with emission reduction credits representing equivalent emission reductions from other facilities, and/or by contributions to the Carl Moyer program to allow the local air district to pay for retrofits to mobile and area sources such as diesel buses, agricultural diesel engines, and others that will result in an equivalent emission reduction. (See, SJVAPCD Rule 9510 (Indirect Source Rule), requiring off-site emission reduction fees for residential projects of more than 50 units to allow the air district to pay for off-site emissions reductions; see also, SCAQMD Rule 1610; SCAQMD Regulation XX.)</p>
<p>Impact AQ-3</p>	<p>Construction emissions</p>	<p>Significant and unavoidable</p>	<p>Dust Suppression Control Measures</p> <ul style="list-style-type: none"> • Water all active construction areas at least twice daily. • Prewet surface soils where equipment will be operated. • Cover all trucks hauling soil, project sand, and other loose materials or require all trucks to maintain at least two feet of freeboard. (BAAQMD, SJVUAPCD, Rule 403 Handbook, ADEQ, SLOCAPCD.) • Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access construction roads, parking areas and staging areas at construction sites. (MBUAPCD.) • Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites. • Sweep under the streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets. • Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more). • Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.). Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, said piles shall be effectively stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/suppressant. (SJVUAPCD, ADEQ.) • For stockpiles, maintain at optimum moisture content; remove material from downwind side; avoid steep sides or faces; and stabilize material following stockpile-related activity. (CCHD.) • Limit traffic speeds on unpaved roads to 15 mph. (CCHD.) • Install sandbags or other erosion control measures to prevent silt runoff to public roadways. • Replant vegetation in disturbed areas as quickly as possible. • Install wheel washers for all exiting trucks, or wash off the tires or tracks of all trucks and

	<ul style="list-style-type: none"> • equipment leaving the site. (CCHD, SLOCAPCD.) • Gravel pads must be installed at all access points to prevent tracking of mud on to public roads. (SBCAPCD.) • Install and maintain trackout control devices in effective condition at all access points where paved and unpaved access or travel routes intersect. (CCHD.) • Install windbreaks, or plant trees/vegetative windbreaks at windward side(s) of construction areas. Install barriers with 50% or less porosity located adjacent to roadways to reduce windblown material leaving a site. (Rule 403 Handbook.) • Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 mph or visible dust clouds affect sensitive receptors. • Limit the area subject to excavation, grading and other construction activity at any one time. • In staging areas, limit size of area; apply water to surface soils where support equipment and vehicles are operated; limit vehicle speeds to 15 mph; and limit ingress and egress points. (CCHD.) • Where feasible, use bedliners in bottom dumping haul vehicles. (Rule 403 Handbook.) • Empty loader bucket slowly and minimize drop height from loader bucket. (CCHD.) • Limit fugitive dust sources to 20% opacity. (ADEQ.) • Require a dust control plan for earthmoving operations. (ADEQ.) • Prior to land use clearance, the applicant shall include, as a note on a separate informational sheet to be recorded with map, these dust control requirements. All requirements shall be shown on grading and building plans. (SBCAPCD, SLOCAPCD.) • The contractor or builder shall designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite. (SBCAPCD, SLOCAPCD.) • Post a publicly visible sign with the telephone number and person to contact regarding dust complaints. This person shall respond and take corrective action within 24 hours. (BCAQMD, CCHD.) 	
Diesel Exhaust Mitigation		

			<ul style="list-style-type: none"> • The idling time of all construction equipment shall not exceed five minutes. • Limit the hours of operation of heavy-duty equipment and the amount of equipment in use. (BAAQMD 12/99, p. 53.) • All equipment shall be properly tuned and maintained in accordance with the manufacturer's specifications. • Conversion to cleaner engines. • Gasoline-powered equipment shall be equipped with catalytic converters. • Use the minimum practical engine size for construction equipment. • Alternative fueled or electrical construction equipment shall be used at the Project site. • Use of ultra low sulfur fuel, alternative diesel formulations, compressed natural gas, liquefied natural gas or propane as alternatives to diesel powered construction equipment • Use diesel particulate exhaust filters. • Substitution of gasoline-powered for diesel-powered construction equipment. • Installation of high-pressure injectors on diesel construction equipment. • Implementation of activity management techniques including: a) development of a comprehensive construction management plan designed to minimize the number of large construction equipment operating during any given time period; b) scheduling of construction truck trips during non-peak hours to reduce peak hour emissions; c) limitation of the length of construction work-day period; and d) phasing of construction activities. • Installation of catalytic converters on gasoline-powered equipment, if feasible. • Minimization of construction worker trips by requiring carpooling and by providing for lunch onsite. • Lengthening of construction period during smog season (May through October), so as to minimize the number of vehicles and equipment operating at the same time. • Utilization of new technologies to control ozone precursor emissions as they become available and feasible. • Use electricity from power poles rather than temporary diesel power generators. • Emission offsets. <p>Sensitive Receptors. Projects proposed within one mile of sensitive receptors with the potential</p>
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			<p>to generate odors or toxic pollutants shall be required to conduct an odor and health risk assessment to evaluate the project's compatibility with the sensitive receptor. A sufficient buffer zone shall be provided when necessary.</p> <p>Examples of Projects Requiring Compliance with Diesel Exhaust Mitigation Measures:</p> <ul style="list-style-type: none"> • The Stanford University Community Plan EIR required a range of measures to minimize diesel engine exhaust, including catalytic converters and particulate traps. (Santa Clara County, Stanford University Draft Community Plan and General Use Permit Application Draft EIR (June 23, 2000) at p. 4.11-10.) • The City of San Diego in the Padres Ballpark Final EIR required the control of 95% of engine exhaust emissions, using, among others, oxidation catalysis, particulate filters, and "Blue Sky" low-emission engines. (City of San Diego, Final Subsequent Environmental Impact Report, Ballpark and Ancillary Development Projects (Sept. 13, 1999) and Draft Subsequent EIR (May 12, 1999) at pp. IV-262, I8.A.89.) • Similarly, the Port of Oakland required the use of new engines or post-combustion controls on trucks serving its Vision 2000 expansion project. (See Port of Oakland, Summary Report #5, Vision 2000 Air Quality Mitigation Program, February 2002.) The Port's air quality mitigation program is now partially in place and has been very successful in reducing emissions.
<p>Impact AQ-4</p>	<p>Operation and maintenance emissions</p>	<p>Significant and unavoidable</p>	<ul style="list-style-type: none"> • Where applicable, same as mitigation for AQ-3. • Use electric lawn and garden equipment for landscaping. (BAAQMD.) • Use electrically, CNG-powered or propane maintenance equipment, e.g., lifts, cherry pickers, utility carts. (BAAQMD.) • Use lighting controls and energy-efficient interior and exterior lighting. (SLOAPCD, SCAQMD, SBAPCD, BCAQMD.) • Secure emission offsets. • Landscape with drought-resistant species, and use groundcovers rather than pavement to reduce heat reflection. • Provide electric maintenance equipment. <p>Implement Off-site Mitigation Measures, Such As:</p>

			<ul style="list-style-type: none"> • Retrofit existing homes and businesses in the project area with approved energy conservation devices. (SLOAPCD.) • Replace/repower school/transit bus with cleaner vehicles. (SLOAPCD.) • Fund a program to buy and scrap older, high-emission vehicles (SLOAPCD.) • Contribute to an off-site TDM fund. (VCAPCD.) • Repair smog-check waived vehicles. (SLOAPCD.) • Introduce electric lawn and garden equipment exchange program. (SLOAPCD.) • Retrofit/purchase clean heavy-duty trucks, construction equipment, diesel locomotives, and marine vessels. (SLOAPCD.)
Biological Resources	(Chapter IV, Section D)		
Impact BIO-1a	Temporary impacts to special status species that use vernal pools and swales	Significant and unavoidable	<ul style="list-style-type: none"> • Limit construction crews to the right-of-way and confine disturbances to as small an area as possible. • All development shall avoid substantial adverse impacts on vernal pool habitats where feasible. • To the extent possible, 250-foot setbacks should be established between construction or O&M activities and surrounding vernal pools. • Avoid effects to vernal pools and swales at all construction sites, staging areas, borrow sites, and haul routes by fencing them with orange construction fencing. Construction fencing will be placed 250 feet from the edge of vernal pools, or at the edge of construction limits if pools are within 250 feet of construction. No vehicles or storage of equipment or supplies will be placed within the zone delineated by the construction fencing. Revegetate all construction sites, staging areas, borrow sites, and haul routes with native grasses and forbes. • Prior to construction of a proposed project within a planning area where special status species may be impacted, SMUD shall prepare a biological assessment to evaluate potential effects on any special status plant or wildlife species. If special status species are known to occur or have the potential to occur, impacts shall be avoided to the extent feasible. Unavoidable impacts shall be mitigated to reduce impacts to the extent possible consistent with established CDFG or USFWS guidelines where available, or as determined by a qualified biologist. <p>Where practicable, the qualified biologist shall coordinate with the wildlife agencies in</p>

			<p>developing appropriate mitigation measures.</p> <ul style="list-style-type: none"> • Articulate specific performance criteria for mitigation of listed species identified as potentially occurring in the Project area. • SMUD shall apply for and obtain a CWA 404 permit from the USACE and a streambed alteration agreement from CDFG for any activities deemed to require such permits from those agencies. • If an activity requires a 404 permit from the ACOE, a determination as to whether the activity is likely to adversely affect federally listed species or critical habitat will be made by the USACE in consultation with the USFWS and/or NOAA Fisheries during the permitting process. If consultation results in a determination that the Proposed Project may result in the take of listed species, take authorization pursuant to Section 7 of FESA will be required. • If initial biological assessments for a proposed activity determine the presence or potential presence of a federally listed species and no 404 permit is required, SMUD shall coordinate directly with the USFWS for guidance on whether or not the Project can avoid impacts to the species. The Project shall avoid impacts through re-design where possible. SMUD will receive the appropriate take authorizations under FESA for any unavoidable impact that may result take of a federally listed species. • SMUD shall coordinate with CDFG prior to any activity that may result in take of state listed species, to ensure that appropriate avoidance measures are taken and to ensure that SMUD obtains the appropriate take authorization for any activity resulting in take of state listed species. • If impacts cannot be avoided, the project shall incorporate mitigation to reduce impacts to the extent possible based on consultation with a qualified biologist and the resource agencies. • Unavoidable impacts to vernal pools and swales should be mitigated through a combination of restoration/creation and preservation to achieve a mitigation ratio of no less than two-to-one preservation and at least one-to-one restoration/creation (See, CNPS Policies and Guidelines: Policy and Guidelines on Vernal Pool Mitigation, adopted 5 March 1994) or as determined in consultation with the appropriate resource agencies. SMUD may fulfill the mitigation requirements by purchasing conservation easements over areas containing vernal pools and swales, restoring vernal pool habitat to pre-project conditions, purchasing vernal pool preservation credits at a conservation bank approved by the appropriate agencies, and/or by providing funding for habitat conservation and/or restoration. (See, CalTrans, Environmental
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Impact BIO-1b	Temporary impacts to special status species that inhabit grasslands and agricultural lands	Significant and unavoidable	<p>Handbook, Vol. 3, Biological Resources, sect. 5-1.2.)</p> <ul style="list-style-type: none"> • During temporary ground disturbance, avoid activities that would puncture the underlying hardpan or claypan. If this impact is unavoidable, backfill with impermeable material designed to retain hydrologic conditions so that disturbed pools may be restored to pre-disturbance conditions. • Stockpile topsoil prior to any ground disturbance within vernal pool habitat. Re-contour temporarily disturbed vernal pools to pre-project conditions and replace topsoil. • Where applicable, same as mitigation measures for Impact BIO-1a.. • Lease roadside right-of-way for agricultural purposes; place conservation easements on parcels restricting use of agricultural land from more intensive purposes. (See, CalTrans Community Impact, p. 48; Draft EIR for Lincoln Bypass, Placer County, Route 65 (Jan. 2002), p. 4-15). • Plant native vegetation after disturbance and restore disturbed areas to pre-project conditions.
Impact BIO-1c	Temporary impacts to special status species that inhabit marsh, riparian areas, and woodland	Significant and unavoidable	<ul style="list-style-type: none"> • Where applicable, same as mitigation measures for Impact BIO-1a. • All development shall avoid substantial adverse impacts on vernal pool habitats. • Require development along creeks to be set back from the entire floodway or 250 feet on either side of the creek centerline, whichever is greater. Setbacks required should allow adequate room for trails and access on both sides of the creek. • Avoid effects to woody vegetation at all construction sites, staging areas, borrow sites, and haul routes by fencing them with orange construction fencing. Construction fencing will be placed at 1.5 times the distance of the trunk to the dripline. No vehicles or storage of equipment or supplies will be placed within the zone delineated by the construction fencing. Revegetate all construction sites, staging areas, borrow sites, and haul routes with native grasses and forbes. • Minimize effects to trees along the construction area by having all trimming performed by a qualified arborist to ensure tree survival after the project. In addition, a "Tree Protection Plan" will be prepared establishing measures required to safeguard trees from the impacts of construction activities. • Conduct nest surveys prior to the removal of any trees or scrub shrub to ensure migratory and other birds would not be lost during construction, pursuant to the MBTA and California Fish and Game Code Section 3513. Nest surveys shall be conducted in the spring and shall be adequate to ensure protection of the nests of as many birds and bird species as possible during

		<p>construction. Any trees that contain nests will be removed between August 16th and February 15th (outside of the nesting season). During construction activities potentially affecting trees where birds have nested, buffer zones will be established, within which there will be no construction activity until the young have fledged. The size of the buffer zones shall be determined in consultation with CDFG, but shall be at least 75 feet for trees containing songbird nests and 275 feet for trees containing raptor nests.</p> <ul style="list-style-type: none"> • Require SMUD to purchase conservation easements over areas containing marsh, riparian areas, and woodland; create replacement habitats; provide funding for habitat conservation and/or restoration. (See, CalTrans, Environmental Handbook, Vol. 3, Biological Resources, Section 5-1.2; U.S. Fish and Wildlife Service, Environmental Assessment; Habitat Conservation Plan for Golden-Cheeked Warbler for Construction of Single-Family Residence in Austin, Texas). • Actively restore temporarily impacted wetlands to pre-disturbance conditions. 	<p>Significant and unavoidable</p>	<p>Permanent loss of habitat used by special status species</p>
Impact BIO-1d	<p>Loss of special status bird species from collisions with transmission lines</p>	<ul style="list-style-type: none"> • Where applicable, same as mitigation measures for Impact BIO-1a through BIO-1c. • When developing new projects, minimize invasion of exotic pest plants by planting native plants and non-invasive exotics in landscape plans for new development. • Implement design measures to reduce incidence of collisions, such as using crossarm construction with horizontal line-post insulators versus vertical conductor construction. (See "When Birds and Powerlines Collide" by R. Sundararajan and Ravi Gorur, Transmission & Distribution World, December 1, 2005.) • Use conductor marking and static wire-marking to reduce risk of bird collisions. (See "Rate of Bird Collision with Power Lines: Effects of Conductor-marking and Static Wire-marking" G.F.E. Janss and M. Ferrer. Journal of Field Ornithology, 69(1): 8-17.) 	<p>Significant and unavoidable</p>	
Impact BIO-2	<p>Impacts to sensitive natural communities</p>	<ul style="list-style-type: none"> • Where applicable, same as mitigation measures for Impacts BIO-1a through BIO-1d. • Provide funding for implementation of habitat conservation plan programs that provide for regional protection of sensitive natural communities. 	<p>Significant and unavoidable</p>	
Impact BIO-3	<p>Impacts to wetlands</p>	<ul style="list-style-type: none"> • Where applicable, same as mitigation measures for Impact BIO-1a and BIO-1c. • Require wetland delineation studies of proposed SMUD-initiated projects that may affect potential jurisdictional wetlands. • Require SMUD to purchase conservation easements over areas containing wetlands; create replacement habitats; provide funding for habitat conservation and/or restoration. (See, CalTrans, Environmental Handbook, Vol. 3, Biological Resources, Section 5-1.2; U.S. Fish 	<p>Significant and unavoidable</p>	

				and Wildlife Service, Environmental Assessment; Habitat Conservation Plan for Golden-Cheeked Warbler for Construction of Single-Family Residence in Austin, Texas.)
Impact BIO-4	Interference with fish or wildlife movement	Significant and unavoidable		<ul style="list-style-type: none"> • Where applicable, same as mitigation measures for Impact BIO-1a. • Require construction crews to maintain a 15-mph speed limit on all unpaved roads to avoid the chance of wildlife being harmed. A 15- mph speed limit will allow wildlife to cross roads while avoiding the path of vehicles, or allow vehicle operators to see the wildlife and have sufficient time to avoid a collision. • Participate in regional conservation planning efforts to avoid habitat fragmentation and contribute to preservation and management of large, unfragmented blocks of habitat to minimize interference with fish and wildlife movement.
Impact BIO-5	Conflict with local policies or ordinances	Significant and unavoidable		<ul style="list-style-type: none"> • Where applicable, same as mitigation measures for Impact BIO-1a through BIO-1d.
Impact BIO-6	Conflict with habitat conservation plans	Significant and unavoidable		<ul style="list-style-type: none"> • Require compliance with habitat conservation plans, including measures to preserve and restore species habitat. • Provide funding for completion and implementation of habitat conservation plan programs.
Cultural Resources				
Impact CR-1a	Cultural resource impacts from reconstruction of the Power Inn Road to Hedge substation transmission line	Significant and unavoidable		<ul style="list-style-type: none"> • In areas identified as archaeologically sensitive: A comprehensive cultural resource evaluation shall be required at the time specific development projects are proposed. Unsurveyed areas would require a thorough field inspection to identify potential historic and prehistoric resources. After specific cultural surveys have been conducted, appropriate plans for evaluation and mitigation of impacted resources would be completed as necessary. • SMUD shall: a) plan construction to avoid archaeological sites; b) "cap" or covering the archaeological site with a layer of soil prior to construction; capping may be used where serious soil compaction will not occur; the covering materials are not chemically active; and the site has been recorded; and c) Deed the archaeological sites into permanent conservation easements. • Cultural Resource surveys shall be conducted by a qualified and certified archeologist in the project areas for the reconstruction of the Power Inn Road to Hedge substation transmission line, for the North City interconnection, the Woodland-Elverta transmission line, and the

Impact CR-1b	Cultural resources impacts from construction of North City interconnection	Significant and unavoidable	Willow Slough substitution. Same as mitigation for CR-1a.
Impact CR-1c	Cultural resources impacts from construction of the Woodland-Elverta transmission line	Significant and unavoidable	Same as mitigation for CR-1a.
Impact CR-1d	Cultural resources impacts from construction of the Willow Slough substitution	Significant and unavoidable	Same as mitigation for CR-1a.
Impact CR-1e	Cultural resources impacts from reconductoring in the annexation territory	Significant and unavoidable	Same as mitigation for CR-1a.
Impact CR-2	Impacts to Paleontological resources	Significant and unavoidable	Same as mitigation for CR-1a.
Hazards and Hazardous Materials	(Chapter IV, Section F)		
Impact HAZ-1	Expose people or property to hazardous materials or conditions	Significant and unavoidable	<ul style="list-style-type: none"> • Minimize the overall supply of raw materials to prevent overstocking. • Maintain vehicles and equipment at a single, central location. • Prepare a Storm Water Pollution Prevention Plan for use during construction. This plan shall include, but not be limited to, CalOSHA requirements, measures to train employees and measures to transport, store, handle, and dispose of hazardous materials and wastes. In addition the SWPPP shall include a section for containing, cleaning and reporting hazardous spills.

			<ul style="list-style-type: none"> • Hazardous materials and/or wastes will be doubly contained when stored onsite. • Construction contractors will be required to have spill response equipment available at the jobsite. Any spills occurring at this site will be fully contained and cleaned up immediately. • Used oil will be recycled if possible. If no recycling is available, the oil will be properly disposed. • Petroleum products such as waste gasoline, diesel or kerosene, will be recycled if possible. If no recycling is available, the petroleum products will be properly disposed. • Protocols for managing contaminated soil encountered during grading operations will be provided in the contract specifications. These specifications will establish procedures for the sampling, excavation, hauling, disposal, and reporting of contaminated soils. • SMUD, in conjunction with the California Department of Conservation, shall initiate the preparation of a map generally showing the locations that possess soils or rock material with the potential to contain naturally occurring asbestos for use by SMUD in their review of proposed projects. A registered soils engineer shall evaluate proposed project activities within areas on this map for impacts due to naturally occurring asbestos, and develop and implement appropriate mitigation, if necessary. • Use double circuit poles to reduce electric and magnetic fields. • If any "Category 1" or other chemicals that can pollute the soil are found, conduct a health risk assessment to determine if people will be exposed to hazardous levels of contaminants. • Utilize the DTSC guidance for sampling (http://www.disc.ca.gov/PublicationsForms/interim-ag-soils-guidance.pdf) and conform to recommended sampling protocol and sampling density. • Flood proof facilities, structures and poles located in 100-year flood zone that may contain hazardous materials. • Identify conflicts and fund mitigation measures.
Impact HAZ-2	Conflict with airport comprehensive plans	Significant and unavoidable	
Impact HAZ-4	Cause wildfires	Significant and unavoidable	<ul style="list-style-type: none"> • Run distribution lines underground. • Regularly clear brush and other fuel away from electrical lines and equipment.
Hydrology/ Water	(Chapter IV, Section G)		

Quality	Impacts on storm water quality	Significant and unavoidable	<ul style="list-style-type: none"> Grading plans shall include an approved drainage and erosion control plan to minimize the impacts from erosion and sedimentation during grading. This plan should include measures such as: (a) restricting grading to the dry season; (b) protecting all finished graded slopes from erosion; (c) protecting downstream storm drainage inlets from sedimentation; and (d) use of silt fencing to retain sediment in the project site. Site-specific erosion and sediment control measures shall be based on recommendations of the Regional Water Quality Control Board ("RWQCB"). After construction is completed, all active drainage channels and culverts should be inspected for accumulated sediment. If sediment accumulation has occurred, these drainage structures should be cleared of debris and sediment. As soon as grading is complete, all exposed soils shall be seeded or vegetated with a SMUD-approved seed mix and native vegetation to ensure that soils are stabilized. Preparation of a Spill Prevention and Pollution Control Plan identifying management practices for materials with the potential to degrade water quality and emergency response protocols for releases.
Impact H-2	Impacts to groundwater hydrology	Significant and unavoidable	<ul style="list-style-type: none"> Same as mitigation for Impact H-1. Obtain a Clean Water Act Section 404 permit and a Section 401 water quality certification for all activities involving the dredging or filling of waters of the United States, and shall comply with all requirements instituted pursuant to such permit.
Land Use / Planning	(Chapter IV, Section H)		
Impact LU-2	Conflict with Policies of Sacramento County General Plan	Significant and unavoidable	<ul style="list-style-type: none"> Identify conflicts. Where feasible, modify Project to conform to Plan policies. Identify and implement appropriate mitigation measures.
Impact LU-3	Conflict with Measure M, the Natomas Joint Vision Plan, and the Sacramento International Airport Master Plan	Significant and unavoidable	<ul style="list-style-type: none"> Identify conflicts. Where feasible, modify Project to conform to Plan policies. Identify and implement appropriate mitigation measures.
Noise	(Chapter IV, Section I)		
Impact	Noise from construction	Significant	<ul style="list-style-type: none"> Limit construction activity to weekdays between 7:00 a.m. and 7:00 p.m., with no construction

NOI-1b	of the North City interconnection	and unavoidable	<ul style="list-style-type: none"> on Sundays. Require that all internal combustion engine-driven equipment is equipped with high-efficiency mufflers, which are in good condition and appropriate for the equipment. Locate stationary noise-generating equipment as far as possible from sensitive receptors when sensitive receptors adjoin or are near a construction project area. Construct sound walls or other noise reduction measures prior to developing the project site. Define maximum equipment noise levels to assure mufflers are working properly. Monitor noise levels at locations of sensitive receptors. Run lines underground.
Impact NOI-2b	Noise from new transmission lines	Significant and unavoidable	<ul style="list-style-type: none"> Install permanent noise barriers for Willow Slough substation. Require that all internal combustion engine-driven equipment is equipped with mufflers that are in good condition and appropriate for the equipment. Locate stationary noise-generating equipment as far as possible from sensitive receptors when sensitive receptors adjoin or are near a construction project area. Construct sound walls, landscaping or other noise reduction measures prior to operating the substation. Reduce noise levels to well-below permissible noise levels of the City. Implement mitigation measures for Impact NOI-1b for maintenance activities.
Impact NOI-2c	Noise from Willow Slough substation	Significant and unavoidable	
Population / Housing	(Chapter IV, Section J)		
Impact PH-1	Increase population growth	Significant and unavoidable	Provide funding for low-income housing development. (CalTrans Community Impact, Section 4-7).
Impact PH-2	Increase housing demand	Significant and unavoidable	Same as mitigation for Impact PH-1.
Impact PH-3	Preempt housing on land planned for housing development	Significant and unavoidable	Same as mitigation for Impact PH-1.

Public Services	(Chapter IV, Section K)		
Impact PS-1	Desired fire and police response times	Significant and unavoidable	<ul style="list-style-type: none"> • Provide funding to improve provision of public services. • Pay Project's fair share of costs to mitigate delayed fire and police response times due to cumulative impacts.
Impact PS-1	Increased demand for schools and parks	Significant and unavoidable	<ul style="list-style-type: none"> • Require SMUD to construct or fund construction of parks and school facilities. (CalTrans Community Impact, p. 51.)
Recreation	(Chapter IV, Section L)		
Impact REC-1	Direct impacts to public recreational facilities	Significant and unavoidable	<ul style="list-style-type: none"> • Require SMUD to construct or fund construction of parks and activity centers. (CalTrans Community Impact, p. 51.)
Transportation/Traffic	(Chapter IV, Section M)		
Impact TR-1	Construction traffic impacts	Significant and unavoidable	<ul style="list-style-type: none"> • Provide a traffic control plan to CalTrans for review and approval prior to Project construction including: access points; staging areas; dump sites; operating hours; Project duration; scheduling and phasing; and total number of construction vehicles and their respective haul routes, per Project phase. • Flaggers shall be stationed to slow or stop approaching vehicles to avoid conflicts with construction vehicles, or equipment.
Impact TR-2	Operation and maintenance traffic impacts	Significant and unavoidable	<ul style="list-style-type: none"> • Provide electric vehicle ("EV") and compressed natural gas ("CNG") vehicles in vehicle fleets. • Install CNG fueling facility. • Establish a carpool/vanpool program. • Provide on-site childcare or contribute to off-site childcare within walking distance. • Provide preferential parking for carpool/vanpool vehicles. • Construct transit facilities such as bus turnouts/bus bulbs, benches, shelters, etc. • Provide shuttle service to transit stations/multimodal centers. • Implement parking fee for single-occupancy vehicle commuters. • Implement parking cash-out program for non-driving employees. • Implement compressed workweek schedule.

Utilities / Energy Conserv.	(Chapter IV, Section N)		
Impact UT-1	Impacts on solid waste disposal facilities	Significant and unavoidable	<ul style="list-style-type: none"> • Commit to increased use of recycled materials. • Develop enhanced recycling programs. • Pay Project's fair share of improvements to solid waste disposal facilities.
Impact UT-1	Increase overall per capita energy consumption	Significant and unavoidable	<ul style="list-style-type: none"> • Commit to energy conservation programs that exceed in scope and effectiveness the programs offered by PG&E. • Expand energy efficiency rebate program to exceed the rebates offered by PG&E. • Install solar electric systems in annexation area public schools. • Install solar electric systems on low-income family homes in annexation area. • Commit to adherence to California Energy Action Plan policies. • Commit to providing annexation area 20% renewables by 2010. • Participate in California Solar Initiative.
Growth Inducing Impacts	(Chapter VI)		
Impacts	Economic growth caused by lowering rates and improved reliability	Significant and unavoidable	Identify areas potentially impacted by growth caused by Project and impose relevant mitigation measures as discussed above.

XIV. THE DEIR FAILS TO ADEQUATELY ANALYZE THE GROWTH-INDUCING IMPACTS OF THE PROJECT

The DEIR's analysis of the Project's potential growth-inducing effects is legally deficient. The DEIR fails to describe and evaluate the impacts that may result from the Project's inducement of growth.

When preparing an EIR, the lead agency must identify, discuss and analyze the growth-inducing impacts of a proposed project.²²² A project must be analyzed to determine if it will facilitate and encourage population growth, economic growth or changes in land use and development patterns.²²³

"[An] EIR must discuss growth-inducing impacts even though those impacts are not themselves a part of the Project under consideration, and even though the extent of the growth is difficult to calculate."²²⁴ In determining if a project has growth-inducing impacts, the EIR should look to whether the Project may set in motion market forces that can lead to economic pressure for growth.²²⁵

The DEIR acknowledges that the Project may induce increased growth in the annexation area if it meets its Project goal of reducing electric rates by up to 25%.²²⁶ Lower rates are, by their nature, likely to induce greater growth in the annexation area than in surrounding areas with significantly higher rates. Lower rates give businesses a long-term competitive advantage over businesses located in territories with higher electrical rates.

A 2004 study by Area Development Magazine, ranks energy costs and availability as one of the top five factors for businesses making site selection decisions.²²⁷ This study demonstrates that, should the Project deliver its promise of reduced electric rates, businesses would be more likely to relocate to the annexation territory in order to avail themselves of this competitive advantage.

Such growth would have all of the attendant consequences on the environment, such as construction impacts, traffic impacts, noise and visual

²²² CEQA Guidelines § 15126.2, subd. (d).

²²³ *Id.*

²²⁴ *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 368, 110 Cal.Rptr.2d 579.

²²⁵ *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1333.

²²⁶ DEIR at p. VI-2.

²²⁷ Area Development Magazine, 19th Annual Corporate Survey (December, 2004) at p. 6.

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aesthetic impacts, air and water quality impacts, energy consumption impacts, loss of agricultural land, loss of critical biological habitat, and increased burdens on public services. CEQA Guidelines recognize, for example, that population growth may "tax existing community service facilities, requiring the construction of new facilities that could cause significant environmental effects."²²⁸

In addition, lower electrical rates may significantly change the pattern of housing development and growth in the area. The Project may thus result in significant localized urban encroachment and development pressures within the traditionally agricultural areas of the annexation territory. This growth may very well occur in suburban and rural sprawl patterns, most harmful to habitat areas and farmland.

While acknowledging that growth impacts may be significant, the DEIR, fails to identify or to evaluate the potential scope and manner of these impacts. The DEIR further fails to identify or to evaluate any mitigation measures to reduce or avoid these impacts.

Review of the likely growth-inducing impacts of the Project "cannot be postponed until such effects have already manifested themselves through requests for amendment of the general plan and applications for approval of housing developments."²²⁹ The fact that the exact extent and location of such growth cannot now be determined does not excuse the lead agency from evaluating the potential impacts of such growth. The Court of Appeal has held that the fact that future development may take several forms, does not excuse evaluation of a project's growth-inducing impacts.²³⁰

The DEIR must be revised to identify with greater precision the potential impacts that may result from the Project's significant growth-inducing impacts. Potential mitigation measures to address such impacts must also be identified and evaluated for feasibility.

²²⁸ CEQA Guidelines, § 15126.2, subd. (d).

²²⁹ *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 158-159.

²³⁰ *Id.*

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XV. CONCLUSION

The proposed DEIR fails to fulfill its responsibilities under CEQA. The comments presented above identify numerous impacts that are undisclosed, erroneously evaluated or insufficiently mitigated. A revised DEIR must be prepared to correct these deficiencies. Because such revisions would be significant, the revised DEIR must be recirculated for public review and comment.

Thank you for providing us the opportunity to comment on this matter.

Sincerely,



Thomas A. Enslow

TAE:cnh