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September 15, 2003

Myke Praul  
City Engineer  
City of St. Helena  
1480 Main Street  
St. Helena, CA 94574

**Re: Comprehensive Flood Protection Project: Comments on Revised Draft  
Environmental Impact Report**

Dear Mr. Praul:

This office represents the Living Rivers Council ("LRC") with respect to the City of St. Helena's proposed Comprehensive Flood Protection Project ("Project"). We write today on behalf of LRC to comment on the City's Revised Draft Environmental Impact Report ("RDEIR"), pursuant to the California Environmental Quality Act ("CEQA").<sup>1</sup>

**I. INTRODUCTION**

The LRC was established to protect, restore and preserve rivers and their critical watersheds in natural harmony with the people and wildlife that depend on them for economic vitality, recreational enjoyment and ecological sustainability. The LRC pursues these goals through education, research, consensus building, and advocacy. The members of the LRC believe that the Napa River is a cultural, economic and natural treasure that has defined and sustained our community throughout its history. In 1998, Napa valley residents had the foresight and determination to preserve this resource and protect our communities by passing the Living River Flood Management Ordinance, commonly known as "Measure A" and officially known as "Napa County Flood Protection Sales Tax Ordinance", which instituted a special sales tax to pay for flood projection projects that achieve real flood protection, and do so without degrading our rivers and riverine ecosystems. (Attached hereto as Exhibit 4.)

The first of their kind in the world, Measure A projects are flood management strategies that work *with* the river, not against it, and ensure full flood protection for all our communities. To ensure that projects provide both flood protection and environmental benefits, Measure A includes

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<sup>1</sup> California Public Resources Code §§ 21000 *et seq.*

a clear mandate that all work undertaken with Measure A funds comply with the Living River Principles and not lead to or induce additional growth or development. (Living River Principles attached hereto as Exhibit 5.) The LRC intends to ensure that the promise made to the residents of this county through Measure A is kept, and that all flood management projects embody Living River Principles.

The Vineyard Valley community in St. Helena faces an increasingly dangerous flooding situation. While the flooding is not caused by the Vineyard Valley community or its residents, it must be acknowledged that the reason periodic flooding in this location is problematic is because Vineyard Valley was built directly in harm's way, within the 100 year floodplain and directly adjacent to the banks of the Napa River. In fact, when Vineyard Valley first proposed floodwalls, the City refused to accept liability and acknowledged that such structures may not solve Vineyard Valley's flooding issues and may actually exacerbate flooding either up or downstream. (See 1986 letter from City to Vineyard Valley attached hereto as Exhibit 6.) The LRC's goal is to help develop a flood management plan that not only offers a sustainable solution to this particular flooding situation, but also embodies the requirements of the Living River Principles. Unfortunately, the City of St. Helena's proposed project, the EMP, fails to satisfy either goal.

## **II. SPECIFIC COMMENTS ON THE PROJECT AND RDEIR**

According to the RDEIR, it is now clear that the City's proposed project is the Enhanced Minimum Plan ("EMP") and includes the following key development elements:

- (1) Floodplain terraces - Terraces A & B;
- (2) Home relocations;
- (3) Setback levees;
- (4) Setback floodwalls;
- (5) Undergrowth clearing and removal (Element C);
- (6) Utility relocations and modifications;
- (7) Slope protection and bank stabilization;
- (8) Adams Street levee and extension;
- (9) Paseo Grande extension;
- (10) Public trail;
- (11) Flood protection for City wastewater treatment plant;
- (12) adaptive management, monitoring, and maintenance plan;
- (13) Adams Street extension, causeway, bridge, and intersection with Silverado Trail; and
- (14) Pope Street bridge sill removal and stabilization.

However, for undisclosed reasons, the RDEIR purports to invent "dual purpose" environmental review of the project in that it provides both project level and program level review. (RDEIR at ES-

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1.) The RDEIR provides project level review for purported "project level features" including those listed as numbers 1-12 above, and program level review for purported "programmatic level features" including those listed as numbers 13 and 14 above. (RDEIR at ES-8.)

As explained in more detail below, the RDEIR does not comply with the requirements of CEQA. The RDEIR lacks several essential elements required for it to be considered legally adequate under CEQA. First, CEQA's fundamental policy is that all public agencies "shall regulate such activities so that major consideration is given to preventing environmental damage." *Laurel Heights Improvement Assn. v. Regents of the University of California ("Laurel Heights I")* (1988) 47 Cal.3d 376, 390; Pub. Res. Code § 21000(g). The "primary means" by which the legislative goals of CEQA are achieved is the preparation of an EIR. *Laurel Heights I, supra*, 47 Cal.3d at 392; Pub. Res. Code §§21080(d), 21100, 21151; 14 Cal. Code Regs. ("CEQA Guidelines") §15080. The EIR has been described as "an environmental 'alarm bell' whose purpose is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810. An EIR is intended to serve as "an environmental full disclosure statement." *Rural Land Owners Assn. v. City Council of Lodi* (1983) 143 Cal.App.3d 1013, 1020.

Second, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. CEQA Guidelines § 15002(a)(1). An EIR must include a description of the physical conditions in the vicinity of the project at the time environmental analysis commences. CEQA Guidelines § 15125. This environmental setting will normally constitute the baseline physical conditions by which the lead agency determines whether an impact is significant. *Id.*

Aside from evaluating a proposed project's environmental impacts, the third principal purpose of the EIR is to identify mitigation measures and alternatives to the project which may reduce or avoid the project's significant adverse impacts, thus accomplishing CEQA's basic statutory goals. *See, Laurel Heights I, supra* 47 Cal.3d at 400-403; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564; Pub. Res. Code §§ 21002.1, 21100. This analysis of feasible mitigation measures and a reasonable range of alternatives is crucial to CEQA's substantive mandate that significant environmental damage be substantially lessened or avoided where feasible. Pub. Res. Code §§ 21002, 21081, 21100; CEQA Guidelines § 15002(a)(2) and (3).

The EIR process also serves a fourth fundamental purpose – that of informing the public and fostering public participation, resulting in official accountability. *Laurel Heights I, supra*, at 392, 404-405. CEQA requires government agencies to disclose to the public the reasons why they have approved a particular project if it will result in significant adverse environmental effects. CEQA Guidelines § 15002(a)(4). "The EIR process protects not only the environment but also informed self-government." *Laurel Heights I, supra*, at 392. Consequently, the California Supreme Court has

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repeatedly recognized that the EIR process is "the heart of CEQA." *Laurel Heights I, supra*, at 392; *Laurel Heights Improvement Assn. v. University of California* ("*Laurel Heights II*" (1993) 6 Cal.4th 112, 1123.

The City's RDEIR fails to satisfy all of the above mentioned underlying purposes of CEQA. In preparing the RDEIR, the City has: (1) failed to provide a finite and clear project description and unlawfully segmented environmental review of the project by providing part project and part program level review without any justification for its piecemealing of comprehensive environmental review in this manner; (2) failed to provide sufficient baseline information to conduct accurate and complete environmental review; (3) failed to accurately identify and adequately analyze all potentially significant environmental impacts; (4) failed to incorporate adequate measures to mitigate environmental impacts to a less than significant level, improperly deferred mitigation measures that it has identified, and failed to assess a reasonable range of alternatives; (5) failed to perform adequate analysis regarding the Project's growth inducing impacts, specifically with regard to the EMP's proposed Adams Street Extension and Bridge over the Napa River; and (6) failed to adequately analyze the cumulative impacts of the project.

We have prepared these comments with the assistance of technical experts, including Dr. Robert Curry, Dr. Robert Abbot and Anne Flannery. The comments of these experts are appended hereto as Exhibits 1, 2, and 3 respectively. Please note that these experts' comments supplement the issues addressed below and should be addressed separately.

#### **A. THE RDEIR ILLEGALLY COMBINES 'PROJECT' AND 'PROGRAM' LEVEL REVIEW**

CEQA mandates that in order to determine the scope of environmental review for a project, the project description must be accurate. *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199. As the *County of Inyo* court noted:

A curtailed or distorted project description may stultify the objectives of the [CEQA] reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e. the "no project" alternative) and weigh other alternatives in the balance. An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.

*County of Inyo, supra*, 71 Cal.App.3d at 192, citing *Aberdeen & Rockfish RR. v. SCRAP* (1975) 422 US 289, 322. This RDEIR does not provide a legally adequate description of the project.

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Following CEQA's full disclosure directives, a lead agency must clearly inform the public whether an EIR is a program or a project EIR and thus, whether future CEQA documents are anticipated. In this case, the RDEIR offers a confusing mix of both project and program level environmental review, stating that some "aspects of the Proposed Project could be carried out without further environmental review" whereas "[f]or those features addressed at only a program level . . . further environmental review, more focused on site-specific issues, will be necessary after certification of the Final EIR for the Project." (RDEIR at ES-1.)

The RDEIR does not provide any explanation or rationale for its decision to single out specific project components for an unequal and less than thorough environmental review. For example, the RDEIR arbitrarily excludes project components such as the (1) Adams Street extension, causeway, bridge, and intersection with Silverado Trail and (2) the Pope Street Bridge sill removal and stabilization from the analysis of the rest of the project simply because it has summarily deemed these to be "programmatically" project features. This approach is especially confusing with regard to the Adams Street extension and bridge components because the RDEIR purports to review a portion of the Adams Street extension completely now (phase 1), while leaving the remainder of the Adams Street extension and causeway/bridge construction to be more precisely reviewed at a later date (phase 2). The RDEIR offers no reason to segment this project feature and piecemeal its environmental review. The RDEIR literally stops its analysis of the Adams Street Extension at an arbitrary point in the proposed new levee/road, claiming that while the road extension up to that point is thoroughly reviewed in this RDEIR, the remainder of the road and bridge over the Napa River will be reviewed in the future. In doing so, the RDEIR violates CEQA.

It is a clear violation of CEQA's requirement that an EIR provide an adequate project description to assist in an informed evaluation and review of the project and its environmental impacts. "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *County of Inyo, supra* Cal.App.3d 185, 193 (italics in original); *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 738; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730; *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 830; *see also* Discussion following CEQA Guidelines § 15124.

While CEQA provides for and even encourages program EIR's and tiering in some situations, a program EIR is not appropriate for this particular project. Public Resources Code §§ 21068.5, 21093 and 21094 govern the use of "tiered" EIRs and express a legislative intent to free lead agencies from reinventing the wheel each time an EIR is prepared on one of a series of projects when some of the environmental impacts of those projects could be analyzed once at the outset. Here, the RDEIR isn't reviewing the Adams Street extension and bridge and removal of Pope Street sill on a programmatic level to make it easier to review future projects included in a large scale plan or policy, but instead, is simply deferring review of portions of the Comprehensive Flood Protection

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Project to a later date. Typically, program EIR's and its 'tiering' process is used to cover general matters and environmental effects of large scale policies, plans, programs or ordinances (such as large scale development projects requiring Specific Plans or comprehensive plans or policies covering many smaller actions) which envision a number of subsequent projects consistent with the overarching plans. (CEQA Guidelines §15168.) Here, the exact opposite is occurring, with the Adams Street extension/bridge and removal of Pope Street sill comprising two specific features of the overall project.

California courts require detailed analyses of all potentially significant impacts that may result from a project. Under CEQA, project EIR's focus primarily on the changes in the environment that would result from the development project. (CEQA Guidelines § 15161.) A project EIR shall examine all phases of the project including planning, construction, and operation. (Id.) Most importantly, a lead agency cannot defer the analysis of impacts from planning, construction or operation of a project simply by designating the project, or portions of the project, a "program." See, *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182.

The Court's decision in the *Stanislaus Natural Heritage Project* discusses the exact reasons why the RDEIR's deferral of environmental review of the Adams Street extension/bridge (phase 2) and the removal of the Pope Street sill violates CEQA in this instance. Just as the City has done in the RDEIR, the County in the *Stanislaus Natural Heritage Project* case asserted that the EIR was both a 'program EIR' for some aspects of the project and a 'project-level' EIR for other aspects. *Id.* at 202. In that case, the court rejected the County's argument that it could review certain project phases and their environmental impacts in the future by observing that in doing so "the County's approval of the project under these circumstances [would] defeat[] a fundamental purpose of CEQA: to 'inform the public and responsible officials of the environmental consequences of their decisions before they are made.'" *Id.* at 195 (emphasis added), citing *Laurel Heights Improvement Association v. Regents of University of California* ("Laurel Heights II") (1993) 6 Cal.4th 1112, 1123. Ultimately, the court held that a "decision to 'tier' environmental review does not excuse a governmental entity from complying with CEQA's mandate to prepare, or cause to be prepared, an environmental impact report on any project that may have a significant effect on the environment, with that report to include a detailed statement setting forth '[a]ll significant effects on the environment of the proposed project.' (Pub. Resources Code, § 21100.)" *Id.* at 197. Accordingly, the City cannot defer its analysis of the Adams Street extension and bridge or the removal of the Pope Street sill but is required to analyze and identify the specific impacts expected to result from their development now, in this RDEIR. By deferring environmental assessment to a future date, the RDEIR runs counter to "that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process....Environmental problems should be considered at a point in the planning process where "genuine flexibility remains." *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 307.

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Without detailed analysis of the entire Adams Street extension and bridge construction, as well as the removal of the Pope Street bridge sill, both the public and the City's decision-makers are deprived of knowing the truth and totality of the project's environmental impacts at this most important stage before committing precious financial resources, most of which are envisioned to come from Measure A sales tax revenues. Moreover, mitigation measures and alternatives that may appear adequate now, may turn out to be inadequate or inapplicable to address the additional impacts of the Adams Street extension/bridge and Pope Street sill removal when viewed together with the impacts of the 'whole' project. Moreover, when the impacts of the 'whole' project are considered together, project alternatives that now seem infeasible or completely new project alternatives may become feasible or more attractive. While the RDEIR is clear in that additional environmental review of these programmatic level features will occur in the future, by deferring the identification of the project's impacts at this crucial stage, the City is violating one of CEQA's fundamental goals.

Second, also related to CEQA's project description requirement, the RDEIR also violates the prohibition against improper segmentation, or piecemealing of environmental review for a project. Pursuant to CEQA Guidelines § 15378(a), a 'project' means the whole of an action that may cause either a direct or reasonably foreseeable indirect physical change in the environment. Further, "'Project' is given a broad interpretation in order to maximize protection of the environment." *McQueen v. Board of Directors of the Midpeninsula Regional Open Space District* (1988) 202 Cal.App.3d 1136, 1143. Accordingly, by failing to analyze the Adams Street extension and new bridge as well as the removal of the Pope Street sill together with the rest of the project in the RDEIR, the City improperly split the project into multiple segments in violation of CEQA. See *Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 165-166; *Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 283-284; *City of Carmel-By-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 241-243; *Del Mar Terrace Conservancy, Inc. v. City Council of the City of San Diego* (1992) 10 Cal.App.4th 712, 729-737; *McQueen v. Board of Directors of the Midpeninsula Regional Open Space District* (1988) 202 Cal.App.3d 1136, 1144; *Laurel Heights Improvement Association v. Regents of the University of California ("Laurel Heights I")* (1988) 47 Cal.3d 376, 395-396; *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1452-1453.

The entire project being proposed must be described in the EIR as a complete project description is necessary to ensure that all of the project's environmental impacts are considered. *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1450. Further, a project description must include all relevant parts of a project, including reasonably foreseeable future expansion or other activities that are part of the project. *Laurel Heights I, supra*, 47 Cal.3d at 396. The court in *Laurel Heights I* set forth a two-pronged test for determining whether reasonably foreseeable future activities must be included in an EIR project description which states:

We hold that an EIR must include an analysis of the environmental effects of future

expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.

*Id.* Under the test set forth by the court in *Laurel Heights I*, environmental review of the Adams Street extension/bridge and removal of the Pope Street sill must be completed now in the RDEIR and not deferred into the future. These two project elements are explicitly included in the project description. Thus, not only are they reasonably foreseeable, they are virtually certain as evidenced by their inclusion in the RDEIR's construction time line in Year 1 (Remove Pope Street Bridge Sill) as well as in Years 3 & 4 (Adams Street causeway/bridge). (RDEIR at 2-16.) Moreover, by proposing work directly in the Napa River as well as on its banks, both the Adams Street extension/bridge and removal of the Pope Street Bridge sill have the potential to add a host of additional impacts to biological resources, water quality, traffic, and aesthetics to name a few. As such, deferring environmental review of these project features amounts to an improper segmentation of the project in violation of CEQA.

## **B. THE RDEIR OMITTS CRUCIAL ASPECTS OF THE PROJECT FROM ITS PROJECT DESCRIPTION**

As discussed above, in order to be legally sufficient and satisfy CEQA's informational purposes, an EIR must provide an accurate, stable, and finite project description. *County of Inyo, supra* Cal.App.3d 185, 193. Unfortunately, the RDEIR fails to describe and analyze a number of key project elements.

First, the EMP includes an adaptive management and maintenance plan that will be used to ensure the EMP's flood terraces and overflow channels perform as designed with respect to flow, habitat, and flood control functions. However, the RDEIR fails to accurately describe the type and method of maintenance to be conducted in the flood terraces and overflow channels proposed as part of the EMP. (*See* Dr. Curry's and Dr. Abbot's discussions regarding the inadequacy of the Adaptive Management and Maintenance Plan at Exhibit 1 (Curry) and Exhibit 2 (Abbot).) Specifically, while the RDEIR recognizes that the EMP may not be self-sustaining as planned and may require actions such as "regrading and revegetating areas where conditions have not resulted in successful plantings", "reduc[ing] or increas[ing] the frequency of overbank flow" (presumably by augmenting overflow terrace elevations) to address potential problems, it does not specify how that maintenance will be done or address whether the maintenance activities themselves have any potential to result in adverse environmental impacts. For example, if excessive sedimentation or log jams create problems with flood water conveyance or fish passage, problems the RDEIR and adaptive management plan regard as possible, earthmoving or other construction activities may be required to address the problems.

Accordingly, it is imperative that the RDEIR completely describe all aspects of the project in order to accurately identify all potential environmental impacts as required by CEQA. While the LRC supports adaptive management, simply deferring the type or method of maintenance activities to a future time without identifying what that maintenance might entail or if maintenance activities will cause their own impacts violates CEQA.<sup>2</sup> Further, under the two-pronged test developed by the court in *Laurel Heights I*, reasonably foreseeable future activities (consequences of the proposed project) such as maintenance activities must be further developed and explained in the EIR.

Second, the Project's proposed modifications to the treatment of stormwater drainage in the area where the EMP proposes to relocate 31-33 mobile homes is not adequately described. While the RDEIR discusses rerouting several drainage ditches and enlarging several drainage pipes (to account for the increased development tied to the relocation), it lacks any discussion of the detention basin as depicted in Figure 2-12 and provides a cursory and hypothetical discussion of potential alternatives to treat stormwater in the relocation area. With respect to its omission of the detention basin and its as yet undetermined treatment of stormwater runoff, the RDEIR's project description is anything but accurate, stable and finite. Instead, the City claims that it will finalize its treatment of the project's stormwater drainage issues through consultation with the EPA and the Regional Water Quality Control Board ("RWQCB"). While the LRC welcomes the idea that the City will involve both the EPA and the RWQCB in the development of stormwater drainage solutions, CEQA requires more of the City. As such, agencies cannot refuse to describe project components, identify potential impacts, or refuse to consider mitigation measures simply because another agency with subsequent permitting responsibility may have the power to address certain significant impacts. *See Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 443 n8.

The RDEIR also fails to adequately describe changes to the City wastewater treatment plant. On pages 2-12 through 2-13, the RDEIR discusses the changes to be made to the wastewater treatment plant. These include raising the entrance roadway 4 feet to flood proof the operations buildings, constructing a floodwall along the westerly side of the site, installing a culvert through the embankment across the drainage ditch, and the apparent proposal for the construction of a new operations and administrative buildings. The RDEIR makes an offhanded suggestion that such new buildings "may be added to the site . . . within the area protected from flooding by the Proposed Project." Nowhere in the RDEIR are these proposed new buildings explained or detailed, let alone analyzed for any potential environmental impacts. In spite of acknowledging the likelihood of new operations and administrative buildings as a result of the flood proofing benefit proposed by this project, the RDEIR states that because such facilities are not part of the proposed project, they would be subject to separate environmental review. As discussed in detail above, the appropriate test for

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<sup>2</sup>CEQA Guideline § 15126.4(a)(1)(D) requires that "if a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed".

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when such facilities must be reviewed, as expressed by the court in *Laurel Heights I*, is that an “EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.” *Laurel Heights I, supra*, 47 Cal.3d at 396. By the City’s own admission, the development of additional operations and administrative buildings at the wastewater treatment plant is a reasonably foreseeable consequence of the flood proofing proposed by this project. Accordingly, since the construction of any additional buildings changes the scope or nature of the project or its environmental effects, the City improperly excluded such future building construction and impact analysis from the current RDEIR.

Additionally, the RDEIR lacks any description or analysis whatsoever of project components such as (1) the public trail, (2) the extension of Paseo Grande, or (3) the water it intends to use to assist in the establishment of riparian vegetation in the overflow terraces (Terrace A and B). For each of these important project elements, the RDEIR not only fails to adequately describe them, it also fails to consider or address any additional, or secondary impacts that may result from their development or application in violation of CEQA.

For example, while the proposal for a public trail is certain to be welcomed, especially if it is a multi-purpose recreational trail allowing pedestrian, bicycle, and equestrian use, the RDEIR’s failure to identify the type and location and of the proposed trail is problematic. Typically, such multi-use trails are developed as small road-like trails with an impervious surface wide enough for all three user types to enjoy simultaneously. Despite the benefits such trails provide for recreation and transportation, the development and use of the trail may result in significant impacts to wildlife, riparian habitat, water quality, and flooding. Neither the location nor the potential impacts of the proposed trail are addressed in the RDEIR.

Further, the RDEIR only briefly mentions that the overflow terraces will require a water supply for irrigation in order to help establish the planned riparian vegetation in the terraces. The RDEIR’s complete failure to describe let alone analyze this water supply/use/application is troubling for two reasons. First, the RDEIR fails to discuss the amount of water required to establish the riparian vegetation in the terraces. While the RDEIR does mention that the source of the water will be treated wastewater, it is impossible to support statements that the use of treated wastewater will not impact the City’s supply of water without quantifying the amount needed. Also, the RDEIR states that the treated wastewater will be applied to the new vegetation by using the City’s water truck. Without more, it appears that the City intends to drive a large utility truck into or near the fragile environment of the newly planted overflow terraces and apply wastewater for irrigation purposes. On its face, such a plan includes a number of potential impacts that are not addressed. In concluding that this need for and use of water to irrigate the vegetation in the overflow terraces is less than significant, the RDEIR violates CEQA by not adequately describing this project

component with enough detail to enable potential impacts to be identified and by deferring the development of this project component until the design phase of the project, whenever that will occur.

Second, the RDEIR's recognition that the overflow terraces will require supplemental irrigation to assist in the establishment of the riparian vegetation admits the possibility that a flood event may force water into the overflow terraces before they are established with the riparian vegetation intended to achieve flow, sedimentation, and wildlife habitat functions. Without detailed information about the vegetation management of the terraces and the water needed for establishment of that vegetation, the project description and its impact assessment is inadequate. (See Dr. Curry's report at Exhibit 1.)

### **C. THE RDEIR'S DESCRIPTION OF THE ENVIRONMENTAL SETTING, OR 'BASELINE' IS INADEQUATE**

An essential requirement of an EIR is that it describe the environmental setting for the proposed project in order to establish the baseline physical conditions by which a lead agency determines whether an impact is significant. CEQA Guidelines § 15125. Accurately and completely describing the environmental setting is the crucial first step in the EIR's process of identifying impacts, assessing the significance of those impacts, and developing mitigation measures and project alternatives to avoid or lessen project impacts. As stated by the court in *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 723, "[b]ecause the concept of a significant effect on the environment focuses on changes in the environment, this section [Guidelines § 15125] requires an EIR to describe the environmental setting of the project so that the changes can be seen in context. The description of the pre-existing environment also helps reviewers to check the Lead Agency's identification of significant effects." The RDEIR for this project does not adequately or completely describe the project's environmental setting with regard to biological resources, and because of that flaw, the RDEIR's identification of project related impacts is similarly inadequate. *San Joaquin Raptor, supra* 27 Cal.App.4th at 729.

The project proposes a number of activities that will likely change both the appearance and function of the Napa River and its riparian habitat throughout the project reach, including flood terraces, overflow channels, levees, floodwalls, undergrowth clearing and removal, slope protection and bank stabilization, the Adams Street extension and bridge construction as well as the removal of the Pope Street sill. Accordingly, in order to make a proper assessment regarding the potential impacts of those activities on plant and animal species, it is imperative to know what plant and animal species and habitats actually exist on the project location. Further, it is not only important to know which species exist or use the project location, but to quantify their presence as well as habitat essential to their survival and life functions. The only way to accurately determine impacts to plant and animal species is for qualified biologists to conduct on the ground surveys of all plant

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and animal species and habitat areas following all scientifically recommended protocols, such as conducting said surveys in ways designed to identify species or habitats with daily or seasonal specific characteristics/mannerisms. Unfortunately, the City has not conducted the type of surveys mentioned above in a manner designed to accurately and completely identify the existing biological resources in the environmental setting of the project area.

As discussed in more detail by both Robert Abbot and Anne Flannery, the RDEIR fails to accurately and completely assess the baseline environmental conditions of the project site. (Exhibits 2 and 3.) The RDEIR's most glaring shortcomings include (1) its reliance on both outdated wildlife data base information and an inadequate biological survey, (2) its utter failure to survey for aquatic species and resources, and (3) its failure to address serious concerns raised in previous comments from the California Department of Fish and Game. Instead of conducting an appropriate baseline assessment for biological resources allowing for accurate impact assessment and mitigation, the RDEIR generalizes impacts to wildlife species and habitat and proposes similarly generalized mitigation which fails to quantify impacts and ensure actual mitigation. The RDEIR's inadequacy is best explained by Anne Flannery who concludes "clearly, a one-day survey cannot provide adequate baseline information on presence or absence of a species. The ultimate problem, of course, was that this information was then used to draw conclusions in the RDEIR, and the initial inadequacy was carried forth. In any event, it is the City's ultimate responsibility to request and see to an adequate environmental review." (Exhibit 3 at page 3.)

Further, the RDEIR excludes any reference or mention to the biological baseline information at the wastewater treatment plant location, for which equally disturbing activities such as a floodwall, culvert and other construction is planned. The failure to conduct proper on the ground surveys for wildlife species, especially special status species, is a serious flaw as it precludes any real understanding of the present biological diversity of the project area and thus any defensible determination regarding the project's biological impacts.

The LRC is not alone in its belief that the City has failed to adequately describe the Project's environmental setting or baseline. In its March 14, 2003 comment letter on the Project, the California Department of Fish and Game ("CDFG") expressed a number of concerns regarding the inadequacies of the Project's Biological Resources analysis. (See CDFG letter attached as Exhibit 7.) In that letter, the CDFG similarly criticizes the DEIR for failing to conduct surveys to determine if any special status plant or animal species exist within the project area. Specifically, CDFG singles out a number of species including the Valley Elderberry Longhorn Beetle, Salmonids (such as steelhead), Northwestern Pond Turtle, California Freshwater Shrimp, and the Napa False Indigo as examples of plant and animal species it believes may be located within the project area and deserve additional attention and analysis. In fact, with regard to the Northwestern Pond Turtle, the CDFG soundly rejects the RDEIR's conclusion that no such species have been found or observed on the project site by stating that CDFG staff and others positively observed turtles and potentially suitable

turtle nesting habitat during a recent onsite meeting for this project! (Exhibit 7 at page 3.) As a result, CDFG recommends a number of actions the City should take in order to correct the flaws in the EIR's biological resource analysis ranging from the preparation of surveys designed to determine the existence of special status plant and animal species to possibly requiring a substantial redesign of the project to avoid impacts to the beetle and salmonid fishes. Furthermore, the DFG recommends that any new species information, impacts, or mitigation measures be disclosed and afforded an opportunity for review under CEQA. The LRC agrees with all of the DFG's concerns and recommendations and incorporates them into this comment letter.

Additionally, the LRC notes that while the RDEIR mentions that soil excavated from the proposed flood terraces will be used in the construction of some project features (levees/floodwalls) the RDEIR fails to describe that process in any meaningful detail. Further, because these soils are proposed to be excavated and then utilized in project construction or taken to a location for disposal it is important to know the type of soil and whether or not it includes any hazardous or contaminated properties. For example, if the soil to be excavated contains hazardous/contaminated properties, human health, air quality, or water quality impacts may result. Further, if the soils to be excavated are incompatible with the soils, plants, or wildlife at the disposal site, additional impacts may result. Similarly, because the EMP (as well as the MP and VVRP alternatives) include varying degrees of mobile home and infrastructure demolition and relocation, it is necessary to present similar soil and hazardous/contamination information for the areas to be disturbed by demolition/relocation activities as well. Accordingly, soil sample tests and/or consultation with local and state hazardous/contaminated lists and databases must be conducted and included in the RDEIR with regard to the excavation of the terraces and demolition/relocation planned for the mobile home park.

While the RDEIR represents a slight improvement over the previous DEIR with regard to its assessment of environmental baseline conditions and project impacts to biological resources, it continues to contain an inadequate description of the project's environmental baseline which taints its impact assessment and proposed mitigation measures through out the remainder of the document and frustrates CEQA's mandate that the EIR function as an informational document for both the public and the City's decision-makers. The court's holding from *San Joaquin Raptor* is directly applicable to the City's current RDEIR. In that case, the court held that:

Without accurate and complete information pertaining to the setting of the project and surrounding uses, it cannot be found that the FEIR adequately investigated and discussed the environmental impacts of the development project. The failure to provide clear and definite analysis of the location, extent and character of wetlands possibly within and definitely adjacent to the development project and the failure to discuss SJWF, precludes this court from concluding that all the environmental impacts of the development project were identified and analyzed in the FEIR

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*San Joaquin Raptor, supra, 27 Cal.App.4th at 729.*

Similarly, the RDEIR's failure to provide clear and definite analysis of the location, extent and character of wildlife species and habitat possibly within and adjacent to the flood control project, all the environmental impacts of the project were not properly identified and analyzed in the RDEIR.

The RDEIR's failure to adequately assess the environmental baseline is even more troubling due to the fact that a number of federally and state listed threatened and endangered species are likely to be impacted by the project. While CEQA requires an adequate assessment of the baseline conditions regardless of a project's potential to impact rare and endangered species such as steelhead, California freshwater shrimp, Valley elderberry longhorn beetle, Western pond turtle and others, the fact that responsible agencies such as CDFG, the United States Fish and Wildlife Service ("USFWS") and NOAA Fisheries ("NOAA") have criticized the EIR for failing to accurately address baseline information for these species underscores the requirement for more in depth and accurate analysis of baseline conditions. The RDEIR does not adequately address the concerns raised previously by CDFG, USFWS and NOAA. As such, their comments are equally relevant to the current RDEIR. Because LRC agrees with the CDFG's, USFWS's and NOAA's concerns, it resubmits their previous comments by attaching them hereto as Exhibits 7 (CDFG), 8 (USFWS) and 9 (NOAA Fisheries) respectively.

Thus, because it is clear that the RDEIR will need to be revised or supplemented with the project and baseline information it currently lacks, the City is required to re-circulate the RDEIR once that information has been obtained. CEQA requires a lead agency to re-circulate an EIR when significant new information is added to the EIR following public review but before certification. Pub. Res. Code § 21092.1. Because additional information must be developed to accurately describe the whole project and assess the environmental baseline the RDEIR will need to be re-circulated for public and agency review and comment.

### **C. THE DEIR FAILS TO ACCURATELY IDENTIFY AND ADEQUATELY ANALYZE ALL POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS OF THE PROJECT**

The primary purpose of an EIR is to provide public agencies and the public alike with detailed information about the effect a project is likely to have on the environment, to list ways significant effects might be minimized, and to indicate alternatives to the project. Pub. Res. Code §§ 21002, 21002.1(a), 21061, 21100, 21150. Accordingly, an EIR must identify and analyze all direct and indirect potentially significant environmental impacts of a project. Pub. Res. Code § 21100(b)(1); CEQA Guidelines § 15126.2(a). A significant environmental effect is "a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of

historic or aesthetic significance." CEQA Guidelines 15382.

(In addition, when preparing an EIR, the lead agency must identify, discuss and analyze the growth inducing impacts of the proposed project. CEQA Guidelines § 15126.2(d).)

### **1. Significant and Unavoidable Impacts**

The RDEIR identifies a number of significant impacts related to Aesthetics, Cultural Resources, and Transportation, as well as a number of significant cumulative impacts related to Aesthetics, Air Quality, Cultural Resources, Noise and Transportation that it deems "unavoidable." LRC objects to the determination that these significant impacts are unavoidable because the DEIR fails to include an analysis of a reasonable range of alternatives to the project that would reduce or avoid those impacts. For example, the significant and unavoidable impacts identified by the City are directly tied to project construction and the levees, floodwalls, bridges and terraces proposed by the EMP which would create significant impacts which do not currently exist. While the City may believe that effective flood protection requires the construction of such structures, that belief does not allow the City to shirk its responsibility to analyze flood protection alternatives that do not include levees and floodwalls or other project components which contribute to significant impacts. As it stands currently, the City is skipping an important step required by CEQA, the requirement that it attempt to reduce or avoid significant project impacts through the implementation of mitigation measures or project alternatives before determining that a specific impact or impacts are truly unavoidable.

Only after analyzing project alternatives that do not result in such significant and unavoidable impacts (by including alternatives that refrain from using levees/floodwalls, building new bridges or requiring extensive earthmoving construction activities), and demonstrating their infeasibility can the City find these significant impacts to be unavoidable. Until analyzing such alternatives and supporting findings that such alternatives are infeasible with substantial evidence, the City's conclusion that all project related significant impacts are also unavoidable violates CEQA. The RDEIR's treatment of the many significant and allegedly unavoidable cumulative impacts is a perfect example of the City's improper analysis. In the RDEIR's cumulative impacts section, a number of significant cumulative impacts are identified. However, in response, the City makes no effort to identify additional mitigation measures or alternatives to address these impacts. Instead, the City simply reiterates that the same mitigation measures identified earlier in the RDEIR will be required and summarily concludes that no others are available to address the cumulative impacts. Accordingly, the City's determination that the project's significant cumulative impacts are unavoidable is based entirely on its unsupported claims that "there are no further feasible mitigation measures that could be applied that would reduce the incremental contribution of this project to the significant cumulative impacts." At a minimum, CEQA requires that an actual effort be made to identify and determine the feasibility of mitigation measures and project alternatives in the EIR to

allow the public and decision-makers to comment on the impacts and mitigation. Here, the City skipped this important step.

## 2. Biological Resources

As discussed above in Section C, the RDEIR fails to accurately describe the environmental setting, especially with regard to the actual presence of plant and animal species and habitats. Because a proper description of the environmental baseline is a prerequisite to an adequate impacts analysis, the RDEIR's biological impact analysis is inadequate and incomplete. In addition, the LRC has additional concerns with the biological resources impact analysis.

The LRC objects to the RDEIR's blind reliance on the proposed creation of additional riparian habitat (in flood terraces) to mitigate the admitted significant impacts to special status, endangered, threatened, and rare plant and animal species such as the steelhead, chinook salmon, the Valley Elderberry Longhorn Beetle and others. While the RDEIR acknowledges that significant adverse impacts will result from the removal of riparian and upland trees required for aspects of the project such as terrace floodplain inlet and outlets and the Adams Street road extension and bridge, project noise, harassment from construction activity and human/equipment presence, and habitat modification during project construction, it ultimately concludes that the Project will result in long-term benefits to biological resources. (RDEIR at page 3-60.) The RDEIR's reliance on the proposed creation of riparian habitat to reduce these impacts is improper because the RDEIR fails to affirmatively show that the replacement habitat actually will offset the identified impacts to result in a net benefit. The RDEIR apparently relies on the fact that the 18 acres of proposed riparian habitat to be created in the flood terraces will more than make up for the project's significant impacts due to the larger size the proposed new riparian habitat and the habitat to be lost due project construction and operation. This assumption is apparently made without any analysis of the relative quality and suitability as wildlife habitat of the new flood terraces as compared to the habitat to be lost. In fact, as discussed in the attached reports by Phil Williams and Associates, Dr. Curry, Dr. Abbot and Anne Flannery, due to a number of factors including the infrequency of overbank flood flows into the overflow terraces (on average, one day every two years), the success of the riparian restoration proposed in the overflow terraces is highly suspect and makes the City's reliance on the mitigation afforded by the overflow terraces inappropriate and illegal.

CEQA demands more of an EIR, requiring that it set forth the bases for its conclusions. *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713; *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 432. An EIR must contain facts and analysis, not just an agency's bare conclusions or opinions. *Citizens for Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568. A bare conclusion without an accompanying explanation of its factual and analytical basis is not sufficient analysis of an environmental impact. *Laurel Heights I, supra*, at 404; *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397; *People*

*v. County of Kern* (1974) 39 Cal.App.3d 830, 841. CEQA requires that an EIR be prepared with a sufficient degree of analysis to provide decision-makers and the public with the information needed to make an intelligent decision concerning the project's environmental consequences. CEQA Guidelines § 15151.

The RDEIR also fails to consider a number of other potential impacts to fish species as such as temperature increases due to riparian habitat removal and others identified by biologist Dr. Robert Abbot. (See Dr. Abbot's letter attached as Exhibit 2). Third, the RDEIR fails to consider the time it will take for the new riparian habitat in the flood terraces to achieve functional habitat value equivalent to the habitat to be lost or consider potential impacts that may occur if flood waters enter the overflow terraces before they are established with mature riparian habitat (temporal impacts). Both Dr. Curry's attached report as well as other memoranda prepared by Philip Williams and Associates and submitted to the city on behalf of the Friends of the Napa River demonstrate that success of the floodplain terrace riparian habitat is highly uncertain. Based in part on Dr. Curry's most recent report (Exhibit 1), the LRC continues to assert that the overflow terraces will not achieve the flood protection or habitat restoration goals anticipated by the City and hereby re-submits Phillip Williams and Associates' previous comments as further support for its comments in this regard. (Memoranda prepared by Phil Williams and Associates and dated October 17, 2002, November 29, 2002, January 20, 2003 and February 26, 2003 are therefore attached hereto as Exhibit 8. Phil Williams' previous comments are equally applicable to the current RDEIR due to the fact that despite apparent modifications in the required excavation elevations for the overflow terraces to accommodate for previous flaws in hydrological modeling (as discussed in the RDEIR at page 2-5 and 2-6, in Appendix D page 16 and Appendix F page ES-3), the RDEIR does not present updated analysis of bedload transport and sedimentation nor address the potential for impacts from increased sediment deposition in the terraces due to the newly proposed terrace excavations.

### **3. Cultural Resources**

The structures located at 330 Pratt Avenue, 376 Pratt Avenue, and the GL Pratt Home and Barn are locally and historically important and appear to have been excluded from the RDEIR's cultural resources analysis.

### **4. Public Services, Utilities, and Service Systems**

The RDEIR summarily concludes that because no additional spaces would be built as a part of this project and because all relocated homes would continue to be serviced by the same utilities such as water, sewer, storm systems and landfills, there would be no impacts related to public services, utilities and service systems. However, just because the project will relocate the same number of homes lost in the Vineyard Valley Mobile Home Park to a different area, it doesn't

necessarily follow that no impacts will result. For example, it is clear from the RDEIR that infrastructure for public services, utilities and service systems will need to be developed and/or extended to provide for service to the relocated homes. Simply stating that all relocated homes would continue to be serviced by the same utilities such as water, sewer, storm systems and landfills is not adequate. Because the area where the homes are to be relocated is not currently set up to deliver utilities such as power, water, and sewer, it is reasonable to expect that the relocation of homes to such an area would require new construction or development to provide such service/utility infrastructure. However, the RDEIR fails to describe that new construction or assess whether it will result in any impacts. Accordingly, the Final Environmental Impact Report needs to include additional information explaining the infrastructure in place at the relocation receiver site, or if no such infrastructure exists, the RDEIR needs to be revised to analyze the potential impacts of providing such utilities/services to the receiver site. Providing public services, utilities, and service systems to the same number of persons but in an entirely new and different area can and will cause impacts if that area does not currently provide services or have the requisite infrastructure. These potential impacts have not been identified or addressed in the RDEIR.

Further, as discussed above in Section B, the RDEIR fails to expand on the project's need for a water supply for irrigation. Instead the City summarily concludes that the need for and use of water to irrigate the vegetation planned for the riparian habitat in the overflow terraces will not create significant impacts. Such unsupported conclusions are insufficient to bolster the identification of a potential impact as insignificant, especially when a complete description and understanding of the restoration plan and maintenance regime (including irrigation water source, intervals and duration) has yet to even be developed.

## **5. Transportation/Traffic**

The RDEIR concludes that the Adams Street extension and bridge will result in significant and unavoidable impacts due to a Level of Service ("LOS") at the at the signalized intersection of Main Street and Adams Street of LOS F as a result of reassigned traffic from the Adams Street extension. In the project's first draft EIR, the City claimed that by installing a westbound right turn lane and adding a right turn overlap to the existing traffic signal to operate concurrently with the southbound left turn phase, the intersection will operate at LOS D with 53.2 seconds of control delay and the significant impact would be mitigated to a level of insignificance. However, the City failed to support its conclusion with any evidence whatsoever. Now, in this RDEIR, after recognizing that the Adams Street extension and bridge *will* cause a significant and adverse impact, the city ignores its duty to explore additional mitigation measures and project alternatives to address the impact. Instead, the City has seemingly given up, opting to forgo additional efforts to alleviate or avoid this particular impact by simply deeming the impact unavoidable. CEQA requires much more.

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While the LRC recognizes the complexity and severity of traffic concerns in St. Helena, the city's response to the project's impact on traffic is utterly unacceptable and violates CEQA. A look at the comment letters from the California Department of Transportation ("CalTrans") clearly illustrates the City's failure and appears to explain why it ultimately decided to defer environmental review of the Adams Street extension and bridge altogether. In letters dated March 12, 2003 and May 29, 2003 and attached hereto as Exhibits 10 and 11 respectively, CalTrans severely criticized the City for its treatment of the project's traffic impacts relating to the Adams Street extension and bridge. Not only did CalTrans strongly suggest the exploration of additional mitigation measures to address the Adams Street extension and bridge impacts to the intersection of SR 29-Main Street/Adams Street, it outlined analytical deficiencies in the City's traffic study further undermining the City's project and cumulative traffic impact analyses. Instead of working with CalTrans to correct problems with its traffic study, revise its traffic impact analysis, and conduct a comprehensive cumulative traffic impact analysis as recommended, the City summarily concluded that the traffic impacts will be significant and unavoidable and deferred the detailed analysis and mitigation suggested by CalTrans by deeming the Adams Street extension and bridge a "program" level feature of the project. While the illegality of such action is covered in great detail in Section A above, the practical reasons why the deferral of proper environmental review violates CEQA is clear from this review of the City's treatment of project traffic impacts.

According to the City, it will "consult with Caltrans to determine whether additional feasible mitigation is available that could reduce this impact to less than significant" when it performs environmental review for the Adams Street extension and bridge in the future. However, this solution ignores the possibility that the impacts will be found to be even more severe than currently understood, or that additional impacts will be identified. The tragedy, and ultimate embodiment of the City's violation of CEQA in this regard, is that mitigation measures or project alternatives that reduce or avoid these traffic impacts may not be known or identified until it is too late to implement them. For example, if the goal of securing an all weather access route to the hospital can be achieved by retrofitting or upgrading one or more of the existing bridges over the Napa River (alternatives yet to be explored), learning that fact after half of the Adams Street extension had already been built would be too little too late. That is why CEQA requires environmental review of a project, its future phases, and reasonably foreseeable consequences at the earliest possible point in time.

## **6. Impacts From Use of Chemicals for Noxious Weed Control**

The RDEIR fails to discuss the potential impacts from the use of chemicals to control invasive and other noxious weeds and plants in the overflow channels despite the fact that the use of such chemicals is clearly expressed as part of the "Vegetation Planting and Establishment Plan for Terraces" on page 2-7 and 2-8 of the RDEIR. Other than a statement from the City that "[a]s the riparian corridor develops, activities in the flood plain restoration areas could include noxious weed

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removal (mechanical and chemical)", there is no other discussion or analysis of potential impacts from the use of any such chemicals. The complete lack of information and analysis regarding the project's chemical/herbicide use and potential impacts renders the EIR and its project description legally inadequate under CEQA. *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199. Without detailed information regarding the types, amounts and timing of chemical use (typically required in a Chemical or Pesticide Management Plan), it is impossible for the public or the City's decision-makers to adequately identify let alone properly avoid or mitigate impacts of such chemical use on biological resources and water quality. This is a significant omission as the City apparently intends to use chemicals to control noxious weeds in the same area it proposes as mitigation for impacts to rare and endangered species and their habitats.

In the report entitled "Cumulative Impacts on Fisheries Resources from Intensive Viticulture Practices in Napa County, CA" submitted as Exhibit 12 to this letter, Dr. Robert Abbot and Dr. Robert Coats discuss how the use of chemicals and pesticides can impact steelhead and other aquatic species. In addition, the reports attached as Exhibits 13-22, discuss how contamination (from pesticides such as organophosphates including diazinon and chlorpyrifos) results in adverse impacts to fish and the aquatic invertebrates that form the base of the aquatic ecosystem. While it is unknown whether the City will use diazinon or chlorpyrifos, the attached studies and data are equally applicable to the numerous organophosphate chemicals typically used to control unwanted weed species, as well as a host of other chemicals. As stated in the summary work, "Disrupting the Balance:"

Most fish species and many species of zooplankton in the San Francisco Bay-Delta have experienced dramatic population declines in the last several decades. Multiple factors contribute to these declines, including toxic contaminants in waterways, dams diversions, exotic species, and reduction in food sources. Pesticides known to kill aquatic animals and plants, impair their reproduction, and reduce food sources for fish are thought to be one of the major stressors affecting aquatic organisms in the Bay-Delta ecosystem.

(Exhibit 13, p. 37.) The key to aquatic ecosystems are the tiny aquatic organisms, known as phytoplankton and zooplankton, which form the base of the food web for larger organisms such as fish, insects and amphibians. These organisms are crucial for supplying the food for larger aquatic species, particularly the young of a number of fish species. (Id. at pp. 37-39.)

The California Department of Fish and Game has established criteria for protection of aquatic life which account for the importance of invertebrate organisms in the aquatic ecosystem. For chlorpyrifos, Fish and Game has established a chronic aquatic life criteria of 0.02 ug/liter (parts

per billion) and an acute aquatic life criteria of 0.07 ug/liter.<sup>3</sup> For diazinon, Fish and Game has established a chronic aquatic life criteria of 0.04 ug/liter and an acute aquatic life criteria of 0.08 ug/liter.<sup>4</sup>

Fish and Game's report noted the likelihood of significant environmental impacts if a four day average pesticide concentration does not exceed the chronic aquatic life criteria level, and if a one hour average concentration does not exceed the acute aquatic life criteria every three years.<sup>5</sup> Since the submitted studies indicate that these levels have been exceeded, significant impacts are likely.

Numerous studies corroborate Fish and Game's findings that these levels of chlorpyrifos and diazinon contamination are harmful to aquatic organisms, from small invertebrates such as *Daphnia* species to fish species listed under the federal Endangered Species Act. As discussed in several reports, the direct impacts to listed fish species from low levels of chlorpyrifos and diazinon contamination are significant, including reduced mobility, lowered immune response leading to disease, development abnormalities, endocrine disruption, and disruption of smell and taste.<sup>6</sup> Moreover, chlorpyrifos and diazinon contamination has substantial indirect impacts on fish species by harming or even eliminating smaller invertebrates on which juvenile fish feed.<sup>7</sup> This impact is particularly significant given that many fish species use adjacent waterways as nesting grounds in which their young hatch and grow to adulthood. In fact, the Fish and Wildlife Service has indicated that pesticide contamination, including chlorpyrifos and diazinon, are a likely cause of the declines of several listed fish species in the Delta and adjacent waterways in the Sacramento River and San Joaquin River basins. As stated by the U.S. Geological Survey:

Many pesticides and their breakdown products do not have standards or guidelines, and current standards and guidelines do not yet account for exposure to mixtures and seasonal pulses of high concentrations. In addition, potential effects on reproductive, nervous, and immune systems, as well as on chemically sensitive individuals, are not yet well understood. For example, some of the most frequently detected pesticides are suspected endocrine disruptors that have potential to affect reproduction or

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<sup>3</sup> Exhibit 13, p. 41, Table 3-1.

<sup>4</sup> *Id.*

<sup>5</sup> *See e.g.*, Exhibit 23, p. iii.

<sup>6</sup> *See* Exhibits 19, 20-28.

<sup>7</sup> *Id.*

development of aquatic organisms or wildlife by interfering with natural hormones.

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In light of the numerous and varied adverse impacts to aquatic species identified herein, coupled with the fact aquatic species such as freshwater shrimp and steelhead in the Napa River and its tributaries have suffered alarming declines prompting the need to recognize and protect them as threatened and endangered, it is imperative that the City include specific information regarding the planned use of chemicals for weed control in order to complete proper environmental review. Once specific pesticide information is received, the impacts can be properly identified and mitigation measures or project alternatives can be developed to address those impacts. CEQA requires the City to understand and identify any such impacts before deciding to approve the project.

#### **D. DEFERRAL OF MITIGATION OF SIGNIFICANT IMPACTS**

The RDEIR improperly defers the development of mitigation measures to reduce identified significant impacts, in violation of CEQA. In addition to the RDEIR's improper deferral of impact assessment and mitigation measures associated with comments in Section A above (illegal combination of 'project' and 'program' level review), the RDEIR further defers specific mitigation by requiring the following future studies/actions to develop mitigation measures for a number of potentially significant impacts: (1) Community Design Workshops to be conducted to address aesthetic impacts on Adams Street bridge (RDEIR at ES-10); (2) development of a plan to demonstrate how project construction vehicles will achieve Nox and ROG levels required by CARB (RDEIR at ES-13); (3) stipulation that prime contractor will ensure emissions from all off-road diesel powered equipment will not exceed 40 percent opacity for more than three minutes in any one hour (RDEIR at ES-13); (4) preparation of a tree protection plan to establish measures to safeguard trees from construction impacts (RDEIR at ES-14); (5) development of a Stormwater Pollution Prevention Plan ("SWPPP")(RDEIR at ES-15); (6) consultation with federal agencies and application for federal permits under Clean Water Act and Endangered Species Act (RDEIR at ES-15); (7) preparation of pond turtle surveys prior to construction (RDEIR at ES-15); (8) development of mitigation for Valley Elderberry Longhorn Beetle, including number and location of replacement planting (RDEIR at ES-16); (9) a visual field survey will be performed by a qualified archaeologist to assess the potential for cultural and/or historic resources present in construction areas (RDEIR at ES-17); (10) preparation of health and safety and spill prevention and pollution control plans to address the use of hazardous materials (RDEIR at ES-19); (11) development of protocols to manage contaminated soil that may be encountered (RDEIR at ES-19); (12) preparation of a traffic control plan (RDEIR at ES-25); (13) preparation of nest surveys to ensure migratory and other birds would not be lost during project construction (RDEIR at ES-14).

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<sup>8</sup> The Quality of Our Nation's Waters: Nutrients and Pesticides, USGS Circular 1225, 1999, p.2.

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*In Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307, the court rejected use of future studies as a mitigation measure for project impacts. It also held that an agency may not rely on mitigation measures of unknown efficacy to conclude that a project's potentially significant impacts will be reduced to a "less-than-significant" level. *Id.*

Courts have found, however, that the precise formulation and combination of mitigation measures may wait until after project approval provided that 1) the EIR identifies extensive, alternative mitigation measures, 2) measurable performance standards are established in the EIR that will ensure the avoidance of significant impacts, and 3) the information presented in the EIR reasonably supports a conclusion that some combination of the range of proposed mitigation measures in the EIR will meet the performance standards. For example in *Sacramento Old City Association v. City Council of Sacramento* ("*SOCA*"), concerned citizens of Sacramento challenged the City's approval of a new downtown convention center, where the City had failed to specify the precise mix of mitigation measures that would reduce the project's identified traffic impacts (i.e., parking) to insignificance. *SOCA, supra*, 229 Cal.App.3d at p. 1018. In *SOCA*, the Appellate Court held that the City had not violated CEQA because 1) the City had extensively described several alternatives for fully mitigating traffic impacts including adoption of a transportation management plan, limiting the size of week-day events, promoting regional rather than local conferences, providing satellite parking and shuttle service, and/or promoting alternative transportation modes for conference attendees, and 2) the City made a commitment, in approving the project, that it would fully mitigate traffic impacts with some combination of these mitigation measures by establishing a performance standard of 90% parking utilization during the weekday afternoon (peak) period. *SOCA, supra*, 229 Cal.App.3d at pp.1020-1022, 1026-1030. In other words, the City had committed itself to a quantifiable performance standard - achieving 90% parking utilization on weekday afternoons - and the EIR's mitigation measures were described with sufficient detail to demonstrate the ability to achieve the stated 90% goal. *Id.*

In *Gentry v. City of Murrieta*, the Court of Appeal applied the holdings of *Sundstrom* and *SOCA*, in a challenge to numerous mitigation measures adopted in a negative declaration for a residential development project. The *Gentry* court, following *SOCA*, found that practically all of the challenged mitigation measures were legally adequate under CEQA because 1) measures only requiring reports did not call for further investigation of new or additional mitigation measures to offset impacts, or for the applicant to take any particular actions to comply with recommendations arising from report, and 2) measures requiring the City of Murrieta to direct the applicant's performance were tied to measurable performance criteria that the City had established. *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1394-1396.

However, the *Gentry* court nevertheless rescinded the City of Murrieta's approval of the negative declaration. *Gentry, supra*, 36 Cal.App.4th at 1396. The City had improperly deferred the development of mitigation measures for the federally listed Stephens' kangaroo rat by partially relying on a mitigation measure that allowed the City 1) to request the preparation a post-approval,

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biological study for the Stephen's kangaroo rat, and 2) to require the applicant to comply with any mitigation measures that might be recommended in the biological report. *Id.*

Accordingly, while *Sundstrom* and later cases such as *SOCA and Gentry* recognize that in some situations, environmental analysis and impact mitigation can be properly deferred to a future date, such deferral is only appropriate when it is not practical to provide as complete an analysis as might be desirable and 1) the EIR identifies extensive, alternative mitigation measures, 2) measurable performance standards are established in the EIR that will ensure the avoidance of significant impacts, and 3) the information presented in the EIR reasonably supports a conclusion that some combination of the range of proposed mitigation measures in the EIR will meet the performance standards. Here, for most if not all of the deferred mitigation measures enumerated above, the RDEIR fails to explain why the development of such measures is currently impracticable, fails to identify extensive, alternative mitigation measures, fails to identify measurable performance standards to ensure the avoidance of significant impacts, and fails to provide information to ensure that some combination of the mitigation measures proposed will meet the performance standards. If the City wishes to go forward with the deferral of so many mitigation measures, it must revise the RDEIR to provide the required information in order to clearly show its commitment toward true and effective mitigation.

The reason such deferred mitigation measures are so problematic is explained by the following hypothetical. If the visual field survey required by the RDEIR to assess the potential for cultural and/or historic resources present in the proposed construction areas was to be completed now, during the planning stage, a positive identification of a cultural or historic resource would enable the project to be changed or mitigated such that none of the resources would be damaged or lost. However, if the field survey is deferred until the day before construction/excavation, the equipment may have already been brought in and the project may have reached a point of no return prohibiting a project change or mitigation measure from avoiding the impact. Moreover, if it is feasible to prepare a study, survey or plan required as a mitigation measure during the planning stage, the public and other resource agencies will be able to comment on the adequacy of the mitigation measure, possibly revealing flaws or suggesting additions that could be made to the measure to ensure its success. Thus, because CEQA requires environmental and public review at the "earliest feasible stage in the planning process", any and all mitigation measures that can feasibly be developed in full, must be developed earlier instead of later.

For a number of potentially significant impacts regarding biological and geological resources, hazardous materials, and water quality, the City not only defers mitigation, it fails to consider any mitigation measures of its own. Instead, it relies solely on future consultation and/or permits to be acquired from other state and federal agencies who also have jurisdiction over some aspects of the project to that potentially significant impacts will be reduced to a level of insignificance. Included in this list is the SWPPP, Clean Water Act Section 404, NPDES (402) and

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401 permits/certification, as well as a potential ESA incidental take permit to mitigate impacts to biology, geology, hazardous materials and water quality. In all of these instances, the RDEIR requires that nothing be done until later when the appropriate agency is consulted or the required permit is applied for. There are a number of specific problems with the RDEIR's treatment of these mitigation measures. First, deferring the preparation of surveys and/or the analysis and development of mitigation measures to minimize or avoid impacts to rare, threatened or endangered species may cause an opportunity to positively change the project to avoid such impacts to be missed prior to project approval (making it much more difficult to make substantial project changes or substantial project re-designs to achieve proper mitigation as suggested by the DFG March 14, 2003 comment letter). Once again, CEQA requires environmental review and impact analysis at the earliest feasible opportunity.

Second, the City has a separate and distinct independent duty under CEQA to assess and address potential impacts to endangered species, a duty that is apart from any placed upon the USFWS or NOAA Fisheries (to enforce the federal Endangered Species Act) or the Regional Water Quality Control Board ("RWQCB") and EPA (to enforce the Clean Water Act. Accordingly, it is inappropriate for the city to completely pass off the responsibility of assessing and addressing impacts related to biology (rare, threatened or endangered species), geology (soil erosion), hazardous materials or water quality to the USFWS, NOAA Fisheries, the RWQCB or EPA because its duties are different than the City's. While those agencies may have jurisdiction over species or project impacts because of the federal laws they have been entrusted to enforce, that does not allow the City to ignore its specific duties under CEQA, which works in conjunction with and in addition to other federal laws to address project impacts. The 3<sup>rd</sup> District Appellate Court clearly addressed this issue when it found that agencies cannot refuse to consider mitigation measures simply because another agency with subsequent permitting responsibility may have the power to address certain significant impacts. *See Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 443 at fn 8.

Finally, as discussed above, while mitigation measures are intended to minimize potential impacts, sometimes they can actually lead to additional impacts that may also need to be minimized or avoided. Such a situation appears to be true with regard to a number of the RDEIR's proposed mitigation measures and project features such as noise barriers to reduce road and traffic impacts, creation of overflow terraces A and B, adaptive management actions such as regrading to achieve flood control or address sediment deposition, vegetation management requirement for noxious weed control, and the rescuing of stranded fish. While each of these measures have been proposed to address potential project impacts, due to their ability to cause possible unintended environmentally damaging side effects, the City cannot ignore them and must conduct analysis of any potential unintended damaging side effect. *See Dunn-Edwards Corporation v. Bay Area Air Quality Management District* (1992) 9 Cal.App.4th 644.

**E. THE RDEIR CONTAINS AN INADEQUATE CUMULATIVE IMPACTS ANALYSIS**

An EIR must discuss significant "cumulative impacts." (CEQA Guidelines section 15130(a).) This requirement flows from CEQA section 21083, which requires a finding that a project may have a significant effect on the environment if "the possible effects of a project are individually limited but cumulatively considerable. . . . 'Cumulatively considerable' means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." "Cumulative impacts" are defined as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." (CEQA Guidelines section 15355(a).) "[I]ndividual effects may be changes resulting from a single project or a number of separate projects." (CEQA Guidelines section 15355(a).)

"The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." *Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 117. A legally adequate "cumulative impacts analysis" views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable probable future projects whose impacts might compound or interrelate with those of the project at hand. "Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." (CEQA Guidelines section 15355(b).)

As the court recently stated in *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal. App. 4th 98, 114:

Cumulative impact analysis is necessary because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.

However, RDEIR's cumulative impact analysis fails to recognize the full scope of the flooding and sedimentation problems on the Napa River. In a sense, by only considering the project's cumulative impacts through a comparison with only local development and changes in runoff (limited to areas within City of St. Helena), the RDEIR is analyzing this project in a vacuum. As more fully explained by Dr. Curry in his report attached as Exhibit 1:

The Cumulative effects analysis in the draft EIR is mis-focused on local development and local changes in runoff. The proposed project needs to be evaluated with other ongoing changes in flood frequency-magnitude-duration in the main stem of the Napa River above and below the project site. Particularly important is the evaluation of the possible impacts of the proposed project on the Pope Street Bridge concrete sill and the possible impacts should that sill fail or be removed. Without such an evaluation, it is impossible to place this project in a context that permits an adequate assessment of its cumulative impacts along with those already affecting the river (such as dams, land use, timber harvests and conversions, etc).

Based on Dr. Curry's expert opinion and analysis, it is clear that the RDEIR's cumulative impacts assessment and analysis must be redone and conducted within the proper scope and not be limited to the particular flooding problem and project at Vineyard Valley.

#### **F. THE RDEIR FAILS TO ASSESS A REASONABLE RANGE OF ALTERNATIVES**

The LRC has addressed both the City Council and Planning Commission on numerous occasions about the previous DEIR's failure to explore a reasonable range of alternatives to the flood protection plans proposed in the RDEIR. The consideration of additional project alternatives is particularly important here, because the proposed project, especially the EMP, will not achieve the desired flood protection and habitat restoration objectives. Further, the LRC is dedicated to upholding the purpose and intent of Measure A and the Living River Principles upon which Measure A projects must be based.

The requirement that EIRs identify and discuss alternatives to the project stems from the fundamental statutory policy that public agencies should require the implementation of feasible alternatives or feasible mitigation measures to reduce the project's significant environmental impacts. Pub. Res. Code § 21002. The requirement that the City select a reasonable range of alternatives for evaluation in the EIR is well settled. *See Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 566; *Save San Francisco Bay Ass'n v. San Francisco Bay Conserv. & Dev. Comm'n* (1992) 10 Cal.App.4th 908, 919; CEQA Guidelines § 15126.

As mentioned throughout this letter, the RDEIR violates CEQA by failing to include and analyze any project alternatives that minimize or avoid any of the identified significant impacts, including impacts to aesthetics, noise, traffic, cultural and biological resources. With respect to the impacts to aesthetics, noise, and cultural resources, the failure to identify and discuss alternatives other than the MP, EMP, or VVRP to the Project is an even clearer violation of CEQA because for those impacts, the RDEIR concludes that they are ultimately unavoidable regardless of which plan is approved. By failing to identify and discuss such alternatives, the City has failed to meet a crucial

requirement of CEQA, and is deprived of the opportunity to evaluate the comparative merits of the Project and the alternatives.

The LRC believes the following alternatives are reasonable and should be explored in the RDEIR along with others aimed at avoiding the impacts identified in the RDEIR.

(1) Eliminate traffic impacts, growth-inducing impacts, and other problems associated with the Adams Street extension and bridge by proposing modifications/renovations to the existing Pope Street bridge to provide the desired all weather access to Silverado Trail and the hospital. This alternative has added value as it can also be utilized to address the concerns of Philip Williams and Bob Curry regarding the Pope Street bridge's structural stability and potential impacts associated with sill removal. Additionally, the EIR should analyze another alternative bridge location (either new bridge or renovation of existing bridge such as the one at Pratt Avenue) as the City has simply requested the RDEIR to evaluate alternatives for an all weather alternative to St. Helena Hospital, and has not expressed any preference as to where or how the all weather access goal is to be achieved.

(2) Develop a hybrid or variation of the Vineyard Valley Relocation Plan which explores different locations to relocate the homes to other than the one location explored in the RDEIR, or considers other creative ways to relocate either the homes or simply the people living in the Vineyard Valley mobile home park. To this end, LRC, through its spokesperson Sampson Bowers, will present a new relocation proposal which calls for the removal/relocation of approximately 70 mobile homes to the property just north of the Hunt's Grove Apartments and enables the elimination of an overflow terrace on the east bank of the Napa River.

(3) Develop new City ordinance or regulations to help address the root causes of flooding and sedimentation (such as dams, development, and timber harvesting and land use conversions), or, work with the County to develop such new ordinances or regulations to be applied at a county-wide level. Whether this is more properly called a mitigation measure than an alternative, it is very appropriate considering that the flooding and sedimentation problems in the Napa River are surely neither caused nor limited to the specific area of this particular project. The CEQA Guidelines also recognizes the availability and attractiveness of such a solution by stating that "for some projects, the only feasible mitigation for cumulative impacts may involve the adoption of ordinances or regulations rather than the imposition of conditions on a project-by-project basis. CEQA Guidelines § 15130(c).

While the three alternatives suggested above are simply examples of project alternatives that could be explored by the EIR, it is worth noting that these examples expand on the types of activities considered in other EIR's as project alternatives, such as changes in density or intensity of the

project, a reconfiguration or redesign of the project, substituting a different type of project for the proposed project, or locating the project in a different area or on a different site.

Additionally, the RDEIR does not provide an adequate justification for the rejection of the Non-Structural Plan. The Non-Structural Plan remains attractive because it relies less on artificial measures that require engineering and construction activities for flood protection, but instead, works with the river based on the living river principles that are so important to an ecologically successful flood protection/control project.

The RDEIR improperly dismisses alternatives ranging from the partial to complete buyout of the Vineyard Valley Mobile Home Park as well as the Non-Structural Plan. The RDEIR improperly eliminates the partial-complete buyout and Non-Structural Plan from its analysis and consideration by failing to clearly explain, and more importantly, support its reasons for rejecting the alternative. The RDEIR simply states that the partial and complete buyout alternative was rejected because of the importance of the homes, and their affordable nature, in the overall housing strategy of the City. (RDEIR at 5-5.) It goes on to argue that the partial-complete buyout alternative is both economically and practically (availability of area to relocate) infeasible without any support for its conclusions. Moreover, the RDEIR does not include information showing that there is nowhere else for the relocated persons to live other than the mobile home park or include proposals to find or increase the availability of areas to relocate the homes (redevelopment, annexation of new land within city limits, etc).

Similarly, the RDEIR also rejects the Non-Structural Plan. In support of its decision not to include the Non-Structural Plan for further consideration, the RDEIR simply states that it was rejected because there is not an adequate site to accommodate the relocated homes, the alternative cost is prohibitive, and socially and politically impractical. The RDEIR provides no evidentiary or informational support for its decision to reject the Non-Structural Plan. Without more, the RDEIR's rejection of both the partial-complete buyout and the Non-Structural Plan from consideration in the EIR is both inappropriate and unfortunate.

#### **G. GENERAL PLAN CONSISTENCY**

The Project is inconsistent with the City's General Plan, including the policies discussed below:

**GP Policy 4.5.1** The sense of a strong connection to the surrounding agricultural open space and hillsides must be preserved in the future. Views of vineyard, hillsides, creeks and major landscape features should be maintained.

**GP Policy 4.6.1:** Retain key undeveloped open space areas where views to the

vineyard and hills can be maintained. Require that these areas be planted in vines and other low vegetation.

It is clear that the Project is inconsistent with this policy as the RDEIR concludes that impacts to views and aesthetics will be significant and unavoidable due to the blockage of vineyard and Napa River views attributed to the proposed levees and floodwalls. The RDEIR must discuss this inconsistency and address ways to make the project consistent with it through project alternatives.

**GP Policy 4.5.2:** Open space should be brought into the community wherever possible as a reminder of the natural setting of the community

The City should take advantage of the opportunity provided by this flood protection project to re-zone any and all feasible areas of the project where residential development is being removed/relocated and where future development might be impacted by flood events. By re-zoning areas close to the Napa River and its floodplain as open space, the City would be both implementing GP Policy 4.5.2 as well as preventing potential future flooding hazards that may arise due to the development of residential land uses in areas better utilized as flood plains and riparian habitat.

**GP Policy 4.8.1:** Preserve historic buildings and landscapes throughout the city of St. Helena as an important component of the city's heritage.

**GP Policy 4.8.2:** Where feasible adapt historic structures to modern uses to ensure their economic viability and to protect against possible loss

As stated above, the RDEIR may have omitted the inclusion of historic structures and buildings located on Pratt Avenue from its analysis. If such historic buildings do exist in the project area, it is important to make any and all attempts to preserve them and protect them against possible loss as required by the general plan, including against degradation and losses due to flooding. At a minimum, the above referenced General Plan policies as well as the more detailed policies located in the Historic Resources Element of the Plan need to be discussed and compared to the Project to determine consistency.

**GP Policy 5.4.1:** Service Level C shall be maintained at all signalized intersections in St. Helena except along Main Street, where Service Level D shall be permitted. Exceptions to this policy are that lower service levels shall be permitted at any location where the existing service level does not meet this standard; in these locations, the Service Level shall not be lower than that shown in Table 5-3. The City Council may also allow an exception to this policy if it finds overriding circumstances which make maintenance of this policy impracticable or infeasible.

As discussed above and recognized in the RDEIR, significant direct and cumulative impacts will result from the project's extension of Adams Street and construction of a bridge over the river to Silverado Trail. There is confusion regarding the resulting LOS for the Main Street/Adams Street signalized intersection after the proposed turn lane and overlap mitigation measures are factored in. Moreover, Caltrans has stated that it prefers the City to include yet additional mitigation measures in order to mitigate this traffic impact to pre-project conditions (LOS C) and fix inadequacies in its traffic study as well as the RDEIR's cumulative impacts analysis. Due to the importance of traffic congestion issues in the City of St. Helena, and the concern over this particular impact, the LRC believes that the Project's consistency with GP Policy 5.4.1 must be discussed due to the apparent inconsistency.

#### **GP Policies 6.2.1-6.2.15**

The RDEIR fails to discuss and analyze the Project's consistency with the applicable policies contained in the General Plan's Open Space and Conservation Element. Among those policies are requirements to protect and preserve riparian corridors, riparian vegetation, and natural habitats which support rare, endangered or special status wildlife and plant species. As mentioned throughout this comment letter, the Project as currently designed will not achieve the flood protection goals or effectively create riparian habitat planned for the artificial flood terraces, and as such, will not provide the beneficial impacts to the river, its riparian habitat, and plant and animal species. In light of the substantial evidence before the City regarding the controversy over whether the artificial floodplain terraces will be a success, it should review the Project for its consistency with these General Plan policies. At a minimum, the City must better explain how the overflow terraces will achieve and maintain the desired riparian plant community despite being designed to receive floodwaters for approximately one or two days every two years.

#### **GP Policies concerning Noise, Section 8.3 of the Public Health and Safety Element**

For the same reasons that the Project inconsistent with the above referenced view protection policies, the Project is inconsistent with the General Plan's noise policies. The RDEIR concludes that with respect to noise, Project related impacts will be significant and unavoidable, all without analyzing any project alternatives that minimized or omitted the construction and other noise generating project actions. Without first attempting to minimize or avoid such significant impacts, the City cannot claim that the Project is consistent with the General Plan's policies which protect citizens from excessive noise exposure. At a minimum, the RDEIR must discuss the Project's consistency with these policies.

### **H. THE RDEIR FAILS TO ADEQUATELY ASSESS THE PROJECT'S GROWTH INDUCING IMPACTS**

While the RDEIR does include a brief section entitled "Growth-Inducing Impacts," it fails to adequately mention, discuss, and analyze the potential for growth inducing impact from the EMP's Adams Street extension and bridge over the Napa River. Amazingly, while it recognizes that the project IS growth inducing, it is growth that the City has planned for and thus no additional analysis or mitigation is required of the project.

Pursuant to CEQA Guidelines § 15126(d) (not 15126(g) as cited in the RDEIR), EIR's are required to include a discussion of the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this analysis are projects that would remove obstacles to population growth. Increases in population will increase demand on existing community services and/or facilities, which may require provision of additional services or construction of new facilities that could result in secondary environmental effects that may be significant. Characteristics of some projects may encourage or facilitate other activities that could significantly affect the environment, either individually or cumulatively. The analysis should not assume that growth is necessarily beneficial, detrimental, or of little significance to the environment.

Under CEQA, a project is generally considered to be growth-inducing if it results in any one of the following criteria:

- Extension of urban services or infrastructure into a previously unserved area;
- Extension of a transportation corridor into an area that may be subsequently developed;

or

- Removal of a major obstacle to development and growth (e.g., if to accommodate the campus, new infrastructure components need to be developed capable of serving additional growth in the community).

The project's plan to extend Adams Street from its current terminus eastward to the Silverado Trail and construct a new all weather access bridge across the Napa River meets all three of the above listed criteria for a growth-inducing project. First, the City has repeatedly cited the need for this extension and bridge in order to provide and expand adequate public health and safety services (such as fire and ambulance), thus, without a doubt, doing so would allow for the extension of urban services (fire, police, ambulance) or infrastructure (road and bridge) into a previously unserved area.

Second, the Adams Street extension and bridge IS the extension of a transportation corridor as that is its intended purpose. Currently the area of the proposed street extension and bridge is not developed, and the City and RDEIR itself admit that development is likely in the area after the street extension as part of the relocation of homes proposed by the EMP or VVRP, or by future development proposals.

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Third, the RDEIR states that a parcels # 30 and #31 adjacent to the new Adams Street extension and bridge would be key sites for residential development upon completion of a flood protection project, meaning that the development of that area is currently hindered by existing flooding hazards and constraints. The RDEIR also states that the Adams Street extension would serve as a flood proofing measure, thereby removing a major obstacle to development and growth, thus satisfying the third criteria implicating a growth-inducing impact.

Instead of addressing the admitted growth inducing impacts of the project, the City attempts to justify its lack of analysis by arguments regarding the project's reliance and consistency with regulatory standards, namely the General Plan's Growth Management Policies. By doing so, the City has failed to adequately identify the level of growth inducing impacts from the project by claiming that each of the identified impacts will be 'less than significant' due the project's adherence to various regulatory standards. This practice violates CEQA and frustrates its main purpose which is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made.

Just last year, the Court of Appeal's Third Appellate District overturned a newly enacted CEQA Guideline section which attempted to validate the practice of using regulatory standards to determine significant environmental effect. *See Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98. In that case, the Court was troubled by the fact that by relying on a project's consistency with a regulatory standard to conclude that a particular environmental effect is not significant, agencies will fail to take the required hard look into the significance of an impact. With regard to the Comprehensive Flood Protection Project and RDEIR at hand, those fears are personified. By avoiding a true analysis of the project's Adams Street extension and bridge connection with Silverado Trail, the City fails to make a true inquiry into the real significance of the project's growth inducing impacts. Instead, the City concludes that the identified impacts have no potential to be significant simply because the project is consistent with the General Plan. As expressed in the *Communities for a Better Environment* case, such a practice runs afoul of CEQA. Accordingly, until the City goes back and makes independent, fact specific inquiries into the significance of the growth inducing impacts of the Adams Street extension and bridge, the RDEIR is inadequate and subject to reversal.

Thank you for your attention to these comments.

Respectfully submitted,

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Stephen E. Velyvis  
Attorney for Living Rivers Council

### **LIST OF ATTACHMENTS AND EXHIBITS**

- Exhibit 1: September 12, 2003 report entitled *Analysis of St. Helena Comprehensive Flood Protection Study* from Robert Curry to Law Offices of Thomas N. Lippe
- Appendix 1: Napa River Water Rights workbook (Spreadsheets and charts)
  - Appendix 2: Napa River at St. Helena All Peaks Revised workbook (Spreadsheets and charts)
  - Appendix 3: Napa at St. Helena Gumbell workbook (Spreadsheets and charts)
  - Appendix 4: Napa near St. Helena Discharge Summary workbook (Spreadsheets and charts)
- Exhibit 2: September 13, 2003 letter from Robert R. Abbot Ph.D. to Stephen Velyvis, Law Offices of Thomas N. Lippe
- Exhibit 3: September 12, 2003 letter from Anne Flannery (Ibis Environmental, Inc.) To Stephen Velyvis, Law Offices of Thomas N. Lippe
- Exhibit 4: Napa County Flood Protection Sales Tax Ordinance, commonly referred to as “Measure A”, passed in 1997
- Exhibit 5: Goals and Objectives for a “Living” Napa River System, including Living River Principles, Goals, and Guidelines
- Exhibit 6: August 14, 1986 letter from City of St. Helena, Jack M. Meade (City Engineer) to Vineyard Valley Mobile Homes
- Exhibit 7: March 14, 2003 letter from California Department of Fish and Game, Robert W. Floerke, to Myke Praul, City of St. Helena
- Exhibit 8: Memoranda prepared by Phil Williams and Associates and dated October 17, 2002, November 29, 2002, January 20, 2003 and February 26, 2003
- Exhibit 9: January 30, 2002 letter from U.S. Fish and Wildlife Service, Michael B. Hoover, to Myke Praul, City of St. Helena.
- Exhibit 10: May 22, 2002 letter from United States Department of Commerce, National Oceanic

and Atmospheric Administration, Patrick J. Rutten, to Myke Praul, City of St. Helena

- Exhibit 11: March 12, 2003 letter from California Department of Transportation, Timothy C. Sable, to Myke Praul, City of St. Helena
- Exhibit 12: May 29, 2003 letter from California Department of Transportation, Timothy C. Sable, to Myke Praul, City of St. Helena
- Exhibit 13: Expert Witness Report: Cumulative Impacts on Fisheries Resources from Intensive Viticulture Practices in Napa County, CA prepared by Robert R. Abbot, PhD., and Robert N. Coats, PhD. February 1, 2001
- Exhibit 14: Susan Kegley, Lars Neumeister, Timothy Martin, *Disrupting the Balance: Ecological Impacts of Pesticides in California*, Pesticide Action Network, 1999.
- Exhibit 15: Mark Munn and Robert Gilliom, *Pesticide Toxicity Index for Freshwater Aquatic Organisms*, USGS, 2001, Water Resources Investigation Report No. 01-4077.
- Exhibit 16: Kuivila, Kathryn M., *Studies Relating Pesticide Concentrations to Potential Effects on Aquatic Organisms in the San Francisco Bay-Estuary, California*, U.S. Geological Survey (1999).
- Exhibit 17: Department of Fish and Game, *Hazard Assessment of the Insecticide Chlorpyrifos to Aquatic Organisms in the Sacramento-San Joaquin River System*, Environmental Services Division, Administrative Report 94-1, 1994.
- Exhibit 18: Department of Fish and Game, *Hazard Assessment of the Insecticide Diazinon to Aquatic Organisms in the Sacramento-San Joaquin River System*, Environmental Services Division, Administrative Report 94-2, 1994.
- Exhibit 19: R.D. Ewing, *Diminishing Returns: Salmon Decline and Pesticides*, Northwest Coalition for Alternatives to Pesticides, 1999.
- Exhibit 20: C. Cox, *Lethal Lawns: Diazinon Use Threatens Salmon Survival*, Oregon Pesticide Education Network, 2000.
- Exhibit 21: P. Lind, *Poisoned Waters: Pesticide Contamination of Waters and Solutions to Protect Pacific Salmon* Northwest Coalition for Alternatives to Pesticides, Washington Toxics Campaign, January 2002.

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- Exhibit 22: C. Cox, Diazinon: Part 3: Ecological Effects and Environmental Contamination, Insecticide Fact Sheet, Journal of Pesticide Reform, Vol. 20, No. 3, Fall 2000.
- Exhibit 23: C. Cox, Chlorpyrifos: Part 3: Ecological Effects, Insecticide Fact Sheet, Journal of Pesticide Reform, Vol. 15, No. 2, Summer 1995.
- Exhibit 24: Napa River Basin Limiting Factors Analysis, June 14, 2002, prepared for San Francisco Bay Water Quality Control Board and California State Coastal Conservancy by Stillwater Sciences and Professor William Dietrich.