October 13, 2020

SENT VIA EMAIL: (cnuproject@elkgrovecity.org and uploaded to https://www.opentownhall.com/portals/264/Issue_9336/votes/new)

Sarah Kirchgessner
Development Services Department
City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758

RE:  Comments on California Northstate University Medical Center Project Draft Environmental Impact Report (PLNG18-110)

Dear Ms. Kirchgessner:

These comments on the Draft Environmental Impact Report (“DEIR”) prepared by the City of Elk Grove (“City”) for the California Northstate University (“CNU”) Medical Center and Biotech Project (“Project”) are submitted on behalf of the Stonelake Master Association (“Stonelake”).

1 Stonelake is a safe, family-focused, neighbor-based community. A substantial draw to living here is the natural beauty, critical migratory flyway and spectacular birdlife, and open space to our south and to our west. It is our responsibility to protect these critical resources.

A health care facility closer to our Elk Grove community could have benefits. Here, a massive project is proposed by an entity that is not a licensed health care provider and has never operated anything other than medical teaching schools. A hospital is already being built in Elk Grove, at the new Dignity hospital 4.5 miles to the east. It may be possible for CNU to propose an acceptable hospital design in a different location, with considerably less environmental impacts. In any case, the City must not be lulled into a false choice; gaining a local health care facility does not require us to sacrifice our environment or quality of life, or to support a project clearly out of scale for local needs or entirely duplicative of another proposed hospital.

1 In addition to these comments, Stonelake also submits several reports, prepared by experts in their respective fields, addressing flaws and omissions in the DEIR’s analysis. (See Exhibits 3, 6, 7, 16, 17, 19, and 20.) Stonelake requests that the City provide responses specific to the comments contained within these reports.
The DEIR for the Project fails to disclose, analyze and mitigate multiple admittedly significant impacts as required by the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq. (“CEQA”)). This vast Project, consisting of a hospital, associated structures, as well as future laboratory and biotech development, would include the tallest building in Elk Grove, rising far into the City’s western skyline, which looks toward the Sacramento-San Joaquin River Delta. The DEIR flaws discussed in this letter include, among other defects:

- The DEIR fails to provide an adequate description of the Project, omitting crucial information regarding Project baseline, proposed building design, permitting and licensing processes, and concurrent construction and operations.
- The DEIR fails to include accurate baseline information regarding CNU’s current activities thereby obscuring the Project’s additional impacts.
- The DEIR fails to discuss numerous concurrent review processes and other agencies’ jurisdiction over the Project.
- The DEIR fails to correlate the Project’s significant air emissions to potential human health impacts on Elk Grove residents.
- The DEIR fails to adequately analyze the manner in which the Project take (harm, harass, kill) special-status wildlife species such as the Greater Sandhill Crane, White-Tailed Kite and Swainson’s Hawk.
- The DEIR does not adequately address the inherent risks of relaxing the City’s flood standards to allow siting of essential infrastructure in the 200-year flood plain, including potential stranding of patients and staff in the hospital without safe exit routes in a flood.
- The DEIR fails to disclose what medical and hazardous wastes, and in what amounts, the Project would produce.
- The DEIR’s cumulative impact analysis completely ignores the proposed Delta Conveyance Project, that would also create significant impacts on the Stone Lakes National Wildlife Refuge and migratory birds, just west of Elk Grove.
- The DEIR’s analysis of project alternatives does not adequately consider the Lent Ranch location, which would avoid many of the Project’s most significant impacts.

For these and other reasons, the DEIR must be extensively revised and recirculated for public review prior to consideration of any Project approvals by the Planning Commission and City Council.
I. **DEIR’s Project Description is Impermissibly Vague**

“An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.” (San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (1994) 27 Cal.App.4th 713, 730 (San Joaquin Raptor), quoting County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d 185, 193.) Courts have found that even if an environmental document is adequate in all other respects, the use of a “truncated project concept” violates CEQA and mandates the conclusion that the lead agency did not proceed in a manner required by law. (San Joaquin Raptor, supra, 27 Cal.App.4th at 730.) Furthermore, “[a]n accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity.” (Id. at p. 730 (citation omitted).) “[D]ecision makers and [the] general public should not be forced to . . . ferret out the fundamental baseline assumptions that are being used for the purposes of environmental analysis.” (San Joaquin Raptor, supra, 149 Cal.App.4th at 659.) Thus, an inaccurate and incomplete project description renders the Draft EIR’s analysis of potentially significant environmental impacts inherently unreliable.

The DEIR’s description of the Project does not include sufficient detail about the phases of Project development or how the Project would operate during those phases. (See DEIR, pp. 2-15 to 2-16, 2-51, 52.) Throughout the environmental review process, the City and CNU alike have indicated that the Project would be open for operation as soon as 2022. However, the DEIR states that all three phases of construction would be completed over a period of nine to ten years. The DEIR does not provide an explanation for this inconsistency. The DEIR admits that “facilities constructed during each phase of the Project would become operational upon completion and would continue to operate during construction of subsequent phases.” (DEIR, p. 2-51.)

However, the DEIR does not include the environmental effects of the proposed phasing in its analysis. If construction and operations would occur simultaneously during Phases 2 and 3, the construction and operational impacts analyses need to reflect the impacts of both operating and constructing at the same time. Impacts such as noise or air quality cannot be evaluated in a mutually exclusive manner because construction and operational impacts could aggregate. Appendix D is the only part of the DEIR that attempts to explain how construction of each phase would occur, but this information is inadequate. (See Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho

---

Cordova (2007) 40 Cal.4th 412, 442 (information scattered in EIR and its appendices and supporting reports not substitute for good faith analysis) (Vineyard.).

The DEIR neglects to evaluate the whole of the proposed Project. Under CEQA, a project is defined as “the whole of the action” that may result in either a direct or reasonably foreseeable indirect physical change to the environment. (Pub. Resources Code, § 21065; 14 Cal. Code Regs., § 15378, subd. (a) (“CEQA Guidelines”).) This broad definition of “project” is intended to maximize protection of the environment. (McQueen v. Bd. of Directors of the Mid-Peninsula Regional Open Space Dist. (1988) 202 Cal.App.3d 1136, 1143 (disapproved on other grounds); Tuolumne County Citizens for Responsible Growth v. City of Sonora (2007) 155 Cal.App.4th 1214, 1223.) In performing its analysis, a lead agency must not “piecemeal” or “segment” a project by splitting it into two or more segments. (CEQA Guidelines, § 15165.) This approach ensures “that environmental considerations [do] not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences.” (Burbank-Glendale-Pasadena Airport Authority v. Hensler (1991) 233 Cal.App.3d 577, 592; Bozung v. Local Agency Formation Commission (1975) 13 Cal.3d 263, 283-284.)

Other elements of the Project are only vaguely referenced and not adequately described. For example, the DEIR does not provide sufficient details about CNU’s aspiration that the Project would be designated as a Level II Trauma Center. Obtaining the Level II Trauma Center designation is a primary motivation for design and operational decisions like including the helipad. (See DEIR, 2-51, 3.11-14, 3.11-29 to 30.) The DEIR, however, does not describe the process for obtaining a Level II Trauma designation, or address the fact that the Project may not obtain the designation due to legal limits on the number of trauma centers in a geographic area. (22 Cal. Code Regs., § 100254, subd. (a)(1)(A)-(B).) There are currently three Level II and Level I trauma centers in Sacramento County. (See Exhibit 1, Map and List of Designated Trauma Centers, pp. 9-10.) There are approximately 1,540,000 people in Sacramento County, meaning there can only be one more trauma center in the county. It is not clear that a trauma center in the proposed Project location would meet the criteria, as the eastern side of the county is the area not yet served by a trauma center. The DEIR must provide more information on the designation process, and explain what impacts achieving a Level II Trauma Center designation would have on the Project. (See CEQA Guidelines, § 15124, subd. (d)(1)(C); see also Banning Ranch Conservancy v. City of Newport Beach (2017) 2 Cal.5th 918, 937-942 (deferring analysis of consistency with Coastal Act’s environmentally sensitive habitat areas requirements was an information deficiency) (Banning Ranch).)
CNU has failed to submit designs for many buildings that are proposed as part of the Project, thereby preventing full disclosure of the impacts associated with them. Appendix B of the DEIR only includes the hospital and the central utility plant. The DEIR does not include designs or plans for the dormitory, the outpatient clinic, the medical office building, biological and/or chemical handling facilities, or the three parking structures. Without an understanding of these additional Project components, numerous impacts cannot be adequate disclosed and analyzed.

Similarly, the DEIR is devoid of detail about the hospital permitting process in general. The DEIR merely references the components of this process in the necessary approval sections. (See DEIR, pp. 2-3 to 2-4.) The permitting process is extensive, and purported plans to begin operations in 2022 are entirely unrealistic. CNU does not currently operate any health care facilities and is not licensed as a healthcare provider. Like the process for achieving the Level II Trauma Center designation, these permitting processes must be fully disclosed and discussed in the DEIR.

Future biotech laboratory components of the Project are also not disclosed in the DEIR. The Sacramento Bee obtained email exchanges from City and CNU officials through a Public Records Act request, and described these future facilities in an April 2019 article. (Exhibit 2, Yoon-Hendricks, Private medical school asked Elk Grove to provide financing for $750M hospital, emails show, Sacramento Bee (April 5, 2019).) In one email exchange, the City official, economic development director Darrel Doan, asked CNU CEO Alvin Cheung how quickly the school could build 25,000 square feet of “bio wet lab” on or near campus, so as to attract startup bio tech companies. (Ibid.) The email exchange occurred in December 2018. According to the City’s website, there is a possibility that CNU would develop a “bio-tech” district, and that CNU recently purchased nearby property at 2400 and 2410 Maritime Drive, ostensibly for that purpose. Since project partners and funding has been advanced by the Project proponent for a biological research facility, either at or adjacent to the CNU Project site, these facilities are reasonably a part of the Project.

All project components contemplated by CNU must be considered part of the Project as a whole, and the corresponding impacts, along with the hospital’s, must be evaluated in their totality. (Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 396 (holding that an EIR must include an analysis of

---

3 See City of Elk Grove, Planning Division, Current Development Projects, California Northstate University Hospital, Frequently Asked Questions (available at: http://www.elkgrovecity.org/city_hall/departments_divisions/planning/current_development_projects/california_northstate_university_hospital/frequently_asked_questions.)
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).

The DEIR does not identify the multiple potential flight patterns helicopters may use to bring patients to and from the proposed hospital. The DEIR only identifies a single flight pattern, along I-5, but qualifies that assertion by stating that alternative routes may be necessary “under certain weather conditions or in the case of a life-threatening emergency.” (DEIR, p. 2-52.) In addition, Mitigation Measure 3.3-2d calls for alternative flight routes during roosting season for Greater Sandhill Cranes and for flight paths to avoid Swainson’s Hawk and White-tailed Kite nests during their respective nesting seasons. (DEIR, pp. 3.3-22 to -23.) The DEIR does not provide these alternative flight paths or analyze the differing impacts of alternative flight paths, and fails to explain how these competing requirements would be balanced. (See Exhibit 3, Scott Cashen Report (“Cashen”), p. 2.) There is also no evidence provided that it is even feasible for pilots to consider and implement other flight paths.

II. **DEIR Fails to Include an Accurate Baseline for Multiple Impacted Resources**

An EIR must describe “the physical environmental conditions in the vicinity of the project . . . from both a local and regional perspective.” (CEQA Guidelines, §15125, subd. (a).) “[D]ecision makers and [the] general public should not be forced to . . . ferret out the fundamental baseline assumptions that are being used for the purposes of environmental analysis.” (San Joaquin Raptor, supra, 149 Cal.App.4th at p. 659.)

The DEIR fails to substantiate the assumption the Project would only have 81 ambulance trips and 1.5 helicopter trips per week. (DEIR, Appen. D.) These assumptions must be substantiated given how much they diverge from other hospitals in Sacramento. (See Exhibit 4, Sacramento County Department of Health Services, Emergency Medical Services Report 2019 (“EMS Report”), p. 16.) The lowest per week figure in Sacramento County is Sutter Roseville, which averages approximately 79 ambulance trips per week. (Ibid.) Mercy General Hospital, with 419 licensed beds, is closest in size to the proposed Project.4 Mercy General had 40,216 emergency department patients in 2019, and averaged over 158 ambulance trips per week. (Exhibit 4, EMS Report, p. 16.) This data suggests that the DEIR understates likely ambulance and helicopter trips.

---

4 See Office of Statewide Health Planning and Development, Facility Information (available at: [https://oshpd.ca.gov/facility/mercy-general-hospital/](https://oshpd.ca.gov/facility/mercy-general-hospital/)).
The DEIR obscures the impacts of operating laboratories that are part of every hospital’s operations. According to the DEIR, there is already a laboratory at CNU. (DEIR, p. 3.8-9.) Records from Sacramento County also indicate that the Medical School is itself a hazardous waste generator that had compliance issues in 2017. (See Exhibit 5, Sacramento County Environmental Management Department, Public Records for California Northstate University.) However, that laboratory currently operates as part of the medical school and does not serve a hospital. Presumably, there would be different level of activity to serve a hospital than for a teaching school. The DEIR does not describe the current baseline level of activity at the laboratory, and appears to assume that there would be no increase in activity with an operational hospital. (See DEIR, pp. 3.8-913 to -14.) For additional information regarding the inadequate description of impacts associated with the proposed hospital laboratory, please see impact discussions post of air quality and hazards.

With respect to traffic, the DEIR relies on improper baselines. As discussed by Tom Brohard, P.E., the DEIR’s traffic analysis uses the same pre-Project baseline when evaluating traffic impacts at each phase of Project development. (See Exhibit 6, Tom Brohard Report (“Brohard”), p. 2.) Given the substantial changes to traffic due to Project development, and the significant amount of time of concurrent construction and operation of the Project, new baselines should be established for Phases II and III. (Ibid.)

The DEIR also fails to adequately disclose the current Sacramento Municipal Utility District (“SMUD”) operations at the Project site. Currently, the Project site is served by underground 12kV facilities on the Project site that will, according to SMUD, need to either remain or be replaced. The DEIR only makes a passing reference to the existing SMUD underground facilities along Elk Grove Boulevard and West Taron Drive, and claims that they would remain. (DEIR, p. 3.15-12.) The DEIR must disclose all of SMUD’s facilities, including those on the Project site itself.

The baseline for biological resources is unclear and inadequate for purposes of CEQA. Table 3.3-1 purports to list 47 special status species that could occur within the Project area, however, the DEIR appears to only indicate the species that could exist on the Project site itself. This ignores that the Project would impact the myriad of wildlife present on at the Refuge. The DEIR provides a misleading baseline with respect to Swainson’s Hawk nest locations. (Cashen, p. 3.) The DEIR only identifies one nest, despite acknowledging that “several known Swainson’s Hawk nests adjacent to the proposed [helicopter] flight path.” (DEIR, Table 3.3-1.) The DEIR fails to acknowledge exactly how many Swainson’s Hawk nests are in the potential helicopter flight paths, or where these nests are located. (Cashen, p. 3.)
With respect to hazardous waste generation, the DEIR is incredibly misleading as to CNU’s current generation. The DEIR states that the “existing school of medicine and school of pharmacy are not registered with [U.S. Environmental Protection Agency] under [the Resource Conservation and Recovery Act]” because “neither generate a minimum of 100 kilograms of hazardous waste in a month” but omits any information about registration with the California Department of Toxic Substances Control (“DTSC”). (DEIR, p. 3.8-9.) The CNU schools of medicine and pharmacy do in fact generate hazardous waste and are registered with DTSC. Further, the DEIR does not disclose baseline hazardous and medical waste generation associated with the CNU schools. This information is critical to understanding the increases in hazardous and medical waste generation tied to hospital operations, associated environmental impacts and the regulatory ramifications of that increased generation.

III. Potentially Significant Impacts Are Not Disclosed, Adequately Analyzed or Properly Mitigated in the DEIR

The “fundamental purpose of an EIR is ‘to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment.’” (Vineyard, supra, 40 Cal.4th at 428, citing Pub. Resources Code, § 21061.) In order to serve this purpose, the EIR must “present information in such a manner that the foreseeable impacts of pursuing the project can actually be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made.” (Ibid. at 449-450.)

Sufficient analysis of recognized impacts does not excuse an EIR’s failure to disclose others impacts. (See Banning Ranch, supra, 2 Cal.5th at 941 (“however technically accurate the [biological impacts] analysis might be, it fell short by” not disclosing impacts to environmentally sensitive habitat); see also Sierra Club v. County of Fresno (2018) 6 Cal.5th 502, 517-522 (adequate analysis of project emissions did not reconcile failure to analyze the health impacts from those emissions) (Sierra Club).) “The ultimate inquiry . . . is whether the EIR includes enough detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” (Sierra Club, supra, 6 Cal.5th at 516.) “A sufficient discussion of significant impacts in an [EIR] requires not merely a determination of whether an impact is significant, but some effort to explain the nature and magnitude of the impact.” (Id. at 519.)

---

Under section 15088.5 of the CEQA Guidelines, recirculation of an EIR is required when “significant new information” is added to the EIR after public review but prior to certification of the FEIR. The term “information” can include changes in the project or environmental setting, as well as additional data or other information. “Significant new information” requiring recirculation may include a disclosure showing that new or more severe significant impacts would result, that feasible mitigation that would address impacts is not being adopted, or that the DEIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. The new information and clarifications required to respond to the DEIR’s flaws as identified in this comment letter will require recirculation of the DEIR for a new round of public comment.

An EIR must disclose related environmental review and consultation requirements of other jurisdictions and integrate these related requirements into CEQA review. (CEQA Guidelines, § 15124, subd. (d)(1)(C); see Banning Ranch, supra, 2 Cal.5th at 936.) Agencies are therefore encouraged to consult with responsible agencies before and during preparation of an EIR so that the document will meet the needs of all the agencies which will rely on it. (CEQA Guidelines, § 15006, subd. (g); Banning Ranch, supra, 2 Cal.5th at 936.) Such information is not only necessary for analysis of environmental impacts, but also project alternatives and mitigation measures. (See Banning Ranch, supra, 2 Cal.5th at 937.) Failing to discuss other regulatory and permitting regimes with authority over the project violates the information disclosure requirements of CEQA and is a prejudicial error depriving the public of a full understanding of a project. (Banning Ranch, supra, 2 Cal.5th at 942.) The coordination between lead agencies and other permitting authorities “serves the laudable purpose of minimizing the chance the [lead agency] will approve the Project, only to have later permits for the project denied . . . .” (Cal. Native Plant Society v. City of Rancho Cordova (2009) 172 Cal.App.4th 603, 642.)

In general, the mitigation measures in the DEIR lack any explanation about their effectiveness, except a conclusion that they are effective. CEQA requires more. Because the public must be able to understand, evaluate, and respond to conclusions in an EIR, the document must contain facts and analysis disclosing the analytical route the agency traveled from evidence to action, not just the agency’s bare conclusions and opinions. (Save Our Peninsula Committee v. Monterey County Bd. of Supervisors (2001) 87 Cal.App.4th 99, 118.) Meaningful assessment of a proposed mitigation measure requires that the potential impact be clearly identified and quantified, if possible. The Draft EIR must then describe the mitigation measures and explain why they will work to the degree that the EIR concludes the measures will work. (California Clean Energy Committee v. City of Woodland (2014) 225 Cal.App.4th 173, 203.) Similarly, the DEIR should explain
its conclusions that no mitigation is necessary, or that no mitigation is available. As set forth more fully below, the City must revise the DEIR to provide this analysis.

A. Project’s Significant Aesthetic Impacts are Inadequately Discussed and Mitigated

The DEIR concludes that the Project would have significant and unavoidable aesthetic impacts, by degrading the existing visual character and by creating a new source of light or glare. (DEIR, pp. 3.1-29 to 30.) The analysis in the DEIR is still lacking. As to Impact 3.1-1, the analysis fails to consider whether the Project would be visible from the Stone Lakes National Wildlife Refuge (“Refuge”). The Refuge lies directly west of the Project site with other lands to the north and south, and members of the public can walk or take boats throughout it. The DEIR’s vantage points only go so far west as the I-5 overpass (DEIR, p. 3.1-15), but it is possible that the Project would also degrade the existing visual character for those visiting the Refuge.

The DEIR also woefully underestimates the Project’s shadows at full development. (See, Section III.D., infra; see also Exhibit 17, Lucien Eddisford Report (“Eddisford”), pp. 1-5.) The DEIR’s analysis of the Project’s shadows incorrectly implies that the sun sets at 4:30 p.m. year-round, as it does not include any simulations later than 4:30 p.m. (DEIR, pp. 3.1-19 to -28.) This error is best illustrated by Figure 3.1-27, Shadow Conditions on July 1 at 4:30 p.m. (DEIR, p. 3.1-24.) The sun sets over four hours later, at 8:34 p.m. in Elk Grove on July 1. (Eddisford, p. 1.) Not only does the DEIR assume the shadow would be much smaller at 4:30 p.m., but the shadow would grow substantially larger, and cover substantially more homes by the time the sun sets. (Eddisford, p. 2.) The DEIR fails to adequately analyze this aesthetic impact.

Further, the DEIR’s discussion of why mitigation is not possible for Impact 3.1-1 (degradation of existing visual character) is lacking. (DEIR, p. 3.1-29.) The DEIR only identifies Project alternatives, not mitigation measures, that could reduce the visual impact of the Project. The discussion ignores the potential to redesign the Project’s buildings to create a lower overall profile.

As to Impact 3.1-3, the DEIR does not sufficiently describe mitigation measures. The significance of the impact would come primarily from nighttime lighting and the helipad. (DEIR, pp. 3.1-31 to -32.) However, the proposed mitigation only addresses one source, the light and glare from the hospital building. The DEIR does not acknowledge that removing the helipad could reduce this impact, possibly to less than significant levels. Further, the DEIR does not consider feasible mitigation for light...
pollution from exterior lighting, such as requiring all lights have covers and face downwards.

Similarly, the DEIR’s mitigation for light glare emanating from the hospital is inadequate. Mitigation Measure 3.1-3 requires “each room with a window in the hospital building” to be equipped with curtains or blinds. (DEIR, p. 3.1-14.) However, renderings of the hospital, such as Figure 3.1-37 demonstrate that most of the hospital is made up of windows, though not necessarily rooms where curtains would be installed. Curtains, or some other mitigation measure, are necessary for the entirety of the hospital building in order for this mitigation measure to be effective.

The DEIR also entirely overlooks another aesthetic impact in the privacy concerns that would arise with development of the Project. (Pocket Protectors v. City of Sacramento (2004) 124 Cal.App.4th 903, 937-940.) The height of the main hospital building, along with the parking lots, would create obvious privacy concerns for nearby residents.6 The DEIR must disclose and analyze this aesthetic impact. (See Sierra Club, supra, 6 Cal.5th at 514-516.)

B. Analysis of Air Quality Impacts Fails to Address Harmful Human Health Impacts

The DEIR fails as an informational document because it provides no meaningful analysis for either operational or construction-related emissions of TACs and their associated health risks. Emissions of TACs associated with the Project include diesel particulate matter and ultrafine particulate (“UFP”)7 emissions. (DEIR, p. 3.2-11.) The Project site is adjacent to I-5, an acknowledged source of TAC emissions. (Ibid.) The Project would add to existing levels of TAC and UFP emissions due to traffic increases from construction and operation. Despite its location, and the considerable amount of emissions the Project would cause, the DEIR flat-out refuses to calculate the associated human health risks associated with these emissions in violation of Sierra Club. The DEIR does conclude that construction related emissions would exceed SMAQMD’s thresholds for multiple criteria air pollutants, including TACs PM10 and PM2.5. (DEIR, pp. 3.2-17 to -18.) The DEIR also concludes that the long-term net increase in criteria pollutants would be a significant and unavoidable impact, including more than twice

6 See Public Comments on the CNU Medical Center Project DEIR (available at: https://www.opentownhall.com/portals/264/Issue_9336/statements).
7 UFPs are particles smaller than 0.1 micrometers in diameter that are generated by all vehicle engines, but particularly diesel engines, and any vehicles braking system. (Exhibit 11, Cahill, Very Fine and Ultrafine Metals and Ischemic Heart Disease in the California Central Valley 1:2003–2007, p. 1130.)
exceeding the threshold for PM$_{10}$. (DEIR, pp. 3.2-20 to -21.) A glaring informational flaw, however, is that the DEIR only identifies diesel particulates as a TAC. (See DEIR, Appen. F.) This ignores other TACs generated by automobiles and chemicals used at the hospital, including benzene, formaldehyde and butadiene ethylene oxide sterilizers. (Exhibit 7, Ray Kapahi Report (“Kapahi”), pp. 2-3.)

The Supreme Court recently addressed the need to correlate air emissions to human health conditions in *Sierra Club, supra*, 6 Cal.5th at 519:

The EIR’s discussion of health impacts of the named pollutants provides only a general description of symptoms that are associated with exposure to the ozone, particulate matter (PM), carbon monoxide (CO), and nitrogen dioxide (NOx), and the discussion of health impacts regarding each type of pollutant is at most a few sentences of general information. The disclosures of the health effects related to PM, CO, and sulfur dioxide fail to indicate the concentrations at which such pollutants would trigger the identified symptoms.

The DEIR’s analysis is vague and flouts the requirements of *Sierra Club* by failing to make “a reasonable effort to discuss relevant specifics regarding the connection between two segments of information … the general health effects associated with a particular pollutant and the estimated amount of that pollutant the project will likely produce.” (*Id* at 521; see also Kapahi, pp. 1-3.) Similar to *Sierra Club*, the DEIR acknowledges that certain health effects may occur, yet claims “it would be speculative to more specifically correlate exposure to criteria air pollutant and precursors from this Project to specific health outcomes for sensitive receptors.” (DEIR, p. 3.2-17.)

The emissions generated by the Project would have significant short and long-term impacts to public health. (Kapahi, p. 1.) These impacts are made worse by the sheer length of time for Project construction. (*Id* at 2.) The DEIR does not disclose or quantify these health impacts. Thus the DEIR, “as written makes it impossible for the public to translate the bare numbers provided into adverse health impacts or to understand why such translation is not possible … .” (*Sierra Club, supra*, 6 Cal.5th at 521.)

The minimal air quality analysis included in the DEIR is also incomplete. The DEIR fails to acknowledge that the Project area already suffers from poor air quality, including exceedances of 8-hour ozone and 24-hour PM$_{10}$ standards. (Kapahi, p. 1.) Yet the DEIR fails to disclose what the 24-hour concentrations of PM$_{10}$ would be during each stage of Project construction and operation. (*Id.* pp. 1-2.) Concentrations are relevant for evaluating the health effects on nearby residents and workers.
The DEIR states that the use of BMPs allows for an increased significance threshold for construction emissions, but does not provide a mitigated quantity of emissions, thus failing to demonstrate any actual reduction in emissions. (DEIR, p. 3.2-18.) Similarly, the DEIR proposes that mitigation, such as short-term bicycle parking, access to bike network, on-site café, guaranteed ride home program, carpooling and subsidized transit would result in a 15 percent reduction in operational emissions. (DEIR, Appen. G, p. 5.) None of these measures would reduce TACs. (See Kapahi, p. 2.) The DEIR also fails to substantiate the effectiveness of these mitigation measures. (Ibid.) Ultimately, the public, whether existing residents, those who currently work in the area, or those in the area because of CNU, would be exposed to significant increases in emissions that would not be directly mitigated.

Diesel exhaust is not only linked to increase cancer risk as a TAC, but also to physical changes in children’s brain structure, and mental issues due to prenatal exposure. (Exhibit 8, Cahill, I Can Breathe Clearly Now (2017), Ch. 7, p. 68.) Large trucks are a primary source of diesel emissions. (See Exhibit 8, Cahill, I Can Breathe Clearly Now (2017), Ch. 7, pp. 70-71.)

Other TACs associated with increased traffic are incredibly dangerous for childhood development. Residential proximity to roadways and other indices of increased exposure to traffic-related pollution are associated with low birth weight, pre-term births, and congenital malformations. (Exhibit 9, J. D. Brender et al., “Residential Proximity to Environmental Hazards and Adverse Health Outcomes,” American Journal of Public Health 101, no. S1 (2011): S37–S52.) Residential proximity to traffic related pollution is also associated with increased childhood leukemia and lymphoma, respiratory illness, and cardiovascular disease. (Ibid.; see also Exhibit 10, C. Steinmaus and M. Smith, “Parental, In Utero, and Early-Life Exposure to Benzene and the Risk of Childhood Leukemia: A Meta-Analysis,” American Journal of Epidemiology 183, no. 1 (2016).)

Beyond diesel exhaust and other TACs, UFPs are another air quality impact omitted from the DEIR. UFPs, particles with diameters less than 0.1 micrometers, are comprised mostly of metals that are known constituents of brake pads and drums, as well as additive in motor oil. (Exhibit 8, Cahill, I Can Breathe Clearly Now (2017), Ch. 8, p. 80.) Traffic, particularly start-and-stop, generates UFPs. (See Exhibit 11, Cahill, Very Fine and Ultrafine Metals and Ischemic Heart Disease in the California Central Valley 1: 2003–2007, p. 1131.) Recent research suggests that UFPs pose considerable health risks, such as increased risk of cardio-vascular disease and ischemic heart disease death rates, and loss of lung function. (Exhibit 12, Cahill, Artificial ultra-fine aerosol tracers for highway transect studies, pp. 31-32; see also Exhibit 13, Cahill, Very Fine and Ultrafine
Metals and Ischemic Heart Disease in the California Central Valley 2: 1974–1991; Exhibit 11, Cahill, Very Fine and Ultratine Metals and Ischemic Heart Disease in the California Central Valley 1: 2003–2007.) “The strongest correlations to [ischemic heart disease] mortality were found in very fine . . . to ultrafine metals, with most tied to vehicular sources.” (Exhibit 11, Cahill, Very Fine and Ultratine Metals and Ischemic Heart Disease in the California Central Valley 1: 2003–2007, p. 1133.) Prenatal proximity to freeways and exposure to UFPs may be causally linked to increased autism rates in children. (Exhibit 14, Volk, Residential Proximity to Freeways and Autism in the CHARGE Study, p. 875.) Unlike diesel exhaust or other larger TAC emissions, UFPs are more persistent and do not dissipate easily over distances. (Exhibit 15, Cahill, Transition metals in coarse, fine, very fine and ultra-fine particles from an interstate highway transect near Detroit, pp. 324-341.)

The DEIR does not ever mention UFPs as a potentially significant air quality impact and therefore fails as an informational document. In additional to acknowledging these TAC emissions that would be exacerbated by the Project, the recirculated DEIR will need to measure those emissions and correlate those emission levels to identified health risks, if feasible. If not feasible, the recirculated DEIR will need to explain why so. Here, the City has not even attempted to inform the public of the “bare numbers” with respect to UFP emissions, let alone translate those numbers into quantifiable adverse impacts. The failure to do so is inexcusable given that recent scientific studies demonstrate that it is feasible to correlate TACs and UFP emissions levels to resulting human health risks.

Another element of the Project’s emissions that is not disclosed, either in quantifying emissions or correlating those emissions to health impacts, are the potential emission from laboratory waste and the hospital’s labs. The DEIR does not disclose what types of chemicals or compounds would be used at the hospital, or even what and how much of these toxic materials are currently used at the schools of medicine and pharmacy. Further, the DEIR does not disclose how indoor ventilation would be designed and operated to protect human health and the environment from toxic and other exposures, within the facility and outside of the buildings. Without this information, the public cannot understand whether the hospital’s labs would release hazardous emissions, and whether the hospital’s design sufficiently protect against such releases.

The revised DEIR must include a full TAC analysis as required by Sierra Club to understand the nature and extent of these impacts on the public. The City’s reliance merely on SMAQMD thresholds of significance, without further investigation, is legal error. “[A] threshold of significance cannot be applied in a way that would foreclose the consideration of other substantial evidence tending to show the environmental effect to
which the threshold relates might be significant.” (See Protect the Historic Amador Waterways v. Amador Water Agency (2004) 116 Cal.App.4th 1099, 1109.) Similarly, a lead agency has a duty to inform itself about available methodologies for assessing an impact. (Berkeley Keep Jets Over the Bay Comm. v. Board of Port Comm’rs (2001) 91 Cal.App.4th 1344, 1367.)

Magnifying the deficient analysis of construction and operational emissions, and the failure to quantify the health impacts of them, is the DEIR’s failure to quantify and analyze the combination of construction and operational emissions that would be generated during constructions of Phases II and III. The DEIR only analyzes whether the Project would cause construction-generated criteria air pollutant or precursor emissions exceed SMAQMD thresholds (DEIR, p. 3.2-16), and whether it would result in a net increase in long-term operational criteria air pollutant and precursor emissions that exceed SMAQMD thresholds (DEIR, p. 3.2-20). The DEIR does not provide analysis that accounts for the operation of Phase I during the construction of Phase II, or the operation of Phases I and II during construction of Phase III. While the construction emissions alone of PM$_{10}$ and PM$_{2.5}$ would already exceed SMAQMD thresholds during every year of construction, the City still has a duty to disclose the total amount of emissions during these intervening years when operational emissions would be additive to construction. The DEIR must disclose the total emissions during these phases of the Project, analyze the significance of the impacts, and comply with Sierra Club with respect to the associated health impacts of that total emission amount.

C. Impacts to Biological Resources and Compliance with Regulatory Regimes are Overlooked

The DEIR’s analysis of impacts to biological species is riddled with glaring informational deficiencies that render the document inadequate under CEQA. The DEIR fails to disclose multiple regulatory schemes that apply to sensitive species, thus violating CEQA’s consultation requirement between the lead and responsible agencies. The DEIR’s analysis of the Project’s impacts is inadequate, both for not sufficiently discussing impacts, and for failing to support its conclusions with substantial evidence.

1. The DEIR Fails to Consider Regulatory Regimes for Special-Status Species and Does Not Reflect an Adequate Consultation with Responsible Agencies

The Project requires a consultation with United States Fish and Wildlife Service (“USFWS”), pursuant to Section 7 of the Endangered Species Act. Whenever a federal agency has permitting authority over a project that may affect a listed endangered or
threatened species, an informal consultation with USFWS is required. The permitting federal agency must then prepare a biological assessment to determine the project’s impacts on the listed species. If, through the biological assessment or other review, it is determined that the project would likely have an adverse effect on a listed species, then formal consultation is initiated and the USFWS will prepare a biological opinion. The DEIR does not disclose this process or analyze it, even though Federal Aviation Administration approval is required (DEIR, p. 2-4) and multiple federally listed species are in the Project vicinity (DEIR, pp. 3.3-7 to -11).

The California Fish and Game Code includes provisions expressly designed to provide a heightened level of protection for specific species, exceeding even those protections for endangered species, referred to as “fully protected species”. Under Fish and Game Code section 3511, “a fully protected bird may not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of a permit or license to take a fully protected bird, and no permit or license previously issued shall have any force or effect for that purpose.” “Fully protected” birds subject to the prohibition of section 3511 include the Greater Sandhill Crane (Grus canadensis tabida). (Fish & G. Code, § 3511.) The DEIR notes that “[f]ully protected species may not be taken or possessed at any time, and no take permits can be issued” and even lists the fully protected (species in the vicinity of the Project. (DEIR, pp. 3.3-6 to -8.)

However, the DEIR fails to include any analysis of impacts to these species that incorporates the legal ramifications of the fully protected species scheme. (Cashen, p. 13; Exhibit 16, Dr. Gary Ivey Report (“Ivey”), pp. 2-3.) The Project would have significant impacts on the Greater Sandhill Crane, and “bird strikes would likely still occur” and “sandhill crane may collide with the new hospital building.” (DEIR, pp. 3.3-19 to -20.) A Greater Sandhill Crane bird strike death would violate the fully protected species provisions of the Fish and Game Code. Not only is this a failure to adequately describe a potentially significant impact (Sierra Club, supra, 6 Cal.5th at 521), but it is also a failure to adequately discuss competing regulatory regimes (Banning Ranch, supra, 2 Cal.5th at 942). Moreover, the Project’s mitigation is inadequate, because it does not avoid take of fully protected species. Without such mitigation, the Project would have a significant impact and violate the fully protected species provisions of the Fish and Game Code.

The DEIR also fails to adequately disclose the Project’s consistency with federal Migratory Bird Treaty Act (“MBTA”) requirements. A federal District Court just recently reaffirmed protections afforded by the MBTA in Natural Resources Defense Council, Inc. v. U.S. Department of the Interior (S.D. N.Y. 2019) 397 F.Supp.3d 430, wherein the court found that the MBTA prohibits even incidental take of birds covered by
the MBTA. The DEIR does not disclose what bird species are present in the Project area, analyze the amount of take of birds protected by the MBTA that would occur, or include any sort of mitigation for those impacts.

The Refuge is a stopover for thousands of migratory birds on the Pacific Flyway, including birds that do not fly at high altitudes and would likely strike the 261-foot-tall hospital building. (Cashen, p. 6.) The failure to discuss the MBTA is a failure to adequately describe a potentially significant impact (Sierra Club, supra, 6 Cal.5th at 521), as well as a failure to adequately discuss competing regulatory regimes (Banning Ranch, supra, 2 Cal.5th at 942).

The limited discussion that is included in the DEIR with respect to wildlife protection is also inadequate. The DEIR prescribes consultation with California Department of Fish and Wildlife (“CDFW”) and obtaining an Incidental Take Permit pursuant to the California Endangered Species Act as Mitigation Measure 3.3-2e. (DEIR, p. 3.3-23.) The DEIR fails to provide sufficient information about the consultation and permitting process. The DEIR makes no effort to integrate the procedures and requirements to obtain an incidental take permit, as required by CEQA. (Banning Ranch, supra, 2 Cal.5th at 937.)

Similarly, the DEIR misrepresents the Project’s consistency with local ordinances regarding trees. (Cashen, p. 7.)

2. The DEIR Does not Adequately Analyze the Project’s Impacts to Special Status Species

The DEIR continually downplays, miscasts, or outright fails to acknowledge the Project’s impacts to special-status species.

First, the DEIR fails to adequately analyze the Project’s noise impacts on wildlife. The DEIR inconsistently claims that noise would not be greater than existing conditions along the I-5 corridor, but the modeling in Appendix J demonstrates increase in noise. (Cashen, p. 3; see DEIR, Appen. J, Tables 2-4.) Moreover, the Helicopter noise data collected is inadequate with respect to its usefulness to analyzing impacts to wildlife. (Cashen, p. 4.) The locations meant to represent the Refuge were both along Elk Grove Boulevard, which has higher baseline noise levels than other parts of the Refuge, and where helicopters would presumably turn east away from the Refuge. (Ibid.)

The DEIR does not adequately analyze noise impacts on special-status bird species that occupy habitat in the Refuge. (Cashen, p. 3.) The DEIR does not quantify
the noise exposure wildlife would experience at the Refuge, or how these noise levels would impact wildlife. (Ibid.) The DEIR did not even analyze noises at the appropriate frequencies for wildlife. (Id. at pp. 3-4.) These omissions render the DEIR’s discussion of impacts to biological resources inadequate, because the DEIR fails to disclose and analyze all of the Project’s impacts. (Sierra Club, supra, 6 Cal.5th at 516.)

As more and more habitats are destroyed or rendered less usable for wildlife, conservation lands like the Refuge become increasingly important. This phenomenon is illustrated by the changing Greater Sandhill Crane population in the Refuge. The DEIR incorrectly identifies a Greater Sandhill Crane population of 300-350 at the Refuge, based on a 13-year old survey. (DEIR, p. 3.3-14.) According to the USFWS, approximately 700 Greater Sandhill Cranes use the Refuge as habitat.8 The Greater Sandhill Crane population is not necessarily increasing, but more birds are relying on the Refuge for habitat. The greater concentration of the Greater Sandhill Crane population at the Refuge reflects the continued habitat loss throughout the state. Thus, ensuring the integrity of the Refuge is critical for the ongoing recovery of the Greater Sandhill Crane, and impacts to that integrity, must be adequately analyzed.

Another impact inadequately analyzed are avian collisions. The Project would cause avian mortality, including of the fully protected Greater Sandhill Crane. (Ivey, p. 2.) The primary study that the DEIR relied on to conclude that the Project would not cause a significant avian collision impact, Loss et al. (2014), is not applicable to this Project. (See Cashen, pp. 5-6.) The majority of the study only looked at buildings that were both not near water bird habitat and buildings shorter than the Project. (Cashen, p. 6.) The Loss study also only looked at birds flying at high altitudes, which contrasts with the lower flight patterns that birds flying to and from the Refuge would have. (Ibid.)

The DEIR fails to analyze whether the Project would cause roost site abandonment due to the overall level of disruption from construction and operation. Helicopter flyovers in particular could cause Greater Sandhill Cranes to abandon current roost sites in the Refuge, causing them to crowd into other roost sites and causing indirect mortality. (Ivey, p. 3.) This would be a significant impact, given the Greater Sandhill Crane’s fully protected species status.

Relatedly, the DEIR fails to analyze how the Project would potentially lower the overall value of existing habitat due to disturbances from helicopter flyovers. (Ivey, p. 3;  

---

8 See USFWS Comments on CNU Medical Center DEIR, pp. 4-5 (available at: https://www.opentownhall.com/portals/264/Issue_9336/statements?filter%5Border_by%5D=Date&page=4&scope=on_forum.)
see also Foraging Locations Figure.) The DEIR must analyze how the Project impacts the how the Refuge and other conservation areas meet their intended purposes. \textit{(Ibid.)}

Figure 2-17 also shows that the Project would largely be planted with non-native species, including the California pepper tree \textit{(Schinus mole)}, however the DEIR does not identify the species as such. (See Cashen, p. 5.) Invasive plants pose a significant threat to biodiversity and natural resources. \textit{(Ibid.)} Pepper trees are a particularly poor choice for this Project, as they are spread primarily by birds and the Project’s proximity to the Refuge creates ample opportunity for spread. \textit{(Ibid.)} The DEIR must disclose the fact that CNU intends to plant invasive species at the Project site and analyze the potentially significant impacts of introducing such plants so close to the Refuge.

3. \textit{The Project’s Mitigation Measures for Impacts to Biological Resources are Inadequate}

The mitigation measures meant to protect special-status species like the Greater Sandhill Crane and Swainson’s Hawk are inadequate and would not reduce take to legal levels.

Mitigation Measure 3.3-1a is ineffective because it fails to adhere to the CDFW recommended survey standards. (Cashen, p. 8.) The amount of surveys required under the mitigation measure is unclear, and its timing requirement contradicts CDFW’s guidance for Swainson’s Hawk. \textit{(Ibid.)}

Mitigation Measure 3.3-2a is an unsubstantiated partial attempt to mitigate the serious threat the Project’s light sources pose to birds. By only requiring curtains or blinds on windows in rooms, significant portions of the glass-surfaced hospital would not be covered by this mitigation measure. (Cashen, pp. 9-10.) The mitigation measure also ignores other Project buildings and does not address exterior lighting. \textit{(Ibid.)} The reflectance of glass and metallic surfaces and associated aesthetic and biological resource impacts are inadequately mitigated.

Mitigation Measure 3.3-2b requires compliance with Mitigation Measure 3.1-1, which was not sufficient to reduce aesthetic impacts to less than significant levels and does not contain any relevant performance standards. (Cashen, p. 11.) As Cashen explains, the mitigation measure does not adequately address the core factors that drive avian collisions. \textit{(Ibid.)} The monitoring regime in Mitigation Measure 3.3-2b is also inadequate because it too does not have performance standards. \textit{(Id. at p. 12.)} The corrective action element of Mitigation Measure 3.3-2b fails because it is unenforceable. Pilot Credit 55 only requires voluntary corrective action. \textit{(Ibid.)}
Mitigation Measure 3.3-2c is inadequate, as blinking lights on the helipad would still cause avian collisions. (Cashen, p. 13.)

Mitigation Measure 3.3-2d is ineffective because presumably, the need to deviate course in emergency will take precedence over wildlife protections. Helicopter flights would still occur over the Refuge despite this mitigation measure and would cause significant impacts to special-status species. (Ivey, p. 3.) Without identifying the proposed helicopter paths, the effectiveness of this mitigation measure cannot be readily determined. (Cashen, p. 14.) Mitigation Measure 3.3-2d’s flight restrictions fail for being unenforceable. The DEIR does not include any monitoring or enforcement mechanism to ensure the altitude and airspeed restrictions are adhered to. (Ibid.)

Mitigation Measure 3.3-2e is improperly deferred. (Cashen, p. 15.) In order to issue an incidental take permit, CDFW would need to rely on the completed EIR. Thus, the document itself must be adequate and provide sufficient information for CDFW. (Ibid.) The City has thus far failed its duty to provide a document sufficient for CDFW to rely on. Moreover, the DEIR does not adequately describe and discuss the incidental take permit process, as required under Banning Ranch. Instead, the DEIR merely assumes that the city will obtain an incidental take permit in the future.

D. The DEIR Fails to Analyze How the Project’s Shadow Would Impact Solar Energy Production and the Project’s Compliance with CALGreen Requirements

The DEIR fails as an informational document for ignoring two discrete issues that relate to both energy and greenhouse gas impacts. First, the DEIR does not disclose or analyze how the Project’s shadows will impact solar energy production in the surrounding area. The Project’s considerable shadows would extend much further than the DEIR represents. (See Eddisford, pp. 1-2.) Moreover, the DEIR fails to illustrate shadows throughout the day, instead presenting unduly limited timeframes. (Ibid.) For example, the DEIR only considers shadows on July 1 up to 4:30 p.m., despite sunset being after 8:30 p.m. (Ibid.) This has ramifications on renewable energy production potential and greenhouse gas emission reduction plans. The Project’s shadows, given their size and reach, would block existing and future solar arrays in the surrounding neighborhoods. (Ibid.; see also DEIR, pp. 3.1-19 to -28.) According to Eddisford, between 300-400 homes could lose approximately 20 percent of their solar potential due to the large shadow cast by the Project. (Eddisford, p. 2.) The DEIR must disclose this impact on energy, including solar energy generation, and whether such reductions in renewable energy generation would impact achieving the goals of renewable energy and greenhouse gas reduction plans. (Sierra Club, supra, 6 Cal.5th at 516 (an EIR must
include enough detail for public to understand and consider meaningfully the issues raised by proposed project).

Second, the DEIR does not disclose or analyze the Project’s compliance with the requirements of CALGreen, California Code of Regulations, Title 24, Part 11. Generally, “enforcement of CALGreen rests with local jurisdictions, except where state agencies have specific authority, such as with school or hospital construction.” (2019 Guide to the 2019 California Green Building Standards Code, § 101.3.1 (emphasis added).) The Office of Statewide Health Planning and Development (“OSHPD”) has the authority over CALGreen compliance for the Project. (Id., § 106.) Neither the DEIR nor its appendices reference the CALGreen building standards or OSHPD’s responsibility over them. The failure to discuss CALGreen compliance in the DEIR is an informational deficiency rendering the DEIR inadequate. (Banning Ranch, supra, 2 Cal.5th at 942.)

E. The DEIR Fails to Disclose how the Project would Manage Hazardous and Medical Waste Generation and Disposal

The DEIR fails under CEQA due to the absence of critical information regarding the Project’s generation of hazardous and medical waste. Basic information regarding the existence of and use of existing lab and research facilities located at CNU, and the nature and extent of proposed laboratories or pharmacy, and their relative difference in hazardous, radioactive and medical waste generation, their management and disposal are entirely missing from the DEIR. For example, the DEIR fails to disclose how much radioactive material CNU currently handles, what are the chemical forms, amount and type of radiation emitted, how will the material be stored and disposed of, or how more generally, the public and the environment be protected from those materials at each step. The DEIR also fails to disclose how these materials would be secured from terrorism, flooding or other harmful uses.

Medical waste is particularly concerning if there are any biological laboratories in use. Ordinary medical waste contains highly dangerous biological materials, and biological labs can concentrate those and other pathogenic materials. The DEIR not only fails to describe the types and amounts of waste that would be generated on site, but it also does not disclose the methods of disposal that would be used. The DEIR asserts, without support or explanation, that disposal of wastes “would be conducted in accordance with established procedures and the applicable regulatory requirements.” (DEIR, p. 2-54.) The DEIR does not go on to describe in adequate detail what the “established procedures” would be, or how the Project would comply with the “applicable regulatory requirements.” (See DEIR, pp. 3.8-3 to -14.)
The analysis of Impact 3.8-2 does not disclose the amounts of each hazardous material generated by the Project. (DEIR, pp. 3.8-13 to -14.) Rather than include adequate information and analysis of the Project’s hazardous material generation, the DEIR improperly defers resolution of these issues to later preparation of a business plan pursuant to the Hazardous Materials Release Response and Inventory Law. (DEIR, p. 3.8-14.) This is an informational deficiency.

Hospitals typically generate significant amounts and kinds of hazardous waste. (See Exhibit 18, UC Davis Medical Center Waste Code Matrices.) The DEIR must disclose exactly how much hazardous and medical waste is currently generated by CNU (baseline), and new hazardous waste that would be generated by the Project. Otherwise the extent of the Project’s impacts as compared to baseline conditions cannot be discerned. The amounts and types of hazardous and medical wastes directly influence Project impacts, including but not limited to air quality and hazards. The DEIR fails to include sufficient information for the public to discern the extent of the Project’s hazard related risks and is inadequate. (Sierra Club, supra, 6 Cal.5th at 516.)

F. The DEIR Fails to Analyze the Impacts of Future Development Under Relaxed Flood Requirements and Ignores the Hazards from Operating a Hospital in a 200-year Flood Plain

The DEIR failed to analyze several important impacts regarding hydrology and water quality which are particularly relevant given the Project’s location in the 200-year flood plain. First, the DEIR’s analysis of the Project’s design is inadequate. The Project would elevate all important functions above ground level to protect them from inundation during a 3-5’ flood event. While this tactic could help to minimize risk of property damage and life loss, it is entirely inadequate for an essential public facility like a hospital. (Exhibit 19, Dave Peterson Report (“Peterson”), p. 1.) Staff, nurses, doctors, patients and their families, would have no ingress or egress during a flood event under the current design of the Project. (Id. at pp. 1-2.) Critical facilities like a hospital should be built on high ground that avoids flooding entirely, as this is the only way to ensure continued operation during emergency events. (Ibid.) The dark history of failed evacuations from medical facilities in Louisiana during Hurricane Katrina cannot be repeated.9

---

The City has not demonstrated that the Project would have an urban level of protection ("ULOP"). (Peterson, p. 2; see DEIR, pp. 3.9-7 (acknowledging ULOP must be reflected in floodplain map or project must be conditioned to achieve ULOP), 3.9-11 (to achieve ULOP, 4.5 miles of the Laguna West levee system would need to be raised by 3.5 feet).) Yet the DEIR does not include any analysis as to how the Project would meet the requirements of Municipal Code Section 23.42.040.E and SB 5. Presumably, the City is seeking to achieve ULOP by imposing conditions, because the DEIR does not discuss improving the Laguna West levee system. (See Peterson, pp. 1-2.) The DEIR does not disclose what the conditions are, evaluate whether they would be sufficient to achieve ULOP. (Id. at pp. 2-3.) Further, the DEIR does not disclose or discuss other elements of the ULOP process. (Ibid.) This failure to adequately discuss ULOP process and requirements violates the information disclosure requirements of CEQA and is a prejudicial error depriving the public of a full understanding of a project. (Banning Ranch, supra, 2 Cal.5th at 942.)

The Project is not only the development of CNU’s hospital and ancillary buildings. It also includes a rewriting of the City’s General Plan Policy ER-2-3 and Municipal Code section 23.42.040.D, to allow development of essential infrastructure such as health care facilities in the 200-year flood plain. (DEIR, p. 2-3.) The Project site is thus not the only location where development would be permitted. The DEIR entirely overlooks this fact and fails to analyze the potential impacts of other development occurring pursuant to the General Plan and Municipal Code changes.

The DEIR also fails to analyze the potential runoff of herbicides or pesticides from landscaping. The DEIR should disclose what types of chemicals could be used in landscaping and then evaluate whether runoff could have a significant impact on water quality.

G. DEIR Fails to Analyze Significant Impacts Arising from Land Use Inconsistencies

The DEIR fails to address potential inconsistencies with applicable land use regulations. Elk Grove Zoning Code Chapter 23.29 sets a height standard of 60 feet for the Project site Professional Office Park zone. The Project’s inconsistency with this standard, the hospital’s 261-foot height, is a direct cause of the Projects significant impacts both on aesthetics and biological resources. Yet the DEIR’s analysis of Impact 3.10-2 fails to discuss this incompatibility or its relation to the Project’s significant impacts. (DEIR, pp. 3.10-5 to -7.)
H. The DEIR Fails to Correlate the Project’s Noise Emissions to Human Health Impacts

Much like air emissions, noise emissions can result in human health impacts. Lead agencies must, if feasible, correlate noise emissions to their human health impacts or else discuss why such correlation is not feasible. (Sierra Club, supra, 6 Cal.5th at 516.) Here, the DEIR makes no attempt to correlate the significant and unavoidable noise impacts to associated human health impacts. The Project would cause significant construction noise over a ten-year period, ranging from 55 to 88 dB L_{eq} in outdoor noise. (DEIR, Table 3.11-12; see also Exhibit 20, Frank Hubach Report (“Hubach”), p. 3.) Yet, no effort is made to even correlate these noise levels to various health effects, let alone quantify those health effects. Negative health impacts associated with significant noise emissions include cardiovascular disease, annoyance, cognitive impairment, hearing impairment, adverse birth outcomes, negative mental health outcomes, negative metabolic outcomes, and sleep issues. (Hubach, p. 2, citing World Health Organization (“WHO”) Environmental Noise Guidelines.) Characterizing construction-generated noise as a “temporary” impact is misleading and callous. A child who lives near the Project site could go through nearly all of his or her primary education being disturbed by construction of the Project.

The significant temporal exposure to these noises is not the only justification for requiring further study into the Project’s noise-caused health effects, but so are the noise levels themselves. The Project’s noise emissions would, at various times, exceed exterior and interior criteria by 33 dBA and 19 dBA respectively. (Hubach, p. 3; DEIR, p. 3.11-20.)

Project operation would pose similarly significant noise emissions in its own right. Here, however the DEIR asserts that mitigation can reduce operational noise impacts to less than significant levels. (DEIR, p. 3.11-24.) The DEIR simply assumes that mitigation measures would be effective, without evidence to support that conclusion. (See Hubach, pp. 4-5.) For example, the DEIR “assume[s] that a 5-dB reduction would be provided by the existing wall along the east side of West Taron Drive and the existing wall along the southern boundary of the Project site.” (DEIR, p. 3.11-24.) However, the location of loading docks has not yet been determined, because building design has not been completed for a majority of the Project. (Ibid.) Numerous factors complicate this assumption however, such as the height of the walls, the height of the trucks, the height of residences. (Hubach, p. 4.) If the 5-dB reduction does not occur, delivery truck noise would exceed the applicable daytime and nighttime thresholds. (Ibid.) Overall, the City has failed to demonstrate the effectiveness of mitigation measures because it has not
provided any calculations. *Ibid.* This is rooted in the failure to provide completed building designs for the entire Project.

Noise emissions can feasibly be correlated to human health impacts, as demonstrated by the WHO Environmental Noise Guidelines. (See Hubach, pp. 9-12, Exhibit 1.) The City must comply with CEQA and analyze the health effects, if any from the Project’s noise emissions. The City has a duty under CEQA to analyze and disclose the severity of a potentially significant impact. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 (“in preparing an EIR, the agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project”)).

The DEIR also fails to set forth any meaningful significance standard against which to measure the significance of construction noise impacts. Compliance with a city’s zoning standard is distinct from CEQA’s informational mandates. The fact that a given noise level may be allowed under a particular zoning code provision does not mean that it is necessarily a less than significant impact. “[A] threshold of significance cannot be applied in a way that would foreclose the consideration of other substantial evidence tending to show the environmental effect to which the threshold relates might be significant.” (*Amador Waterways, supra*, 116 Cal.App.4th at p. 1109; see also *East Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 2016 (disallowing bare reliance on a General Plan policy to dismiss a potentially significant impact)). The Project’s thresholds of significance should be grounded in the negative human health outcomes, not abstract noise levels. (Hubach, p. 2.)

I. DEIR Fails to Analyze Increases in Drinking Water Usage and Disclose Information Regarding New Wastewater Infrastructure

While the DEIR does discuss the Project’s impacts on available wastewater treatment capacity, and impacts to overall water supply, it fails to disclose impacts to drinking water capacity. (See DEIR, pp. 3.15-1 to -18.) The Project would increase the number of daily users considerably, given the approximately 4,000 full-time jobs proposed to exist on site, in addition to patients and visitors, totaling 14,728 daily trips. (DEIR, p. 2-51.) The significant increase over existing levels of full-time employees, as well as daily visitors, indicates a corresponding increase in drinking water consumption at the Project site. The DEIR does not disclose how much drinking water consumption is expected to increase, nor whether any infrastructure improvements would be necessary to meet the new demand.
The Project would require upsizing the wastewater collection pipes serving the Project location, from 8 inches to 10 inches between West Taron Drive and Stonelake Club Drive, from 10 inches to 12 inches between Stonelake Club Drive and Club Park Drive, and from 15 inches to 18 inches between Club Park Drive and East Taron Drive. (DEIR, p. 2-47.) The DEIR fails to adequately describe this upsizing, and whether this upsizing is adequate to support the significant increases in daily users the Project would bring as compared to the current baseline. Similar to drinking water infrastructure, the DEIR omits relevant data. The DEIR must disclose this information to contextualize infrastructure upsizing plans.

J. Transportation Analysis Fails to Disclose Impacts and Other Agency Jurisdiction

As detailed in the attached comments by Tom Brohard, P.E., the DEIR’s analysis includes critical flaws and entirely fails to consider several transportation impacts that could be potentially significant. Similar to the issue in air quality, the DEIR transportation analysis fails to account for the overlap in Project construction and operations. This has led to improper baseline assumptions that reflect only pre-Project conditions. (Brohard, p. 2.) For analysis of impacts during Phases II and III, the DEIR must rely on new baselines that incorporate operation of the previously built phases. As Caltrans noted in its comment letter, the DEIR only analyzed traffic at completion of Phase 1 and full build-out of the Project, but not the in-between stage when Phase II is completed but Phase III would be constructed.

The Project also fails to comply with multiple requirements of the City’s own Transportation Analysis Guidelines, which requires each phase include site-access and on-site circulation analysis based on the conditions at the time the NOP was issued and interim analysis for phased projects. (Brohard, p. 2.)

The DEIR fails as an informational document with respect to its discussion of Caltrans’ jurisdiction over Project elements. Caltrans’ June 27, 2019 letter to the City made several requests, none of which the City fulfilled, let alone disclosed. The DEIR does not even acknowledge Caltrans’ jurisdiction with respect to the I-5 interchanges, and rights-of-way where the City intends to make transportation improvements. (Brohard, pp. 3-4.) The failure to discuss these issues in the DEIR is an informational deficiency. (Banning Ranch, supra, 2 Cal.5th at 942.)

The analysis in the DEIR is flawed because certain assumptions regarding vehicle miles traveled (“VMT”) are not substantiated. (Brohard, p. 5.) A hospital is more likely to generate trips with more distant origins than retail or medical offices, yet the DEIR
assumes that average trip length would be reduced by more than half. (Ibid.) The DEIR fails to substantiate its methodology. (Ibid.) One potential source of relevant information not provided by the City is the economic report prepared by Varshney & Associates. The economic report could provide context for the number of expected trips and how those trips would be divided amongst the hospital, the schools, and on-site retail. It also could provide information about employment generated by the Project, which in turn affects traffic generation. The economic report is not included in the DEIR and although the report was presented to City staff, the City has refused to make it available to the public.

The DEIR entirely overlooks the potential impacts, and dangers, caused by bike trail changes. (Brohard, p. 6.) Stopping the existing bike trail 100 feet north of Ruddy Duck Road would cause confusion and create an unsafe condition. (Ibid.)

Last, the DEIR includes a Transportation Demand Management (“TDM”) Plan as mitigation for Impact 3.14-1. However, several of the individual measures included in the TDM plan are simply ineffective given the Project’s circumstances. (Brohard, pp. 6-7.) Subsidizing transit passes when transit capabilities are limited in the Project vicinity are not effective, and the DEIR includes next to no details about the proposed shuttle bus. (Ibid.)

IV. **Cumulative Impacts of Project and Related Past, Present and Future Projects is Incomplete**

An EIR must evaluate a project’s cumulative impacts if the project’s incremental effects “are significant when viewed in connection with the effects of past . . . current . . . and . . . probable future projects.” (CEQA Guidelines, §15065, subd. (a)(3); Banning Ranch, supra, 211 Cal.App.4th at 1228.) The purpose of cumulative impact analysis is to ensure a project is not considered in a vacuum. (Whitman v. Board of Supervisors (1979) 88 Cal.App.3d 397, 408.)

The DEIR fails to mention one of the most consequential planned projects in the Sacramento-San Joaquin Delta, the California Department of Water Resources’ (“DWR”) Delta Conveyance Project (“Delta Tunnel”). (See Exhibit 21, Notice of Preparation of Environmental Impact report for the Delta Conveyance Project.) The Delta Tunnel project proposes to build two massive water diversions along the Sacramento River, just west of the City of Elk Grove and adjacent to the Refuge. (See Exhibit 21, Figure 1.)

The predecessor to the Delta Tunnel project, the “California WaterFix”, would have been an unprecedented endeavor, causing significant environmental impacts.
throughout the region. The latest version of the Delta Tunnel project proposed by DWR is very similar to the California WaterFix. Relevant here, construction and operation of the intakes on the Sacramento River and the tunnel itself would have significant impacts on the Refuge and the wildlife that inhabit it. Whether it is new power lines, truck traffic, or construction noise, the Delta Tunnel would be devastating for the Refuge and the special-status species that rely on Refuge habitat. (See Exhibit 22, Testimony of Dr. Fraser Shilling for the State Water Resources Control Board California WaterFix Hearings (describing how construction and operation of intakes would impact wildlife), Exhibit 23, Testimony of Dr. Gary Ivey for the State Water Resources Control Board California WaterFix Hearings [describing impacts from constructing intakes on sandhill cranes], Exhibit 24, Testimony of James Pachl for the State Water Resources Control Board California WaterFix Hearings [describing impacts of constructing intakes on Swainson’s Hawk].) Given the proximity of the Delta Tunnel and the Project (see Exhibit 25, Map of Delta Conveyance Project), and that construction and operation of both is proposed to coincide, the Delta Tunnels must be included as a cumulative Project. To ignore this massive undertaking in Elk Grove’s backyard renders the cumulative impact analysis in the DEIR woefully deficient.

Additionally, as noted above, the DEIR fails to disclose CNU’s plans for developing a biotech district in Elk Grove to accompany the proposed hospital as planned by CNU. CNU has already purchased property north of the Project site for this purpose. Yet those planned future uses are not mentioned in the DEIR. Even if a biotech district is not a part of this Project, but is nonetheless still planned by CNU, it must be included as a cumulative Project.

V. **DEIR Alternatives Analysis is Impermissibly Truncated and Fails to Reduce Project’s Significant Effects**

The discussion of project alternatives is “the core of an EIR.” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564; see *Banning Ranch*, supra, 2 Cal.5th at 937.) A discussion of project alternatives is required even if a project’s impacts would be avoided or reduced by mitigation measures. (*Laurel supra*, 47 Cal.3d 376, 403; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.3d 692, 732 (*Kings County*).) An EIR must describe a reasonable range of alternatives that could feasibly attain a project’s basic objectives. (CEQA Guidelines, § 15126, subd. (d); *Kings County*, supra, 221 Cal.3d at 733.) “An EIR which does not produce adequate information regarding alternatives cannot achieve the dual purpose served by the EIR, which is to enable the reviewing agency to make an informed decision and to make the decisionmaker’s reasoning accessible to the public, thereby protecting informed self-government.” (*Kings County*, supra, 221 Cal.3d at 733, quoting *Laurel Heights Assn. v. Regents of University of California*, supra, 47 Cal.3d at 403.)
The DEIR includes three alternatives, Development Consistent with Municipal Code Height Standards, Reduced Development, and Lent Ranch Marketplace Site. (DEIR, pp. 5-6 to -7.) The alternative that would follow the City’s height standards was not considered further due to purported site constraints limiting the amount of beds that would be available in a shorter hospital building. (DEIR, pp. 5-6.) According to the DEIR, the hospital must exceed the City’s height standards so that the hospital can have 400 beds, and the Project can remain financially viable. (Ibid.) The DEIR does not sufficiently explain why reductions in beds would be necessary, however. It is feasible that a hospital could both be shorter, with a larger overall footprint and modifications to the footprints of other buildings, including the multiple parking garages. Along with the DEIR’s premature disposal of the alternative that would comply with applicable land use regulations, the other alternatives are also cursory and inadequate. For example, the DEIR’s analysis of the Reduced Development alternative’s impacts to biological resources only discusses the elimination of helicopter related bird-strikes, but fails to discuss or quantify the reduction in building bird strikes from reduced building height. (DEIR, p. 5-11.) Moreover, the DEIR does not analyze whether either the Reduced Development or the Lent Ranch alternatives would avoid violations of California’s fully protected species law and/or the federal MBTA. (DEIR, pp. 5-11, -15.) This could be a tantamount difference between the Project and the alternatives, and this information should have been included in the DEIR. Similarly, the DEIR does not compare the number of sensitive receptors that would be impacted under the Lent Ranch alternative compared to the Project, or the actual noise levels they would experience. (DEIR, p. 5-17.)

The Project’s current location has significant pitfalls that simply do not apply to the Lent Ranch alternative. Building on the Lent Ranch site would entirely avoid the need to amend the City’s General Plan and Municipal Code, because it is not in the 200-year flood plain. (See Peterson, p. 2.) Risks associated with a 200-year flood event’s effects on operation of the hospital would not occur. (Ibid.) The Lent Ranch location does not just have a reduced flooding impact, it nearly eliminates it entirely.

Similarly, the Lent Ranch location is further removed from the Refuge and is a larger parcel. (See DEIR, pp. 5-13 to 5-14.) A larger site would facilitate reducing the height of the hospital building; or even if it was built to 261 feet tall, there would be less of an avian collision threat. The types of birds that frequent the Refuge migrate at high altitudes. (Cashen, p. 6.) The risk posed by the proposed Project is its proximity to the Refuge – birds would not have the time to ascend or descend at the rate necessary to avoid collision with the hospital. (Ibid.) However, with the hospital further inland and away from the Refuge, the birds would be at high enough altitudes to avoid collisions. The risks of bird strikes on the hospital, particularly of Greater Sandhill Cranes, would be
significantly reduced at the Lent Ranch location. (See Ivey, p. 4.) Noise impacts would also be greatly reduced given that construction would be far removed from the Refuge and helicopter flights over the Refuge would be less frequent.

Last, human health impacts from air and noise emissions would be greatly reduced because of the sizable difference in sensitive receptors near the Lent Ranch site. The myriad of health effects of the Projects significant and unavoidable emissions of TACs and construction noise would be avoided. The closest potential sensitive receptors to the Lent Ranch site, the homes on Bilby Road, are over 1,000 feet away. The DEIR does not reflect this and the analysis of impacts under the different alternatives is deficient. The Lent Ranch location is demonstrably less impactful than the proposed Project. The fact that the DEIR does not reflect these stark differences is indicative that the document does not “enable the reviewing agency to make an informed decision” or “make the decisionmaker’s reasoning accessible to the public, thereby protecting informed self-government.” (Kings County, supra, 221 Cal.3d at 733.)

VI. Conclusion

The DEIR is an inadequate document under CEQA, riddled with informational deficiencies and lacking in supporting evidence. The DEIR overlooks, dismisses, or downplays the Project’s significant impacts. Yet, even with the level of obfuscation in the DEIR, one glaring truth comes through – this Project is not right for this location. A 261-foot tall building should not be built adjacent to a wildlife refuge. A project requiring ten years of construction should not be developed in a residential neighborhood. Critical infrastructure like a hospital should not be developed in the 200-year flood plain. The Project’s design and location are the root of significant impacts that could likely be avoided in a different location.

As the City takes the necessary steps to prepare and recirculate a legally adequate EIR, it should also reconsider the propriety of the Project and its location. The goals of
the Project could be achieved at a fraction of the impact to wildlife and Elk Grove residents if proposed in a different location.

Thank you for considering these comments. Please feel free to contact my office with any questions.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By:

Osha R. Meserve

SOLURI MESERVE
A Law Corporation

By:

Nicolas Sweeney

ORM/NS:wra

**EXHIBITS** Available Via Dropbox at:
https://www.dropbox.com/sh/9tkdf2ucs1sr369/AADfVFe-RdnKRQQSGADzS0yta?dl=0

Exhibit 1 – Map (2020) and List of Designated Trauma Center Figure (2013)

Exhibit 2 – Yoon-Hendricks, Private medical school asked Elk Grove to provide financing for $750M hospital, emails show, Sacramento Bee (April 5, 2019)


Exhibit 4 – Sacramento County Department of Health Services, Emergency Medical Services Report (2019)
Exhibit 5 – Sacramento County Environmental Management Department, Public Records for CNU School of Medicine (2020)

Exhibit 6 – Tom Brohard Report on Transportation Impacts (2020)

Exhibit 7 – Ray Kapahi Report on Air Quality Impacts (2020)

Exhibit 8 – Cahill, I Can Breathe Clearly Now (2017), Chapter 7 – Diesel Exhaust, Chapter 8 – Cahill, Copper and other ultra-fine transition metals


Exhibit 11 – Cahill, Very Fine and Ultrafine Metals and Ischemic Heart Disease in the California Central Valley 1: 2003–2007 (2011)

Exhibit 12 – Cahill, Artificial ultra-fine aerosol tracers for highway transect studies (2015)


Exhibit 14 - Volk, Residential Proximity to Freeways and Autism in the CHARGE Study (2010)

Exhibit 15 – Cahill, Transition metals in coarse, fine, very fine and ultra-fine particles from an interstate highway transect near Detroit (2016)

Exhibit 16 – Dr. Gary Ivey Report on Impacts to Greater Sandhill Crane (2020)


Exhibit 18 – UC Davis Medical Center Hazardous Waste Generation Matrixes (2020)

Exhibit 19 – Dave Peterson Report on Flooding Impacts (2020)
Exhibit 20 – Frank Hubach Report on Noise Impacts (2020)


Exhibit 22 – Testimony of Dr. Fraser Shilling for the State Water Resources Control Board California WaterFix Hearings (2017)

Exhibit 23 – Testimony of Dr. Gary Ivey for the State Water Resources Control Board California WaterFix Hearings (2017)


Exhibit 25 – Map of Delta Conveyance Project (2020)