



CENTER FOR ADVOCACY & POLICY

Telephone: (916) 442-1036

Fax: (916) 442-1743

April 28, 2015

Executive Steering Committee
SB 863 Adult Local Criminal Justice
Facilities Construction
Board of State and Community Corrections
2590 Venture Oaks Way
Sacramento, CA 95833
magi.work@bscc.ca.gov

Dear SB 863 Executive Steering Committee Members,

Having reviewed the draft RFP that you will be considering for approval at tomorrow's meeting, the ACLU continues to have serious concerns about some of the language and its potential to invite challenges to any grants awarded under its terms. The RFP begins, appropriately, by quoting the following legislative language from SB 863: "By improving adult criminal justice housing with an emphasis on expanding program and treatment space, this financing will serve a critical purpose by promoting public safety." While repeating in several portions of the RFP the statutory requirement that these funds be utilized to build facilities that emphasize programming and treatment space, the RFP in other critical places indicates that this requirement does not apply to proposals intended to replace compacted, outdated, or unsafe housing capacity. This is a serious contradiction that may well lead to challenges by counties on the basis that they were not fairly graded because they chose to accept either one of these two contradictory requirements. The good news is that the language of the RFP can be easily modified to remove this contradiction.

Under the section entitled PROPOSED PROJECT AND EVALUATION FACTORS, after the explanation of the grading process, the RFP requires applicants to answer six questions.

Question two, Scope of Work, reads:

Describe the areas, if any, of the current facility to be replaced or renovated, and the nature of the renovation, including the number of cells, offices, classrooms or other programming/treatment spaces to be replaced or added and the basic design of the new or renovated units.

The Special Factors under this question read:

A. Is the county plan feasible for seeking to replace compacted, outdated or unsafe housing capacity; or,

ACLU OF NORTHERN CALIFORNIA
Abdi Solani, Executive Director
39 Drumm Street
San Francisco, CA 94111
(415) 621-2493

ACLU OF SOUTHERN CALIFORNIA
Hector Villagra, Executive Director
1313 West Eighth Street
Los Angeles, CA 90017
(213) 977-9500

ACLU OF SAN DIEGO & IMPERIAL COUNTIES
Norma Chavez-Peterson, Executive Director
P.O. Box 87131
San Diego, CA 92138
(619) 232-2121

B. Is the county plan feasible for seeking to renovate existing or build new facilities that provide adequate space for the provision of treatment and rehabilitation services, including mental health treatment.

Providing adequate space in these facilities for the provision of treatment and rehabilitation services, including mental health services, is a requirement of the statute. Placing the “or” at the end of Special Factor (A) indicates that these need not be provided if the county is seeking to replace compacted, outdated, or unsafe housing capacity. If that were the case, all counties could assert that they are under no obligation to provide programming and treatment space because all counties are seeking to replace compacted, outdated, or unsafe facilities. This language both contradicts the statutory mandate and, by creating confusion as to who is subject to the requirements for programming and treatment space, it creates a very real potential for challenges to these grant awards. This could be easily remedied by amending the word “or” at the end of Special Factor (A) to read “and.”

Question three, Programming and Services, reads:

Describe the programming and/or treatment services currently provided in your facility. Provide the requested data on pretrial inmates and risk based pretrial release services. Describe the facilities or services to be added as a result of the proposed construction; the objectives of the facilities and services; and the staffing and changes in staffing required to provide the services.

General Merit Factor (B) asks appropriate questions about proposed programming and treatment space to be provided.

However General Merit factor (C) then appears as an alternative: “If improvements are designed to replace compacted, outdated, or unsafe housing capacity:

- Are the improvements to housing deficiencies clearly described?
- To what extent will the deficiencies be remedied by the proposed construction?

General Merit factor (C) indicates that, if the county is seeking to replace compacted, outdated, or unsafe housing capacity, then no programming or treatment space is required. This can be easily remedied by combining General Merit Factors (B) and (C) and deleting the language, “If improvements are designed to replace compacted, outdated, or unsafe housing capacity.”

Lastly, under Needs Assessment Study/Letter of Intent, the RFP states, “Projects for renovation or program space only do not require a separate needs assessment study; however, a comprehensive documentation of need must be provided in the proposal narrative (see Section 5 of the Proposal Form).” Does this mean that a project to renovate a 3,000 bed facility requires no needs assessment? This requires clarification.

In sum, the ACLU recommends:

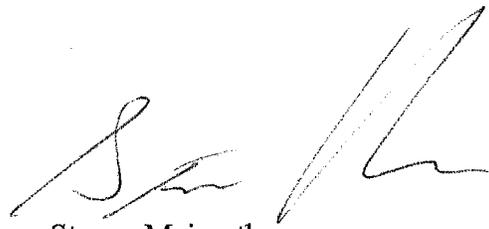
1. Under Question 2. Scope of Work, the word “or,” which appears at the end of Special Factor (A), should be amended to read “and.”
2. Under Question 3. Programming and Services, General Merit Factors (B) and (C) should be combined and the language, “If improvements are designed to replace compacted, outdated, or unsafe housing capacity” should be deleted.
3. Under Needs Assessment Study/Letter of Intent, the language needs to clarify that all proposals require a needs assessment.

We wish to express our thanks to the committee members for their thoughtful consideration of our previous comments and suggestions. We are hopeful that these important final issues can be addressed and we look forward to continuing to work with the committee through the process of awarding these grants.

Respectfully,



Natasha Minsker
Director
ACLU of California
Center for Advocacy and Policy



Steven Meinrath
Advocate
ACLU of California
Center for Advocacy and Policy



CONTRA COSTA COUNTY OFFICE OF THE SHERIFF

DAVID O. LIVINGSTON

SHERIFF - CORONER

June 4, 2015

Senate Bill 863 Executive Steering Committee
Board of State and Community Corrections
600 Bercut Drive
Sacramento, CA 95811

Re: SB 863/County Award History in Scoring Protocol

Dear Executive Steering Committee Members:

A new SB 863 Request for Proposal will be released by your Committee in the near future. Contra Costa County is expending significant resources in anticipation of applying for this round of funding. Our situation is serious. Among other things, we have acute safety concerns since the only housing we have for our high security inmates was not designed for the current population and is severely inadequate. It also lacks space for any meaningful reentry and treatment programs.

For several years we have been planning a project designed to replace the deficient housing with a new facility that provides appropriate housing and programming space. However, we have been unable to finance it. We were discouraged from participating in the AB 900 program because of the competition with other project needs at that time. We applied for financing under the SB 1022 program but were denied because of a technicality. We will be applying again under the SB 863 program.

I understand that SB 863 provides some legislative intent that is unique from the others. As you are aware, the legislation provides in Section 15820.936 (b), Chapter 3.131, Part 10b of Division 3, Title 2 of the Government Code;

The BSCC may consider award history in Chapters 3.11 to 3.13, inclusive, in its scoring of adult local criminal justice facilities applications.

I bring to the Committee's attention that Contra Costa County's award history is non-existent for funding under any of these programs, including SB 81. Thus, we have a keen interest in how this scoring criterion is applied.

I know it is incumbent upon my county to demonstrate the worthiness of our project, and we intend to do that. I only ask that the Committee consider the apparent intent of the legislation and adopt a scoring system that fully considers a county's award history, or lack thereof, such as is the case with Contra Costa County.

I understand and appreciate the many challenges you face in the important work of your Committee and I appreciate the opportunity to provide our input on SB 863 scoring.

Sincerely,

DAVID O. LIVINGSTON
Sheriff - Coroner

DOL:sl

*Faith Alliance
for a
Moral Economy*



August 11, 2015

Sheriff David O. Livingston
651 Pine Street, 7th Floor
Martinez, CA 94553

Dear Sheriff Livingston,

We are writing to you as faith leaders who reside in and serve congregations throughout Contra Costa County to express our profound concern about your intention to construct a new unit at the West County Detention Facility with up to 418 beds. As you may remember, many of us met with you in 2012 and were part of tremendous community outpouring around the re-alignment monies. We urged greater investment of County resources into re-entry, drug rehabilitation, and services, rather than expansion of this facility. We believe that three years later, the desire of the community and the sense of the faithful to re-envision our County's approach to criminal justice is even stronger. This mandate from the public was made clear last Fall with the passage of Proposition 47, which was supported by many religious networks and denominations, including the California Catholic Conference of Bishops.

We acknowledge and appreciate the stated intentions of your Office to use this construction as an opportunity to provide expanded services for inmates, addressing the critical need for mental health services. We affirm there is serious need in the community for greater access to more developed mental health treatment. In fact, we understand the dearth of such services *in the community* as a contributing factor to crime and a prelude to incarceration.

For this reason, it is our earnest desire to see the Sheriff's budget and any new County monies invested in the community on the front-end, toward services that prevent crime, rather than the back-end, after incarceration. Most reports show that incarceration does a woeful job at treating mental illness. Oversight of mental health services should not be the job of the Sheriff, and your Deputies should not be tasked with becoming service providers. Mental health services should remain the responsibility of trained health professionals with roots in the community.

Though your proposal specifies no net increase in the total number of county inmates being held at this time, we fear that the construction of new facilities with more available beds will create the possibility of holding more people in the long run. This is evidenced by the County's current practice of contracting at least 150 excess beds to Immigration Customs

and Enforcement. We question this practice of “beds for rent”, and even the need to detain undocumented immigrants, a large percentage of whom are held only on civil violations.

With more beds, the county will be enabled and even incentivized to detain more immigrants, who play a vital role in our society and do not deserve to be separated from their families and communities.

In the wake of the tragic closing of Doctor’s Medical Center due to the lack of county funds, there is hurt and skepticism about funds that would now be made available for mental health services within the confines of a jail. This profoundly challenges our sense of moral budgeting priorities. In a 2011 research report “Speaking Truth on Coming Home”, a team of formerly incarcerated Richmond residents recommended that “given the astonishing need for housing” among those released from jail, more resources should be directed at affordable transitional housing. Yet in the most recent County budget, such programs were given a new grant of only \$220,000 – a small fraction of the projected annual costs of your new facility. We urge you to think about the holistic and moral needs of our County budget, and how the diversion of resources to health care, housing, and education would reduce the need to incarcerate.

We certainly appreciate the work you do to keep our communities safe, and applaud the intentions to improve services that you suggest could be done through this construction. But we believe that expanding the WCDF is unwise, against our principles, and contrary to the common good of Contra Costa County. We urge you to re-think your budget and approach in order to find ways to make improvements without this costly expansion.

We hope that you may hear our request to not apply for these funds for new construction and increased beds at the West County Detention Facility.

May you be sustained by the light and love of the Holy One, and guided by Wisdom and concern for the poor in all that you do.

Sincerely,

The under-signed faith leaders of Contra Costa County:
(Affiliations are for identification purposes only)

Rev. Anne Cox Bailey, St. Luke's Episcopal Church, resident of Walnut Creek

Anne Danielle, Social Justice Chair at Christ the King Catholic Church in Pleasant Hill,
resident of Martinez

Rev. Anthony Clark, Arlington Christian Church, resident of Kensington

Ariane Wolfe, Seminarian, All Souls Episcopal Parish Berkeley, resident of El Cerrito

Pastor BK Woodson Sr., Bay Area Christian Connection, resident of El Cerrito

Pastor Cassandry Redmond Keys , Davis Chapel CME Church and St. Peter CME Church,
Richmond

Chris Coons, Social Justice Alliance of Interfaith Council of Contra Costa County, resident of Lafayette

Rev. Dr. Daniel Prechtel, Episcopal Church, resident of San Pablo

Darlana David, All Souls Episcopal Parish Berkeley, resident of Richmond

David Stevens, Christ The Lord Episcopal Church Pinole, resident of Richmond

Dean M. Coons, Lafayette United Methodist Church, resident of Lafayette

Pastor Donnell Jones, New Directions Ministry, Richmond

Fr. Don MacKinnon, CSSR, Oakland Catholic Diocese and Kmhmú-Laotian Pastoral Center in Richmond

Elena C. Ramirez, All Soul's Episcopal Church, resident of Richmond

Elsa China Stevens, Christ The Lord Episcopal Church Pinole, resident of Richmond

Pastor Felix Golden, His Presence Christian Center, Brentwood

Rev. Fran Gardner-Smith, Holy Spirit Church: Episcopal Shared Ministry in Contra Costa County, resident of Antioch

Rev. Dr. Fred Weidmann, Hillcrest Congregational Church, resident of Pleasant Hill

Gwen Watson, Chair of the Social Justice Alliance of Interfaith Council of Contra Costa County

Rev. Jack Shriver, Presbyterian Church, resident of Walnut Creek

Rev. Javier Torres, Holy Trinity Episcopal Church, Richmond

Rev. Kamal Hassan, Sojourner Truth Presbyterian Church, Richmond

Rev. Katherine Salinaro, Christ The Lord Episcopal, Pinole, resident of Pinole

Rev. Leslie Takahashi, Pastor of Mt. Diablo Unitarian Universalist Church, Walnut Creek

Lillian Delores Loague, Church & Society Chair at Concord United Methodist Church

Madeline Feeley, All Souls Episcopal Church, resident of Kensington

Rev. Mary Louise Hintz, Episcopal Diocese of California & Greater Richmond Interfaith Program Social Justice Committee Chair

Rev. Matt Prinz, Ygnacio Valley Presbyterian Church, Concord

Michael Fischer, Congregation B'nai Tikvah, Walnut Creek

Rev. Mike Van Hofwegen, Christian Reformed Church, resident of Concord

Nancy Kelly, Chair of the Social Justice Council at Unitarian Universalist Church of Berkeley, resident of Kensington

Rev. Nate Klug, Orinda Community Church, Orinda

Rev. Dr. Phil Lawson, Pastor Emeritus of Easter Hill United Methodist, Richmond

Robert Adams, Unitarian Universalist Church of Berkeley, resident of El Cerrito

Pastor Fr. Robert Rien, St. Ignatius of Antioch Catholic Church

Rev. Ruth A. Meyers, Episcopal Diocese of California, resident of San Pablo

Rev. Susan Champion, Christ the Lord Episcopal Church Pinole

Suzanne Llewellyn, Immigration Task Force at Mt. Diablo Unitarian Universalist Church,
Walnut Creek

Rev. Vicki Gray, Christ the Lord Episcopal Church, Pinole

Rev. Will McGarvey, Executive Director of the Interfaith Council of Contra Costa County and
pastor at Community Presbyterian Church of Pittsburg

cc: *Contra Costa County Board of Supervisors*
District I Supervisor John M. Gioia
District II Supervisor Candace Anderson
District III Supervisor Mary N. Piepho
District IV Supervisor Karen Mitchoff
District V Supervisor Federal D. Glover

August 13, 2015

VIA E-MAIL & U.S. MAIL

Julia Bueren, Director/Chief Engineer
Hillary Heard, Senior Planner
Leigh Chavez, Environmental Division Manager
Contra Costa County Public Works Department
255 Glacier Drive
Martinez, California 94553
jbuer@pw.cccounty.us
hhear@pw.cccounty.us
lchav@pw.cccounty.us

Re: Improper Filing of Notice of Determination: West County Detention Facility Expansion Project

Dear Ms. Bueren, Ms. Heard, and Ms. Chavez:

I am writing on behalf of the City of Richmond in response to the Board of Supervisor's actions on July 21 and 28, 2015 with respect to the West County Detention Facility Expansion Project ("Project"). At its July 21 meeting, the Board certified the Final Environmental Impact Report ("EIR") for the Project, and explicitly chose to withhold discussion of whether to approve the Project until its meeting in August. On that basis, the Board amended its Order so as not to direct the filing of a Notice of Determination ("Notice") under the California Environmental Quality Act ("CEQA").

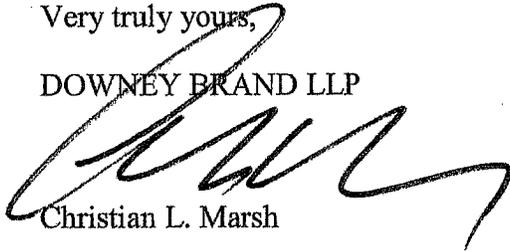
On July 28th, the very next week, the Public Works Department inexplicably recommended the filing of a Notice for the Project even though the "Sheriff's Office will return to the Board in August 2015 for final project approval." (Board Agenda, July 28, 2015, Consent Item 76.) Reversing its action of the previous week, the Board accepted staff's recommendation and directed the filing of the Notice without further discussion or approval of the Project.

As County staff and its environmental consultants are undoubtedly aware, or certainly should be aware, any Notice filed *before* the date of approval is defective. (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931 (a notice of determination filed *before* rather than *after* project approval is invalid).) The Notice, therefore, has no force or effect. The

City of Richmond, therefore, calls upon the County to withdraw this defective Notice. If it is not promptly withdrawn, the City will file suit so as to preserve its remedies.

Very truly yours,

DOWNEY BRAND LLP



Christian L. Marsh

cc: Bruce Reed Goodmiller, City Attorney
City of Richmond

Magi Work, Deputy Director
Robert Oates, Project Director III
Facilities Construction Division
Board of State and Community Corrections
2590 Venture Oaks Way, Suite 200
Sacramento, California 95833
robert.oates@bscc.ca.gov
magi.work@bscc.ca.gov

Sharon L. Anderson, County Counsel
Contra Costa County
651 Pine Street, 9th Floor
Martinez, California 94553
sande@cc.cccounty.us

Christian L. Marsh
cmarsh@downeybrand.com
415.848.4830 Direct
415.848.4831 Fax

Downey Brand LLP
455 Market Street, Suite 1420
San Francisco, CA 94105
415.848.4800 Main
downeybrand.com

August 17, 2015

VIA U.S. MAIL AND EMAIL

Contra Costa County Board of Supervisors
Attn: Clerk of the Board
651 Pine Street Room 106
Martinez, California 94553
clerkoftheboard@cob.cccounty.us

**Re: Comments on the Proposed West County Detention Facility Expansion Project
Final EIR, State Clearinghouse #2015042003**

Dear Members of the Board of Supervisors:

We are writing on behalf of the City of Richmond ("City") with comments on the Final Environmental Impact Report ("FEIR") for the West County Detention Facility ("WCDF") expansion project (the "Project") proposed by Contra Costa County ("County") and located within the City of Richmond. The City has submitted comments at all stages of the environmental review process, and these comments are meant to supplement, not replace, earlier comments.

Environmental review documentation is more than a set of technical hurdles for agencies and developers to overcome. The documents must "contain facts and analysis, not just the agency's bare conclusions or opinions." (*Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 404.) Crucially, the documents "must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." (*Id.* at 405.) The County must ensure that adequate environmental information is gathered and that the environmental impacts of the Project are fully identified and analyzed before the Project is approved. "To conclude otherwise would place the burden of producing relevant environmental data on the public rather than the agency." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 724.)

For a variety of reasons, the EIR falls short of compliance with CEQA. First, the Project Description is inaccurate and misleading in that it assumes no net increase in detention center capacity within the County. Second, the EIR fails to analyze all of the direct, indirect, and cumulative impacts to the environment, and many of the EIR's impact conclusions are entirely lacking in factual support. The net effect of these problems is that the Board cannot legally rely on the current EIR to approve the Project, and therefore, we respectfully submit that the

proposed Project must be denied pending more thorough environmental review in a recirculated EIR.

I. The Board's Actions on the Project Have Misled the Public as No Project Approval Has Occurred

The Board has conveyed contradictory messages to the public regarding the actions it has taken with respect to the Project. At the Board's July 21 meeting, the Board certified the FEIR for the Project but did not approve the Project. Thus, at that meeting the Board directed staff to withhold the filing of a Notice of Determination ("NOD") until approval of the Project in August, when, according to the Board, it would also consider Project funding. The next week, on July 28, the Board adopted Consent Item 76 directing the filing of an NOD for the Project. Notably, the agenda for that item specifically stated that the Board's final approval of the Project would occur at its August 2015 meeting. (See Board Agenda, July 28, 2015, Consent Item 76 ["Sheriff's Office will return to the Board in August 2015 for final project approval."]) The Agenda for the Board's upcoming August 18, 2015 meeting states that it will:

CONSIDER adopting Resolution No. 2015/301, approving the County's proposal to be awarded \$80 million in State financing for the West Contra Costa County Reentry, Treatment, and Housing facility project in the Richmond area, authorizing the Sheriff to submit the proposal to the State, and taking related actions, as recommended by the Sheriff-Coroner. (David O. Livingston, Sheriff-Coroner)

The draft of Resolution 2015/301 provided with the Agenda Report for Item D.3 confirms that the County will consider whether to approve the project during the August 18 public hearing. (See Agenda Report, Item D.3 (Aug. 18, 2015), Resolution No. 2015/301, p. 1 ("Approves the West Contra Costa County Reentry, Treatment and Housing facility project.")) From this record, it is clear that approval of the Project *has not yet occurred*. The Board must take further action, as provided in the draft Resolution No. 2015/301, to approve the Project. (See, e.g., Pub. Resources Code, § 21002, 21081; Guidelines, § 15090-15095.)

As we noted in our letter dated August 12, the County impermissibly filed a Notice of Determination ("NOD") of approval of the Project on July 28. An NOD is only valid if filed *after* the lead agency "approves or determines to carry out a project which is subject to the requirements of CEQA." (CEQA Guidelines, § 15373.) Yet, the County *has not approved* the Project. (See Board Agenda, July 28, 2015, Consent Item 76 ["Sheriff's Office will return to the Board in August 2015 for final project approval."]) Any NOD filed before the date of project approval is defective and has no force or effect. (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931 (a notice of exemption filed before rather than after project approval is invalid).) If after considering the Project at the August 18 Board meeting, the Board approves the Project, only then can the County issue an NOD.

II. The Project Description Is Inaccurate and Misleading Because It Assumes No Net Increase in Detention Center Capacity in Contra Costa County

“[A]n accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity.” (*San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730.) Without an accurate and stable project description, it is impossible for the public to “ascertain the project’s environmentally significant effects, assess ways of mitigating them, and consider project alternatives.” (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 533.)

The Project Description claims there will be “no net increase of California Department of Corrections rated beds in Contra Costa County as a whole.” (DEIR, p. ES-1.) This statement is both false and misleading. The Project will add 240 cells (480 beds) at the WCDF to house existing high-security inmates that are located at MDF. The cells at MDF will not be closed or demolished or otherwise restricted from use. Instead, they will be “repurposed for short-term housing of inmates for purposes of in-processing and release” and the MDF will “continue to be the booking facility for law enforcement agencies in the central and eastern areas of the County.” (DEIR, p. 3.) Nowhere does the EIR point to any restriction on later use of the 240 cells, whether for short-term or long-term inmate housing, or whether low, medium, or high security could be housed there. Indeed, there is not even any discussion of how or when the transfer of inmates from one facility to another will occur. The County’s most recent application materials for funding through SB 863 demonstrate that the capacity at MDF will remain available. The application states that it will modify existing MDF cells that are currently double occupancy to single-occupancy—a change which can easily be reversed should additional beds be needed. (Agenda Report, Item D.3, Attachment A, Statement of Need, p. 5.) The application also states that they will close two housing modules at MDF, but presumably those modules could also be reopened if needed. (*Id.*) There are no physical or legal actions taken with respect to MDF that will prevent future re-use of the facilities for the maximum use at which they are currently operating.

The Project will result in an overall increase of 480 beds in Contra Costa County, the 480 beds existing at the MDF will continue to house inmates, there will be no restrictions on the short-term or long-term use of the MDF cells based on inmate security risk level, and thus Contra Costa County will see a *net increase* in detention center capacity. The EIR’s failure to properly disclose these facts results in a misleading Project Description and deficient impacts analysis. “Far from being an informative document, the EIR’s conclusions call for blind faith in vague subjective characterizations.” (*Communities for a Better Env’t v. City of Richmond* (2010) 184 Cal.App.4th 70, 85.)

This defect is similar to the one at issue in *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 655-56. There, the EIR involved the expansion of acreage at an existing mine, which would have allowed the mine’s *peak capacity* to increase, but the EIR made “inconsistent assurances [] that there would be no increase in production” and instead

relied upon what the projected average production would be. (*Id.* at 655.) The Court held that “[b]y giving such conflicting signals to decisionmakers and the public about the nature and scope of the activity being proposed, the Project description was fundamentally inadequate and misleading.” (*Id.* at 655-56.) Such “curtailed and inadequate characterizations of the Project” had the result of “mislead[ing] the public and thwart[ing] the EIR process.” (*Id.* at 656. As described below, the EIR’s assumption that there would be “no net increase” in detention center capacity in Contra Costa carried through to the analysis of air quality and traffic impacts as described below.

Finally, the EIR’s Project Description is also misleading with respect to its statements about the number of staff that will be needed at WCDF as a result of the expansion. The County’s proposed SB 863 application materials specifically state that the Project will require, as “preliminary staffing” an additional 43 deputy sheriffs and sheriff’s aids (Agenda Report, Item D.3, p. 2), *in addition to* the six employees or community volunteers needed for the educational, vocational, and drug and alcohol counseling services (EIR, p. 2-5), totaling 49 new employees at the WCDF. The EIR only disclosed a maximum of 30 staff members. This defect must be remedied and the environmental analysis concerning air quality and traffic must be updated to reflect the actual staffing level proposed for the WCDF.

III. The EIR’s Analysis of the Project’s Operational Air Quality Impacts Is Premised Upon No Net Increase in Detention Center Capacity

The EIR’s analysis of operational air quality impacts is defective because it is premised upon the inaccurate assumption that there will be no net increase in detention center capacity in Contra Costa County. This is made evident when the EIR states:

Implementation of the proposed project would not increase the inmate population or number of employees in Contra Costa County. Rather, as described in Chapter 2, Project Description, the County would transfer 480 inmates and up to 24 employees from the MDF to the WCDF and would add 6 community volunteers or other program staff members. Because neither the number of inmates nor employees would increase within the airshed relative to existing conditions, there would be no net increase in vehicle trips within the County or BAAQMD. . . . Because no changes in vehicle trips or VMT would result from proposed project implementation relative to existing conditions, there would be no increase in mobile source criteria pollutant or GHG emissions in the airshed as a result of the proposed project. (EIR, p. 3-2.13—14 (emphasis added).)

With respect to existing inmate and receptor exposure to potential Project-generated carbon monoxide hot-spots, the EIR makes the same assumption regarding a “transfer” of existing impacts at MDF to WCDF. The EIR states:

Implementation of the proposed project would shift existing vehicle trips from the MDF to the WCDF, decreasing traffic and CO concentrations adjacent to the MDF and increasing traffic and CO concentrations by a corresponding amount near the WCDF. (DEIR, p. 3.2-23.)

Further evidence of the EIR's assumption that there will be no additional mobile source emissions associated with operation of the Project is found in Table 3.2-8, which excludes mobile source emissions altogether.

As explained in Section II above, the Project will add capacity at WCDF and will not close, demolish, or otherwise restrict usage of the existing capacity at MDF. Therefore, the Project could result in an increase in the inmate population and the number of associated detention facility employees within the County. In addition, as acknowledged in the County's EIR and the County's own application materials for funding under SB 863, the Project will require both a transfer of 31 existing employees from MDF, and 18 *new employees*—six *new* Deputy Sheriff's, six *new* Sheriff's Aides, and six *new* staff for the educational, vocational, and mental health and medical services that are proposed as part of the Project. (See Agenda Report, Item D.3, p. 2, DEIR, p. 2-4.)

For these reasons, the EIR cannot assume that there is no net increase in air quality impacts associated with mobile sources and inmate and receptor exposure because any existing emissions associated with the MDF facility will not simply "transfer" to the WCDF facility. The Project will not foreclose the use of MDF's existing capacity, and the Project will add new 18 entirely new employees to the WCDF. Furthermore, the Project will add entirely new facilities to the WCDF, including a mental health treatment facility, educational and vocational programs, and healthcare services. Any analysis of mobile source emissions associated with operation of the Project must include an evaluation of how these new facilities will alter the number and frequency of cars and trucks coming to the Project site.

IV. The EIR Fails to Properly Evaluate the Project's Potential Greenhouse Gas Emissions and Energy Impacts

In evaluating a project's greenhouse gas (GHG) emissions, Appendix G of the CEQA Guidelines directs lead agencies to evaluate whether the project will "conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases." (CEQA Guidelines, App. G(VII).) Assembly Bill 32 (AB 32), as one applicable plan or policy, establishes a statewide goal to reduce GHG emissions to 1990 levels by 2020. In addition, BAAQMD has established GHG thresholds of significance to assist lead agencies in determining the level of significance of operational-related GHG emissions. (See DEIR, p. 3.2-15.) In December of 2008, Contra Costa County adopted a Municipal Climate Action Plan (MCAP).¹ Contra Costa County adopted the long-term GHG reduction target set by the US Cool

¹ The MCAP is available at: <http://www.co.contra-costa.ca.us/DocumentCenter/Home/View/2905>

Counties Climate Stabilization Declaration, which “calls on the County to work with local, state, and federal governments and other local leaders to develop a regional plan to reduce countywide GHG emissions to 80% below baseline levels by 2050.” (MCAP, p. 4.)² The MCAP also establishes a “reduction target of 50% below baseline levels by 2030.” (MCAP, p. 4.) California has also adopted aggressive energy efficiency standards for new buildings, including the California Green Building Standards Code, which “establishes voluntary standards that became mandatory in the 2010 edition of the code.” (DEIR, p. 3.2-5, *see* 24 Cal. Code Regs., Part 11.)

Under Impact GHG-2, the EIR concludes that “the WCDF expansion *could be* LEED Silver certified and would include a number of energy efficiency improvements relative to the existing MDF.” (DEIR, p. 3.2-25.) Then the EIR concludes that “[t]his is consistent with strategies identified in the AB 32 Scoping Plan, as well as MCAP goals to conserve energy and reduce GHG emissions generated by County facilities” and that “implementation of the proposed project would not conflict with AB 32 or the MCAP.” (*Id.*) Nowhere does the EIR provide any detail concerning what the Project’s energy efficiency improvements would be, or how the Project would reduce emissions from business-as-usual to meet state and local GHG reductions targets. As shown in the MCAP, building electricity use, building natural gas consumption, and waste disposal as the second, third, and fifth largest contributors to municipal emissions within the County, respectively. (MCAP, p. 3.) Yet, under Impact GHG-2 there is no discussion of how the County will construct the Project (either as design features or as mitigation measures) in a way as to reduce electricity usage, natural gas consumption, or waste disposal. Thus, there is no substantial evidence supporting the EIR’s conclusion under Impact GHG-2 that the Project will not conflict with applicable plans, policies, or regulations concerning GHG reductions. “Such a bare conclusion without an explanation of its factual and analytical basis is insufficient.” (*San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 736.) This requirement that conclusions be adequately supported and explained is needed to “enable[] the decision-makers and the public to make an ‘independent, reasoned judgment’ about a proposed project.” (*Concerned Citizens of Costa Mesa v. 32nd Dist. Agric. Assn.* (1986) 42 Cal.3d 929, 935.)

Similarly, under Impact EGY-1, the EIR summarily concludes that “the proposed project would be consistent with AB 32, the County’s MCAP, the County’s Green Building Code, and would be planned for a high level of energy efficiency and sustainability, potentially to LEED Silver levels. Therefore, the proposed project would be consistent with state and local energy policies and would not result in a wasteful, inefficient, and unnecessary usage of energy.” (DEIR, p. 3.2-26.) Yet, again, there is absolutely no factual data or information supporting this conclusion, no description of how the Project will be energy efficient, reduce waste, reduce water usage, or otherwise implement energy reducing features for the operation. Thus, there is

² The State’s emissions reductions targets are increasing. This past January, Governor Brown announced a new goal of 50 percent renewable energy by 2030. (*See* Governor Brown Inaugural Address (Jan. 5, 2015), *available at*: <http://gov.ca.gov/news.php?id=18828>; *see also* Senate Bill 350 (amended July 16, 2015), *available at*: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB350.)

no substantial evidence supporting the EIR's less-than-significant impact conclusion for Impact EGY-1 because the EIR fails to explain how the Project's energy consumption will not be "wasteful, inefficient, or unnecessary."

Finally, the County's evaluation of the Project's GHG impacts commits the same error made by the lead agency in *Friends of Oroville v. City of Oroville* (2013) 219 Cal.App.4th 832. There, the lead agency was found to have violated CEQA because it applied the threshold for compliance with AB 32 incorrectly because the EIR never evaluated how the proposed project could reduce emissions from Business-As-Usual (BAU) to meet AB 32's target reductions. (*Id.* at 842.) As the Court explained:

The relevant question to be addressed in the EIR is not the relative amount of GHG emitted by the Project when compared with California's GHG emissions, but whether the Project's GHG emissions should be considered significant in light of the threshold-of-significance standard of Assembly Bill 32, which seeks to cut about 30 percent from business-as-usual emission levels projected for 2020, or about 10 percent from 2010 levels.

(*Id.* at 842.) Here, the EIR completely avoids any evaluation of the Project's BAU emissions, and likewise fails to demonstrate how those emissions will be reduced to meet AB 32's current targets. As such, the EIR must be revised and recirculated to correct this substantive error.

V. The EIR Does Not Adequately Analyze and Mitigate the Project's Aesthetic Impacts

Under Appendix G of the CEQA Guidelines, a project would have a significant aesthetic impact if it would (a) have a substantial adverse effect on a scenic vista; (b) substantially damage scenic resources within a state scenic highway; (c) substantially degrade the existing visual character or quality of the site and its surroundings; or (d) create a new source of substantial light or glare which would adversely affect day or nighttime views in the area.

The EIR states that the Project will develop 2.3 acres and construct a new building with a height range of 32-45 feet for a total of 150,000 square feet. (DEIR, pp. 2-2, 2-3.) In response to comments raised on this issue, the FEIR disclosed that the setback from the Giant Highway will be greater than 100 feet. (FEIR, p. 2-11.) The Project fails, however, to include a site plan, specifications, or any depiction of the proposed Project. As a result, it is not possible to determine whether the Project's impacts to identified viewsheds (i.e., the Giant Highway, nearby residences, the Richmond Golf and Country Club, the Point Pinole Regional Shoreline, and the Pinole Point Business Park) may be potentially significant.

The EIR shows that the proposed Project would result in the construction of buildings closer to the Great Highway, nearby residences, and the Richmond Golf and Country Club, than the existing WCDF buildings on the Project site. (DEIR, Figure 2-3.) As a result, the EIR notes

that the Project may increase the visibility of the WCDF from these areas. (DEIR, p. 3.1-5.) It is impossible to determine whether aesthetic impacts are significant, however, because the EIR fails to include a rendering of what the Project will look like from any of the selected vantage points, or any other point of view, for that matter. At a minimum, the EIR should include viewpoints of the site with a generic rendering of the Project, including a scale building at the maximum proposed height of 45 feet at the eastern boundary of the 2.3-acre expansion area depicted in Figure 2-3. While an EIR need not conduct every study, the EIR here lacks any substantial evidence that the Project will have less than significant impacts on aesthetics.

Further, the Project has the potential to create new sources of substantial light or glare adversely affecting nighttime views in the area. Facility lighting has the potential to be very bright, but the EIR fails to include any clear and specific set of lighting design features requiring that lights be directed away from the Giant Highway and nearby residences, stating only that “[e]xterior lighting for the facility would be similar to existing lighting, directed downward with the minimum wattage [necessary] to meet security needs.” (DEIR, p. 2-3.) Because the Project may be visible from nearby residences, it is also possible that lighting for the facility will be as well. (DEIR, p. 3.1-6.) The EIR should be revised to state design features necessary to avoid creating hazardous roadway conditions or shining onto adjacent businesses and residences.

Additionally, the EIR does not fully discuss the status of existing landscaping used to obscure the WCDF, only stating that it will be maintained. (DEIR, p. 2-3.) With respect to new landscaping, however, the County states that it will not install new landscaping adjacent to the WCDF for security reasons, thus ruling out one of the only feasible measures to mitigate view impacts without providing alternative options, which may be required to mitigate the impacts to aesthetics caused by the Project.

VI. The EIR Does Not Adequately Analyze and Mitigate the Project’s Impacts to Biological Resources

As pointed out in comments by the California Department of Fish and Wildlife, the County completely failed to conduct a thorough assessment of habitat, flora, and fauna within and adjacent to the Project area to determine the presence of threatened, endangered, and locally unique species and sensitive habitats. Although the County’s consultant “confirmed the lack of suitable wildlife habitat” on the Project site (Initial Study, p. 18), the County did not evaluate which special-status species may have a potential to occur on the Project site, and therefore may have potentially significant impacts from Project operation and construction. Instead, the Initial Study simply concluded—without supporting evidence—that the “project would not have a substantial adverse effect either directly or through habitat modification for any candidate, sensitive, or special-status species.” (Initial Study, p. 18.)

Further, the County failed to evaluate the presence of flora and fauna in areas adjacent to the Project site. The Initial Study acknowledges the WCDF is bordered on the western side by the 2,315-acre Point Pinole Regional Shoreline Park, which is “home to more than 100 species of

birds, eucalyptus woodlands, and assorted wildlife,” but concludes that because a rail line separates the WCDF and the park, that “the rail lines are considered to limit the site’s suitability for nesting birds.” (Initial Study, p. 17.) This assumption is not supported by substantial evidence in the record. The County failed to conduct a survey to determine whether nearby areas are not suitable for special status bird species to nest and forage, or whether bird species and other sensitive wildlife are present and have become habituated to existing noise patterns. Indeed, a March 2014 EIR for the Chevron Refinery Modernization Project discussed the presence of many sensitive species at nearby Point Pinole, species which the environmental documents for this Project fail to disclose:

Point Pinole. Tidal and freshwater marshes, mudflat, grassland, eucalyptus plantation, and fishing pier, which extends ¼ mile into San Pablo Bay. Valuable for migrating waterfowl and shorebirds. Habitat for soft-haired bird’s beak (Cordylanthus mollis ssp. mollis), California clapper rail and salt marsh harvest mouse (Reithrodontomys raviventris), possibly for black rail, Samuel’s song sparrow (Melospiza melodia samuelis), and white-tailed kite (Elanus leucurus). The eucalyptus plantation serves as an overwintering site for migrating monarch butterflies (about 5 miles north of the Project site).

(Chevron Refinery Modernization Project EIR, March 2014, p. 4.4-45 (“Chevron EIR”).) In contrast, the County’s EIR failed to identify sensitive species which may be present on or near the Project site.

The County admits that it “is aware that there may be birds that nest in nearby trees and monarch butterflies that use nearby trees; however, the County does not propose to remove those trees.” (DEIR, p. 1-5.) Assuming the presence of sensitive species, as the County does here, requires an analysis of the potentially significant impacts on those species that may result from Project construction and operation. The fact that tree removal is not proposed is not a sufficient basis to conclude that the Project’s impacts to sensitive species will be insignificant. For example, the Chevron EIR made the following findings with respect to potential construction impacts:

As described above, any wildlife species, including nesting birds, using habitats adjacent to Refinery Process and Tank Farm areas are assumed to already be acclimated to industrial noise levels. *However, there is potential for increased noise levels during construction to disrupt nesting activities of special-status bird species, including those protected by the MBTA.* With implementation of Mitigation Measure 4.4-1a (see Section 4.4.4.2.1 below), this indirect impact would be avoided by conducting a nesting bird survey and observing prescribed disturbance buffers (if active nests are found), or by avoiding construction during the nesting season.

(Chevron EIR, p. 4.4-49 (emphasis added).) In contrast, the Project EIR simply provides that the County “will require standard use of Best Management Practices, including pre-construction surveys, to ensure that nesting birds would not be affected.” (DEIR, p. 1-5.) To the extent the County presumes the presence of sensitive species and corresponding impacts to them, it fails to provide adequate and necessary mitigation measures. The commitment to conduct pre-construction surveys and proceed under Best Management Practices constitutes impermissible deferral of the mitigation analysis, especially where, as here, the County has failed to identify which species may be present. (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 671 (EIR improperly deferred to future management plan to mitigate direct and indirect impacts to special-status status species presumed present); *see also Lotus v. Department of Transp.* (2014) 223 Cal.App.4th 645, 656 (EIR should indicate whether project’s environmental impacts would be potentially significant and separately determine whether mitigation measures described would substantially reduce or avoid identified significant impacts).)

Accordingly, the EIR failed to adequately analyze the Project’s potentially significant construction-related impacts to biological resources, including noise and dust-related impacts. The Initial Study’s conclusion that nearby rail lines “are considered to limit the site’s suitability for nesting birds” does not amount to evidence supporting the conclusion that no impacts to nesting birds may result from the Project. Consequently, the Biological Resources impacts analysis in the EIR is inadequate and must be revised.

VII. The EIR Fails To Incorporate Required Mitigation for the Discovery of Human Remains During Construction

As acknowledged in the EIR, “[c]ultural resources was the one resource topic for which the Initial Study identified potential impacts that would be less than significant with mitigation,” but the EIR did not further evaluate impacts to cultural resources, it simply incorporated two mitigation measures. (DEIR, p. 1-5.) The DEIR proposes Mitigation Measures CUL-1: Stop Work at Discovery of Cultural Resources, and CUL-2: Stop Work at Discovery of Paleontological Resources. (DEIR, p. ES-5—6.) The DEIR failed to incorporate Mitigation Measure CUL-3, pertaining to discovery of human remains during construction, even though the Initial Study found “it is possible construction of the new facilities would result in the discovery of human remains,” and that to “reduce potential impacts on undiscovered human remains” mitigation was required. (Initial Study, p. 22.)

CEQA Guidelines section 15064.5(e)(1) requires that in the event of “accidental discovery of human remains . . . [t]here shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains.” (CEQA Guidelines, § 15064.5(e)(emphasis added).) Moreover, even Mitigation Measure CUL-3, as provided in the Initial Study, did not include the requirement that the County “rebury” any “Native American remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance” where the applicable conditions are

met. (Initial Study, p. 22.) The omission of any discussion of preservation in place conflicts with settled case law. (*See Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48 [the determination of a site's historical significance must be made before certification of the final EIR, not during construction].) Based on the above, there is substantial evidence within the Initial Study and EIR demonstrating that the Project will have potentially significant impacts to cultural resources.

VIII. The EIR Does Not Adequately Analyze and Mitigate the Project's Noise Impacts

The EIR concludes that the Project will have less than significant noise and vibration impacts to the nearest residences, located approximately 450 feet away, which the City and other commenters have disputed. Additionally, the EIR completely omits any analysis of the expected significant impacts to persons living and working on the premises of the WCDF. The EIR fails to analyze noise and vibration impacts to inmates and staff resulting from Project construction, which is expected to proceed from 6 a.m. to 6 p.m. five days per week for 18-24 months. The EIR acknowledges that construction noise could reasonably reach 88 dBA at a distance of 50 feet from construction activity, and 69-65 dBA at a distance of 450 feet (distance of nearest residence). (DEIR, p. 3.4-7.) The EIR utilizes a threshold of 75 dBA to conclude that noise impacts to the nearby residences will be less than significant. (*Id.*) Because noise impacts on the Project site itself will exceed 75 dBA, the EIR attempts to minimize these effects by claiming that the inmates are "normally located within existing buildings or in outdoor areas that are shielded by buildings." (*Id.*) This analysis improperly diminishes the potential effects on inmates and staff, and ignores the fact that people residing in nearby residences will likewise be indoors most of the time and/or shielded from noise through walls or buildings. In effect, the EIR ignores the 88 dBA noise level that will affect the existing inmates and staff at WCDF. The EIR must be revised to properly evaluate the effect of construction noise to inmates and staff at WCDF and include measures to mitigate those impacts.

IX. The EIR's Traffic Analysis Is Flawed

The EIR's analysis of the Project's traffic related impacts is premised upon a defective method of quantifying trip generation. The EIR states that it was unable to use the Institute of Traffic Engineers ("ITE") *Trip Generation Manual* because the two studies for the land use code "Prison" had a very wide range of rates. (DEIR, p. 3.6-5.) As a result, the County surveyed the existing WCDF during a "typical weekday in February to determine existing trip generation rates." (*Id.*) Then, to determine the Project's potential trip generation, the County simply took the existing traffic counts, divided it by the number of existing average occupancy beds (574) to get a trip generation rate of "0.05 trips per bed in the A.M. peak hour, and 0.06 trips per bed in the P.M. peak hour." (*Id.*) Using these rates, the County simply multiplied the number of additional beds by these rates to conclude that the proposed Project "would generate 24 additional trips during the A.M. peak hour and 29 additional trips during the P.M. peak hour." (*Id.*)

This entire approach to estimating the proposed Project's potential trip generation is flawed. First, as explained in Section II, the Project will require 49 new employees at the WCDF (31 transferring from MDF and 18 entirely new staff), separate from the 480 inmates. The trip generation methodology assumes that there will be *fewer* additional trips than there will be new employees. The new employees alone will increase daily trips by 49 in both the morning and afternoon, unless the EIR can demonstrate that these employees will be carpooling with existing employees or with one another, or have another means of getting to work that does not involve driving. Second, there is no real analysis of how traffic will change as a result of the construction of the other new facilities on the premises that do not currently exist, in particular the new educational and vocational program facilities and healthcare and mental health services. Existing trip generation rates are based on a facility that does not have these operations. Thus, the EIR fails to evaluate how these new operations will increase traffic, for example with deliveries of supplies, machinery, medicine, handling and removal of hazardous medical waste, increased maintenance, etc.

Because the data underlying all of the EIR's traffic impacts conclusions is inherently flawed, the County must re-evaluate the Project's trip generation rates, with reference to the new employees needed for the Project and the new types of facilities that will be present on the site as part of the proposed Project. The EIR identified that two intersections would operate at LOS F based on cumulative conditions, with or without the project. If the traffic counts are flawed, then there may be a cumulatively considerable impact at each of these locations if the delay exceeds 5 seconds. Regardless, the EIR must be revised and recirculated with new trip generation data.

Finally, under Impact TRA-5, concerning emergency access on the Project site, there is inadequate information and analysis supporting the EIR's conclusion that there will be no impact. (DEIR, p. 3.6-11.) As acknowledged in the EIR, the Project's "site plan is conceptual, it lacks many details of a typical site layout plan such as drive aisle widths, stall widths, curb radii, etc." (DEIR, App. B, p. iii.) Indeed, the Traffic Study found in Appendix B of the EIR states "access to the site for trucks cannot be assessed." (App. B, p. iii.) As a result, there is no substantial evidence supporting the conclusion that the addition of 150,000 square feet of new buildings on the existing site will not impair emergency access.

X. The EIR Does Not Adequately Analyze and Mitigate the Project's Impacts with Respect to Utilities and Service Systems

A. Water Service

CEQA requires a discussion of whether the Project will have "sufficient water supplies available to serve the project from existing entitlements and resources, or whether new or expanded entitlements are needed. (CEQA Guidelines, Appx. G.) The EIR concludes that "[w]ater demand during construction activities would be temporary in nature and is not anticipated to be substantial." (DEIR, p. 3.5-7.) The EIR fails to identify a threshold of significance or discuss any data supporting its conclusion that construction-related water demand

will be anything less than substantial. Because the Project entails the development of 2.3 acres of land and the construction of a 150,000 square foot building, the use of water for “airborne dust suppression, routine cleaning of construction equipment, concrete mixing, and other purposes” is potentially significant. This is especially true given that construction activities have an expected duration of 18-24 months at 60 hours per week. (DEIR, p. 3.4-7.) Because no data regarding construction-related water usage was provided, the EIR’s analysis of the Project’s impacts with respect to water supply is inadequate, particularly as the State is in an unprecedented drought.

With respect to Project operations, the EIR only analyzes the increase in water use associated with an expanded onsite population. (DEIR, p. 3.5-7.) Notably, the EIR fails to discuss the expected water demand associated with new programming offered at the WCDF, as well as water demand associated with healthcare and mental health services. For these reasons, the County’s analysis of the Project’s water usage is insufficient and must be revised to determine whether potentially significant impacts may occur.

B. Wastewater Service and Infrastructure

The Initial Study identified potentially significant impacts from the Project that were not adequately analyzed in the EIR, including exceeding wastewater treatment requirements of the Regional Water Quality Control Board, requiring the construction of new wastewater treatment facilities, and insufficient wastewater treatment provider capacity to treat wastewater from the Project in addition to existing commitments. The EIR must be revised to remedy the failure to analyze identified potentially significant impacts.

The EIR is deficient because it does not analyze whether the Project will cause or contribute to the West County Wastewater District (“WCWD”) exceeding the wastewater treatment requirements of the Regional Water Quality Control Board. The EIR should be revised to identify the effluent limits contained in WCWD’s permits, and analyze the Project’s expected wastewater stream. Without knowing the effluent limits contained in the WCWD’s permits, it is impossible to determine whether the Project may cause or contribute to exceedances of those standards. The issue is whether the Project’s wastewater may have, in actual expected volumes, significant impacts on the WCWD’s treatment standards. Again, this assessment cannot be done without an actual understanding of all the treatment plant’s requirements (not just its volumetric limits) and the full range of chemicals and contaminants that will likely be found in the Project’s wastewater, and the volume of that water.

Moreover, the Initial Study found that the Project would not result in impacts to the stormwater drainage facilities because the existing facilities were designed to accommodate any increase in stormwater drainage. The IS continues, however, that “runoff and drainage are not anticipated to increase substantially,” but no evidence is cited to support this conclusion, especially considering that the Project will develop 2.3 acres and place a 150,000 square foot building on them—essentially increasing impervious surfaces and attendant runoff substantially. Nor does the IS support its conclusion that “no new drainage facilities or expansion of existing

facilities would be required.” (Initial Study, p. 49.) Additionally, the EIR found that “more recent regulations require development projects to implement low-impact development standards and ensure runoff is retained on-site.” (DEIR, p. 3.5-4.) Whether and how the County will redesign the stormwater runoff facilities onsite is not addressed in the EIR, nor is the County’s compliance with “recent regulations.” Those regulations are not identified, nor are the Project’s wastewater facilities described in accordance with them.

In contrast to the Initial Study, the EIR summarily concludes that the Project will not have significant stormwater impacts without adequate analysis or explanation. Thus, the EIR’s treatment of stormwater runoff impacts remains insufficient. The EIR must be revised to confront the water quality impacts associated with the Project’s stormwater, and to provide additional information regarding the specific onsite infrastructure that would mitigate polluted runoff.

C. Hazardous and Solid Waste Disposal

The EIR is deficient because it does not adequately analyze impacts associated with construction-related waste. The County concludes that waste-related impacts are less than significant because “[m]inimal solid waste would be generated during the operation of proposed project.” The EIR admits, however, that “the majority of solid waste generation would take place during construction of the facility.” (DEIR, p. 3.5-8.) This analysis is inadequate and the EIR must determine whether “the majority of solid waste generation” would also have a less than significant impact on waste disposal capacity. If the impacts are significant, mitigation measures should be discussed in the EIR and required as part of the approved Project.

Additionally, the County entirely omits discussion of potentially significant impacts resulting from hazardous waste disposal required by new healthcare facilities that will be on site. A medical facility presumably has the potential to generate hazardous wastes, yet this concern is not discussed in any of the environmental documents for the Project.

XI. The Project Has Significant Environmental Justice Concerns

Environmental justice addresses disproportionate environmental impacts on communities of color, low-income communities, and other demographics that have historically faced discrimination. California Attorney General Kamala D. Harris has intervened in two cases challenging projects or programs for their failure to analyze disproportionate impacts on minority communities.³ The California legislature explicitly adopted an environmental justice statute that requires the California Environmental Protection Agency to “[c]onduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority

³ CEQA Litigation and Settlements, State of California Department of Justice, Office of the Attorney General, <http://oag.ca.gov/environment/ceqa/litigation-settlements> (last visited June 8, 2012).

populations and low-income populations of the state.” (Pub. Res. Code § 71110(a).) Under CEQA, “[e]conomic or social changes may be used . . . to determine that a physical change shall be regarded as a significant effect on the environment . . . economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant.” (Guidelines, § 15064(e).)

The EIR’s failure to adequately analyze the Project’s environmental effects raises significant environmental justice concerns, especially with respect to air quality, GHG emissions, and noise. Both inmates of the WCDF and those who live in the residential development adjacent to the Project site will suffer, in particular, during the two-year construction period. The Project has the potential to generate significant adverse localized air quality impacts, as well as increased noise, which will both have a disproportionately greater effect on nearby residents and the existing population of inmates and WCDF staff, many of whom will be unable to leave the Project site during the entire two year construction period. This is especially troublesome, since Richmond, together with San Pablo, was one of the six Bay Area communities determined by BAAQMD to have higher relative toxic air contaminant exposure, and accordingly was designated a Community Air Risk Evaluation (CARE) community.⁴

The EIR should be recirculated to correct the deficiencies highlighted in the sections above, and as part of that analysis, should evaluate and mitigate the disproportionate environmental effects of the Project on the WCDF inmates and nearby residential area.

XII. The EIR Must Be Revised and Recirculated

As discussed in detail above, the EIR’s Project Description is misleading, the EIR fails to adequately identify and analyze potentially significant environmental effects, fails to support significance conclusions with substantial evidence, and fails to adopt mitigation measures that would reduce the Project’s identified significant impacts to a level of insignificance. Under these circumstances, the Board should decertify the EIR and direct staff to substantially revise the EIR to include these missing analyses. CEQA requires recirculation of an EIR when “significant new information” is added to the EIR. (Pub. Res. Code, § 21092.1); CEQA Guidelines, § 15088.5.) Therefore, the EIR must be recirculated for public review and comment after further revision.

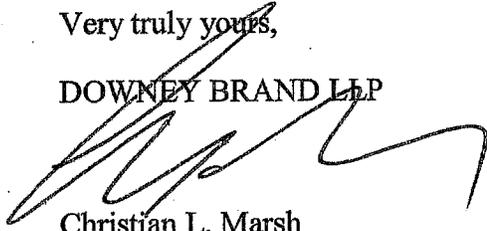
⁴ BAAQMD initiated the CARE program in 2004 to evaluate and reduce health risks associated with outdoor toxic air contaminants in the Bay Area. The CARE program focuses on emissions near sensitive populations to help prioritize air quality mitigation strategies.

CONCLUSION

The EIR for the West County Detention Facility Expansion Project is inadequate. The City of Richmond respectfully submits that the proposed Project must be denied pending appropriate environmental review in a revised and recirculated EIR that addresses the issues discussed above. The City is highly concerned about the serious environmental and associated impacts this project could have within Richmond and is willing to pursue legal action, if necessary, to ensure that the environmental review for the Project complies with the law. We appreciate your consideration.

Very truly yours,

DOWNEY BRAND LLP



Christian L. Marsh

cc: Bruce Reed Goodmiller, City Attorney
City of Richmond

Sharon L. Anderson, County Counsel
Contra Costa County
651 Pine Street, 9th Floor
Martinez, California 94553
sande@cc.cccounty.us

Magi Work, Deputy Director
Robert Oates, Project Director III
Facilities Construction Division
Board of State and Community Corrections
2590 Venture Oaks Way, Suite 200
Sacramento, California 95833
robert.oates@bscc.ca.gov
magi.work@bscc.ca.gov

Julia Bueren, Director/Chief Engineer
Hillary Heard, Senior Planner
Leigh Chavez, Environmental Division Manager
Contra Costa County Public Works Department
255 Glacier Drive
Martinez, California 94553
jbuer@pw.cccounty.us
hhear@pw.cccounty.us
lchav@pw.cccounty.us

DOWNEY BRAND LLP

1 BRUCE REED GOODMILLER (CA SBN 121491)
City Attorney
2 E-Mail: Bruce Goodmiller@ci.richmond.ca.us
RACHEL SOMMOVILLA (CA SBN 231529)
3 Assistant City Attorney
E-mail: Rachel Sommovilla@ci.richmond.ca.us
4 CITY OF RICHMOND
450 Civic Center Plaza
5 Richmond, California 94804
Telephone: 510.620.6509
6 Facsimile: 510.620.6518

7 CHRISTIAN L. MARSH (CA SBN 152203)
E-mail: cmarsh@downeybrand.com
8 ARIELLE O. HARRIS (CA SBN 257792)
E-mail: aharris@downeybrand.com
9 ZACHARY W. LLOYD (CA SBN 294184)
DOWNEY BRAND LLP
10 455 Market Street, Suite 1420
San Francisco, California 94105
11 Telephone: 415.848.4800
Facsimile: 415.848.4801

12 Attorneys for Petitioner
13 CITY OF RICHMOND

14 SUPERIOR COURT OF CALIFORNIA
15 COUNTY OF CONTRA COSTA

FILED
2015 AUG 27 P 2:02
STEPHEN H. NASH
CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA
400 ... STREET, S.F.

N15-1272

17 CITY OF RICHMOND, a municipal
18 corporation of the State of California,

19 Petitioner,

20 v.

21 COUNTY OF CONTRA COSTA, a
22 political subdivision of the State of
California, and the CONTRA COSTA
23 COUNTY BOARD OF SUPERVISORS,
its governing body,

24 Respondents.

Case No. _____

**PETITIONER'S ELECTION TO
PREPARE ADMINISTRATIVE
RECORD OF PROCEEDINGS**

California Environmental Quality Act (CEQA) Case

BY FAX

25
26 **NOTICE OF ELECTION TO PREPARE RECORD**

27 Pursuant to Public Resources Code section 21167.6(b)(2), Petitioner City of Richmond,
28 hereby elects to prepare the administrative record of proceedings in the above-captioned matter

1 challenging Contra Costa County's certification of an Environmental Impact Report for, and
2 approval of, the West County Detention Facility Expansion Project.

3 DATED: August 27, 2015

DOWNEY BRAND LLP

4
5
6 By: *Christian L. Marsh* FOR
7 CHRISTIAN L. MARSH
8 Attorney for Petitioner
9 CITY OF RICHMOND
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DOWNEY BRAND LLP

DOWNEY BRAND LLP

1 BRUCE REED GOODMILLER (CA SBN 121491)
City Attorney
2 E-mail: Bruce.Goodmiller@ci.richmond.ca.us
RACHEL SOMMOVILLA (CA SBN 231529)
3 Assistant City Attorney
E-mail: Rachel.Sommovilla@ci.richmond.ca.us
4 CITY OF RICHMOND
450 Civic Center Plaza
5 Richmond, California 94804
Telephone: 510.620.6509
6 Facsimile: 510.620.6518

7 CHRISTIAN L. MARSH (CA SBN 152203)
E-mail: cmarsh@downeybrand.com
8 ARIELLE O. HARRIS (CA SBN 257792)
E-mail: aharris@downeybrand.com
9 ZACHARY W. LLOYD (CA SBN 294184)
DOWNEY BRAND LLP
10 455 Market Street, Suite 1420
San Francisco, California 94105
11 Telephone: 415.848.4800
Facsimile: 415.848.4801

12
13 Attorneys for Petitioner
CITY OF RICHMOND

14
15 SUPERIOR COURT OF CALIFORNIA
16 COUNTY OF CONTRA COSTA

FILED

2015 AUG 27 P 1:58

STEPHEN H. NASH
CLERK OF SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA
RECEIVED

17
18 CITY OF RICHMOND, a municipal
corporation of the State of California,

19 Petitioner,

20 v.

21 COUNTY OF CONTRA COSTA, a
political subdivision of the State of
22 California, and the CONTRA COSTA
COUNTY BOARD OF SUPERVISORS,
23 its governing body,

24 Respondents.

Case No. _____

**PETITION FOR PEREMPTORY WRIT
OF MANDATE**

California Environmental Quality Act (CEQA)
Case

N15-1272

BY FAX

25
26 INTRODUCTION

27 1. This action challenges the County of Contra Costa's (hereinafter "County" or
28 "Respondent") certification of the Environmental Impact Report ("EIR") and associated

1 approvals for the proposed expansion of the West County Detention Facility (“WCDF”) located
2 at 5555 Giant Highway in the City of Richmond, California (“Project”). In granting the
3 discretionary approvals challenged in this Petition, the County prepared and relied on an EIR that
4 falls well below and violates the minimum requirements of the California Environmental Quality
5 Act [Pub. Res. Code, § 21000 et seq.] (“CEQA”) and its implementing Guidelines [Title 14
6 California Code of Regulations, § 15000 et seq.] (“Guidelines”).

7 2. By this action, the City of Richmond (hereinafter “City” or “Petitioner”) seeks a
8 writ of mandate vacating the County’s EIR and associated approvals for the Project. Petitioner
9 also seeks to enjoin any further approvals, permits, construction, or any other action in
10 furtherance of the Project that may result in a change or alteration of the physical environment
11 pending full compliance with CEQA.

12 PARTIES

13 3. Petitioner, the City of the Richmond, is a municipal corporation in the County of
14 Contra Costa in the State of California. The City is home to the West County Detention Facility,
15 which was constructed in the early 1990s to provide institutional housing for the County’s inmate
16 population. In 2015, the WCDF population is expected to vary between 574 and 625 inmates.

17 4. Respondent, the County of Contra Costa, is a political subdivision in the State of
18 California. The County’s Board of Supervisors (“Board”), the County’s governing body, sits in
19 the City of Martinez. The County and its Board are referred to herein as the “County.” The
20 County is charged with complying with applicable provisions of state law, including CEQA. The
21 County is the “lead agency” for the Project under CEQA. As lead agency, the County is
22 responsible for preparing the EIR that describes the Project and its impacts and, if necessary,
23 evaluating mitigation measures and/or alternatives to lessen or avoid any potentially significant
24 environmental impacts. The Board, as the duly constituted legislative body and administrative
25 body in the County, is charged with the final duty of ensuring, among other things, that all
26 applicable state and county laws are fully and faithfully obeyed and implemented. The County,
27 through the final actions of its Board of Supervisors, has certified the EIR and issued the
28 discretionary approvals which are the subject of this litigation.

FACTS AND PROCEDURAL HISTORY

1
2 5. The Project would further develop 2.3 acres at the WCDF for a high-security
3 detention facility with supporting re-entry program facilities, a mental health treatment facility,
4 and outpatient medical services. The Project does not involve or require, however, funding for
5 re-entry program services. The new facilities would provide high-security housing, and
6 educational and vocational facilities and programs. The new facility would consist of a 150,000
7 square foot building with several wings, containing approximately 240 double-occupancy cells
8 for a total of 480 new beds. In addition, a small, single story equipment or generator building
9 would be located adjacent to the main building. Building heights would range from 32 to 45 feet,
10 and the facility would be located near the WCDF's eastern boundary parallel to the Giant
11 Highway.

12 6. The County issued a Notice of Preparation ("NOP") of a Draft EIR for the Project
13 on or about March 31, 2015, and then released the Draft EIR for public review on or about May
14 15, 2015. The City commented on the NOP and the Draft EIR, including but not limited to letters
15 submitted on April 30, 2015, June 30, 2015, and July 20, 2015, in addition to comments made by
16 other public entities and members of the public. The public comments raised significant
17 deficiencies in the Draft EIR's treatment of the Project's specific impacts, including but not
18 limited to impacts associated with transportation, air quality and climate change, historical and
19 cultural resources, biological resources, hydrology and water quality, noise, aesthetics, public
20 utilities, and land use inconsistencies.

21 7. The County released a Final EIR in July 2015 but failed to remedy the issues
22 identified in public comments. The Final EIR summarily dismissed many of the public comments
23 identifying deficiencies in the Draft EIR. The Board held a public hearing and voted to certify
24 the Final EIR for the Project on July 21, 2015. Importantly, at that meeting, the Board expressly
25 chose to limit its discussion and actions to certification of the EIR. The Board did not discuss
26 approving, nor did it approve, the Project at its July 21, 2015 meeting.

27 8. On July 28, 2015, the Board adopted Consent Item 76 directing the filing of a
28 Notice of Determination ("NOD") for the Project while acknowledging that final approval of the

1 Project would not occur until the Board's August 2015 meeting. Without further discussion or
 2 approval of the Project, however, the Board's NOD is of no force and effect. (Pub. Res. Code,
 3 § 21108; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931 [a
 4 notice of determination filed *before* rather than *after* project approval is invalid].)

5 9. The Project came before the Board for approval on August 18, 2015. Petitioner
 6 submitted a detailed, sixteen-page comment letter on August 17, 2015 explaining why the
 7 County's Final EIR did not resolve the deficiencies in the environmental review process for the
 8 Project. After approximately 75 public speakers commented on the Project, the vast majority of
 9 them opposed to it, the Board passed a resolution (1) approving the Project, and (2) authorizing
 10 the County Sheriff's office to submit a proposal to the Board of State and Community Corrections
 11 requesting funds for partial Project construction pursuant to Senate Bill 863.

12 10. The County's action to approve the Project constitutes final agency action subject
 13 to judicial review.

14 11. The County's actions in approving the Project were illegal in that those actions
 15 violated CEQA.

16 12. The City of Richmond has brought this action in the public interest, and is not
 17 seeking relief greater than or different from the relief sought for the general public. If successful,
 18 this action would enforce the mandates of CEQA and thus enforce the public's right to adequate
 19 environmental review under that statute.

20 JURISDICTION AND VENUE

21 13. Petitioner incorporates by reference paragraphs 1 through 12 of this Petition.

22 14. This Court has jurisdiction to issue a writ of mandate to set aside the County's
 23 approval of the Project under Code of Civil Procedure sections 1085 and 1094.5, and Public
 24 Resources Code sections 21168, 21168.5 and 21168.9.

25 15. This Court also has jurisdiction under Code of Civil Procedure sections 526, 527
 26 and 1094.5(g) to enjoin and stay the County from proceeding with any further approvals or
 27 commencing construction activities.

28 //

1 16. Because this is an action against the County, venue is proper in Contra Costa
2 County Superior Court pursuant to Section 394 of the Code of Civil Procedure.

3 **PROCEDURAL ALLEGATIONS**

4 17. Petitioner incorporates by reference paragraphs 1 through 16 of this Petition.

5 18. This Petition is timely filed and served in accordance with Public Resources Code
6 section 21167, as the Petition was brought within 180 days of the County's approval of the
7 Project, and it is also within 30 days of the date of the County's defective filing of the NOD for
8 the Project.

9 19. Petitioner has complied with the requirements of Public Resources Code section
10 21167.5 by serving a written notice of the City's intention to commence this action on the County
11 prior to filing this action. A copy of the written notice and proof of service is attached hereto as
12 Exhibit A.

13 20. Petitioner has complied with the requirements of Public Resources Code section
14 21167.6(a) by concurrently filing its election to prepare the record of proceedings relating to this
15 action.

16 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

17 21. Petitioner incorporates by reference paragraphs 1 through 20 of this Petition.

18 22. Petitioner has performed all conditions precedent to this filing and has exhausted
19 the available administrative remedies to the extent required by law. Petitioner actively
20 participated in the administrative process leading up to the County's approval of the Project, and
21 Petitioner stated its objections to the County's actions.

22 23. All issues raised in this Petition were raised orally or in writing by the City, other
23 members of the public, or public agencies during the administrative process prior to the County's
24 Project approval. All other requests of the County, having been previously made, would be futile.

25 24. Irreparable harm to the City and the environment will occur through the effects of
26 increases in noise, traffic, air pollution, impacts to biological resources, water quality, and
27 increased demands on water use and public utilities, among other environmental impacts resulting
28 from the Project. Petitioner has no plain, speedy, or adequate remedy in the course of ordinary

1 law unless this Court grants the requested writ of mandate to require the County to set aside its
2 approval of the Project.

3 **STANDING**

4 25. Petitioner incorporates by reference paragraphs 1 through 24 of this Petition.

5 26. The City has standing to assert the claims raised in this Petition because it holds a
6 beneficial interest in the action. The City's real property located near the Project site will be
7 adversely affected by the Project. Specifically, the City's interests are and will be adversely
8 affected by the Project's environmental impacts including increases in traffic, air pollution,
9 impacts to water quality, and public utility and water demands, among other environmental
10 effects in the vicinity. Further, the City of Richmond has standing in the public interest because
11 this case involves public rights and the enforcement of public duties. Specifically, the County has
12 a mandatory duty to comply with the procedural and substantive requirements of CEQA.
13 Petitioner is not seeking relief greater than or different from the relief sought for the general
14 public. If successful, this action would enforce the mandates of CEQA and thus enforce the
15 public's right to adequate environmental review under that statute.

16 **FIRST CAUSE OF ACTION**

17 **(CEQA Violations)**

18 27. Petitioner incorporates by reference paragraphs 1 through 26 of this Petition.

19 28. CEQA prohibits state and local agencies from approving public or private projects
20 that may have adverse environmental effects without first undergoing environmental review and
21 avoiding or reducing the significant environmental effects of those projects whenever feasible.

22 29. An EIR must include an accurate and stable project description, and demonstrate
23 that the potentially significant impacts of the project were adequately investigated and analyzed.
24 The EIR is an information document that must disclose any potentially significant environmental
25 impacts of the project, and inform decision-makers, responsible agencies and the general public
26 of mitigation measures and alternatives to the project that would avoid or substantially lessen
27 those impacts.

28 //

1 30. CEQA and its information requirements are designed to ensure that the lead
2 agency identifies all potentially significant environmental impacts of a proposed project,
3 adequately discloses those impacts to the public, and implements all feasible alternatives or
4 mitigation measures necessary to avoid or substantially lessen those impacts. (Pub. Res. Code, §§
5 21002, 21100; Guidelines, §§ 15126.6, 15370.) It is improper for an EIR to defer its analysis or
6 the formulation of mitigation measures until after certification of the EIR and approval of the
7 project, and mitigation measures must be enforceable and contain specific performance standards.

8 31. A Final EIR must demonstrate that the lead agency provided a good faith,
9 reasoned response to public comments. Conclusory statements unsupported by substantial
10 evidence will not suffice. (Guidelines, § 15088(c).) And when significant new information is
11 added to a Final EIR, CEQA requires that the lead agency recirculate the EIR for additional
12 public review and comment. (Pub. Res. Code, § 21092.1; Guidelines, § 15088.5(a).)

13 32. A lead agency cannot certify an EIR and approve a project with significant
14 environmental effects unless the agency makes a series of detailed findings. These include
15 findings that changes or alterations have been required which mitigate or avoid the project's
16 significant effects on the environment, or that specific considerations render the mitigation
17 measures or alternatives "infeasible" but that the benefits of the project nonetheless outweigh the
18 project's significant environmental effects. The lead agency's findings must be supported by
19 substantial evidence in the administrative record. (Pub. Res. Code, § 21081; Guidelines,
20 §§ 15091-15093.)

21 33. Noncompliance with the requirements outlined above constitutes a prejudicial
22 abuse of discretion under sections 21168 and 21168.5 of the Public Resources Code, regardless of
23 whether a different outcome would have resulted if the lead agency had complied with those
24 requirements in the first place. (Pub. Res. Code, § 21005.) Abuse of discretion is established if
25 the agency has not proceeded in a manner required by law or if the agency's determination or
26 decision is not supported by substantial evidence in the administrative record. (Pub. Res. Code,
27 §§ 21168, 21168.5.)

28 //

1 34. Acting as the CEQA lead agency, the County had a mandatory duty to comply
2 with CEQA prior to approving the discretionary actions at issue in this lawsuit.

3 35. The EIR and the County's findings for the Project fail to comply with the strict
4 requirements of CEQA and its Guidelines.

5 36. The County committed a prejudicial abuse of discretion and failed to proceed in a
6 manner required by law by relying on an EIR that fails to meet the requirements of CEQA for
7 disclosure, analysis, and mitigation of significant Project impacts, and consideration of Project
8 alternatives.

9 37. The EIR relied on an incomplete, misleading, and changing project description that
10 undermined its analysis concerning project-specific impacts, rendering some environmental
11 impacts impossible to discern. For example, the Project Description improperly assumes that
12 there will be no net increase in detention center capacity in Contra Costa County. In addition, the
13 EIR's statements about the number of new staff needed at WCDF was misleading as the EIR only
14 disclosed a maximum of 30 new employees, whereas materials in the record disclosed that 49
15 new staff members will be needed. These errors influence the impacts analysis throughout the
16 entire EIR.

17 38. The County's findings, including but not limited to, determinations that certain
18 impacts would be less than significant, that mitigation measures would avoid or lessen the
19 Project's significant effects on the environment, and that certain mitigation measures or
20 alternatives are infeasible or do not meet Project objectives, are inadequate as a matter of law and
21 are not supported by substantial evidence in the record.

22 39. The EIR fails to adequately analyze and mitigate the Project's operational and
23 construction related traffic impacts. Flaws in the analysis of such impacts include, but are not
24 limited to the following:

25 a. The EIR's analysis of traffic impacts is defective because it is premised
26 upon the inaccurate assumption that there will be no net increase in detention
27 center capacity in Contra Costa County and inaccurate staffing levels for the
28 Project.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

b. The EIR’s analysis of the Project’s traffic-related impacts is premised upon an improper method of quantifying trip generation.

c. The EIR fails to adequately evaluate how operations will increase traffic.

d. The EIR lacks substantial evidence that the mitigation measures will reduce the Project’s significant traffic impacts to less than significant levels.

e. The EIR lacks substantial evidence for the conclusion that the Project will not have potentially significant impacts to emergency access.

40. The EIR fails to adequately analyze and mitigate the Project’s operational and construction related air quality and greenhouse gas impacts (“GHG”). Flaws in the analysis of such impacts include, but are not limited to the following:

a. The EIR’s analysis of operational air quality impacts is defective because it is premised upon the inaccurate assumption that there will be no net increase in detention center capacity in Contra Costa County.

b. The EIR fails to explain how the Project would reduce emissions to meet state and local GHG reductions targets, as well as satisfy regulations by the Bay Area Air Quality Management District (“BAAQMD”).

c. The EIR fails to discuss how the County will construct the Project (either as design features or as mitigation measures) in a way as to reduce electricity usage, natural gas consumption, or waste disposal.

d. The EIR lacks substantial evidence that mitigation measures will lessen the Project’s significant project-level and cumulative air pollution and greenhouse gas impacts to less than significant levels.

41. The EIR does not adequately analyze and mitigate the Project’s potentially significant impacts on biological resources. Flaws in the analysis of such impacts include, but are not limited to the following:

a. The EIR fails to conduct a thorough assessment of habitat, flora, and fauna within and adjacent to the Project area to determine the presence of threatened, endangered, and locally unique species and sensitive habitats.

1 b. The EIR fails to determine whether Project construction and operations
2 may have potentially significant impacts on biological resources present in the area
3 within and adjacent to the Project.

4 c. The EIR presumes the presence of sensitive species and corresponding
5 impacts to them, but fails to provide adequate and necessary mitigation measures.

6 d. The EIR impermissibly deferred mitigation analysis by committing the
7 County to conduct pre-construction surveys and proceed under Best Management
8 Practices without identifying them.

9 42. The EIR does not adequately analyze and mitigate the Project's potentially
10 significant impacts on historical and cultural resources. Flaws in the analysis of such impacts
11 include, but are not limited to the following:

12 a. The EIR lacks substantial evidence that the Project's potentially significant
13 impacts to cultural and historical resources will be mitigated to a less than
14 significant level.

15 b. The EIR failed to include any mitigation whatsoever for the discovery of
16 human remains during construction of the Project.

17 c. The EIR also fails to consider the feasible mitigation measure of
18 preservation in place as a means of avoiding or lessening significant impacts.

19 43. The EIR's analysis of impacts on public utilities and service systems is fatally
20 flawed. The deficiencies of this analysis include, but are not limited to the following:

21 a. The EIR lacks substantial evidence that the Project will not have significant
22 project-level and cumulative stormwater runoff impacts.

23 b. The EIR fails to identify a threshold of significance or discuss any data
24 supporting its conclusion that construction-related water demand will be anything
25 less than substantial.

26 c. The EIR fails to discuss the expected water demand associated with new
27 programming offered at the WCDF, as well as water demand associated with the
28 Project's addition of healthcare and mental health services to the WCDF.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

d. The EIR is deficient because it does not analyze whether the Project will cause or contribute to the West County Wastewater District exceeding the wastewater treatment requirements of the Regional Water Quality Control Board.

e. The EIR lacks substantial evidence to support the EIR's conclusion that the Project will not substantially increase runoff and drainage for the site.

f. The EIR fails to identify low-impact regulations requiring on-site runoff retention, and the Project's wastewater facilities are not described in accordance with them.

g. The EIR is deficient because it does not adequately analyze impacts associated with construction-related waste.

h. The EIR omits discussion of potentially significant impacts resulting from hazardous waste disposal required by new healthcare facilities that will be on site.

44. The EIR fails to adequately disclose, evaluate and mitigate or consider feasible mitigation measures for the Project's potentially significant noise impacts. The deficiencies of this analysis include, but are not limited to the following:

a. The EIR lacks substantial evidence to support the conclusion that it will have less than significant noise and vibration impacts to the nearest residences, located approximately 450 feet away.

b. The EIR completely omits any analysis of the expected significant noise and vibration impacts to persons living and working on the premises of the WCDF.

c. The EIR fails to include necessary mitigation for potentially significant noise impacts.

45. The EIR fails to adequately disclose, evaluate and mitigate or consider feasible mitigation measures for the Project's potentially significant impacts relating to aesthetics. The deficiencies of this analysis include, but are not limited to the following:

a. The EIR lacks substantial evidence that the Project's impacts to identified viewsheds will not be significant because it fails to include a site plan,

1 specifications, or any depiction of the proposed Project.

2 b. The EIR fails to state design features necessary to avoid creating hazardous
3 roadway conditions or shining onto adjacent businesses and residences.

4 c. The EIR does not fully discuss the status of existing landscaping used to
5 obscure the WCDF, only stating that it will be maintained. Therefore the EIR
6 lacks substantial evidence that the Project will not create significant impacts to
7 aesthetics.

8 d. The EIR rules out new landscaping which is one of the only feasible
9 measures to mitigate view impacts from the Project, and fails to provide alternative
10 options.

11 46. The EIR's failure to adequately analyze the Project's environmental effects raises
12 significant environmental justice concerns, especially with respect to air quality, GHG emissions,
13 and noise. Richmond has been designated a Community Air Risk Evaluation (CARE)
14 community by BAAQMD.

15 47. The EIR fails to discuss and analyze a reasonable range of project alternatives.
16 The City's alleged reasons for rejecting consideration of an off-site alternative are not supported
17 by substantial evidence.

18 48. The County failed to adequately respond to public and government agency
19 comments, including ignoring or dismissing in a conclusory, evasive, confusing or otherwise non-
20 responsive fashion analysis of impacts and mitigation measures.

21 49. As a result of each of the above deficiencies and the deficiencies identified in each
22 of the public comments submitted on the EIR during the administrative proceedings, the County
23 prejudicially abused its discretion and failed to proceed in a manner required by law.

24 Consequently, the City's approvals concerning the Project are invalid and must be set aside.

25 50. Petitioner reserves the right to modify, delete from, or add to this list of CEQA
26 violations after the administrative record of proceedings for the Project has been fully and
27 adequately prepared, certified and analyzed.

28 **PRAYER FOR RELIEF**

DOWNEY BRAND LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WHEREFORE, Petitioner respectfully prays for the following relief:

1. For a peremptory writ of mandate directing the County to:
 - a. Vacate and set aside its approvals of the Project;
 - b. Vacate and set aside certification of the Final EIR and NOD for the Project;
 - c. Comply with CEQA and the Guidelines and to take any other action as required by Public Resources Code section 21168.9; and
 - d. Suspend any and all activity pursuant to the County's approval of the Project that could result in an adverse change or alteration to the physical environment until the County has complied with all requirements of CEQA and all other applicable state and local laws, policies, ordinances, and regulations as are directed by this Court pursuant to Public Resources Code section 21168.9.
2. For an injunction restraining the County, and all persons working on their behalf, from permitting or undertaking any construction or taking any other action in furtherance of the Project that may result in a change or alteration in the physical environment pending completion of this litigation and full compliance with CEQA.
3. For the City's costs of suit;
4. For the City's reasonable attorneys' fees as authorized by Code of Civil Procedure section 1021.5 and other provisions of law; and
5. For such other relief as the Court may deem just and proper.

DATED: August 27, 2015

DOWNEY BRAND LLP

By: *Christian L. Marsh* FOR
CHRISTIAN L. MARSH
Attorneys for Petitioner
CITY OF RICHMOND

EXHIBIT A

August 26, 2015

Via Email and U.S. Mail

Sharon L. Anderson, County Counsel
Contra Costa County
651 Pine Street, 9th Floor
Martinez, California 94553
sande@cc.cccounty.us

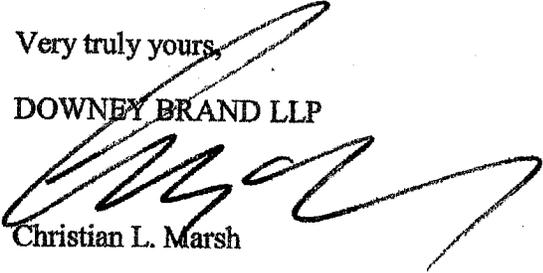
Re: Notice of Intent to File CEQA Proceeding Challenging Contra Costa County's Approval of the West County Detention Facility Expansion Project ("Project")

Dear County Counsel:

Pursuant to California Public Resources Code sections 21167 and 21167.5, please take notice that the City of Richmond ("City") intends to file a Petition for Peremptory Writ of Mandate challenging Contra Costa County's approval of the West County Detention Facility Project and associated Environmental Impact Report ("EIR"). This legal challenge will include claims that the County violated the California Environmental Quality Act ("CEQA") in approving the EIR for the Project.

Very truly yours,

DOWNEY BRAND LLP



Christian L. Marsh

cc: Bruce Reed Goodmiller, City Attorney
City of Richmond

DOWNEY BRAND LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Downey Brand LLP, 455 Market Street, Suite 1420, San Francisco, California 94105. On August 26, 2015, I served the within document(s):

NOTICE OF COMMENCEMENT OF ACTION LETTER

BY ELECTRONIC MAIL: by causing the document(s) listed above to be transmitted via electronic mail to the electronic addresses(s) set forth below on this date.

BY MAIL: by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.

Respondent

Sharon L. Anderson, County Counsel
Contra Costa County
651 Pine Street, 9th Floor
Martinez, California 94553
sande@cc.cccounty.us

BY OVERNIGHT MAIL: by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.

BY PERSONAL DELIVERY: by causing personal delivery by First Legal of the document(s) listed above to the person(s) at the address(es) set forth below.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 27, 2015, at San Francisco, California.


Emilie Medalle-Alcantara

DOWNEY BRAND LLP

1 BRUCE REED GOODMILLER (CA SBN 121491)
 City Attorney
 2 E-mail: Bruce_Goodmiller@ci.richmond.ca.us
 RACHEL SOMMOVILLA (CA SBN 231529)
 3 Assistant City Attorney
 E-mail: Rachel_Sommovilla@ci.richmond.ca.us
 4 CITY OF RICHMOND
 450 Civic Center Plaza
 5 Richmond, California 94804
 Telephone: 510.620.6509
 6 Facsimile: 510.620.6518

7 CHRISTIAN L. MARSH (CA SBN 152203)
 E-mail: cmarsh@downeybrand.com
 8 ARIELLE O. HARRIS (CA SBN 257792)
 E-mail: aharris@downeybrand.com
 9 ZACHARY W. LLOYD (CA SBN 294184)
 DOWNEY BRAND LLP
 10 455 Market Street, Suite 1420
 San Francisco, California 94105
 11 Telephone: 415.848.4800
 Facsimile: 415.848.4801

12 Attorneys for Petitioner
 13 CITY OF RICHMOND

14 SUPERIOR COURT OF CALIFORNIA
 15 COUNTY OF CONTRA COSTA

17 CITY OF RICHMOND, a municipal
 corporation of the State of California,

Case No. N15-1272

18 Petitioner,

PROOF OF SERVICE

19 v.

20 COUNTY OF CONTRA COSTA, a
 21 political subdivision of the State of
 California, and the CONTRA COSTA
 22 COUNTY BOARD OF SUPERVISORS,
 its governing body,

23 Respondents.
 24

25
 26
 27
 28

DOWNEY BRAND LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Downey Brand LLP, 455 Market Street, Suite 1420, San Francisco, California 94105. On August 27, 2015, I served the within document(s):

**PETITION FOR PEREMPTORY WRIT OF MANDATE
PETITIONER'S ELECTION TO PREPARE ADMINISTRATIVE
RECORD OF PROCEEDINGS**

- BY E-SERVICE:** by causing the document(s) listed above to be transmitted by **One Legal** via electronic mail to the electronic addresses(s) set forth below on this date.
- BY ELECTRONIC MAIL:** by causing the document(s) listed above to be transmitted via electronic mail to the electronic addresses(s) set forth below on this date.
- BY PERSONAL DELIVERY:** by causing personal delivery by Nationwide Legal of the document(s) listed above to the person(s) at the address(es) set forth below.

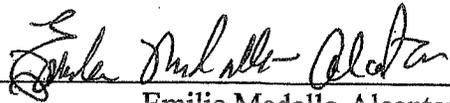
**County of Contra Costa
David Twa, Clerk of the Board
651 Pine Street Room 106
Martinez, California 94553**

- BY MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 31, 2015, at San Francisco, California.



Emilie Medalle-Alcantara

9/1/15

Executive Committee
BSCC
2590 Venture Way
Sacramento, Ca. 95833

To whom it may concern:

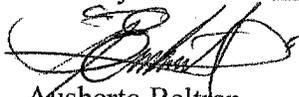
I want to join the thousands of Richmond residents in support of the Chief Chris Magnus opposition to increase incarceration. We need a more sustainable option. That is, please use our tax dollars to educate and develop programs to prevent crime.

"Richmond Police Chief Chris Magnus came out in opposition to the Sheriff's plan for expanded jail facility in Richmond, writing that " tax dollars geared toward reducing crime and recidivism are better spent on community-based corrections than further jail construction," via email, quoted here."

http://www.conracoatimes.com/richmond/ci_28562333/richmond-council-rejects-west-county-jail-expansion-supervisors

"Since the Contra Costa County Supervisors voted August 18th to submit the grant proposal for funds for expansion, the Chief has warned that the State could still approve funding for a new jail without the Board of Supervisors pledge of (\$9M in) matching funds."

Thank you for listening.



Ausberto Beltran
113Big Bear CT.
Richmond, CA 94803-2647

Board of State and Community Corrections

Executive Board

2590 Venture Oaks Way

Sacramento, CA 95833

RE: Opposition to Contra Costa Application for SB 863 funds

Dear Board Members,

My name is Sung Ae Choi, and I am writing to urge you to reject the Contra Costa County application for SB 863 funds. I am a homeowner in Richmond, and I am an attorney in the Contra Costa County Public Defender's Office.

Sheriff Livingston, the Contra Costa County Sheriff, has put forward a proposal that would expand the current Contra Costa jail housing capacity by 21%. Even though his proposal clearly increases housing capacity by 416 beds, he has repeatedly claimed that his proposal means "no net increase in beds" -- that is, he claims he would not increase the inmate population. I believe that Sheriff Livingston, with his many years' experience in law enforcement and jail administration, is well aware of the difference between jail capacity versus actual inmate population. As the Board likely is also aware, the actual number of occupied jail beds is controlled by parties other than Sheriff Livingston: namely, the criminal courts and the District Attorney.

Sheriff Livingston, in his proposal, nowhere addresses the excess jail housing capacity in Contra Costa County. According to the Sheriff's own numbers, released throughout the summer in various jail proposal presentations, the three county jails combined have a current vacancy rate of 33%. The Richmond jail, where Sheriff Livingston proposes to build the new wing, has a current vacancy rate of 44%. The Richmond jail, according to the Sheriff's own numbers, has an average daily population of 605 inmates -- this number includes a fluctuating number of federal immigration detainees -- even though the facility is rated for 1096 inmates. SB 863 specifies that "an existing housing capacity deficiency" must be shown before these monies are to be used to building additional housing capacity. California Government Code section 15820.936(d). Given the Sheriff's numbers, it is clear that no jail housing deficiency exists in Contra Costa County.

Sheriff Livingston, since late May, 2015, has added in some mental health treatment features to an existing construction proposal. Since 2012, Sheriff Livingston has advocated for building a new jail wing

at the Richmond jail, with approximately 400 new beds, and with no mental health or other treatment space specified. Looking at this history, it is clear that the priority for Sheriff Livingston is the 416 new beds, and that the current mental health features are simply window dressing. Less than 25% of the new wing would be designated for treatment space. The vast majority of the new space would be new, but redundant, jail cells.

The Board may be aware that there is very strong local community opposition to this proposed new wing. Richmond City Council passed a resolution rejecting the Sheriff's proposal. Supervisor Goia, who represents West Contra Costa County, voted against the Sheriff's proposal. At the August 18, 2015 Board of Supervisors meeting, over 70 individuals turned out to speak out against the Sheriff's proposal. A handful of individuals – including a representative from the Deputy Sheriffs' Association and representatives from various construction unions – were in favor of the proposal. And as this Board is likely aware, Sheriff Livingston's application for SB 863 funds goes to this Board, without County authorization for the matching county funds, and with the complication of a CEQA suit filed by the City of Richmond.

Thank you for your consideration of my concerns regarding and opposition to Sheriff Livingston's proposal jail expansion.

Sincerely,

Sung Ae Choi
721 39th Street
Richmond, CA 94805

September 30, 2015

Board of State & Community Corrections
Executive Board
2590 Venture Oaks Way
Sacramento, CA 95833

Dear Executive Board Members:

Contra Costa County does not need an \$80m jail expansion!!! There is already a 33% vacancy rate in its existing jails and space for "programs" in the Martinez jail. Jails are not therapeutic communities - the money would be better spent on mental health & addiction treatment in the communities, which would go a long way towards actually helping people - & prevent-
ing them from being arrested.

Contra Costa County should spend taxpayer's money improving schools, not jail expansion. I have been a taxpayer in the City of Richmond for over 30 years; my voice should be heard & respected.

Schools - not Jails!! for the sake of our citizens & our community -

Sincerely,
Camille Archer, Ed.D.

788 Ventura Street
Richmond, CA 948057462

9/22/2015

Board of State & Community Corrections
2590 Venture Oaks Way Suite 200
Sacramento, CA 95833

Re: Contra Costa County Sheriff's Office SB 863 Application

Dear Board Members:

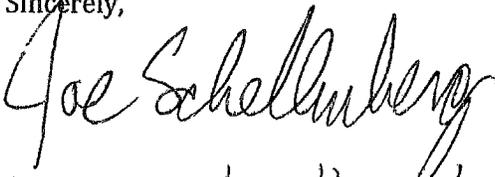
We write to you today urging you to reject the Senate Bill 863 application submitted by the Contra Costa County Sheriff's Office.

While Contra Costa County has debated whether or not to expand the West County Detention Facility, communities across the county are awaking to the realization that jails are not the best place to provide inmates with mental health services that should be provided in the community. At the federal level, several bills with bipartisan support – including “The Helping Families in Mental Health Crisis Act” and “The Mental Health Reform Act of 2015” – propose moving federal dollars into treating people with mental illness rather than punishing them for their illness.

Rather than expanding our local detention centers, we believe Contra Costa County must enhance funding for early screening and mental health intervention programs to help people while they're young. We also need to enhance funding for peer-to-peer support and drop-in centers. Furthermore, we believe that we can truly improve the lives of those who already suffer from mental illness by providing more comprehensive treatment and recovery programs, access to affordable medications, acute and long-term hospital beds, decent housing, therapy and jobs.

On August 18th over 100 Contra Costa County residents spoke against the sheriff's proposal at the Board of Supervisor meeting. We believe the county resources should not be allocated to fund a jail expansion. We believe that any county construction funds should be used to build more hospitals and community-based health clinics; and the sheriff should be required to develop and fully fund comprehensive pre- and post-release services. We also think that the sheriff should be forced to spend all of its AB 109 resources on re-entry and mental health services – rather than storing over a million dollars of those funds to subsidize more construction. Even though the sheriff got the approval to submit the application, he did not get the county to commit the matching funds for the construction. The City of Richmond, the hosting city for the project, is also opposing the proposal and challenged the EIR. We hope these strong evidences are enough for BSCC members to reject the application submitted by Contra Costa County Sheriff's office.

Sincerely,



Joe Schellenberg
Chair, Racial Justice Community
Mt. Diablo Unitarian Universalist Church
Walnut, Creek, CA

Human Rights and Human Relations Commission

440 Civic Center Plaza, Suite 200
Richmond, California 94804
RichmondHRHRC@ci.richmond.ca.us
(510) 620-6563



September 22, 2015

Board of State & Community Corrections
Executive Board
2590 Venture Oaks Way
Sacramento, CA 95833

Re: Contra Costa County Sheriff's Dept. SB 863 Application

Dear Board Members,

The Human Rights and Human Relations Commission (HRHRC) of the City of Richmond works collaboratively with city departments, commissions, boards and community organizations and members to promote a culture of peace within Richmond communities. The HRHRC advocates on behalf of individuals or groups whose Human Rights are violated or in danger of being violated and encourages government agencies and other partners to place Human Rights as priorities, and the protection of Human Rights as guiding principles.

A concern was brought to the Commission's attention by city officials and community members about the proposed plan by the Contra Costa County Sheriff's Office for the West County Detention Facility (WCDF). The Human Rights and Human Relations Commission of the City of Richmond supports the Richmond City Council's decision on Tuesday, July 28th, 2015 to oppose the proposed plan to expand WCDF.

We write you, today, strongly encouraging you to deny the Contra Costa County Sheriff's Department's application for SB 863 jail construction funding.

The Sheriff's Department claim of overcrowding is unsubstantiated by their data. According to a presentation to the Richmond City Council, Sheriff's Department representatives stated that the average daily capacity in all three Contra Costa County detention facilities is below the facilities' rated capacities. On average, there are 45 vacant beds at the Martinez Detention Facility (MDF), 491 vacant beds at the WCDF, and 118 vacant beds at the MDF. In addition, a recent report by the Contra Costa County Grand Jury revealed that there is ample space in MDF housing units to accommodate housing and program needs for inmates there. This further contradicts the assertion that a new building is needed at WCDF to accomplish the Sheriff's stated goals.

Moreover, many communities across the country are moving, increasingly, toward alternatives to incarceration. Contra Costa County (and other counties in CA) should awaken to the realization that jails have not been the best place to provide quality mental health services to inmates, which should, instead, be provided in the community. It is also unconscionable that the Sheriff is storing

millions of AB 109 funds, rather than spending that money on re-entry programs, such as mental health and drug treatment services, in the community. At the federal level, there are several bills, with bipartisan support, including, "The Helping Families in Mental Health Crisis Act" and "The Mental Health Reform Act of 2015, that propose moving federal money into treating people with mental illness, rather than punishing them for their illness.

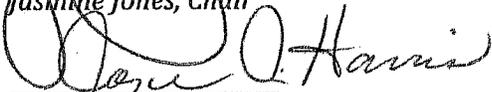
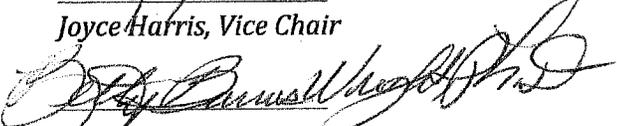
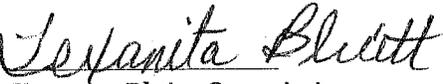
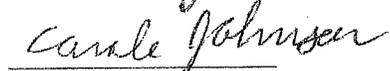
In addition, the National Association of Counties, the Council of State Governments Justice Center, and the American Psychiatric Foundation are leading the "Stepping Up Initiative," a call to action bringing legislators, judges, and law enforcement agencies together to re-direct people from jails back into their communities. The National Alliance on Mental Illness and the National Sheriff's Association have endorsed both the federal legislation and initiative similar to "Stepping Up."

Furthermore, the application was submitted without meaningful input from residents who would be impacted the most by the Sheriff's proposed jail construction. Elected leaders, re-entry service providers, and concerned citizens, requested, multiple times, for the Sheriff's Department to include representatives from the local community in planning meetings for the SB 863 application. These requests were repeatedly ignored or denied.

Should you have any questions, contact the HRHRC at RichmondHRHRC@ci.richmond.ca.us or (510) 620-6563

Sincerely,

Human Rights and Human Relations Commission
City of Richmond, California


Jasmine Jones, Chair
Joyce Harris, Vice Chair
Betty Burrus-Wright, PhD, Commissioner
Texanita Bluitt, Commissioner
Courtney Cummings, Commissioner
Carole Johnson, Commissioner
Crystal Johnson, PhD, Commissioner

cc: Contra Costa County Supervisor John Gioia, Richmond Mayor Tom Butt, Richmond Vice Mayor Jael Myrick, Richmond Councilmember Nathaniel Bates, Richmond Councilmember Jovanka Beckles, Richmond Councilmember Eduardo Martinez, Richmond Councilmember Gayle McLaughlin, and Richmond Councilmember Vinay Pimplé.

September 24, 2015

Chair Linda Penner
Board of State & Community Corrections
Executive Board
2590 Venture Oaks Way
Sacramento, CA 95833

I attended the Contra Costa County Board of Supervisors meeting on August 18, 2015 when nearly 80 community members spoke before a standing room only crowd of 200 or so people concerned about Sheriff Livingston's proposal to build a high security jail in West County with funds from the state. Despite overwhelming opposition expressed by community members and the City of Richmond, where the new facility would be built, Supervisors Mitchoff, Andersen, and Piepho chose to ignore the community and voted to support the proposal. Only Supervisor Gioia had the courage to vote no. I hope that Sheriff Livingston's proposal will not be funded since the county did not approve matching funds, and the vast majority of CCC residents spoke against it. A few of the many reasons cited in opposition include:

- Mental health services are extremely important but should be supported OUTSIDE of the jail to prevent incarceration and to prevent recidivism. Incarceration causes and exacerbates mental health problems, so mental health services within the jail have proven to be ineffective. People who are mentally ill should not be incarcerated. They should be identified by law enforcement and diverted to an environment that promotes healing.
- The County closed its hospital, also in opposition to needs expressed by the community, so how can a jail expansion be funded?
- Richmond residents and city government representatives stated that they were not adequately consulted in developing a plan that would have an impact on their city.
- Transitional and low-income housing, health and mental health care, and jobs are a higher priority than investment in our jail. If the county has money, it should address these urgent needs, which will also reduce incarceration.
- The County's jail system is only 2/3rds full, and it rents hundreds of beds to Immigration and Customs Enforcement (ICE) to detain immigrants. There is no need for more beds, and many people object strongly to the county raising funds by incarcerating immigrants, most of whom have only committed a civil offense. Cancel the contract with ICE to free up beds instead of permanently expanding the jail infrastructure.
- We want to invest in PREVENTION, especially to provide juveniles and homeless veterans with mental health services so they don't end up in jail.
- The tide has turned against mass incarceration. The public recognizes that it is a racist system. In CCC, 10% of the population is Black, yet 40% of the prison population is Black. Stop investing in a racist system.
- The County should invest in reducing recidivism with a wide array of post-release services. In the time it would take to build a new prison facility, we shouldn't need it.

- Reform the judicial system so that 67% of the people imprisoned in CCC are no longer awaiting trial. Tax payers shouldn't be paying to imprison poor people who can't afford to pay bail.
- Sheriff Livingston's proposal is unclear about the mental health services it would deliver, and much of the proposed budget is for additional deputies, despite his stated plan to move inmates from the Martinez jail to a new high security jail in Richmond, not increase the number. Why are more deputies needed for the same size population?

If Contra Costa County proposed to build a state of the art clinic and mental health facility in the community designed to prevent incarceration, I would support it wholeheartedly. The sheriff's proposal is doomed to fail because people don't get healthy in a prison environment. They get worse.

If the county focuses on preventive and post-release services, in 5 years from now, when the sheriff's new jail would be complete, the county will need to reduce jail space, and its investment in an expanded jail would be wasted.

I strongly urge our supervisors and the Board of State and Community Corrections to envision a future with fewer people in jail. We will get what we plan for. Please reject the CCC jail proposal. Thank you for considering my concerns.

Sincerely,



Suzanne Lewellyn
946 Sousa Drive
Walnut Creek, CA 94597

cc:

Members of the Board of State and Community Corrections

Jeffrey A. Beard
Daniel P. Stone
Dean Growdon
Geoff Dean
Leticia Perez
Michelle Brown
Michael Ertola
Ramona Garrett
David Bejarano
Scott Budnick
David Steinhart
Mimi H. Silbert

Contra Costa County Supervisors
Contra Costa County Sheriff Livingston

Dear Board,

September 2015

Please deny Sheriff Livingston's application to expand jail beds in Contra Costa County. I own another home there (at 45 Southwind in Richmond) where my parents are happily retired.

As a taxpayer, I'd rather see our money go towards real programs to treat mental health & addiction which would prevent people from being arrested. ^(psychiatrists, therapists, detox) Moreover, we have a 33% vacancy rate in existing jails, which are NOT "therapeutic".

Thanks for your support in applying our resources well,

Sincerely, Kathy Rai

September 28, 2015

Board of State & Community Corrections
2590 Venture Oaks Way, Suite 200
Sacramento, CA 95833

Re: Contra Costa County Sheriff's Office SB 863 Application

Dear Board Members:

The Contra Costa County Racial Justice Coalition, a coalition of organizations and individuals who work and live in Contra Costa County. We are a coalition of organizations and individuals committed to eliminating racial inequalities in Contra Costa. We write to you today urging you to reject the Senate Bill 863 application submitted by the Contra Costa County Sheriff's Office.

This application was completed without meaningful input from residents who would be impacted by the sheriff's proposed jail expansion. Elected leaders, re-entry service providers and community members requested multiple times for the Sheriff's Office to include representatives from the local community in planning meetings for the SB 863 application. These requests were repeatedly ignored or denied.

While the Sheriff's Office did hire a local consultant to help development its SB 863 application (including the reentry and mental health programmatic model), this individual was not selected by local elected officials, service providers, community-based organizations, or residents to serve as their representative. The result is a proposal that is not only incomplete, but also is opposite to the will of those living in city and neighborhoods impacted by this jail expansion plan – including families of currently and formerly incarcerated individuals.

Additionally, the Sheriff's Office's claims of overcrowding in local jails is unsubstantiated by their data. In a presentation to the Richmond City Council this summer, Sheriff's Office representatives noted that the average daily capacity at all three Contra Costa County detention facilities is below the facilities' rated capacities. On average there are 45 vacant beds at the Martinez Detention Facility (MDF), 491 vacant beds at the West County Detention Facility (WCDF), and 118 vacant beds at the Marsh Creek Detention Facility (MCDF). Moreover, a recent report by the Contra Costa County Grand Jury found that there is ample space in currently unused MCDF housing units to accommodate housing and program needs for inmates held at MDF. This further underscores the point that a new building at WCDF is not necessary to accomplish the sheriff's stated goals.

It is important to note here that the Sheriff's Office has been asked several times to commit to permanently closing housing units at MDF if its SB 863 application is approved. Representatives from the Sheriff's Office have repeatedly refused to make this guarantee. The SB 863 grant application specifically forbids applicants from increasing their jail populations. Without guarantees that the housing units at MDF would permanently remain closed, this proposal is out of line with both the community's desire and the grant regulations.

Moreover, the Sheriff's Office has refused to guarantee that they will fully fund enhanced reentry and mental health programs for inmates. Given the lack of dedicated funding in the proposal for enhanced programming – and the fact that the Sheriff's Office is storing millions of AB 109 funds instead of

spending those dollars on reentry programs – we think it is unlikely that the Sheriff's Office will honor its commitment to fund (or fundraise for) enhanced mental health and reentry programs for inmates.

Adding a new building to the WCDF footprint and transferring more than 400 inmates from MDF to WCDF will have a large effect on nearby cities and communities. If this project is approved, WCDF could house more than 75 percent of the county's inmates. Many of these individuals would be released into West Contra Costa County. However, the Sheriff's Office has not committed to enhancing funding for post-release services in these areas. This means many incarcerated individuals who would be released into these jurisdictions could face much difficulty acclimating into society – increasing the odds of recidivism.

While we fully support holistic and impactful programs for currently incarcerated and recently formerly individuals, we do not think the proposal by the Contra Costa County Sheriff's Office accomplishes these goals. Therefore, we request that the BSCC rejects this proposal and joins us in urging the Sheriff's Office to engage in meaningful dialogue with the community and service providers about strategies for implementing comprehensive and impactful reentry and mental health programs.

We appreciate your consideration of this letter.

Contra Costa County Racial Justice Coalition Members and allies:

Alliance for Californians for Community Empowerment (ACCE)
California Nurses Association (CNA)
Concilio Latino
Contra Costa Interfaith Community Organizations (CCISCO)
Faith Alliance for a Moral Economy
League of Women Voters of Diablo Valley
Nancy P. Kelly, Chair, Social Justice Council, Unitarian Universalist Church of Berkeley in Kensington
Richmond Progressive Alliance
Safe Return Project
Social Justice Committee in Mt Diablo Unitarian Universalist Church
Somos Latin@s

Meiklejohn Civil Liberties Institute
PO Box 673
Berkeley California 94701

Berkeley, California 94701

Re: Contra Costa County Sheriff's Office SB 863 Application

Dear Board Members,

The Meiklejohn Civil Liberties Institute (MCLI) would like you to reject the Senate Bill 863 application submitted by the Contra Costa County Sheriff's Office.

As a Human Rights Organization, we are opposed to the jail expansion. We support more jobs, medical treatment centers for those with medical problems, preventive measures created in the communities and real rehabilitation to reduce the recidivism rate that presently exists.

This application was completed without meaningful input from residents who would be impacted by the sheriff's proposed jail expansion. Elected leaders, re-entry service providers and community members requested multiple times for the Sheriff's Office to include representatives from the local community in planning meetings for the SB 863 application. These requests were repeatedly ignored or denied.

While the Sheriff's Office did hire a local consultant to help development its SB 863 application (including the reentry and mental health programmatic model), this individual was not selected by local elected officials, service providers, community-based organizations, or residents to serve as their representative. The result is a proposal that is not only incomplete, but also is opposite to the will of those living in city and neighborhoods

impacted by this jail expansion plan – including families of currently and formerly incarcerated individuals.

Additionally, the Sheriff's Office's claims of overcrowding in local jails is unsubstantiated by their data. In a presentation to the Richmond City Council this summer, Sheriff's Office representatives noted that the average daily capacity at all three Contra Costa County detention facilities is below the facilities' rated capacities. On average there are 45 vacant beds at the Martinez Detention Facility (MDF), 491 vacant beds at the West County Detention Facility (WCDF), and 118 vacant beds at the Marsh Creek Detention Facility (MCDF). Moreover, a recent report by the Contra Costa County Grand Jury found that there is ample space in currently unused MCDF housing units to accommodate housing and program needs for inmates held at MDF. This further underscores the point that a new building at WCDF is not necessary to accomplish the sheriff's stated goals.

It is important to note here that the Sheriff's Office has been asked several times to commit to permanently closing housing units at MDF if its SB 863 application is approved. Representatives from the Sheriff's Office have repeatedly refused to make this guarantee. The SB 863 grant application specifically forbids applicants from increasing their jail populations. Without guarantees that the housing units at MDF would permanently remain closed, this proposal is out of line with both the community's desire and the grant regulations.

Moreover, the Sheriff's Office has refused to guarantee that they will fully fund enhanced reentry and mental health programs for inmates. Given the lack of dedicated funding in the proposal for enhanced programming – and the fact that the Sheriff's Office is storing millions of AB 109 funds instead of spending those dollars on reentry programs – we think it is unlikely that the Sheriff's

Office will honor its commitment to fund (or fundraise for) enhanced mental health and reentry programs for inmates.

Adding a new building to the WCDF footprint and transferring more than 400 inmates from MDF to WCDF will have a large effect on nearby cities and communities. If this project is approved, WCDF could house more than 75 percent of the county's inmates. Many of these individuals would be released into West Contra Costa County. However, the Sheriff's Office has not committed to enhancing funding for post-release services in these areas. This means many incarcerated individuals who would be released into these jurisdictions could face much difficulty acclimating into society – increasing the odds of recidivism.

While we fully support holistic and impactful programs for currently incarcerated and recently formerly individuals, we do not think the proposal by the Contra Costa County Sheriff's Office accomplishes these goals. Therefore, we request that the BSCC rejects this proposal and joins us in urging the Sheriff's Office to engage in meaningful dialogue with the community and service providers about strategies for implementing comprehensive and impactful reentry and mental health programs.

We appreciate your consideration of this letter.


For the MCLI Board of Directors,
Victoria Sawicki, Board Secretary

Faith Alliance for a Moral Economy

September 2015

Board of State and Community Corrections
2590 Venture Oaks Way
Sacramento, CA 95833
Deputy Director: Magi Work
magi.work@bscc.ca.gov

Re: Contra Costa County Application for Adult Local Criminal Justice Facilities Construction Grants (SB 863)

Dear Board members,

On behalf of faith leaders who reside in and serve congregations throughout Contra Costa County, I am writing to urge you to reject the Contra Costa County Sheriff's application for SB 863 funding for new jail construction.

Since the re-alignment process began, the Contra Costa faith community has been part of a diverse coalition that seeks to invest resources in community-based services instead of jail infrastructure. We have opposed our Sheriff's attempts to expand the West County Detention Facility, believing that crime would be better addressed through alternatives to incarceration.

As the Sheriff developed his proposal for SB 863 funding, we spoke with faith leaders from all around the County and developed an interfaith letter to express our shared concerns. That letter, originally written to the Sheriff, is attached here to convey our profound opposition to his plan.

After an outpouring of opposition from hundreds of community members including clergy, nurses, attorneys, and local elected officials, the Contra Costa County Board of Supervisors **did not approve the requisite 10% local funding match on the Sheriff's application**. We do not see how our County could move forward with construction, even if awarded funding from the state. The opposition is too widespread, and the need for jail expansion has not been substantiated by the Sheriff's Office.

May you consider and honor the profound concerns of faith and community leaders and not accept the Sheriff's grant proposal.

In faith, hope and solidarity with the most vulnerable among us,



Kristi Laughlin, Program Director

October 12, 2015

Board of State & Community Corrections
2590 Venture Oaks Way Suite 200
Sacramento, CA 95833

Re: Contra Costa County Sheriff's Office SB 863 Application

Dear Board Members:

We write to you today urging you to reject the Senate Bill 863 application submitted by the Contra Costa County Sheriff's Office.

While Contra Costa County has debated whether or not to expand the West County Detention Facility, communities across the county are awaking to the realization that jails are not the best place to provide inmates with mental health services that should be provided in the community. At the federal level, several bills with bipartisan support – including “The Helping Families in Mental Health Crisis Act” and “The Mental Health Reform Act of 2015” – propose moving federal dollars into treating people with mental illness rather than punishing them for their illness.

Rather than expanding our local detention centers, we believe Contra Costa County must enhance funding for early screening and mental health intervention programs to help people while they're young. We also need to enhance funding for peer-to-peer support and drop-in centers. Furthermore, we believe that we can truly improve the lives of those who already suffer from mental illness by providing more comprehensive treatment and recovery programs, access to affordable medications, acute and long-term hospital beds, decent housing, therapy and jobs.

On August 18th over 100 Contra Costa County residents spoke against the sheriff's proposal at the Board of Supervisor meeting. We believe the county resources should not be allocated to fund a jail expansion. We believe that any county construction funds should be used to build more hospitals and community-based health clinics; and the sheriff should be required to develop and fully fund comprehensive pre- and post-release services. We also think that the sheriff should be forced to spend all of its AB 109 resources on re-entry and mental health services – rather than storing over a million dollars of those funds to subsidize more construction. Even though the sheriff got the approval to submit the application, he did not get the county to commit the matching funds for the construction. The City of Richmond, the hosting city for the project, is also opposing the proposal and challenged the EIR. We hope these strong evidences are enough for BSCC members to reject the application submitted by Contra Costa County Sheriff's office.

Sincerely,

Name

City

From the Rabbi's Study

October 20, 2015

Riverside County Supervisors Jeffries, Tavaglione, Washington, Ashley and Benoit
County Administrative Center
4080 Lemon Street, 5th Floor
Riverside, California 92501

RE: Riverside County Jail Construction

Dear Supervisors:

I am writing to you on behalf of a number of organizations with concerns regarding jail construction in Riverside County. We believe that county decision makers are currently pursuing expensive jail construction plans that do not take into account the potential to reduce local jail population through diversion and alternative measures. Our collective has been opposed to the construction of the East County Detention Center in Indio, not only because of the enormous price tag of \$330 million but, also, because of the annual costs required to maintain and operate the facility. According to an editorial in The Press-Enterprise, "the jail will likely cost upwards of \$50 million a year..." (February 17, 2015). Additionally, we are very concerned that this jail will include a solitary confinement unit: this is a practice that has been internationally condemned as torture.

We are also opposed to the current proposal submitted to the Board of State and Community Corrections (BSCC) through AB 863 for \$80 million to reconstruct the Larry D. Smith Correctional Facility in Banning, which will require our county to match funds of \$10 million. We challenge the need for these new facilities, despite the Sheriff's claim that Riverside County needs an additional 10,000 jail beds over the next decade. With the passage of criminal justice reform laws, like Proposition 47, there has been a major impact in reducing the numbers of those incarcerated. Through investment in the Safe Neighborhoods & Schools Funds and other evidence-based diversion practices, there is an opportunity for Riverside to permanently abandon jail construction plans that are being pursued.

In its editorials, The Press-Enterprise has consistently questioned the county's focus on jail expansion, urging the county "to continue investing in alternatives to incarceration and not become dependent on locking people up." (February 17, 2015) In a June 15, 2015 editorial, the newspaper warns that "public safety costs" in 2014-15 "encompass[es] over 67 percent of the [county] budget. This is up from 58 percent in fiscal 2005-6, with projections suggesting public safety will engulf 75 percent of the budget in the foreseeable future." With public safety eating up so much of the budget, the paper warns that there are insufficient funds for essential services such as education. Furthermore, in previous years Riverside County faced a \$20 million shortfall in the Sheriff's Budget. Jail expansion could max out the county's self-imposed limit on debt payments by 2020 if jails expand.

We are urging the County of Riverside to focus on its mission to encourage Evidence-Based Practices (EBP) by placing an emphasis on achieving measurable outcomes and making sure that the services and resources provided are effective. We believe that California has within its reach, affordable, effective and humane alternatives to combat its continued reliance on the construction of detention facilities.

Riverside Temple Beth El
2675 Central Avenue
Riverside, CA 92506

Telephone # 951-684-4511
Fax # 951-684-8437

Our recommendations include:

1. Funding to expand re-entry services and support
2. Mandate the creation of a compassionate release or medical probation policy
3. Discharge from Mandatory Supervision and Post-Release Community Supervision all persons convicted of non-serious and non-violent crimes.
4. Discharge to post-release community supervision people convicted of offenses classified as "non-serious" and "non-violent" 12 months before their currently established release dates.
5. Mandate the reduction of the number of people who receive sentences due to probation revocation—a statistic that was dropping steadily in the 1990s, but has sharply increased
6. Mandate a process for pre-booking diversion and supportive services for people who are charged with simple drug possession and low-level drug sales ~~or work on minor property crimes many of which are impacted by Prop.47~~
7. Mandate the use of a pretrial release program similar to successful programs in counties such as Santa Cruz (SB 863 already requires documentation of people in jail who are pre-trial)
8. Mandate a bail reform policy similar to what New York has implemented (please see: <http://www.npr.org/2015/07/11/422008446/new-york-bail-reform-is-part-of-trend-away-from-cash-punishment>)
9. Expediting court processing and transfer
10. Increased use of split-sentencing, as now provided for by the courts
11. Expansion of drug and alcohol treatment options in the community

The erosion of the social safety net has resulted in the sacrifice of the needs of people in Riverside County. Educational, physical and mental health services; substance abuse treatment programs; and life skills services will be more affordable, effective, and comprehensive – outside of jail. After all, strong, independent re-entry services are proven to reduce recidivism and save public dollars. Furthermore, it is imperative when evaluating program effectiveness that jails and programs run by law enforcement be held to the same standard as community based programs.

We hope you can take into consideration our recommendations and look forward to continued engagement with you all on the issue. Thank you.

Sincerely,



Rabbi Suzanne Singer for:

ACLU of SoCal
Alternatives to Jail Expansion Coalition
California Partnership
Inland Congregations United for Change (ICUC) Clergy Caucus
Inland Empire Immigrant Youth Coalition
Inland Empire Sankofa Project
Riverside All of Us or None
Shades of Afrika
Starting Over, Inc.
Straight Talk Program
28ers

cc.: Linda Penner, Chair of the Board of State and Community Corrections

October 25, 2015

Chair Linda Penner
Board of State & Community Corrections
Executive Board
2590 Venture Oaks Way
Sacramento, CA 95833

About 10 members of the Mt. Diablo Unitarian Universalist Church in Walnut Creek attended the Contra Costa County Board of Supervisors meeting on August 18, 2015. The focus of this meeting was to discuss, get community input, and vote on Sheriff Livingston's proposal to build a high security jail in West County with funds from the state.

Our congregation has been deeply concerned with mass incarceration and has been discussing the issue for the past year and a half. The members who attended this Supervisor's meeting reported to our Social Justice Council, and we have reached the same decision that most of the nearly 80 community members who spoke before a standing room only crowd that day. We have major concerns about the proposal and oppose investment in more jail infrastructure. We urge you to deny funding for the Contra Costa County proposal.

We would like to share our concerns and some of the overwhelming opposition expressed by community members and the City of Richmond, where the new facility would be built. We note, too, that even though the proposal was approved to go forward, it did not have the consensus to provide matching funds from the county.

Some of the reasons cited in opposition include:

- Mental health services are extremely important but should be supported OUTSIDE of the jail to prevent incarceration and to prevent recidivism. Incarceration causes and exacerbates mental health problems, so mental health services within the jail have proven to be ineffective. People who are mentally ill should not be incarcerated. They should be identified by law enforcement and diverted to an environment that promotes healing.
- The County recently closed its hospital, also in opposition to needs expressed by the community, so how can a jail expansion be funded?
- Richmond residents and city government representatives stated that they were not adequately consulted in developing a plan that would have an impact on their city.
- Transitional and low-income housing, health and mental health care, and jobs are a higher priority than investment in our jail. If the county has money, it should address these urgent needs, which will also reduce incarceration.
- The County's jail system is only 2/3rds full, and it rents hundreds of beds to Immigration and Customs Enforcement (ICE) to detain immigrants. There is no need for more beds, and many people object strongly to the county raising funds by incarcerating immigrants, most of whom have only committed a civil offense. Cancel the contract with ICE to free up beds instead of permanently expanding the jail infrastructure.
- We want to invest in PREVENTION, especially to provide juveniles and homeless veterans with mental health services so they don't end up in jail.

- The tide has turned against mass incarceration. The public recognizes that it is a racist system. In CCC, 10 percent of the population is Black, yet 40 percent of the prison population is Black. Stop investing in a racist system.
- The County should invest in reducing recidivism with a wide array of post-release services. In the time it would take to build a new prison facility, we shouldn't need it.
- Reform the judicial system so that 67 percent of the people imprisoned in Contra Costa County are no longer awaiting trial. Tax payers shouldn't be paying to imprison poor people who can't afford to pay bail.
- Sheriff Livingston's proposal is unclear about the mental health services it would deliver, and much of the proposed budget is for additional deputies, despite his stated plan to move inmates from the Martinez jail to a new high security jail in Richmond, not increase the number. Why are more deputies needed for the same size population?

If Contra Costa County proposed to build a state of the art clinic and mental health facility in the community designed to prevent incarceration, we would support it wholeheartedly. The sheriff's proposal is doomed to fail because people don't get healthy in a prison environment. They get worse.

If the county focuses on preventive and post-release services, in 5 years from now, when the sheriff's new jail would be complete, the county will need to reduce jail space, and its investment in an expanded jail would be wasted.

We strongly urge our supervisors and the Board of State and Community Corrections to envision a future with fewer people in jail. We will get what we plan for. Please reject the CCC jail proposal. Thank you for considering our concerns.

Sincerely,



Kate Newkirk, Chair
 Social Justice Council
 Mt Diablo Unitarian Universalist Church
 55 Eckley Lane
 Walnut Creek, CA 94596

cc:

Members of the Board of State and Community Corrections

| | |
|------------------|-----------------|
| Jeffrey A. Beard | Michael Ertola |
| Daniel P. Stone | Ramona Garrett |
| Dean Growdon | David Bejarano |
| Geoff Dean | Scott Budnick |
| Leticia Perez | David Steinhart |
| Michelle Brown | Mimi H. Silbert |

Contra Costa County Supervisors
 Contra Costa County Sheriff Livingston

BOARD OF STATE AND
 COMMUNITY CORRECTIONS
 2015 OCT 28 PM 1:04

STATE CAPITOL
SACRAMENTO, CA 95814
TEL (916) 651-4015
FAX (916) 651-4915

2108 S. BASCOM AVE.
SUITE 154
CAMPBELL, CA 95008
TEL (408) 558-1291
FAX (408) 558-1296

100 PASEO DE SAN ANTONIO
SUITE 209
SAN JOSE, CA 95113
TEL (408) 286-9318
FAX (408) 286-2338

California State Senate

SENATOR
JIM BEALL

FIFTEENTH SENATE DISTRICT



COMMITTEES
TRANSPORTATION
AND HOUSING
CHAIR
APPROPRIATIONS
BUDGET AND
FISCAL REVIEW
GOVERNANCE
AND FINANCE
JOINT LEGISLATIVE AUDIT
PUBLIC EMPLOYMENT
AND RETIREMENT
SUBCOMMITTEE
BUDGET AND FISCAL
REVIEW SUBCOMMITTEE #5
ON CORRECTIONS,
PUBLIC SAFETY, AND
THE JUDICIARY

November 6, 2015

Ms. Linda Penner
Chair, Board of State and Community Corrections
2590 Venture Oaks Way, Suite 200
Sacramento, CA 95833

**RE: Support for Santa Clara County's SB 863 Adult Local Criminal Justice Facilities
Construction Project**

Dear Ms. Penner:

On behalf of the undersigned members of the County of Santa Clara's legislative delegation, we write to express our enthusiastic support for the County's SB 863 jail facility project that focuses on mental health program and treatment space. As you may be aware, the County is proposing to replace an outdated existing facility with a thoughtful, modern structure designed to maximize the delivery of programs to address offender mental health, health, treatment and education needs and to facilitate an integrated re-entry approach that will drive improved outcomes for the court-involved population, their families and communities.

Since the implementation of 2011 Public Safety Realignment, the County of Santa Clara has assessed the changes in its jail population and carefully evaluated the needs of those in custody to understand how best to move forward in a post-realignment era. The County took these findings into account for purposes of designing the proposed new facility, which will focus on enhanced programming and treatment space to support our community's commitment to successful reintegration and recidivism reduction. The County has invested extensively in a comprehensive reentry program and worked diligently to extend the life of its 1950s-era main jail. Prior to submitting its SB 863 construction proposal, it should be noted, the County has not competed for any of the previous AB 900 or SB 1022 funding opportunities.

The County of Santa Clara has a demonstrated record of intra- and extra-county collaboration and a deep commitment to innovative and cost-effective services that seek to benefit its citizens and communities. In the community corrections context, the County has invested heavily in programs and services aimed at reversing the cycle of offending. The County offers robust re-entry services in a centralized delivery

model; an extensive network of community-based organizations, including the faith community; and a range of supportive employment, housing, and treatment programs in the community. The detention facility project will help the County achieve its vision of smoothly and successfully reintegrating the jail population and improving societal outcomes that will pay dividends for generations to come.

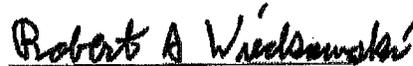
We are confident that the County will be a good steward of the scarce state resources dedicated to supporting expansion of county capacity to house and treat expanded offender populations. The detention facility project design is consistent with the intent of recent criminal justice reforms and responds to the call for counties to innovate locally and make smart investments that address underlying causes of criminality.

We thank the Board of State and Community Corrections for its leadership in supporting counties' efforts to manage its expanded criminal justice system responsibilities. We respectfully request that you distribute this letter to the entire Board in advance of the November 12 meeting during which the conditional SB 863 awards will be considered. Thank you.

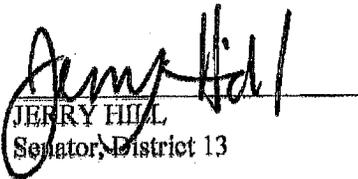
Respectfully,



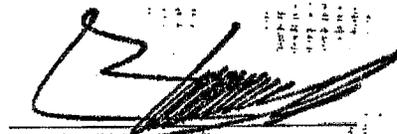
JIM BEALL
Senator, District 15



BOB WIECKOWSKI
Senator, District 10



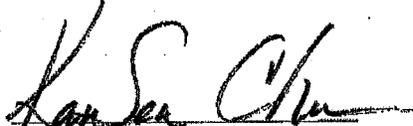
JERRY HILL
Senator, District 13



BILL MONNING
Senator, District 17



RICHARD GORDON
Assemblymember, District 24



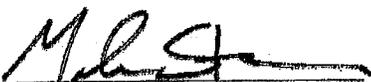
KANSEN CHU
Assemblymember, District 25



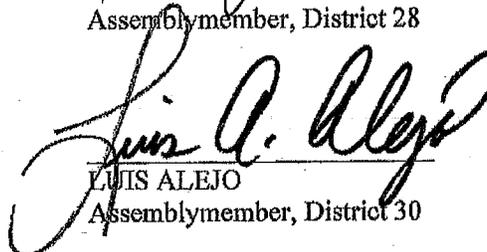
NORA CAMPOS
Assemblymember, District 27



EVAN LOW
Assemblymember, District 28



MARK STONE
Assemblymember, District 29



LUIS ALEJO
Assemblymember, District 30

Buentipo, Amanda@BSCC

From: Rieger (Rodriguez), Maria@BSCC
Sent: Friday, November 06, 2015 4:21 PM
To: Howard, Kathleen@BSCC; Work, Magi@BSCC
Cc: Buentipo, Amanda@BSCC
Subject: FW: APPEAL to BSCC- Review of Contra Costa County SB 863 Proposal

From: Teresa Pasquini [mailto:tcpasquini@gmail.com]
Sent: Friday, November 06, 2015 3:30 PM
To: Penner, Linda@BSCC <Linda.Penner@bscc.ca.gov>; Beard, Jeff@CDCR <Jeff.Beard@cdcr.ca.gov>; Stone, Dan@CDCR <Dan.Stone@cdcr.ca.gov>; sheriff@co.lassen.ca.us; Geoff.dean@ventura.org; district5@co.kern.ca.us; michelle.brown@prob.sbcounty.gov; Michael.ertola@co.nevada.ca.us; sbudnick@antirecidivism.org; commonweal@commonweal.org; Rieger (Rodriguez), Maria@BSCC <Maria.RodriguezRieger@bscc.ca.gov>
Subject: APPEAL to BSCC- Review of Contra Costa County SB 863 Proposal

Dear Executive Committee Members,

My name is Teresa Pasquini, the current Chair of the Behavioral Healthcare Partnership of Contra Costa Regional Medical Center/Health Centers, including Detention Health. I am writing as a lifelong resident of West Contra Costa County and a local, state and national activist for those with serious mental illness. I am respectfully appealing the decision of the BSCC to strip 12 points from our SB 863 proposal. There is clearly a disconnect regarding the status of the EIR submitted by Contra Costa County in connection with the SB863 Grant application. I have reviewed the timeline for the submission and the County appears to have been in full compliance with the CEQA criteria when it filed its application. It appears that it is only because of a frivolous lawsuit filed by the City of Richmond that the CEQA status was questioned.

As the mother of a son in the system, it is deeply disappointing that one city's political gamesmanship has robbed our entire community of the chance to improve the current inhumane conditions in the Martinez Detention Facility. I served on Contra Costa County's state mandated Mental Health Commission for the past 9 years and learned of the grave need for progressive reforms. The Contra Costa County SB863 proposal made a clear, compelling and convincing plan to rectify the overcrowded, and dangerous conditions in its Martinez jail while advancing effective programs to improve positive outcomes both in custody and post release.

The Contra Costa SB 863 proposal ranked second-highest in the state. It scored only 0.24 points behind San Francisco's, *and it was ranked above every other proposal in the state.* This clearly demonstrates recognition for its innovative and comprehensive approach. However, the City of Richmond's baseless lawsuit has cost our entire community of the critical preference points in the grant proposal review process. This action will doom inmates with serious mental illnesses to ongoing inhumane conditions and possible human right's violations.

Technicalities and politics must not prevent Contra Costa from receiving due process based on an unwarranted CEQA challenge filed by one city. I urge the BSCC to reconsider the intent of the preference points for completing an EIR and allow Contra Costa's proposal to be recognized on its obvious merits.

Thank you for your consideration.

Respectfully submitted,

Teresa Pasquini

2536 Heide Court

El Sobrante, CA 94803



CONTRA COSTA

Mental Health Commission

Contra Costa County Mental Health Commission has a dual mission: 1) To influence the County's Mental Health System to ensure the delivery of quality services which are effective, Efficient, culturally relevant and responsive to the needs and desires of the clients it serves with dignity and respect; and 2) to be the advocate with the Board of Supervisors, the Mental Health Division, and the community on behalf of all Contra Costa County residents who are in need of mental health services.

November 6, 2015

Dear Executive Committee Members:

There appears to be great confusion and misinformation regarding the status of the EIR submitted by Contra Costa County in connection with the SB863 Grant application. The County appears to have been in full compliance with the CEQA criteria when it filed its application, and it is only because of a frivolous lawsuit filed by the City of Richmond that the CEQA status came into question.

Given the confusion and misinformation, it is unreasonable for the Board of State and Community Corrections to move forward with a vote to deny funding to the second highest rated proposal in the state.

Contra Costa County's need for funding is abundantly clear, as is the extraordinarily progressive and comprehensive approach to mitigate the terrible conditions in the Martinez Detention Facility (which is the County's only high-security facility), as a result of the overcrowding created by the State's transfer of high security inmates from the state detention system to the county detention system.

It is the hope of the Mental Health Commission of Contra Costa County that you will recognize the bureaucratic confusion that is docking points from Contra Costa's application and therefore disqualifying them for funding, and authorize the allocation to a county whose needs, readiness, and intent were abundantly clear to the reviewers

The Mental Health Commission publicly supported this grant application and recognizes the great benefit this outstandingly thoughtful and progressive approach will have on the mentally ill who are incarcerated in facilities that were never designed to provide either programming or treatment.

On behalf of the Mental Health Commission, I respectfully request that you give Contra Costa County back those 12 points that were taken away based on the frivolous lawsuit filed by one city out of the 19 in Contra Costa County and grant the funding to Contra Costa County so that we may move our system into a positive model of treatment and recovery for those with mental illness who find themselves behind bars.

Sincerely,
Lauren Rettagliata
Chair, Contra Costa County Mental Health Commission



Buentipo, Amanda@BSCC

From: Rieger (Rodriguez), Maria@BSCC
Sent: Tuesday, November 10, 2015 9:03 AM
To: Work, Magi@BSCC; Howard, Kathleen@BSCC
Cc: Buentipo, Amanda@BSCC
Subject: FW: Please Vote SB863 funds to Contra Costa County - Letter

Follow Up Flag: Follow up
Flag Status: Flagged

Here's another letter.

Maria

From: Rieger (Rodriguez), Maria@BSCC
Sent: Tuesday, November 10, 2015 9:01 AM
To: 'Gina Swirsding' <gdm2win@aol.com>; Penner, Linda@BSCC <Linda.Penner@bscc.ca.gov>; Beard, Jeff@CDCR <Jeff.Beard@cdcr.ca.gov>; Stone, Dan@CDCR <Dan.Stone@cdcr.ca.gov>; sheriff@co.lassen.ca.us; Geoff.dean@ventura.org; district5@co.kern.ca.us; michelle.brown@prob.sbcounty.gov; Michael.ertola@co.nevada.ca.us; sbudnick@antirecidivism.org; commonweal@commonweal.org
Subject: RE: Please Vote SB863 funds to Contra Costa County

Yes, of course.

Maria

Maria Rodriguez-Rieger
Executive Assistant
Board of State and Community Corrections
phone 916.445.7672
email maria.rodriguezrieger@bscc.ca.gov

From: Gina Swirsding [<mailto:gdm2win@aol.com>]
Sent: Tuesday, November 10, 2015 4:46 AM
To: Rieger (Rodriguez), Maria@BSCC <Maria.RodriguezRieger@bscc.ca.gov>; Penner, Linda@BSCC <Linda.Penner@bscc.ca.gov>; Beard, Jeff@CDCR <Jeff.Beard@cdcr.ca.gov>; Stone, Dan@CDCR <Dan.Stone@cdcr.ca.gov>; sheriff@co.lassen.ca.us; Geoff.dean@ventura.org; district5@co.kern.ca.us; michelle.brown@prob.sbcounty.gov; Michael.ertola@co.nevada.ca.us; sbudnick@antirecidivism.org; commonweal@commonweal.org
Subject: Please Vote SB863 funds to Contra Costa County

Dear Marie can you distribute my letter to all the committee members. Thank you
Dear Committee Members,

I'm a Richmond resident and a member of the Contra Costa Mental Health Commission (CCMHC) and the Criminal Justice Committee of the CCMHC. I'm a representative of the West County part of Contra Costa County where the construction of the Building will take place. The city of Richmond filed the law suit and filed it close to the date of the dead line to block the Grant so the board wouldn't consider Contra Costa County's proposal of the SB863 grant funds for the building of construction of better housing for inmates who are currently in Martinez Correctional Facility. The opposers of this grant have spread false

facts about the Grant that the Sheriff is going to make more cell beds for the inmates instead of reducing the number of the beds in Martinez and transferring those inmates to WCDF. Most who I have spoken too haven't even read the Sheriff proposal and they also aren't aware that the Grant money and how it is used will be looked over by a board too.

These opposers of the bill aren't informed or if they are informed are telling others who are opposing the bill that **the money will be used for** construction of more cells for housing of more inmates. The purpose of the bill is to improve the housing of inmates who are being housed in a facility that is out of date and in need of repairs and to construct a center to help in the Rehab and reentry of inmates into society. This is the case with Martinez Correctional Facility that was builded in the 1940'S and is in need for major repairs. Some of the modules our Criminal Justice Committee visited that holds our Mentally ill inmates and they are in a need for closure or major repairs. Moving these inmates to WCDF which is a newer constructed campus with adding a Rehab center so they can get help in reentry into society is in need at WCDF too. We visited the WCDF too and saw there is no room there for a rehab center. Currently there is no rooms available to help council the inmates in ReHAB/mental health services in both facilities.

PLEASE CONSIDER OUR MENTALLY ILL INMATES HOUSING SITUATION and THEIR NEED FOR A BUILDING TO HELP IN REHAB/MENTAL HEALTH SERVICES. Where they are housed now in Martinez its hard to give them the Rehab and mental health services they need. The jail was build in the 1940s to house inmates temporary until they are sent to prisons to serve their time. It's not a place and there is no room to help the inmates in Rehab and mental health services Because of AB109 some of our mentally ill have been in the Martinez facility for years.

Just like the opposers in Richmond didn't check out the facts behind the bill nor even read or understood what they read in the Sheriff proposal. Many of them are not aware how out of date the Martinez facility is and in need of repair. Please check out as to why they filed the law suit and to why they oppose the bill. They filed it to stop the Grant money from coming to our county.

Many of them state that these mentally ill inmates need to be placed in a State Hospital like Napa. That facility is older then Martinez and is in need of repairs too. The State Hospital is like the prison system not the jail system. They aren't even educated on the State Hospital system either. They don't even know what kind of mentally ill inmates that are being housed in Martinez and that what they need is Rehab not jail time and hospital time. These mentally ill inmates aren't violent criminals that are serving their time in the STATE HOSPITAL LIKE NAPA or a State Prison. There is no room in Napa either many of our mentally ill that are in need for state hospital care are being sent out of county and placed in southern California and families can't even visit them due to how far the hospital is located.

PLEASE CONSIDER AND VOTE FOR CONTRA COSTA COUNTY BUILDING PROPOSAL SB863 GRANT MONEY,

Gina Swirsding

CCC Mental Health Commission representing the part of West County.

City of Richmond Resident

Rieger (Rodriguez), Maria@BSCC

From: Kay Derrico <kayderrico@comcast.net>
Sent: Tuesday, November 10, 2015 3:31 PM
To: sbudnick@antirecidivism.org; Rieger (Rodriguez), Maria@BSCC;
michelle.brown@prob.sbcounty.gov; Geoff.dean@ventura.org; Stone, Dan@CDCR;
Penner, Linda@BSCC; Beard, Jeff@CDCR; sheriff@co.lassen.ca.us; district5@co.kern.ca.us
Cc: Michael.ertola@co.nevada.ca.us; commonweal@commonweal.org; Rieger (Rodriguez),
Maria@BSCC
Subject: support SB863 grant Contra Costa

Please reconsider your decision and keep this alive!
Contra Costa really needs help supporting its mentally ill inmate population.
Our family has been impacted by the current lack of help, so we feel strongly about inmates getting care before they exit jail.

Best regards,
Kay Derrico
Walnut Creek



CENTER FOR ADVOCACY & POLICY

Telephone: (916) 442-1036

Fax: (916) 442-1743

November 11, 2015

Board of State and Community Corrections
2590 Venture Oaks Way
Sacramento, CA 95833
kathleen.howard@bscc.ca.gov
linda.penner@bscc.ca.gov

Dear BSCC Members,

The ACLU has been closely following the work of the SB 863 Executive Steering Committee as they have drafted the Request for Proposals (RFP), reviewed and rated the counties' proposals, and made their recommendations to you for awarding \$500,000,000 in financing to counties for the construction of local adult criminal justice facilities.

One application stands out as being particularly problematic. In its application, Butte County has proposed using \$650,000 taken from its Inmate Welfare Fund, to meet its 10% cash-match requirement. Their proposal states the following:

County Contribution

The County's contribution to the project as approved by the Board of Supervisors totals \$4,445,000, 10% of the project total. The County will meet the required contribution through a combination of cash and in-kind match. \$3,365,000 in cash contribution will be provided from three existing County funding sources – Jail Impact Fees, Sheriff Impact Fees and Inmate Welfare Funds as detailed below.

Below that, the application states:

Inmate Welfare Fund—

Revenue in the inmate welfare fund is derived from the profit earned by the store in the county jail that sells personal items to inmates as well as revenue related to the use of pay telephones by inmates. Government Code requires that inmate welfare funds be expended primarily for the benefit, education, and welfare of the inmate population. The SB 863 Project budget contemplates \$685,000 in inmate welfare funds being expended on the project, and all such funds would be used for program space where inmates would be provided educational and evidence-based programming intended to improve their life

ACLU OF NORTHERN CALIFORNIA
Abdi Solani, Executive Director
39 Drumm Street
San Francisco, CA 94111
(415) 621-2493

ACLU OF SOUTHERN CALIFORNIA
Hector Villagra, Executive Director
1313 West Eighth Street
Los Angeles, CA 90017
(213) 977-9500

ACLU OF SAN DIEGO & IMPERIAL COUNTIES
Norma Chavez-Peterson, Executive Director
P.O. Box 87131
San Diego, CA 92138
(619) 232-2121

skills and reduce recidivism. Accordingly, these funds are legally available and lawful for this use.

We disagree and believe that use of inmate welfare fund moneys to finance new facility construction would constitute an unlawful use of these funds. Penal Code section 4025(e) authorizes use of Inmate Welfare Funds as follows:

The money and property deposited in the inmate welfare fund shall be expended by the sheriff primarily for the benefit, education, and welfare of the inmates confined within the jail. Any funds that are not needed for the welfare of the inmates may be expended for the maintenance of county jail facilities. Maintenance of county jail facilities may include, but is not limited to, the salary and benefits of personnel used in the programs to benefit the inmates, including, but not limited to, education, drug and alcohol treatment, welfare, library, accounting, and other programs deemed appropriate by the sheriff. Inmate welfare funds shall not be used to pay required county expenses of confining inmates in a local detention system, such as meals, clothing, housing, or medical services or expenses, except that inmate welfare funds may be used to augment those required county expenses as determined by the sheriff to be in the best interests of inmates. An itemized report of these expenditures shall be submitted annually to the board of supervisors.

(West's Ann.Cal.Penal Code § 4025(e).)

Butte County has not demonstrated that there are funds in the IWF “not needed for the welfare of the inmates.” In addition, construction of a new jail facility is not sufficiently related to the “benefit, education and welfare” of the inmates to authorize use of Inmate Welfare Fund monies for this purpose under Penal Code section 4025. Any assumption that there may be generalized public benefit from this construction is insufficient to enable the county to finance the project with funds derived exclusively from the families of inmates. In 2007, a class-action lawsuit filed in Santa Clara County, resulted in the county agreeing to pay back \$1.5 million to the inmate welfare fund for inappropriate use of those funds to pay for basic county responsibilities, as well as the county agreeing to pay \$400,000 in attorney’s fees.

<http://www.lawfoundation.org/documents/HopkinsFinalSettlementAgreement.pdf>

Because Penal Code section 4025 does not authorize use of inmate welfare funds to help the county pay its required 10% cash match for new jail construction, Butte County’s application including use of these funds is improper.

Respectfully,

Natasha Minsker
Center Director

Steven Meinrath
Advocate