July 27, 2004

Stockton City Council
425 N. El Dorado Street
Stockton, CA 95202

Re: Stockton City Council, July 27, 2004, Agenda Item 8.02

Dear Mayor Pedesto and Council Members:

At the Tuesday, July 20, 2004 Council meeting, Councilperson Larry Ruhstaller introduced and had placed on the agenda for the July 27, 2004 Council meeting a purported greenbelt initiative signed by Larry Ruhstaller and Gary Pedesto.

During Citizens’ Comments, we spoke to that issue, bringing up the question of the legality of the Stockton City Council’s placing a land use initiative on the November 2, 2004 ballot without following the California Environmental Quality Act (CEQA).

The proposed initiative, which would affect the use of land in the Stockton area, is unquestionably a “project” under CEQA. CEQA defines “project” as an “activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment . . . which is . . . directly undertaken by [a] public agency.” Pub. Res. Code sec. 21065. As we explained to the Council, the fact that the Council’s measure would be placed before the Stockton voters does not absolve the City of the requirement to comply with CEQA. The Supreme Court clarified this point in the landmark decision of Friends of Sierra Madre v. City of Sierra Madre, 25 Cal.4th 165 (2001).

Despite this clear requirement to comply with CEQA, it appears that the City Council may be poised to avoid the City’s duty to prepare environmental documents in connection with this ballot proposal. The Staff Report for the July 27th meeting attaches a Proposed Resolution that would improperly rely on CEQA exemptions found in the CEQA Guidelines (Guidelines) for this project. In fact, none of the cited exemptions would apply to the initiative:

- Reliance on Guidelines section 15061 (b)(3) (general exemption for activities where there is no possibility for significant effect on the environment) is blatantly improper. By its own terms, the Pedesto/Ruhstaller initiative gives the City until December 31, 2005 to adopt the greenbelt plan, yet it provides no development moratorium in the interim. The purpose of this initiative is obvious: its sponsors simply wish to “buy time” before any greenbelt plan can be adopted, so that the
landowners in this area can secure their development entitlements before the plan becomes effective. Because the measure will thus foster, rather than deter, development in this largely agricultural area, the cited CEQA exemption is wholly inapplicable.

- Reliance on Guidelines sections 15262 and 15306, concerning planning studies and information-collection, is obviously inappropriate for the proposed initiative, which “requires the City of Stockton to adopt a Master Plan which will establish a Greenbelt…” Moreover, even if these exemptions did apply, they would only serve to illustrate that the initiative is illegal because it does not constitute actual legislation.

The Podesto/Ruhstaller initiative does not constitute legislation. Rather than amending the City’s land use laws to adopt a greenbelt, the initiative merely directs that “[o]n or before December 31, 2005, the City of Stockton shall process, approve and adopt a Greenbelt Master Plan for the creation of a Greenbelt between the City of Lodi and the City of Stockton.” The courts have repeatedly held that the initiative power is limited to proposed measures that directly enact statutes. American Federation of Labor v. Eu (1984) 36 Cal.3d 687, 174 (AFL); Marblehead v. City of San Clemente (1991) 226 Cal.App.3d 1504, 1509. The initiative power does not extend to advisory measures or other resolutions that do not change local law but merely constitute one step in a process that might eventually lead to complete legislation. AFL, 36 Cal.3d at 694-95. This flaw is fatal, and could serve as the basis for legal action to prevent the initiative from appearing on the ballot. AFL, 36 Cal.3d at 694 (court granting pre-election relief when initiative exceeded the scope of the initiative power because it failed to enact legislation directly).

In addition to the CEQA violation, there are other aspects of the proposed initiative which appear to be contrary to law.

Section 1, part B. 3., is a “poison pill” clause that is worded in direct conflict with the City Charter and the Election Code, both of which provide that, in the extent that provisions of two or more measures approved or adopted at the same election conflict, the provisions of the measure receiving the highest affirmative vote shall control.

Further, the initiative’s provisions are so vague and ambiguous that the voters would have no idea of what, if anything, they are enacting. Section 2 does not give a complete definition to the scope or true location of the Greenbelt Study Area. The Greenbelt Master Plan could establish a zone from ten or less feet up to the entire width of the Study Area in the attached diagram. The map and diagram are ambiguous and do not legally define the Study Area. From the diagram it appears the initiative is planning for land use more in the Lodi area than the Stockton area. This appears to be a land-planning “grab” north of Armstrong Road by the City of Stockton.

We also question the last-minute revision of the July 27, 2004, Council Agenda Item 8.02. The purpose of this change appears to be removing the designation of this ballot measure as an “ordinance.” One would interpret this maneuver as an attempt by the City of Stockton to justify its failure to comply with CEQA.
Curiously, the Staff report for Council Agenda Item 8.02 removes the reference to “ordinance” only from the Subject line of the first page. The draft Resolution in the Staff Report refers to “THE STOCKTON GREENBELT ORDINANCE MEASURE . . .” in the resolution title and continues referring to the initiative as being an ordinance in the “BE IT RESOLVED . . .” Sections 1 and 2.

Never analyzed under CEQA, this hastily crafted measure fails to adopt actual legislation, leaving the City exposed to serious legal challenge.

For all the foregoing reasons, we urge the Council to reject the proposal to place the Podesto/Ruhstaller measure on the ballot.

Sincerely,

Eric Parfrey
Mother Lode Chapter Chair

Dale Stocking
Delta-Sierra Group Chair

Copies: Stockton City Manager
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