

1 Meredith Stevenson (SBN 328712)
2 Frances Tinney (SBN 346927)
3 CENTER FOR BIOLOGICAL DIVERSITY
4 1212 Broadway, Suite 800
5 Oakland, California 94612
6 Telephone: (510) 844-7100
7 Facsimile: (510) 844-7150
8 mstevenson@biologicaldiversity.org
9 ftinney@biologicaldiversity.org

10 *Attorneys for Petitioner and Plaintiff Center for Biological Diversity*

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF CONTRA COSTA**

13 CENTER FOR BIOLOGICAL
14 DIVERSITY,

15 Petitioner and Plaintiff,

16 v.

17 CITY OF PITTSBURG; CITY COUNCIL
18 OF THE CITY OF PITTSBURG; and
19 DOES 1 through 20, inclusive,

20 Respondents and Defendants;

21 PITTSBURG DATA HUB, LLC; JOHN
22 DELACIO; AVAIO DIGITAL
23 PARTNERS I, LLC; and DOES 21
24 through 40, inclusive,

25 Real Parties in Interest.

Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

[Pub. Res. Code § 21000, et seq.
(California Environmental Quality Act);
Code Civ. Proc. §§ 1060, 1085, 1094.5]

INTRODUCTION

1. This action challenges the November 4, 2024 decision of Pittsburg, California (“City”) and its City Council (together, “Respondents”) to approve the Pittsburg Technology Park Specific Plan (“Project”) and certify an Environmental Impact Report (“EIR”) for the Project (State Clearinghouse Number 2024030184). The Project includes a specific plan, zoning change, and various other associated approvals.

2. The Project, proposed by Pittsburg Data Hub, LLC (“Applicant”) would cover a total of approximately 76.38 acres in the southern portion of the City, with the Project site bisected by the Contra Costa Canal. This proposed Project allows for 1.1 million square feet of warehousing on predominantly undeveloped acreage that is home to a variety of natural habitats, including grasslands and wetlands, as well as remnant patches of landscaping trees and golf cart paths. The Project site’s valuable grassland and wetland habitat currently supports numerous special-status wildlife species, such as Cooper’s hawk and White-tailed kite.

3. The Project’s EIR purports to assess an overall “program” of projects and claims that no concrete development plans for specific projects exist currently. At the same time, the EIR “assumes” three so-called “phases” of construction, each involving a separate warehouse or building on both sides of the Contra Costa Canal. The Project site’s Employment Center Industrial land use designation allows for high-traffic, manufacturing and distribution warehouses or data centers for any of the Project’s phases.

4. The EIR states that the Project’s Phase I will likely involve a data center, one of the most energy-intensive building types and the first such land use in Pittsburg, California. The “assumed” data center will subsume about 22 acres and span over 347,000 square feet, with 37 back-up diesel generators housed in separate buildings, a commercial switching yard, PG&E electrical substation, and other facilities. In addition to the Phase I data center, the EIR assumes Phase II will involve a 368,551 square foot warehouse on 29 acres, and Phase III will involve a 392,567 square foot warehouse on 25 acres. Overall, the EIR projects that the Project area will have about 1,582 employees following Phase III construction.

5. The Project will have significant negative impacts on Pittsburg residents' air quality, traffic, and noise levels, and will increase wildfire risks, greenhouse gas emissions (GHGs), water usage, and harm to wildlife. The Project's impacts to air quality are particularly troubling, given the site's location close to numerous sensitive receptors. The property is directly adjacent to a residential area, 80 feet from a proposed park, 200 feet from a church, 250 feet from another park, and 640 feet from a junior high school. Nonetheless, the City failed to adequately evaluate these environmental impacts in the EIR, or identify effective mitigation measures, rendering the EIR inadequate under the California Environmental Quality Act ("CEQA"), Public Resources Code sections 21000 et seq. and the "CEQA Guidelines" (14 California Code of Regulations sections 15000 et seq.).

6. Members of the public including the Center for Biological Diversity (the “Center”) raised concerns throughout the administrative process that the Project would have significant negative environmental impacts on, among other things, biological resources (including special status species), wildfire, community safety, GHG emissions, water quality, water supply, traffic, and noise. Yet, the EIR failed to disclose or adequately analyze these impacts, identify and adopt feasible mitigation measures to reduce them, and consider reasonable alternatives to the Project.

7. Despite the EIR's numerous and fatal defects, the City approved the Project and certified the EIR against Petitioner's and the public's repeated objections. Petitioner brings this lawsuit to ensure that the City fully complies with state law by disclosing, analyzing, and mitigating the Project's significant environmental impacts and considering reasonable alternatives to the Project.

THE PARTIES

8. Petitioner CENTER FOR BIOLOGICAL DIVERSITY (“the Center”) is a non-profit conservation organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has approximately 1.7 million members and online activists throughout California and the United States, including members

1 who reside within communities in the Project’s vicinity. The Center has worked for many years
2 to protect imperiled plants and wildlife, open space, air and water quality, and the overall quality
3 of life for people in Contra Costa County. The Project’s approval and construction will directly
4 and adversely affect the Center’s members.

5 9. Respondent CITY OF PITTSBURG (the “City”), a political subdivision of the
6 State of California, is responsible for regulating and controlling land use within the jurisdiction
7 of the City, including implementing and complying with CEQA. The City is the “lead agency”
8 for the Project for purposes of Public Resources Code section 21067, with principal
9 responsibility for conducting environmental review of the Project. The City has a duty to
10 comply with CEQA and other state laws.

11 10. Respondent CITY COUNCIL OF THE CITY OF PITTSBURG (the “City
12 Council”) is the duly elected decision-making body of the City. As the decision-making body,
13 the City Council is responsible for adopting the necessary resolutions, ordinances, or approvals
14 for the Project, and for ensuring that the City has conducted an adequate and proper review of
15 the Project’s environmental impacts under CEQA prior to doing so.

16 11. On information and belief, Applicant PITTSBURG DATA HUB, LLC (“PDH”),
17 is a wholly owned subsidiary of AVAIO DIGITAL PARTNERS I, LLC; is a limited liability
18 company registered to do business in the State of California; is the owner of the real property
19 that is the subject of the approvals challenged in this action; is a Project applicant for purposes
20 of CEQA; and is the recipient of the approvals challenged in this action.

21 12. On information and belief, Real Party in Interest AVAIO DIGITAL PARTNERS
22 I, LLC (“Real Party in Interest” or “ADP”), is a Connecticut-based limited liability company
23 licensed to do business in the State of California; is the owner of the real property that is the
24 subject of the approvals challenged in this action; is a Project applicant for purposes of CEQA;
25 and is the recipient of the approvals challenged in this action.

1 13. On information and belief, Real Party in Interest JOHN DELACIO (“Real Party in
2 Interest”) is a natural person who is a Project applicant for purposes of CEQA and is the
3 recipient of the approvals challenged in this action.

4 14. Petitioner does not know the true names and capacities, whether individual,
5 corporate, associate, or otherwise, of respondents DOES 1 through 20, inclusive, and therefore
6 sues said respondents under fictitious names. Petitioner will amend this Petition to show their
7 true names and capacities when the same have been ascertained. Each of the respondents is the
8 agent and/or employee of Respondents, and each performed acts on which this action is based
9 within the course and scope of such respondent’s agency and/or employment.

10 15. Petitioner does not know the true names and capacities, whether individual,
11 corporate, associate, or otherwise, of real parties in interest DOES 21 through 40, inclusive, and
12 therefore sues said real parties in interest under fictitious names. Petitioner will amend this
13 Petition to show their true names and capacities when the same have been ascertained.

14 **JURISDICTION AND VENUE**

15 16. This Court has jurisdiction to issue a writ of mandate to set aside Respondents’
16 decision to approve the Project under California Code of Civil Procedure section 1094.5 (or
17 alternatively, section 1085) and Public Resources Code section 21168.5 (or alternatively, section
18 21168) and section 21168.9.

19 17. Venue for this action properly lies in the Contra Costa County Superior Court
20 because Respondents and the proposed Project site are located in the County. Many of the
21 Project’s significant environmental impacts that are the subject of this lawsuit would occur in
22 the County, and the Project would affect the interests of County residents, including Petitioner’s
23 members.

24 18. Respondents have taken final agency actions with respect to approving the Project
25 and certifying the EIR. Respondents had a duty to comply with applicable state laws, including
26 but not limited to CEQA, prior to undertaking the discretionary approvals at issue in this
27 lawsuit.

1 19. Petitioner has complied with the requirements of Public Resources Code section
2 21167.5 by serving a written notice of Petitioner’s intention to commence this action on
3 Respondents on November 27, 2024. A copy of the written notice and proof of service is
4 attached hereto as Exhibit A.

5 20. Petitioner has complied with the requirements of Public Resources Code section
6 21167.6 by concurrently notifying Respondents of Petitioner’s request to prepare the record of
7 administrative proceedings relating to this action. A copy of the Petitioner’s Election to Prepare
8 the Administrative Record of Proceedings is attached hereto as Exhibit B.

9 21. Petitioner has performed any and all conditions precedent to filing this instant
10 action and has exhausted any and all administrative remedies to the extent the law requires,
11 including, but not limited to, timely submitting extensive comments objecting to the Project
12 approval and identifying in writing to Respondents the deficiencies in Respondents’
13 environmental review. Specifically, the Center submitted detailed comments on August 19, 2024
14 on the Draft EIR and September 9, 2024 on the Final EIR, and commented orally during the
15 Pittsburg Planning Commission meeting on September 10, 2024 and during the City Council
16 meeting on November 4, 2024.

17 22. This Petition is timely filed in accordance with Public Resources Code section
18 21167 and CEQA Guidelines section 15112.

19 **GENERAL ALLEGATIONS**

20 **The Proposed Project and Project Site**

21 23. The Project is located on approximately 76 acres in Pittsburg, California.
22 Currently, the Project site remains largely undeveloped and contains dozens of acres of
23 grasslands and wetlands, which provide valuable habitat and connectivity for a wide variety of
24 species such as the White-tailed kite, California red-legged frog, Cooper’s hawk, Western pond
25 turtle, and Red-tailed hawk. Specifically, the Project site lies adjacent to an important wildlife
26 crossing across the Contra Costa Canal, connecting the Diablo Range Hills to the Bayland edge.
27 The City has acknowledged that the Contra Costa Canal has “relatively few crossings accessible
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1 to wildlife,” with this crossing providing one of the larger ones and providing “an important
2 location ... for wildlife connectivity.”

3 24. The EIR describes the Project as a phased, master planned warehouse
4 development with three construction phases. The EIR provides that Phase I of construction is
5 “assumed” to involve a 347,000 square foot data center on 22 acres, Phase II a 368,551 square
6 foot warehouse on 29 acres, and Phase III a 392,567 square foot warehouse on 25 acres. The
7 General Plan’s land use designation of the Project site as “Employment Center Industrial” and
8 the City’s rezoning of the Project site to “Planned Development” would allow for any phase to
9 include high-traffic manufacturing and distribution warehouses or data centers.

10 25. The Project approvals include a new Specific Plan; a zoning change, modifying
11 the zoning district from Limited Industrial with Limited Overlay to Planned Development; and a
12 vesting tentative subdivision map.

13 26. The Project site is highly susceptible to wildfire, with 11.4 acres designated as a
14 “High” Severity Fire Hazard Zone, and approximately 5.19 acres designated as a “Very High”
15 Severity Fire Hazard Zone. These “very high” zones are located throughout the Project site,
16 where slopes are greater and around areas with combustible vegetation.

17 27. The Project site also falls in a highly polluted area. According to the American
18 Lung Association’s “State of the Air” report, Contra Costa County received a “Fail” grade for
19 both particulate matter and ozone levels in 2024. The County is also in nonattainment for ozone
20 and particulate matter, and the EIR admits “a guarantee cannot be made that emissions from
21 future development of the Plan Area [will] not exceed the thresholds of significance” for either
22 pollutant in this nonattainment zone.

23 28. The Project site lies close to several sensitive receptors, including a proposed park
24 80 feet away, another park 250 feet away, and a junior high school 640 feet away, along with the
25 directly adjacent residential area and church 200 feet away. The Project will affect these nearby
26 sensitive receptors through increased noise, traffic congestion, degraded air quality, and
27 heightened wildfire risk. The Project will also result in urban discharge and runoff, increase
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1 water use for cooling the potential data center and other industrial uses, disrupt wildlife, and
2 increase GHG emissions, among other environmental harms.

3 29. On February 28, 2024, PDH applied for a Small Power Plan Exemption to the
4 California Energy Commission (“CEC”) for the assumed Phase I data center. The application
5 explains that the data center would include an emergency backup generating facility with a
6 generation capacity of up to 92 megawatts to support the data center in providing an
7 uninterruptible power supply for its tenant’s servers. Specifically, the Pittsburg Back-up
8 Generating Facility would consist of 37 three megawatt diesel-fired backup generators arranged
9 in a generation yard located on the data center’s west side. However, the CEC has not yet
10 approved the application, and “depending on CEC feedback, market demand, economic
11 conditions, site constraints, and other factors, the property owner may choose to proceed with a
12 different or revised development concept for Phase I.”

13 **The Project Approvals and EIR**

14 30. On February 28, 2024, the City issued a Notice of Preparation (“NOP”) for the
15 Project, in which it notified public agencies and interested individuals that, as a lead agency, it
16 would be preparing a Draft EIR to analyze the proposed Project’s potentially significant
17 environmental impacts.

18 31. On or about July 3, 2024, Respondents published a Notice of Availability of a
19 Draft EIR for the Project and circulated the Draft EIR for public review and comment.

20 32. Petitioner and numerous others, including individual members of the public,
21 submitted comments on the Draft EIR, pointing to serious deficiencies. For example, numerous
22 commenters noted how close the Project is to nearby residences and parks, which would result
23 in noise impacts and increased fire risks, as well as air quality impacts, and insisting that the
24 EIR’s analysis and proposed mitigation failed to meet CEQA standards.

25 33. On August 19, 2024, before the close of the comment period on the Draft EIR, the
26 Center submitted written comments on the Draft EIR to the City. The comments explained,
27 among other things, that the Draft EIR failed to comply with CEQA in the following respects:
28

- a. The Draft EIR lacked an adequate project description because it failed to assess the impacts of reasonably foreseeable, permissible land uses such as distribution warehouses on the Project site, instead basing its conclusions solely on the “assumed” Phase I data center repeatedly described as “speculative”;
- b. The Draft EIR’s analysis of and mitigation for GHG emissions failed to adequately disclose, evaluate, avoid, and/or mitigate significant impacts because, *inter alia*, (1) the EIR overlooked numerous GHG impacts, and (2) the California Air Resources Board intended the significance threshold used in the EIR for residential and mixed-use development only;
- c. The Draft EIR’s analysis of and mitigation for the Project’s air quality impacts was insufficient because it failed to definitively determine if emissions from all phases would exceed the thresholds of significance;
- d. The Draft EIR’s analysis of and mitigation for the Project’s water quality impacts was insufficient because it failed to consider vehicle-related toxins and other runoff from reasonably foreseeable distribution or manufacturing warehouses;
- e. The Draft EIR’s analysis of and mitigation for the Project’s water supply impacts was insufficient because it overlooked the data center’s reasonably foreseeable, massive water demands and failed to consider climate change impacts on water supply;
- f. The Draft EIR’s analysis of and mitigation for impacts to biological resources failed to adequately disclose, evaluate, avoid, and/or mitigate significant impacts to species and wildlife movement through the site, including sensitive species such as the California red-legged frog, Western pond turtle, White-tailed kite, Cooper’s hawk, and Red-tailed hawk; and
- g. The Draft EIR’s analysis of and mitigation for noise impacts failed to adequately disclose, evaluate, avoid, and/or mitigate noise impacts, because it included

1 numerous contradictory and inconsistent statements and failed to support its
2 contention that mitigation measures would reduce noise.

3 34. On August 30, 2024, just eleven days after the end of the Draft EIR comment
4 period, the City released a Final EIR for the Project, which included minimal text changes to the
5 Draft EIR and Respondents' responses to public comments on the Draft EIR. All the defects
6 Petitioner and other commenters identified in the Draft EIR persisted in the Final EIR, as the
7 Final EIR's revisions included only (1) one additional sentence in the Project Description; (2)
8 several General Plan policies pasted into the Land Use section and found consistent, and (3)
9 minor changes to Appendix B, the Specific Plan.

10 35. On September 9, 2024, the Center submitted comments on the Final EIR,
11 identifying myriad remaining inadequacies in the Final EIR, including the following:

- 12 a. The Final EIR still failed to consider the reasonably foreseeable impacts of a data
13 center, distribution warehouse, or manufacturing warehouse, all of which the
14 Project site's land use designation allows, excusing itself from adequate analysis
15 purportedly due to the EIR's programmatic status;
- 16 b. The Final EIR's GHG emissions analysis failed to adequately assess impacts by,
17 *inter alia*, (1) selecting a threshold of significance applicable only to residential
18 and mixed-use projects, (2) failing to take into account the loss of carbon storage
19 from destroying grasslands, and (3) failing to adequately consider emissions from
20 vehicle miles traveled for both passenger vehicles and trucks;
- 21 c. The Final EIR's analysis of and mitigation for the Project's traffic impacts
22 overlooked construction traffic and the thousands of daily truck trips a reasonably
23 foreseeable distribution warehouse would generate;
- 24 d. The Final EIR's analysis of and mitigation for the Project's air quality impacts
25 failed to determine if the air quality impacts exceeded the significance threshold,
26 overlooked impacts on sensitive receptors, and failed to adopt feasible mitigation
27 measures;

- e. The Final EIR's analysis of and mitigation for the Project's water quality impacts was insufficient because it failed to consider the impact of pollutants entering the Contra Costa Canal, and the Storm Water Pollution Prevention Plan constituted improperly deferred and vague mitigation;
- f. The Final EIR's analysis of and mitigation for the Project's water supply impacts was insufficient because the Water Supply Assessment's conclusions rested on historical normal water years and failed to consider climate change impacts on water supply;
- g. The Final EIR's analysis of and mitigation for impacts to sensitive species failed to adequately disclose, evaluate, avoid, and/or mitigate significant impacts to species and wildlife movement through the site, including the California red-legged frog, Western pond turtle, Cooper's hawk, and Red-tailed hawk and lacked adequate buffers to protect aquatic resources;
- h. The Final EIR's noise analysis failed to adequately disclose, evaluate, avoid, and/or mitigate noise impacts because, *inter alia*, it (1) improperly deferred assessment and mitigation to the project-level stage, (2) included inconsistent statements on noise impacts, (3) failed to adequately assess consistency with the General Plan, and (4) overlooked noise impacts on wildlife; and
- i. The Final EIR's analysis of and mitigation for the Project's wildfire-related impacts failed to adequately assess and mitigate increased wildfire ignition risks, lack of insurability due to wildfire risk, and the recent uptick in warehouse fires.

36. On September 10, 2024, the Planning Commission held a public hearing to consider the Project. Along with written comments, Petitioner provided oral testimony at the hearing, requesting further analysis and mitigation. The Planning Commission voted to recommend Project approval and EIR certification to the Pittsburg City Council.

1 **Respondents' Approval of the Project and Certification of the EIR**

2 37. On November 4, 2024, the Pittsburgh City Council held a public hearing to
3 consider whether to certify the Final EIR and approve the Project. Petitioner and members of the
4 public attended the public hearing and gave testimony opposing Project approval and EIR
5 certification.

6 38. At the conclusion of the November 4, 2024 hearing, the City Council unanimously
7 adopted the resolutions, certifying the Final EIR and approving the Project, as well as adopting
8 findings in support of Project approval, a Zoning Map amendment, and other Project-related
9 entitlements.

10 39. On November 5, 2024, the City filed a Notice of Determination for the Project
11 with the County Clerk, which stated that the City had approved the Project, prepared an EIR,
12 and adopted the CEQA findings.

13 40. The Notice of Determination listed Pittsburgh Data Hub, LLC as the sole project
14 applicant.

15 41. As a result of Respondents' actions in approving the Project and certifying the EIR
16 for the Project, Petitioner and its members will suffer significant and irreparable harm. Petitioner
17 has no plain, speedy, or adequate remedy at law for this irreparable harm. Unless this Court
18 grants the requested writ of mandate to require Respondents to set aside certification of the EIR
19 and approval of the Project, Respondents' approval will remain in effect in violation of state
20 law.

21 42. Respondents have prejudicially abused their discretion and failed to proceed in the
22 manner required by law in the following ways:

23 **FIRST CAUSE OF ACTION**

24 **Violation of CEQA – Inadequate EIR (Public Resources Code § 21000, et seq.,**
25 **CEQA Guidelines 14 Cal. Code Regs. § 15000 et seq.)**

26 43. Petitioner hereby incorporates by reference each and every allegation set forth
27 above.

1 44. The California legislature enacted CEQA to ensure that the long-term protection
2 of the environment is a guiding criterion in public decisions. CEQA requires the lead agency for
3 a project with the potential to cause significant environmental impacts to prepare an EIR for the
4 project that complies with the requirements of the statute, including, but not limited to, the
5 requirement to disclose and analyze the project's potentially significant environmental impacts.
6 The EIR must provide sufficient environmental analysis such that decisionmakers can
7 intelligently and fully consider environmental consequences when acting on the proposed
8 project. Such analysis must include and rely upon thresholds of significance that are based on
9 substantial evidence in the record.

10 45. CEQA also mandates that the lead agency analyze and adopt feasible and
11 enforceable mitigation measures that would reduce or avoid any of a project's significant
12 environmental impacts. If any of the project's significant impacts cannot be mitigated to a less
13 than significant level, then CEQA bars the lead agency from approving a project if a feasible
14 alternative is available that would meet the project's objectives while avoiding or reducing its
15 significant environmental impacts.

16 46. CEQA requires that substantial evidence in the administrative record support each
17 of the agency's findings and conclusions, including those contained in the EIR, and that the
18 agency explain how the evidence in the record supports the conclusions the agency has reached.

19 47. Respondents committed a prejudicial abuse of discretion and failed to proceed in a
20 manner required by law because the Project relies on an EIR that fails to meet CEQA's
21 requirements for the disclosure, analysis, mitigation, reduction, and/or avoidance of significant
22 environmental impacts from the Project, including direct and cumulative impacts relating to
23 wildfire, GHG emissions, air quality, traffic, biological resources, water supplies, and land use.

24 48. **Project Description.** The EIR's project description is legally inadequate because,
25 *inter alia*, the EIR:

- 26 a. fails to describe the whole of the Project;
- 27 b. improperly piecemeals environmental review; and

- 1 c. fails to describe and analyze the Project as it was ultimately approved by the City
2 at the City Council's November 4, 2024 hearing.

3 49. **Greenhouse Gas Emissions.** The EIR fails to adequately disclose, analyze, and/or
4 mitigate the Project's significant direct, indirect, and cumulative GHG impacts. The EIR's
5 analysis of GHG impacts is inadequate because, *inter alia*, the EIR:

- 6 a. fails to include and fully analyze all GHG emissions resulting from the Project;
7 b. uses a significance threshold intended for residential and mixed-use developments;
8 and
9 c. fails to incorporate all feasible mitigation and avoidance measures.

10 50. **Transportation.** The EIR fails to adequately disclose, analyze, and/or mitigate the
11 Project's significant direct, indirect, and cumulative traffic impacts. The EIR's analysis of traffic
12 impacts is inadequate because, *inter alia*, the EIR:

- 13 a. fails to disclose and fully analyze all traffic impacts resulting from the Project; and
14 b. fails to incorporate feasible mitigation and traffic reduction measures.

15 51. **Air Quality.** The EIR fails to adequately disclose, analyze, and/or mitigate the
16 Project's significant and cumulative impacts to air quality. The EIR's analysis of air quality
17 impacts is inadequate because, *inter alia*, it fails to:

- 18 a. determine if the Project's impacts will exceed a significance threshold;
19 b. disclose or analyze all potential sources of air pollution from the Project;
20 c. disclose or analyze the Project's air quality impacts on sensitive populations; and
21 d. adopt all feasible mitigation measures and consider alternatives that would reduce
22 impacts.

23 52. **Water Quality.** The EIR fails to adequately disclose, analyze, and/or mitigate the
24 Project's significant and cumulative impacts to water quality. The EIR's analysis of water
25 quality impacts is inadequate because, *inter alia*, the EIR:

- 26 a. fails to disclose or analyze all potential sources of water pollution from the
27 Project;
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- b. relies on vague, ineffective, deferred, and/or unenforceable mitigation measures;
and
- c. fails to adopt all feasible mitigation measures and consider alternatives that would
reduce impacts.

53. **Water Supplies.** The EIR fails to adequately disclose, analyze, and/or mitigate the Project's significant impacts to water supplies because, *inter alia*, the EIR:

- a. fails to assess the Phase I data center's reasonably foreseeable water demand;
- b. fails to consider climate change impacts on the Project's water supply; and
- c. fails to adopt all feasible mitigation measures and consider alternatives to reduce
water demands.

54. **Biological Resources.** The EIR fails to adequately disclose, analyze, and/or mitigate the Project's significant direct and cumulative impacts to numerous special status species and other wildlife affected by the Project. Those wildlife species include, but are not limited to: California red-legged frog, Western pond turtle, Cooper's hawk, White-tailed kite, and Red-tailed hawk. The EIR's biological resources analysis is inadequate because, *inter alia*, the EIR fails to:

- a. include and fully analyze all biological resource impacts resulting from the
Project, including impacts on the wildlife using the Contra Costa Canal crossing;
- b. require sufficient buffers to protect aquatic resources;
- c. adequately disclose, analyze, and/or mitigate the Project's significant impacts on
habitats and features such as grasslands and wetlands; and
- d. adequately disclose, analyze, and/or mitigate the Project's direct, indirect, and
cumulative impacts on other biological resources, including cumulative impacts on
wildlife movement.

55. **Noise.** The EIR fails to adequately disclose, analyze, and/or mitigate the Project's significant direct, indirect, and cumulative noise-related impacts. The EIR's analysis of noise-related impacts is inadequate because, *inter alia*, the EIR:

- a. fails to adequately disclose, analyze, and/or mitigate the full extent of the Project’s noise-related impacts, including but not limited to the increased risk of noise from the “assumed” data center and increased traffic noise from reasonably foreseeable manufacturing or distribution warehouses;
- b. relies on vague, ineffective, deferred, and/or unenforceable mitigation measures; and
- c. fails to incorporate all feasible mitigation, alternatives, or avoidance measures.

56. **Wildfire.** The EIR fails to adequately disclose, analyze, and/or mitigate the Project’s significant direct, indirect, and cumulative wildfire-related impacts. The EIR’s analysis of wildfire-related impacts is inadequate because, *inter alia*, the EIR:

- a. fails to adequately disclose, analyze, and/or mitigate the full extent of the Project’s wildfire-related impacts, including but not limited to the increased risk of wildfire ignition resulting from the Project and the safety of nearby residents; and
- b. fails to incorporate all feasible mitigation, alternatives, or avoidance measures.

57. **Cumulative Impacts.** The EIR fails to adequately disclose, analyze, or mitigate the Project’s significant cumulative impacts. The EIR fails to consider the full scope of recently-approved or pending development projects within the City and neighboring jurisdictions that would together create significant environmental impacts.

58. **Response to Comments.** The responses to comments in the Final EIR fail to meet CEQA’s requirements because they do not adequately dispose of all the issues raised, nor provide specific rationales for rejecting suggested Project changes, such as the adoption of feasible mitigation measures. CEQA requires lead agencies to evaluate and respond to all environmental comments on the Draft EIR that they receive during the public review period. The responses must describe the disposition of the issues raised and must specifically explain reasons for rejecting suggestions and for proceeding without incorporating the suggestions. The Final EIR’s response to comments fails to satisfy the requirements of law.

59. Based upon each of the foregoing reasons, the EIR is legally defective under CEQA. Respondents prejudicially abused their discretion in violation of CEQA in approving the Project. As such, the Court should issue a writ of mandate directing Respondents to set aside the EIR certification and Project approval.

SECOND CAUSE OF ACTION

Violation of CEQA — Inadequate Findings

(Public Resources Code § 21000, et seq., CEQA Guidelines § 15000 et seq.)

60. Petitioner hereby incorporates by reference each and every allegation set forth above.

61. Respondents' Findings of Fact violate CEQA requirements and the CEQA Guidelines. Respondents' Findings of Fact fail to identify the changes or alterations required to avoid or substantially lessen the Project's significant environmental impacts, and do not provide adequate reasoning or disclose the analytic route from facts to conclusions, as required by law. The purported Project benefits do not outweigh the Project's substantial costs to public health and the environment. Respondents' Findings of Fact are not supported by substantial evidence in the record.

62. When an EIR concludes that a project would result in significant environmental effects, but where mitigation measures and alternatives identified in the EIR are deemed infeasible, the CEQA findings must identify the specific economic, legal, social, and technological considerations, as well as other considerations, that make infeasible the adoption of mitigation measures or alternatives. All CEQA findings must be supported by substantial evidence in the record and must disclose the analytical route by which approval of a project is justified. Here, substantial evidence does not support the findings regarding the impacts, mitigation measures, and alternatives relied upon by Respondents' Project approval, and the findings do not disclose the links between evidence and conclusions.

63. Respondents' Findings of Fact fail to reflect the independent judgment of Respondents.

64. As a result of the foregoing defects, Respondents failed to proceed in a manner required by law, and substantial evidence does not support Respondents' decision to approve the Project and adopt the Findings of Fact.

WHEREFORE, Petitioner prays for relief as follows:

PRAYER FOR RELIEF

1. For alternative and peremptory writs of mandate directing Respondents to vacate and set aside certification of the EIR, adoption of the Findings, and approval of all associated Project permits, entitlements, and approvals;

2. For alternative and peremptory writs of mandate directing Respondents to comply with CEQA and the CEQA Guidelines and take any other action as required by Public Resources Code section 21168.9;

3. For a temporary stay, temporary restraining order, and preliminary and permanent injunctions restraining Respondents or Real Parties, and their agents, servants, and employees, and all others acting in concert with them or on their behalf, from taking any action to implement, fund, or construct any portion or aspect of the Project, pending full compliance with the requirements of CEQA and the CEQA Guidelines;

4. For a declaration that Respondents' actions in certifying the EIR and approving the Project violated CEQA and the CEQA Guidelines, and that the certification and approvals are invalid and of no force or effect, and that the Project is inconsistent with other applicable plans, policies, or regulations;

5. For costs of the suit;

6. For attorney's fees as authorized by Code of Civil Procedure section 1021.5 and other provisions of law; and,

7. For such other and future relief as the Court deems just and proper.

1 DATED: December 2, 2024

CENTER FOR BIOLOGICAL DIVERSITY

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3 By: 

4
5 Meredith Stevenson
6 Frances Tinney

7 Attorneys for Petitioner CENTER FOR
8 BIOLOGICAL DIVERSITY
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I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents.

Executed on December 2, 2024, at Shelter Cove, California.



Peter Galvin, Director of Programs
Center for Biological Diversity

EXHIBIT A



Via FedEx

November 27, 2024

Alice E. Evenson, City Clerk
Donna Mooney, City Attorney
City of Pittsburg
Pittsburg City Hall
65 Civic Avenue
Pittsburg, CA 94565

Re: Notice of Commencement of Legal Action Pursuant to the California Environmental Quality Act

Dear Ms. Evenson and Ms. Mooney,

The Center for Biological Diversity (“Petitioner”) intends to commence an action for writ of mandate to vacate and set aside the decision of the City of Pittsburg and the City Council of the City of Pittsburg (“Respondents”) approving the Pittsburg Technology Park Specific Plan (the “Project”) and certifying a Final Environmental Impact Report for the Project. Petitioner submits this notice pursuant to Public Resources Code section 21167.5.

The action will commence on December 2, 2024 and will be largely based upon Respondents’ failure to comply with the California Environmental Quality Act (Public Resources Code § 21000, *et seq.*) in adopting the Environmental Impact Report and approving the Project.

Sincerely,

Meredith Stevenson
Staff Attorney
Center for Biological Diversity
1212 Broadway, Suite #800
Oakland, CA 94612
Tel: (510) 844-7117
mstevenson@biologicaldiversity.org

cc: aevenson@pittsburgca.gov; dmooney@pittsburgca.gov



Via FedEx

November 27, 2024

Alice E. Evenson, City Clerk
Donna Mooney, City Attorney
City Council of the City of Pittsburg
Pittsburg City Hall
65 Civic Avenue
Pittsburg, CA 94565

Re: Notice of Commencement of Legal Action Pursuant to the California Environmental Quality Act

Dear Ms. Alice E. Evenson and Councilmembers,

The Center for Biological Diversity (“Petitioner”) intends to commence an action for writ of mandate to vacate and set aside the decision of the City of Pittsburg and the City Council of the City of Pittsburg (“Respondents”) approving the Pittsburg Technology Park Specific Plan (the “Project”) and certifying a Final Environmental Impact Report for the Project. Petitioner submits this notice pursuant to Public Resources Code section 21167.5.

The action will commence on December 2, 2024 and will be largely based upon Respondents’ failure to comply with the California Environmental Quality Act (Public Resources Code § 21000, *et seq.*) in adopting the Environmental Impact Report and approving the Project.

Sincerely,

Meredith Stevenson
Staff Attorney
Center for Biological Diversity
1212 Broadway, Suite #800
Oakland, CA 94612
Tel: (510) 844-7117
mstevenson@biologicaldiversity.org

cc: aevenson@pittsburgca.gov; dmooney@pittsburgca.gov

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I am employed in Oakland, California. I am over the age of 18 and not a party to the foregoing action. My business address is Center for Biological Diversity, 1212 Broadway, Suite 800, Oakland, California 94612. My email address is wmuhire@biologicaldiversity.org.

Notice of Commencement of Legal Action Pursuant to CEQA

[X] BY FEDERAL EXPRESS: By placing a true and correct copy thereof in sealed envelope(s). Such envelope(s) were addressed as shown below. Such envelope(s) were deposited for collection and mailing following ordinary business practices with which I am readily familiar.

Pittsburg, CA 94565

Executed on November 27, 2024 at Sacramento, California.

Wanjiku Muhire

EXHIBIT B

1 Meredith Stevenson (SBN 328712)
2 Frances Tinney (SBN 346927)
3 CENTER FOR BIOLOGICAL DIVERSITY
4 1212 Broadway, Suite 800
5 Oakland, California 94612
6 Telephone: (510) 844-7100
7 Facsimile: (510) 844-7150
8 mstevenson@biologicaldiversity.org
9 ftinney@biologicaldiversity.org

10 *Attorneys for Petitioner and Plaintiff Center for Biological Diversity*

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF CONTRA COSTA**

13 CENTER FOR BIOLOGICAL
14 DIVERSITY,

15 Petitioner and Plaintiff,

16 v.

17 CITY OF PITTSBURG; CITY COUNCIL
18 OF THE CITY OF PITTSBURG; and
19 DOES 1 through 20, inclusive,

20 Respondents and Defendants;

21 PITTSBURG DATA HUB, LLC; JOHN
22 DELACIO; AVAIO DIGITAL
23 PARTNERS I, LLC; and DOES 21
24 through 40, inclusive,

25 Real Parties in Interest.

Case No.

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

[Pub. Res. Code § 21167.6]

1 **TO RESPONDENTS CITY OF PITTSBURG AND CITY COUNCIL OF THE**
2 **CITY OF PITTSBURG:**

3 In the above-captioned action, Petitioner Center for Biological Diversity (“Petitioner”)
4 petitions this Court for a Writ of Mandate, directed to the City of Pittsburg and the City Council
5 of the City of Pittsburg (“Respondents”). Petitioner challenges Respondents’ November 4, 2024
6 approval of the Pittsburg Technology Park Specific Plan (“Project”) and certification of the
7 Final Environmental Impact Report (“EIR”) for the Project (State Clearinghouse #
8 2024030184). Petitioner seeks a determination that Respondents’ approvals were inconsistent
9 with, among other things, the requirements of the California Environmental Quality Act
10 (“CEQA”), Public Resources Code section 21000 *et seq.*, and the CEQA Guidelines, Title 14,
11 California Code of Regulations, section 15000 *et seq.*

12 Pursuant to Public Resources Code section 21167.6(b)(2), Petitioner hereby elects to
13 prepare the record of proceedings for this action. The record will be organized chronologically,
14 paginated consecutively, and indexed so that each document may be clearly identified as to its
15 contents and source, in form and format consistent with California Rules of Court, Rule 3.2205.

16 Petitioner will include in the record of proceedings all documents, including transcripts,
17 minutes of meetings, notices, correspondences, reports, studies, proposed decisions, final drafts,
18 and any other documents or records relating to Respondents’ approval of the Project and
19 certification of the Project EIR.

1 DATED: December 2, 2024

CENTER FOR BIOLOGICAL DIVERSITY

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3 By: 

4 Meredith Stevenson

5 Frances Tinney

6 Attorneys for Petitioner CENTER FOR
7 BIOLOGICAL DIVERSITY
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