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Via Electronic Mail Only

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Re: Proposed Solano Maritime and Manufacturing Act: Agenda Item 29

Dear Honorable Members of the Board of Supervisors:

This firm represents the Solano County Orderly Growth Committee in matters related to the ill-conceived and damaging California Forever scheme. We have reviewed the Solano Maritime and Manufacturing Act and are writing to inform you of several legal problems embedded in that proposed law, including the following:

- The Act would *require* the Board to amend the County's General Plan and Zoning Code to allow for Maritime and Manufacturing uses when requested to do so by California Forever landowners. (See § 66499.901(a) on pages 3-4).
 - This would be an unprecedented takeover of the Board's discretionary, legislative authority to determine the best location and extent of allowed land uses within the unincorporated County.
 - State Planning and Zoning law requires a general plan to meet certain standards, but the governing body retains discretion to determine the

land use designation for particular parcels. (Gov. Code §§ 65300, 65301, 65302, 65358). The Act would conflict with these laws.

- The Act would require the Board to redesignate land to allow for Maritime and Manufacturing uses *while disregarding longstanding, existing General Plan policies* of city-centered growth and farmland and open space protection. (See § 66499.901(a)(1) on page 3).
 - Land Use Policy LU.P-3 requires the General Plan's designation of lands as agriculture or open space to remain in effect until December 31, 2028.
 - Because this Policy was readopted and extended by over 70% of County voters via their constitutional initiative power, the Board cannot change those designations without voter approval. (Ordinance No. 2008-01 (Measure T); *Devita v. County of Napa* (1995) 9 Cal.4th 763, 796).
 - The California Supreme Court has already upheld such voter-approved general plan policies to preserve agricultural land by restricting changes in land use designations. (*Devita*, 9 Cal.4th at 796).
- The Act purports to allow the Board to require execution of a Development Agreement in connection with a conditional use permit, *but that provision is illusory*. (See § 66499.901(d) on pages 4-5).
 - A Development Agreement is a *voluntary* agreement, meaning the developer must agree to its terms. (Gov. Code § 65865).
 - Any community benefits, fees, and infrastructure that do not have an essential nexus and rough proportionality to the project's impacts are unconstitutional. (*Koontz v. St. Johns River Water Management District* (2013) 570 U.S. 595.)
 - *The County, therefore, will have no leverage in negotiating the terms of the Development Agreement* because, under the Act, the County will have already granted the developer the legislative approvals that it requires, and the Act prohibits the County from changing those land use designations until *after* the County's General Plan update is complete. (See § 66499.901 on page 3, Section 8 on pages 13-14).

- The Act would deem the Solano County General Plan Final EIR, adopted nearly 20 years ago, as sufficient to satisfy environmental review requirements for *any* Maritime and Manufacturing project—including infrastructure located on the bay delta or rivers outside of the industrial area. (See § 21159.41(a) and 21159.40(d)(2) on page 6).
 - The 2008 EIR, however, was a first-tier, program environmental review document. (See FEIR Vol. 1, § 2.5, pages 2-8 to 2-9.)
 - CEQA prohibits future projects from relying on program EIRs before those projects *are defined* and *assessed* along with current environmental conditions. (14 C.C.R. § 15168 (“Later activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared.”)).

The Solano County Board of Supervisors should not endorse this unprecedented takeover of its own land use authority. Nor should it countenance the Act’s disregard for state and local laws, including those approved by County voters, to protect the County’s residents, environment, and agricultural community. The County has the tools it needs to consider approving any new maritime and manufacturing uses without the proposed Act.

This letter has highlighted key legal issues that warn against the Board endorsing the Act. Other concerns regarding the legality of the Act and its unintended consequences will continue to arise. The Board should vote to oppose this legislation, presented to it in the eleventh hour.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Heather M. Minner, Attorney

cc: Duane Kromm, Solano County Orderly Growth Committee

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