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19 February 2010

Mayor Guy S. Bjerke and City Council  
City of Concord  
1950 Parkside Drive, MS/01  
Concord, CA 94519

**Re: Concord Community Reuse Project Final Environmental Impact Report**

Dear Mayor Bjerke and Councilmembers:

On behalf of the Community Coalition for a Sustainable Concord, I write to offer solutions to remedy outstanding deficiencies in the Environmental Impact Report for the Concord Community Reuse Project.

The Coalition's extensive comment letters and testimony at last week's Council meeting have highlighted a number of fundamental deficiencies in the environmental review, including the EIR's failure to mitigate significant impacts adequately. We write not to reiterate the seriousness of those deficiencies but instead to suggest solutions.

We share your desire to move the reuse plan forward without unnecessary delay, and the best way to accomplish that shared goal is to remedy problems now rather than leaving them to fester. Accordingly, you will find in Attachment A specific mitigation measures that you can include in the FEIR now. By doing so, you will both bring the FEIR into legal compliance and ensure that the environment and community are adequately protected in the future.

Including more robust mitigation measures in the FEIR and Mitigation, Monitoring, and Reporting Plan (MMRP) is the most appropriate and straight-forward way to meet legal obligations and community needs. Two important legal principles are well-established in this area. First, CEQA's requirement to adopt measures that mitigate significant environmental impacts applies not only at the project level, but also in programmatic EIRs. *See* Cal. Code Regs. tit. 14, §§ 15126.4(a)(1), 15168(a)(1)-(4). Indeed, consideration and adoption of program-wide mitigation measures is one of the central purposes of a programmatic EIR. *See In re Bay-Delta Programmatic Environmental Impact Report*, 43 Cal. 4th 1143, 1169 (2008). While programmatic mitigations are often less fine-grained than those at

the project level, they are equally important and must be equally concrete and robust.

Second, if any mitigations are deferred at the programmatic stage, the EIR must establish specific and fully enforceable performance standards against which future project-level mitigation efforts will be measured. *See* Cal. Code Regs. tit. 14, §15126.4(a)(1)(B); *Endangered Habitats League, Inc. v. County of Orange*, 131 Cal. App. 4th 777, 793-4 (2005).

Many of the significant impacts of greatest concern boil down to a single source, automobiles. Air quality, climate change, noise and vibration, and of course numerous transportation impacts can be traced back to the tens of thousands of cars that the Reuse Project will add to the roads. Mitigating these significant impacts at the programmatic level requires a multi-pronged approach, including minimizing the number of car trips, reducing trip length, providing alternative transit modes, and implementing forward-looking land use practices. In other words, the necessary mitigation measures are those that will ensure more project area workers can afford to live near their jobs, more existing Concord residents are employed in the project area, and public transportation is viable and incentivized. Specific mitigation measures outlined in Attachment A include:

- A **housing impact fee** on development of all types, including residential, to offset the need for affordable housing generated by that development.
- Ensuring the availability of land and funding necessary for the Homeless Collaborative to **complete the integrated housing proposal**, of which the Homeless Assistance Conveyance is just a piece.
- Policies to ensure hiring and training of local workers at **family-sustaining wages**, including a Living Wage and Benefits Ordinance, promotion of Project Labor Agreements during construction, local hire, apprenticeship conditions, prevailing and living wages, and the use of responsible local contractors.
- Firm commitments to develop and implement a robust **Climate Action Plan (CAP)**, including a schedule for adoption, a clear public process, minimum GHG reduction targets, a commitment to emphasize land-use and transportation policies, and establishment and monitoring of both GHG and equity benchmarks.
- Clear baseline criteria for **Transportation Demand Management**, such as: a transportation impact fee to fund both capital and operating expenses, optimal parking fee structures, reduced parking requirements for lower-income housing in TOD zones, minimum transit performance standards, and guarantees to blunt traffic and parking impacts in existing neighborhoods.

Of course, not all of the project's environmental impacts are automobile-related; disruption of plant and wildlife habitats, watersheds, and visual resources also require stronger and more definite mitigations. Two mitigation measures would address many of these intertwined issues: a firm commitment and program to **restore Mt. Diablo Creek and permanent preservation of open space areas** through stewardship by the East Bay Regional Parks District. As detailed in Attachment A, the FEIR and MMRP should:

- Include mitigations that specifically require the creation, adoption, and implementation of a comprehensive, site-wide permitting/mitigation strategy including creek restoration

concepts, with detailed and specific steps, timing, implementation and both a funding plan and monitoring and enforcement requirements.

- Commit to grant the Public Benefit Conveyance to the East Bay Regional Park District to ensure that the open space on the site is protected in perpetuity.
- Reduce far-flung low-density residential zones in favor of increasing density in TOD areas, which will reduce the project footprint to preserve more open space.

Adding more robust mitigation measures to the FEIR will not only address CEQA requirements and protect the environment; it will also strengthen the City's hand with the Navy to secure Concord-serving benefits from the Reuse Project. As City staff has repeatedly emphasized, Concord will need to negotiate the reuse plan, conveyance mechanisms, and required developer agreements with the Navy prior to land sale. To the extent that the FEIR incorporates mitigation measures designed to ensure that the Reuse Project contains adequate environmental protections for Concord residents, this will provide a strong foundation for these discussions. *Mitigation measures incorporated into the FEIR become a necessary precondition to project development, effectively taking them off of the negotiating table.* Incorporating these measures early in the process also provides more certainty to developers as they bid for the land. Deferring mitigation without performance standards and guidelines for future development not only violates the law, but leaves both the environment and the Concord community at unnecessary risk.

We suggest these mitigations in a constructive effort to help you ensure that the needs of the environment and community are adequately protected by the adoption of a legally-sufficient FEIR. Public Advocates and the CCSC would welcome the opportunity to discuss our suggestions and ways to incorporate them into the FEIR and MMRP.

Sincerely yours,



Sam Tepperman-Gelfant  
Staff Attorney

Attachments:

- A. Suggested mitigations for the FEIR and MMRP
- B. Sample housing impact fee statutes and nexus studies
- C. Sample affordable housing overlay zoning ordinances

cc: Dan Keen, City Manager  
Michael Wright, Reuse Project Director