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Via Email and Overnight Mail

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Rebecca Bustos, Project Planner I
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Reena Brilliot, Planning Manager
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Re: Draft Environmental Impact Report for Agrihood Project aka Files PLN2016-12389, PLN2016-12390, CEQ2016-01017, and SCH 2018042026

Dear Ms. Bustos, and Ms. Brilliot:

I am writing on behalf of the Laborers International Union of North America, Local Union 270 and its members living in Santa Clara County and/or the City of Santa Clara ("LiUNA"), regarding the Draft Environmental Impact Report ("DEIR") prepared for the Agrihood Project (aka Files PLN2016-12389, PLN2016-12390, CEQ2016-01017, and SCH 2018042026), including all actions related or referring to the proposed construction of 165 senior apartments, 160 multi-family apartment units, and 36 townhouses, at 1834 Worthington Circle on APN: 303-14-053 in the City of Santa Clara.("Project").

We have reviewed the DEIR and conclude that it fails to comply with the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000, et seq. This letter points out some of the most obvious defects in the DEIR. We reserve the right to supplement these comments at later hearings on the EIR and the Project.

A. The DEIR Fails to Impose All Feasible Mitigation Measures.

The DEIR admits that the Project will have significant unavoidable greenhouse gas ("GHGs") impacts, but fails to impose all feasible mitigation measures. CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring "environmentally superior" alternatives and mitigation measures. (CEQA Guidelines § 15002(a)(2) and (3); See also, *Berkeley Keep Jets v. Board*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564) The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to "identify ways that environmental damage can be avoided or significantly reduced." (Guidelines §15002(a)(2)) If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns." (Pub.Res.Code § 21081; 14 Cal.Code Regs. § 15092(b)(2)(A) & (B))

For example, the DEIR proposes only a "solar ready" roof. Yet the DEIR fails to propose installing solar photovoltaic panels on the roof. Solar panels are clearly feasible within the meaning of CEQA and should be required. A "solar ready" roof does not reduce GHG emissions at all since solar panels may or may not ultimately be installed. A public agency may not rely on mitigation measures of uncertain efficacy or feasibility. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation measure because no record evidence existed that replacement water was available).) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors. (14 CCR § 15364.) Mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments. (14 CCR § 15126.4(a)(2).) Mitigation measures are not adequate unless the lead agency can show that the mitigation measure that will actually be implemented in its entirety. (*Napa Citizens for Honest Gov. v. Bd. Of Supervisors* (2001) 91 CallApp.4th 342 (no evidence that impacts will be mitigated simply by paying a fee); *Anderson First Coal. v. City of Anderson* (2005) 130 Ca.App.4th 1173 (traffic mitigation fee is inadequate because it does not ensure that mitigation measure will actually be implemented); *Kings Co. Farm Bureau v. Hanford* (1990) 221 Cal.App.3d 692. But see, *Save Our Peninsula Comm v. Monterey Co.* (2001) 87 Cal.App.4th 99 (mitigation fee allowed when evidence in the record demonstrates that the fee will fund a specific mitigation plan that will actually be implemented in its entirety).) A "solar ready" roof without a commitment to install solar panels is not an enforceable mitigation measure.

A recirculated DEIR should be prepare to analyze the feasibility of solar panels and other feasible mitigation measures set forth by the California Attorney General (attached).

B. The DEIR Fails to Provide Substantial Evidence to Support a Statement of Overriding Considerations, Particularly With Respect to the Quality of Employment Opportunities that will be Created by the Project.

The EIR concludes that the Project will have significant, unmitigated environmental impacts. As a result, the City will need to adopt a statement of overriding considerations. Under CEQA, when an agency approves a project with significant environmental impacts that will not be fully mitigated, it must adopt a "statement of overriding considerations" finding that, because of the project's overriding benefits, it is approving the project despite its environmental harm. (14 Cal.Code Regs. §15043; Pub. Res. Code §21081(B); *Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212, 1222). A statement of overriding considerations expresses the "larger, more general reasons for approving the project, such as the need to create new jobs, provide housing, generate taxes and the like." (*Concerned Citizens of South Central LA v. Los Angeles Unif. Sch. Dist*. (1994) 24 Cal.App.4th 826, 847).

A statement of overriding considerations must be supported by substantial evidence in the record. (14 Cal.Code Regs. §15093(b); *Sierra Club v. Contra Costa Co*. (1992) 10 Cal.App.4th 1212, 1223)). The agency must make "a fully informed and publicly disclosed" decision that "specifically identified expected benefits from the project outweigh the policy of reducing or avoiding significant environmental impacts of the project." (15 Cal.Code Regs. §15043(b)). As with all findings, the agency must present an explanation to supply the logical steps between the ultimate finding and the facts in the record. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515).

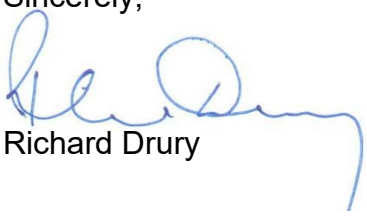
Key among the findings that the lead agency *must* make is that:

> "Specific economic, legal, social, technological, or other considerations, including ***the provision of employment opportunities for highly trained workers*****,** make infeasible the mitigation measures or alternatives identified in the environmental impact report…[and that those] benefits of the project outweigh the significant effects on the environment."

(Pub. Res. Code §21081(a)(3), (b)).

Thus, the City must make specific findings, supported by substantial evidence, concerning both the environmental impacts of the Project, and the economic benefits including "the provision of employment opportunities for highly trained workers" created. The EIR and its supporting documents fail to provide substantial evidence to support a statement of overriding considerations. The City cannot find that the economic benefits of the Project outweigh the environmental costs if it does not know what the economic benefits will be. A revised EIR, Fiscal Analysis and Statement of Overriding Considerations is required to provide this information.

Sincerely,



Richard Drury