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July 17, 2018

Via Email and Hand Delivery

Mayor Sofia Pereira
Members of the Arcata City Council
736 F Street
Arcata, CA 95521
c/o citymgr@cityofarcata.org

Re: The Village Student Housing Project – Final Environmental Impact Report
(State Clearinghouse No. 2016102038)

Dear Mayor Pereira and Councilmembers:

I am writing on behalf of Laborers' International Union of North America Local Union No. 324 and its members living in and around the City of Arcata (collectively "LIUNA" or "Commenters") regarding the Draft and Final Environmental Impact Report ("EIR") prepared for The Village Student Housing Project (SCH No. 2016102038) proposed to be located at 2905 St. Louis Road, Arcata, CA 95521 ("Project"). The Project involves construction by AMCAL Equities, LLC ("AMCAL") of 240 units of student housing at the former Craftsman's Mall property to be used by 800 Humboldt State University ("HSU") students. This letter follows Commenters' previous letter dated June 7, 2018, raising concerns about the Project's inadequate Statement of Overriding Considerations.

After reviewing the Project and the EIR together with our expert consultants, it is evident that the EIR contains numerous errors and omissions that preclude accurate analysis of the Project. As a result of these inadequacies, the EIR fails as an informational document and fails to impose all feasible mitigation measures to reduce the Project's impacts. Commenters request that the City of Arcata ("City") address these shortcomings in a revised draft environmental impact report ("RDEIR") and recirculate the RDEIR prior to considering approvals for the Project.

Commenters submit herewith comments of the environmental consulting firm Soil/Water/Air Protection Enterprise ("SWAPE"), including Matthew Hagemann, P.G., C.Hg., QSD, QSP, former Senior Science Policy Advisor, U.S. EPA Region 9 and Hydrogeologist, Superfund, RCRA and Clean Water programs and environmental scientist Hadley Nolan, who conclude that the EIR fails to adequately evaluate and mitigate the Project's air quality and greenhouse gas impacts. First, the EIR fails to acknowledge that by the EIR's own admission, the Project will result in significant operational air quality impacts. Second, the EIR failed to conduct a Health Risk

Assessment for the Project, based on reasoning that is inconsistent with the Office of Environmental Health Hazards guidance on when such analysis are needed. SWAPE's analysis demonstrates that the Project will create significant cancer risks above the applicable CEQA significance threshold. Third, SWAPE found that the EIR failed to calculate the Project's GHG emissions. Finally, there are additional mitigation measures that are feasible that must be considered to reduce the Project's significant air quality and greenhouse gas emissions.

Commenters also submit comments from civil and traffic engineer Daniel Smith, Jr. ("Smith"), who determined that the EIR incorrectly calculates the Project's traffic impacts. Mr. Smith finds that the Project's traffic impacts were not properly analyzed and that one of the mitigation measures is not proper. Therefore, additional analysis and mitigation is required to reduce the Project's traffic impacts.

Mr. Hagemann and Ms. Nolan's comments and curriculum vitae are attached hereto as Exhibit A and are incorporated herein by reference. Mr. Smith's comments and curriculum vitae are attached hereto as Exhibit B and are incorporated herein by reference. Each of SWAPE's and Mr. Smith's comments requires separate responses from the City. These experts and our own independent review demonstrate that the EIR is inadequate and that a revised DEIR should be prepared prior to Project approval to analyze all impacts and require implementation of all feasible mitigation measures.

I. PROJECT DESCRIPTION.

The Project site is located in the north central portion of the City of Arcata just west of Highway 101. The street address of the Project is 2905 St. Louis Road. The site covers approximately 11 acres and consists of seven parcels (APNs 505-022-011, -012, 503-372-002, -003, -004, -005, and -006). In the past, the site was used as a lumber mill. The site is now home to Craftsman's Mall, a grouping of artisan and light industrial rental spaces. The proposed Project involves the demolition of all existing structures at the Project site. The Project would involve the creation of an HSU off-campus student housing community. It would consist of approximately 240 units and 800 bed in four 4-story buildings each with an interior courtyard. It would also include a number of support facilities, such as a fitness center, recreation courts, access roads, trails, and the creation of between 240 – 480 parking spaces.

II. LEGAL STANDARDS.

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR") (except in certain limited circumstances). See, e.g., Pub. Res. Code § 21100. The EIR is the very heart of CEQA. *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652. "The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the

fullest possible protection to the environment within the reasonable scope of the statutory language.” *Comms. for a Better Env’t v. Calif. Resources Agency* (2002) 103 Cal. App. 4th 98, 109.

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 Cal. Code Regs. (“CEQA Guidelines”) § 15002(a)(1). “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564. The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354 (“Berkeley Jets”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures. CEQA Guidelines § 15002(a)(2) and (3); *see also Berkeley Jets*, 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.” CEQA 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 (“PRC”) § 21081; CEQA Guidelines § 15092(b)(2)(A) & (B).

The EIR is the very heart of CEQA. *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652. CEQA requires that a lead agency analyze all potentially significant environmental impacts of its proposed actions in an EIR. PRC § 21100(b)(1); CEQA Guidelines § 15126(a); *Berkeley Jets*, 91 Cal.App.4th 1344, 1354. The EIR must not only identify the impacts, but must also provide “information about how adverse the impacts will be.” *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831. The lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692. “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” *Communities for a Better Env’t v. Calif. Resources Agency* (2002) 103 Cal.App.4th 98, 109.

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A ‘clearly inadequate or unsupported study is entitled to no judicial deference.’” *Berkeley Jets*, 91 Cal. App. 4th 1344, 1355 (emphasis added), quoting, *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 391 409, fn. 12. A prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.” *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 722]; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal. App. 4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 946. As discussed below, and in the attached expert comment letter, the EIR for this Project fails to adequately analyze and mitigate the Project’s impacts.

III. THE DEIR FAILS TO ADEQUATELY DESCRIBE THE ENVIRONMENTAL SETTING OF THE PROJECT BY FAILING TO ACCURATELY DESCRIBE THE TRAFFIC BASELINE CONDITIONS.

To facilitate its informational goals, an EIR must contain an accurate description of the project’s environmental setting. An EIR “must include a description of the physical environmental conditions in the vicinity of the project... from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” (CEQA Guidelines, §15125(a).) The “environmental setting” is defined as “the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.” (CEQA Guidelines, §15360; see §21060.5; *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1192.) As the court stated in *Friends of Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859:

There is good reason for this requirement: “Knowledge of the regional setting is critical to the assessment of environmental impacts. . . . The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context.” ([CEQA] Guidelines, § 15125, subd. (c).) We interpret this Guideline broadly in order to “afford the fullest possible protection to the environment.” (*Kings County Farm Bureau, supra*, 221 Cal.App.3d 692, 720.) In so doing, we ensure that the EIR’s analysis of significant effects, which is generated from this description of the environmental context, is as accurate as possible.

(108 Cal.App.4th at 874.)

Traffic engineer, Daniel T. Smith explains that the EIR fails to accurately describe existing traffic conditions. In its traffic analysis, the EIR uses a trip generation for common apartments, which results in a total of 1,578 daily trip for the 240 dwelling unit Project. However, the likelihood is that there could be 800 students occupying beds at the Project, and college students behave in a different manner from those persons typically analyzed in a common apartment. Given their varied schedule, students are likely to take more trips in a day. Mr. Smith cites a guidance from the City of Davis, California, which advises a daily trip rate of 5.961 trips per bed for off-campus student apartments. (Smith, p. 2). He notes that “[a]t this rate, the subject Project would generate 4768 daily trips, dwarfing the 1578 daily trips the EIR estimates for the Project.” (*Id.*) Even to the extent, that the Project is capped at a total of 602 residents, the analysis number of daily trips would still be significantly higher than the original estimate in the DEIR. Thus the Project’s traffic analysis is inherently flawed. A Revised Draft EIR must be prepared, and its traffic analysis must be based on an actual potential trip generation.

IV. THE DEIR FAILS TO ADEQUATELY DISCLOSE, ANALYZE, AND MITIGATE ALL POTENTIALLY SIGNIFICANT IMPACTS.

A. THE EIR FAILS TO IDENTIFY SIGNIFICANT AIR QUALITY IMPACTS FROM CONSTRUCTION RELATED EMISSIONS.

The DEIR concludes that the Project would not result in any significant air quality impacts based on its observation that the Project’s construction and operation criteria air pollutant emissions would not exceed applicable thresholds. (DEIR, p. 2.7-15, 2.7-16). However, this finding is patently false as the DEIR contains contradictory information. As SWAPE points out, the Project’s CalEEMod [air quality analysis] output files demonstrate that the Project’s construction emissions are actually *way in excess* of applicable thresholds. The South Coast Air Quality Management District (“SCAQMD”) has set a significance threshold of 75 pounds per day (“lbs/day”) for ROG emissions. While the DEIR states that the maximum daily ROG emissions generated during Project construction will be 28.1 lbs/day, the Project’s air model indicates that the construction-related emissions for ROG will be approximately 177.2 lbs/day during summer and winter of 2009. (DEIR, Appendix G, pp. 39, 67; SWAPE, p. 2). Thus, the EIR must be revised and recirculated to indicate this significant air quality impact and to provide feasible mitigation measures.

SWAPE observes that short-term exposure to VOCs (also referred to as ROG) can cause eye and respiratory tract irritation, headaches, dizziness, visual disorders, fatigue, loss of coordination, allergic skin reactions, nausea, and memory impairment while long-term exposure can cause damage to the liver, kidneys, and central nervous system (SWAPE, p 2.). Since the EIR erroneously concluded that the Project would

have less than significant air quality impacts, SWAPE accordingly proposes a long list of feasible mitigation measures for construction-related VOC emissions that were not analyzed in the EIR. These measures include use of zero-VOC emissions paint, use of materials that do not require paint, and use of spray equipment with greater transfer efficiencies. SWAPE notes that “[w]hen combined together, these measures offer a feasible way to effectively reduce the Project’s construction-related VOC emissions, potentially to less than significant levels.” (SWAPE, p. 3). A Revised Draft EIR is required to consider these and other feasible mitigation measures.

B. THE PROJECT WILL CREATE SIGNIFICANT RISKS TO HUMAN HEALTH WHICH ARE NOT ANALYZED OR MITIGATED IN THE EIR.

The DEIR concludes that the proposed Project would have a less than significant health risk impact without conducting a quantitative health risk assessment (HRA) (DEIR, p. 2.7-17). The DEIR attempts to justify this omission by stating,

“As indicated by the air quality impact analysis in this section under Finding 2.72, the proposed project would not exceed any of the thresholds of significance for criteria pollutants during short-term construction activities or long term operation. In addition, the proposed project would not create a carbon monoxide (CO) hot spot. Therefore, the proposed project will not expose sensitive receptors to substantial pollutant concentrations.” (p. 2.7-17).

This justification for failing to conduct a quantified HRA, however, is incorrect. As SWAPE notes, “the Project Applicant cannot claim that the Project would result in a less than significant health risk impact without properly assessing the diesel particulate matter (“DPM”) emissions that will be emitted during Project activities.” (SWAPE, p. 4). Further, failing to conduct an HRA in this instance is inconsistent with the most recent guidance published by Office of Environmental Health Hazard Assessment (OEHHA), the organization responsible for providing recommendations and guidance on how to conduct health risk assessments in California. OEHHA recommends that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors.¹ SWAPE finds that based on OEHHA guidance, an HRA is required.

SWAPE has prepared a Health Risk Assessment in accordance with OEHHA Guidance, using the required AERSCREEN model. (SWAPE, pp. 5-7). SWAPE’s analysis concludes that the Project will create very significant cancer risks from nearly

¹ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-18

60-190 times above SCAQMD's 10 per million CEQA significance threshold. SWAPE calculates that the Project will create the following cancer risks, largely from DPM:

Child Cancer Risk	59 per million
Infant Cancer Risk	120 per million
Lifetime Cancer Risk	189 per million

Since the Project will create a substantial cancer risk in excess of the SCAQMD's CEQA significance threshold, the Project's cancer risk from DPM emissions will be significant and must be analyzed and mitigated in a revised EIR.

SWAPE proposes a long list of mitigation measures that would reduce the emissions of criteria pollutants associated with Project construction. These include the following:

- Limit construction equipment idling beyond regulation requirements
- Require implementation of diesel control measures
- Repower or replace older construction equipment engines
- Install retrofit devices on existing construction equipment
- Use electric and hybrid construction equipment
- Institute a heavy-duty off-road vehicle plan
- Implement a construction vehicle inventory tracking system
- "Enhanced Exhaust Control Practices" from the Sacramento Metropolitan Air Quality Management District

(SWAPE, pp. 8-13). These measures represent a plethora of cost-effective, feasible means to incorporate lower-emitting equipment into the Project's construction fleet, which would serve to reduce DPM emissions during Project construction. Since the EIR did not even include a health risk assessment, it failed to analyze this DPM impacts entirely and failed to analyze mitigation measures such as these. A revised EIR should consider and include these measures.

C. EIR FAILS TO PROPERLY ANALYZE THE PROJECT'S SIGNIFICANT GREENHOUSE GAS IMPACTS.

The DEIR fails to adequately assess Project-related greenhouse gas emission impacts because it fails to demonstrate consistency with Assembly Bill 32 ("AB 32"). This bill requires California to reduce greenhouse gas ("GHG") emissions to 1990 levels by 2020. As SWAPE demonstrates, "[r]eview of the DEIR's GHG analysis demonstrates that the Project Applicant simply lists emissions reduction measures 'to achieve the greenhouse gas emissions goal as set forth in the plan' as evidence that the Project would be consistent with the requirements in AB 32." (SWAPE, p. 13 (citing DEIR p. 2-8-11)). Beyond this, the DEIR does not offer *any* additional support that

implementation of these measures would result in compliance with AB 32. In short, the DIER is wholly lacking information and analysis to demonstrate compliance with AB 32, as well as Gov. Schwarzenegger's Executive Order S-3-05 and Gov. Brown's Senate Bill 32 ("SB 32"), additional state requirements mandating more stringent GHG reductions than AB 32.

Commenters note that the Project Applicant asserts that the Project will have a less than significant GHG impact because the proposed Project is consistent with the Arcata Community GHG Reduction Plan. However, that plan was developed in 2006, and fails to address reductions required to meet the 2020, 2030, or 2050 emissions reductions targets set forth by Executive Order S-3-05 and SB 32. Thus, SWAPE finds that "the Project may conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing GHG emissions" and that "[a] revised FEIR should be prepared to demonstrate the Project's compliance with these more aggressive measures specified in SB 32 and in Executive Order S-3-05." (SWAPE, pp. 14, 15). A revised EIR should be prepared to quantify the Project's GHG emissions and the impacts of any mitigation measures. To the extent those reduction will not be sufficient to reduce emissions below the new 2030 and 2050 significance thresholds, thus causing significant GHG impacts, the Project should include additional mitigation measures.

D. THE EIR FAILS TO INCLUDE FEASIBLE TRAFFIC MITIGATION MEASURES.

The EIR identifies a significant short and long term traffic impact at the intersection of Sunset Avenue, LK Wood Boulevard and the U.S. 101 northbound ramps. To mitigate this impact, it identifies the construction of a roundabout at this location. However, as Daniel T. Smith notes, portions of this intersection are under the jurisdiction of the California Department of Transportation ("Caltrans"), and Caltrans participation and design approval will be required to implement the mitigation. (Smith, p. 2). The EIR does not demonstrate that Caltrans plans to or would be willing to construct such a roundabout. It does not indicate that the City consulted with Caltrans. CEQA requires that the EIR must define feasible mitigation measures, and without this additional information, there is no evidence that such a mitigation measure would be feasible. Further, Commenters note that Appendix L to the EIR mentions this potential intersection and includes a letter from Caltrans indicating that the City would need to conduct an Intersection Control Evaluation prior to determining the method of intersection control. The EIR does not make a description of performing such an evaluation. To the extent it plans to do this after the Project certification, this would be considered improper deferred mitigation.

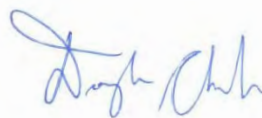
V. THE CITY SHOULD PREPARE AND RECIRCULATE A SUPPLEMENTAL DEIR.

A revised draft EIR (“RDEIR”) should be prepared and circulated for full public review to address the impacts identified above and to propose feasible mitigation measures. CEQA requires re-circulation of an EIR when significant new information is added to the EIR following public review but before certification. PRC § 21092.1. The CEQA Guidelines clarify that new information is significant if “the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project” including, for example, “a disclosure showing that ... [a] new significant environmental impact would result from the project.” 14 CCR § 15088.5. The above significant environmental impacts have not been analyzed in the EIR and must be addressed in a supplemental DEIR that is re-circulated for public review.

VI. CONCLUSION.

For the foregoing reasons, the EIR is inadequate. LIUNA urges the City to make the above changes, and recirculate a revised DEIR to the public for review. The EIR should analyze all feasible mitigation measures to reduce or avoid the Project’s significant adverse environmental impacts. Commenters also note that other commenters have addressed various environmental issues, and LIUNA agrees with many of those points, particularly those raised by Arcata Citizens for Responsible Housing. Thank you for your attention to these comments.

Sincerely,



Douglas Chermak