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VIA U.S. MAIL & E-MAIL

April 5, 2021

Attn: Jaclyn Lee, Principal Planner
City of Camarillo Community Development
601 Carmen Drive
Camarillo, CA 93010
Em: jlee@cityofcamarillo.org

RE: Early Notice and Public Review of a Proposed Activity in a 100-Year Floodplain for the 2800 Barry Street Affordable Housing Project (SCH No. 2020080530)

Dear Ms. Lee,

On behalf of the Southwest Regional Council of Carpenters ("**Commenter**" or "**Carpenter**"), my Office is submitting these supplemental comments on the City of Camarillo's ("**City**" or "**Lead Agency**") Initial Study/Mitigated Negative Declaration ("**IS/MND**") (SCH No. 2020080530) and Early Notice and Public Review of a Proposed Activity in a 100-Year Floodplain for the 2800 Barry Street Affordable Housing Project in the City of Camarillo which proposes to construct a 68-unit multi-family residential development on vacant land at 2800 Barry Street. ("**Project**"). These comments pertain specifically to the letter circulated by the City regarding its evaluation under Executive Order 11988, in accordance with HUD regulations (24 C.F.R. 55.20, Procedures for Making Determinations on Floodplain Management).

The Southwest Carpenters is a labor union representing 50,000 union carpenters in six states and has a strong interest in well-ordered land use planning and addressing the environmental impacts of development projects.

Individual members of the Southwest Carpenters live, work and recreate in the City and surrounding communities and would be directly affected by the Project's environmental impacts.

Commenters expressly reserves the right to supplement these comments at or prior to hearings on the Project, and at any later hearings and proceedings related to this Project. Cal. Gov. Code § 65009(b); Cal. Pub. Res. Code § 21177(a); *Bakersfield Citizens*

for Local Control v. Bakersfield (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

Commenters expressly reserves the right to supplement these comments at or prior to hearings on the Project, and at any later hearings and proceedings related to this Project. Cal. Gov. Code § 65009(b); Cal. Pub. Res. Code § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

Commenters incorporates by reference all comments raising issues regarding the EIR submitted prior to certification of the EIR for the Project. *Citizens for Clean Energy v City of Woodland* (2014) 225 Cal. App. 4th 173, 191 (finding that any party who has objected to the Project's environmental documentation may assert any issue timely raised by other parties).

Moreover, Commenter requests that the Lead Agency provide notice for any and all notices referring or related to the Project issued under the California Environmental Quality Act ("**CEQA**"), Cal Public Resources Code ("**PRC**") § 21000 *et seq*, and the California Planning and Zoning Law ("**Planning and Zoning Law**"), Cal. Gov't Code §§ 65000–65010. California Public Resources Code Sections 21092.2, and 21167(f) and Government Code Section 65092 require agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body.

The City should require the Applicant provide additional community benefits such as requiring local hire and use of a skilled and trained workforce to build the Project. The City should require the use of workers who have graduated from a Joint Labor Management apprenticeship training program approved by the State of California, or have at least as many hours of on-the-job experience in the applicable craft which would be required to graduate from such a state approved apprenticeship training program or who are registered apprentices in an apprenticeship training program approved by the State of California.

Community benefits such as local hire and skilled and trained workforce requirements can also be helpful to reduce environmental impacts and improve the positive economic impact of the Project. Local hire provisions requiring that a certain percentage of workers reside within 10 miles or less of the Project Site can reduce the length of vendor trips, reduce greenhouse gas emissions and providing localized

economic benefits. Local hire provisions requiring that a certain percentage of workers reside within 10 miles or less of the Project Site can reduce the length of vendor trips, reduce greenhouse gas emissions and providing localized economic benefits. As environmental consultants Matt Hagemann and Paul E. Rosenfeld note:

> [A]ny local hire requirement that results in a decreased worker trip length from the default value has the potential to result in a reduction of construction-related GHG emissions, though the significance of the reduction would vary based on the location and urbanization level of the project site.

March 8, 2021 SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling.

Skilled and trained workforce requirements promote the development of skilled trades that yield sustainable economic development. As the California Workforce Development Board and the UC Berkeley Center for Labor Research and Education concluded:

> . . . labor should be considered an investment rather than a cost – and investments in growing, diversifying, and upskilling California's workforce can positively affect returns on climate mitigation efforts. In other words, well trained workers are key to delivering emissions reductions and moving California closer to its climate targets.[1]

In addition, the City should require the Project to be built to standards exceeding the current 2019 California Green Building Code to mitigate the Project's environmental impacts and to advance progress towards the State of California's environmental goals.

[1] California Workforce Development Board (2020) Putting California on the High Road: A Jobs and Climate Action Plan for 2030 at p. ii, *available at* *https://laborcenter.berkeley.edu/wp-content/uploads/2020/09/Putting-California-on-the-High-Road.pdf*

I. THE PROJECT WOULD BE APPROVED IN VIOLATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND 24 C.F.R. 55.20

A. Background Concerning the California Environmental Quality Act

CEQA has two basic purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 California Code of Regulations ("**CCR**" or "**CEQA Guidelines**") § 15002(a)(1).[2] "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.' [Citation.]" *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 directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or 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; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal. 3d 376, 400. The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to "identify ways that environmental damage can be avoided or significantly reduced." CEQA Guidelines § 15002(a)(2). If the project has a significant effect on the environment, the agency may approve the project only upon finding 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" specified in CEQA section 21081. CEQA Guidelines § 15092(b)(2)(A–B).

[2] The CEQA Guidelines, codified in Title 14 of the California Code of Regulations, section 150000 et seq, are regulatory guidelines promulgated by the state Natural Resources Agency for the implementation of CEQA. (Cal. Pub. Res. Code § 21083.) The CEQA Guidelines are given "great weight in interpreting CEQA except when . . . clearly unauthorized or erroneous." *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal. 4th 204, 217.

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,* 47 Cal. 3d at 391, 409 fn. 12). Drawing this line and determining whether the EIR complies with CEQA's information disclosure requirements presents a question of law subject to independent review by the courts. (*Sierra Club v. Cnty. of Fresno* (2018) 6 Cal. 5th 502, 515; *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102, 131.) As the court stated in *Berkeley Jets*, 91 Cal. App. 4th at 1355:

> A prejudicial abuse of discretion occurs "if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.

The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. The EIR's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been considered. For the EIR to serve these goals it must present information so that the foreseeable impacts of pursuing the project can be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made. *Communities for a Better Environment v. Richmond* (2010) 184 Cal. App. 4th 70, 80 (quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 449–450).

B. <u>CEQA Requires Revision and Recirculation of an Environmental Impact Report When Substantial Changes or New Information Comes to Light</u>

Section 21092.1 of the California Public Resources Code requires that "[w]hen significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 … but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report" in order to give the public a chance to review and comment upon the information. CEQA Guidelines § 15088.5.

Significant new information includes "changes in the project or environmental setting as well as additional data or other information" that "deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative)." CEQA Guidelines § 15088.5(a). Examples of significant new information requiring recirculation include "new significant environmental impacts from the project or from a new mitigation measure," "substantial increase in the severity of an environmental impact," "feasible project alternative or mitigation measure considerably different from others previously analyzed" as well as when "the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." *Id.*

An agency has an obligation to recirculate an environmental impact report for public notice and comment due to "significant new information" regardless of whether the agency opts to include it in a project's environmental impact report. *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal. App. 4th 74, 95 [finding that in light of a new expert report disclosing potentially significant impacts to groundwater supply "the EIR should have been revised and recirculated for purposes of informing the public and governmental agencies of the volume of groundwater at risk and to allow the public and governmental agencies to respond to such information."]. If significant new information was brought to the attention of an agency prior to certification, an agency is required to revise and recirculate that information as part of the environmental impact report.

For all of the reasons discussed below, significant new information has been raised relating to the Project that requires revision and recirculation of the IS/MND or EIR.

C. The IS/MND Fails to Support Its Findings with Substantial Evidence

When new information is brought to light showing that an impact previously discussed in the EIR or IS/MND but found to be insignificant with or without mitigation in the EIR or IS/MND's analysis has the potential for a significant environmental impact supported by substantial evidence, the EIR or IS/MND must consider and resolve the conflict in the evidence. (See *Visalia Retail, L.P. v. City of Visalia* (2018) 20 Cal. App. 5th 1, 13, 17; see also *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109.) While a lead agency has discretion to formulate standards for determining significance and the need for mitigation measures—the choice of any standards or thresholds of significance must

be "based to the extent possible on scientific and factual data and an exercise of reasoned judgment based on substantial evidence. (CEQA Guidelines § 15064(b); *Cleveland Nat'l Forest Found. v. San Diego Ass'n of Gov'ts* (2017) 3 Cal. App. 5th 497, 515; *Mission Bay Alliance v. Office of Community Inv. & Infrastructure* (2016) 6 Cal. App. 5th 160, 206.) And when there is evidence that an impact could be significant, an EIR cannot adopt a contrary finding without providing an adequate explanation along with supporting evidence. (*East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal. App. 5th 281, 302.)

In addition, a determination that regulatory compliance will be sufficient to prevent significant adverse impacts must be based on a project-specific analysis of potential impacts and the effect of regulatory compliance. In *Californians for Alternatives to Toxics v. Department of Food & Agric.* (2005) 136 Cal. App. 4th 1, the court set aside an EIR for a statewide crop disease control plan because it did not include an evaluation of the risks to the environment and human health from the proposed program but simply presumed that no adverse impacts would occur from use of pesticides in accordance with the registration and labeling program of the California Department of Pesticide Regulation. *See also Ebbetts Pass Forest Watch v Department of Forestry & Fire Protection* (2008) 43 Cal. App. 4th 936, 956 (fact that Department of Pesticide Regulation had assessed environmental effects of certain herbicides in general did not excuse failure to assess effects of their use for specific timber harvesting project).

1. *The IS/MND Fails to Support its Hydrology and Water Quality Analysis with Substantial Evidence.*

On March 18, 2021, the City circulated a letter giving notice that the City conducted an evaluation pursuant to Executive Order 11988, in accordance with HUD regulations at 24 C.F.R. 55.20, Procedures for Making Determinations as Floodplain Management, "to determine the potential effect that its activity in the floodplain and wetland will have on the human environment."[3]

The Project site contains areas designated as Zone X and AO under the Federal Emergency Management Agency's (FEMA) Flood Zone guidelines. Sites in Zone X flood zones exhibit a flood risk of approximately 0.2 percent annually (or a 500-year flood).[4] Despite the circulated notice of analysis and requirements pursuant to CEQA

[3] March 18, 2021, City of Camarillo letter re "Early Notice and Public Review of a Proposed Activity in a 100-Year Floodplain." Available at https://www.ci.camarillo.ca.us/2020.03.19%20Public%20Notice.pdf.
[4] FEMA Flood Zone Glossary, available at https://www.fema.gov/glossary/flood-zones.

Appendix G(IX) and 24 C.F.R. 55.20—*Commenters were unable to locate any analysis of the effects of the Project in the flood zone.*

The IS/MND discloses that the Project site is in areas "designated as Zone X "and "designated Zone AO" under FEMA guidelines, but fails to conduct the required CEQA analysis to support its conclusion that "the proposed project would not impede or redirect flood flows…" (IS/MND, 63.) While the Project construction itself may be elevated at least one foot to avoid risk to the Project itself (IS.MND, 3) CEQA Appendix G requires an analysis of whether *the Project* will affect flood flows, drainage patterns, increase runoff, etc. No analysis was conducted pursuant to Appendix G's requirements.

Furthermore, Executive Order 11988 and 24 C.F.R. 55.20, Procedures for Making Determinations as Floodplain Management, requires that the City conduct an eight-step analysis, and if analysis is required, demonstrate compliance and documentation through at least *one* of the following[5]:

- Documentation supporting the determination that an exception at 55.12(c) applies;
- A FEMA map showing the project is not located in a Special Flood Hazard Area;
- A FEMA map showing the project is located in a Special Flood Hazard Area and an applicable citation to 55.12(b) demonstrating that the 8-Step Process is not required;
- A FEMA map showing the project is located in a Special Flood Hazard Area, documentation that the 5-Step Process was completed, and the applicable citation to 55.12(a); or
- A FEMA map showing the project is located in a Special Flood Hazard Area along with documentation of the 8-Step Process and required notices.

The City has failed to include any documentation that the eight-step analysis was conducted, and merely states in its March 18 Notice letter that the required analysis was conducted. Executive Order 11988 and 24 C.F.R. 55.20 require that the City either *demonstrate* the eight-step process is not required, or else provide all

[5] HUD Exchange, Floodplain Management guidelines for environmental review, available at https://www.hudexchange.info/programs/environmental-review/floodplain-management/.

documentation that the five-step process *was completed* and a citation to 55.12(a) as cited above. None of this analysis or documentation was included either in the IS/MND document or in the March 18 Notice letter.

For example, the City was required to conduct an analysis of practicable alternatives pursuant to Step 3 of 24 C.F.R. 55.20 for locating the Project outside of the 100 or 500-year floodplain—no such analysis was conducted or provided[6].

The City's IS/MND and March 18 notice collectively fail to meet CEQA and 24 C.F.R. 55.20's requirements.

III. The City's March 18 Public Notice Fails to Meet 24 C.F.R. 55.20's Notice Requirements

Not only did the City fail to conduct or demonstrate any of the required analysis as demonstrated above, even its March 18 Public Notice pursuant to 24 C.F.R. 55.20 is deficient. The March 18 Notice does not indicate whether it is an initial notice per Step 2, or a final notice per Step 7 of to 24 C.F.R. 55.20. If it is a Step 2 notice, the Notice should have detailed "the total number of acres of floodplain" affected and the "natural and beneficial functions and values of the floodplain […] that may be adversely affected by the proposed activity." 24 C.F.R. 55.20(b)(3).

If the March 18 Notice was a Step 7 notice, the Notice failed to state why the Project must be located in the floodplain or wetland, list alternatives considered, and state all mitigation measures to minimize adverse impacts and to restore natural and beneficial functions and values. 24 C.F.R. 55.20(g).

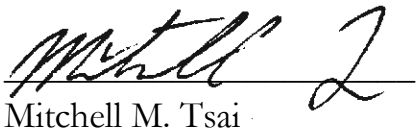
The City must revise and recirculate the Public Notice with an additional comment period to include all required information.

IV. CONCLUSION

Commenters request that the City revise and recirculate the Project's IS/MND and/or prepare an environmental impact report which addresses the aforementioned concerns. The City should also revise and recirculate the March 18 Public Notice to comply with all notice requirements of 24 C.F.R. 55.20.

[6] 24 C.F.R. 55.20 Decision making process, Step 3: Identify and evaluate practicable alternatives to locating the proposed action in a 100-year floodplain (or a 500-year floodplain for a Critical Action) or wetland.

Sincerely,



Mitchell M. Tsai
Attorneys for Southwest Regional Council of Carpenters

Attached:

March 8, 2021 SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling (Exhibit A);

Air Quality and GHG Expert Paul Rosenfeld CV (Exhibit B); and

Air Quality and GHG Expert Matt Hagemann CV (Exhibit C).