



1515 CLAY STREET, 20<sup>th</sup> FLOOR  
P.O. BOX 70550  
OAKLAND, CA 94612-0550

Telephone: (510) 622-2145  
Facsimile: (510) 622-2270  
E-Mail: [Sandra.Goldberg@doj.ca.gov](mailto:Sandra.Goldberg@doj.ca.gov)

August 8, 2008

By Telecopy and Email

Michael W. Wright  
Director of Community Reuse Planning  
1950 Parkside Drive, MS/56  
Concord, CA 94519  
[Pamela.Laperchia@ci.concord.ca.us](mailto:Pamela.Laperchia@ci.concord.ca.us)

Re: Concord Community Reuse Plan Draft Environmental Impact Report - SCH #2007052094

Dear Mr. Wright:

Thank you for the opportunity to comment on the Draft Environmental Impact Report ("DEIR") for the Concord Community Reuse Plan ("Project" or "Reuse Plan").<sup>1</sup> It is very rare that a large area like the former Concord Naval Weapons Station becomes available for development in the Bay Area. We encourage the City of Concord ("the City") to embrace this unique opportunity to create a new mixed used, compact, transit-oriented community that will be consistent with the State's greenhouse gas ("GHG") reduction goals and contribute to a lower-carbon, sustainable future.

The goals and guiding principles that the City has adopted for the Reuse Plan -- including to "emphasize quality development and avoid sprawl," "address long-term impacts including traffic and air quality," and achieve "environmentally sustainable development" -- show the City's recognition of these issues and demonstrate true leadership on the part of the City. However, as discussed below, there are some issues that should be further addressed in the EIR to ensure compliance with the California Environmental Quality Act ("CEQA").

First, the climate change section of the DEIR should be revised to adequately address all sources of GHG emissions resulting from the Project, including the construction phases. Second, the DEIR's analysis of the significance of the Project's GHG emissions should be clarified or revised. Third, the DEIR should apply the appropriate time frame in assessing cumulative impacts. Fourth, to constitute permissible mitigation, the City's commitment to adopt a GHG

---

<sup>1</sup> The Attorney General submits these comments pursuant to his independent power and duty to protect the natural resources of the State. (See Cal. Const., art. V., § 13; Cal. Gov. Code, §§ 12511, 12600-12612; *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.) While this letter sets forth some areas of particular concern, it is not intended to be an exhaustive discussion of the DEIR's compliance with CEQA.

Reduction Plan should be further developed. In addition, we encourage the City to select the feasible alternative that limits increases in GHG emissions, and accommodates a substantial amount of the City's future population and job growth within ready walking and biking distances to the existing major transit station.

### **Background: Planning, Land Use and GHG Emissions**

Transportation is responsible for 38% of the GHG emissions in California.<sup>2</sup> Better land use planning, addressing such things as land use patterns, increased density, connected streets, and access to jobs, transit and services, has the potential to reduce driving and thus reduce GHG emissions.<sup>3</sup> Local governments, as the State's foremost land planners, have a very important role to play in the fight against climate change. The California Air Resources Board ("ARB") notes that they are "essential partners in achieving California's GHG goals." (Draft Scoping Plan, at p. 31.) The California Energy Commission ("CEC") has noted that better land use decisions are essential to achieving the State's GHG reduction goals. According to both agencies, if we do not address growth in vehicle miles traveled ("VMT"), it will completely overwhelm the other advances that the State is making to control emissions and lower the carbon content of fuel.<sup>4</sup>

Local government is rising to meet the challenge. As the CEC notes, "[I]and use choices that result in lower energy use and VMT reductions are possible and examples are beginning to emerge across the state."<sup>5</sup> Action at the local government level makes environmental and fiscal sense. As ARB has found, all levels of government will accrue cost savings from smarter growth strategies and reduced VMT, most significantly from avoided capital costs, with the greatest cost savings accruing in the 2050 time-frame. (Draft Scoping Plan, Appendix C, p. C-47.)

Global warming is an urgent environmental issue. As reflected in the California Global Warming Solutions Act of 2006 ("AB 32") and Executive Order S-3-05, the best available science establishes that we must substantially reduce our total GHG emissions, achieving a low-

---

<sup>2</sup> Air Resources Board, Climate Change Draft Scoping Plan (June 2008), Appendix C, p. C-21, at <http://www.arb.ca.gov/cc/scopingplan/document/draftscopingplan.htm> (hereafter "Draft Scoping Plan.")

<sup>3</sup> See, e.g., U.S. Environmental Protection Agency, *Our Built and Natural Environments: A Technical Review of the Interactions Between Land Use Transportation and Environmental Quality* (2001); Ewing, R. & Cervero, R., *Travel and the built environment: A synthesis* (2001) 1780 *Transportation Research Record*, at pp. 87-114; Frank, L.D. *Land Use and Transportation Interaction: Implications on Public Health and Quality of Life* (2000) 20 *Journal of Planning Education and Research*, at pp. 6-22; Ewing, R., et al. *Growing Cooler: The Evidence on Urban Development and Climate Change*, Urban Land Institute (Chicago 2007).

<sup>4</sup> CEC, *The Role of Land Use in Meeting California's Energy and Climate Change Goals*, Final Staff Report (August 2007), pp. 10, 18; Draft Scoping Plan, Appendix C, p. C-40.

<sup>5</sup>*Id.* at p. 10; see also *California Energy Commission, 2007 Integrated Energy Policy Report* (November 2007), Chapter 8, Mitigating Energy Needs With Smart Growth, at p. 261.

carbon future by mid-century in order to stabilize atmospheric concentrations of GHGs at a level that will reduce the risk of the most catastrophic outcomes of climate change. If we fail to make better development decisions at all levels of government and at every opportunity, in a very short time, our climate goals may be out of reach. According to Rajendra Pachauri, Chairman of the United Nations Intergovernmental Panel on Climate Change (“IPCC”), “If there’s no action before 2012, that’s too late. What we do in the next two to three years will determine our future. This is the defining moment.”<sup>6</sup>

### **Impacts of Climate Change on California and the City of Concord**

The DEIR does an excellent job of describing the phenomenon of global warming, the sources and amounts of GHG emissions, and California’s commitment to reducing its emissions and achieving carbon stabilization. (DEIR, pp. 17-16 through 17-25.)

As the DEIR notes, greenhouse gases in the atmosphere trap heat near the Earth’s surface. Unnaturally elevated atmospheric concentrations of these gases, emitted from human activities, cause global average temperatures to increase, with adverse impacts on humans and the environment.<sup>7</sup> (*Id.* at p. 17-16.) As the DEIR recognizes, the overwhelming scientific consensus is that global warming is already underway. (*Ibid.*) According to the leading experts, including the IPCC, continuing the current rate of emissions will result in disastrous environmental effects, including increasingly rapid sea level rise, increased frequency of droughts and floods, and increased stress on wildlife and plants due to rapidly shifting climate zones.

The DEIR recognizes that, to avoid the most catastrophic outcomes (so-called “dangerous climate change”), we must reduce our emissions and stabilize atmospheric levels of greenhouse gases. (*Id.* at pp. 7-17, 7-18.)<sup>8</sup> The DEIR says that stabilization of atmospheric carbon dioxide concentrations must occur at a range between 450 and 550 ppm. (*Id.*, citing IPCC 2001.) Many credible scientists believe that to avoid dangerous climate change, stabilization must occur at or below 450 ppm.<sup>9</sup> Scientists are also reporting that, based on recent observations, climate appears

---

<sup>6</sup>Rosenthal, *U.N. Chief Seeks More Leadership on Climate Change*, N.Y. Times (November 18, 2007).

<sup>7</sup>See also Intergovernmental Panel on Climate Change, Fourth Assessment Report (IPCC 4<sup>th</sup>) (2007) Working Group (WG) I, Frequently Asked Question 2.1, *How Do Human Activities Contribute to Climate Change and How Do They Compare with Natural Influences?* [http://ipcc-wg1.ucar.edu/wg1/FAQ/wg1\\_faq-2.1.html](http://ipcc-wg1.ucar.edu/wg1/FAQ/wg1_faq-2.1.html).

<sup>8</sup> While the DEIR states that the current atmospheric concentration of CO<sub>2</sub>, the leading GHG, is 379 parts per million (ppm), this has actually increased to 385 ppm. (See <http://www.esrl.noaa.gov/gmd/ccgg/trends/>.)

<sup>9</sup> J. Hansen et al, Dangerous human-made interference with climate: a GISS modelE study, 7 *Atmos. Chem. Phys.* 2287-2312 (2007) (article with 47 co- authors).

to be changing even faster than modeled in the IPCC's worst case scenarios.<sup>10</sup>

The DEIR discusses in general how global warming will affect California, resulting in warmer temperatures, more extreme weather events, decreased snowpack in the Sierras, rising sea levels, worsening of air quality, increased flooding, and reductions in water supply and water quality. (DEIR, p. 17-17.) It is important to understand that these changes are and will continue to exact very real costs here in California. For example:

- Wildfires are growing bigger, stronger and more expensive to control. Wildfire-related spending in California now exceeds \$1 billion per year.<sup>11</sup>
- Water supplies are reduced, with the California Department of Water Resources reporting that supplies from the State Water Project will be reduced 20% one-fourth of the time and greater than 30% in one-sixth of future years.<sup>12</sup>
- The West is experiencing more heat waves, which can be deadly. The heat wave in July 2006 caused at least 141 deaths in California.<sup>13</sup>

And, more specifically for the City of Concord, global warming will have disproportionate impacts on air quality in California's urban areas that already experience poor air quality. Air District records show that days with very high temperatures closely correlate with days when the air quality standard for ozone is exceeded in the Bay Area.<sup>14</sup> In addition, recent Stanford studies found that higher temperatures caused by climate change will have a disproportionate impact on California, by causing additional air pollution that leads to more annual deaths and cases of

---

<sup>10</sup> S. Rahmstorf et al, Recent Climate Observations Compared to Projections, *Scienceexpress* (2007); M. Raupach et al., Global and Regional drivers of accelerating CO2 emissions, *Biological Sciences/Sustainability Science* (2007); J. Stroeve, Arctic Sea Ice Decline: Faster than Forecast? (2007) *Geophysical Research Letters*; The Climate Institute (November 2007) *Evidence of Accelerated Climate Change* (Climate Adaptation Science and Policy Initiative, University of Melbourne).

<sup>11</sup> Greenwire, *Costs to battle blazes grow as fires get bigger, stronger* (July 29, 2008) at [www.eenews.net/Greenwire/pring/2008/07/29/23](http://www.eenews.net/Greenwire/pring/2008/07/29/23).

<sup>12</sup> California Department of Water Resources, *Draft State Water Project Delivery Reliability Report* (2007) Summary, p.1.

<sup>13</sup> Munoz, Olivia, "141 Deaths Later, Heat Wave Appears Over" Associated Press, July 28, 2006, at: [www.washingtonpost.com/wp-dyn/content/article/2006/07/28/AR2006072801304\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2006/07/28/AR2006072801304_pf.html), and see increased heat wave predictions for various California cities in: *Climate Change In California: Health, Economic and Equity Impacts* (Redefining Progress, January 2006), pp. 22-24.

<sup>14</sup> See attached graph prepared by the Bay Area Air Quality Management District.

respiratory illness and asthma in areas where air pollution is already severe.<sup>15</sup> The study finds that in California (which has six of the ten urban areas with the worst air quality in the nation), carbon dioxide increases air pollution-related mortality and other health problems at a rate at least 2.5 times that of the United States as a whole. (*Id.*)

### **Comments on the DEIR**

CEQA requires that “[e]ach public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.” (Pub. Res. Code, § 21002.1, subd. (b).) This requirement is the “core of an EIR.” (*Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County* (1990) 52 Cal.3d 553, 564-65.) Global warming is an “effect on the environment” under CEQA, and an individual project’s incremental contribution to global warming can be cumulatively considerable. (See Cal. Pub. Res. Code, § 21083.05, subd. (a); see also Sen. Rules Comm., Off. Of Sen. Floor Analyses, Analysis of Sen. Bill No. 97 (2007-2008 Reg. Sess.) Aug. 22, 2007.)

The Reuse Plan examines seven alternatives, ranging from approximately 14,700 new residents and 18,000 new jobs to 30,000 new residents and 29,000 new jobs, and various configurations in between. Thus, the Plan will allow for substantial new development that will occur over the next twenty-two years and remain in place for many decades. If the City does not set the groundwork in the Reuse Plan for a community that minimizes the need for residents and employees to drive, the City will irrevocably lose the ability to reduce driving, and its associated GHG emissions, in the future.

#### **1. The DEIR improperly excludes reasonably foreseeable sources of greenhouse gas emissions from its analysis**

An EIR must identify and assess all significant environmental impacts of the proposed Project, including direct and indirect impacts. (CEQA Guidelines, §§ 15064, 15358, subd. (a).) A lead agency must make reasonably conscientious efforts to collect additional data or make further inquiries of environmental or regulatory agencies having expertise in the matter. (*Berkeley Keep Jets Over the Bay Committee v. Board of Port Comm'rs* (2001) 91 Cal.App.4th 1344, 1370.) Here, the DEIR fails to evaluate the possibility of increased emissions from any sources other than building energy use and vehicle miles traveled. (DEIR, at pp. 17-30, Table 17-6 and 17-34, Table 17-7.) At a minimum, the DEIR should include reasonably foreseeable GHG emissions from waste generation, water and wastewater conveyance and treatment, and construction emissions that will result from the Reuse Plan, both from construction vehicles and construction waste. It is reasonably foreseeable that these sources will be direct and indirect sources of GHG emissions. Consequently, the EIR should include them in its analysis.

---

<sup>15</sup> Jacobson, Mark Z., *On the causal link between carbon dioxide and air pollution mortality*, Geophysical Research Letters, Vol. 35 L03809 (2008), available at: [www.stanford.edu/group/efmh/jacobson/ve.html](http://www.stanford.edu/group/efmh/jacobson/ve.html); see also, Mark Z. Jacobson, Professor of Civil & Environmental Engineering, Stanford University, April 9, 2008, Testimony to Select Committee on Energy Independence and Global Warming, United States House of Representatives at: <http://globalwarming.house.gov/pubs/pubs?id=0036>

Because emissions from all sources are not included, the DEIR's estimate of the GHG emissions resulting from the Project may be significantly understated.

**2. The DEIR's per capita method of determining the cumulative significance of the Project's GHG emissions is potentially inaccurate**

The DEIR's analysis of the significance of the Project's GHG emissions and the proposed mitigation is, in some key respects, unclear and potentially inaccurate. We urge the City to clarify and, if necessary, re-evaluate and revise this analysis after considering the following issues.

The projected annual emissions of the alternatives at full buildout range from 610,698 tons (Alt. 3) to 281,446 tons (Alt. 7) CO<sub>2</sub>-equivalent. (DEIR, p. 17-35.) In evaluating significance of these emissions, the DEIR employs a benchmark performance standard for 2020 expressed as a ratio of the state's total emissions from all sources divided by the statewide projected "service population" (defined as number of residents and employees) in 2020. (*Id.*, Table 17-5, p. 17-26.) According to the DEIR, AB 32 requires that emissions be reduced to 6.5 tons of carbon dioxide equivalent per service population-person ("TCO<sub>2</sub>-e/SP-person") per year by 2020. (*Id.*)

The DEIR calculates that the GHG emissions per service population-person per year for the seven alternatives range from 8.6 TCO<sub>2</sub>-e/SP-person (Alt. 7) to 12.6 TCO<sub>2</sub>-e/SP-person (Alt. 1). (*Id.*, p.17-33.) The estimated Project emissions exceed the calculated AB 32 service population emission rate by an amount ranging from 32% to 94.5%. (*Id.*, p. 17-35.) However, the DEIR states that, for each alternative, the emissions can be reduced to less than the AB 32 service population emissions rate through adoption of a GHG Reduction Plan to limit GHG emissions from buildings.

While we commend the City for recognizing the need to limit the GHG emissions from the Project and identifying the significant opportunities that exist to limit GHG emissions from buildings, we are concerned that the DEIR's analysis may not form the basis for a valid comparison of the Project with predicted 2020 emissions under AB 32.

As we read the document, the statewide total emissions in 2020 (the numerator used to calculate the per capita benchmark) includes significant emission sources that are omitted from the calculation of Project emissions. These include emissions from industry (20% of state total), agricultural emissions (6% of the state total) and the 20% of transportation emissions that come from medium and heavy duty vehicles (rather than passenger cars and trucks). (Draft Scoping Plan, pp. 7 and 30.) It does not appear that any of these emission categories (as well as potentially others) are allocated to the Project's service population, but they are included in the "benchmark" calculation. If this is correct, then the analysis in the DEIR is not an accurate comparison and cannot provide a valid basis for determining the building GHG emission levels required for the Project to be consistent with AB 32's 2020 emission limit.<sup>16</sup>

---

<sup>16</sup> Our comments are consistent with the CAPCOA White Paper "CEQA and Climate Change," which notes that this "GHG efficiency" method of analyzing the significance of a



**3. The DEIR's cumulative impacts analysis should look beyond 2020**

While the Project will certainly continue to exist well beyond the year 2020, the DEIR's analysis effectively ends at 2020, and it does not address whether the Project emissions are consistent with the need to greatly reduce and stabilize the State's GHG emissions by mid-century (to 80% below 1990 levels, as set forth in Executive Order S-3-05).<sup>17</sup> The DEIR simply states that the statewide annual GHG target for 2050 is 85.4 tons CO<sub>2</sub>-e, and that this translates to per capita annual emissions of only 1.4 tons CO<sub>2</sub>-e. (DEIR, Table 17-5, p. 17-26.) When this longer time-frame (which is consistent with the lifetime of the proposed development) is considered, the Project's cumulative impact on climate change may remain potentially significant, but the DEIR does not address this issue.<sup>18</sup>

**4. The DEIR's commitment to develop a GHG Reduction Plan should be clarified and expanded.**

The DEIR states that the City will develop a GHG Reduction Plan and therefore "this potentially significant impact will be reduced to a level that is less than significant." (DEIR, p. 17-36.) The GHG Reduction Plan will set design standards for energy efficiency of all buildings and infrastructure. (*Id.*) A list of potential strategies is provided, including co-generation, district heating and cooling systems, solar thermal water heating, reflective pavement and roofs, high performance glazing, and low or zero-GHG energy sources, such as building-integrated photovoltaic panels, wind turbines, solar farms, and anaerobic digestion of organic waste. The DEIR's discussion of the proposed GHG Reduction Plan points to several attributes that will help to ensure that real mitigation will be achieved: it articulates a requirement that the GHG Reduction Plan must be in place before any development under the Reuse Plan may occur; progress towards meeting the plan's requirements will be estimated at stages of the design and construction process; and the plan will be periodically reviewed and updated if necessary to

---

project's impact on climate change requires comparing project emissions with projected statewide GHG emissions "*from the applicable end-use sectors ...*" (CAPCOA (January 2008), p. 72, available at <http://www.capcoa.org/>.) CAPCOA noted that this method "may eventually be appropriate" but "will need substantially more work..." (*Id.*, pp. 4 and 72.)

<sup>17</sup> This is based on the atmospheric concentration of GHG that scientists say may not be exceeded if we are to avoid catastrophic climate change.

<sup>18</sup> We also note that the DIER discusses discounting the Project's GHG emissions because those emissions may not be "new and additional." (DEIR, at p. 17-27 - 17-28.) This is not appropriate because, as the DEIR recognizes, the state and the region are expected to experience very substantial population and economic growth, and also because there is no reason to believe that buildings where the Project's residents and employees previously lived and worked will be demolished. Additionally, it would be highly speculative to characterize the extent and type of housing and job changes (or first-time housing/job acquisition) occurring and the implications for fossil fuel consumption from those changes. The City's determination of significance does not appear to rely on such discounting.

ensure that the performance standard will be met. (*Id.*) The GHG Reduction Plan's performance standard is to achieve 6.5 TCO<sub>2</sub>-e/SP-person by 2020.

In stating its intent to prepare a GHG Reduction Plan, the City has shown substantial leadership. Although potential mitigation strategies are identified in the DEIR, we note that the specifics of the GHG Reduction Plan have not yet been developed. Generally, under CEQA, a lead agency cannot defer development of the specifics of a mitigation measure. (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 670 [holding that provision in EIR that allowed specifics of mitigation for biological impacts to be determined after future study violated CEQA where there were no specific criteria or standards of performance].) However, under certain circumstances, a project may use a future, not yet existing "mitigation plan" as mitigation for a current project. A mitigation plan is acceptable mitigation where the EIR includes a performance objective for the plan and the plan is sufficiently formulated that the lead agency and the public can have a level of assurance that the objective of the plan – real mitigation – will be achieved. (See, e.g., *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1020-22, 1028-30 [holding that plan to develop parking mitigation strategy did not defer mitigation where EIR established a performance objective and set forth in detail the various mitigation strategies that would be analyzed, where formulation of the precise means of mitigating the impacts was impractical at the time of project approval, and where lead agency had approved funds for the required study].)

We make the following recommendations that will ensure that the GHG Reduction Plan comports with CEQA and does not improperly defer mitigation. As a threshold matter, as discussed above, it is unclear whether the analysis used to determine the appropriate TCO<sub>2</sub>-e/SP-person target was appropriately calculated. This is a critical issue that must be resolved before the GHG Reduction Plan can be relied on to provide the necessary mitigation.

In addition, it is not clear whether the City intends to incorporate the GHG Reduction Plan into the General Plan. The proposed mitigation measure states that the GHG Reduction Plan will be developed and implemented "prior to adoption of the revised General Plan." (DEIR, p. 17-36.) We request that the City amend the EIR to make it clear that it will include the GHG Reduction Plan and its mitigation measures and strategies in the revised General Plan. This is essential if the GHG Reduction Plan is to be enforceable.<sup>19</sup>

Finally, we urge the City to include both the performance standard for the GHG Reduction Plan, and all of the additional elements referred to above (including the evaluation of progress, the adaptive management provisions, and the list of potential strategies that will be analyzed), in the language of the mitigation measure itself, so that the City does not run afoul of CEQA's rule against deferral. (*Sacramento Old City Assn. v. City Council* (1999) 229 Cal.App.3d 1011, 1020-22, 1028-30; *Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 446.)

---

<sup>19</sup>Provided that the GHG Reduction Plan is completed and integrated into the General Plan, the City and project proponents will be able to benefit substantially from CEQA's streamlining provisions. (See, e.g., CEQA Guidelines, §§ 15152(d), (f); 15130(d), (e) [discussing tiering and cumulative impacts]; see also Pub. Res. Code, § 21081.6(b).)



**Benefits of a Lower-Carbon Alternative**

The DEIR notes that the differences in GHG emissions between the alternatives reflects the differing extent to which smart growth design characteristics (transit-oriented development, mixed use and higher density) are represented within each alternative. (DEIR, p. 17-35.)

The City has the opportunity to select a feasible alternative that minimizes GHG emissions, while also accommodating a substantial amount of jobs and housing. We encourage the City to consider not only the GHG emissions projected for the various alternatives, but also the fact that accommodating a greater amount of jobs and housing at this site (within ready walking or biking distance to a BART station) could avoid greater vehicle GHG emissions that would be expected if the development is located at a more suburban location that is not well-served by transit. This is a valid issue to consider and acknowledge in the City's decision.

Moreover, an alternative that results in lower vehicle miles traveled on both a project and regional basis will provide other air quality benefits, by reducing emission of ozone precursors. This is an important "co-benefit" since the City is a nonattainment area for ozone, and the number of hot days when the standard is exceeded is expected to increase. By selecting an alternative that reduces vehicle miles traveled in the region, the City can reduce this health threat.

**Conclusion**

The Reuse Plan presents an opportunity for the City to create a model mixed used, transit-oriented community that provides a substantial contribution to achieving the State's GHG reduction goals. We strongly urge the City to take this opportunity to ensure implementation of measures to adequately mitigate the Project's impacts on climate change and adopt an alternative that takes maximum advantage of the site location adjacent to an existing BART station.

Thank you for your time and consideration.

Sincerely,

/S/

SANDRA GOLDBERG  
Deputy Attorney General

For EDMUND G. BROWN JR.  
Attorney General