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Board of Trustees
Mount San Antonio College
1100 North Grand Avenue
Walnut, CA 91789

Re: *Environmental Impact Report Addendum and Revised Mitigation for the West Parcel Solar Project MT. SAC Photovoltaic System – West Parcel Solar Project*

Dear Members of the Board of Trustees:

The purpose of this letter is to provide comments and objections on behalf of the City of Walnut to the above-referenced documents presented as Action Item 2 on the Agenda for the January 13, 2016 Regular Meeting of the Board of Trustees.

Introduction

On September 16, 2015, the Board of Trustees awarded a design-build agreement for the Solar Project to be located on the College's West Parcel. At the November 18, 2015 meeting, the Board of Trustees approved the award of bids, including grading of the West Parcel site. In both instances, the Mt. San Antonio Community College District (the "District") relied on the Master Facility Plan 2012 Program EIR (SCH 2002041161), including the 2012 EIR Response to Public Comments and the 2012 Mitigation Monitoring Program (the "2012 EIR") and made findings that no additional environmental review was required under the California Environmental Quality Act (CEQA).

The City of Walnut has previously submitted comments to the District challenging the reliance on the 2012 EIR and asserting that a project-level environmental analysis is required. As a responsible agency under CEQA, the City should be included in Project review and regulation, including but not limited to the conditional use permit, a grading permit, and a City-approved truck haul route. The City's position is based not only on applicable state law and the City's Municipal Code, but representations made by District officials and the Project's own mitigation measures included in the 2012 EIR.

For example, Mitigation Measure MM-2c of the Mitigation Monitoring Program in the 2012 EIR states:

MM-2c: **Prior to issuance of a grading permit**, Facilities Planning & Management shall consult with the City of Walnut on a Truck Route Plan for truck hauling activities with more than fifty

(50) trucks per day. Hauling of earth materials shall only occur between 9:00 am and 2:00 pm Monday through Friday and between 8:00 am to 5:00 pm on Saturdays to void peak hour traffic. Light duty trucks with a weight of no more than 8,500 pounds are exempted from this restriction. Facilities Planning & Management shall ensure compliance. (Emphasis added.)

Now, in a failed effort to correct the inadequacies of the District's environmental review and to evade the City's rights as a responsible agency under CEQA, the District has prepared an Addendum to the 2012 FMP Final EIR (the "Addendum"). The proposed Addendum includes revisions to four mitigation measures (2c, 2k, 3a, and 3i) to allow for extended dump truck traffic, require parking supply studies at regular intervals, remove the requirement for obtaining a grading permit, and bring the paint VOC standards up to current industry and state requirements. The Addendum also adds six new mitigation measures to "mitigate potentially significant traffic impacts from the construction truck hauling of soil import to the West Parcel."

The District is trying to game the CEQA system through its preparation of the Addendum.

The District is using the Addendum in an attempt to usurp both the City's rights as a responsible agency under CEQA and its general police powers to properly regulate and control grading activities, traffic, and weight limits on City streets. Furthermore, the Addendum is woefully inadequate as an informational CEQA document.

In correspondence over the past few months, the City has brought to light several glaring deficiencies in how the District has gone about moving forward with the Solar Project, including its lack of detailed project-level review, its misrepresentation regarding consultation with the City on a truck haul route to import soil to the West Parcel site, the District's plans to violate the City's street weight limits in importing, and the District's apparent inability to describe the Solar Project in sufficient detail from one environmental document to the next.

The Addendum represents the District's attempt to put a bandage over the substantial missteps taken thus far in the Solar Project's environmental review process. Even so, the Addendum falls well short of providing adequate disclosure of potentially significant impacts, and in fact changes the Project so substantially that further study and review is warranted in several key CEQA areas.

Quite simply, the Addendum is not the proper instrument to carry out the type of substantial changes the District has made to the Project, including the proposed truck haul route, the revision and addition of several key mitigation measures, and the (once again) revision to the Project description.

The District has improperly changed the Project description in violation of CEQA.

The District's description of the Solar Project has been a moving target—never remaining the same over the course of the public review process, with the result that no adequate review has been undertaken by virtue of the Project's changeability. The Project has been described in the

RFP for the design/build agreement and in several CEQA documents such as the Final EIR, Responses to Public Comments, and Draft Subsequent EIR, and now the Addendum. At least one component of the Project has been changed or added since the publication of the first environmental review document.

These changes are outlined in the table below:

	2012 Draft Subsequent EIR	2012 Response to Public Comments (Final EIR)	2015 Addendum
Earth Import	261,000 cubic yards import	333,980 cubic yards import	163,571 cubic yards import ¹
Truck Hauling Distance	1 mile	No change	6 miles
Truck Hauling Route	Consult with the City of Walnut	Consult with the City of Walnut	No Consultation; six mile loop through the Cities of Walnut and Pomona
Truck hauling time	[3 minutes implied by 1 mile haul route]	[3 minutes implied by 1 mile haul route]	13.5 minutes per truck
Truck Idling time	Over 5 minutes prohibited	Over 5 minutes prohibited	Over 5 minutes prohibited
Truck trips per hour	Not analyzed	Not analyzed	160 trips per day or 20 trips/hour
Number of Days for Grading and Construction	312 days of grading and 312 days of construction	Not analyzed in light of greater earth import	73 days or three months
Truck weight	Not analyzed	Not analyzed	14 cubic yards/load = 65,000 loaded
Hours of hauling per week	34 hours/week 9-2 M-F, 8-5 Sat	34 hours/week 9-2 M-F, 8-5 Sat	48 hours/week 8:30-4:30 M-Sat
Solar Project Area	1.5 to 2.0 MW facility on 6.6 acres (DEIR, p. 135.)	2.0 MW facility on 10.6 acres (p. 6.)	2.2 MW Facility; 8.9 acre array on "approximately" 10.6 acre pad
Grading Permit	Grading permit required	No change	No grading permit required

¹ With the remainder of the 333,980 cubic yards being graded onsite using commercial earth-moving equipment. (Gary Nellesen comments, November 18, 2015 meeting of the Board of Trustees of Mt. SAC.)

Mitigation Measure 2c

In the 2012 draft subsequent EIR and the 2012 final EIR, Mitigation Measure 2c read:

“2c. Prior to issuance of a grading permit Facilities Planning & Management shall consult with the City of Walnut on a Truck Route Plan for truck hauling activities with more than fifty (50) trucks per day. Hauling of earth materials shall only occur between 9:00 am and 2:00 pm Monday through Friday and between 8:00 am to 5:00 pm on Saturdays to avoid peak hour traffic. Light duty trucks with a weight of no more than 8,500 pounds are exempted from this restriction. Facilities Planning & Management shall ensure compliance.”

The District now proposes to revise Mitigation Measure 2c to take out any mention of the requirements that the District seek a grading permit from the City and consult with the City on a truck haul route prior to importing soil and commencing grading. Another change is that the District now wishes to increase by 41 percent the number of hours it is allowed to conduct truck hauling activities on the City’s streets.

Moreover, the District now concedes its mitigation measure in the 2012 Final EIR was inadequate and lacked specificity, both due to an incomplete Project description, and to the fact that the District had not decided on a truck haul route, meaning the Project was not fully described or planned at the time it was approved:

“It is now apparent that MM-2c will intrude into the Saturday pm peak hour and **does not have the specificity needed for assessing truck hauling activities for the Solar Project** or future campus projects that involve large amounts of earth, concrete or other construction debris. Therefore, an extensive congestion analysis for truck hauling (Appendix A) was completed by Iteris, Inc., based on recent traffic counts, to aid the District in assessing potential truck haul route impacts on the area circulation network.”

(Addendum, pg. 6; emphasis added.)

The courts have repeatedly stated that: “An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-93; *San Joaquin Raptor/Wildlife Reserve Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730.) “The defined project *and not some different project* must be the EIR’s bona fide subject.” (*M.M. Homeowners v. San Buenaventura City* (1985) 165 Cal.App.3d 357, 365, emphasis added.) While an EIR is not designed to freeze a project in the mold of the original proposal, “[o]n the other hand, a curtailed or distorted description of the project may ‘stultify the objectives of the reporting process.’” (*Dry Creek Citizens Coalition v. County of Tulare*, (1999) 70 Cal.App.4th 20, 28.)

A curtailed, enigmatic or unstable project description draws a red herring across the path of public input.” (*County of Inyo, supra*, at p. 198.) “[O]nly through an accurate view of the project may the public and interested parties and public agencies balance the proposed project's benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives.” (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1454); see also (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 654.)

To quote *County of Inyo* above, the District’s description of the Solar Project has not been “accurate, stable, and finite”. (*County of Inyo, supra*, at p. 192–193.) Even now, there is no apparent end in sight to what the District may have planned for the Project. CEQA does not sanction such ambiguity.

The Addendum constitutes a post hoc rationalization of the proposed Project and impermissibly defers mitigation measures to a later date when the Project will be well under way and out of sight of public review.

The Addendum revises Mitigation Measure 2k, which formerly contained a requirement that the District provide “8,825 parking spaces by 2020, and approximately 11,025 spaces by 2025.” Revised MM-2k does away with those mandates and instead defers mitigation to a later date by requiring the District to conduct a study every five years and then come up with a recommendation as to the number of parking spaces needed at that particular time. This sort of mitigation measure deferral is not allowed under CEQA.

In the leading case on deferred mitigation, *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307-309, the court disapproved a negative declaration requiring the project proponent to perform two studies in the future, holding that deferring evaluation of environmental impacts until after adoption of a negative declaration would amount to a *post hoc* rationalization and would skirt the required procedure for public review and agency scrutiny of potential impacts. The same equally holds true for EIRs. The CEQA Guidelines require an EIR to identify and describe *feasible* mitigation measures to minimize significant impacts on the environment. (Guidelines §15126.4(a); *emphasis added*.) CEQA defines “feasible” as meaning “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.” (Public Resources Code § 21061.1.) Revised Mitigation Measure 2k is not a feasible mitigation measure

The Addendum omits several potentially significant environmental impacts from its analysis of the proposed truck haul route.

The District claims “[t]here are no new or exacerbated significant environmental impacts associated with the proposed Project that were not analyzed in the certified Final EIR.” (Addendum, pg. 16.) To the contrary, the District either completely failed to analyze certain required environmental impacts or failed to sufficiently update its now-outdated analyses in key areas such as air quality and noise.

Air quality

The 2012 EIR analyzed air quality (table 3.2.15) from three simultaneous projects – Fire Training Academy, Athletic Education Building, Parking Structure, and the Solar Project. The air quality impacts from the Solar Project were analyzed separately in table 3.2.12 for 261,000 cubic yards of dirt. Mitigation Measure AQ-07 in the 2012 EIR prohibited vehicle and engine idling for longer than five minutes. (2012 EIR, p. 76.)

As described above, however, the proposed truck haul route is now six miles long, instead of the originally analyzed one-mile route from the 2012 EIR. The Addendum does not analyze the air quality impacts of the 500 percent increase in distance that trucks will be driving. Furthermore, while the Addendum analyzes traffic impacts for 160 truck trips per day, nowhere does it analyze the air quality impacts for these trips.

In addition to a general air quality analysis, the District should perform an OEHHA Toxic Air Contaminant health hazard assessment. The 2012 draft EIR concludes a health risk assessment is not required because Mitigation Measure AQ – 04 requires the use of ultra low sulfur diesel fuel, and because diesel emissions occur over a relatively short duration of construction. However the February 2015 OEHHA Air Toxics Hotspots Program Guidance Manual states:

“Due to the uncertainty in assessing cancer risk from very short-term exposures, we do not recommend assessing cancer risk for projects lasting less than two months at the MEIR. We recommend that exposure from projects longer than 2 months but less than 6 months be assumed to last 6 months (e.g., a 2-month project would be evaluated as if it lasted 6 months). Exposure from projects lasting more than 6 months should be evaluated for the duration of the project. In all cases, for assessing risk to residential receptors, the exposure should be assumed to start in the third trimester to allow for the use of the ASFs (OEHHA, 2009)” (Air Toxics Hotspots Program Risk Assessment Guidance Manual, 2015, p. 8-18).

In other words, any project lasting longer than two months should be evaluated for health risks. Here, the District has stated in the Addendum that soil importation to the West Parcel site will last 73 days, or three months. Therefore, an exposure assessment should be completed as if the Project lasted for six months.

Noise

Noise impacts for the Project were analyzed in the 2008 EIR § 3.4. However, like air quality analysis discussed above, the Addendum does not discuss much less analyze noise impacts from 20 truck trips per hour. These trucks will be driving through the cities of Walnut and Pomona directly adjacent to residential neighborhoods and businesses. While Mitigation Measure AQ-07, discussed above, prohibited vehicle idling for longer than five minutes, that

measure will be vitiated by the trucks now constantly driving the six-mile haul route eight hours a day, six days a week.

The Addendum is improper under CEQA.

The District takes the position that its proposed Addendum to the 2012 EIR is properly prepared because "some changes or additions are necessary for the project," and that those changes are sufficiently insubstantial to warrant a lesser degree of scrutiny of the kind addressed in the Addendum. The District is mistaken. As discussed above, the Addendum proposes changes to several key mitigation measures, and those proposed revisions will result in potentially significant impacts to the environment.

Summary

The District's belated attempt to fix its CEQA problems *after* its approval of the Project and cut the City of Walnut out of the CEQA review process violate the very purpose of CEQA itself.

Very truly yours,

LEIBOLD MCCLENDON & MANN



By: Barbara Leibold

cc: Walnut City Council
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