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January 15, 2019

**VIA EMAIL AND HAND DELIVERY**

Erik Bjorklund, Chairperson  
Honorable Members of the Planning Commission  
c/o Steve Stewart, Planning Manager  
City of Livermore  
Council Chambers  
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**Re: Request To Continue Hearing On Agenda Item 5.02 - Prologis  
Distribution Center Jack London Boulevard & Isabel Avenue  
(SPDR18-002 / PD-I 18-002)**

Dear Chairperson Bjorklund, Honorable Members of the Planning Commission, Mr. Murray:

We are writing on behalf of **Livermore Residents for Responsible Development** (“Livermore Residents”) regarding Agenda Item No. 5.02, Prologis Distribution Center SPDR18-002 / PD-I 18-002 (“Project”), proposed by Jack London Blvd & Isabel Ave LLC (“Applicant”). The Project proposes to develop a 372,500 sq. ft. warehouse/distribution building with 29,000 sq. ft. of office use on an approximately 19.1-acre site, providing 295 parking spaces, 49 trailer parking spaces, and loading docks for 50 tractor-trailers. The Project is proposed to be located at the South West quadrant of Jack London Blvd., and Isabel Ave. in the City of Livermore (“City”) (APN: 904-0005-002-24).

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Livermore Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public impacts associated with Project development. Livermore Residents includes International Brotherhood of Electrical Workers Local 595, Plumbers & Steamfitters Local 342, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483 and their members and their families; and other individuals that live and/or work in the City of Livermore and Alameda County. Livermore Residents have a strong interest in enforcing the State's environmental laws that encourage sustainable development and ensure a safe working environment for its members.

The City has incorrectly and prematurely scheduled this Planning Commission ("Commission") hearing to consider the Project's Initial Study/Mitigated Negative Declaration ("MND") and recommend approval of the Project to the City Council before the close of the public comment period on the MND. The City's actions violate the California Environmental Quality Act ("CEQA"),<sup>1</sup> which requires the lead agency to consider "the proposed...mitigated negative declaration together with any comments received during the public review process" at the public hearing on the Project.<sup>2</sup>

Livermore Residents is currently reviewing the MND and plans to submit detailed comments on the MND prior to the close of the public comment period. Based on our preliminary review, it appears that the Project continues to have significant, unmitigated impacts that are not adequately addressed in the MND, which require preparation of an environmental impact report ("EIR"). Livermore Residents' comments, and the comments of all other members of the public, must be considered by the Commission and the City Council in conjunction with the City's public hearings on the Project.<sup>3</sup> Accordingly, Livermore Residents respectfully requests that the Commission continue its hearing on the Project to a later date that falls after the close of the public comment period on the MND.

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<sup>1</sup> Cal. Pub. Res. Code ("PRC") § 21000 et seq.; 14 Cal. Code Regs. ("CCR") § 15000 et seq.

<sup>2</sup> 14 CCR § 15074(b).

<sup>3</sup> 14 CCR § 15202(b). Livermore Residents reserves the right to supplement these comments at later hearings on this Project. Gov. Code § 65009(b); PRC § 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.

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## I. PUBLIC HEARINGS REGARDING THE PROJECT MUST OCCUR AFTER THE CEQA PUBLIC COMMENT PERIOD

As an advisory agency to the City Council, the Planning Commission is prohibited from conducting a hearing to make recommendations to the City Council regarding adoption of the MND or approval of the Project until the City's public review process for the MND is complete.<sup>4</sup> In order to comply with CEQA and the CEQA Guidelines, both the Planning Commission hearing and the City Council hearing must take place after the close of the CEQA public comment period on the MND, and following any subsequent revisions to the MND or an EIR that are prepared in response to public comments.

The process for preparing and adopting an MND is clearly set forth in the CEQA Statute and Guidelines. First, the lead agency prepares an initial study. If the initial study identifies potentially significant effects on the environment, but revisions in the project plans or mitigation measures would mitigate the effects to a point where no significant effect on the environment would occur, the lead agency may adopt an MND.<sup>5</sup> If, on the other hand, substantial evidence in the record before the agency supports a fair argument that a project may have a significant effect on the environment, the lead agency must prepare an EIR.<sup>6</sup>

In order to make this determination, CEQA requires the lead agency to consider all public comments and evidence received during the public comment period.<sup>7</sup> CEQA requires a mandatory minimum public review period for an MND of "not less than 20 days," or not less than 30 days if submitted to the State Clearinghouse."<sup>8</sup> Following receipt of public comments, the lead agency may determine that some proposed mitigations measures are ineffective, or that

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<sup>4</sup> 14 CCR § 15074(a).

<sup>5</sup> PRC § 21080(e)(2).

<sup>6</sup> Pub. Resources Code §§ 21080(d), 21082.2(d); CEQA Guidelines §§ 15002(k)(3), 15064(f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602.

<sup>7</sup> 14 CCR § 15074.

<sup>8</sup> PRC § 21091; 14 CCR § 15073(a), (b).

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substantial evidence submitted during the public comment period demonstrates that the Project has outstanding significant impacts that necessitate preparation of an EIR. In such cases, the agency must either revise and recirculate the MND, or prepare an EIR for further public comment.<sup>9</sup>

Finally, prior to approving a project, CEQA requires that the decision making body of the lead agency consider the proposed MND “together with any comments received during the public review process.”<sup>10</sup> This consideration must take place at the same public hearings conducted for its decisions to carry out or approve the project.<sup>11</sup> This requirement extends to “[a]ny advisory body of a public agency making a recommendation to the decision making body.”<sup>12</sup>

Here, the City released the MND for public comment on January 5, 2018, just 10 days ago. The public comment period on the MND closes on February 4, 2019.<sup>13</sup> Members of the public, including Livermore Residents, therefore maintain the right to submit public comments on the MND through and including February 4, 2019. The City nevertheless issued its public notice setting the instant Commission hearing for January 15, 2019, midway through the MND public comment period. The purpose of the hearing is for the Commission to make three Project recommendations to the City Council:

1. certify the environmental document;
2. adopt an ordinance approving Planned Development-Industrial (PD-I) 18-002; and
3. adopt a resolution approving Site Plan Design Review (SPDR) 18-002, subject to conditions.<sup>14</sup>

These are project approval recommendations. Thus, the Commission is acting in an advisory capacity to the City Council with regard to the Project and the MND. CEQA prohibits the Commission from taking these actions until all public comments on the MND have been received and reviewed by the Commission.<sup>15</sup>

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<sup>9</sup> 14 CCR § 15073.

<sup>10</sup> 14 CCR § 15074(b).

<sup>11</sup> 14 CCR § 15202(a), (b).

<sup>12</sup> 14 CCR § 15074(a).

<sup>13</sup> See City of Livermore Public Hearing Notice re Prologis Project, January 5, 2019.

<sup>14</sup> Staff Report, p. 5.

<sup>15</sup> 14 CCR §§ 15202(a), (b); 15074(a), (b).

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At this time, the MND remains in preliminary stages. The draft version of the MND that has been circulated for public comment may not be the final CEQA document that is ultimately adopted for the Project. Following receipt of public comments, it is highly possible that the MND and/or the Project plans themselves, may need to be revised prior to approval, or that an EIR must be prepared. Thus, the Commission cannot rely on the current MND to make approval recommendations to the City Council, and is prohibited from making any such recommendations to the City Council at this time.<sup>16</sup>

## II. CONCLUSION

If the Commission proceeds with the hearing on Agenda Item 5.02, it will violate CEQA by improperly making recommendations regarding both adoption of the MND and approval of the Project to the City Council before the City's CEQA document is complete. Livermore Residents respectfully requests that the Commission continue its hearing on the Project to a later date that falls after the close of the public comment period on the MND, and reserves its right to submit further comments on the MND during the public comment period.

Thank you for your attention to these comments. Please place them in the record of proceedings for the Project.

Sincerely,



Christina M. Caro  
Attorney

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<sup>16</sup> 14 CCR §§ 15202(a), (b); 15074(a), (b).  
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