



T 510.836.4200  
F 510.836.4205

410 12th Street, Suite 250  
Oakland, Ca 94607

www.lozeaudrury.com  
richard@lozeaudrury.com

BY E-MAIL AND OVERNIGHT MAIL

August 16, 2018

Barton Brierley, Community Development Director  
Albert Enault, Associate Planner  
Planning Division  
City of Vacaville  
650 Merchant Street  
Vacaville, CA 95688  
Barton.Brierley@cityofvacaville.com  
albert.enault@cityofvacaville.com

Re: Cessna & Aviator Warehouse Project, File No.: 17-322 Initial Study |  
Mitigated Negative Declaration

Dear Mr. Brierley:

I am writing on behalf of the **Laborers International Union of North America, Local Union 324** and its members living in Solano County and/or the City of Vacaville ("LIUNA"), regarding the Initial Study and Mitigated Negative Declaration ("IS/MND") prepared for the Project known as the Cessna & Aviator Warehouse Project (File No. 17-322) for Applicant Jason Gray of Buzz Oates Construction, including all actions related or referring to the proposed development of two new warehouse buildings on two vacant parcels, along with 184 parking spaces, on-site landscaping, and parking lot lighting. ("Project"). The Project site is located north of Aviator Drive, between Cessna Drive and East Monte Vista Avenue in the City of Vacaville, Solano County, California. APNs: 0133-210-670 and 0133-210-680.

I am in receipt of your letter dated today stating that you have decided to cancel the hearing that had been scheduled before the Planning Commission for August 21, 2018. I hereby request that you reconsider your decision. At the very least, the decision of whether to allow the Planning Commission hearing to proceed must be made by the Planning Commission itself, not by staff.

There is no dispute that our appeal of the staff decision to certify a mitigated negative declaration ("MND") for the Project was timely filed with proper appeal fee. Your allegation is that we failed to allege the defects in the MND with sufficient specificity. To the contrary, we fully complied with the Vacaville Municipal. In accordance with Section 14.03.020.070(B), we specified in our appeal as follows:

Cessna/Aviator Warehouse (File No. 17-322)  
August 16, 2018  
Page 2 of 2

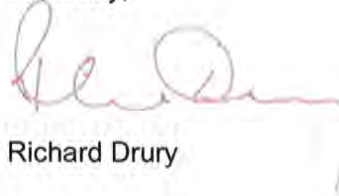
The Initial Study and Mitigated Negative Declaration (IS/MND) fails as an informational document, and that there is a fair argument that the Project may have adverse environmental impacts. Therefore, we request that the City of Vacaville prepare an environmental impact report ("EIR") for the Project pursuant to the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000, et seq. The Director of Community Development prejudicially abused his discretion by failing to prepare an EIR as required by CEQA.

This is the exact legal standard under the CEQA that applies to this matter. As is our right under CEQA, we were prepared to present expert evidence to the Planning Commission demonstrating that the Project will have significant environmental impacts. Pursuant to CEQA Section 21177, evidence may be submitted either "during the public comment period provided by this division or prior to the close of the public hearing on the project." (Pub. Res. Code §21177(a), (b); *Galante Vineyards v. Monterey Peninsula Water Management Dist.*, 60 Cal. App. 4th 1109, 1121 (1997).). City staff may not short-circuit this process by simply cancelling a duly scheduled hearing set after the filing of a timely appeal with proper filing fee.

The Court of Appeal stated in *Bakersfield Citizens for Local Control v. City of Bakersfield*, "If an EIR is certified by an unelected planning commission, then the lead agency must allow the public an opportunity to appeal the certification to an elected body. (*Bakersfield Citizens for Local Control v. City of Bakersfield*, 124 Cal. App. 4th 1184, 1201-02 (2004)). The same rule applies to negative declarations. CEQA requires that an agency's ultimate "elected or appointed" decision-making body must approve CEQA documents. (*Kleist v. City of Glendale* (1976) 56 Cal.App.3d 770, 779, and CEQA Guidelines sections 15025(b); 15075.) Since the MND was approved by an unelected official (the Community Development Director), an appeal must be allowed to the appointed Planning Commission. As the *Bakersfield* Court stated, "City appears to have thought that the public's role in the environmental review process ends when the public comment period expires. Apparently, it did not realize that if a public hearing is conducted on project approval, then new environmental objections could be made until close of this hearing." (*Bakersfield Citizens*, 124 Cal. App. 4th 1184, 1201).

Since LIUNA has timely appealed the Director's decision to the Planning Commission, the Planning Commission must be allowed to consider the appeal, and to accept evidence at the hearing. We therefore request that you allow the appeal hearing before the Planning Commission to proceed as required by CEQA. At the very least, the Planning Commission itself must decide whether to conduct the hearing. Staff may not insulate itself from appeal to the elected and appointed decision-making bodies who are charged with making ultimate decisions under CEQA.

Sincerely,

A handwritten signature in red ink, appearing to read "Richard Drury", is written over a faint, larger signature in black ink.

Richard Drury