



T 510.836.4200
F 510.836.4205

1939 Harrison Street, Ste. 150
Oakland, CA 94612

www.lozeaudrury.com
michael@lozeaudrury.com

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By E-mail and Hand Delivery

Mayor David M. Sander, Ph.D.
Vice Mayor Garrett Gatewood
Councilmember Donald Terry
Councilmember Linda Budge
Councilmember Robert J. McGarvey
Rancho Cordova City Council
2729 Prospect Park Drive
Rancho Cordova, CA 95670
dsander@cityofranhocordova.org
ggatewood@cityofranhocordova.org
dterry@cityofranhocordova.org
lbudge@cityofranhocordova.org
rmcgarvey@cityofranhocordova.org

June Cowles, Senior Planner
City of Rancho Cordova
Planning Department
2729 Prospect Park Drive
Rancho Cordova, CA 95670
jcowles@cityofranhocordova.org

Stacy Leitner, City Clerk
City of Rancho Cordova
City Clerk's Department
2729 Prospect Park Drive
Rancho Cordova, CA 95670
sleitner@cityofranhocordova.org

**RE: Project DD9903: GLP Stores, LLC Warehouse on APN 072-2860-033-0000,
Request for Review under the California Environmental Quality Act
("CEQA")**

Dear Mayor Sander, Honorable Council Members, Ms. Cowles, and Ms. Leitner:

I am writing on behalf of Laborers' International Union of North America Local Union No. 185 and its many members living and/or working in or around the City of Rancho Cordova ("LIUNA") concerning Project DD9903: GLP Stores, LLC Warehouse on APN 072-2860-033-0000 ("Project"). The City of Rancho Cordova ("City") is proposing to approve the Major Design Review of the Project without review under the California Environmental Quality Act ("CEQA"), Pub. Res. Code section 21000, et seq., based on the assertion that the Project is consistent with the General Plan EIR approved in June 2006. The City contends that under CEQA Guidelines section 15183, no further environmental review is required. Given the nature of the Project, LIUNA disagrees and requests that the City Council deny approval and direct staff to prepare an environmental impact report ("EIR") to analyze the significant environmental impacts of the Project and to propose all feasible mitigation measures and alternatives to reduce those impacts.

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I. PROJECT DESCRIPTION

The Project involves the development of a 9.3 acre parcel with a 164,149 square-foot light industrial warehouse with an associated office building that includes parking, lighting and landscaping within the Villages of Zinfandel Special Planning Area. The Project is located at the southwest corner of Zinfandel Drive and North Mather Boulevard, APN: 072-2860-033-0000.

II. LEGAL STANDARD

CEQA mandates that “the long-term protection of the environment . . . shall be the guiding criterion in public decisions” throughout California. Pub. Res. Code § 21001(d). A “project” is “the whole of an action” directly undertaken, supported, or authorized by a public agency “which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” Pub. Res. Code § 21065; 14 CCR (“CEQA Guidelines”) § 15378(a). For this reason, CEQA is concerned with an action’s ultimate “impact on the environment.” *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283. CEQA requires environmental factors to be considered at the “earliest possible stage . . . before [the project] gains irreversible momentum,” *Id.* 13 Cal.3d at 277, “at a point in the planning process where genuine flexibility remains.” *Sundstrom v. Mendocino County* (1988) 202 Cal.App.3d 296, 307.

To achieve its objectives of environmental protection, CEQA has a three-tiered structure. CEQA Guidelines § 15002(k); *Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1185-86 (“*Hollywoodland*”). First, if a project falls into an exempt category, or it can be seen with certainty that the activity in question will not have a significant effect on the environment, no further agency evaluation is required. *Id.* Second, if there is a possibility the project will have a significant effect on the environment, the agency must perform an initial threshold study. *Id.*; CEQA Guidelines § 15063(a). If the study indicates that there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment the agency may issue a negative declaration. *Id.*, CEQA Guidelines §§ 15063(b)(2), 15070. Finally, if the project will have a significant effect on the environment, an environmental impact report (“EIR”) is required. *Id.* Here, the City is attempting to bypass CEQA entirely by claiming that the project is “[e]xempt per Section 15183, Consistent with Community Plan, General Plan, and Zoning, of [CEQA].”

CEQA Guidelines section 15183 provides that “projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review” CEQA Guidelines § 15183(a). However, if there are project-specific significant effects that are peculiar to the project or its site, additional environmental review is necessary. *Id.* Section 15183 specifies that an examination of a project’s environmental effects in an initial study or other analysis include those effects that:

- (1) Are peculiar to the project or the parcel on which the project would be located,

- (2) Were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent,
- (3) Are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action, or
- (4) Are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.

Id. § 15183(b). If any one of these criterion is not met, section 15183 does not apply. Importantly, “peculiar” is a term of art specifically defined by the regulation:

An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if uniformly applied development policies or standards have been previously adopted by the city or county with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects, unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect.

Id. § 15183(f).

Here, it does not appear that the City made a determination addressing numerous environmental effects “peculiar to the project.” *See Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1407. As discussed below, there are numerous impacts that are specific to this Project that are not addressed or mitigated by any policies or standards adopted by the City. Nor does it appear that, in the alternative, the City found that the impact of the Project “has been addressed as a significant effect in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards.” CEQA Guidelines § 15183(c). Nor has the City explained why the Project otherwise meets the requirements of § 15183. Indeed, § 15183(j) specifically provides: “This section does not affect any requirement to analyze potentially significant offsite or cumulative impacts if those impacts were not adequately discussed in the prior EIR.” It does not appear that the City has analyzed the impacts specific to this Project in the prior EIR. Rather, the City has discussed generally light industrial and heavy industrial zoned areas. That the City may have generally discussed the effects of light industrial and heavy industrial zoned areas does not make the specific Project on this site exempt from CEQA. A full CEQA analysis is required.

III. ANALYSIS

A. The Project’s Health Risk Impacts Were Neither Discussed nor Analyzed as Significant Effects in the General Plan EIR and are Peculiar to the Site.

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Reference to the General Plan EIR does not justify completely exempting the Project from CEQA review pursuant to section 15183 because no effort was made to calculate the levels of toxic air contaminants (“TACs”) that the Project will individually or cumulatively emit onto the residential properties located across the intersection from the Project site and the corresponding cancer health risks posed by the Project. This issue is peculiar to the Project. The City does not identify, and LIUNA has not located, any ordinance or city-wide standard that addresses this significant impact. *See* CEQA Guidelines § 15183(b)(1). Moreover, TAC health risks to the adjacent residences were not treated as significant in the prior General Plan EIR and are a potential significant off-site or cumulative impact of the Project.

Environmental consulting firm SWAPE reviewed the Project and the General Plan EIR and prepared a screening-level health risk assessment (“HRA”) in an effort to demonstrate the potential health risk posed by the Project’s construction and operation to off-site, nearby, existing sensitive receptors. SWAPE’s comment and curriculum vitae are attached as Exhibit A hereto and are incorporated herein by reference in their entirety. SWAPE used AERSCREEN, the leading screening-level air quality dispersion model for their analysis. Exhibit A, pp. 4-8. SWAPE calculates that the Project’s construction and operation may pose cancer risks to children, infants, and over the course of residential lifetime of approximately 34, 73, and 110 in one million, respectively, well above the Sacramento Metropolitan Air Quality Management District’s (“SMAQMD”) threshold of 10 in one million. *Id.*, p. 7; *see* Exhibit C. The results of SWAPE’s assessment demonstrates that construction and operational diesel particulate matter emissions may result in a potentially significant health risk impact that was neither discussed nor analyzed as a significant effect in the General Plan EIR and is peculiar to the Project site. Accordingly, environmental review of the Project is not subject to section 15183’s streamlining provisions. CEQA Guidelines § 15183(b)(2)-(3).

B. The Project’s Impacts From Greenhouse Gas Emissions Were Not Discussed nor Analyzed as Significant Effects in the General Plan EIR and are Peculiar to the Site.

Reference to the General Plan EIR does not justify completely exempting the Project from CEQA review pursuant to section 15183 because no effort was made to calculate the levels of greenhouse gas (“GHG”) emissions that the Project will individually or cumulatively emit. This issue is peculiar to the Project and hence not exempted from CEQA review. *See* CEQA Guidelines § 15183(b)(1). Moreover, GHG emissions were not treated as significant in the prior General Plan EIR and are a potential significant off-site or cumulative impact of the Project.

SWAPE reviewed the Project and General Plan EIR and prepared a screening-level analysis of the Project’s GHG emissions, which indicate a potentially significant impact. Ex. A, pp. 8-9. SWAPE used Project-specific information to quantify the Project’s emissions using the California Emissions Model (“CalEEMod”) output files. *Id.*, p. 8. SWAPE concluded that the Project will emit approximately 2,170.5 MT CO₂e/year of operational emissions, exceeding the SMAQMD’s operational bright line threshold of 1,100 MT CO₂e/year. *Id.*; *see* Exhibit C. The results of SWAPE’s assessment demonstrates that the Project’s GHG emissions will have a potentially significant impact that was not discussed or analyzed as a significant effect in the General Plan EIR. For this reason alone, section 15183 cannot be applied to the Project. In

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addition, the Project's significant GHG emissions are peculiar to the Project, also independently precluding section 15183's streamlining provision to the Project. CEQA Guidelines § 15183(b)(2)-(3).

C. The Project is Not Consistent with the General Plan EIR's Requirements.

In analyzing the General Plan's impacts on biological resources, the General Plan EIR specifically states that "[f]uture proposed projects that have the potential to cause a direct or reasonably foreseeable indirect physical change in the environment will undergo additional, project-specific CEQA-review, as required by statute." General Plan EIR, p. 4.10-35. The City attempts to bypass CEQA review using CEQA Guidelines section 15183, explicitly going against the General Plan EIR's requirement of analyzing the Project's direct and indirect physical changes in the environment. The Project will construct a warehouse on a previously undeveloped plot of land, directly causing a physical change in the environment. This direct change must go through CEQA review per the General Plan EIR's requirements.

The General Plan EIR determined that the General Plan would result in a significant impact on biological resources due to the direct and indirect loss of habitat and individuals of endangered, threatened, rare, proposed and candidate status. In order to mitigate this significant impact, the General Plan EIR contains the following mitigation measure:

The City shall require a biological resources evaluation for private and public development projects in areas identified to contain or possibly contain listed plant and/or wildlife species based upon the City's biological resource mapping provided in the General Plan EIR or other technical materials. This evaluation shall be conducted prior to the authorization of any ground disturbance.

General Plan EIR, p. 4.10-42. Following this mitigation measure, the General Plan EIR also requires the following action item:

For those areas in which special status species are found or likely to occur or where the presence of species can reasonably be inferred, the City shall require mitigation of impacts to those species. Mitigation shall be designed by the City in coordination with the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG), and shall emphasize a multi-species approach to the maximum extent feasible.

General Plan EIR 4.10-43.

Under CEQA, "[m]itigating conditions are not mere expressions of hope." *Sierra Club v. Cnty. of San Diego* (2014) 231 Cal.App.4th 1152, 1167-68, quoting *Lincoln Place Tenants Assn. v. City of Los Angeles* ("*Lincoln Place I*") (2004) 130 Cal.App.4th 1491, 1508. "[U]ntil mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program." CEQA Guidelines § 15097(a). "A public agency shall provide that measures to mitigate or avoid

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significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures.” Pub. Res. Code § 21081.6(b). “Once incorporated, mitigation measures cannot be defeated by ignoring them or by ‘attempting to render them meaningless by moving ahead with [a] project in spite of them.’” *Sierra Club v. Cnty. of San Diego*, 231 Cal.App.4th at 1167; *see also Katzeff v. Dep’t of Forestry & Fire Prot.* (2010) 181 Cal. App. 4th 601, 614. This is true even where subsequent approvals are ministerial or subject to an exemption. *See Lincoln Place I*, 130 Cal.App.4th at 1167, citing *Katzeff*, 181 Cal.App.4th at 614. Mitigation under CEQA cannot be “nullified simply by the passage of time.” *Katzeff*, 181 Cal.App.4th at 611.

The Project is a private development project in an area identified to contain listed wildlife species, including Swainson’s hawks and white-tailed kite. The Project site is also an area in which special status species are found, as shown in Dr. Shawn Smallwood’s comment. *See Exhibit B*, pp. 1-8. Dr. Smallwood has identified no less than five special status species that are using the site. The City must therefore require a biological resources evaluation for the Project and mitigation for any special status species that use the site. There is no evidence that the City has conducted such an evaluation. Nor has the City required any mitigation of the project’s impacts on such species or their habitat. Without taking these actions, the City cannot comply with the General Plan EIR’s mitigation measure. Nor can the City rely upon section 15183 and claim the Project is consistent with the General Plan EIR.

D. The Project’s Impacts on Biological Resources were Not Analyzed as Significant Effects in the General Plan EIR.

Reference to the General Plan EIR does not justify completely exempting the Project from CEQA review pursuant to section 15183 because the General Plan EIR did not analyze impacts to certain wildlife species found on and around the Project site as significant. This issue is peculiar to the Project, since the wildlife species and their habitats are particular to the site and immediate vicinity, and hence not exempted from CEQA review. *See CEQA Guidelines* § 15183(b)(1). Nor has the City adopted any standard or policy that would mitigate the Project’s impacts to such species.

Wildlife biologist Shawn Smallwood Ph.D reviewed the Project and the General Plan EIR and identified several issues with the City’s reliance on the General Plan EIR. Dr. Smallwood’s comment and curriculum vitae are attached as Exhibit B hereto and are incorporated herein by reference in their entirety. Dr. Smallwood personally detected 59 species of vertebrate wildlife during 6 cursory visits to the Project site and its neighboring area. *Ex. B*, p. 9, pp. 6-7. Dr. Smallwood detected 12 special-status species on and around the Project site, including Swainson’s hawks and bald eagles, white-tailed kites and a grasshopper sparrow. *Id.* In Dr. Smallwood’s assessment, another 8 special-status species of mammals, reptiles and amphibians possibly or probably occur at the Project site, for a total of 20 special-status species of vertebrate wildlife. *Id.* Most of these 20 special-status species were not addressed in the General Plan EIR, and the General Plan EIR specifically did not analyze the Project’s impacts on bald eagles or grasshopper sparrows.

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Of particular note, the General Plan EIR listed the tricolored blackbird in its table of special status species occurring within the Rancho Cordova Planning Area and Dr. Smallwood stated that the tricolored blackbird is reported on eBird as a species on or near the proposed Project site. General Plan EIR, p. 4.10-17; Ex. B, p. 10. On March 18, 2019, the tricolored blackbird was listed as threatened under the California Endangered Species Act (“CESA”). See State and Federally Listed Endangered and Threatened Animals of California, p. 11, available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109405&inline>. The General Plan EIR stated the tricolored blackbird had no state listing status. General Plan EIR, p. 4.10-17. As a result of this change in listing status, the Project may have significant impacts on the tricolored blackbird, even if the Project was assumed to be the same project as the General Plan EIR, because this impact was not addressed in the General Plan EIR. Section 21166 of CEQA requires a subsequent or supplemental EIR when there is “[n]ew information, which was not known and could not have been known at the time the [EIR] was certified as complete.” Pub. Res. Code § 21166(c). At the time the General Plan EIR was certified, the tricolored blackbird was not listed under CESA, but has since been listed as threatened, qualifying as new information triggering a subsequent or supplemental EIR under CEQA section 21166.

Since the General Plan EIR already determined that the General Plan will have significant impacts on habitat and wildlife species, the Project will likely also have significant impacts on the special-status species identified by Dr. Smallwood to be on or near the Project site. These impacts are peculiar to the Project site and may result in a potentially significant impact that was not analyzed as a significant effect in the General Plan EIR, and this aspect of the environmental review of the Project is therefore not subject to section 15183’s streamlining provisions. CEQA Guidelines § 15183(b)(2).

E. The Project’s Significant Impact on Biological Resources May have a More Severe Adverse Impact than Discussed in the General Plan EIR.

The General Plan EIR determined that the General Plan will have a significant impact on endangered, threatened, and other listed species. General Plan EIR, p. 4.10-34. As mentioned above, the tricolored blackbird has since been listed under CESA as threatened. This change in listing status is substantial new information which was not known at the time the General Plan EIR was certified. Since the tricolored blackbird is now listed as threatened as is found in the Project area and the surrounding vicinity, the impact to the tricolored blackbird is peculiar to the Project and the General Plan will have a more severe adverse impact on biological resources than was discussed in the prior EIR. This aspect of the environmental review of the Project is therefore not subject to section 15183’s streamlining provisions. CEQA Guidelines § 15183(b)(4).

F. The Project’s Potentially Significant Impacts to Wildlife from Vehicle Collisions Due to Increased Traffic from the Project Were Not Discussed nor Analyzed as Significant Effects in the General Plan EIR.

Reference to the General Plan EIR does not justify completely exempting the Project from CEQA review pursuant to section 15183 because no effort was made to calculate the

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impacts of wildlife collisions with vehicles from the Project. This issue is peculiar to the Project and hence not exempted from CEQA review. *See* CEQA Guidelines § 15183(b)(1). Moreover, the General Plan EIR only mentioned road traffic mortality of wildlife once, characterizing it as an indirect impact and proposing to mitigate it only along roads intersecting preserves. Since the Project is not located near a preserve, vehicles generated by the Project will drive along many roads that do not intersect preserves, and therefore the off-site and cumulative impact caused by the Project was not discussed in the General Plan EIR and is peculiar to the Project site. The Project will generate at least several hundred average daily trips due to the use of the site as a warehouse, although the exact number has not been disclosed in the Project's hearing notices. The number of daily trips the Project will generate matters to the Project's impacts analysis since it will determine the number of wildlife that will be killed annually on roads servicing the Project. Ex. B, p. 12.

Vehicle collisions account for the deaths of many thousands of reptile, amphibian, mammal, bird, and arthropod fauna, and the impacts of such collisions have often been found to be significant at the population level. *Id.* In terms of avian mortality, it is estimated that vehicle collisions result in the death of 89 million to 340 million birds per year. *Id.* Because the Project's potentially significant off-site and cumulative impact of vehicle collisions on wildlife was not addressed in the General Plan EIR and is peculiar to the Project site, this aspect of the environmental review of the Project is therefore not subject to section 15183's streamlining provisions. CEQA Guidelines § 15183(b)(2)-(3).

IV. CONCLUSION

The City has not met the criterion under CEQA Guidelines section 15183 and therefore cannot use section 15183 to relieve the City from preparing an EIR for the GLP Stores, LLC Warehouse project. Thank you for your attention to these comments. Please include this letter and all attachments hereto in the record of proceedings for this project.

Sincerely,



Michael R. Lozeau
Paige Fennie
Lozeau | Drury LLP