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Re: Appeal of March 10, 2022 Director Hearing Approval of HP Hood Cold Storage Expansion Project (DR21-034)

Honorable Commissioners:

We are writing on behalf of **Sacramento Residents for Responsible Development** ("Sacramento Residents") to appeal the March 10, 2022 City Design Director's ("Director") approval of an Initial Study/Mitigated Negative Declaration ("IS/MND"), Mitigation Monitoring Plan, and Site Plan and Design Review (collectively, "approvals") and associated approvals for the HP Hood Cold Storage Expansion Project, (DR21-034 / SCH No. 2021120483) ("Project").

The Project is proposed to be located at 8340 Belvedere Avenue (APN: 061-0140-071-000 and 061-0140-092-0000) in the City of Sacramento. The proposed Project consists of the new construction of a 94,400-square-foot cold storage facility and associated site improvements on the 27.15-acre existing light industrial project site. The proposed expansion building will include an automated storage and retrieval system ("AS/RS") warehouse, low bay truck dock, additional truck dock expansion offices, employee and utility areas, blow molding expansion, and wastewater treatment. Proposed site improvements include an additional 41 covered car parking spaces, landscaping, and a new on-site access road between the parking lot expansion and Safeway Distribution Driveway to the north. The existing on-site fire pump, storage tank, and trash compactors will be relocated to

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alternative on-site locations to accommodate the new construction. The Project will require a deviation from current zoning building height requirements.

The grounds for this appeal are set forth herein and in Sacramento Residents' prior comments on the Project, which are attached to this appeal and incorporated by reference herein. Residents previously submitted comments during the public comment period for the Project's IS/MND, which ran from Tuesday, December 21, 2021 through Thursday, January 20, 2022.¹ Our comments explained that the California Environmental Quality Act ("CEQA") requires that an Environmental Impact Report ("EIR") be prepared, because substantial evidence supports a fair argument that the Project may result in significant impacts. These impacts include potentially significant impacts to public health, air quality, energy, water supply, greenhouse gases ("GHGs"), biological resources, noise, transportation, and aesthetics. Our comments also identified significant informational defects in the IS/MND.

On March 9, 2022, we submitted supplemental comments containing additional analysis of the Project's potentially significant impacts.²

As outlined below and in our prior comments, the Director's March 10, 2022 approval of the Project was contrary to CEQA and was not supported by substantial evidence. This appeal respectfully requests that the Planning Commission reverse the Director's approval of the Project. The Project must be remanded back to Staff so that an EIR can be prepared.

I. Procedural Basis for Appeal

The Sacramento Planning and Development Code provides the right to appeal a Director hearing decision. Section 17.808.140(C) of the Sacramento Planning and Development Code provides that the Director's decision is appealable to the Planning and Design Commission, as provided in section 17.812.060. Section 17.812.060 provides: "Any person dissatisfied with any director-level decision that is subject to appeal under this title may appeal the decision within 10 days after the

¹ **Exhibit A:** Letter from Adams Broadwell Joseph & Cardozo to City of Sacramento re: Preliminary Comments on the Initial Study/Mitigated Negative Declaration for the HP Hood Cold Storage Expansion Project (DR21-034; SCH No. 2021120483) (January 20, 2022).

² **Exhibit B:** Letter from Adams Broadwell Joseph & Cardozo to City of Sacramento re: Comments on the Agenda Item 1 of the March 10, 2022 Director Hearing – HP Hood Cold Storage Expansion Project (DR21-034; SCH No. 2021120483) (March 9, 2022).
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decision is final. The appeal is heard at the commission level. The appeal must be filed with the planning director using the form provided by the city.” A Director hearing decision becomes final when the decision is made and written findings of fact are adopted.³

This appeal is timely filed within the time permitted under the Code. Here, the decision was final on March 10, 2022, because the decision was made and the draft written findings of fact were adopted at the March 10th hearing. Ten days after the hearing is March 20th, which falls on a weekend. Section 17.104.060 provides that weekends are excluded from the filing time limit, which is extended to the next nonweekend or nonholiday. Thus, the appeal deadline is March 21, 2022.

The municipal code provides that the hearing on appeal is “de novo.” Section 17.812.060(G), “Review de novo,” provides: “[t]he hearing on an appeal is de novo, meaning that the hearing on appeal is not a review of the hearing previously held, but a completely new hearing as if the previous hearing had never occurred.”

The City must provide notice of the hearing. Section 17.812.060(F), “Notice,” provides: “[n]otice of an appeal hearing is given by posting and mail as prescribed for appeal hearings in section 17.812.030.”

II. The City Failed to Prepare an Environmental Impact Report for the Project and Relied on the Incorrect Environmental Clearance

The decision to approve this project at the March 10 Director hearing is not supported by substantial evidence because the City failed to comply with CEQA. As explained in our previous comments, a Mitigated Negative Declaration is a legally-inadequate form of environmental review given the Project’s significant, unmitigated environmental and public health impacts – an Environmental Impact Report is required for this Project.

III. The City Lacked Substantial Evidence to Approve the Project’s Site Plan and Design Review

Section 17.808.180(B) of the Sacramento Planning and Development Code, “Site plan and design review—Decision and findings,” provides:

³ Section 17.812.050.
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For projects not located in a historic district and not involving a landmark, the decision-maker may approve an application for site plan and design review based on all of the following findings: [...] The design, layout, and physical characteristics of the proposed development are not detrimental to the public health, safety, convenience, or welfare of persons residing, working, visiting, or recreating in the surrounding neighborhood and will not result in the creation of a nuisance.

As explained in our comments, the Project has potentially significant and unmitigated environmental impacts, including to public health. As a result, the City lacks substantial evidence to approve the Site Plan and Design Review.

IV. Conclusion

For these reasons, Sacramento Residents urges the Planning Commission to reverse the Director's approval of the Project. Thank you for your consideration.

Sincerely,



Aidan P. Marshall

Attachments

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