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Via Email

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Thomas Veatch, Planner
City of Fresno
Planning and Development Department
2600 Fresno Street, Room 3043
Fresno, CA 93721

Re: Letter in Support of Appeal of Director's Decision Approving P22-00565

Dear Mr. Veatch:

I am writing on behalf of the Laborers International Union of North America, Local Union 294 ("LIUNA"), regarding Environmental Assessment No. P22-00565 for Development Permit Application No. P22-00565 ("Project"). LIUNA is appealing the approval of the Project by the planning director for the City of Fresno ("City") and requests that the City remand the Project application back to staff to prepare and circulate an appropriate California Environmental Quality Act ("CEQA") document for public review and comment.

The City has prepared streamlined review for the Project pursuant to 14 CCR § 15183, which applies to certain projects consistent with a community plan or zoning ("Section 15183 Review"). The City states that the Project is consistent with the Program Environmental Impact Report ("PEIR") prepared for the City's 2021 General Plan Amendment (hereafter, "2021 GP PEIR") and has prepared an Environmental Assessment ("EA") to support its findings. However, as discussed below, the proposed Project does not meet the requirements of Section 15183 Review, and must prepare either a Negative Declaration ("ND") for less than significant impacts or an Environmental Impact Report ("EIR") which adequately assesses the Project's potentially significant environmental impacts.

I. LEGAL STANDARD

Section 15183 of the CEQA guidelines allows a project to streamline environmental review if it is "consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was

certified.....” (14 CCR § 15183). The section then states that an agency utilizing the provision must analyze certain environmental effects, the following of which are relevant here: environmental effects that “[w]ere not analyzed as significant effects in a prior EIR on the zoning action, general plan, or community plan, with which the project is consistent,” or environmental effects that “[a]re 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.” (14 CCR § 15183 (b)(2), (3)).

The fair argument standard applies to the review of environmental effects mandated by Section 15183. (See *Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 Cal. App. 4th 273, 287, citing *Gentry v. City of Murrieta, supra*, 36 Cal.App.4th at pp. 1373, 1406, fn. 24, 43 Cal.Rptr.2d 170 [suggesting fair argument standard applies to determination under § 21083.3].) Thus, in reviewing a project’s environmental effects under these sections, if an agency finds that the project may have a significant impact with respect to one or more of the effects, they must prepare an EIR to assess those impacts. As the California Supreme Court has held “[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.” (*Communities for a Better Env’t v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319-320.) The “fair argument” standard creates a “low threshold” favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.)

If the agency finds that there is no significant impact, they must prepare an MND or an ND. An MND is proper *only* if the project revisions would avoid or mitigate the potentially significant effects identified in the initial study “to a point where clearly no significant effect on the environment would occur, and...there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” (PRC §§ 21064.5 and 21080(c)(2); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331.) In that context, “may” means a reasonable possibility of a significant effect on the environment. (PRC §§ 21082.2(a), 21100, 21151(a); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927; *League for Protection of Oakland's etc. Historic Res. v. City of Oakland* (1997) 52 Cal.App.4th 896, 904–05.)

II. DISCUSSION

As explained below, the City has failed to adequately analyze the proposed Project with respect to air quality impacts, biological impacts, and energy impacts. The City must therefore prepare an EIR or an ND to adequately analyze these effects in accordance with Section 15183 Review.

a. The Project May Have Potentially Significant Air Quality Impacts.

The Project's operational air quality impacts were not discussed as significant impacts in the prior EIR, and as such, they must be analyzed in an ND or supplemental EIR. Although the EA states that the proposed Project would emit 9 tons/day of nitrogen oxides (NO_x), one ton under the San Joaquin Valley Air Pollution Control District threshold of 10 tons/day, LIUNA believes that the modeling estimating these NO_x emissions may have underestimated these emissions, and that when calculated correctly, they may exceed the significance threshold. The City may therefore have to prepare an EIR to assess these impacts, pursuant to 14 CCR 15183(b)(2). Even if the City's analysis is correct, and these NO_x emissions are not significant impacts, the evaluation must be accompanied by a negative declaration including the requisite public participation requirements.

b. The City Fails to Assess the Impact of Project-Generated Traffic on Wildlife Mortality.

Neither the 2021 GP PEIR nor the Environmental Assessment prepared in support of the Project's 15183 Review discuss the Project's potential impacts on wildlife caused by project-generated traffic. According to the EA, the Project is anticipated to generate 481 daily trips during operation. However, the EA fails to consider how this increased traffic from the Project will lead to vehicle collisions with wildlife, potentially including special-status species of wildlife. This is an impact which was not discussed in the 2021 GP PEIR, and which is potentially significant. As such, the City is required to assess this impact and should prepare an EIR or an ND for the Project, pursuant to 14 CCR 15183(b)(3).

c. The Project's Energy Usage is Wasteful.

CEQA requires analysis of whether a project would "result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during construction or operation." (CEQA Appendix G). The Project's specific use of energy was not discussed or evaluated in the prior EIR as a significant impact or potential offsite or cumulative impact. The proposed Project has failed to adequately offset its energy usage through the implementation of solar panels, therefore its use of energy is wasteful. This is a significant impact which has not been addressed in the City's Section 15183 Review, and either an EIR or an ND is necessary to adequately analyze energy impacts and appropriate mitigation.

The Project proposes to install a minimum of 450 kW of rooftop solar. 450 kW of rooftop solar could be expected to generate approximately 50,000 – 70,000 kWh

of energy per month.¹ The EA estimates that during operation, the Project will consume 2,492,730 kWh/year, which is equivalent to about 207,727 kWh/month. The anticipated rooftop solar would therefore only cover about one fourth of the Project's anticipated monthly energy usage. The Project's energy usage therefore remains wasteful.

Additionally, the EA does not explain what amount of rooftop space the 450 kW of rooftop solar will occupy, and it is therefore impossible to ascertain whether the solar panels being used on the Project have been maximized. Assuming for the sake of argument that the Project proposes to use 370W panels to reach its 450 kW of rooftop solar, the solar panels will take up approximately 2,133.1 square meters of roof, or approximately 22,960 square feet.² When compared to the Project's proposed 205,000 square feet of warehouse space, plus the potential additional 40,300 square feet to be constructed in a later phase, the proposed quantity of solar paneling seems significantly lower than that which could presumably fit on the building's roof.

The City must prepare an ND or an EIR which adequately offsets the Project's wasteful use of energy.

III. CONCLUSION

The City has failed to meet the requirements of Section 15183 Review and has failed to adequately review the environmental effects designated by that provision to address whether either an ND or EIR is required for those effects. The City must prepare either an ND or an EIR for the Project to adequately address the issues raised in this letter.

Sincerely,



Amalia Bowley Fuentes
LOZEAU DRURY LLP

¹ <https://www.solarreviews.com/blog/how-much-electricity-does-a-solar-panel-produce>.

² <https://quotes.solarproof.com.au/system-sizes/450kw-solar-system-information-facts-figures/>.