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Via E-Mail

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Frank N. Gonzalez, Vice Chair
Jerry Gutierrez, Commissioner
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Re: Comment on PC-22-01003 - Golden Land Warehouse (Conditional Development Permit No. 2021-0047, Precise Plan Design No. 2021-0061)

Dear Chair Peukert, Vice Chair Gonzalez, and Honorable Members of the Planning Commission:

I am writing on behalf of **Supporters Alliance for Environmental Responsibility ("SAFER")**, a California nonprofit benefit corporation, regarding the Golden Land Warehouse, a 62,248 square foot industrial building proposed for the southwest corner of Locust Avenue and Stonehurst Drive in the Rialto (Conditional Development Permit No. 2021-0047, Precise Plan Design No. 2021-0061, Environmental Assessment Review No. 2021-0060) ("Project").

SAFER objects to the City of Rialto's ("City") decision to exempt the Project from review under the California Environmental Quality Act ("CEQA") pursuant to Section 15332 of the CEQA Guidelines. As demonstrated below, the Class 32 exemption is inapplicable because (1) the Class 32 exemption does not apply on its face, and (2) the unusual circumstances exception to the exemption applies. Since the Project is not exempt from CEQA, an initial study must be prepared to determine the appropriate level of CEQA review required.

I. PROJECT DESCRIPTION

The proposed project is a 62,248 square foot industrial commerce building. The truck court will accommodate up to six trucks and trailers and 63 passenger vehicles. Trucks will constitute approximately 115 of the 179 potential daily trips. According to the Staff Report, there is no proposed tenant for the project at this time, but the design of the building will accommodate various storage and distribution uses.

II. LEGAL STANDARD

The EIR is the very heart of CEQA. *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214 (*Bakersfield Citizens*); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927 (*Pocket Protectors*). The EIR is an “environmental ‘alarm bell’ whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return.” *Bakersfield Citizens*, 124 Cal.App.4th at 1220. The EIR also functions as a “document of accountability,” intended to “demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” *Laurel Heights Improvements Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392. The EIR process “protects not only the environment but also informed self-government.” *Pocket Protectors*, 124 Cal.App.4th at 927.

An EIR is required if “there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.” PRC § 21080(d); *see also Pocket Protectors*, 124 Cal.App.4th at 927. In very limited circumstances, an agency may avoid preparing an EIR by issuing a negative declaration, a written statement briefly indicating that a project will have no significant impact thus requiring no EIR (14 CCR § 15371), only if there is not even a “fair argument” that the project will have a significant environmental effect. PRC §§ 21100, 21064. Since “[t]he adoption of a negative declaration . . . has a terminal effect on the environmental review process,” by allowing the agency “to dispense with the duty [to prepare an EIR],” negative declarations are allowed only in cases where “the proposed project will not affect the environment at all.” *Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440.

To achieve its objectives of environmental protection, CEQA has a three-tiered structure. 14 CCR § 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.*; 14 CCR § 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.*; 14 CCR §§ 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, since the City exempted the Project from CEQA entirely, the first step of the CEQA process applies.

CEQA identifies certain classes of projects which are exempt from the provisions of CEQA. These are called categorical exemptions. 14 CCR §§ 15300, 15354. “Exemptions to CEQA are narrowly construed and ‘[e]xemption categories are not to be expanded beyond the reasonable scope of their statutory language.’” *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 125. The determination as to the appropriate scope of a categorical exemption is a question of law subject to independent, or de novo, review. *San Lorenzo Valley*

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Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist., (2006) 139 Cal. App. 4th 1356, 1375 (“[Q]uestions of interpretation or application of the requirements of CEQA are matters of law. Thus, for example, interpreting the scope of a CEQA exemption presents ‘a question of law, subject to de novo review by this court.’”)

Here, the City is relying on the Class 32 in-fill exemption pursuant to CEQA Guidelines section 15332. However, as discussed below, this exemption is improper, and instead, a full CEQA analysis, such as an EIR, must be prepared for this Project.

III. DISCUSSION

a. The Class 32 Exemption Does not Apply on its Face.

The Class 32 exemption provides:

Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section.

- (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- (c) The project site has no value, as habitat for endangered, rare or threatened species.***
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.***
- (e) The site can be adequately served by all required utilities and public services.

14 CCR § 15332 [emph. added].

By its terms, the exemption does not apply if the project site has any value as habitat for endangered, rare, or threatened species. In addition, the exemption does not apply if the project will have any significant effects relating to traffic, noise, air quality, or water quality. 14 CCR § 15332(d).

Here, there is no evidence that the Project falls within the language of the exemption. Specifically, there is no evidence that the vacant Project site has no value as habitat for endangered, rare, or threatened species. Moreover, there is no evidence that adding a warehouse to the site, when combined with the other industrial development in the area, will not have air quality impacts and impacts on the health of residential neighbors just one block away, or the health of students attending Wilmer Amina Carter High School, just two blocks away.

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Here, the exemption cannot apply because there is substantial evidence that the Project will have a significant impact on air quality.

IV. CONCLUSION

Reliance on the Class 32 exemption is improper and unsupported by any evidence. The City must prepare an initial study to determine the appropriate level of CEQA review required. Thank you for considering these comments.

Sincerely,



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