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August 17, 2021

VIA EMAIL AND ONLINE SUBMISSION ONLY

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VIA ELECTRONIC SUBMISSION

<https://lf.cityofamericancanyon.org/Forms/PublicComment>

**Re: Agenda Items 9 and 11: SDG Commerce 330 Distribution Center
Project (Item 9) and SDG Commerce 217 Warehouse Distribution
Center Conditional Use Permit - Appeal of the Planning
Commission Approval (Item 11)**

We write on behalf of the **American Canyon Residents for Responsible
Development** (“Residents”) to provide comments on **Agenda Item No. 9**, the SDG
Commerce 330 Distribution Center Project (“SDC 330 Project”) and **Agenda Item
No. 11**, the SDG Commerce 217 Warehouse Distribution Center Conditional Use
Permit (File Number PL21-0006) (“SDG 217 Project”).

Agenda Item 9 asks the City Council to adopt a Resolution taking two actions
in conjunction with the SDG 330 Project, including (1) approve the Parcel Map to
subdivide the SDG Commerce 330, LLC property to create four parcels (Parcel
Number 058-030-065); and (2) accept public improvements associated with the SDG
330. The SDG 330 Project is an approximately 330,000 square-foot wine

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distribution center to be located on the 15.24-acre south parcel of the proposed SDG 330 Parcel Map.

Agenda Item 11 asks the City Council to direct staff to report on the project analysis and the Laborers International Union of North America, Local 324 (“LIUNA”) appeal of the Planning Commission approval of the SDG 217 Warehouse Permit by December 7, 2021. The SDG 217 Project seeks a Conditional Use Permit (“CUP”) to construct a new 217,294 square foot wine warehouse distribution center with parking and landscaping at 1075 Commerce Court in the City of American Canyon (“City), on one of three SDG 330 Project parcels.

Residents asks the City Council to continue both hearings in order to prepare a single environmental impacts report (“EIR”) pursuant to the California Environmental Quality Act¹ (“CEQA”) analyzing the environmental impacts of all proposed entitlements for these two closely related projects. The SDG 330 and SDG 217 Projects are both proposed by entities of Stravinski Development Group (“SDG” or “Applicant”). The two projects propose nearly identical wine warehouse uses, are adjacent to one another, and are both proposed to be located on parcels that are the subject of the proposed SDG 330 Project’s parcel map. The Projects are part of a single warehouse development plan by SDG on the subdivided parcel, and must be analyzed as a single project pursuant to CEQA before the City Council can take action on the proposed entitlements for either the SDG 330 Project or the SDG 217 Project.

I. PROCEDURAL BACKGROUND

The SDG 217 Project site was previously part of a 35.85-acre parcel (APN: 058-030-065). A tentative parcel map was adopted by the City as part of the SDG 330 Project on February 28, 2019, that split the 35.85-acre parcel into three parcels. The 15.24-acre south parcel was approved for the SDG 330 Project in 2019. The City prepared and approved a Mitigated Negative Declaration (“MND”) in 2019 for the SDG 330 Project. The City appears to have failed to issue a final parcel map for the Project within the two (2) years following issuance of the tentative map, as required by the Subdivision Map Act (“Map Act”),² and now proposes to issue a

¹ Pub. Resources Code, §§ 21000 et seq.; 14 Cal. Code Regs. (“C.C.R”) §§ 15000 et seq. (“CEQA Guidelines”).

² Gov. Code 66452.6(d).
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parcel map to create four parcels on the same parcel that was the subject of the 2019 tentative map (Parcel Number 058-030-065).³

The City released a separate MND for the SDG 217 Project on December 18, 2020, which was heard by the Planning Commission on February 25, 2021, and appealed by LIUNA on March 5, 2021.⁴ In response to LIUNA's appeal, the City released a Recirculated MND for the SDG 217 Project for public comment in April 2021. Residents filed written comments on the Recirculated MND on April 29, 2021, during the public comment period. Residents' comments explained that the City was improperly piecemealing its environmental review of the SDG 217 Project and the SDG 330 Project. Residents' comments were also supported by expert comments which provided substantial evidence supporting a fair argument that the Project will result in potentially significant impacts to air quality, public health, biological resources, energy, GHG, land use, noise, and transportation that were not disclosed or imitated in the Recirculated MND.⁵

On July 20, 2021, the City Council scheduled a hearing on the LIUNA Appeal of the original MND. The agenda for the July 20 hearing agenda asked the City Council to uphold the Planning Commission's February 2021 approval of the original MND approve the Project in reliance on the original MND. Residents filed comments prior to the hearing which explained that the City could not approve the Project based on the original, outdated version of the MND because it had been superseded by the Recirculated MND in April 2021. Residents' comments also explained that the City Council lacked jurisdiction to take action on the Commerce 217 Project until the Planning Commission conducted a hearing on the operative CEQA document, the Recirculated MND. Finally, Residents' July 20 comments again asked the City to prepare an EIR for the Project before taking any action on the Project's proposed entitlements.⁶

The City Council now proposes, in two separately agenzied hearings on the same date, to continue the SDG 217 Project to December 2021, and to approve subsequent entitlements for the SDG 330 Project, without preparing an EIR for the

³ See Agenda Item 9 Staff Report.

⁴ See SDG 217 Staff Report, p. 1.

⁵ See ABJC April 29, 2021 Comments on the Initial Study/Mitigated Negative Declaration for SDG Commerce 217 Distribution Center Project (Application PL20-0008; SCH Number 2020120302), previously filed with the City.

⁶ See ABJC July 20, 2021 Agenda Item No. 16: SDG Commerce 217 Warehouse Distribution Center Conditional Use Permit (File Number PL21-0006), previously filed with the City.
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entire SDG warehouse project. As explained below, and in our previous comments on the SDG 217 Project, the City may not approve either the SDG 217 Project or the SDG 330 Project until it prepares a legally adequate EIR.

II. STATEMENT OF INTEREST

American Canyon Residents for Responsible Development is an unincorporated associations of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental and public service impacts of the Project. Residents includes American Canyon residents Robert Schwerin, Jason Moreno, and Anthony Ricker, the International Brotherhood of Electrical Workers Local 180, Plumbers & Steamfitters Union Local 343, Sprinkler Fitters Local 483, International Association of Sheet Metal, Air, Rail, Transportation Workers Local Union 104, and the District Council of Ironworkers, along with their members, their families, and other individuals who live and work in the City of American Canyon, and in Napa and Solano counties.

Individual members of Residents live, work, recreate, and raise their families in the City, in Napa and Solano counties, and in the surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist on site.

In addition, Residents has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for businesses and industries to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

III. THE CITY VIOLATED CEQA BY PIECEMEALING ITS REVIEW OF THE SDG 330 PROJECT, SDG 217 PROJECT, AND RELATED PROJECTS ON THE SAME PARCEL

The SDG 330 Project and SDG 217 Project are components of a larger, phased warehouse development by the Applicant in the City. Yet, the City prepared separate MNDs for each project, rather than a single EIR, despite abundant facts demonstrating that the two projects are part of a single warehouse development. Both projects propose nearly identical wine warehouse uses, are adjacent to one another, and are both proposed to be located on parcels that are the subject of the proposed SDG 330 Project's parcel map. Neither MND analyzed the Applicant's other warehouse projects in its description and failed to analyze the direct, indirect, and cumulative impacts of the Applicant's warehouse development project within the City as CEQA requires.⁷ This approach, termed "piecemealing" or "segmenting," violates CEQA, as it inhibits the full disclosure, analysis and mitigation of impacts, and discussion of alternatives.⁸

The City, within the last 5 years, has reviewed the SDG 217 Project, the SDG 330 Project, the SGE 258 Warehouse Project, and the 2019 tentative map approval, which connects all 3 projects.⁹ A review of the MNDs for the SDG 217 and SDG 330 Projects shows marked similarities between the two projects such as (1) having the same applicant, (2) similar LLC's who were organized by the same individual, (3) their Energy analysis in Appendix A-2 deferred actual analysis but instead stated the "CalEEMod default electrical usage was adjusted to be consistent with the SGE 258 Warehouse Project" because they were nearly identical¹⁰, (4) they are proposed

⁷ See generally, *Bozung v. LAFCO*, 13 Cal.3d 263, 283-84 (1975); *City of Santee v. County of San Diego*, 214 Cal.App.3d 1438, 1452 (1989); *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo*, 172 Cal.App.3d 151, 165 (1985).

⁸ E.g., Pub. Resources Code, §21002, 210021.1(a); CEQA Guidelines, §§ 151363, 15121, 15140, 15151 (An EIR is informational document whose purpose is to disclose and mitigate impacts, analyze a reasonable range of alternatives, and select as the project any alternative which can achieve project objectives, but is more protective of the environment, consistent with CEQA's substantive mandate); CEQA Guidelines, § 15378 (project description must include all project components).

⁹ SDG 330 Project MND, at Appendix A2,
<https://www.cityofamericancanyon.org/Home/ShowDocument?id=17307>

¹⁰ SDG 330 Project MND, at Appendix A2,
<https://www.cityofamericancanyon.org/Home/ShowDocument?id=17307>
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every two years,¹¹ (5) previously in 2016 the three separate lots were combined into one single lot only to be redivided to create these projects.¹² These Projects should have been considered as one project because “piecemealing” or “segmenting” violates CEQA, as it inhibits the full disclosure, analysis and mitigation of impacts, and discussion of alternatives.¹³

A project under CEQA means the “whole of an action which has the potential for resulting in either a direct physical change in the environment, or reasonably foreseeable indirect physical change in the environment.”¹⁴ CEQA prohibits a project proponent from seeking approval of a large project in a piecemeal fashion in order to take advantage of environmental exemptions or lesser CEQA review for smaller projects.¹⁵ CEQA mandates “that environmental considerations do not become submerged by chopping a large project into many little ones - each with a minimal potential impact on the environment - which cumulatively may have disastrous consequences.”¹⁶ Before undertaking a project, the lead agency must assess the environmental impacts of all reasonably foreseeable phases of a project and a public agency may not segment a large project into two or more smaller projects in order to mask serious environmental consequences. As the Court of Appeal stated, “[t]he CEQA process is intended to be a careful examination, fully open to the public, of the environmental consequences of a given project, covering the entire project, from start to finish.”¹⁷

Here, the Applicant every two years submits a nearly identical warehouse Project, with a nearly identical MND, on subdivided parcels of the same original

¹¹ CEQA Clearing House Projects in American Canyon,

<https://ceqanet.opr.ca.gov/Search?City=American+Canyon>

¹² CEQA SCH 2016012049, <https://ceqanet.opr.ca.gov/Project/2016012049>

¹³ E.g., Pub. Resources Code, §21002, 21002.1(a); CEQA Guidelines, §§ 151363, 15121, 15140, 15151 (An EIR is informational document whose purpose is to disclose and mitigate impacts, analyze a reasonable range of alternatives, and select as the project any alternative which can achieve project objectives, but is more protective of the environment, consistent with CEQA’s substantive mandate); CEQA Guidelines, § 15378 (project description must include all project components).

¹⁴ CEQA Guidelines, § 15378(a).

¹⁵ *Arviv Enterprises, Inc. v. South Valley Area Planning Com.*, 101 Cal.App.4th 1337, 1340 (2002).

¹⁶ *Bozung v. LAFCO*, 13 Cal.3d 263, 283-84 (1975); *City of Santee v. County of San Diego*, 214 Cal.App.3d 1438, 1452 (1989); *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo*, 172 Cal.App.3d 151, 165 (1985).

¹⁷ *Natural Resources Defense Council v. City of Los Angeles*, 103 Cal.App.4th 268 (2002); see also *Whitman v. Board of Supervisors* (1979) (EIR for an exploratory oil well that failed to analyze the impacts associated with an proposed pipeline was inadequate and violated CEQA).

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parcel of land in an apparent attempt to disguise the actual impacts on the environment of SDG's one large warehouse district.¹⁸ The SDG 217's Recirculated MND further explains that the tentative parcel map was adopted by the City on February 28, 2019 as part of the SDG 330 Project. The tentative map split the previously 35.85-acre parcel into three separate parcels in order to facilitate both the SDG 217 Project and the SDG 330 Project.¹⁹ The 15.24-acre south parcel was approved for the approximately 330,000 square-foot SDG 330 wine distribution center, which was subsequently approved with a separate MND and is nearing completion.²⁰ The City failed to prepare a single EIR for the parcel map and subsequent warehouse projects on these parcels, despite the clear connection between these actions.

The City should have required a single EIR for SGE 258, the subdivision map, SDG 330, and the SDG 217 Project prior to approving any of these project. An EIR was, and currently is, necessary to analyze the environmental and public health impacts from the ongoing and reasonably warehouse development and expansion of warehouse uses on SDG's subdivided parcels. It was reasonably foreseeable from the time the SDG 330 Project was approved in 2019 that the Applicant planned to turn the subdivided parcels into a warehouse district. The Applicant is now proceeding with that development by seeking a separate set of approvals for the SDG 217 Project. Since the City is now proposing subsequent approvals for the SDG 330 Project, this triggers a duty for the City to prepare a single subsequent EIR for, at a minimum, the SDG 330 Project and SDG 217 Project.

The City must prepare an EIR to fully disclose, analyze, and mitigate the individual and cumulative impacts of SDG's warehouse district projects to be located on the SDG 330 Project's subdivided parcels. In particular, an EIR is required to review the cumulative impacts of all these warehouses being built in the same area since the SDG 217 Project will now be the third one, with space for potentially one more. The EIR must analyze the environmental effects of other phases or future expansions of a project if the other activities are reasonably foreseeable consequences of the initial project.²¹

¹⁸ *Arviv Enterprises, Inc. v. South Valley Area Planning Com.* (2002) 101 Cal. App. 4th 1333, 1340 (serial approval of multiple small housing and subdivision projects by same applicant in same location, leading to single large development project).

¹⁹ MND, p. 12.

²⁰ *Id.*

²¹ *Bozung*, 13 Cal.3d at 283–284.

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A. Approval of the SDG 330 Parcel Map May Violate the Subdivision Map Act

Under the Map Act, approvals of a tentative subdivision map last two years.²² Tentative maps may be extended in two-year increments upon application by the proponent and approval by the lead agency.²³ However, if a tentative map expires with no extension, the proponent must begin the process again by re-submitting a new tentative parcel map for approval by the lead agency.²⁴

The tentative parcel map for the SDG 330 Project was approved on February 28, 2019, over two years ago.²⁵ As part of this approval, the City asked for certain conditions and detailed the circumstances in which the tentative parcel map would expire.²⁶ The Staff Report for the SDG 330 Project does not provide any discussion or evidence demonstrating that an extension was granted by the City Council or the Community Development Director prior to the Tentative Parcel Map's expiration. Without this extension, the SDG 330 Project's Tentative Parcel Map expired on February 28, 2021 under both the Conditions of Approval and the Subdivision Map Act.²⁷ If no extension has been granted then the City Council has no authority to approve a Final Map without starting the process over by submission of application for a new Tentative Parcel Map.²⁸

²² Gov. Code § 66452.6.

²³ Gov. Code § 66452.6(d), (e).

²⁴ *Id.*

²⁵ See City of American Canyon Feb. 2019 Planning Commission Agenda and Minutes, https://cityofamericancanyon.civicweb.net/document/40245/Planning%20Commission%20Meeting%20-%202028%20Feb%202019.docx?referer=granicus&handle=B387FB390AA84102ABD75E11E3F6AAD4;https://americancanyon.granicus.com/DocumentViewer.php?file=americancanyon_66cb7a65cd02ffe331f8a4e396b17fa6.pdf&view=1.

²⁶ Tentative Parcel Map Conditions of Approval, Section 2 subsection 6 Expiration of this Approval, <https://cityofamericancanyon.civicweb.net/document/40250/Att%20%20SDG%20330%20TPM%20Re-so%202.22.19.pdf?handle=39FD3217554F4FCBA44D4897DC2E9011>.

²⁷ Tentative Parcel Map Conditions of Approval, Section 2 subsection 6 Expiration of this Approval, <https://cityofamericancanyon.civicweb.net/document/40250/Att%20%20SDG%20330%20TPM%20Re-so%202.22.19.pdf?handle=39FD3217554F4FCBA44D4897DC2E9011>; Gov. Code section 66542.6(d)-(e).

²⁸ Gov. Code section 66542.6(d)-(e).
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IV. CONCLUSION

We urge the City Council to fulfill its responsibilities under CEQA and the Subdivision Map Act by remanding both the SDG 330 Project and SDG 217 Project to staff to prepare a legally adequate EIR for the Project. Thank you for your attention to these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Darien Key", is written over a grey rectangular background.

Darien K. Key

DKK:acp

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