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Via E-mail

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Re: Comment on Initial Study and Mitigated Negative Declaration for the Development Permit Application No. P22-04122

Dear Mr. Holt and City of Fresno Planning and Development Department:

I am writing on behalf of Laborers International Union of North America, Local Union 294 and its members living in the City of Fresno (“LIUNA”), regarding the Environmental Assessment No. P22-04122 and Development Permit Application No. P22-04122, submitted by Living Spaces (the “Applicant”), and prepared for the Project, including all actions related or referring to the proposed development of an approximately 104,867 square-foot furniture retail store and showroom and associated parking, to be located upon an approximately 8-acre site at the east side of North Abby Street between East Alluvial and East Spruce Avenues, in Fresno, California (the “Project”).

LIUNA is concerned that the Initial Study and Mitigated Negative Declaration (“IS/MND” or “MND”) prepared for the Project is legally inadequate. After reviewing the MND, we conclude that it fails as an informational document, and that there is a fair argument that the Project may have adverse environmental impacts. Therefore, we request that the City of Fresno (the “City”) prepare an environmental impact report (“EIR”) for the Project pursuant to the California Environmental Quality Act (“CEQA”), Public Resources Code (“PRC”) section 21000, et seq.

PROJECT DESCRIPTION

The proposed Project is for the construction and operation of an approximately 104,867 square-foot furniture retail store and showroom and associated parking. More specifically, the Project would include an 81,608 square-foot showroom, a 4,682 square-foot stockroom and attached loading zone for delivery vehicles and customer pick up in the northeast corner, as well as other features. The Project would also include 298 parking stalls, including 30 electrical vehicle (EV) stalls and 36 clean air/vanpool parking stalls.

The Project site is an approximately 8-acre site located in the City of Fresno with commercial and residential uses to the west. Single-family residences are located approximately 65 feet west of the Project site across North Abby Street. The Pinedale Elementary School is about 900 feet to the west of the Project site. The site is primarily vacant, with the exception of two concrete utility structures located on the southwest corner and the central portion of the project site respectively.

The City prepared an initial study and mitigated negative declaration for the proposed Project, which found that the Project would have no potentially significant impacts. However, as discussed below, the Project may have significant biological resources, energy, air quality, and health risk impacts requiring that the City prepare an EIR.

LEGAL STANDARD

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 (*CBE v. SCAQMD*) (citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504–505).) “Significant environmental effect” is defined very broadly as “a substantial or potentially substantial adverse change in the environment.” (Pub. Res. Code (“PRC”) § 21068; *see also* 14 CCR § 15382.) An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.” (*No Oil, Inc.*, 13 Cal.3d at 83.) “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Communities for a Better Env’t v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 109 (*CBE v. CRA*).)

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.) 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.)

Where an initial study shows that the project may have a significant effect on the environment, a mitigated negative declaration may be appropriate. However, a mitigated negative declaration 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, 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*, 124 Cal.App.4th at 927; *League for Protection of Oakland’s etc. Historic Res. v. City of Oakland* (1997) 52 Cal.App.4th 896, 904–05.)

Under the “fair argument” standard, an EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency’s decision. (14 CCR § 15064(f)(1); *Pocket Protectors*, 124 Cal.App.4th at 931; *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-51; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.) 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*, 124 Cal.App.4th at 928.)

The “fair argument” standard is virtually the opposite of the typical deferential standard accorded to agencies. As a leading CEQA treatise explains:

This ‘fair argument’ standard is very different from the standard normally followed by public agencies in their decision making. Ordinarily, public agencies weigh the evidence in the record and reach a decision based on a preponderance of the evidence. [Citation]. The fair argument standard, by contrast, prevents the lead agency from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact.

(Kostka & Zishcke, *Practice Under the California Environmental Quality Act*, §6.37 (2d ed. Cal. CEB 2021).) The Courts have explained that “it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency’s determination. Review is de novo, with a preference for resolving doubts in favor of environmental review.” (*Pocket Protectors*, 124 Cal.App.4th at 928 (emphasis in original).)

For over forty years the courts have consistently held that an accurate and stable project description is a bedrock requirement of CEQA—the *sine qua non* (that without which there is nothing) of an adequate CEQA document:

Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the “no project” alternative) and weigh other alternatives in the balance. An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.

(*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185 at 192–93.) CEQA therefore requires that an environmental review document provide an adequate description of the project to allow for the public and government agencies to participate in the review process through submitting public comments and making informed decisions.

Lastly, CEQA requires that an environmental document include a description of the project’s environmental setting or “baseline.” (CEQA Guidelines § 15063(d)(2).) The CEQA “baseline” is the set of environmental conditions against which to compare a project’s anticipated impacts. (*CBE v. SCAQMD*, 48 Cal.4th at 321.) CEQA Guidelines section 15125(a) states, in pertinent part, that a lead agency’s environmental review under CEQA:

...must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time [environmental analysis] is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant.

(*See Save Our Peninsula Committee v. County of Monterey* (2001) 87 Cal.App.4th 99, 124-25 (“*Save Our Peninsula*”).) As the court of appeal has explained, “the impacts of the project must be measured against the ‘real conditions on the ground,’” and not against hypothetical permitted levels. (*Id.* at 121-23.)

DISCUSSION

I. The Project May Result in Significant Impacts to Biological Resources.

A. The IS/MND inadequately characterized the existing environmental setting as it relates to wildlife.

The IS/MND’s baseline for biological impacts is inadequate, incomplete, and understates the biological values at the Project site. According to the IS/MND and the Biological Resources Assessment, included as Appendix B to the IS/MND, “a general biological survey of the project

site was conducted by an LSA Biologist on January 19, 2023.” (IS/MND, p. 37; IS/MND, Appendix B, p. 3.) In addition, “[a] literature review and records search was conducted on January 18, 2023, to identify the existence and potential for occurrence of sensitive or special-status plant and animal species in the project vicinity.” (IS/MND, p. 36.) The IS/MND reports “no special-status species hav[ing] been identified within the project site or in the vicinity of the site.” (*Id.*, p. 38.) As a result, the IS/MND concludes that “[t]he project site does not contain critical habitat that could support candidate, sensitive or special-status species.” (*Id.*) However, based on the literature review and the observations made during the January 2023 biological survey of the Project site, special-status bird species could be present and/or use the site for nesting, breeding, and/or foraging.

The IS/MND reports that during the LSA biologist’s field survey of the Project site, the following species were observed:

A total of seven wildlife species were observed on or near the project site during the January 2023 survey, including: American crow (*Corvus brachyrhynchos*), house finch (*Haemorhous mexicanus*), white-crowned sparrow (*Zonotrichia leucophrys*), black phoebe (*Sayornis nigricans*), California scrub jay (*Aphelocoma californica*), European starling (*Sturnus vulgaris*; nonnative species), and California ground squirrel (*Otospermophilus beecheyi*).

(*Id.*, p. 37.) Regarding the observation of California ground squirrels on the Project site, the IS/MND states:

While no special-status animal species (or signs of such species) were observed on site during the January 2023 survey, California ground squirrel burrows that could be used by burrowing owl (*Athene cunicularia*) were observed in portions of the project site. None of the burrows observed in the project site exhibited features typical of occupied burrowing owl burrows at the time of the survey, although there is some potential for use by this species in the future. Potentially significant direct and/or indirect impacts, including mortality, harassment, or other forms of incidental take, could occur if construction-related ground disturbance occurs in or around an occupied burrow.

(*Id.*) The occurrence of California ground squirrels is also significant because ground squirrels are prey of large raptors such as bald eagle, golden eagle, ferruginous hawk and Swainson’s hawk. Due to the presence of ground squirrels on the Project site, protocol-level surveys should have been performed for burrowing owls and nesting birds and raptors, such as the Swainson’s hawk. Instead, only a single reconnaissance-level survey was conducted on January 19, 2023. This survey was inadequate for several reasons.

First, the January 2023 field survey of the Project site does not provide substantial evidence of the presence or absence of burrowing owls on the site. The lack of evidence of burrowing owls on the Project site was not necessarily because they were not there, but because

the survey was not conducted during the breeding season when the owls may be present and did not adhere to the survey protocols for burrowing owls prepared by the California Department of Fish and Wildlife (“CDFW”). According to CDFW:

Burrowing owls are more detectable during the breeding season with detection probabilities being highest during the nestling stage (Conway et al. 2008). **In California, the burrowing owl breeding season extends from 1 February to 31 August** (Haug et al. 1993, Thompsen 1971) with some variances by geographic location and climatic conditions. **Several researchers suggest three or more survey visits** during daylight hours (Haug and Diduik 1993, CBOC 1997, Conway and Simon 2003) **and recommend each visit occur at least three weeks apart during the peak of the breeding season, commonly accepted in California as between 15 April and 15 July** (CBOC 1997). Conway and Simon (2003) and Conway et al. (2008) recommended conducting surveys during the day when most burrowing owls in a local area are in the laying and incubation period (so as not to miss early breeding attempts), during the nesting period, and in the late nestling period when most owls are spending time above ground.

Non-breeding season (1 September to 31 January) surveys may provide information on burrowing owl occupancy, but **do not substitute for breeding season surveys because results are typically inconclusive. Burrowing owls are more difficult to detect during the non-breeding season and their seasonal residency status is difficult to ascertain.**

(Cal. Dep’t Fish & Wildlife, Staff Report on Burrowing Owl Mitigation (Mar. 7, 2012), p. 6, at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843> (emphasis added).) However, the biological survey of the Project site took place on January 19, 2023, which is outside of the breeding season for burrowing owls, as identified above by the CDFW. No survey was taken during the burrowing owl breeding season. The single survey that was conducted is also inconsistent with the surveys recommended in the CDFW’s available survey guidelines for burrowing owls. (See, e.g., p. 28.) For example, detection surveys are needed for burrowing owls present on and in the vicinity of the Project site that are consistent with the recommendations of CDFW. An EIR should be prepared along with a report of appropriate detection surveys.

Thus, given the paucity of owls present in Fresno and the importance of that county to the breeding success of the species, the Project’s baseline must be informed by protocol-level surveys that can determine the presence or absence of burrowing owls at the site. Only with an accurate baseline could the IS/MND purport to assess the impacts on that species of concern.

The same baseline problem also afflicts the IS/MND’s discussion of other nesting bird species of concern on or in the vicinity of the Project site, such as the Swainson’s hawk. According to the IS/MND’s Biological Resources Assessment:

The project site contains marginal foraging habitat for certain raptors such as the Swainson's hawk (*Buteo swainsoni*), although suitable tree-nesting habitat for this species is absent from the project site. . . . Mature Palm and oak trees in the vicinity and along the perimeter outside of the site in the adjacent parcels could be used by raptors and other tree-nesting species. Overall, the project site and immediate surroundings contain foraging and nesting habitat for a variety of bird species that are protected while nesting under the Migratory Bird Treaty Act and California Fish and Game Code. (IS/MND, Appendix B, p. 7.)

Because of the absence of detection surveys, the IS/MND only speculates that habitat is marginal and occurrence likelihoods low. Only with an accurate baseline could the IS/MND purport to assess the impacts on nesting raptors and other bird species of concern.

As multiple courts have explained:

The agency [will] not be allowed to hide behind its own failure to gather relevant data.... CEQA places the burden of environmental investigation on government rather than the public. If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.”

(*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311; see also *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1378–79; *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 197, 228 Cal.Rptr. 868 [fact that initial study checklist was incomplete and marked every impact “no” supported fair argument that project would have significant environmental effects].) Accordingly, a fair argument can be made for the need to prepare an EIR for the Project because of the lack of relevant investigation of the site's biological resources and the possible use of the site by sensitive wildlife species.

B. The pre-construction surveys identified in the IS/MND for burrowing owls and nesting birds are not sufficient to address potential impacts to birds that may be present at the Project site.

After reviewing the proposed wildlife impact mitigations identified in the IS/MND related to pre-construction surveys for burrowing owl surveys (i.e. Mitigation Measure BIO-1), and nesting birds (i.e. Mitigation Measure BIO-2), we agree with the need for such pre-construction surveys. However, these recommended burrowing owl surveys and pre-construction surveys will come too late either to disclose the Project's anticipated impacts or to fully mitigate impacts to birds, including burrowing owls and nesting raptors. Instead, detection surveys need to be performed to professional standards and that information used to disclose potential impacts and to inform the pre-construction surveys. Detection surveys are needed, because detection surveys provide the bases for impact assessments and formulation of mitigation measures. They also inform pre-construction surveys, which are otherwise performed

in a rushed manner just ahead of construction. By failing to determine the actual baseline of burrowing owls and other nesting-bird species' reliance on the site for roosting, nesting, and foraging, and instead waiting until five to thirty days before construction to determine what roosts, nests, and birds may suffer impacts from the Project, the IS/MND fails to evaluate and mitigate the Project's potential significant impacts to special-status bird species.

II. The IS/MND's Analysis of Energy Impacts is Conclusory and Fails to Provide Substantial Evidence that the Project's Energy Impacts are Less than Significant.

Contrary to the IS/MND, the construction and operation of the Project could potentially cause wasteful, inefficient, and unnecessary consumption of energy. (See, e.g., IS/MND, pp. 46-49.) The IS/MND states that "[t]he proposed project would increase the demand for electricity, natural gas, and gasoline." (*Id.*, p. 46.) However, the IS/MND concludes that "[t]he proposed project would not result in any potentially significant impacts related to energy, and no mitigation is required." (*Id.*, p. 49.)

Regarding the Project's construction-related gasoline impacts, the IS/MND concludes that the impacts will be less than significant, stating:

Petroleum fuels (e.g., diesel and gasoline) would be the primary sources of energy for these activities. Construction activities are not anticipated to result in an inefficient use of energy as gasoline and diesel fuel would be supplied by construction contractors who would conserve the use of their supplies to minimize their costs on the project. Energy usage on the project site during construction would be temporary in nature and would be relatively small in comparison to the State's available energy sources. Therefore, the proposed project would result in a less-than-significant impact during project construction.

(*Id.*, p. 46.)

Turning to the Project's operational energy use, the IS/MND concludes that the impacts to natural gas use, electricity consumption, and fuel use for vehicle and truck trips associated with Project operation will be less than significant because:

- [E]lectricity demand associated with the proposed project would be less than 0.1 percent of Fresno County's total electricity demand. (*Id.*, p. 47.)
- [N]atural gas demand associated with the proposed project would only be less than 0.1 percent of Fresno County's total natural gas demand. (*Id.*, pp. 47-48.)
- [V]ehicle and truck trips associated with the proposed project would increase the annual fuel use in Fresno County by less than 0.1 percent for gasoline fuel usage and by less than 0.1 percent for diesel fuel usage. (*Id.*, pp. 47-48.)

In addition to the IS/MND's general estimates regarding the Project's construction and operational-related natural gas, electricity, and fuel use, above, the IS/MND also bases its less than significant construction and operational energy use conclusion on the following:

[The] proposed new development would be constructed using energy efficient modern building materials and construction practices, and the proposed project also would use new modern appliances and equipment, in accordance with the Appliance Efficiency Regulations (Title 20, CCR Sections 1601 through 1608). The expected energy consumption during construction and operation of the proposed project would be consistent with typical usage rates for commercial uses; however, energy consumption is largely a function of personal choice and the physical structure and layout of buildings.

(*Id.*, p. 48.)

Lastly, concerning whether or not the Project would “[c]onflict with or obstruct a state or local plan for renewable energy or energy efficiency,” the IS/MND concludes:

The proposed project would not result in wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation. Because California's energy conservation planning actions are conducted at a regional level, and because the proposed project's total impact to regional energy supplies would be minor, the proposed project would not conflict with California's energy conservation plans as described in the [California Energy Commission's] Integrated Energy Policy Reports. Impacts would be less than significant, and no mitigation is required.

(IS/MND, p. 49.)

The standard under CEQA is whether the Project would result in wasteful, inefficient, or unnecessary consumption of energy resources. Failing to undertake “an investigation into renewable energy options that might be available or appropriate for a project” violates CEQA. (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 213; see also, *League to Save Lake Tahoe Mountain etc. v. County of Placer* (“*League to Save Lake Tahoe*”) (2022) 75 Cal.App.5th 63, 164-168.)

Energy conservation under CEQA is defined as the “wise and efficient use of energy.” (CEQA Guidelines, app. F, § I.) The “wise and efficient use of energy” is achieved by “(1) decreasing overall per capita energy consumption, (2) decreasing reliance on fossil fuels such as coal, natural gas and oil, and (3) increasing reliance on renewable energy resources.” (*Id.*)

Noting compliance with the California Appliance Efficiency Regulations (Cal. Code Regs., tit 20, §§ 1601–1608 (Title 20)) does not constitute an adequate analysis of energy. (*Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 264-65.) Similarly, the court in *City of Woodland* held unlawful an energy analysis that relied on

compliance with California Building Energy Efficiency Standards (Cal. Code Regs., tit. 24, part 6 (Title 24)), that failed to assess transportation energy impacts, and that failed to address renewable energy impacts. (25 Cal.App.4th at pp. 209-13.) As such, the IS/MND's reliance on Title 20's Appliance Efficiency Regulations does not satisfy the requirements for an adequate discussion of the Project's energy impacts.

The IS/MND summarily concludes that the Project would not result in the inefficient, wasteful, and unnecessary consumption of energy. There is no discussion of the Project's cost effectiveness in terms of energy requirements. There is no adequate discussion of energy consuming equipment and processes that will be used during the construction or operation of the Project, including, *inter alia*, the energy necessary for heating, cooling, and ventilation of buildings; water heating; operation of electrical systems; and indoor, outdoor, and perimeter lighting. The Project's energy use efficiencies by amount and fuel type for building maintenance was also not identified.

The IS/MND attempts to satisfy the analysis of energy impacts by estimating the Project's percentage of energy use compared to energy and fuel use for the entirety of Fresno County. CEQA prohibits this type of "drop in the bucket" analysis. (*See Kings Cnty. Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718; *Friends of Oroville v. City of Oroville* (2013) 219 Cal. App. 4th 83, 842.)

In addition, the effect of the Project on peak and base period demands for electricity has not been addressed. This is of particular concern given recent events where California's electric grid was significantly impacted by an unprecedented high energy demand as a result of a prolonged, record-breaking heat wave that affected the entire State of California for multiple days. For example, at the start of September 2022, California experienced extreme heat, with temperatures across the state 10 to 20 degrees hotter than normal, driving up energy demand and straining power generation equipment as people ran their air conditioning. On September 6, 2022, as a result of electricity supplies running low in the face of record heat and demand, the California Independent System Operator (Cal-ISO) issued an Energy Emergency Alert (EEA) 3, the highest energy alert, authorizing the grid operator to order rotating power outages to lower demand and stabilize the system if necessary. As grid conditions worsened, energy supplies were determined to be insufficient to cover demand and reserves, and an EEA 3 was declared, meaning controlled power outages were imminent or in process according to each utility's emergency plan. The EEA 3 was in response to an evening peak electricity demand that was forecasted at more than 52,000 megawatts, which Cal-ISO stated was "a new historic all-time high for the grid, as the state endured the hottest day in this prolonged, record-breaking heat wave." Here, the IS/MND fails to adequately analyze energy conservation. As such, the IS/MND's conclusions are unsupported by the necessary discussions of the Project's energy impacts under CEQA.

In addition, under *League to Save Lake Tahoe*, the agency has to implement all feasible energy mitigation measures unless it has substantial evidence to show that the proposed measures are infeasible. (*Save Lake Tahoe*, 75 Cal.App.5th at 166-168; see also, *id.*, pp. 159-163.) An example of a feasible mitigation measure, which has recently been adopted as a new

ordinance in San Francisco, is the requirement that 100% of parking spaces have electric vehicle charging stations. According to the IS/MND, of the 298 parking stalls included in the Project, only “30 electrical vehicle (EV) stalls” would be provided. (IS/MND, p. 3.) Since requiring all parking stalls to be EV stalls is likely feasible, the IS/MND must implement it as an energy efficient mitigation measure, or at minimum, provide substantial evidence that implementing the mitigation measure is unfeasible. As such, the IS/MND’s conclusions are unsupported by the necessary discussions of the Project’s energy impacts under CEQA.

In conclusion, because the IS/MND failed to adequately analyze and mitigate the Project’s potentially wasteful, inefficient, and unnecessary consumption of energy, an EIR should be prepared to address the Project’s potential significant energy impacts, and to mitigate those impacts accordingly.

III. The IS/MND Fails to Adequately Evaluate and Mitigate Health Risks from Diesel Particulate Matter Emissions.

One of the primary emissions of concern regarding health effects for land development projects is diesel particulate matter (“DPM”), which can be released during Project construction and operation. DPM consists of fine particles with a diameter less than 2.5 micrometers including a subgroup of ultrafine particles (with a diameter less than 0.1 micrometers). Diesel exhaust also contains a variety of harmful gases and cancer-causing substances. Exposure to DPM is a recognized health hazard, particularly to children whose lungs are still developing and the elderly who may have other serious health problems. According to the California Air Resources Board (“CARB”), DPM exposure may lead to the following adverse health effects: aggravated asthma; chronic bronchitis; increased respiratory and cardiovascular hospitalizations; decreased lung function in children; lung cancer; and premature deaths for those with heart or lung disease.

An EIR should be prepared to evaluate the significant health impacts to individuals and workers from the Project’s operational and construction-related DPM. The IS/MND incorrectly concluded that the Project would have a less-than-significant health risk impact without conducting a quantified construction or operational health risk analysis (“HRA”). (See, IS/MND, p. 32.) Given the proximity of the Project to single-family residences within 65 feet of the Project site and Pinedale Elementary School within 1,000 feet of the Project site, construction and operational HRAs need to be prepared to determine the potential significant health risk impacts to families, students, and teachers from DPM emissions related to the Project. As such, the IS/MND’s evaluation of the Project’s potential health risk impacts, as well as the subsequent less-than-significant impact conclusion, is incorrect for two reasons.

First, by failing to prepare a quantified construction and operational HRA, the Project is inconsistent with CEQA’s requirement to correlate the increase in emissions that the Project would generate to the adverse impacts on human health caused by those emissions. The IS/MND’s conclusion is also inconsistent with the most recent guidance published by the Office of Health Hazard Assessment (“OEHHA”). (See, “Risk Assessment Guidelines: Guidance

Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*: <https://oehha.ca.gov/media/downloads/cmr/2015guidancemanual.pdf>.)

Second, by failing to prepare a quantified construction and operational HRA for nearby, existing sensitive receptors, the IS/MND fails to compare the excess health risk impact of the Project to the San Joaquin Valley Air Pollution Control District’s (“SJVAPCD”) specific numeric threshold of 10 in one million. Without conducting a quantified construction and operational HRA, the IS/MND also fails to evaluate the cumulative lifetime cancer risk to nearby, existing receptors from the Project’s construction and operation together. This is incorrect, and as a result, the IS/MND’s evaluation cannot be relied upon to determine Project significance. OEHHA guidance requires that the excess cancer risk be calculated separately for all sensitive receptor age bins, then summed to evaluate the total cancer risk posed by all Project activities. Therefore, in accordance with the most relevant guidance, an assessment of the health risk posed to nearby, existing receptors from Project construction and operation should have been conducted.

Lastly, the IS/MND relies on inadequate mitigation (i.e. Mitigation Measure Air-1) to support its conclusion that the Project will result in less-than-significant health risk impacts from construction-related emissions. (See, e.g., IS/MND, pp. 32-33.) Mitigation Measure Air-1 only requires certain controls consistent with SJVAPCD Regulation VIII (Fugitive PM10 Prohibitions) to be included as specifications for the Project and implemented at the construction site. (*Id.*) The IS/MND should also require construction equipment used at the Project site to meet Tier 4 Final emissions standards to reduce construction-related emissions as well as the adverse health risk impacts of those emissions on nearby sensitive receptors.

CONCLUSION

For the foregoing reasons, LIUNA requests that an EIR be prepared for the Project and that it be circulated for public review and comment in accordance with CEQA. Thank you for your consideration of these comments.

Sincerely,



Victoria Yundt
LOZEAU | DRURY LLP