LOZEAU DRURY LLP

January 31, 2024

Via E-mail

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Re: Comment on Development Permit Application No. P21-02699, Vesting Tentative Parcel Map No. 2021-09, and Final Environmental Impact Report, State Clearinghouse (SCH) No. 2022050265, for the 2740 West Nielsen Avenue Office/Warehouse Project (February 1, 2024 City Council Meeting Agenda Item 1)

Dear President Perea, Vice-President Karbassi, Honorable Members of the City of Fresno City Council, Clerk Stermer, Director Clark, and Mr. Martinez:

I am writing on behalf of Laborers International Union of North America, Local Union No. 294 and its members living in and around the City of Fresno ("LIUNA") regarding the Final Environmental Impact Report ("FEIR" or "EIR"), State Clearinghouse (SCH) No. 2022050265, for the Development Permit Application No. P21-02699 and Vesting Tentative Parcel Map No. 2021-09 proposing to construct four warehouse buildings totaling approximately 901,438 square feet of office and warehouse uses located on approximately 48.03 acres of property at the northeast intersection of North Marks and West Nielsen Avenues in Fresno, California (the "Project"). This Project is scheduled to be heard on appeal as Agenda Item 1 at the City Council's February 1, 2024 meeting.

After reviewing the FEIR, LIUNA is concerned that the FEIR fails to adequately analyze significant environmental impacts, and fails to mitigate significant impacts that will occur as a result of the Project. LIUNA requests that the City Council grant the appeals and refrain from certifying the EIR at this time, and instead, request staff to reconsider the analyses and require

additional mitigation measures in order to address the Project's significant transportation, biological resources, air quality, health risk, energy, and noise impacts that the Project as proposed will cause.

This comment is prepared with the assistance of biologist Shawn Smallwood, Ph.D. Dr. Smallwood's comments and curriculum vitae are attached hereto as Exhibit A, and are incorporated herein by reference in their entirety. Dr. Smallwood's comment included at Exhibit A was originally submitted to the City of Fresno Planning and Development Department as Exhibit B to LIUNA's June 13, 2022 comment letter on the Initial Study and Mitigated Negative Declaration ("IS/MND" or "MND") that the City initially prepared for the Project. While Dr. Smallwood's comment references the MND, not the EIR, his expert analysis of the Project's biological resources impacts still applies to the shortcomings found in the EIR.

PROJECT DESCRIPTION

The Project proposes to construct approximately 901,438 square feet of office and warehouse uses on an approximately 48-acre project site. The Project would include four buildings with a total of 201 loading docks. Building 1 would be 468,812 sf with 122 truck loading docks. Building 2 would be 248,786 sf with 46 loading docks. Building 3 would be 93,074 sf with 18 loading docks. Building 4 would 90,766 sf with 15 loading docks. Construction would occur in two phases over 24 months, with each phase taking about 12 months. Buildings 2, 3 and 4 would be constructed in the Phase 1. Building 1 would be constructed in Phase 2. Once constructed, the Project is anticipated to generate 1,920 car trips per day and 342 truck trips per day. Adjusted to Passenger Car Equivalents ("PCE"), the Project will generate 2,458 PCE trips per day.

LEGAL STANDARD

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR") (except in certain limited circumstances). (*See, e.g.*, Pub. Res. Code ("PRC") § 21100.) "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." (*Comms. for a Better Env't v. Calif. Resources Agency* (2002) 103 Cal.App.4th 98, 109.)

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. (14 Cal. Code Regs. ("CEQA Guidelines") § 15002(a)(1).) "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'" (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." (*Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal.App.4th 1344, 1354 ("*Berkeley Jets*"); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.)

Second, CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring "environmentally superior" alternatives and all feasible mitigation measures. (CEQA Guidelines § 15002(a)(2) & (3); *see also Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564.) The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to "identify ways that environmental damage can be avoided or significantly reduced." (CEQA Guidelines § 15002(a)(2).) If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns." (PRC § 21081; CEQA Guidelines § 15092(b)(2)(A) & (B).)

The EIR is the very heart of CEQA. (*Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.) CEQA requires that a lead agency analyze all potentially significant environmental impacts of its proposed actions in an EIR. (PRC § 21100(b)(1); CEQA Guidelines § 15126(a); *Berkeley Jets*, 91 Cal.App.4th 1344, 1354.) The EIR must not only identify the impacts, but must also provide "information about how adverse the impacts will be." (*Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831.) The lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692.) "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*, 103 Cal.App.4th at 109.)

While the courts review an EIR using an "abuse of discretion" standard, "the reviewing court is not to 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A 'clearly inadequate or unsupported study is entitled to no judicial deference.'" (*Berkeley Jets*, 91 Cal.App.4th at 1355 (quoting, *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 391 409, fn. 12).) A prejudicial abuse of discretion occurs "if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.) As discussed below, in the attached expert comment letter, and appellants' comments and other public comments submitted to the City, the EIR for this Project fails to adequately analyze and mitigate the Project's impacts.

DISCUSSION

I. THE EIR'S PROJECT DESCRIPTION AS RELATED TO TRANSPORTATION IMPACTS IS INADEQUATE.

"An accurate, stable and finite project description is the *sine qua non* of an informative and legally adequate EIR." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192; *Berkeley Jets*, 91 Cal.App.4th 1344, 1354; *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1023; *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal. App. 4th 182, 201.) "[A] curtailed or distorted project description," on the other hand, "may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental costs, consider mitigation measures, assess the advantage of terminating the proposal (*i.e.*, the "no project" alternative) and weigh other alternatives in the balance." (*Id.*; *see also*, CEQA Guidelines § 15124; *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438.) As one analyst has noted:

> The adequacy of an EIR's project description is closely linked to the adequacy of the EIR's analysis of the project's environmental effects. If the description is inadequate because it fails to discuss the complete project, the environmental analysis will probably reflect the same mistake. (Kostka and Zischke, "Practice Under the California Environmental Quality Act," p. 474 (8/99 update).)

A "rigorous analysis" required to dispose of an impact as insignificant. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692.) Such a rigorous analysis is not possible if the project description is inaccurate, inconsistent, or misleading.

Moreover, even though the project description typically need not identify the end user for a project because CEQA is concerned with the project's environmental impacts, not who uses it, (*see, e.g. Maintain Our Desert Env't v. Town of Apple Valley* (2004) 124 Cal.App.4th 430), courts have held that where the tenant, or type of business, is known and there is evidence that an impact unique to that tenant or type of business will result, an EIR must disclose that information. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1213.)

Here, the EIR assumes that the end users of the site will generate truck trips using the average trip generation rate of 2.13 trucks per 1,000 square feet found in the Western Riverside Council of Governments ("WRCOG") Transportation Uniform Mitigation Fee ("TUMF") High-Cube Warehouse Trip Generation Study ("WRCOG Study"). (DEIR, p. 4.10-9.) However, trip generation rates can vary widely based on the end user of a project, as shown by the WRCOG Study. An example is that the WRCOG Study found that an Amazon facility generates 4.5 daily trips per 1,000 square feet, which is twice the rate assumed in the EIR. (*See* Adams Broadwell Joseph & Cardozo May 19, 2023 Comments, Attach. C, p. 4.) However, because this approach is unsupported, it is likely to underestimate the Project's operational air quality, health risk, GHG emissions, energy, noise, and vehicle miles traveled ("VMT") impacts. As such, the EIR should

analyze truck trips based on the most intensive reasonably foreseeable use of the site, not an average use, since the City lacks information about the type of end user that will ultimately occupy the Project warehouses after construction. Therefore, the EIR should be revised to calculate impacts based on the most intensive foreseeable uses at the Project site.

II. THE EIR FAILS TO ADEQUATELY DISCLOSE, ANALYZE, AND MITIGATE ALL OF THE PROJECT'S POTENTIALLY SIGNIFICANT IMPACTS.

A. THE EIR FAILS TO ADEQUATELY DISCLOSE, ANALYZE, AND MITIGATE THE PROJECT'S POTENTIALLY SIGNIFICANT TRANSPORTATION IMPACTS.

1. The Project's Operational Trip Generation and Trip Length Calculations Included in the EIR are Incorrect.

As discussed above and noted by Adams Broadwell Joseph & Cardozo and its transportation expert Normal Marshall of Smart Mobility, because the City cannot reasonably assume that the Project will generate the average rate determined in the WRCOG Study, the City should have analyzed the more intensive trip generation rate to ensure that the City adequately disclosed the severity of the Project's potential transportation impacts. As explained by Mr. Marshall, if the EIR assumed the Amazon trip generation rate for the Project, the Project would result in a trip generation rate twice as high as estimated in the EIR. (*See* Adams Broadwell Joseph & Cardozo, May 19, 2023 Comments, Attach. C, p. 3.) Furthermore, if the City had used the parcel hub rate of approximately 14 trips per 1,000 square feet, the Project's trip generation rate would have been "more than six times the rate used in the [EIR]." (*Id.*) Since the future tenants and the eventual uses of the Project buildings are unknown, the City's reliance on the reduced trip rates is unreasonable and unsupported. Thus, the City should use the most conservative estimates for the Project's trip generation rates and provide that updated analysis in a revised and recirculated DEIR for public review.

2. The EIR Fails to Adequately Disclose and Analyze the Project's Potential Significant VMT Impacts.

The EIR concludes that the Project would not result in any significant VMT impacts. However, as Mr. Marshall found, the Project's VMT analysis included in the EIR is likely underestimated. According to Mr. Marshall, "the DEIR estimates that 10.2% of daily trips are made by heavy trucks (5+ axles) and another 7.6% are made by medium trucks (2-4 axles)," and that the average work trip lengths are esstimated to be 9.5 miles and the "other" trip lengths are estimated to be 7.3 miles. (Adams Broadwell Joseph & Cardozo, May 19, 2023 Comments, Attach. C, p. 5.) However, Mr. Marshall found that "[i]t t is likely that the average truck trip lengths are much higher than assumed in the CalEEMod default values." (*Id.*) Mr. Marshall explains that the major intermodal facilities that will likely be used to facilitate warehouse distribution related to Project operations are located "far from the project site," including:

- Rail intermodal facilities in Bakersfield 110 miles,

- Rail intermodal facilities in Stockton 120 miles,
- Port of Oakland 175 miles, and
- Port of Los Angeles 240 miles.

(*Id.*)

Since the future use of the Project site is unknown, it is impossible to fully evaluate trip lengths. As such, the EIR should have accounted for the possibility of the Project generating much greater truck trip lengths. Additionally, Mr. Marshall found that the DEIR's VMT analysis fails to incorporate data regarding trips that originate from outside of the Fresno Council of Governments ("Fresno COG") activity-based travel demand model ("ABM") region. (*Id.*, p. 6.) According to Mr. Marshall, it is necessary for the City to include "out of region" data in the EIR's VMT analysis in order to understand truck trip lengths to intermodal facilities and ports. As a result, Mr. Marshall recommended that the Project's "VMT analysis should be supplemented to include an analysis of external travel with a particular focus on truck travel." (*Id.*) Thus, the EIR should be revised to include this information in its VMT analysis and recirculated for public review.

B. THE EIR FAILS TO PROPERLY ANALYZE THE PROJECT'S POTENTIALLY SIGNIFICANT AIR QUALITY IMPACTS.

1. The EIR's Air Quality Analysis Is Not Based on Substantial Evidence Because It Fails to Use Substantiated Input Parameters to Estimate Project Emissions.

The EIR's air quality analysis is based on modeling using the California Emissions Estimator Model Version CalEEMod.2020.4.0 ("CalEEMod"). In order for this model to work as intended and to provide accurate results, the inputs relating to the proposed Project must accurately reflect the Project's components. The San Joaquin Valley Air Pollution Control District ("SJVAPCD") reviewed the CalEEMod modeling conducted for the Project, including comparing the model inputs to the EIR's project description. (*See* SJVAPCD May 18, 2023 Comments, p. 2.) SJVAPCD has identified significant omissions and errors in the model inputs which demonstrate that its results are less than substantial evidence and which underestimate the Project's air emissions and health risk impacts, including the CalEEMod underestimating the Heavy Heavy-Duty Truck trip lengths traveled. For example, SJVAPCD explains:

> Based on the DEIR, specifically the Technical Appendices Volume I: Appendix C, the California Emissions Estimator Model (CalEEMod) air quality modeling results, include a 7.3 mile trip length for quantifying Project operational air quality emissions from Heavy Heavy-Duty (HHD) Truck travel. This value represents the default CalEEMod trip length. This Project consists of warehouse development and is expected to generate increased HHD truck trips that have the ability travel further distances (e.g. trip length) for distribution. As a result, the Project related emissions resulting from the CalEEMod analysis may be underestimated. The trip length included in the DEIR is not consistent with trip

> length values we have seen for similar warehouse development projects and the DEIR lacks sufficient analysis to justify the use of the default value. The District recommends the DEIR be revised to include a project specific trip length value and associated analysis to justify the value. The DEIR and supporting CalEEMod air quality modeling results should be revised to reflect an appropriate trip length distance that is supported by project-specific factors.

(SJVAPCD May 18, 2023 Comments, p. 2.) Thus, the EIR should be revised and recirculated to include an adequate analysis of the Project's air quality impacts as related to HHD truck trips traveled.

Additionally, and as discussed above, the Project's transportation impact analysis fails to adequately analyze the Project's operational truck trip generation rates. As a result, the EIR likely underestimates the Project's VMT. Given that the Project's air quality analysis relies on the transportation impact analysis' trip generation numbers and VMT to calculate the Project's air emissions and analyze the Project's air quality and GHG emission impacts, the EIR's failure to adequately calculate the Project's trip generation resulted in the EIR's failure to adequately calculate the emissions from truck traffic during Project operation. Thus, the EIR should be revised and recirculated to include a proper transportation impact analysis for the Project that adequately analyzes the Project's air quality impacts.

Lastly, the EIR fails to analyze air quality impacts related to the Project's operation of backup generators. According to Adams Broadwell Joseph & Cardozo's and its air quality and hazardous materials expert James J.J. Clark, Ph.D. of Clark and Associates, each Extreme Heat Event ("EHE") and Public Safety Power Shutoff ("PSPS") that occurs during Project operation would result in increased diesel particulate matter ("DPM") from the reasonably foreseeable operation of backup generators being used at the Project site. (Adams Broadwell Joseph & Cardozo, May 19, 2023 Comments, Attach. A, p. 15.) Even though the City does not have to analyze the worst-case scenarios related to a project's impacts when preparing an EIR, there is substantial evidence demonstrating that PSPS events and EHEs are reasonably foreseeable events that will require the use of backup generators at the Project site. (*Id.*) Thus, the EIR should be revised and recirculated to include an analysis of the impacts on air quality from the Project's operation of backup generators.

These mistakes in the air modeling and impact analyses as related to emissions render the air pollution analysis and corresponding EIR discussion inaccurate and not based on substantial evidence. In order to provide accurate information to the public and decision makers and to determine whether or not the Project will have significant air quality impacts and sufficient mitigation requirements, a new discussion of air impacts must be prepared and circulated to the public in a revised DEIR.

C. THE PROJECT COULD RESULT IN SIGNIFICANT HEALTH RISKS WHICH ARE NOT ANALYZED OR MITIGATED IN THE EIR.

The EIR fails to adequately disclose, analyze, and mitigate health risk impacts related to the Project, as discussed below.

First, the EIR fails to adequately analyze the Project's operational health risk. For example, without providing any justification, the City failed to analyze building downwash, which is a critical dispersion factor that affects the rate and severity of exposure to toxic contaminants. (*See* Adams Broadwell Joseph & Cardozo, May 19, 2023 Comments, Attach. A, p. 8.) Therefore, the EIR should be revised and recirculated to incorporate an adequate analysis of the Project's operational health risks.

Second, the EIR does not adequately analyze the Project's significant Valley Fever impacts. Nor does the EIR require that any and all mitigation measures that will reduce Valley Fever risks be incorporated as binding mitigation in the Project's Mitigation Monitoring and Reporting Program ("MMRP"). (*Id.*, pp. 4-6.) Therefore, the EIR should be revised and recirculated to include an analysis of the health risks related to the Project's Valley Fever impacts as well as adequate mitigation measures to mitigate those impacts.

Thus, the EIR should be revised and recirculated to include an adequate analysis of health risk impacts as a result of the Project.

D. THE PROJECT WILL CAUSE SIGNIFICANT BIOLOGICAL RESOURCES IMPACTS WHICH ARE NOT ANALYZED OR MITIGATED IN THE EIR.

Expert wildlife biologist Dr. Shawn Smallwood, Ph.D. visited the site on May 31, 2022. (Smallwood, p. 1.) He also reviewed the MND that was previously prepared for the proposed Project and its supporting documents. Drawing on his familiarity with the project area and decades of studying and surveying many of the species encountered at the site, Dr. Smallwood prepared a critique of the MND, which is attached as Exhibit A to this comment letter, pointing out numerous shortcomings in the baseline assessment of the presence of species at the site, failures to evaluate impacts that will result from the Project, and numerous instances where the City's assertions with regard to the Project's biological resources impacts are insufficient or not supported by substantial evidence. While Dr. Smallwood's comment references the MND, not the Draft EIR or FEIR, his expert analysis of the Project's biological resources impacts still applies to the shortcomings found in the EIR.

1. <u>The EIR Fails to Address the Impacts on Wildlife from Additional Traffic Generated by the Project</u>.

According to the EIR, the Project will generate an average of 1,920 new daily vehicle trips, including 342 daily truck trips. Yet the EIR provides no analysis of the impacts of wildlife that will be caused by an increase in traffic on the roadways servicing the Project. (Smallwood, pp. 19-21.)

Vehicle collisions with special-status species is not a minor issue, but rather results in the death of millions of species each year. Dr. Smallwood explains:

> Across North America traffic impacts have taken devastating tolls on wildlife (Forman et al. 2003). In Canada, 3,562 birds were estimated killed per 100 km of road per year (Bishop and Brogan 2013), and the US estimate of avian mortality on roads is 2,200 to 8,405 deaths per 100 km per year, or 89 million to 340 million total per year (Loss et al. 2014). Local impacts can be more intense than nationally.

(Smallwood, p. 19.)

The EIR should be revised to analyze and mitigate this potentially significant impact on wildlife and recirculated for public review.

2. <u>The Project Will Have a Significant Impact on Wildlife Movement.</u>

Similarly to the MND initially prepared for the Project, the EIR improperly dismisses the Project's potential to impact wildlife movement based on the sole ground that no migratory corridor exists at the Project site. (Smallwood, pp. 18-19.) A project will have a significant biological impact if it would "[i]nterfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites." (CEQA Guidelines, App. G.) As Dr. Smallwood pointed out in his review of the MND, the EIR also relies on an assumption that a physical corridor be present on the Project site in order for the Project to disrupt wildlife movement:

> The implied premise is that only disruption of the function of a wildlife movement corridor can interfere with wildlife movement in the region. This premise, however, represents a false CEQA standard, and is therefore inappropriate to the analysis. The primary phrase of the CEQA standard goes to wildlife movement regardless of whether the movement is channeled by a corridor.

(Smallwood, p. 18.) Dr. Smallwood explains that the Project site will have a significant impact on wildlife movement:

> A site such as the proposed project site is critically important for wildlife movement because it composes an increasingly diminishing area of open space within a growing expanse of anthropogenic uses, forcing more species of volant wildlife to use the site for stopover and staging during migration, dispersal, and home range patrol (Warnock 2010, Taylor et al. 2011, Runge et al. 2014). The project would cut wildlife off from stopover and staging opportunities, forcing volant wildlife to travel even farther between remaining stopover sites.

(*Id.*, pp. 18-19.)

Because the Project will have a significant impact on wildlife movement, the EIR should be revised to analyze and mitigate this potentially significant impact on wildlife, and then recirculated for public review.

E. THE EIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE SIGNIFICANT NOISE IMPACTS RELATED TO CONSTRUCTION.

The EIR fails to adequately analyze and mitigate the Project's potentially significant construction noise impacts. According to Adams Broadwell Joseph & Cardozo and its noise expert Derek Watry of Wilson Ihrig:

> Mr. Watry found that the Project's site prep phase will result in a noise level of 70.2 dBA Leq, while grading will result in noise levels of 71 dBA Leq, and building construction will result in noise levels of 69.0 dBA Leq. When compared to the existing ambient noise level of 62.3 dBA Leq, Mr. Watry found that Project construction will result in noise exposure increases of 7.9, 8.7 and 6.7 dBA Leq during the Projects site prep, grading, and building phases respectively. Therefore, the Project will exceed the DEIR's threshold of 5 dBA Leq during three phases of construction, resulting in a significant impact.

(Adams Broadwell Joseph & Cardozo, May 19, 2023 Comments, p. 29 (citing *id.*, Attach. B, p. 5).) Hence, the EIR fails to properly analyze the Project's significant noise impacts and therefore should be corrected and recirculated for public review.

F. THE EIR FAILS TO ADEQUATELY DISCLOSE, ANALYZE, AND MITIGATE THE PROJECT'S POTENTIALLY SIGNIFICANT ENERGY IMPACTS.

Contrary to the EIR, the construction and operation of the Project could potentially cause wasteful, inefficient, and unnecessary consumption of energy.

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.) 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 2019 California Building Energy Efficiency Standards (Cal. Code Regs., tit. 24, part 6 (Title 24)) 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 as unlawful an energy analysis that relied on compliance with Title 24, that failed to assess transportation energy impacts, and that failed to address renewable energy impacts. (*City of Woodland*, 225 Cal.App.4th at pp. 209-13.) As such, the EIR's reliance on Title 24 compliance does not satisfy the requirements for an adequate discussion of the Project's energy impacts.

The EIR 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 discussion of energy consuming equipment and processes that will be used during the construction or operation of the Project. The Project's energy use efficiencies by amount and fuel type for each stage of the project including construction, operation, and maintenance were not identified. The effect of the Project on peak and base period demands for electricity has not been addressed. The greenhouse gas (GHG) discussion in the EIR fails to address GHG emissions resulting from energy production and energy savings measures, as well energy conservation. As such, the EIR conclusions are unsupported by the necessary discussions of the Project's energy impacts under CEQA.

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 the 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 EIR fails to adequately analyze energy conservation. As such, the EIR's conclusions are unsupported by the necessary discussions of the Project's energy impacts under CEQA.

Moreover, 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. Since requiring all parking stalls to be EV stalls is likely feasible, the EIR must implement it as an energy efficient mitigation measure, or at minimum, provide substantial

evidence that implementing such a mitigation measure is unfeasible. As such, the EIR's conclusion is unsupported by the necessary discussions of the Project's energy impacts under CEQA.

In conclusion, because the EIR 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 CITY SHOULD PREPARE AND RECIRCULATE A REVISED DRAFT EIR.

A revised draft EIR ("RDEIR") should be prepared and circulated for full public review to address the impacts identified above and to propose feasible mitigation measures. CEQA requires recirculation of an EIR when significant new information is added to the EIR following public review but before certification. (PRC § 21092.1.) The CEQA Guidelines clarify that new information is significant if "the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project" including, for example, "a disclosure showing that … [a] new significant environmental impact would result from the project." (14 CCR § 15088.5.) The above significant environmental impacts have not been analyzed in the EIR and must be addressed in a RDEIR that is recirculated for public review.

CONCLUSION

For the foregoing reasons, the EIR is inadequate. LIUNA urges the City to make the above changes, and recirculate a revised DEIR to the public for review. The EIR should analyze all feasible mitigation measures to reduce or avoid the Project's significant adverse environmental impacts. LIUNA also notes that appellants and other commenters have addressed various environmental issues, and LIUNA agrees with many of those points, particularly those raised by appellants.

Sincerely,

Victoria Yundt
LOZEAU | DRURY LLP