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BY E-MAIL

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Rick Caguiat
Community Development Director
Planning Commission Secretary
Community Development Department
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Re: Comment on Planning Commission Agenda Items No. 8.3 Regarding the Ashley Furniture Project (Conditional Use Permit No. CUP-23-08; Site Plan Review No. SPR 23-09)

Dear Mr. Caguiat and Honorable Members of the Planning Commission:

I am writing on behalf of **Laborers' International Union of North America, Local Union No. 73 ("LIUNA")** regarding the proposed Ashley Furniture Project proposed to be located at the northwest corner of Dos Reis Rd and Manthey Road. The Planning Commission staff have determined that the project is exempt from the requirement for preparation of environmental documents pursuant to California Environmental Quality Act ("CEQA") Guidelines, Section 15183 and Public Resources Code § 21083.3. However, after reviewing the Environmental Checklist and relevant appendices prepared for the Project, and the 2022 General Plan Update EIR that the Project relies upon, we conclude that the Project does not meet the requirements for an exemption under CEQA Guideline § 15183 and PRC § 21083.3. LIUNA respectfully requests that the Planning Commission not recommend approval of each of the agenda items addressed by the proposed exemption and, in particular, the proposed Ashley Furniture Project, and instead request staff to prepare the necessary environmental documents under CEQA.

I. PROJECT DESCRIPTION

The Project proposes to construct and operate a 1,486,607 square foot industrial building including a mix of retail, office/call center, and warehouse and distribution uses. About 110,000 square feet would be dedicated to retail use, 24,000 square feet to office and call-center uses, and 1,352,347 square feet to warehouse and distribution center uses.

The Project proposes to construct approximately 2,046 parking spaces throughout the development site, with 942 spaces for passenger vehicles and 1,104 spaces for truck trailer parking. The Project expects to generate 2,798 daily passenger vehicle trips, including 203 a.m. peak hour trips (124 inbound, 79 outbound) and 255 p.m. peak hour trips (110 inbound, 145 outbound) for passenger vehicles. Another 680 daily truck trips also are expected, including 95 a.m. peak hour trips and 45 p.m. peak hour trips.

II. LEGAL STANDARD

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 purports to exempt the Project from CEQA entirely, the first step of the CEQA process applies. “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 an exemption is a question of law subject to independent, or de novo, review. *San Lorenzo Valley 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 proposes that the Project is exempt from CEQA review under Section 15183 and PRC § 21083.3. However, as discussed below, the use of these streamlining provisions is improper, and instead, a full CEQA analysis, such as an EIR, must be prepared for this Project.

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III. DISCUSSION

a. **The City Incorrectly Applied CEQA's Section 15183 Categorical Exemption to the Project and Thus a Full CEQA Analysis is Required.**

Section 15183 of the California Environmental Quality Act allows a project to avoid environmental review if it is "consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified . . . **except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.**" 14 CCR 15183 (emphasis added). See PRC § 21083.3(b). The intention of this section is to "streamline[]" CEQA review for projects and avoid the preparation of repetitive documents. While the City refers to these provisions as exemptions from CEQA, environmental review is still required for various types of impacts, including those "peculiar to the project or parcel on which the project would be located," those which "were not analyzed as significant effects in a prior EIR," "are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR," or "[a]re previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR."

Section (f) of section 15183 states that a Project's environmental effects are not peculiar to a project if "uniformly applied development policies or standards have been previously adopted" which serve to mitigate environmental impacts, "unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect." The standard set forth by the statute for this analysis is substantial evidence.

Here, there is substantial evidence demonstrating that the Project will have significant impacts which were not addressed in the EIR prepared for the 2022 General Plan Update. Section 15183 therefore does not apply, and the City must prepare appropriate CEQA documents for this Project.

b. **The City Must Prepare a Statement of Overriding Considerations With Regard to This Project.**

The 2022 General Plan Update concluded that several of the impacts identified as a result of the General Plan Update project were significant and unavoidable. These impacts included agricultural resources, air quality, greenhouse gas, and traffic noise impacts. In the Environmental Checklist prepared for the Project, the City acknowledges these significant and unavoidable impacts, but states that:

Impacts from buildout of the General Plan including cumulative impacts associated with development and buildout of the CLSP Phase 2 plan area

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and the warehouse Project site, as proposed, were fully addressed in the General Plan EIR (State Clearinghouse No. 2021100139), and implementation of the proposed project would not result in any new or altered impacts beyond those addressed in the General Plan EIR.

Env't Checklist, p. 13. Similar statements are repeated for each of the specific unavoidable significant impacts. This conclusion does not, however, address all of the City's obligations to grapple with acknowledged significant and unavoidable cumulative impacts.

In the case of *Communities for a Better Environment v. Cal. Resources Agency*, the court of appeal held that, although tiering may allow a later project to rely on the environmental analysis contained in a prior program-level EIR, that procedure does not relieve the agency of acknowledging the significant and unavoidable impacts and reconsidering its statement of overriding considerations. As the Court explained:

The section appears to allow an agency, in approving a later project that has significant unavoidable impacts, to forego making a statement of overriding considerations *specifically tied to that project*. This is contrary to CEQA law. CEQA section 21094, subdivision (d) requires agencies that approve a later project to comply with CEQA section 21081. Under CEQA section 21081, an agency approving a project with significant environmental effects must find that each effect will be mitigated or avoided, or "that *specific* overriding economic, legal, social, technological, or other benefits of *the project* outweigh the ... effect[]"⁶⁵ The requirement of a statement of overriding considerations is central to CEQA's role as a public accountability statute; it requires public officials, in approving environmentally detrimental projects, to justify their decisions based on counterbalancing social, economic or other benefits, and to point to substantial evidence in support.⁶⁶ Under Guidelines section 15152(f)(3)(C), however, an agency apparently could adopt one statement of overriding considerations for a prior, more general EIR, and then avoid future political accountability by approving later, more specific projects with significant unavoidable impacts pursuant to the prior EIR and statement of overriding considerations. Even though a prior EIR's *analysis* of environmental effects may be subject to being incorporated in a later EIR for a later, more specific project, the responsible public officials must still go on the record and explain specifically why they are approving the later project despite *its* significant unavoidable impacts.

Communities for a Better Env't v. California Res. Agency, 103 Cal. App. 4th 98, 124–25, 126 Cal. Rptr. 2d 441 (2002), *as modified* (Nov. 21, 2002), and *disapproved of on other grounds by Berkeley Hillside Pres. v. City of Berkeley*, 60 Cal. 4th 1086, 343 P.3d 834 (2015).

The same reasoning applies to the implementation of Pub. Res. Code § 21083.3 and 14 Cal. Admin. Code § 15183. The Project, based on its reliance on the 2022 General Plan Update EIR, will have cumulative impacts on agricultural resources, air quality, greenhouse gas emissions, and traffic noise. Although sections 21083 and 15183 provide for streamlining of the environmental review of a subsequent project, neither section relieves the City from its obligation to make a statement of overriding considerations for the Project. PRC § 21081. Prior to recommending the Project and applying the streamlining provisions, the Planning Commission should prepare a statement of overriding considerations supported by substantial evidence and which evaluates whether any additional feasible mitigation measures applicable to this specific project should be required in order to address the acknowledged cumulative impacts.

c. The Project Will Have Project-Specific Significant Effects Which Were Not Addressed in the 2022 General Plan Update EIR.

LIUNA is concerned that a number of significant environmental impacts peculiar to the Project were not addressed in the 2022 General Plan Update EIR. As a result, Pub. Res. Code § 21083.3 and 14 Cal. Admin. Code § 15183 do not apply and either a mitigated negative declaration or EIR must be prepared to address these unanalyzed impacts.

i. Biological Resources

According to the 2022 General Plan EIR, the federally-listed, endangered valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) did not occur within one-mile of the planning area. GP EIR, p. 3.4-15. As a result, there is no focused discussion in the 2022 General Plan EIR on any impacts to this federally-listed species. In general, the 2022 General Plan EIR concludes that there will be no significant impacts to listed species from the General Plan's implementation. GP EIR, p. 2.4-28 – 3.4-29. The valley elderberry longhorn beetle relies on a particular host plant for its survival – the red or blue elderberry. See Biological Resources Analysis Report, p. 18. The reconnaissance survey conducted for the Biological Resources Analysis observed a 6-foot by 15-foot elderberry shrub on the property. *Id.*, p. 19. The presence of that host plant, the enhanced likelihood of the presence of the endangered valley elderberry longhorn beetle, and the heightened risk of adverse affects on the host plant or potentially present beetles are not addressed as a significant impact in the 2022 General Plan EIR and these effects are peculiar to the Project site. Pub. Res. Code § 21083.3. Given these facts peculiar to the site, it “might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.” 14 CCR 15183.

Likewise, the observed presence of a Swainson's hawk foraging on the project site and nesting within 20 feet of the site also results in obvious effects peculiar to the

project site, including not only the direct loss of foraging habitat but also disturbances from construction activities at the site and a dramatic increase in vehicles using Dos Reis Road to access the project once it is operational. Because impacts to Swainson's hawks were not addressed as significant impacts in the 2022 General Plan EIR and impact to a Swainson's hawk is peculiar to the site, those potential impacts must be addressed in a proper CEQA environmental review document and reliance on Pub. Res. Code § 21083.3 and 14 Cal. Admin. Code § 15183 is inappropriate.

Given the very limited reconnaissance-level survey performed on a single day at the Project site on May 5, 2021, LIUNA is concerned that there are numerous other listed and sensitive species foraging or located at the Project site. No effort has been made to determine the current presence of burrowing owls at the site. The past presence of red-tailed hawks and white-tailed kites foraging at the site also excludes the proposed streamlining exemption. A current and more robust survey of the Project site is necessary for the City to make any decision on these potential impacts based on substantial evidence.

In addition, the 2022 General Plan EIR does not identify the significant potential impact of the Project's thousands of trucks and car trips on wildlife from vehicle collisions with wildlife. This impact is peculiar to the Project given its proposed 2,798 daily passenger vehicle trips and 680 daily truck trips which will lead to wildlife collisions in the vicinity of the Project. Because this project-specific direct and cumulative effect was not addressed at all in the 2022 General Plan EIR, it must be addressed in an EIR or potentially a mitigated negative declaration for the Project. See PRC § 21083.3(c) ("Nothing in this section affects any requirement to analyze potentially significant offsite impacts and cumulative impacts of the project not discussed in the prior environmental impact report with respect to the general plan").

ii. Energy

The 2022 General Plan EIR's discussion of the General Plan's energy impacts boils down to stating that by complying with California's Building Energy Efficiency Standards ("CalGreen"), promoting the use of renewable energy sources and encouraging public transportation and bicycle use, and the fact that PG&E will generally make progress on adding new renewable energy sources to its portfolio, projects within the planning area will not have energy impacts. GP EIR, p. 3.7-41 – 3.7-42. The Environmental Checklist focuses on the Ashley Furniture Project's compliance with CalGreen and PG&E's long-term efforts. Env't Checklist, p. 66. None of these considerations address the energy effects that are peculiar to a 1.4 million square feet furniture distribution and retail center.

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

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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 California Building Energy Efficiency Standards (Cal.Code Regs., tit. 24, part 6 (Title 24) does not constitute an adequate analysis of energy impacts. *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 Title 24, that failed to assess transportation energy impacts, and that failed to address renewable energy impacts. *California Clean Energy Committee v. City of Woodland*, 225 Cal.App.4th 173, 209-13. As such, the General Plan EIR’s reliance on Title 24 compliance does not address the proposed furniture warehouse Project’s energy impacts. The energy effects of the Project are, by definition, peculiar to the Project. Given the vast expanse of roofing provided by the proposed Project, any evaluation of its energy impacts cannot ignore the obvious feasibility of an array of solar panels on the roof or covering the extensive parking proposed at the site. Energy efficiency, in the context of the Proposed project and site would require the consideration and implementation of sufficient solar panels to meet all of the Project’s direct electricity demand, as well as solar power that would offset the considerable GHG and other air pollution emissions that will result from the thousands of trucks and cars driving to and from the Project every day once it’s operational.

The Environmental Checklist contains 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 and operation were not identified. The effect of the project on peak and base period demands for electricity has not been addressed. As such, the Environmental Checklist’s conclusions are unsupported by the necessary discussions of the Project’s energy impacts under CEQA. An EIR or possibly a mitigated negative declaration must be prepared to assess these impacts.

iii. Greenhouse Gases and Air Quality.

The 2022 General Plan EIR did not project air pollution emissions for any given project that would be allowed by the plan. Instead, it identifies the implementation measure in the General Plan that the City “[review development, infrastructure, and planning projects for consistency with SJVAPCD requirements during the CEQA review process.” GP EIR, p. 3.3-35 (RR-6a). The General Plan and the EIR go on to further require that:

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Require project applicants to prepare air quality analyses to address SJVAPCD and General Plan requirements, which include analysis and identification of:

- A. Air pollutant emissions associated with the project during construction, project operation, and cumulative conditions.
- B. Potential exposure of sensitive receptors to toxic air contaminants.
- C. Significant air quality impacts associated with the project for construction, project operation, and cumulative conditions.
- D. Mitigation measures to reduce significant impacts to less than significant or the maximum extent feasible where impacts cannot be mitigated to less than significant.

Id. Although the Environmental Checklist purports to describe these evaluation efforts, the Checklist does not provide any of the input files for the air pollution modeling conducted for the proposed Project. Only the output files are provided. Environmental Checklist, Attachment I, p. 162. Given the size of the warehouse and the number of expected daily truck trips, LIUNA is skeptical that the emissions forecasts identified for its construction and operation can be substantiated. Before making a recommendation to the Council, the Planning Commission should require staff and the applicant to share their input files for the CalEEMod modeling in order for the public to be able to assess the accuracy of the model outputs and whether or not the Project's may have a significant effect on air quality and GHG emissions and the extent of necessary mitigation measures as required by the General Plan.

IV. CONCLUSION

In light of the above comments, the City must prepare an EIR or, if appropriate, a mitigated negative declaration for the Project. LIUNA reserves its right to submit additional comments and evidence for any subsequent Planning Commission hearing or the City Council's consideration of the Project. Thank you for considering these comments.

Sincerely,



Michael R. Lozeau
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