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October 9, 2023

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VIA E-MAIL

Mayor Dhaliwal and Members of the Lathrop
City Council
390 Towne Centre Drive
Lathrop, California

Re: Response to LIUNA's October 6 Comment Letter Regarding the Ashley Furniture Project
(Agenda Item No. 5.3)

On October 6, 2023, the City of Lathrop (the "City") received a letter from Brian B. Flynn on behalf of Laborers' International Union of North America, Local Union No. 73 ("LIUNA") referred to as, the "LIUNA Letter," regarding CUP No. 23-08 and Site Plan Review No. SPR 23-09 for the Ashley Furniture Warehouse Project (the "Project") located on the 89.82-acre property located at the northwest corner of Dos Reis Road and Manthey Road (the "Property"). As you know, the City is relying on state laws that streamline its environmental review of the Project's environmental impacts under the California Environmental Quality Act ("CEQA"). Specifically, the City is invoking Public Resources Code section 21083.3 and Title 14 California Code of Regulations section 15183, which allow a project consistent with the applicable general plan or community plan to rely on the prior environmental impact report ("EIR") for the Project's environmental review. The Project is consistent with the General Plan Update *Light Industrial (LI)* designation that the City has applied to the Property. Thus, the City has relied on the City's General Plan Update EIR to evaluate the Project's environmental impacts.

The LIUNA Letter incorrectly concludes that the Project does not meet the requirements for a Section 15183 CEQA streamlined process and exemption. As explained throughout the City's *Environmental Checklist for the Municipal Code, Central Lathrop Specific Plan (CLSP) Phase 2 Update, and Ashley Warehouse Project* ("Project Environmental Checklist"). As further explained below, substantial evidence supports the City's determination that the Project's environmental impacts previously were addressed in the City's General Plan Update EIR. The Project would not result in any significant unmitigated impacts that are peculiar to the Property or the Project that would warrant further environmental review based on the analysis contained in the Project Environmental Checklist.

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The City adequately applied Public Resources Code section 21083.3 and Section 15183 of the CEQA Guidelines to the Project.

Section 21083.3 of the Public Resources Code states that when a project is consistent with a community plan (*e.g.*, a specific plan) for which an environmental impact report was certified, the subsequent project-specific CEQA analysis “shall be limited to effects upon the environment which are peculiar to the parcel or to the project and which were not addressed as significant effects in the prior environmental impact report.” (*See also* CEQA Guidelines, section 15183.) Additionally, CEQA provides that a program EIR (such as an EIR prepared for a general plan) may “consider broad policy alternatives and program wide mitigation measures” and to permit consideration of later activities “in the light of the program EIR.” (CEQA Guidelines, § 15168.)

In this case, the City’s General Plan Update and the Central Lathrop Specific Plan Phase 2 Amendment designate the Property *Limited Industrial*, which is consistent with the City’s General Plan Update land use designation and density. (Project Environmental Checklist, p. 5.) In September 2022, the City certified the General Plan Update EIR (SCH No. 2021100139), which evaluated potential impacts due to the implementation of the General Plan Update. (Project Environmental Checklist, p. 5.) The General Plan Update EIR necessarily evaluated the cumulative impacts of the buildout of the General Plan. (Project Environmental Checklist, p. 9.) Since the proposed warehouse Project is consistent with the General Plan Update’s *Limited Industrial* designation, the City properly concluded that the General Plan Update EIR adequately evaluated the Project’s environmental impacts. Section 15183 expressly allows a streamlined environmental review process for projects that are consistent with the densities established by existing zoning, community plan or general plan policies for which an EIR was certified. The only additional environmental review required of a Section 15183-eligible project are to address impacts that: (1) “are peculiar to the project;” (2) were not analyzed as significant impact in a prior EIR; or (3) are potentially significant off-site impacts or cumulative impacts that were not addressed in the prior EIR. (CEQA Guidelines, § 15183(b).) Moreover, Section 15183(f) explains that an effect is not peculiar if “uniformly applied development policies or standards have been previously adopted by the city . . . will substantially mitigate that environmental effect when applied to future projects.” This would not apply if substantial new information “shows that the policies or standards will not substantially mitigate the environmental effect.” (CEQA Guidelines, § 15183(f).)

Just as CEQA requires, the City prepared an extensive analysis to determine whether the Project’s environmental impacts were previously addressed in the General Plan Update EIR. (*See* Project Environmental Checklist.) That analysis found that the Project is “consistent with the land uses and development intensities assigned to the project site by the General Plan.” (Project Environmental Checklist, p. 13.) “Impacts from buildout of the General Plan including cumulative impacts associated with” the Project buildout, “were fully addressed in the General Plan EIR.” (Project Environmental Checklist, p. 13.) The Project Environmental Checklist confirmed that “there are no site-specific or peculiar impacts associated with the project, and identifies uniformly applied standards and policies that would be applied to the project.” (Project Environmental Checklist, p. 13.) Section 15183(g) provides several examples of such “uniformly applied development policies.” Thus, the City complied with CEQA.

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Substantial evidence does not support the LIUNA Letter’s assertions that the Project may result in significant environmental impacts warranting further CEQA review.

Public Resources Code section 21083.3 and CEQA Guidelines section 15183 only require more CEQA review for environmental impacts peculiar to the Project. Further environmental review is only warranted when new information meets one of the following criteria: A) the project would have one or more significant effects not previously examined in the IS/MND; B) significant effects previously examined will be substantially more severe; C) mitigation measures previously found to be infeasible would be feasible; or D) mitigation measures or alternatives considerably different from those previously studied would substantially reduce one or more significant effects on the environment, and those mitigation measures were declined by the project. (*Id.*, § 15162(a)(3).) That is not the case here.

To demonstrate that the City erred in relying on the General Plan Update EIR and should have instead conducted additional environmental review, LIUNA must provide substantial evidence demonstrating that substantial changes to the Project and/or its circumstances or new information occurred in accordance with CEQA Guidelines section 15162. Substantial evidence is defined as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” (*Id.*, § 15384(a).) “Argument, speculation, unsubstantiated opinion” is expressly excluded from substantial evidence. (*Id.*) Substantial evidence includes “facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” (*Id.*, § 15384(b).)

LIUNA makes the same unsubstantiated claims that further environmental review is required for the Project that it made before. LIUNA claims without evidence that the Project would result in impacts that the prior General Plan Update EIR did not address. After that argument fails, LIUNA contends without evidence that the General Plan Update EIR mitigation incorporated into the Project or set forth in standard City conditions would not mitigate the impacts already identified. But LIUNA can’t have it both ways. They can’t say the impact was ignored when it was addressed and then say the way it was addressed (which is no different than the way the City addresses the same impacts for other projects) is not adequate. For the reasons explained below, LIUNA’s unsubstantiated claims do not warrant further environmental review. LIUNA’s latest letters raise the same issues without any evidence, and LIUNA has failed to meet its burden of proof, and the City complied with CEQA.

Contrary to the unsubstantiated assertions from LIUNA, the General Plan Update EIR and implementation of the adopted mitigation measures would not result in any new significant impacts to biological resources.

The LIUNA Letter summarizes the findings from a biologist’s review which jumbles the transportation and biological impacts analysis to misleadingly suggest that the Project would result in a number of wildlife roadway mortality incidents. This explanation, however, ignores the Project’s Environmental Checklist’s summary of the biological resource impacts that were previously discussed in the EIR and the Environmental Checklist’s reference and incorporation of standard mitigation measures

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that will reduce any biological impacts below a significant level.¹ CEQA requires later activities to be “examined in light of the program EIR to determine whether an additional environmental document must be prepared.” (CEQA Guidelines, § 15168(c).) Later activities found within the scope of the program EIR require no further environmental documents. (*Id.*, § 15168(c)(5).) Thus, a program EIR may apply to a later project to evaluate the project’s impacts to “regional influences, secondary effects, cumulative impacts, broad alternatives, and other factors.” (*Id.*, § 15168(d)(2).) Moreover, when an effect is not peculiar if “uniformly applied development policies or standards have been previously adopted by the city . . . will substantially mitigate that environmental effect when applied to future projects.” (CEQA Guidelines, § 15183(f).)

The Project Environmental Checklist explains that several standard mitigation measures for biological impacts will be applied to the Project just as is the case for other projects in the City of Lathrop. (Project Environmental Checklist, pp. 51-53.) This mitigation is consistent with the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (“SJMSCP”) conservation measures. (Project Environmental Checklist, pp. 52-55.) Thus, the provision of Section 15183(f), which states that impacts addressed by a generally applicable mitigation measure cannot be considered peculiar, applies here. Moreover, Section 15183(g)(6) provides that a “habitat protection or conservation” program is one example of a uniformly applied development policy which governs protection of the elderberry longhorn beetle. Thus, the biological impacts alleged in the LIUNA Letter cannot be considered peculiar under Section 15183, and the City has complied with CEQA.

The Project’s construction- and operation-related air quality impacts were properly evaluated in the General Plan EIR.

LIUNA alleges that the Health Risk Assessment (“HRA”) that the City prepared for the Project, failed to comply with applicable standards. However, both the General Plan EIR and the HRA analysis concluded that there would be no significant construction- and operation-related impacts to sensitive receptors, either Project-related or cumulatively. (Environmental Checklist, p. 45.) Moreover, the Project would implement General Plan mitigation measures and best management practices for warehouse projects that would further reduce any potential air quality impacts.

LIUNA erroneously concludes that the Project requires preparation of a statement of overriding considerations.

CEQA only requires a statement of overriding considerations when a lead agency determines that a project will result in significant unavoidable environmental impacts. (CEQA Guidelines, § 15093.) The General Plan Update EIR only determined that some significant impacts would occur assuming development of the entire General Plan. No one challenged the validity of the General Plan Update EIR,

¹ Dr. Smallwood’s claims seem to rely on wildlife mortality impacts that were associated with other projects in other parts of the state. Dr. Smallwood also seems to ignore all of the prior analysis and information incorporated into the SJMSCP that evaluated development impacts to 97 federally-listed, state threatened and endangered species for the development of more than 109,000 acres of converted land including development in Central Lathrop.

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and the certified EIR is deemed valid. (*See* Pub. Res. Code, § 21177(b); *Tahoe Concerned Citizens v. County of Placer* (2000) 81 Cal.App.4th 577, 589.) The Environmental Checklist clearly concluded that the Project would not result in any significant unavoidable environmental impacts beyond the impacts already addressed in the General Plan Update EIR. (Environmental Checklist, p. 13.) No new statements of overriding considerations are required for the Project. The City has complied with CEQA.

For all of these reasons, we respectfully request that the City Council reject the unsubstantiated claims of LIUNA and find the Project in compliance with CEQA and approve the Project at your meeting this evening. Thank you for your consideration.

Sincerely,

BUCHALTER
A Professional Corporation

A handwritten signature in blue ink, appearing to be 'Alicia Guerra', with a long horizontal line extending to the right.

By

Alicia Guerra

AG:nj

cc: Stephen Salvatore, City Manager
Salvador Navarrete, City Attorney
Teresa Vargas, City Clerk
Rick Casguiat
Sean Asmus
Aaron Hodgdon