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Via Email

May 3, 2022

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Michael Carroll, Commissioner
Rendell Klaarenbeek, Commissioner
Jodi Peters, Commissioner
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**Re: Comment on Planning Commission Agenda Item 2; Planning
Application No. 2021-28 (Corydon III Project)**

Dear Chair Gray, Vice Chair Dobler, Mr. Beery, and Honorable Commissioners:

I am writing on behalf of Supporters Alliance for Environmental Responsibility ("SAFER") regarding the project known as Planning Application No. 2021-28 (Corydon III), including all actions related or referring to the proposed construction of two industrial buildings totaling 63,030 square feet located at 32321 Corydon Road in the City of Lake Elsinore, on APNs 370-080-007, 370-080-006, and 370-080-020 ("Project").

SAFER objects to the City staff's decision to exempt the Project from review under the California Environmental Quality Act ("CEQA") pursuant to Section 15332 of the CEQA Guidelines, and argues that an initial study should be conducted and a CEQA document prepared to analyze the Project and mitigate its environmental impact. For this reason, SAFER requests that the Planning Commission declines to approve the Project unless and until proper CEQA review is conducted.

I. LEGAL STANDARD

CEQA mandates that "the long-term protection of the environment...shall be the guiding criterion in public decisions" throughout California. PRC § 21001(d). A "project" is "the whole of an action" directly undertaken, supported, or authorized by

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a public agency “which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” PRC § 21065; CEQA Guidelines, 14 CCR § 15378(a). For this reason, CEQA is concerned with an action’s ultimate “impact on the environment.” *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283. CEQA requires environmental factors to be considered at the “earliest possible stage . . . before [the project] gains irreversible momentum,” *Id.* 13 Cal.3d at 277, “at a point in the planning process where genuine flexibility remains.” *Sundstrom v. Mendocino County* (1988) 202 Cal.App.3d 296, 307.

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 exempted the Project from CEQA entirely, we are at the first step of the CEQA process.

A. CEQA Exemptions.

CEQA identifies certain classes of projects which are exempt from the provisions of CEQA. These are called categorical exemptions. 14 CCR §§ 15300, 15354. “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 a categorical 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. (Citations.) Thus, for example, interpreting the scope of a CEQA exemption presents ‘a question of law, subject to de novo review by this court.’ (Citations).”)

The City has issued a notice of exemption alleging that the Project is exempt from CEQA review as an “in-fill” project (Class 32), and a minor land division (Class 15).

B. Exceptions to CEQA Exemptions.

There are several exceptions to the categorical exemptions. 14 CCR § 15300.2. At least two exceptions are relevant here:

- (1) Significant Effects. A project may never be exempted from CEQA if there is a “fair argument” that the project may have significant environmental impacts due to “unusual circumstances.” 14 CCR §15300.2(c). The Supreme Court has held that since the agency may only exempt activities that do not have a significant effect on the environment, a fair argument that a project will have significant effects precludes an exemption. *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 204.
- (2) Cumulative Impacts. A project may not be exempted from CEQA review “when the cumulative impact of successive projects of the same type in the same place, over time is significant.”

C. Limitations to In-Fill Exemption.

The Class 32 In-Fill exemption can only be applied when “[t]he project site has no value as habitat for endangered, rare or threatened species” or where “[a]pproval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.” 14 Cal. Admin. Code §§ 15332(c), (d).

The CEQA Analysis fails to properly analyze and mitigate impacts to air quality, traffic, noise, and other impacts. The Analysis should be withdrawn, an Environmental Impact Report (“EIR”) should be prepared, and the draft EIR should be circulated for public review and comment in accordance with CEQA.

II. ANALYSIS

A. Air Quality.

The City relies on an air quality analysis prepared by BlueScape Environmental. The analysis appears not to include a site-specific health risk assessment (“HRA”). Without an HRA it is not possible to determine whether the Project will have significant air quality impacts. It is necessary to prepare a HRA to determine if construction and operation of the Project will create a cancer risk greater than 10 per million, which is the applicable SCAQMD significance threshold.

B. Traffic.

CEQA requires that traffic analysis must now be conducted using vehicle miles travelled (VMT) analysis. Location tends to be the driving factor in VMT analysis. The Staff Report contends that VMT will be less than significant because the Project will allegedly generate 108 vehicle trips per day, while the significance threshold is 110 vehicle trips per day. This difference of 2 vehicle trips per day warrants further analysis.

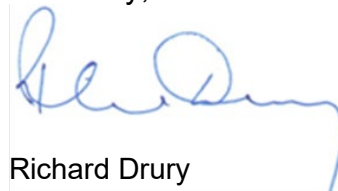
C. Biological Impacts.

The staff report assumes that the Project will not have significant biological impacts because the site is allegedly heavily disturbed. However, even heavily disturbed sites may provide habitat to special status species. The staff report also relies heavily on the Multi-Species Habitat Conservation Plan (MSHCP). However, in order to rely on the MSHCP, the City must determine if the MSHCP is adequately funded and is achieving its goals. Also, the MSHCP does not cover all species that may be using the Project site. If species are using the site and are not within the scope of the MSHCP, then it does not provide adequate mitigation. Further review is required by a qualified biologist to determine if the Project site provide habitat to special status species and if the MSHCP provides adequate mitigation for those species.

III. CONCLUSION.

The City should conduct additional analysis of the Project and its environmental impacts. It should prepare an Initial Study and a CEQA document to analyze the Project's impacts and to propose feasible mitigation measures. The City lack sufficient evidence to support its reliance of the CEQA Infill exemption.

Sincerely,



Richard Drury