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Via E-Mail

January 20, 2021

Elizabeth Blanton, Associate Planner
City of Hayward
777 B St.
Hayward, CA 94541
Email: Elizabeth.Blanton@hayward-ca.gov

**Re: Resolution of Comments on the Initial Study/Mitigated Negative Declaration
for the Clawiter Road Industrial Project**

Dear Ms. Blanton,

I am writing to update you on our January 4, 2021 correspondence to the City of Hayward on behalf of LIUNA Local 304 regarding the Clawiter Road Industrial Project. LIUNA has had an opportunity to discuss its comments with the applicant. In light of further information provided by the applicant and commitments that would further mitigate wildlife and air quality concerns raised in our comments, LIUNA's comments have been resolved. LIUNA has no further comments or objections to the City's adoption of the Initial Study/Mitigated Negative Declaration and approval of the project.

Sincerely,

A handwritten signature in blue ink that reads "Michael R. Lozeau".

Michael Lozeau
Lozeau Drury LLP



January 28, 2021

Hayward Planning Commission
c/o Elizabeth Blanton, Associate Planner
Planning Division
City of Hayward
777 B Street
Hayward, CA 94541

Via U.S. Mail and email to Elizabeth.Blanton@hayward-ca.gov

Re: Comments on Clawiter Road Industrial Project Initial Study/Mitigated Negative Declaration, 25800 Clawiter Road, Hayward

Dear Planning Commission:

Cool World Institute, a project of Advocates for the Environment, submits the comments in this letter regarding the proposed Clawiter Road Industrial project (the **Project**) and the CEQA Initial Study/Mitigated Negative Declaration (the **IS/MND**) the City of Hayward issued for this Project, which is located at at 25800 Clawiter Road.

Cool World Institute is part of a non-profit environmental law firm and advocacy organization with a focus on fighting climate change in California. Cool World Institute submits these comments to public agencies in order to encourage them to consider climate-change effects throughout their work, reduce greenhouse-gas emissions in their projects, and improve their own analyses of greenhouse-gas impacts in CEQA documents.

The approximately 26-acre project site involves the demolition of four existing on-site structures, ancillary structures, and on-site improvements in order to develop an industrial park consisting of four industrial core and shell structures totaling approximately 616,000 square feet and a transformer yard. The general plan designation for the Project site is Industrial Corridor (IC). This Project is extremely large at 616,000 square feet, and many local agencies require an EIR for projects this large; therefore, it is extremely important that adequate analysis and mitigation is discussed in the MND for this Project.

The IS/MND is flawed in that the mitigation measure for the Project's GHG impacts, MM GHG-1, is improperly deferred, as discussed below.

MM-GHG-1 – Improper Deferral

The Project's GHG emissions are significant at 16,772 mega tonnes of CO₂ equivalent (**MTCO₂e**) per year, and, as a result, the MND should describe and implement feasible mitigation measures to reduce the Project's emissions to less-than-significant levels as required by CEQA. Mitigation measures must be clearly described in

the MND so the public can determine their adequacy. “[M]itigation measure[s] [that do] no more than require a report be prepared and followed” do not provide adequate information for informed decisionmaking under CEQA. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794; Guidelines § 15126.4(a)(1)(B)). Improper deferral of mitigation measures can occur when an MND calls for mitigation measures to be created based on future studies or describes mitigation measures in general terms but the agency fails to commit itself to specific performance standards. (*California Clean Energy Comm. v. City of Woodland* (2014) 225 Cal.App.4th 173, 195 [holding that an agency could not rely on future report of urban decay with no standards for determining whether mitigation required]).

Here, the IS/MND admits that the Project will have significant GHG impacts unless mitigation measures are incorporated. MM GHG-1 is the only Mitigation Measure listed for greenhouse gas impacts; therefore, the Project is relying solely on the adequacy of MM GHG-1 to reduce the significant GHG emissions. Beginning on page 75, the IS/MND states, “The project applicant shall prepare and implement a GHG Reduction Plan (GHGRP) that demonstrates emissions reductions from project operation by approximately 16,112 MT of CO₂e per year to 660 MT of CO₂e per year for the lifetime of the project, or by an amount determined through further analysis of project GHG emissions at the time of GHGRP preparation. Potential GHG reduction measures included in the GHGRP may include, but would not be limited to, the following” The IS/MND then proceeds to list variety of potential GHG reduction measures in very general terms that could be implemented in different combinations to potentially achieve the reduction to 660 MT of CO₂e per year. “May include, but would not be limited to” means, in essence, that the list of GHG reduction measures is illustrative only, as none of them are committed to. That makes the mitigation measure vague, a violation of CEQA.

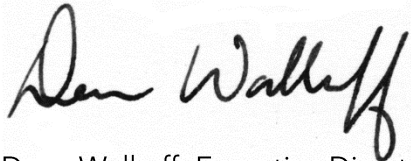
MM GHG-1 is also an improperly deferred mitigation measure. Deferral of formulation of a mitigation measure is allowed under CEQA only when it is infeasible to fully formulate the mitigation measure at the time the MND is prepared. There is no reason why the GHG Reduction Plan cannot be prepared now, and attached as an appendix to the MND, so the public and decision-makers can evaluate it in connection with the MND. Deferring its formulation violates CEQA.

MM GHG-1 appears to include a performance standard, as required for deferred mitigation, namely that the GHG Reduction Plan will reduce emissions by approximately 16,112 MTCO₂e/year to 660 MTCO₂e/year. But that performance standard is completely undermined by the next phrase: “...or by an amount determined through further analysis of project GHG emissions at time of GHGRP preparation.” The addition of the phrase means the mitigation measure contains no enforceable performance standard, and thus violates CEQA.

Conclusion

For the reasons given in this letter, the Planning Commission should deny approval of the IS/MND and request the applicant fully develop and document its GHG Reduction Plan prior to the City's reconsideration of the Project.

Sincerely,

A handwritten signature in black ink that reads "Dean Wallraff". The signature is fluid and cursive, with the first name "Dean" and last name "Wallraff" clearly distinguishable.

Dean Wallraff, Executive Director
Cool World Institute