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Re: Agenda Item 8 - Appeal of VTT-74865-1A; ENV-2017-468-EIR; CPC-2017-467-GPA-VZC-HD-SPR and Final Environmental Impact Report for 656 South San Vicente Medical Office Project (SCH 2020010172)

Dear President Millman, Vice President Choe, and Honorable Commissioners:

I am writing on behalf of **Supporters Alliance For Environmental Responsibility** (“SAFER”) regarding the Environmental Impact Report (“EIR”) prepared for the Project known as 656 South San Vicente Medical Office Project (ENV-2017-468-EIR; SCH 2020010172), including all actions related or referring to the proposed development of a 12-story medical office and retail-commercial building with four above-ground parking levels, located at 650 – 675 South San Vicente Boulevard in Los Angeles (“Project”).

These comments were prepared with the assistance of wildlife ecologist Dr. Shawn Smallwood. Dr. Smallwood’s comments and CV are attached hereto as Exhibit A.

After reviewing the EIR, together with our experts, we conclude that there are a number of significant omissions and flaws in the EIR’s analysis of the Project’s environmental impacts, and significant impacts remain unmitigated. In addition, the FEIR fails to respond to public comment suggesting additional feasible mitigation to further reduce the Project’s significant and unavoidable noise impact. A revised EIR should be prepared prior to Project approval to analyze all impacts and require implementation of all feasible mitigation measures, as described more fully below.

I. PROJECT DESCRIPTION

The Project consists of the construction and operation of a 12-story building (230 feet in height) that would include seven floors of medical office uses over four floors of above-grade parking, and a ground floor containing a lobby for the medical office, and commercial uses. The building includes up to 145,305 square feet of floor area, comprised of 140,305 square feet of medical office space and 5,000 square feet of ground floor retail-commercial space, of which up to 4,000 square feet may be a restraint and 1,000 square feet may be other commercial uses, such as a pharmacy. (EIR at II-1.) The Project would provide full-valet services for 418 parking spaces, including 393 vehicle parking spaces for medical office uses and 25 vehicle parking spaces for retail-commercial uses. The Project would also provide full-valet service for bicycle parking and would include 716 bicycle parking spaces for short- and long-term use.

The Project site is currently occupied by a 5,738 square-foot, vacant educational building, and an 8,225 square foot Big 5 Sporting Goods store and associated surface parking. Directly northeast of the Project Site across the alley are two, two-story apartment buildings. Further to the north and east, along Orange Street and South Sweetzer Avenue, are low-rise multi-family and single-family residential uses. Low-rise single-family and multi-family residential uses are also located to the south, across from Wilshire Boulevard.

II. LEGAL BACKGROUND

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an EIR (except in certain limited circumstances). (See, e.g., Pub. Resources Code, § 21100.) The EIR is the very heart of CEQA. (*Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.) “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 Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 109 (“*CBE v. CRA*”).)

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) and (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.” (Pub. Resources Code, § 21081; CEQA Guidelines, § 15092(b)(2)(A) & (B).)

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 (emphasis added), quoting, *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 391 409, n. 12.) As the court stated in *Berkeley Jets*, 91 Cal.App.4th at 1355:

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.)

More recently, the California Supreme Court has emphasized that:

When reviewing whether a discussion is sufficient to satisfy CEQA, a court must be satisfied that the EIR (1) includes sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises [citation omitted]....

(*Sierra Club v. Cty. of Fresno* (2018) 6 Cal.5th 502, 510 (2018), citing *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 405.) The Court in *Sierra Club v. Cty. of Fresno* also emphasized at another primary consideration of sufficiency is whether the EIR “makes a reasonable effort to substantively connect a project’s air quality impacts to likely health consequences.” (6 Cal.5th at 510.) “Whether or not the alleged inadequacy is the complete omission of a required discussion or a patently inadequate one-paragraph discussion devoid of analysis, the reviewing court must decide whether the EIR serves its purpose as an informational document.” (*Id.* at 516.) Although an agency has discretion to decide the manner of discussing potentially significant effects in an EIR, “a reviewing court must determine whether the discussion of a potentially significant effect is sufficient or insufficient,

i.e., whether the EIR comports with its intended function of including ‘detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’” (6 Cal.5th at 516, citing *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1197.) “The determination whether a discussion is sufficient is not solely a matter of discerning whether there is substantial evidence to support the agency’s factual conclusions.” (6 Cal.5th at 516.) As the Court emphasized:

[W]hether a description of an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact is not a substantial evidence question. A conclusory discussion of an environmental impact that an EIR deems significant can be determined by a court to be inadequate as an informational document without reference to substantial evidence.

(*Sierra Club v. Cty. of Fresno*, 6 Cal.5th at 514.)

In general, mitigation measures must be designed to minimize, reduce or avoid an identified environmental impact or to rectify or compensate for that impact. (CEQA Guidelines § 15370.) Where several mitigation measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. (*Id.* at § 15126.4(a)(1)(B).) A lead agency may not make the required CEQA findings unless the administrative record clearly shows that all uncertainties regarding the mitigation of significant environmental impacts have been resolved.

III. THE EIR IS INCONSISTENT WITH CEQA’S REQUIREMENTS.

A. The Project Will Have a Significant Impact on Birds that the EIR Failed to Analyze and Mitigate.

1. The EIR fails to disclose baseline conditions or adequately analyze impacts on biological resources.

Habitat is defined by a species’ use of the environment. Smallwood, p. 2. One example of habitat is the aerosphere, “where birds and bats and other volant animals with wings migrate, disperse, forage, perform courtship and where some of them mate.” Smallwood, p. 2. Yet the EIR improperly limits its assessment of impacts on biological resources to impacts resulting from loss of terrestrial habitat.

Dr. Smallwood reviewed eBird listings and determined that there are 68 special-status species of wildlife with the potential to use the Project’s aerosphere. Smallwood, p. 2. Of the bird species identified by Dr. Smallwood, 25% were documented because they died as a result of window collisions. Smallwood, pp. 2-3. As discussed below, the Project may significantly impact these species, yet the EIR failed to assess baseline conditions or to determine the impact of the Project compared to baseline conditions. The EIR must be revised to address this potentially significant impact.

2. The EIR failed to analyze the Project's impact on wildlife due to window collisions.

According to wildlife expert Dr. Shawn Smallwood, the Project will have a significant impact on birds as a result of window collisions. The City has not analyzed or mitigated these potential impacts to special-species birds. Analyzing the potential impact on wildlife of window collisions is especially important because “[w]indow collisions are often characterized as either the second or third largest source of human-caused bird mortality.” Smallwood, p. 6.

Dr. Smallwood explains, “birds are vulnerable to window collisions, especially where windows are built into structures without any care to the consequences to birds.” Smallwood, p. 2. Here, the EIR describes the proposed building facades as “floor-to-ceiling clear glass panels.” (ERI, II-16.) Glass curtain walls would be used, as well as glass rails on balconies. At night, the building would be lit internally, “thereby casting off light which attracts birds that fly at night on migration.” Smallwood, p. 6. Dr. Smallwood concludes that “[t]he project would introduce substantial collision hazards to an aerosphere that currently provides critically important habitat to birds, and which would act as lethal traps to flying birds.” Smallwood, p. 6. Nevertheless, the EIR makes no mention of the Project's potential to impact birds as a result of window collisions, or to mitigate those impacts.

Dr. Smallwood reviewed a number of studies in order to calculate the number of bird collisions per m² of glass windows per year. Smallwood, pp. 6-7. According to his calculations, each m² of glass would result in 0.073 bird deaths per year. (*Id.*) Based on the estimated 11,580 m² of glass windows and the 0.073 bird deaths per m² of glass windows, Dr. Smallwood estimates that the project would result in 847 bird deaths per year, which would continue until the building is either renovated to reduce bird collisions, or demolished. (*Id.*) Dr. Smallwood concludes, “[i]f the project moves forward as proposed, and annually kills 847 birds protected by state and federal laws, then the project would cause significant unmitigated impacts.” Smallwood, p. 7.

These bird deaths constitute a significant impact that must be analyzed. *Id.* The City must prepare a revised EIR to disclose, analyze, and mitigate the full scope of the Project's impact resulting from window collisions.

3. The City fails to mitigate the Project's adverse impact on bird species from window collisions.

In order to mitigate the impact of the window collisions on bird species, Dr. Smallwood has suggested a number of mitigation measures. As a starting point, before construction, “[a]ny new project should be informed by preconstruction surveys of daytime and nocturnal flight activity.” Smallwood, p. 11. Dr. Smallwood explains:

[Pre-construction surveys] can reveal the one or more façades facing the prevailing approach direction of birds, and these revelations can help prioritize where certain types of mitigation can be targeted. It is critical to formulate effective measures prior to construction, because post-construction options will be limited, likely more expensive, and probably less effective.

Smallwood, p. 11.

Dr. Smallwood also notes the importance of post-construction fatality monitoring, which he says “should be an essential feature of any new building project.” Smallwood, p. 11.

In addition, for mitigation measures involving the siting and design of the Project, Dr. Smallwood suggests: (1) deciding on the location of structures; (2) deciding on the façade and orientation of structures; (3) selecting types and sizes of windows; (4) minimizing transparency through two parallel façades; (5) minimizing views of interior plants; (6) landscaping so as to increase distance between windows and vegetation; (7) monitoring for fatalities to identify seasonal and spatial patterns; and (8) adjusted light management, window markings, and other measures as needed based on survey results. Smallwood, p. 11-12.

Dr. Smallwood also suggests adherence to available guidelines on building design intended to minimize collisions hazards to birds, such as those by the American Bird Conservancy (“ABC”). Smallwood, p. 15. ABC recommends: (1) minimizing use of glass; (2) placing glass behind some type of screening (grilles, shutters, exterior shades); (3) using glass with inherent properties to reduce collisions, such as patterns, window films, decals or tape; and (4) turning off lights during migration seasons. *Id.* Dr. Smallwood also suggests that the City look to the guidelines developed by the City of San Francisco, based on guidelines produced by the New York City Audubon Society, to minimize injuries and fatalities to bird species. (*Id.*)

Finally, Dr. Smallwood recommends compensatory mitigation including contributions to wildlife rehabilitation facilities to cover the costs of injured animals that may be delivered to these facilities for care from this Project or other projects. Smallwood, p. 16.

4. The EIR failed to analyze the Project’s impact on wildlife due to traffic collisions.

The EIR does not address the impacts on wildlife mortality from traffic generated by the Project. Smallwood, pp. 12-14. According to the EIR, the Project would result in 8,914,030 additional vehicle miles traveled (VMT) annually. After adjusting for the smaller amount of terrestrial wildlife given the urban landscape, Dr. Smallwood estimates **488 wildlife fatalities annually** as a result of collisions with vehicle miles generated by the Project. *Id.*, p. 14. Especially due to the special-status bird species likely to occur at or near the Project, these collisions represent a significant impact to wildlife that has not been addressed, discussed, or mitigated in the EIR. A revised EIR is necessary to disclose and mitigate this impact.

5. The EIR inadequately analyzed the Project's cumulative impacts on wildlife.

The EIR did not analyze cumulative impacts on biological resources based on the same claim made in the Initial Study's as to why the EIR did not need to analyze project-specific impacts. The IS claims that because the site is located in an urban landscape, it is not possible for wildlife to occur, and therefore there will be no impacts. As explained by Dr. Smallwood, "the IS neglected to consider the aerosphere as of any importance to volant wildlife." Smallwood, p. 15. As described in his letter, however, Dr. Smallwood provides evidence that the Project may have significant impacts on special status species, which must be addresses on a project-level and cumulatively in a revised EIR.

Because the EIR does not address impacts on wildlife and Dr. Smallwood's analysis provides substantial evidence of a fair argument that the Project will have a significant impact on special status birds, the City must prepare a revised EIR to analyze, disclose, and mitigate this impact.

B. The EIR's Conclusion that Construction Noise is Significant and Unavoidable is Not Supported by Substantial Evidence.

The EIR concludes that the Project will have a significant construction noise impact, and that it will remain significant even with mitigation. This conclusion is not supported by substantial evidence and violates CEQA.

When an EIR has identified significant environmental effects that have not been mitigated or avoided, the agency may not approve the project unless it first finds that "[s]pecific economic, legal, social, technological, or other considerations . . . make infeasible the mitigation measures or alternatives identified in the environmental impact report." (PRC §21081(a)(3); see 14 CCR §15091(a)(3).) Rejected alternatives and mitigation measures must be "truly infeasible." (*City of Marina v. Bd. of Trustees of Cal. State Univ.* (2006) 39 Cal.4th 341, 369.)

According to the expert comments of Derek Watry (Exhibit B to August 2, 2021 CREED LA Comment), additional feasible mitigation is available to further reduce the Project's significant noise impact.

Mitigation Measure NOI-MM-1 provides:

NOI-MM-1: The Project shall provide temporary ground-level construction noise barriers, with a minimum height of eight feet and up to a height of 15 feet along the alleyway along the northeast property line, equipped with noise blankets or equivalent noise reduction materials rated to achieve sound level reductions of at least 10 dBA between the Project Site and ground-level sensitive receptor locations. These temporary noise barriers shall be used to block the line-of-sight between the construction equipment and the noise-sensitive receptor(s) during the duration of construction activities. Prior to

obtaining any permits, documentation prepared by a noise consultant verifying compliance with this measure shall be submitted to the Department of City Planning.

(DEIR at p. IV.G-49.)

According to this measure, the temporary noise barrier can be anywhere between 8 and 15 feet in height, and need only be placed along the alleyway along the northeast property line. (*Id.*) Since the residences on the far side of the alleyway are two-stories, including multiple windows that face the Project site, NOI-MM-1 is inadequate. (Watry, p. 6.) Instead, the EIR should require the barrier be 15 feet in height, and require that the barrier extend for along the entire extent of the neighboring residential buildings. (*Id.*)

The FEIR fails to adequately respond to Mr. Watry's comment. The FEIR states that:

providing a noise barrier with a height to block the line-of-sight between the Project Site and receptors at second or higher-level building locations is not considered feasible, due to the potential need for the barrier height to reach 20 feet above ground or higher, which would likely require a barrier foundation that could interfere with internal construction activities, require partial or complete closure of the adjacent alleyway, and/or cause safety issues for workers and pedestrians.

(FEIR at 2-64.)

This response ignores Mr. Watry's suggestion that the barrier be 15 feet (rather than a minimum of 8 feet and maximum of 15 feet), and should run along the entire extent of the neighboring residential buildings.

This response violates CEQA for two reasons. First, there is no evidence that Mr. Watry's suggestions are not feasible. As a result, they must be adopted to further reduce the Project's significant noise impact. (*See Covington v. Great Basin Unified Air Pollution Control Dis.* (2019) 43 Cal.App.5th 867, 883.)

Second, FEIR did not adequately respond to Mr. Watry's comment. An agency's responses to comments must specifically explain the reasons for rejecting suggestions received in comments and for proceeding with a project despite its environmental impacts. (PRC § 21091(d); 14 CCR §§ 15088(a), 15132.) Such explanations must be supported with specific references to empirical information, scientific authority, and/or explanatory information. (*Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348, 357.) The responses, moreover, must manifest a good faith, reasoned analysis; conclusory statements unsupported by factual information will not suffice. (*People v. County of Kern* (1974) 39 Cal.App.3d 830, 841.)

Here, the FEIR's response completely ignores the bulk of Mr. Watry's suggestion, which is to require noise barriers to run along the entire extent of the neighboring residential boundaries, and to require the barriers be 15 feet in height. There was no discussion of these

suggestions or any evidence that they would be infeasible. Certifying the EIR without adequately responding to Mr. Watry's comments is an abuse of discretion and a violation of CEQA.

C. The EIR Relies on an Improper Historical Baseline.

Use of a proper baseline is critical to the meaningful assessment of a project's environmental impacts. (*Communities for a Better Env't. v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 320; *Save Our Peninsula, supra*, 87 Cal.App.4th at 119.) Ordinarily, the environmental baseline is the physical environmental conditions that exist at the time the Notice of Publication (NOP) is published. (14 CCR §§ 15125(a)(1), 15126.2(a).) An agency is permitted to veer from this norm and rely on historic conditions or anticipated future conditions for the baseline, but only when "necessary to provide the most accurate picture practically possible of the project's impacts." (14 CCR §15125(a)(1).) An agency that elects *not* to provide an analysis based on conditions existing at the time the NOP is published must provide an adequate justification for doing so, supported by substantial evidence. (*POET, LLC v. State Air Resources Bd.* (2017) 12 Cal.App.5th 52, 80.)

The EIR relies on a historic baseline without justification. The NOP was published in January of 2020, and conditions at that time should form the baseline against which the Project's impacts are measured. This did not occur. Despite ceasing operations in 2018 the Montessori School formerly operating at the Project site is included as part of the baseline, as if it were still operational in 2020. While an agency has some discretion to rely on a historical baseline, here, the City has provided no evidence that including the school in the baseline is "necessary to provide the most accurate picture practically possible of the project's impacts." (14 CCR §15125(a)(1).) The opposition is true. The effect of including the closed Montessori School in the baseline is that Project's air quality, energy, and greenhouse gas impacts are artificially diminished.

These comments were raised in comments on the DEIR by CREED LA. In response, the FEIR dismisses the concerns and claims there is no need to revise the baseline because the emissions and energy use from the school were small, so even if it was not included in the baseline, the significance of the impacts would not change. This response is inadequate. The City cannot pick and choose which parts of CEQA it does and does not have to comply with. Failure to revise the EIR to accurately reflect the baseline is an abuse of discretion and violates CEQA.

D. The Project Does Not Warrant a Height Adjustment from 45 feet to 230 feet.

The Project is located in Height District 1VL meaning "Very Limited Height District, and no Building or Structure in Height District No. 1-VL shall exceed three Stories, nor shall it exceed 45 feet in height." (Los Angeles Mun. Code sec. 12.21.1 (A)(1).) The Project requests a Height change to allow an increase in height for the Project from 45 feet to 230 feet. The massive height of the building will tower over neighboring single family and two-story apartment building. In comments on the DEIR, the Beverly-Wilshire Homes Association, Inc.

took issue with the request for additional height, noting that “Density and height bonuses are given to residential projects because of the current affordable housing shortage. This medical office building does not fall into that category.” No justification for this substantial height change has been provided.

The City’s response to this comment improperly claims that the 12-story building “would be compatible” with the neighboring properties. It states:

the proposed 12-story medical office building would be compatible with development along South San Vicente Boulevard and Wilshire Boulevard, which is characterized by a mix of mid- to high- rise buildings, including a 10-story office building with ground floor commercial uses directly across from the Project Site, a 22-story medical office building fronting Wilshire Boulevard to the southeast of the Project Site, and a 12-story office building to the east of the Project Site.

(FEIR 2-14.)

What the FEIR fails to include in its response is that the DEIR states that the building directly north of the project is 5 stories with a 4-story parking structure, further north is a 3-story building. Directly across the street is a 10-story building, north of that is a 3-story building and 2 and 3 story buildings. (DEIR, II-3.) Moreover, the description of surrounding uses in the EIR makes no mention of the residential neighborhood directly to the northeast. See DEIR II-3 and image on II-4. In other words, the Project is by far the tallest building in the vicinity. The FEIR’s attempt to minimize this is misleading and must be corrected.

IV. CONCLUSION

For the foregoing reasons, SAFER and its members urge the City to prepare and recirculate a revised EIR addressing the above shortcomings. Thank you for your attention to these comments. Please include this letter and all attachments hereto in the record of proceedings for this project.

Sincerely,



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