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Via Email

Jennifer Fullerton, Chair
Anne Miller, Vice Chair
Katie Maynard, Commissioner
Cary Penniman, Commissioner
Rita Serotkin, Commissioner
Goleta Planning Commission
City Hall, Council Chambers
130 Cremona Dr. Goleta, CA
PERmeetings@cityofgoleta.org

Re: Comment on Sywest Industrial Building Project Environmental Impact Report; Item B.1, April 28, 2025 Planning Commission Meeting

Dear Chair Fullerton, Vice Chair Miller, and Honorable Commissioners:

The following comments are submitted on behalf of **Supporters Alliance for Environmental Responsibility (“SAFER”)** regarding the Sywest Industrial Building Project (“Project”) and the Environmental Impact Report (“EIR”) prepared for the Project. This Project will be heard as agenda item B.1 at the April 28, 2025 Planning Commission Meeting.

SAFER is concerned that approval of the Project and certification of the EIR will violate the California Environmental Quality Act (“CEQA”) by failing to adequately disclose and mitigate impacts to sensitive biological resources; and failing to adequately respond to comments from the California Department of Fish and Wildlife and others. SAFER respectfully requests that the Planning Commission recommend that the City Council refrain from approving the Project at this time and instead direct staff to revise and recirculate the EIR.

Project Description

The Project proposes the construction of a 70,594 square-foot industrial building on an 11.77-acre parcel at 907 South Kellogg Avenue in Goleta, California. It also includes the destruction of an existing move screen, concessions stan, projector building, two drive through ticket booths, one walk-in ticket booth, an agricultural box, and a dewatering well. The industrial building could be divided up into four sections and made available for up to four tenants.

LEGAL STANDARD

I. CEQA and Environmental Impact Report

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 CCR § 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.) Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures. (14 CCR § 15002(a)(2) and (3); see also *Berkeley Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1349,1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.)

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an Environmental Impact Report (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 EIR is an “environmental ‘alarm bell’ whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return.” (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004), 124 Cal.App.4th 1184, 1220.) The EIR also functions as a “document of accountability,” intended to “demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” (*Laurel Heights Improvements Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392.)

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.” (14 CCR § 15002(a)(2).) Critical to this purpose, the EIR must contain an “accurate and stable project description.” (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185 at 192-93 (“An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.”)) The project description must contain (a) the precise location and boundaries of the proposed project, (b) a statement of the project objectives, and (c) a general description of the project's technical, economic, and environmental characteristics. (14 CCR § 15124.)

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.*, 47 Cal.3d at 405].) The Court in *Sierra Club v. Cty. of Fresno* also emphasized that 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.” (*Id.* 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.’” (*Sierra Club*, 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.” (*Id.* 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.

(*Id.* at 514.) Additionally, “in preparing an EIR, the agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project.” (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App. 4th 1099, 1109.)

II. Mitigation Measures

In general, mitigation measures must be designed to minimize, reduce or avoid an identified environmental impact or to rectify or compensate for that impact. (14 CCR § 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. (14 CCR § 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.

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. Res. Code, § 21081; 14 CCR § 15092(b)(2)(A) and (B).)

III. Alternatives

Where a project is found to have significant adverse impacts, CEQA requires the adoption of a feasible alternative that meets most of the project objectives but results in fewer significant impacts. (*Citizens of Goleta Valley v. Bd. of Supervisors* (1988) 197 Cal.App.3d 1167, 1180-81; see also, *Burger v. County of Mendocino* (1975) 45 Cal.App.3d 322.) A “feasible” alternative is one that is capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors. (Pub. Res. Code § 21061.1; 14 Cal. Code Regs. § 15364)

CEQA requires that an EIR provide a discussion of project alternatives that allows meaningful analysis. An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. The purpose of the discussion of alternatives is both to support the decision makers and to inform public participation. Thus, “[a]n EIR’s discussion of alternatives must contain analysis sufficient to allow informed decision making.” An EIR must also include “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.”

The lead agency is required to select the environmentally preferable alternative unless it is infeasible. As explained by the Supreme Court, an environmentally superior alternative may not be rejected simply because it is more expensive or less profitable:

The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project.

(*Citizens of Goleta Valley v. Bd. of Supervisors* (1988) 197 Cal.App.3d 1167, 1180-81; see also, *Burger v. County of Mendocino* (1975) 45 Cal.App.3d 322)

In *Burger v. County of Mendocino* (1975) 45 Cal.App.3d 322, the court held that the county’s approval of an 80 unit hotel project over a smaller 64 unit alternative, despite recommendations to the contrary in the EIR, was not supported by substantial evidence. The EIR

discussed numerous adverse environmental effects that would be caused by the 80 unit project and recommended that the developer be allowed to construct a smaller 64 unit hotel so long as certain mitigation measures were completed, including relocation of some of the proposed buildings. In evaluating whether substantial evidence supported the county's rejection of the smaller alternative as economically infeasible, the court found that "there is no estimate of income or expenditures, and thus no evidence that a reduction of the motel from 80 to 64 units, or relocation of some units, would make the project unprofitable." (*Burger v. County of Mendocino*, 45 Cal.App.3d at 326-327.) Thus, the court identified three criteria that should be evaluated in a comparative analysis to determine whether a project alternative or mitigation measure would be economically feasible: (1) estimated income; (2) estimated expenditures; and (3) estimated profitability between the proposed project and alternative or with and without recommended mitigation measures. (See also, *County of El Dorado v. Dept. of Transp.* (2005) 133 Cal.App.4th 1376 (agency must consider small alternative to casino project); *Preservation Action Counsel v. San Jose* (2006) 141 Cal. App. 4th 1336.)

IV. Response to Comments

When a significant environmental issue is raised in comments that object to the draft EIR's analysis, the response must be detailed and must provide a reasoned, good faith analysis. (14 CCR § 15088(c); *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 940.) "Conclusory statements unsupported by factual information will not suffice." (14 CCR § 15088(c); see also *Concerned Citizens of Costa Mesa* (1986) 42 Cal.3d 929, 936.) The failure of a lead agency to respond to comments raising significant environmental issues before approving a project frustrates CEQA's informational purpose and may render the EIR legally inadequate. (See *Flanders Found. v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 615; *Rural Landowners Ass'n v. City Council* (1983) 143 Cal.App.3d 1013, 1020.)

DISCUSSION

I. Impacts to Biological Resources.

Expert ecologist Shawn Smallwood, Ph.D., reviewed the Project's biological impacts and the EIR and prepared expert comments. Dr. Smallwood's comments and CV are attached to this comment as Exhibit A. Dr. Smallwood's comments point out numerous deficiencies in the EIR including:

- The environmental baseline is incomplete and outdated because the surveys underlying the EIR were conducted eight years ago. The vegetation surrounding San Jose Creek is now dense and lush riparian vegetation compared to the 2017 characterization in the EIR, which concludes that "[t]he lack of riparian vegetation along this stretch diminishes habitat value." Similarly, Dr. Smallwood observed great egrets, great blue herons, and mallards at the site during breeding

season, despite the EIR's conclusion that these species will not nest anywhere near the Project site.

- Construction of the Project will result in lost habitat and a reduced productive capacity from that lost habitat. The EIR does not analyze or mitigate this significant impact.
- The EIR's conclusion that the Project will not interfere with wildlife movement is unsupported by substantial evidence.
- The EIR does not analyze or mitigate the Project's significant impacts on wildlife as a result of wildlife fatalities from impacts from Project traffic.
- The EIR's conclusion that the Project will not have significant cumulative impact on biological resources is unsupported by substantial evidence.

In addition, the California Department of Fish and Wildlife commented that additional mitigation measures are needed to address the Project's significant impacts on biological resources. The FEIR did not meaningfully respond to those comments,

CONCLUSION

For the forgoing reasons, SAFER respectfully requests that Project's environmental impact report be revised to adequately analyze and mitigate significant impacts and ensure compliance with CEQA. A revised EIR should be prepared and recirculated to address these comments.

Thank you for your attention to these comments.

Sincerely,



Rebecca Davis
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