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VIA EMAIL

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Scott Johnson, Senior Planner
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City of Sacramento
300 Richards Blvd., 3rd Floor
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Re: Mitigated Negative Declaration for Northgate Industrial Park Project

Dear Mr. Johnson,

I am writing on behalf of **Laborers' International Union of North America, Local Union No. 185** regarding the proposed development of two industrial warehouse buildings, one which will be converted from an existing warehouse retail building onsite, and the other which will be constructed on the existing parking lot onsite at 4100 Northgate Boulevard in the City of Sacramento ("Project"). The City of Sacramento ("City") has prepared a mitigated negative declaration ("MND") for the Project. We request that the City prepare an environmental impact report ("EIR") for the Project because there is a fair argument that the Project may have adverse environmental impacts.

These comments are supported by the comments of the expert consulting firm, Soil Water Air Protection Enterprise ("SWAPE"), authored by Dr. Paul Rosenfeld, Ph.D. and Matthew Hagemann, C. Hg. (Exhibit A). It is also supported by comments from expert wildlife biologist Shawn Smallwood (Exhibit B). We incorporate the SWAPE and Smallwood comments herein by reference. As explained below and in the SWAPE and Smallwood comments, there is a fair argument that the proposed Project may have significant adverse environmental impacts, and an environmental impact report ("EIR") is therefore required.

I. Legal Standard

As the Supreme Court held, "[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR." (*Communities for a Better Environment v. South Coast Air Quality*

Management Dist. (2010) 48 Cal. 4th 310, 319-320, citing, *No Oil, Inc. v. City of Los Angeles*, 13 Cal.3d at pp. 75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal. App. 3d 491, 504–505). “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. Calif. Resources Agency* (2002) 103 Cal. App. 4th 98, 109.)

The EIR is the very heart of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1214; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4th 903, 927). 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*, 124 Cal.App.4th at 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 University of California* (1988) 47 Cal.3d 376, 392.) The EIR process “protects not only the environment but also informed self-government.” (*Pocket Protectors*, 124 Cal.App.4th 927.)

An EIR is required if “there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.” (Pub. Res. Code § 21080(d) (emphasis added); see also *Pocket Protectors*, 124 Cal.App.4th at 927.) In very limited circumstances, an agency may avoid preparing an EIR by issuing a negative declaration, a written statement briefly indicating that a project will have no significant impact thus requiring no EIR (CEQA Guidelines § 15371), only if there is not even a “fair argument” that the project will have a significant environmental effect. (Pub. Res. Code §§ 21100, 21064.) Since “[t]he adoption of a negative declaration . . . has a terminal effect on the environmental review process,” by allowing the agency “to dispense with the duty [to prepare an EIR],” negative declarations are allowed only in cases where “the proposed project will not affect the environment at all.” (*Citizens of Lake Murray v. San Diego*, 129 Cal.App.3d 436, 440 (1989).) CEQA contains a ***“preference for resolving doubts in favor of environmental review.”*** (*Pocket Protectors*, 124 Cal.App.4th at 927 (emphasis in original).)

II. There is a Fair Argument that the Project May Have Adverse Environmental Impacts.

a. Substantial Evidence Supports a Fair Argument that the Project Will Result in Significant Unmitigated Impacts to Air Quality.

Matt Hagemann, P.G., C.Hg., and Dr. Paul E. Rosenfeld, Ph.D., of the environmental consulting firm SWAPE reviewed the IS/MND’s analysis of the Project’s

impacts on air quality. SWAPE's comment letter and CVs are attached as Exhibit A and their comments are briefly summarized here.

SWAPE found that the IS/MND incorrectly estimated the Project's construction and operational emissions and therefore cannot be relied upon to determine the significance of the Project's impacts on local and regional air quality. The MND relies on emissions calculated from the California Emissions Estimator Version 2020.4.0 ("Caleemod"). (IS/MND, p. 25). This model, which is used to generate a project's construction and operational emissions, relies on recommended default values based on site specific information related to a number of factors. (Ex. A, p. 1-2). CEQA requires any changes to the default values to be justified by substantial evidence. (*Id.*)

SWAPE reviewed the IS/MND's Caleemod output files and found that the values input into the model were inconsistent with information provided in the MND. (Ex. A, p. 2). As a result, the IS/MND's air quality analysis cannot be relied upon to determine the Project's emissions.

Specifically, SWAPE found that the following values used in the IS/MND's air quality analysis were either inconsistent with information provided in the IS/MND or otherwise unjustified:

1. Failure to Model Proposed Parking Land Use. (Ex. A, p. 2).
2. Unsubstantiated Changes to Individual Construction Phase Lengths. (Ex. A, p. 2-4).
3. Unsubstantiated Changes to Construction Off-Road Equipment Input Parameters. (Ex. A, p. 4-7).
4. Failure to Include Any Amount of Demolition. (Ex. A, p. 7-8).

Due to the use of these incorrect parameters, the MND cannot be relied upon to determine the significance of the Project's impacts. An EIR should be prepared which corrects the values pointed out by SWAPE.

b. Substantial Evidence Supports a Fair Argument that the Project Will Have Significant Adverse Biological Impacts that the MND Fails to Adequately Analyze and Mitigate.

Shawn Smallwood, Ph.D. reviewed the MND's analysis of the Project's biological impacts. Dr. Smallwood's comment letter and CV are attached as Exhibit B and his comments are briefly summarized here.

- i. The MND is inadequate in its characterization of the existing environmental setting as it relates to wildlife.

Dr. Smallwood's comments are supported by a site visit he performed on August 28, 2022 from 6:24 – 8:59 pm. (Ex. B, p. 1). He used binoculars and scanned for wildlife from the roadside periphery of the Project site. (*Id.*) During that visit, he observed the

presence of 20 species of vertebrate wildlife at the Project site, three of which are special-status species. (*Id.*, see Table 1, Ex. B, p. 2.) Dr. Smallwood observed a Nuttall's woodpecker, a special status species on the site. (*Id.*, p. 4, Photos 3 and 4.) He also observed special status California gull foraging at the site. (*Id.*, p. 2.) Special status Caspian doves were observed flying directly over the site by Dr. Smallwood. (*Id.*, Photo 5.) Dr. Smallwood found abundant evidence of breeding on and around the site, including "nest structures in trees, juvenile birds, and social drama typical of breeding territory defense." (*Id.*) He also observed other species making food deliveries to nests and defending nest territories, and saw fledglings of mourning doves and northern mockingbirds. (*Id.*)

Every CEQA document must start from a "baseline" assumption. The CEQA "baseline" is the set of environmental conditions against which to compare a project's anticipated impacts. (*Communities for a Better Envt. v. So. Coast Air Qual. Mgmt. Dist.* (2010) 48 Cal. 4th 310, 321.) Dr. Smallwood found that the reconnaissance survey performed for the City of Sacramento failed to give methodological details necessary to interpret the survey's results, such as who completed the survey, what time it started, and how long it lasted. (Ex. B, p. 13). He also found that site conditions were summarized vaguely, and noted that the survey detected only 30% of the species he observed, and that the survey found no special-status species. (*Id.*) Dr. Smallwood therefore found that the MND is "inadequately informed by surveys for wildlife at the project site." (*Id.*)

As for particular species, including the Swainson's hawk and burrowing owls, Dr. Smallwood stated that the MND failed to describe having completed detection surveys for these species. (*Id.*) The absence determinations for these species therefore lack supporting evidence. (*Id.*)

A skewed baseline such as the one used by the City here ultimately "mislead(s) the public" by engendering inaccurate analyses of environmental impacts, mitigation measures and cumulative impacts for biological resources. (See *San Joaquin Raptor Rescue Center*, 149 Cal.App.4th 645, 656; *Woodward Park Homeowners*, 150 Cal.App.4th 683, 708-711.)

The MND's biological analysis reported having reviewed the California Natural Diversity Data Base ("CNDDB") to assess occurrence potentials of special-status species onsite. However, Dr. Smallwood found that the MND improperly screened out species based on their absence from CNDDB, a use for which CNDDB is not intended. (Ex. B, p. 13-14). CNDDB is a "positive sighting database" which relies on volunteer reporting, therefore the lack of a report of a species at a certain site does not automatically mean that species does not have the potential to occur. (*Id.*)

Based on Dr. Smallwood's own assessment of database reviews and his site visit, he found that "97 special-status species of wildlife are known to occur near enough to the site to be analyzed for occurrence potential at one time or another." (Ex. B, p. 14, see Table 2, p. 15-19). "[S]ufficient survey effort should be directed to the site to either

confirm these species use the site or to support absence determinations.” (*Id.* at 14). Because of the failure to characterize the site, a fair argument exists that the Project may have a significant impact on wildlife requiring the preparation of an EIR.

ii. The MND fails to analyze the Project’s impact on habitat loss.

Dr. Smallwood found that the Project would contribute to a decline in birds in North America, a trend that has been happening over the last approximately 50 years largely due to habitat loss and fragmentation and would be further exacerbated by this project. (Ex. B, p. 20). Based on studies on the subject, Dr. Smallwood estimates that the presence of the Project on the site could prevent the production of 174 fledglings per year, which would in turn contribute to the lost capacity of 198 birds per year. (*Id.*) The City must address this impact in an EIR.

iii. The MND fails to adequately analyze the Project’s impact on wildlife movement.

The MND’s assessment of whether the Project would interfere with wildlife movement is flawed. (Ex. B, p. 21). The MND states that “[t]he project site does not provide a wildlife corridor or nursery as it is a developed area and surrounded by development.” (*Id.*; MND, p. 35). However, Dr. Smallwood notes that in this statement, the MND implies that “only disruption of the function of a wildlife corridor can interfere with wildlife movement in the region.” (*Id.* at 21). However, Dr. Smallwood states:

The primary phrase of the CEQA standard goes to wildlife movement regardless of whether the movement is channeled by a corridor. A site such as the proposed project site is critically important for wildlife movement because it composes an increasingly diminishing area of open space within a growing expanse of anthropogenic uses, forcing more species of volant wildlife to use the site for stopover and staging during migration, dispersal, and home range patrol (Warnock 2010, Taylor et al. 2011, Runge et al. 2014). The project would cut wildlife off from stopover and staging opportunities, forcing volant wildlife to travel even farther between remaining stopover sites.

(*Id.*) An EIR should be prepared to properly analyze this impact.

iv. The MND fails to analyze the project’s impacts on wildlife from additional traffic generated by the Project.

The MND estimates that the Project would lead to 2,603,990 vehicle miles traveled (“VMT”), yet it contains no analysis of the impacts on wildlife that will be caused by the traffic on the roadways servicing the Project. Vehicle collisions with special-status species is not a minor issue, but rather results in the death of millions of species each year. Dr. Smallwood explains: “. . . the US estimate of avian mortality on roads is 2,200 to 8,405 deaths per 100 km per year, or 89 million to 340 million total per year (Loss et al. 2014).” (Ex. B, p. 21).

Using the Project's VMT estimates and information from a scientific study on road mortality, Dr. Smallwood was able to predict the Project-generated traffic impacts to wildlife. (*Id.* at 23-24). Dr. Smallwood calculates that over the course of 50 years of operation, the Project would cause an accumulated 71,350 wildlife fatalities. (*Id.*) He therefore states that "the project-generated traffic would cause substantial, significant impacts to wildlife." (*Id.* at 24). An EIR should be prepared which includes analysis and mitigation of the result increased traffic from the Project will have on wildlife.

v. The MND conflicts with the local Habitat Conservation Plan.

Although the MND concludes that the project site is in an area considered exempt from compliance with the Natomas Basin Habitat Conservation Plan (NBHCP), Dr. Smallwood notes that "the nature of the project [] requires considerable vehicle traffic on roads located well beyond the boundary of the project site." (Ex. B, p. 24). Many of the Project's estimated 2,603,990 annual VMT would be on roads that are not exempt from the NBHCP. (*Id.*) An EIR must therefore be prepared to address this conflict and the impacts that may be caused to species within the NBHCP.

vi. The MND failed to address the cumulative impacts of past, ongoing, and future projects on wildlife.

The MND failed to analyze cumulative impacts of the project on biological resources. (Ex. B, p. 24). The MND relies on the City of Sacramento's General Plan policies, codes, and regional requirements, which is appropriate under CEQA. However, when relying on an approved plan to mitigate impacts, an agency must "explain how implementing the particular requirements in the plan, regulation or program ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable." (*Id.*, quoting CEQA Guidelines § 15064(h)(3)). Here, the MND did not explain how implementing requirements from the City of Sacramento's General Plan would "minimize, avoid or offset the project's contributions to cumulative impacts." (Ex. B, p. 24). An EIR must be prepared with a revised cumulative impacts section which adequately meets CEQA requirements.

c. The MND's Analysis of Energy Impacts is Conclusory and Fails to Provide Substantial Evidence that the Project's Energy Impacts will be less than Significant.

The MND relies on the Project's compliance with Title 24 regulations to conclude that the impact is less than significant. However, compliance with existing standards does not provide substantial evidence that the Project's energy impacts are less than significant.

The standard under CEQA is whether the Project would result in wasteful, inefficient, or unnecessary consumption of energy resources. Failing to undertake "an investigation into renewable energy options that might be available or appropriate for a project" violates CEQA. (*California Clean Energy Committee v. City of Woodland* (2014)

225 Cal.App.4th 173, 213.) Energy conservation under CEQA is defined as the "wise and efficient use of energy." (CEQA Guidelines, app. F, § 1.) The "wise and efficient use of energy" is achieved by "(1) decreasing overall per capita energy consumption, (2) decreasing reliance on fossil fuels such as coal, natural gas and oil, and (3) increasing reliance on renewable energy resources." (*Id.*)

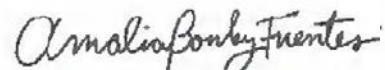
Simply requiring compliance with the California Building Energy Efficiency Standards (Cal.Code Regs., tit. 24, part 6 (Title 24)) does not constitute an adequate analysis of energy. (*Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 264-65.) Similarly, the court in *City of Woodland* held unlawful an energy analysis that relied on compliance with Title 24, that failed to assess transportation energy impacts, and that failed to address renewable energy impacts. (*California Clean Energy Committee v. City of Woodland*, 225 Cal.App.4th 173, 209-13.) As such, the MND's reliance on Title 24 compliance does not satisfy the requirements for an adequate discussion of the Project's energy impacts.

The MND summarily concludes that the Project would not result in the inefficient, wasteful and unnecessary consumption of energy. There is no discussion of the Project's cost effectiveness in terms of energy requirements. There is no discussion of energy consuming equipment and processes that will be used during the construction or operation of the Project, including the energy necessary to power construction equipment, forklifts, heating, cooling, truck refrigeration units, etc. The Project's energy use efficiencies by amount and fuel type for each stage of the project including construction, operation, and maintenance were not identified. The effect of the Project on peak and base period demands for electricity has not been addressed. As such, the MND's conclusions are unsupported by the necessary discussions of the Project's energy impacts under CEQA.

C. CONCLUSION

For the foregoing reasons, SAFER requests that the City prepare an environmental impact report ("EIR") to analyze and mitigate the Project's significant adverse environmental impacts. Thank you.

Sincerely,



Amalia Bowley Fuentes
LOZEAU DRURY LLP