



T 510.836.4200  
F 510.836.4205

1939 Harrison Street, Ste. 150  
Oakland, CA 94612

www.lozeaudrury.com  
michael@lozeaudrury.com

January 20, 2026

Via E-mail

Ken Strel  
Community Development Director  
3231 Main Street  
Oakley, CA 94561  
Strel@ci.oakley.ca.us

Leonard Price, Chair  
Kerry Harvey, Vice Chair  
Yared Oliveros, Commissioner  
Sean Ireland, Commissioner  
Pierre Goudie, Commissioner  
3231 Main Street  
Oakley, CA 94561  
planninggroup@ci.oakley.ca.us

**Re: Comment on Bridgehead Industrial Project Environmental Impact Report and Accompanying Findings and Mitigations, General Plan Amendment (GPA 02-23), Rezone (RZ 04-23), Tentative Map (TM 10-23), Design Review (DR 11-23) and Master Sign Program (MSP 01-23)**

Dear Chair Price, Vice-Chair Harvey, Commissioners Oliveros, Ireland and Goudie, and Mr. Strel:

The following comments are submitted on behalf of Laborers' International Union of North America, Local Union 324 ("LIUNA") on the Bridgehead Industrial Project Environmental Impact Report and the accompanying proposed approvals referenced above ("Project"). The Project proposes to construct and operate a large industrial warehousing and distribution center project consisting of 10 light industrial buildings totaling approximately 3,117,777 square feet ("sf") of new building space, including approximately 3,045,777 sf of warehouse space and 72,000 sf of office space on three parcels totaling about 164-acres immediately southwest of the Big Break Marina. The parcels currently consist of vineyards, all of which would be removed by the Project. Once constructed, the Project will generate an estimated 9,436 vehicle trips. Although unclear about how many truck trips will occur each day, it appears to envision at least 916 medium and heavy-duty truck trips per day.

LIUNA is concerned that the EIR fails as an informational document and fails to impose all feasible mitigation measures to reduce the Project's impacts. In addition to the numerous concerns raised by other commenters, the EIR fails to address the Project's significant impacts on special status species identified as being present at the Project site; fails to meaningfully

address the Project's estimated emission of 34,458 metric tons per year of greenhouse gasses ("GHGs"); and fails to adequately tackle the Project's energy impacts and the complete waste of hundreds of thousands of square feet of roof space available to install solar panels, which would dramatically cut the Project's electricity demand from the power grid and reduce the Project's GHG emissions.

## 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.)

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) & (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." (14 CCR § 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." (PRC § 21081; 14 CCR § 15092(b)(2)(A) & (B).)

The EIR is the very heart of CEQA. (*Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.) CEQA requires that a lead agency analyze all potentially significant environmental impacts of its proposed actions in an EIR. (PRC § 21100(b)(1); 14 CCR § 15126(a); *Berkeley Jets*, 91 Cal.App.4th 1344, 1354.) The EIR must not only identify the impacts, but must also provide "information about how adverse the impacts will be." (*Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831.) The lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692.)

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 (quoting, *Laurel Heights Improvement Assn.*

*v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 391 409, fn. 12.) 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.)

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].) “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.) 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.)

## **DISCUSSION**

### **II. The EIR’s Analysis of Impacts to Biological Resources is Insufficient and Not Supported By Substantial Evidence.**

The City improperly rejects disclosing and analyzing potential impacts to nine special status species either observed at the Project site or expected to be present at the site. These omissions are the result of the City applying an improperly restrictive definition of special status species. In addition, the EIR fails to address impacts on foraging by white-tailed kites, which has been observed foraging at the site since the release of the draft EIR. The only impact to white tailed kites addressed in the EIR is on potential nesting. For these reasons, the City has proceeded in a manner inconsistent with law and fails to sufficiently address potential impacts to all special status species observed or expected to be using the Project site.

CEQA Guideline § 15380 instructs that, to determine the significance of a project's impacts on biological resources, lead agencies answer the question:

Would the project: a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or ***special status species*** in local or regional plans, policies, or regulations, or by the ***California Department of Fish and Game or U.S. Fish and Wildlife Service?***

(CEQA Guidelines, 14 Cal. Admin. Code, Div. 6 Ch. 3 App. G [emphasis added].)

The California Department of Fish and Wildlife ("CDFW") has performed the identification of special status species identified by Section 15380. CDFW maintains a "Special Animals List" as part of the agency's California Natural Diversity Database ("CNDDDB") program. (Attached as Exhibit A [CDFW Special Animals List, Oct. 2025 ["CDFW List"].) "'Special Animals' is a broad term used to refer to all of the animal taxa tracked by the ... CDFW[] ... CNDDDB[], regardless of their legal or protection status." (CDFW List, p. i.) "This list is also referred to as the list of 'species at risk' or '***special status species***'." (*Id.* [emphasis added]) The list includes not only species identified by CDFW as species of special concern, but also bird species identified by the United States Fish & Wildlife Service ("USFWS") as "Birds of Conservation Concern." (*Id.* at xv.)

Despite the directive of the CEQA Guidance and CDFW's identification of special status species, the EIR arbitrarily restricts the scope of special status species identified by CDFW deemed worthy of review in the EIR. Thus, the DEIR acknowledges the key term "special status species" employed by the CEQA Guidelines but then ignores CDFW's Special Animals List. Instead of employing CDFW's official list of special status species, the DEIR claims that, for wildlife species, special status species are limited to species listed as endangered or threatened, candidates for such listing, certain rare species, and:

5. Migratory non-game birds or [sic] management concern listed by the United States Fish and Wildlife Service (USFWS);
6. [Species] Identified as Species of Special Concern or Fully Protected species by the CDFW; and
7. [Species] Identified as Medium or High priority species by the Western Bat Working Group (WBWG).

(DEIR, pp. 4.4-6 – 4.4-7.)

Similarly, the biological consultant for the Project, citing to CEQA Guidelines 14 CCR §§ 15380 and 15382, suggests that determining significant effects on the environment is limited to addressing "California Species of Special Concern" which in turn are limited to "rare" species. (Monk & Assoc., "Biological Resources Analysis Bridgehead Industrial," pp. 8-9 ["Monk Report"] [DEIR, App. D].) However, CEQA Guidelines § 15382 makes no mention of "special status species," "species of special concern" or "rare" species. And CEQA Guideline § 15380 does not limit "special status species" either to "species of special concern" or rare species. Thus,

although referencing the Special Animals List in a footnote to Table 4, that table does not include the nine special status species identified by CDFW in its list.

Lastly, in the FEIR's responses to comments, the City employs an even more restrictive interpretation of special status species, stating that:

For purposes of the analysis for CEQA, special-status species are plants and animals that are legally protected under the California and Federal Endangered Species Acts (CESA and FESA, respectively) or other regulations, and species that are considered rare by the scientific community (for example, the California Native Plant Society [CNPS]).

(FEIR, p. 2-176.)

Comments regarding the DEIR's assessment of the Project's potential significant impacts on biological resources were submitted to the City by Dr. Shawn Smallwood, a Ph.D. ecologist who made observations and monitored for bat species at the Project site in October, 2025. (See FEIR, pp. 2-121 – 2-160.) A true and correct copy of Dr. Smallwood's most recent *curriculum vitae* demonstrates his extensive expertise conducting wildlife surveys, including bat sonar surveys, and wildlife research. (Smallwood Curriculum Vitae dated January 2026 ["Smallwood CV"] [attached as Exhibit B].)

Dr. Smallwood observed at least four bird species moving through or foraging at the site and which are included on CDFW's Special Animals List – the California gull, tricolored blackbird (also a threatened species under the California Endangered Species Act ["CESA"]), the yellow-breasted blackbird (also listed as threatened under CESA) and the white-tailed kite. The FEIR admits that the latter three of these birds are special status species. (FEIR, p. 2-177.) Despite Dr. Smallwood's observation of hundreds of tricolored and yellow-headed blackbirds directly over the site, the City elected not to supplement the DEIR's analysis to address whether any of the buildings proposed to be erected, as well as any other project features, may disrupt these large flocks. In the case of the yellow-headed blackbird, it forages on the ground in agricultural fields. No effort was made in the EIR to evaluate the elimination of the Project site as foraging habitat for this listed species. The FEIR's simplistic assertion that, because these species were only observed flying over the site, the City has no obligation to evaluate any potential impacts from the Project to these species is inconsistent with CEQA's obligations. The City has a duty to investigate potential impacts. (*Cnty. Sanitation Dist. No. 2 v. Cnty. of Kern* (2005) 127 Cal.App.4th 1544, 1597 ["under CEQA, the lead agency bears a burden to investigate potential environmental impacts"]; *Sundstrom v. Cnty. of Mendocino* (1988) 202 Cal.App.3d 296, 311 ["The agency should not be allowed to hide behind its own failure to gather relevant data"].) Where a special status bird species is observed on or flying directly over a Project site, it is up to the City to evaluate whether the Project will adversely affect that species. Similarly, the EIR does not offer any information on the California gull, though Dr. Smallwood observed several flying over the site. For these reasons, the EIR's discussion of these special status bird species is insufficient.

The only bat species discussed in the DEIR is the western red bat. (DEIR, p. 4.4-46.) Using the Sonobat Live application, Dr. Smallwood identified with certainty the presence of hoary bats at the site. (FEIR, p. 2-125.) The hoary bat is listed by CDFW on the Special Animals list and is identified as a Medium priority species by the Western Bat Working Group (“WBWG”). (CDFW List, p. 83; WBWG List.) Dr. Smallwood also confirmed the presence of Mexican free-tailed bats at the site. (FEIR, p. 2-125.) This bat also is a WBWG Medium priority species, meeting even the City’s definition of a special status bat species. (WBWG List.) Dr. Smallwood also determined that four other bat species – little brown bat, silver-haired bat, Yuma myotis, and western small-footed myotis – are all probably utilizing the site. (FEIR, p. 2-125.) Each of those four bat species is identified by CDFW on its Special Animals List. (List, pp. 83-84.) Each also is a Medium priority bat species on the WBWG List. (WBWG List.) Rather than respond objectively to Dr. Smallwood’s bat survey, the FEIR suggests generically that “[w]hile apps such as SonoBat Live can offer helpful species suggestions, the results may be inaccurate due to overlapping call characteristics and environmental interference. Therefore, all species identifications generated by SonoBat Live should be confirmed by a trained professional to ensure accuracy.” (FEIR, p. 2-177.) In the case of Dr. Smallwood, this is not a reasonable response, given his decades of experience surveying for bats and his expertise employing the SonoBat Live application. (See Smallwood CV [attached as Exhibit B].) Each of the special status bat species either confirmed or identified by Dr. Smallwood as probably utilizing the Project site had to be identified in the EIR and discussed sufficiently to evaluate the potential significant impacts of the Project on these species’ foraging and nesting habitat. No such evaluation is included in the EIR.

The EIR also insufficiently addresses the presence of white-tailed kites at the site by inaccurately finding that there is only a moderate potential for white-tailed kite to occur on-site (DEIR, p. 4.4-22 – 4.4-23; FEIR, p. 2-139) despite the evidence provided by Dr. Smallwood that he observed a white-tailed kite foraging on the Project site as well as an adjacent site (prior to its development with another warehouse project). (FEIR, pp. 2-124 [photo], 2-125, 2-126.) Even with a flawed baseline of only a probable presence of white-tailed kites at the site, the EIR finds that “the proposed project could have a substantial adverse effect, either directly or through habitat modifications, on a wildlife species (white-tailed kite) identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the CDFW or USFWS, and a *significant* impact could occur. (DEIR, p. 4.4-45 [emphasis added]. See also FEIR, p. 2-178 [further confirming that “the project site provides suitable *foraging* and nesting habitat for the species] [emphasis added]; DEIR, p. 4.4-45 [“The on-site vineyards provides [sic] potential foraging habitat for the [white-tailed kite], which is typically found foraging in grassland, marsh, or cultivated fields where dense-topped trees or shrubs for nesting and perching occur”].)

Despite the EIR’s agreement the Project site provides foraging habitat for white-tailed kites that will be eliminated resulting in a significant adverse impact if not mitigated, no mitigation of the loss of foraging habitat for this species is discussed or proposed. The only mitigation identified in the EIR is to address impacts to white-tailed kite nesting. (DEIR, pp. 4.4-45 – 46 [Mitigation Measures 4.4-6(a) and 4.4-6(b) providing for nesting survey and buffer during nesting season]; 4.4-47 – 48 [Mitigation Measure 4.4-8 [same]. See also FEIR, p. 2-177

[claiming that white-tailed kites and other bird species “would be protected through the nesting bird surveys”].) No mitigation for loss of foraging is provided. This is particularly insufficient in light of Dr. Smallwood’s observation of white-tailed kites actually foraging on the site. (FEIR, 2-125.)

Because the City failed to address at all numerous special status species, employed a definition of special status species that is inconsistent with the CEQA Guidelines and CDFW’s role to identify special status species, and, in the case of white tailed kits, failed to provide for any mitigation of the significant foraging impacts to this species, the EIR’s evaluation of impacts to biological resources is not consistent with law, insufficient, and arbitrary and capricious.

### **III. The EIR Fails to Adequately Disclose, Analyze and/or Mitigate the Project’s Potentially Significant Impacts on Energy Resources and, as a Result the Project’s Related GHG Emissions.**

The Project will increase electricity consumption by approximately 33 GWh per year. To put that number in perspective, that is enough annual power for approximately 3,300 homes. ([See https://www.carboncollective.co/sustainable-investing/gigawatt-gw.](https://www.carboncollective.co/sustainable-investing/gigawatt-gw)) The Project’s electricity consumption takes into account compliance with California building standards and the Project’s commitment to utilize electric forklifts at the facility. Although mentioned by a few commenters and noting that one of the four key areas of California’s energy efficiency standards is “[e]xpanding solar PV system and battery storage standards to make clean energy available onsite and complement the State’s progress toward a 100 percent clean electricity grid” [DEIR, p. 4.3-29 – 30], the DEIR does not mention any consideration of solar panels for the extensive roof area of the Project. Despite its enormous new energy consumption, the EIR relies on compliance with the CalGreen Code and other regulatory standards as the sole basis for its energy analysis to determine that increasing electricity demand by 33 GWh per year would have a less than significant impact on energy use because it would not result in wasteful, inefficient, or unnecessary use of energy. (DEIR, pp. 4.3-59 – 61).

The standard under CEQA for considering a project’s energy impacts 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, § I.) 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.*)

Noting compliance with the California Building Energy Efficiency Standards (Cal. Code Regs., tit. 24, part 6 (Title 24)) and CALGreen Code 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 as 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. (*City of Woodland*, 225 Cal.App.4th at pp. 209-13.) The EIR

prepared for the Project contains the same flaw, relying solely on compliance with the energy standards rather than considering additional measures to offset the Project's additional demand on the energy grid and annual GHG emissions of 5,328 metric tons of GHGs just from its electricity consumption. (DEIR, p. 4.3-72.) The DEIR, in turn, also relies on the flawed finding that the Project's energy use would not be wasteful to support its conclusion that its GHG emission will be less than significant. (*Id.*, pp. 4.3-68 – 69.) Because the conclusion that the Project would not have significant energy impacts is insufficient and not supported by substantial evidence, the conclusion that the Project's GHG emissions will also be less than significant also is insufficient and not supported by substantial evidence.

The DEIR and FEIR summarily conclude that the Project would not result in significant impacts due to the inefficient, wasteful, and unnecessary consumption of energy. There is no discussion of the Project's cost effectiveness in terms of energy requirements. The greenhouse gas (GHG) discussion in the DEIR fails to address GHG emissions resulting from energy production and energy savings measures, as well as energy conservation. A lead agency has to implement all feasible energy mitigation measures unless it has substantial evidence to show that the proposed measures are infeasible. (*League to Save Lake Tahoe Mountain etc. v. Cnty. of Placer* (2022) 75 Cal.App.5th 63, 166-168; see also, *id.*, pp. 159-163.) An example of a feasible mitigation measure would be the installation of solar panels on the Project's roofs that produce sufficient energy to cover the Project's and its future tenants' power needs. Because such equipment is technically feasible and likely cost efficient over time, the EIR must implement it as an energy efficient mitigation measure, or at minimum, provide substantial evidence that implementing such a mitigation measure is infeasible, which the EIR fails to do. The absence of any consideration in the EIR of employing solar panels to meet the Project's electricity demand and reduce its large amount of GHG emissions does not constitute substantial evidence. As such, the EIR's conclusions that both energy effects and GHG emissions will have less than significant impacts are unsupported by the necessary discussions of the Project's energy impacts under CEQA.

## CONCLUSION

For the foregoing reasons, LIUNA respectfully requests that the Project's Final EIR be revised and recirculated to adequately analyze and mitigate significant impacts to wildlife, energy, and GHG emissions and to ensure compliance with CEQA.

Thank you for your attention to these comments.

Sincerely,



Michael R. Lozeau  
Lozeau | Drury LLP