

Exhibit Q-1
Appeal Letter from
Golden State Environmental Justice Alliance



Green Jobs & Clean Communities

October 15, 2023

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Subject: Appeal to the Fresno City Council regarding a decision of the Fresno Planning Commission, during the P/C Meeting of October 4, 2023. Specifically, Development Permit Application No. P21-02699 and Tentative Parcel Map No. P21-05930. SCH# 2022050265.

Project Name: 2740 West Nielsen Avenue Warehouse EIR

Appellant: Golden State Environmental Justice Alliance

PURPOSE OF APPEAL

This appeal seeks to reverse the entire decision of the Fresno City Planning Commission issued on October 4, 2023, approving the 2740 West Nielsen Avenue Office / Warehouse Project.

REASONS FOR APPEAL AND DENIAL OF PROJECT

Golden State Environmental Justice Alliance (“Appellant”) presented multiple arguments in our comment letter dated May 15, 2023, addressing the flaws of the DEIR. Additionally, comments sent to the Planning Commission on September 29, 2023, addressed the Commission’s failure in its duty to adequately address the environmental, social, and economic justice burden placed on the City of Fresno’s residents. The Planning Commission should have requested an updated Environmental Impact Report be prepared for this project due to its size, comprising 901,438 Sq. Ft. or denied the project if the Developer was unwilling to provide a Revised EIR.



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Grievances

The decision of the Commission issued on October 4, 2023, would result in further impacts on an already pollution-burdened and traffic congested citizenry. Government Code section 11135(a) requires local agencies to consider environmental justice impacts on their residents. With the Commission's decision to approve the project, GSEJA believes the Commission did not fulfill its duty to adequately investigate nor mitigate the project. Further, under CEQA, the city must "Take all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise." CEQA also, "Requires governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality." Pub. Res. Code 21001 (b)(f).

Furthermore, this appeal also addresses the inadequacy of the Response to Comments.

The Responses to Comments (RTC) submitted by GSEJA, do not provide meaningful evidence to support the conclusions made. For example, Comment B1-3 states:

"The Project Description states that "The proposed project would not require any soil import or export." There is no mechanism for public verification of this conclusion, such as a grading plan, included in the EIR. A revised EIR must be prepared to include a grading plan to determine the quantity of soils/materials to be imported/exported from the site. These grading truck hauling trips must be included for all sections of environmental analysis, including but not limited to the Air Quality, Energy, Greenhouse Gas Emissions, and Transportation analysis."

The RTC addresses this comment with uncertain language unsupported by meaningful evidence. The RTC states that "The project site is relatively flat; therefore, soil would be balanced on site without any requirement for soil import or export." The project site's relative flatness is not described in detail and no context is provided to determine the comparison of relativity. Again, there is no method (such as a grading plan) provided for the public or decision makers to verify that the project site is relatively flat. A revised EIR must be prepared and recirculated for public comment to include a grading plan to determine the quantity of soils/materials to be imported/exported from the site. These grading truck hauling trips must be included for all sections of environmental analysis, including but not limited to the Air Quality, Energy, Greenhouse Gas Emissions, and Transportation analysis.



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Further, Comment B1-8 states:

“The proposed Project site is within Chandler Executive Airport Traffic Pattern Zone (TPZ) and Outer Approach/Departure Zone (OADZ). The Fresno County Airport Land Use Compatibility Plan Update was adopted by the ALUC on December 3, 2018 and amended December 2021. The EIR states that “The City of Fresno Development Code Priority of Plans section mentioned above (Section 15-104-B.4) clearly establishes the adopted Fresno County Airport Land Use Compatibility Plan as the plan that takes precedence over all of the City’s other land use plans within the Airport Influence Areas defined in the Plan” to conclude that there will be less than significant impacts. The California Airport Land Use Planning Handbook 2 states that Airport Land Use Commission review is required “when a local jurisdiction has neither revised its local plan(s) to be consistent with the ALUCP (PUC Section 21676.5(a)).” The City’s General Plan was adopted on December 18, 2014 and has not been updated to be consistent with the Fresno County Airport Land Use Compatibility Plan Updates of December 3, 2018 and amended December 2021. The City’s Development Code is not equivalent to the General Plan review and analysis necessary to determine consistency with the new ALUCP. ALUC review of the revised General Plan would be required to ensure consistency with the ALUCP. Therefore, ALUC review of the proposed project is required pursuant to PUC Section 21676.5(a) and the EIR must be revised to include this information for analysis and include a finding of significance because the review has not occurred.

Further, the EIR is inadequate as it states, “the project contemplates densities below those required in TPZs and OADZs and the project would include over 20 percent open land,” but does not provide any meaningful evidence to support this claim. The EIR does not include a calculation for compliance with the maximum intensity of 300 persons per acre (TPZ area) or 150 persons per acre (OADZ area). A revised EIR must be prepared with a calculation of the project’s maximum intensity of people per acre in order to accurately and adequately analyze the potentially significant impacts.”

The RTC addresses Comment B1-8 again with uncertain language not supported by meaningful evidence. The RTC states that “The ALUC has reviewed the proposed project and has provided comments.” However, the ALUC review and comments are not attached for public review, which does not comply with CEQA’s requirements for adequate informational documents and meaningful disclosure (CEQA § 15121 and 21003(b)). Incorporation by reference (CEQA § 15150 (f)) is not appropriate as the ALUC review and comment document contributes directly to analysis of the problem at hand. A revised EIR must be prepared and recirculated for public comment to include the ALUC review and comments for review by the public and decision makers.



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Further, Comment B1-11 states:

"The EIR has not adequately analyzed the project's potential to substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses; or the project's potential to result in inadequate emergency access. The EIR has not provided any exhibits depicting the available truck/trailer turning radius at the project driveways or the intersections of Hughes Ave./Nielsen Ave. or Marks Ave./Nielsen Ave. to determine if there is enough space available to accommodate heavy truck maneuvering. Figure 3-5 Site Plan does not depict an analysis of adequate on-site heavy truck maneuvering, either. The exhibit does not depict two or more trucks attempting to turn corners around the site, park, etc. across the site at any point. There are also no exhibits depicting emergency vehicle access. Deferring this environmental analysis required by CEQA to the construction permitting phase is improper mitigation and does not comply with CEQA's requirement for meaningful disclosure and adequate informational documents. A revised EIR must be prepared for the proposed project with this analysis to provide an adequate and accurate environmental analysis."

The RTC addresses Comment B1-11 with uncertain language not supported by meaningful evidence. For example, the RTC states that "within the project site, there are multiple areas for vehicles (both cars and trucks) turning or backing up to avoid any conflicting movements, if required." However, the RTC has not provided any truck turning templates to demonstrate that the project site provides adequate maneuvering area for both trucks and passenger cars simultaneously moving throughout the project site. The RTC also states that "the site plan, including the project driveway designs, has been reviewed and confirmed to maintain the City's design standard for truck access during the planning process," and that "the proposed project's site plan would be subject to review and approval by the Fresno Fire Department (FFD) to ensure the project includes adequate emergency access." However, the City's review and confirmation that the project driveway designs meet design standards for truck access has not been included for public review, which does not comply with CEQA's requirements for adequate informational documents and meaningful disclosure (CEQA § 15121 and 21003(b)). Incorporation by reference (CEQA § 15150 (f)) is not appropriate as this "review and confirmation" contributes directly to analysis of the problem at hand. Additionally, deferring environmental analysis required by CEQA to the construction permitting phase (FFD emergency access) is improper mitigation and does not comply with CEQA's requirement for meaningful disclosure and adequate informational documents. A revised EIR must be prepared and recirculated for public comment to include the City's "review and confirmation" for review by the public and decision makers.



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Conclusion

Due to the above-mentioned reasons as well as the reasons listed in the original comment letter to the EIR and subsequent letter to the planning commission, GSEJA believes the EIR and RTC are flawed and a revised EIR must be prepared for the proposed project and circulated for public review. GSEJA requests the City of Fresno City Council reverse the decision of the Planning Commission's approval of the project and require a Revised Environmental Impact Report be completed.

Appeal Fees

Please provide the appeal fee and payment will be provided once that information has been received.

Sincerely,

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