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Via E-mail

September 7, 2021

Vista Ezzati, Planner
Community Development Department
City of Glendale
633 E. Broadway, Room 103
Glendale, CA 91206
vezzati@glendaleca.gov

Re: Comment on the Mitigated Negative Declaration, PPRP 2004082 (901-919 South Brand Boulevard)

Dear Ms. Ezzati:

I am writing on behalf of the Supporters Alliance for Environmental Responsibility ("SAFER"), a California nonprofit public benefit corporation, regarding the Initial Study and Mitigated Negative Declaration ("MND") prepared for the Project known as PPRP 2004082, located at 901-919 South Brand Boulevard in the City of Glendale ("Project").

After reviewing the IS/MND, we conclude that it fails to analyze all environmental impacts and implement all necessary mitigation measures, and that there is a fair argument that the Project may have adverse environmental impacts. SAFER respectfully requests that the City withdraw the IS/MND and instead prepare an environmental impact report ("EIR") for the Project.

These comments have been prepared with the assistance of environmental consulting firm Soil/Water/Air Protection Enterprise ("SWAPE"). SWAPE's comment and curriculum vitae are attached as Exhibit A hereto and are incorporated herein by reference in their entirety.

I. PROJECT DESCRIPTION

The Project proposes to construct a new 5-story, 171,140 square foot above-ground parking structure with rooftop parking, featuring 450 parking spaces in total, on an existing 81,148 square-foot project site. This will require the demolition of the existing surface parking lot, an existing 561 square foot accessory building, and existing solar panel structures which will be moved to the rooftop of the new structure. The structure is proposed for use as vehicle inventory for the Pacific BMW Car Dealership, for which the applicant is requesting a parking reduction permit.

II. LEGAL STANDARD

As the California Supreme Court has 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 Env't v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319-320 (*CBE v. SCAQMD*) (citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504–505). "Significant environmental effect" is defined very broadly as "a substantial or potentially substantial adverse change in the environment." Pub. Res. Code ("PRC") § 21068; *see also* 14 CCR § 15382. An effect on the environment need not be "momentous" to meet the CEQA test for significance; it is enough that the impacts are "not trivial*." No Oil, Inc.*, 13 Cal.3d at 83. "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 Env't v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 109 (*CBE v. CRA*).

The EIR is the very heart of CEQA. *Bakersfield Citizens for Local Control v. City of Bakersfield (*2004) 124 Cal.App.4th 1184, 1214 (*Bakersfield Citizens*); *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 Univ. of Cal.* (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 at 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." PRC § 21080(d); 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 (14 CCR § 15371), only if there is not even a "fair argument" that the project will have a significant environmental effect. PRC, §§ 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* (1989) 129 Cal.App.3d 436, 440.

Where an initial study shows that the project may have a significant effect on the environment, a mitigated negative declaration may be appropriate. However, a mitigated negative declaration is proper *only* if the project revisions would avoid or mitigate the

potentially significant effects identified in the initial study "to a point where clearly no significant effect on the environment would occur, and…there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment." PRC §§ 21064.5 and 21080(c)(2); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331. In that context, "may" means a reasonable possibility of a significant effect on the environment. PRC §§ 21082.2(a), 21100, 21151(a); *Pocket Protectors*, 124 Cal.App.4th at 927; *League for Protection of Oakland's etc. Historic Res. v. City of Oakland* (1997) 52 Cal.App.4th 896, 904–05.

Under the "fair argument" standard, an EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency's decision. 14 CCR § 15064(f)(1); *Pocket Protectors,* 124 Cal.App.4th at 931; *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-51; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602. The "fair argument" standard creates a "low threshold" favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. *Pocket Protectors*, 124 Cal.App.4th at 928.

The "fair argument" standard is virtually the opposite of the typical deferential standard accorded to agencies. As a leading CEQA treatise explains:

> This 'fair argument' standard is very different from the standard normally followed by public agencies in making administrative determinations. Ordinarily, public agencies weigh the evidence in the record before them and reach a decision based on a preponderance of the evidence. [Citations]. The fair argument standard, by contrast, prevents the lead agency from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact. The lead agency's decision is thus largely legal rather than factual; it does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the prescribed fair argument.

Kostka & Zischke*, Practice Under CEQA*, §6.29, pp. 273-274. The Courts have explained that "it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency's determination. Review is de novo, with *a preference for resolving doubts in favor of environmental review*." *Pocket Protectors*, 124 Cal.App.4th at 928 (emphasis in original).

CEQA requires that an environmental document include a description of the project's environmental setting or "baseline." CEQA Guidelines § 15063(d)(2). The CEQA "baseline" is the set of environmental conditions against which to compare a project's anticipated impacts. *CBE v. SCAQMD*, 48 Cal.4th at 321. CEQA Guidelines section 15125(a) states, in pertinent part, that a lead agency's environmental review under CEQA:

> …must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time [environmental analysis] is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant.

See Save Our Peninsula Committee v. County of Monterey (2001) 87 Cal.App.4th 99, 124–25 ("*Save Our Peninsula*").) As the court of appeal has explained, "the impacts of the project must be measured against the 'real conditions on the ground,'" and not against hypothetical permitted levels. *Id*. at 121–23.

III. DISCUSSION

A. The IS/MND Failed to Prepare a Phase I Environmental Site Assessment to Estimate the Project Site's Hazardous Substances.

Matt Hagemann, P.G., C.Hg., and Dr. Paul E. Rosenfeld, Ph.D., of the environmental consulting firm SWAPE reviewed the MND's analysis of the Project's impacts on hazards, hazardous materials, air quality, and greenhouse gases. SWAPE comment letter and CVs are attached as Exhibit A.

The MND concluded that no impacts from hazards or hazardous materials would occur because the site is "not included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5." MND, p. 24. However, SWAPE notes that the MND did not provide documentation to support this conclusion, such as a Phase I Environmental Site Assessment ("ESA"). Ex. A, p. 1. The U.S. EPA and the American Society for Testing and Material Standards have both set standards for conducting Phase I ESAs, including reviewing known sites in the vicinity, interviewing people with knowledge about the property, and preparing recommendations for addressing potential hazards. *Id.* at 2. Phase I ESAs end with the identification of "recognized environmental conditions" (RECs), which include the "presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release" of such substances. *Id.* If any RECs are identified, there would then follow a Phase II ESA to further investigate the level of contamination and the mitigation necessary. *Id.*

SWAPE states that a Phase I ESA should be prepared for the project by a licensed environmental professional, and a Phase II ESA should follow if RECs are found on the project site. Ex. A, p. 2. An EIR is required in order to adequately prepare these assessments and evaluate any contamination on the site that is above regulatory screening levels, in accordance with the California Office of Environmental Health Hazard Assessment's Soil Screening Numbers, among other databases. *Id.*

B. The IS/MND Relied on Unsubstantiated Input Parameters to Estimate Project Emissions and Thus the Project May Result in Significant Air Quality Impacts.

SWAPE found that the MND underestimated 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 Model Version CalEEMod.2016.4.0 ("CalEEMod"). Ex. A, p. 2. 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. *Id*. CEQA requires any changes to the default values to be justified by substantial evidence. *Id*.

SWAPE reviewed the 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. 3. This resulted in an underestimation of the Project's emissions. *Id*. As a result, the 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 MND's air quality analysis were either inconsistent with information provided in the MND or otherwise unjustified:

1. Underestimated land use size of a structure. Ex. A, p. 3.
2. Unsubstantiated reduction to default acres of grading values. Ex. A, p. 4.
3. Failure to model all required demolition. Ex. A, p. 4.

As a result of these errors in the MND, the Project's construction and operational emissions are underestimated and cannot be relied upon to determine the significance of the Project's air quality impacts.

C. There is Substantial Evidence of a Fair Argument that the Project May Have a Significant Health Impact as a Result of Diesel Particulate Emissions.

One of the primary emissions of concern regarding health effects for land development projects is diesel particulate matter ("DPM"), which can be released during Project construction and operation. DPM consists of fine particles with a diameter less than 2.5 micrometers including a subgroup of ultrafine particles (with a diameter less than 0.1 micrometers). Diesel exhaust also contains a variety of harmful gases and cancer-causing substances. Exposure to DPM is a recognized health hazard, particularly to children whose lungs are still developing and the elderly who may have other serious health problems. According to the California Air Resources Board ("CARB"), DPM exposure may lead to the following adverse health effects: aggravated asthma; chronic bronchitis; increased respiratory and cardiovascular hospitalizations; decreased lung

function in children; lung cancer; and premature deaths for those with heart or lung disease.[1]

The MND failed to conduct a quantified construction or operational health risk analysis ("HRA") and made no mention of potential project-related toxic air contaminant ("TAC") emissions, resulting in an inadequate health risk emissions analysis. Ex. A, p. 5. SWAPE identifies three main reasons for why the MND's omission of these elements was incorrect.

First, the MND's failure to quantitively evaluate TAC emissions also meant that it failed to make a reasonable effort to connect the emissions to potential health risk impacts as required by CEQA. Ex. A, p. 5; *See Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 510. In fact, according to CalEEMod Outputs, Project construction would increase DPM for a period of 350 days in addition to generating 653 weekday and Saturday and 326 Sunday daily vehicle trips. *Id.*; CalEEMod Outputs, pp. 5, 22. This would generate exhaust emissions and expose sensitive receptors to DPM emissions. *Id.* Despite the presence of these additional emissions, the MND did not connect construction-related and operational TAC to potential health risks posed to nearby receptors, and thus fails to meet the CEQA requirement to correlate the increase in emissions generated by the Project with the potential adverse impacts on human health. Ex. A, p. 5-6.

Second, the California Department of Justice recommends the preparation of a quantitative HRA pursuant to the Office of Environmental Health Hazard Assessment ("OEHHA"), the organization responsible for providing guidance on conducting HRAs in California, as well as local air district guidelines. OEHHA released its most recent guidance document in 2015 describing which types of projects warrant preparation of an HRA. Ex. A, p. 6; *See* "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, *available at*: http://oehha.ca.gov/air/hot_spots/hotspots2015.html. OEHHA recommends that projects lasting at least 2 months be evaluated for cancer risks to nearby sensitive receptors, a time period which this Project easily exceeds. Ex. A, p. 6.; MND, p. 11. The OEHHA document also recommends that if a project is expected to last over 6 months, the exposure should be evaluated throughout the project using a 30-year exposure duration to estimate individual cancer risks. Ex. A, p. 6. Based on its extensive experience, SWAPE reasonably assumes that the Project will last at least 30 years, and therefore recommends that health risk impacts from the project be evaluated. *Id.* An EIR is therefore required to analyze these impacts. *Id.*

Third, the MND's claim that there will be a less than significant impact without having conducted a qualified construction or operational HRA for nearby sensitive receptors fails under CEQA requirements. Ex. A, p. 6. An EIR should be prepared to quantify the cumulative excess cancer risk posed by the Project's construction and

[1] *See* CARB Resources - Overview: Diesel Exhaust & Health, available at https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health.).

operation to nearby, existing receptors, and compare it to the SCAQMD threshold of 10 in one million. *Id.*

SWAPE prepared a screening-level HRA to evaluate potential impacts from Project construction. SWAPE used AERSCREEN, the leading screening-level air quality dispersion model. SWAPE applied a sensitive receptor distance of 50 meters and analyzed impacts to individuals at different stages of life based on OEHHA and SCAQMD guidance utilizing age sensitivity factors. *Id*. at 6-10.

SWAPE found that the excess cancer risks at a sensitive receptor located approximately 50 meters away over the course of Project construction are approximately 46.7 in one million for infants and 16 in one million for children. *Id*. at 9. Moreover, **the excess lifetime cancer risk over the course of a Project operation of 30 years is approximately 68.6 in one million**. *Id*. The risks to infants, children, and lifetime residents appreciably exceed SCAQMD's threshold of 10 in one million.

SWAPE's analysis constitutes substantial evidence that the Project may have a significant health impact as a result of diesel particulate emissions. A health risk assessment must be prepared disclosing the health risk impacts from toxic air contaminants.

D. The IS/MND Failed to Adequately Evaluate Energy Impacts.

CEQA requires that EIRs include "a discussion of the potential energy impacts of proposed projects, with particular emphasis on avoiding or reducing inefficient, wasteful and unnecessary consumption of energy." "APPENDIX F: ENERGY CONSERVATION." CEQA Guidelines Appendices, 2016, available at: https://resources.ca.gov/CNRALegacyFiles/ceqa/docs/2016_CEQA_Statutes_and_Guidelines_Appendix_F.pdf , p. 276. This helps ensure that a project meets CEQA's goal of conserving energy, which requires decreasing energy consumption, decreasing reliance on fossil fuels, and increasing reliance on renewables. *Id.* However, in its energy analysis, the MND concludes that it will have a less-than-significant energy impact simply because it meets Title 24 standards and California Green Building Standards. MND, p. 17. It also states that it will implement sustainable design strategies and relocate existing solar panels to the Project's roof. *Id.*

SWAPE concludes that this compliance with Title 24 does not constitute an adequate analysis of energy, as held in *Ukiah Citizens First v. City of Ukiah* (2016) 248 Cal.App.4th 256. Ex. A, p. 11. There, the court ruled that a city's reliance on mitigation measures that aligned with Title 24 and other California green building codes did not meet CEQA Appendix F requirements. Ex. A, p. 11; *Ukiah Citizens First* at 264 (quoting *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 211). The Project's energy analysis is therefore insufficient and according to SWAPE, the MND's less-than-significant impact conclusion regarding energy impacts should not be relied upon. Ex. A, p. 11.

E. The IS/MND Failed to Adequately Analyze the Project's Greenhouse Gas Impacts and Thus the Project May Result in Significant Greenhouse Gas Emissions.

The MND states that the Project would generate energy from solar panels that would go into the City's electrical grid, thus helping the City meet its renewable energy portfolio as specified in the Greener Glendale Plan. MND, p. 22. It then concludes that because the Project is consistent with Greener Glendale Strategies to reduce greenhouse gases and the Sustainable Communities Strategy ("SCS") prepared by Southern California Association of Governments ("SCAG"), the Project would "result in a less than cumulatively considerable impact on GHG emissions." *Id.* However, SWAPE states that the MND's conclusion about a less-than-significant greenhouse gas impact is incorrect for several reasons. Ex. A, p. 11.

First, the MND does not give an estimate of the renewable energy the Project anticipates generating. Ex. A, p. 12. Without this information, SWAPE is unable to assess whether GHG impacts would be less-than-significant. *Id.*

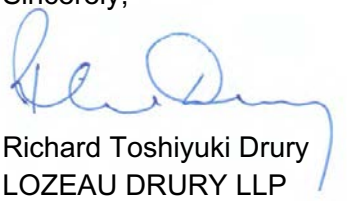
Second, SWAPE points out that the solar panels are not a new component of the project, and the MND therefore fails to show how the proposed project is consistent with the Greener Glendale Strategies. *Id.* According to the MND, the Project plans to remove existing solar panels and relocate them to the roof, thus indicating that they are not a new addition. *Id.*; MND, p. 4.

Lastly, the MND is not consistent with SCAG's Regional Transportation Plan ("RTP")/SCS as it claims because it does not consider mitigation measures associated with SCAG's 2020 RTP/SCS Program Environmental Impact Report. Ex. A, p. 12. SWAPE recommends that the project prepare an EIR to consider two mitigation measures: Air Quality Project Level Mitigation Measures ("PMM-AQ-1") and Greenhouse Gas Project Level Mitigation Measures ("PMM-GHG-1"). *Id.* SWAPE's analysis demonstrated a potentially significant health risk impact from the project that necessitates mitigation, and its proposed measures offer a cost-effective solution to reduce emissions. *Id.* at 12-17. In addition to implementing these measures, the EIR should include an updated air quality, health risk, and GHG analysis. *Id.* at 16-17.

IV. CONCLUSION

In light of the above comments, the City must prepare an EIR for the Project and the draft EIR should be circulated for public review and comment in accordance with CEQA. Thank you for considering these comments.

Sincerely,



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