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Via E-mail

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Re: Comment on Mitigated Negative Declaration, 12772 San Fernando Road Project
(ENV-2021-4571-MND)

Dear Mr. Golden:

I am writing on behalf of **Supporters Alliance For Environmental Responsibility** (“SAFER”) regarding the Initial Study and Mitigated Negative Declaration (“IS/MND”) prepared for the 12772 San Fernando Road Project (ENV-2021-4571-MND), including all actions related or referring to the proposed construction of a 155,446 square foot warehouse, distribution and manufacturing center, located at 12772 and 12744 North San Fernando Road in the City of Los Angeles (“Project”).

This comment has been prepared with the assistance of noise expert Deborah Jue of the acoustics firm Wilson Ihrig. Ms. Jue reviewed the IS/MND and its noise appendix and determined that IS/MND fails to adequately document baseline conditions, and that the IS/MND’s findings that the Projects construction and noise impacts will be less than significant is not supported by substantial evidence, and that the Project may have a significant noise impact on adjacent residential properties that must be analyzed and mitigated in an EIR. Ms. Jue’s comments and curriculum vitae are attached hereto as Exhibit A.

This comment has also been prepared with the assistance of the environmental consulting firm Soil/Water/Air Protection Enterprise (“SWAPE”). SWAPE’s comments and the consultants’ curriculum vitae are attached hereto as Exhibit B.

After reviewing the IS/MND, we conclude that it fails as an informational document, and that there is a fair argument that the Project may have adverse environmental impacts that have not been mitigated. Therefore, we request that the City of Los Angeles (“City”) prepare an

environmental impact report (“EIR”) for the Project pursuant to the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000, et seq.

We reserve the right to supplement these comments, including but not limited to at public hearings concerning the Project. *Galante Vineyards v. Monterey Peninsula Water Management Dist.*, 60 Cal. App. 4th 1109, 1121 (1997).

I. PROJECT DESCRIPTION

The Project site is 6.48 -acres and is located at 12772 and 12744 North San Fernando Road in the City of Los Angeles. The Project proposes to redevelop a property by replacing two existing light industrial use buildings constructed in the 1960s with a new single-story light industrial use building for warehouse/manufacturing uses with ancillary office space. The existing buildings are 135,250 square feet.

The proposed structure would be one-story, 39.5 feet tall, and would have a total floor space of approximately 155,446 square feet consisting of 143,446 square feet on the ground level and a partial mezzanine level of 12,000 square feet. Approximately 107,146 square feet of the total floor area would be for warehouse use, and 48,300 square feet of the floor area would be for manufacturing. The warehouse and manufacturing use areas include ancillary office areas. The industrial building would include 27 truck docks on the southwestern side of the building, 25 of which would have dock-high doors. The Project would also provide 143 paved parking spaces, including some tandem spaces within the truck dock area.

Vehicular access to the Project Site would occur via the two existing driveway entrances from San Fernando Road, which the project would repave and stripe to allow parallel parking adjacent to the through lane of the driveways.

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 & Zishecke, *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).

III. DISCUSSION

A. There is Substantial Evidence of a Fair Argument that the Project Will Have a Significant Noise Impact.

a. The IS/MND fails to establish a baseline for noise.

Before analyzing a project’s impacts, an MND must first identify and describe “the physical environmental conditions in the vicinity of the project as they exist at the time the notice of preparation is published.” (14 CCR § 15125(a).) This information is critical to an impact analysis because it serves as the baseline against which a project’s predicted effects can be described and quantified. (14 CCR § 15125(a); *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 447 (*Smart Rail*).) Courts have repeatedly held that where an EIR contains an “inadequate description of the environmental setting for the project, a proper analysis of project impacts [i]s impossible.” (*Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1122 [invalidating EIR with only passing references to surrounding viticulture]; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 873-75.) Here, noise expert Deborah Jue explains that the minimal effort to gather data on existing noise renders the entire noise impact analysis inadequate. (See Jue Comment.)

The IS/MND found that existing conditions for noise ranged from 53.2 to 69.1 Leq. This range was based on measurements taken at four locations, for only 15 minutes at each location. (MND Appendix G, table 4-1.) Only two of these four measures locations were located close to

the nearest sensitive receptors, i.e. the neighboring residences. As Ms. Jue points out in her comments, [t]he subsequent operational noise analysis is presented as an Leq spread over an 8-hour day, and these two fifteen-minute measurements constitute only 6% of an 8-hour day, with no assurance that the results are typical and appropriately conservative.” (*Id.*) No evidence or explanation is provided explaining “how this data is representative of the time-varying conditions that occur each day and that vary from day to day.” (Jue Comment, p. 1.)

Indeed, the measurements likely skew the baseline noise levels because during each of the two measurements at the neighboring property line, an intermittent event occurred precisely during the measurement period. For example, at one site a medium truck was idling and unloading canisters. (Appendix G, p. 8, Table 4-1.) Had more measurements been taken, the baseline noise levels would likely be lower. As a result, the 4.3 dB Leq increase over existing noise found by the noise analysis may well have exceeded the 5.0 dB Leq over existing conditions threshold of significance and been in violation of LAMC 112.04.

According to Ms. Jue, when gathering information about existing conditions, “[i]t is customary to measure the noise at a residence for a full 24-hour period to document the time-variations. Best practices call for documentation of the existing condition with measurements over several days.” (*Id.*) The need for monitoring for a full 24-hours is particularly important where, here, the warehouse may be operational 24-hours per day. (Jue Comment, p. 2.) The hours of operation must be clarified so that the full scope of the Project’s impacts can be determined.

Two 15-minute measurements do not constitute an adequate baseline against which to compare the Project’s noise impacts to neighboring residential users over a 24-hour day. A proper analysis of the Project’s noise impacts is impossible without additional information about baseline conditions.

- b. The IS/MND fails to analyze any noise impacts beyond those related to an inconsistency with local noise ordinances or policies.

The CEQA Guidelines provide that a project will have a significant noise impact if the project would result in:

- “Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies.” (CEQA Guidelines Appendix G, Section XII.a.)
- “Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels.” (CEQA Guidelines Appendix G, Section XII.b.)
- “A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project.” (CEQA Guidelines Appendix G, Section XII.c.)
- “A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project.” (CEQA Guidelines Appendix G, Section XII.d.)

Yet the IS/MND's analysis of the Project's noise impact only evaluates the first two impacts, never addressing the second two. The IS/MND improperly limits noise impacts to only those noise increases that would be in excess of standards listed in the Los Angeles Municipal Code ("LAMC"). Without having analyzed whether the Project may cause a substantial permanent or temporary increase in ambient noise – regardless of whether in compliance with LAMC, the IS/MND's conclusion that the Project will not have a significant noise impact is not supported by substantial evidence. A revised analysis must be conducted that includes an analysis of this impact.

- c. The IS/MND's analysis of construction-related noise impacts violates CEQA and is not supported by substantial evidence.

Ms. Jue points out numerous errors in the IS/MND's analysis of the Project's construction-related noise impacts. First, the MND improperly concludes that the noise reduction features listed in Table XIII-1 of the MND would be able to achieve compliance with LA Municipal Code section 112.05. These "noise reduction features" are mufflers that are installed on equipment, but the noise levels provided in Table XIII-1 are not based solely based on the factory equipped muffler noise emissions. (Jue Comment, p. 2.) She explains, "[s]ubstantial noise emanates from the engine casing and activities involved with each construction equipment; expecting a 15 dBA reduction solely from muffler is unrealistic." (*Id.*)

Moreover, according to Appendix A to the IS/MND's noise impact analysis, the efficacy of a noise reduction barrier depends on the frequency (Hz) of the noise. The barrier's impact at low frequencies is only approximately 10 dB – half of what the IS/MND claims it will be. The IS/MND needs to disclose the frequency of noise generated by each piece of equipment in order to determine the level of noise reduction the barriers will provide.

Next, LAMC Section 112.05 only requires construction equipment to be restricted to 75 dBA at 50 feet from the source unless compliance is "technically infeasible." (MND, p. 65.) The analysis assumes without evidence that each of the reduction features listed in Table XIII-1 is feasible. Ms. Jue explains:

The feasibility of a contractor installing mufflers or installing a barrier of sufficient height has not been established. A noise reduction of 20 dBA from a barrier implies a tall barrier; based on the geometry it would appear that a 25 ft high barrier at the project property line could provide 18 to 19 dBA reduction of construction noise to the backyard areas. However, the same barrier would only provide 17 to 18 dBA reduction at the homes.

(Jue Comment, p. 2.). There is no evidence that it is feasible to install a 25-foot barrier at the Project site. Moreover, some of the reduction features seem to be just wrong. For example, one cannot install a muffler on a welder.

The MND's conclusion that construction noise would not exceed LAMC is also not supported by substantial evidence because the noise reduction features listed in Table XIII-1

indicate a different level of noise reduction than in Appendix G, Table 6.1. For example, Appendix G lists an Lmax at 50 feet of 79 dB for Tractors/Loaders/Backhoes, which it claims would be reduced to 64 dB, while the IS/MND claims an Lmax at 50 feet of 78 dB, with a reduction to 63 dB. (Compare Appendix G, p. 10, Table 6-1 to IS/MND, p. 66, Table XIII-1.) Differences between the table also appear for concrete/industrial saws and welders. (*Id.*)

The MND includes Regulatory Compliance Measure RC-NOI-1, though it is not listed as a mitigation measure. (MND, pp. 66-67.) One of the sub-measures of RC-NOI-1 is:

A temporary noise control barrier shall be installed on the property line of the construction Site's abutting residential uses. The noise control barrier shall be engineered to reduce construction-related noise levels at the adjacent residential structures with a **goal of a reduction of 15 A-weighted decibels (dBA)**. The supporting structure shall be engineered and erected according to applicable codes. The temporary barrier shall remain in place until all windows have been installed and all activities on the Project Site are complete.

(MND, p. 67 [emphasis added].)

There are two problems with this provision. First, it refers to a barrier that reduces construction-related noise by only 15 dBA, whereas Table XIII-1 assumes a barrier that reduces noise by 20 dBA. This inconsistency must be addressed. Further, RC-NOI-1 only requires the barrier be engineered with a "goal" of 15 dBA reduction – with no requirement that such a reduction be met. If not met, then the LAMC standards will be exceeded based on the MND's Table XIII-1.

These inconsistencies must be addressed and additional information must be provided to ensure that the developer is able to meet the LAMC standards, and if not, then additional mitigation must be required. Without more, there is no evidence that the Project will be able to comply with LAMC's construction-related noise standards.

The analysis is further flawed because it never analyzes the cumulative impact when more than one piece of equipment is operated at one time. The idea that demolition and construction activities will be scheduled so as to avoid operating several pieces of equipment simultaneously, as claimed in RC-NOI-1, is not a realistic assumption. For example, according to Table 6, construction will require 3 excavators during demolition. (IS/MND, Appendix G, Table 6-1.) There would be no need for 3 excavators if only one was going to be used at any one time. (See Jue Comment, p. 3.) The same is true of the 2 Dozers that will be required during demolition and grading. (*Id.*)

- a. The IS/MND's analysis of the Project's operational noise impacts violates CEQA and is not supported by substantial evidence.

As Ms. Jue explains, the noise impact analysis in Appendix G relies on truck noise levels taken from the FHWA Roadway Construction Noise Model. (Jue Comment, p. 2 [citing

Appendix G Table 6-2].) According to Ms. Jue, the FHWA Roadway Construction Noise Model does not take into account that delivery trucks and semi-tractor trailers have air brakes that “generate a very high level transient sound when the brakes are applied.” (*Id.*) Ms. Jue and her team have documented Lmax of 72 to 83 dBA Lmax at 90 feet from a semi-tractor trailer maneuvering into a loading dock, which translates to a range from 78 to 88 dBA at 50 feet. (*Id.*) This would potentially increase the heavy truck noise used in the IS/MND by 1 or 2 dBA over a 6-minute period. (*Id.*) The noise analysis must be updated to address this additional noise.

In addition, the noise analysis spreads out the Project’s operational truck noise over an 8-hour day. “While this may be useful to understand the typical condition, it does not provide enough information for the nearby neighbors to understand what they could experience over any typical hour or during peak periods.” (*Id.*)

Finally, according to Ms. Jue, contrary to the IS/MND’s conclusions, if loading activity resembles Scenario 1 or 2, increasing noise levels to 55.5 dBA and 51.3 dBA, respectively, it would be a significant noise impact at 15001 Oswald Street, as well as other nearby homes. (Jue Comment, p. 3.) Ms. Jue’s expert comments constitute substantial evidence that the Project may have a significant noise impact that must be fully analyzed and mitigated in an EIR.

B. The IS/MND Relies on Unsubstantiated Input Parameters to Estimate Project Emissions and Thus Failed to Adequately Analyze the Project’s Air Quality Impacts.

The IS/MND for the Project relies on emissions calculated from the California Emissions Estimator Model Version CalEEMod.2016.3.2 (“CalEEMod”). This model relies on recommended default values for on-site specific information related to a number of factors. The model is used to generate a project’s construction and operational emissions. SWAPE reviewed the Project’s CalEEMod output files and found that the values input into the model were unsubstantiated or inconsistent with information provided in the IS/MND. This results in an underestimation of the Project’s emissions. As a result, the Project may have a significant air quality impacts and an EIR is required to properly analyze these potential impacts.

1. Unsubstantiated changes to individual construction phase lengths.

The CalEEMod output files indicate that several changes were made to the default individual construction phase lengths. (SWAPE, p. 2 [citing Appendix A, pp. 187, 215].) As a result of these changes, the grading phase was increased by 88%, from 8 to 15 days, the architectural coating phase was increased by 39% from 18 to 25 days, and the site preparation phase was omitted. According to the “User Entered Comments & Non-Default Data” table, the justification for this was “25 days coating. 15 grading. No site prep.” (*Id.*) This is not a justification, but just a restatement of the change that was made. The CalEEMod User’s Guide states:

CalEEMod was also designed to allow the user to change the defaults to reflect site- or project-specific information, when available, provided that the information is supported by substantial evidence as required by CEQA.¹

The MND fails to provide substantial evidence to support the revised construction phase lengths.

Confusing matters, Table 3-1 of the MND provides additional information on the length of each construction phase, claiming that “Durations and equipment pieces are conceptually based on the scale of the Site and proposed structure.” Yet that is precisely what the CalEEMod model is meant to do – it is meant to take the size of the project and site, and provide an estimated schedule based on those inputs. Moreover, Table 3-1 states that the architectural coating/painting phase would be 35 days, while the adjusted CalEEMod input was only 25 days.

SWAPE explains, “by disproportionately altering the individual construction phase lengths without proper justification, the model may underestimate the peak daily emissions associated with some phases of construction.” (SWAPE, p. 4.)

2. Unsubstantiated reduction in off-road construction equipment

The CalEEMod output files also indicate a reduction in the number of units of off-road construction equipment compared to CalEEMod’s default values. (SWAPE, p. 4 [citing Appendix A, pp. 188, 216].) As with the construction phase length changes, the “User Entered Comments & Non-Default Data” does nothing more than list the number of pieces of equipment that the default values were changed to. (SWAPE, p. 4 [citing Appendix A, pp. 187, 215].) “By including unsubstantiated changes to the default off-road construction equipment unit amounts, the model may underestimate the Project’s construction-related emissions and should not be relied upon to determine Project significance.” (SWAPE, pp. 5-6.)

C. There is Substantial Evidence that the Project may have a Significant Air Quality Impact.

SWAPE ran an updated CalEEMod model using the default values, rather than the unsubstantiated changes used in the MND. (SWAPE, p. 6.). SWAPE’s model indicates that the Project’s construction-related ROG emissions would be 81.2 lbs/day, exceeding the South Coast Air Quality Management District’s (SCAQMD) threshold of significance of 75 lbs/day for ROGs. (*Id.*) SWAPE’s comments constitute substantial evidence that the Project may have a significant air quality impact, and therefore an EIR is required to analyze and mitigate this impact.

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¹ CalEEMod User Guide, available at <http://www.caleemod.com>, p. 12.

D. The City Failed to Adequately Evaluate Health Risks from Diesel Particulate Matter Emissions.

The IS/MND concludes that the Project will not have a significant impact on human health. (IS/MND, p. 24.) However, in making this determination, the City improperly relied on a Local Significance Threshold (“LST”) analysis, ignoring the impacts of TACs from diesel particulate matter during project construction and operation, and failed to conduct a health risk assessment (“HRA”).

The use of the LST method to determine the Project’s health risk impacts on nearby existing sensitive receptors is improper. (SWAPE, p. 7.) The LST method assesses the impact of pollutants at a local level, but it only evaluates impacts from criteria air pollutants. (*Id.*) According to the IS/MND itself, the LST analysis is only applicable to NOx, CO, PM10, and PM2.5 emissions, collectively criteria pollutants. (IS/MND, p. 23; *See* “Final Localized Significance Threshold Methodology.” SCAQMD, Revised July 2008, *available at*: <http://www.aqmd.gov/docs/default-source/ceqa/handbook/localized-significance-thresholds/final-lst-methodology-document.pdf>.) Because the LST method can only be applied to criteria pollutants, this method cannot be used to determine whether emissions from diesel particulate matter (“DPM”), a known human carcinogen, will result in a significant health risk impact to nearby receptors. (SWAPE, p. 7.) Therefore, the Air Quality Analysis did not analyze health impacts from exposures to toxic air contaminants (“TACs”) such as DPM. (*Id.*)

In addition, SWAPE explains that “the IS/MND fails to quantitatively evaluate the Project’s construction-related and operational TACs or make a reasonable effort to connect these emissions to potential health risk impacts posed to nearby existing sensitive receptors.” (SWAPE, p. 7.) Construction of the Project will produce DPM through the exhaust stacks of construction equipment over a period of approximately 12-months, and during operation, the Project is expected to generate 415 daily vehicle trips, which will also generate DPM and expose adjacent residents to DPM emissions. (SWAPE, p. 7.) Yet the MND does not evaluate the Project-generated toxic air contaminants or indicate the concentration at which such pollutants would trigger adverse health effects. Failing to connect the Project’s emissions of DPM to their health impacts renders the MND inadequate for informational purposes.

The omission of a quantified HRA is also inconsistent with the most recent guidance published by the Office of Environmental Health Hazard Assessment (“OEHHA”), the organization responsible for providing guidance on conducting HRAs in California. OEHHA released its most recent *Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments* in February 2015. (SWAPE, p 8; *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.) This guidance describes the types of projects that warrant the preparation of an HRA. It recommends that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors. (*Id.*, p. 8-18.) Construction of the Project will produce emissions of DPM through the exhaust stacks of construction equipment over a construction period of more than two months. Therefore,

per OEHHA, the City should prepare a health risk assessment for the Project. (SWAPE, p. 8.) The OEHHA guidance also recommends that exposure from projects lasting more than 6 months be evaluated for the duration of the project, and recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident (“MEIR”). (*Id.*; see “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, pp. 8-6, 8-15.)

Finally, by claiming a less than significant impact without conducting a quantified HRA to nearby, existing sensitive receptors as a result of Project construction, the Air Quality Analysis failed to compare the excess health risk to the SCAQMD’s specific numeric threshold of 10 in one million. (SWAPE, p. 8; See “South Coast AQMD Air Quality Significance Thresholds.” SCAQMD, April 2019, *available at*: <http://www.aqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf?sfvrsn=2>.) The City therefore cannot conclude less than significant health risk impacts resulting from Project construction and operation without quantifying the emissions to compare to the proper threshold. (*Id.*)

E. There is Substantial Evidence that the Project may have a Significant Impact on Human Health.

SWAPE conducted a screening-level HRA in order to demonstrate the potential risk posed by Project construction and operation to nearby sensitive receptors. (SWAPE, pp. 8-12.) SWAPE’s HRA corrected the errors in the CalEEMod model described above. According to the HRA, the Project will result in an excess cancer risk to infants of 29.6 per million and to children of 10.8 per million when using the age sensitivity factors recommended by the Office of Health Hazards Assessment (“OEHHA”). (SWAPE, p. 11.) The excess cancer risk over the course of a residential lifetime (30 years) is 43.7 in one million. (*Id.*) Each of these risks exceed the SCAQMD threshold of significance of an additional 10 per million. (*Id.*) Based on the HRA, SWAPE concludes that the Project’s construction and operational diesel particulate matter emissions may result in a significant health risk impacts that must be fully analyzed and mitigated in an EIR. (*Id.* at 11-12.)

SWAPE’s comment includes suggested mitigation measures that should be considered to reduce the Project’s significant air quality and health risk impacts. (SWAPE, pp. 12-14.)

F. The Project Does Not Meet the Requirements of Los Angeles Municipal Code Sections 12.21.1 A.10, 12.24.X.22, or 12.24 E to Increase Building Height from 33 to 39.6 feet.

The Project is located 70 feet from a residential zone. Accordingly, unless authorized by a Zoning Administrator pursuant to LAMC section 12.24.X.22, its height is limited to 33 feet pursuant to Los Angeles Municipal Code (“LAMC”) section 12.21.1.A.10. Yet the proposed

Project is 39.6 feet in height.² The Project does not meet the requirements for an increase in height.

Section 12.24.X.22 of the LAMC provides (emph. added):

A Zoning Administrator may, upon application, permit buildings and structures on lots in C and M Zones to exceed the maximum heights otherwise permitted by the provisions of Section [12.21.1](#) A.10. In addition to the findings set forth in Section [12.24](#) E., ***the Zoning Administrator shall find that the project provides for an arrangement of uses, buildings, structures, open spaces and other improvements that are compatible with the scale and character of the adjacent properties and surrounding neighborhood.***

Section 12.24 E provides:

A decision-maker shall not grant a conditional use or other approval specified in Subsections U., V., W., or X. of this Section without finding:

1. that the project will enhance the built environment in the surrounding neighborhood or will perform a function or provide a service that is essential or beneficial to the community, city, or region;
2. that the project's location, size, height, operations and other significant features will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare, and safety; and
3. that the project substantially conforms with the purpose, intent and provisions of the General Plan, the applicable community plan, and any applicable specific plan.

The Zoning Administrator and other decision makers cannot make the findings necessary to increase the height of the proposed warehouse located only 70 feet from residential uses from 33 feet to 39.6 feet as proposed.

There is no reasonable basis to find that building an industrial warehouse 6.6 higher than ordinarily permitted, making it the height of a four-story building, is compatible with the scale and character of the adjacent single-family residential homes, as required by LAMC Section

² The IS/MND lists three different heights for the building. See IS/MND pp. 4 (39.5 feet), p. 12 (“industrial use building with a height of approximately 39.5 feet); p. 21 (“construct a single-story light industrial use building with a height of approximately 32 feet”). This discrepancy must be corrected. “An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient [CEQA document].” (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.)

12.24.X.22. This is particularly true because the height of existing buildings on the Project site is not disclosed, nor is the height of the adjacent buildings and homes disclosed. Without this information, any finding on this ground would be unsupported by substantial evidence.

Similarly, there is no evidence that the Project's "location, size, height, operations and other significant features will be compatible with and will not adversely affect or further degrade adjacent properties" as required by Section 12.24 E. Having an industrial building adjacent to residential homes is already detrimental. Making the buildings even taller "further degrade[s]" these adjacent homes.

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,

A handwritten signature in blue ink, appearing to read 'R. Davis', with a long horizontal flourish extending to the right.

Rebecca L. Davis