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May 18, 2022

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**Re: Appeal Comment on the Mitigated Negative Declaration, PPRP 2004082 (901-919 South Brand Boulevard)
May 18, 2022 Planning Commission, Agenda Item 7.a.**

Dear Chairperson Lee and Honorable Members of the Planning Commission:

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”).

On September 7, 2021, SAFER submitted comments opposing the MND to the planning hearing officer, and on December 22, 2021, the hearing officer approved the MND and the Project. SAFER timely appealed that decision, and upon review of the City’s response to comments, SAFER maintains its comments from September 7th. The IS/MND fails to analyze all environmental impacts and implement all necessary mitigation measures.

This comment has been prepared with the assistance of acoustics, noise and vibration expert Dehorah Jue of the consulting firm Wilson Ihrig. Ms. Jue’s comments and resume are attached hereto as Exhibit A. We incorporate Ms. Jue’s comments herein by reference. As explained below and in the expert comments, there is a fair argument that the proposed Project may have significant adverse environmental impacts, and an EIR is therefore required.

I. 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 (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.

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 v. City of Sacramento* (2004) 124 Cal.App.4th 903, 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 & Zishcke, *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).

II. DISCUSSION

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

In SAFER’s September 7th letter, expert environmental consulting firm Soil Water Air Protection Enterprise (“SWAPE”) commented on the potential health risk impacts that could be caused by the Project. SAFER comment letter, Sept. 7, 2021, Ex. A, p. 5-10. SWAPE’s comment noted that exposure to Diesel Particulate Matter (“DPM”) is a health hazard that could occur during construction and operation of the Project. SWAPE found that by not preparing a Health Risk Assessment (“HRA”) for the Project, the Project’s MND was inadequate in its assessment of health risks.

In its December 22nd decision letter and response to comments (“RTC”), the City stated that according to California Air Pollution Control Officers Association (“CAPCOA”) guidance, an HRA is only required for two types of projects, neither of which encompasses the proposed Project. RTC, p. 3. SAFER rejects this response.

Substantial evidence of a fair argument of a health risk impact from the Project still exists, because the City has provided no evidence to rebut SWAPE’s findings. In its comment for the September 7th letter, SWAPE prepared a screening-level HRA to evaluate the Project’s potential construction-related and operational Toxic Air Contaminant (“TAC”) emissions. SAFER comment letter, Sept. 7, 2021, Ex. A, p. 6. SWAPE found that cancer risks over the course of Project construction and operation exceeded the SCAQMD threshold of 10 in one million for children, infants, and lifetime risks. *Id.* at 9. In its RTC, the City did not provide evidence to rebut this finding – they merely stated that an HRA was not required. Whether or not an HRA is required is irrelevant. What matters is that SWAPE conducted an HRA and found that the Project may have a significant impact on human health. An EIR therefore must be prepared to appropriately evaluate these impacts.

- b. There is Substantial Evidence of a Fair Argument that the Project May Have Adverse Noise Impacts that the MND Failed to Address.**
 - i. The MND’s baseline noise levels and thresholds of significance are not properly established.**

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. Relying on a skewed baseline “mislead(s) the public” and “draws a red herring across the path of public input.” *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 656; *Woodward Park Homeowners v. City of Fresno* (2007) 150 Cal.App.4th 683, 708-711.

CEQA does not provide a particular numeric threshold of significance for the evaluation of noise impacts. *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal. App. 5th 814, 884. CEQA Guidelines recommend that agencies compare a project’s noise impacts to standards set forth in a local general plan or noise ordinance, or other applicable noise standards. CEQA Guidelines Appendix G, XII, Noise. It is therefore “the responsibility of lead agencies to choose the thresholds of significance to be applied to a project’s noise impacts.” *King & Gardiner* at 884.

The MND lacks any discussion of the thresholds used to determine significance. Ex. A, p. 1. Although the MND’s Noise section refers to the City of Glendale’s Noise Element and Noise Ordinance, it does not give information on the thresholds that would actually establish whether noise and vibration impacts would be significant. *Id.* at 2. Ms. Jue gives examples of thresholds from the Noise Element and Noise Ordinance which could be used to evaluate potentially significant impacts:

- (1) Speech Interference: Intelligibility of speech could be impacted for people in offices or working from home near the Project site. *Id.* The Noise Element states that noise from 60 to 65 dBA or greater may interfere with speech. Ms. Jue notes that this is up to 10 dBA greater than Glendale's interior noise standards, which limit interior noise to 55 dBA. *Id.*; Glendale Municipal Code ("GMC") § 8.36.040.B. The Noise Element's speech interference threshold equates to 75 to 80 dBA outdoors for buildings with open windows, which is up to 20 dBA greater than Glendale exterior noise standards. Ex. A at 2; GMC § 8.36.040.A. Ms. Jue states that "the duration of the project noise (construction) could be considered in combination with these metrics to determine significance." *Id.*
- (2) Construction Noise and Vibration: Ms. Jue found that the effects of construction noise and vibration were minimized by the MND. Ex. A at 2. The MND characterizes these impacts as "limited" and "temporary" and, according to Ms. Jue, relies on the Noise Ordinance's limited hours for construction to conclude that impacts would be less than significant. *Id.* The MND fails to provide any metrics to evaluate the increase in ambient noise levels to determine the significance of construction noise, or to evaluate the impacts of vibration from construction. *Id.* Ms. Jue gives Caltrans as an example of a threshold that could be used to determine the significance of vibration impacts from construction sources. *Id.*

The MND fails to establish particular thresholds of significance for noise impacts. Its conclusion that noise impacts for the Project would be less-than-significant is therefore unsubstantiated. The City should prepare an EIR which adequately describes the thresholds of significance for noise and demonstrates the Project's compliance with those thresholds.

ii. The MND's impact analyses of potential construction and vibration impacts are incomplete.

Ms. Jue next found that the MND failed to provide evidence that the on-going construction noise and vibration would be less than significant. Ex. A, p. 2-3. Ms. Jue states that "[w]ithout the benefit of the existing BMW building providing shielding of the construction noise, during demolition and site preparation, noise from a hoe ram, excavator, or dozer could generate noise as high as 87 to 92 dBA Lmax at the nearest residence (40 ft distance[]), with on-going noise over several hours each day ranging from 77 to 85 dBA Leq as equipment moves around." *Id.* at 3. Noise levels could be even higher if multiple items of equipment were to operate at the same time, which is not unlikely. *Id.* As for construction, Ms. Jue states that "the noise from a crane, front end loader or pneumatic tools would range from 82 to 87 dBA Lmax at the closest distance, with on-going noise levels of 72 to 84 dBA Leq." *Id.* Noise at these levels could exceed the City's Noise Element speech interference threshold and the City of Glendale's overall exterior noise standards. *Id.*; GMC § 8.36.040.A. Construction noise would therefore be potentially significant at nearby noise sensitive receptors.

As for vibration, Ms. Jue's calculations demonstrate that construction vibration could cause annoyance to occupants and could be potentially significant. Ex. A at 3. Specifically, ground

compaction with a vibratory roller, a tool that Caltrans data shows is typically used in this type of project, would be “strongly perceptible” if used 40 feet from the nearest residence, and distinctly perceptible at 80 feet. *Id.* The MND states that the Project site is located 40 feet away from adjacent residential uses. MND, p. 29. Although the MND states that noise impacts on residential uses would be buffered by the existing dealership’s auto body and vehicle repair building, Ms. Jue points out that construction at higher levels of the garage would not be subject to this noise buffer. *Id.*; Ex. A at 3. Construction vibration would therefore cause a significant noise and vibration impact on sensitive receptors.

The only mention that the MND makes regarding compliance with standards is a statement that “[t]he Project is not anticipated to generate noise in excess of the limits contained in the Noise Element because the Project would be constructed to reduce interior noise to acceptable levels as required by the building code.” MND, p. 29. This conclusory statement is unsupported by evidence and therefore cannot be relied upon. Ex. A at 4. The City has failed to address or mitigate significant noise and vibration impacts, and must prepare an EIR which properly analyzes these impacts.

iii. The MND’s mitigation measures for noise and vibration impacts are lacking and further measures must be implemented.

Ms. Jue states that the following mitigation measures for construction noise should be implemented, and the City should provide evidence that the measures are sufficient to eliminate potentially significant impacts:

- Sound barrier or blankets that block line of sight from the noisiest construction equipment and activities to the noise sensitive neighbors.
- Buffer distances to keep noisy activities and stationary equipment away from noise sensitive neighbors.
- Notification is useful community outreach, but has no bearing on reducing noise.

Ex. A at 4. As for construction vibration impacts, Ms. Jue recommends the following:

- Buffer distances to keep vibratory roller/compaction activities away from noise sensitive neighbors.
- Alternate methods to achieve necessary soil substrate properties to support the project within the buffer distances.
- Notification is useful community outreach, but has no bearing on reducing noise.

Ex. A. at 4-5. The City should therefore prepare an EIR which properly analyzes construction and vibration noise, comparing impacts to relevant thresholds of significance. Based on the City’s findings, it should then implement appropriate mitigation measures to reduce impacts to less than significant.

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III. 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 black ink, appearing to read "Amalia Bowley Fuentes". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Amalia Bowley Fuentes
LOZEAU DRURY LLP