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December 14, 2021

Via Email

Robert E. Magee, Mayor
Timothy J. Sheridan, Mayor Pro Tem
Brian Tisdale, Council Member
Natasha Johnson, Council Member
Steve Manos, Council Member
Jason Simpson, City Manager
City Council
City of Lake Elsinore
Email: calvarez@lake-elsinore.org

Candice Alvarez
City Clerk
City of Lake Elsinore
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**Re: Public Comment on Fairway Business Park Phase III (PA # 2021-29)
AGENDA ITEM 32 (City Council, Dec. 9, 2021)**

Dear Mayor Magee, Mayor Pro Tem Sheridan, and Honorable Councilmembers:

I am writing on behalf of the **Supporters Alliance for Environmental Responsibility ("SAFER")** and its members living or working in and around the City of Lake Elsinore ("City") regarding the Fairway Business Park Phase III Project ("Project") and its associated Addendum to the 2007 Mitigated Negative Declaration prepared for the Fairway Business Park ("2007 MND") to be heard as Agenda Item 32 at the December 14, 2021 City Council meeting.

This comment was prepared with the assistance of expert wildlife biologist Shawn Smallwood, Ph.D, and air quality experts Matt Hagemann, P.G., C.Hg., and Paul E. Rosenfeld, Ph.D., of the Soil/Water/Air Protection Enterprise ("SWAPE"). The analysis by Dr. Smallwood and SWAPE has found that the Addendum is not appropriate under CEQA because new information shows that the Project may result in significant impacts that were not addressed in the 2007 MND. The comments of Dr. Smallwood and SWAPE are attached as Exhibit A and Exhibit B, respectively.

As such, the Addendum is not appropriate under CEQA and the City must prepare an EIR prior to approving the Project to fully analyze the Project's impacts, and to implement additional mitigation measures that ensure protection of the environment.

PROJECT DESCRIPTION

The applicant is requesting approval of Planning Application No. 2021-29 (Industrial

Design Review No. 2021-05 and Tentative Parcel Map No. 38341) for Phase III of the Fairway Business Park project. The project is located on the northwesterly side of Chaney Street and southwesterly of Minthorn Street, at the southerly end of Birch Street (APNs: 377-140-28, 377-140-29, 377-140-30, 377-140-35 & 377-140-44). The Project proposes the development of six (6) industrial buildings an 8.79-acre portion of the Project site ranging in size from 12,000 sq. ft. to 42,000 sq. ft. for a total of 149,500 sq. ft.

For CEQA review, the City has prepared an Addendum to the 2007 Fairway Business Park MND, which analyzed 15,359 fewer sq. ft. of industrial development than the proposed Project.

LEGAL STANDARD

CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the fair argument standard. Under that standard, a lead agency must prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment. (Pub. Res. Code § 21082.2; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1993) ("Laurel Heights II") 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.)

Preparation of an Addendum Under CEQA

Here, the City has prepared an Addendum to the previous 2007 MND. Pursuant to the CEQA Guidelines, an addendum to a previous MND is proper only "if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred." (14 CCR § 15164(b).) Looking to Guidelines Section 1512, **an addendum is not appropriate when:**

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to **the involvement of new significant environmental effects or a substantial increase** in the severity of previously identified significant effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) **New information of substantial importance**, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - (A) The project will have **one or more significant effects not discussed in**

the previous EIR or negative declaration;

- (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
- (C) Mitigation measures or alternatives previously found not to be feasible would, in fact, be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
- (D) **Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment**, but the project proponents decline to adopt the mitigation measure or alternative.

(14 CCR § 15162.)

Importantly, because the original environmental document is a mitigated negative declaration, CEQA's "fair argument" standard applies, under which the Addendum is not appropriate if any evidence in the record demonstrates that there may be significant impacts or available mitigation measures/alternatives as a result of new information available since the adoption of the 2007 MND.

I. REQUEST FOR CONTINUANCE.

As a preliminary matter, the City has released the Addendum only days before final City Council consideration of the Project. SAFER previously commented on the Project to the Planning Commission, which was only considering whether to approve the Project based on the 2007 MND with no further environmental documentation. SAFER had retained experts to look at *that* situation, which did not include an addendum. Despite SAFER's involvement in the administrative process, no one alerted SAFER that the City had decided to prepare the Addendum until the Council's Staff Report was released. The Addendum includes technical analyses that the public should be able to review prior to consideration of the Project by the Council. As such, SAFER respectfully requests that the Council continue this matter to its next scheduled meeting to allow the public to properly review the Addendum.

II. THE PROJECT REQUIRES AN EIR OR MND—NOT AN ADDENDUM—BECAUSE NEW INFORMATION AND CHANGES IN CIRCUMSTANCES SINCE 2007 DEMONSTRATES THAT THE PROJECT MAY RESULT IN SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES.

Expert wildlife biologist Dr. Smallwood and his associate, Noriko Smallwood, performed a site visit to the Project site on November 21, 2021. (Ex. A, p. 1.) In just over two hours, Ms. Smallwood observed 31 species of vertebrate wildlife at or next to the Project site, including six special-status species. (Ex. A, pp. 1-3.) The six special-status bird species observed were California gull, Cooper's hawk, Red-tailed hawk, American kestrel, Nuttall's woodpecker,

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Allen's hummingbird. (Ex. A, p. 3.) Ms. Smallwood also observed a monarch butterfly next to the Project site. (Ex. A, pp. 2- 4.)

Photo 3. Monarch next to the project site, 1 December 2021. Monarchs have been designated a Candidate species for listing under the federal Endangered Species Act. Photo by Noriko Smallwood.



Photos 4 and 5. Cooper's hawk (left) and American kestrel (right) at the project site, 1 December 2021. Photos by Noriko Smallwood.



Photo 6. Nuttall's woodpecker – a US Fish and Wildlife Service Bird of Conservation Concern – next to the project site, 1 December 2021. Photo by Noriko Smallwood.

Two of these special-status species observed by Ms. Smallwood were not protected back in 2007 when the original MND was adopted. The Monarch butterfly was designated as a listing candidate under the Federal Endangered Species Act in 2020. (Ex. A, p. 10.) The California gull was added as a U.S. Fish and Wildlife Service's Birds of Conservation Concern in 2021. (*Id.*) Because these species were protected in 2007, the potential impact to these species at the Project site now is new information that could not have been known in 2007, which must be analyzed in an EIR or MND rather than an Addendum.

In addition to the site visit, Dr. Smallwood consulted respected databases to determine other species that may be present at or near the Project site. Among the countless species identified in the databases as occurring at or near the Project site (Ex. A, pp. 11-15), the tricolored blackbird was designated as a Threatened species under the California Endangered Species act in 2017. The change in status of this species is new information that could not have been known in 2007 and requires an EIR or MND rather than an Addendum.

According to Dr. Smallwood, there is also new information of substantial importance regarding burrowing owls. (Ex. A, p. 10.) Under the Multispecies Habitat Conservation Plan ("MSHCP") applicable to the Project, surveys for burrowing owls are required. (*Id.*) However, the MCHSP fails to account for the fact that new survey and mitigation protocol for burrowing owls was developed in 2012. The 2007 MND does not take this new information into account and new surveys using the updated protocol should be included in an EIR or MND.

In addition, the 2007 MND did not analyze the lost reproductive capacity of birds that would result from the loss of habitat through construction of the Project. (Ex. A, p. 16.) Based on research conducted in 2015, Dr. Smallwood explains that, while habitat loss results in the immediate decline in birds and other animals, it also results in a permeant loss of reproductive capacity. (*Id.*) Dr. Smallwood cites two studies that show that total bird nesting densities were between 32.8 and 35.8 nests per acre, for an average of 34.3 nests per acre. (*Id.*) When multiplied by the Project's acres of habitat that would be lost, Dr. Smallwood predicts a loss of 873 fledglings per year. (*Id.*) This loss would repeat each year. (*Id.*) Based on an average of 2.9 fledglings per nest, and an average generation time of 5 years, "the project would deny California 99,340 birds over the next century due solely to the loss of terrestrial habitat." (*Id.*) Based on the new information about the connection between habitat loss and reduction in reproductive capacity, Dr. Smallwood's calculation constitutes a fair argument that the Project will result in new significant impacts.

Dr. Smallwood also notes that there is new information available regarding the Project's impact on wildlife movement. (Ex. A, p. 16.) The 2007 MND concluded that wildlife movement would not be impacted because "access from the study area to the surrounding open space along the Lake Elsinore Outlet Channel would not be impeded." (*Id.*) However, Dr. Smallwood explains, "But since the 2007 IS/MND, many of the open spaces to which the 2007 IS/MND assured that wildlife could travel via the Lake Elsinore Outlet Channel and its tributary are, in fact, no longer open spaces." (*Id.*) The elimination of these open spaces constitutes a changed circumstance requiring further analysis in an EIR or MND rather than an Addendum. (See 14 CCR 15162(a)(2).)

Dr. Smallwood also notes that the 2007 MND did not address impacts related to vehicle collisions with wildlife. (Ex. A, pp. 17-19.) Based on research post-dating the 2007 MND, Dr. Smallwood calculates that the Project would result in 5,130 wildlife fatalities per year. (*Id.* at p. 19.) These fatalities would reach as far from the Project site as cars and trucks travel to or from the Project site. (*Id.* at p. 17.) Because the extent of this impact was not known in 2007, an

updated analysis in an EIR or MND should be prepared prior to approval of the Project.

Finally, Dr. Smallwood notes that the 2007 MND is “grossly outdated” regarding the cumulative impacts of the Project on biological resources. (Ex. A, p. 19.) Namely, substantial development has occurred in the area since 2007 and “this development has changed the current environmental setting and likely contributions the project would bring to cumulative impacts to wildlife.” (*Id.*) Additionally, research that came out in 2019 concluded that North America has lost 29% of its total bird abundance over the past 50 years (*Id.*). This new information must be taken into account in an EIR or MND to properly evaluate the Project’s cumulative impacts.

III. THE PROJECT REQUIRES AN EIR OR MND—NOT AN ADDENDUM—BECAUSE NEW INFORMATION AND CHANGES IN CIRCUMSTANCES SINCE 2007 DEMONSTRATES THAT THE PROJECT MAY RESULT IN SIGNIFICANT IMPACTS TO AIR QUALITY.

Air quality experts from SWAPE reviewed the Project and found that there may be new significant impacts to air quality and human health that were not addressed in the 2007 MND. (Ex. B, pp. 3-9.)

In order to evaluate the Project’s emissions related to construction and operation of the Project (which includes an increase of 15,359 sq. ft. of industrial development than the 2007 MND), SWAPE utilized California Emissions Estimator Model Version CalEEMod.2016.3.2 (“CalEEMod”). SWAPE calculated that construction of the Project would result in 118.1 lbs/day of volatile organic compounds (“VOC”), which exceeds the CEQA significant threshold set by the South Coast Air Quality Management District (“SCAQMD”) of 75 lbs/day.

SWAPE Criteria Air Pollutant Emissions	
Model	VOC (lbs/day)
SWAPE	118.1
SCAQMD Threshold	75
Exceeds?	Yes

Because the 2007 MND only analyzed a smaller development, the increase in the Project’s size and its associated significant VOC emissions constitute new information requiring an EIR or MND rather than an Addendum.

SWAPE also found that there was no attempt for this Project (or in the 2007 MND) to evaluate the human health risks associated with emissions of diesel particulate matter (“DPM”). The failure of the Addendum and 2007 MND to provide a quantified health risk assessment (“HRA”) for DPM is inconsistent with the most recent guidance of the Office of Environmental Health Hazard Assessment (“OEHHA”). (Ex. B, p. 5.) OEHHA recommends that all short-term projects lasting at least two months (e.g. the Arena Project’s 20-month construction schedule) be

evaluated for cancer risks to nearby sensitive receptors. (Ex. B, p. 5.) OEHHA also recommends that exposure from projects lasting more than 6 months (e.g. the Project's future years of operation) 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.*)

SWAPE prepared a screening-level HRA to evaluate potential DPM impacts from the construction and operation of the Project. (Ex. B, pp. 5-9.) SWAPE used AERSCREEN, the leading screening-level air quality dispersion model. (*Id.* at pp. 5-6.) SWAPE used a sensitive receptor distance of 250 meters and analyzed impacts to individuals at different stages of life based on OEHHA and SCAQMD guidance. (*Id.* at pp. 6-8.)

SWAPE found that the excess cancer risk for infants at the closest sensitive receptor located approximately 250 meters away, over the course of Project construction and operation, is approximately 10.4 in one million, respectively. (Ex. B, p. 9.) Moreover, SWAPE found that the excess cancer risk over the course of a residential lifetime is approximately 14.7 in one million. (*Id.*) Thus, the infant and lifetime cancer risks exceed the SCAQMD threshold of 10 in one million. Even with a less-conservative model that does not include the recommended age sensitivity factors, SWAPE still found that the child, adult, and lifetime cancer risks exceeded the SCAQMD threshold.

SWAPE's analysis indicated that the City must prepare an EIR for the Arena Project with a quantified HRA in order to connect the Project's air quality emissions and the potential health risks posed to nearby receptors, which were not addressed in the Addendum or 2007 MND.

CONCLUSION

For the foregoing reasons, SAFER respectfully requests that the City refrain from approving the Project until the City prepares an EIR or MND—rather than an Addendum. New information available since 2007 demonstrates that the Project may result in significant unmitigated impacts to air quality and biological resources that must be addressed prior to approval of the Project

Sincerely,

A handwritten signature in black ink that reads "Brian B. Flynn". The signature is written in a cursive, slightly slanted style.

Brian B. Flynn
Lozeau Drury LLP