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Via Email

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Caroline Choe, Vice President
Helen Campbell, Commissioner
Jenna Hornstock, Commissioner
Helen Leung, Commissioner
Yvette Lopez-Ledesma, Commissioner
Karen Mack, Commissioner
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Re: Supplemental Comment on Mitigated Negative Declaration, Melrose and Seward Project

Dear President Millman, Vice President Choe, Honorable Members of the Planning Commission, and Mr. Woon:

I am writing on behalf of **Supporters Alliance for Environmental Responsibility ("SAFER")**, regarding the Mitigated Negative Declaration ("MND") prepared for the Project known as Melrose and Seward Project (ENV-2021-2909-MND), including all actions referring or related to the construction of a 5-story, 67,889 square foot office building located at 6101-6117 West Melrose Avenue and 713-735 North Seward Street in the City of Los Angeles ("Project").

We previously submitted comments on this project on April 15, 2022. We request that the City prepare an environmental impact report ("EIR") for the Project because there is substantial evidence of a fair argument that the Project may have adverse environmental impacts.

This comment has been prepared with the assistance of acoustics, noise and vibration expert Deborah 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. DISCUSSION

A. There is a Fair Argument that the Project May Have Adverse Noise Impacts that the MND Failed to Address.

a. The MND contains errors and omissions which render its less than significant conclusion unreliable.

Ms. Jue points out two sections of the MND's noise analysis which fail to provide the necessary information to understand how the MND reached its less-than-significant conclusion with regard to noise impacts. Ex. A, p. 1. The first is on page 158 of the MND, in which a paragraph abruptly shifts from a discussion of noise impacts to a discussion of vibration impacts, rendering the entire paragraph unintelligible. *Id.* The next is on page 164 of the MND, in which the MND discusses requirements of the Los Angeles Municipal Code (LAMC), seemingly presenting those requirements as significance thresholds. *Id.* However, Ms. Jue points out that these requirements are not included as significance criteria presented elsewhere in the MND. *Id.*

Assuming that the MND is using LAMC requirements as thresholds of significance, noise data reported in the noise impacts section demonstrates that the Project has exceeded those threshold levels. Ex. A, p. 2. Ms. Jue noted that Table 4.17 in the MND shows levels exceeding the LAMC's 75 dBA threshold. *Id.*, MND, p. 164.

In sum, it is unclear whether LAMC requirements are significance thresholds, and the MND lacks clarity generally as to how noise impacts are being measured. The conclusion that impacts will be less than significant is therefore not supported by substantial evidence and an EIR must be prepared which clarifies these issues and properly analyzes noise impacts.

b. There is substantial evidence that the Project's off-site construction noise impacts will be potentially significant, and an EIR must be prepared.

With regard to off-site construction noise, Ms. Jue states that the threshold used to measure the potential noise impacts from heavy trucks is inappropriate and a different standard should instead be used. Ex. A, p. 2. When compared against a more appropriate threshold, impacts from off-site construction noise are potentially significant and require mitigation. *Id.*

The court addressed the issue of selecting thresholds in *Mejia v. City of Los Angeles* (2005) 130 Cal. App. 4th 332. There, the city determined that a project would have a less than significant impact with regard to traffic because the project only contained 21 dwelling units, and the threshold for a traffic study was 40 dwelling units. *Id.* at 342. The court concluded that the city improperly relied on a threshold of significance despite substantial evidence supporting a fair argument that the project may have a significant impact on the road. *Id.* The court reasoned:

A threshold of significance may be useful to determine whether an environmental impact normally should be considered significant. (Guidelines, § 15064.7, subd. (a).) A threshold of significance is not conclusive, however, and does not relieve a public agency of the duty to consider the evidence under the fair argument standard. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1108-1109, 11 Cal.Rptr.3d 104; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110-114, 126 Cal.Rptr.2d 441; see Guidelines, § 15064, subd. (b).) A public agency cannot apply a threshold of significance or regulatory standard “in a way that forecloses the consideration of any other substantial evidence showing there may be a significant effect.” (*Communities for a Better Environment, supra*, at p. 114, 126 Cal.Rptr.2d 441.)

Id. at 342. Here, expert Deborah Jue has provided evidence that impacts from off-site trucks are potentially significant, and the City must therefore consider this evidence and mitigate impacts as necessary, regardless of which threshold the City had initially used to measure impacts. An EIR must be prepared to address this potentially significant impact.

c. The MND’s ambient noise measurements were insufficient, therefore there is not sufficient evidence to conclude the Project will not have a significant noise impact.

The MND conducted insufficient sound measurements to accurately evaluate ambient noise levels. “Contrary to the statement on page 159 of the ISMND, the existing noise conditions are not ‘fully describe’(d).” Ex. A, p. 1. According to Ms. Jue, when documenting baseline conditions, it is customary in her profession to obtain a 24-hour measurement of noise for at least one location in order to document the typical variations in noise throughout the day. Ex. A, p. 1-2. Additionally, according to section 111.01(a) of the LAMC, ambient noise must “be averaged over a period of at least 15 minutes at a location and time of day comparable to that during which the measurement is taken of the particular noise source being measured.”

Here, in contrast, the City’s consultant took only a single measurement at four locations, which lasted only 15 minutes each. MND Appendix G, p. 5. These measurements were taken on a single day, and making matters worse, each of the four 15-minute measurements were taken between 12:55 PM and 1:37 PM, further limiting the noise variation that can occur throughout the day. Ex. A, p. 2. This time period also likely represents a time of day when there may be a higher than usual ambient noise environment due to lunchtime commutes. Ms. Jue explains that each 15-minute time interval represented just 1% of the daytime period. Ex. A, p. 2. As a result, based on the limited information provided by the City, “it is unknown whether the ambient result at any

of the noise monitoring locations was typical, higher, or lower than normal conditions.”
Id.

In order to comply with the City’s own standards, the City must take additional ambient noise measurements in the morning and evening, when less traffic is expected, to evaluate the Project’s impact on nearby sensitive receptors. Without additional information, the City lacks substantial evidence to conclude that Project construction will not result in a significant noise impact.

d. There is no evidence that the MND’s proposed mitigation measures are feasible.

An agency may not rely on mitigation measures of uncertain efficacy or feasibility. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727. Based on Ms. Jue’s review of the mitigation measures proposed for the Project’s significant noise impacts, there is no evidence of the feasibility of several of the measures. Ex. A, p. 2-3. For example, in mitigation measure MM NOI-1, the MND “identifies the physical requirements for a sound barrier,” but “provides no evidence to demonstrate that such a barrier would be feasible to provide.” *Id.* at 2. Ms. Jue calculates that such a barrier would have to be 20-26 feet tall to comply with the measure, which would require a “substantial foundation.” *Id.* at 3. Yet there is no evidence that a 26-foot barrier with a substantial foundation is actually feasible for the Project. *Id.* at 3.

In addition, mitigation measure NOI-2 requires the construction contractor to avoid using a large bulldozer or caisson drill within 80 feet of the adjacent residential building and within 63 feet of the adjacent library. MND, p. 174. But there is no evidence that the Project can actually be constructed completely without using a bulldozer or caisson drill within these boundaries. The same is true for mitigation measure MM NOI-3’s requirement that bulldozers not be used within 15 feet of existing buildings. *Id.*

The MND does not provide any details regarding how effective any of these measures will be. In addition, none of these measures are included as Conditions of Approval for the Project, and therefore should not be included as part of the Project’s impact analysis.

The MND also includes an inconsistency that must be addressed. Page 174 of the MND states, “MM NOI-2 and MM NOI-3 require that heavy machinery (excavators, bulldozers, caisson drills) is to be operated at least 80 feet of the façade of the residential use located west of the Project Site at 716 North June Street and within 63 feet of the façade of the John C. Fremont Branch Library located west of the Project site.” The mitigation measures as described right before that statement make no mention of excavators being included in the distance limits. Clarification is needed as to whether excavators are to be included in MM NOI-2 and MM NOI-3.

Additionally, the MND proposes a traffic management plan to mitigate off-site truck noise to a less than significant level, but fails to provide evidence demonstrating that such a plan could in fact mitigate those impacts. *Id.* Lastly, the MND states that on-site stationary noise sources will have to comply with LAMC regulations and are therefore within appropriate thresholds, but Ms. Jue states that this requirement should be included as formal mitigation. *Id.* The noise analysis should also provide evidence that adherence to LAMC thresholds is feasible. *Id.*

II. CONCLUSION

For the foregoing reasons, as well as those stated in our April 15, 2022 letter, the MND is inadequate. SAFER requests that the City prepare an Environmental Impact Report to fully analyze and mitigate the Project's significant adverse environmental impacts. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Amalia Bowley Fuentes".

Amalia Bowley Fuentes
LOZEAU DRURY LLP