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January 22, 2013

ORIGINAL BY U.S. MAIL

VIA E-MAIL

Honorable Members of the City Council
 City of Long Beach
 333 West Ocean Boulevard
 Long Beach, CA 90802

Re: *Safran Senior Housing Project at 3215 E. Broadway (the "Proposed Project")*
 Opposition to Appeal of Planning Commission Certification of EIR

Dear Council Members:

This letter responds to the concerns raised in support of the appeal of the certification of the EIR for the Proposed Project, as described in letters to the Council dated January 14 and January 22, 2013. None of the arguments raised are valid, and this Council should deny the appeal and confirm the certification of the EIR for this community benefitting low or very low income senior housing project.

Traffic:

The January 14 letter claims that 100 percent of the Proposed Project's trips should be attributed to Obispo Avenue, rather than the 20 percent described in the EIR. This unsupported claim is contrary to the expert findings set forth in the Iteris Traffic Technical Memorandum, attached as Exhibit B to the Initial Study, which finds that "approximately 80% or more" of Project Trips would not stay on Obispo Avenue after exiting the Project, but would be expected to travel onto the closest Collector street, East 3rd Street.

The letter then asks if the attribution of all of the Project's anticipated trips to Obispo Avenue would trigger the City's threshold for requiring a detailed traffic study. The answer is no, as the City's threshold is not based on the total anticipated daily trips, but on the peak hour trips only. The Iteris Traffic Technical Memorandum finds, based on the ITE Trip Generation Manual, 8th Edition, that the Proposed Project is anticipated to generate a total of 91 daily trips, with 4 during the AM Peak Hour and 5 during the PM Peak Hour. The Technical Memorandum indicates that

this peak hour trip generation “is below the City’s threshold requirements for a detailed traffic impact study, and no traffic related impacts are anticipated at roadways and intersections within the vicinity of the Project.” (Initial Study, Exhibit B, at page 2.) Thus, even if all of the trips generated by the Project were to travel on Obispo Avenue, the peak hour trips would not meet the threshold requirement for a detailed traffic study and there would be no significant traffic related impacts.

Parking:

An EIR is not required to include an analysis of the adequacy of a proposed project’s parking. *San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656, 697 (“[T]here is no statutory or case authority requiring an EIR to identify specific measures to provide additional parking spaces in order to meet an anticipated shortfall in parking availability.”) In fact, in 2010, the CEQA Guidelines were amended to remove parking from Appendix G’s sample environmental checklist providing suggested CEQA significance thresholds, as there is no law requiring parking impacts to be studied in an EIR. Thus, there is no need for the Proposed Project’s EIR to include any analysis of parking issues beyond what is already covered in the Iteris Traffic Technical Memorandum, Exhibit B to the Initial Study.

Additionally, the January 14 letter in support of the appeal misstates the facts, claiming that there are potentially 36 additional vehicles that will park off-site. In fact, Municipal Code § 21.41.216, Table 41-1B, provides that only 13 parking spaces are required for the 24 low income senior housing units plus one manager’s unit provided by the Proposed Project, and the provision of 12 off-street parking spaces means that we can expect to need only one on-street parking space from time to time. (See Iteris Technical Memorandum, page 3.) And the same code section authorizes the Planning Commission to reduce the required number of off-street parking spaces provided to nine, three fewer than are being provided by the Proposed Project. There is no evidence that the provision of 12 off-street parking spaces by the Proposed Project will create any type of significant adverse environmental impact.

In fact, it is also possible under the Municipal Code to approve the Proposed Project with no off-street parking at all. Municipal Code § 21.27.070.C provides that one non-conforming use with non-conforming parking (e.g., Immanuel Church, which has no parking at all) may change to another use (e.g., low income senior housing) without adding parking. The only exception to this standard is if the new use would require more parking than the existing use. (Municipal Code § 21.27.070.C.1.) Here, however, the church use required one space for every 3.3 fixed seats (Municipal Code § 21.41.216, Table 41-1C). As the church has 300 fixed seats, a total of 91

parking spaces would be required under the Code, much more than the 13 spaces (at most) required by the Code for the senior housing use. Thus, the 12 off-street parking spaces to be provided by the Proposed Project exceed that required by § 21.27.070.C of the Municipal Code. The EIR is more than adequate with regard to the issue of parking.

Noise:

The comments in the January 14 letter concerning noise do not differentiate between the noise and the vibrations that were separately analyzed with regard to the Proposed Project. (*See* discussion at pages 34 through 42 of the Initial Study.) The Initial Study finds that vibration levels, not noise, could temporarily and intermittently reach a maximum of 86 VdB at the residences immediately adjoining the project site, within 20 feet of the site (not those across the street to the west). The vibrations across the street, which are at least 60 feet from the site, would be lower than those experienced by the adjacent residences.

While the nighttime thresholds for residential vibration are 72 VdB, the daytime thresholds are 100 VdB (the level that could cause minor cosmetic damage to fragile buildings). (*See* Initial Study, page 40.) As the construction that would generate those intermittent levels of vibration will only occur during the day, pursuant to the City's Noise Ordinance, the Initial Study correctly concludes that "construction vibration would not be significant at these [adjacent] receptors." (*Id.*) They would only be less significant to the dwellings across the street to the west of the Proposed Project.

The Proposed Project's mitigation measures do include a restriction on the travel of loaded haul trucks coming within 25 feet of school buildings at Horace Mann Elementary School, because the threshold of significance for this school use, unlike for residences, is 75VdB during daytime hours. (*Id.*, at pages 40-41.)

There is no evidence in the record, nor is any provided by the appeal letter, that the Proposed Project's operation would result in significant noise impacts to residents west of the Project. Table 8 in the Initial Study (at page 40) shows typical parking lot noise levels perceptible to uses within 20 feet of the source. The closest homes to the west of the Proposed Project are approximately 60 feet away (*see* Initial Study at page 35), and thus will experience any of these noise sources at a much reduced level. Additionally, the existing ambient noise levels are such that the Municipal Code increases the maximum allowable noise level during daytime hours. (*Id.*, at page 37.) Based on a full and detailed analysis of the Proposed Project's construction and

operation, the Initial Study correctly concludes that, with the imposition of the one mitigation measure, the Proposed Project will have no significant environmental impact related to noise.

Lighting:

The January 14 and January 22 letters claim that the Initial Study discloses that lighting the parking lot at the Proposed Project will create a new source of “substantial” light, “adversely affecting the night time views.” The Initial Study says no such thing. It provides that “The proposed project would include some new sources of light and glare on the project site, such as parking lot lighting and reflective surfaces on parked cars.” There is no mention of “substantial” light, nor that there will be any affect on “night time views.”

There has been no “failure to gather relevant data” as mentioned in *Gentry v. City of Murietta* (1995) 36 Cal.App.4th 1359, 1378. The Initial Study notes that the Municipal Code requires parking lots to be lit, and requires those lights to be “directed and shielded to prevent light and glare from intruding onto adjacent sites.” Thus, by enforcing its Municipal Code, the City, through its Site Plan Review process, will ensure that there are no significant impacts on adjacent properties caused by light or glare, and therefore, no significant environmental impacts. No further analysis is required.

Alternatives:

CEQA Guidelines § 15126.6 requires EIRs to examine a range of reasonable alternatives to the proposed project that will attain most of the basic objectives of the project but will avoid, or substantially lessen, any of its significant impacts. The January 14 and 22 letters claim, without any evidence, that the Proposed Project has significant effects on traffic, parking, noise and lighting. In fact, as shown above, the EIR and the Initial Study have shown that the Proposed Project, as mitigated, will not have significant effects on traffic, parking, noise or lighting.

Nevertheless, the EIR includes a No Project Alternative, and two other alternatives. Alternative 2, the Relocate 304 Obispo Avenue Residence Alternative, would slightly reduce the Proposed Project’s aesthetic impacts, would reduce its cultural resources impacts, and would have roughly equal construction noise impacts. Alternative 3, the Minimize Exterior Changes to Former Church Building Alternative, would slightly reduce the Proposed Project’s aesthetic impacts, would slightly reduce its cultural resources impacts, and would have roughly equal construction noise impacts.

The EIR concluded that the No Project Alternative would be environmentally superior to the Proposed Project, but would not fulfill the Proposed Project's basic objectives. Alternative 2 was also found to be environmentally superior, but "would require the identification of a suitable and available site for the purpose of relocation of the residence."

The foregoing constitutes the "reasonable range of alternatives" required by law. *Village Laguna of Laguna Beach v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1028-1029. An EIR is not deficient when it examines a reasonable range of alternatives that does not include every hypothetical alternative proposed by the public. The Court in *Cherry Valley Pass Acres and Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 355 recently explained the alternatives analysis requirement:

"Absolute perfection is not required; what is required is the production of information sufficient to permit a *reasonable choice* of alternatives so far as environmental aspects are concerned.' [Citation.]" (*Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1029, 185 Cal.Rptr. 41 [Fourth Dist., Div. Two], italics added.) When an EIR discusses a reasonable range of alternatives sufficient to foster informed decisionmaking, it is not required to discuss additional alternatives substantially similar to those discussed. (*Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1358-1359, 46 Cal.Rptr.3d 902; *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 491, 14 Cal.Rptr.3d 308.) The selection of alternatives discussed "will be upheld, unless the challenger demonstrates 'that the alternatives are manifestly unreasonable and that they do not contribute to a reasonable range of alternatives.' [Citation.]" (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 988, 99 Cal.Rptr.3d 572.)"

CEQA Guidelines § 15126.6(a) and (c) provide that the range of potential alternatives to the proposed project shall include those that could "feasibly attain most of the basic objectives of the project ***but would avoid or substantially lessen any of the significant effects of the project.*** . . ." Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are "inability to avoid significant environmental impacts." *Id.*

The January 14 letter asks for analysis of an alternative that includes ingress and egress on East 3rd Street rather than Obispo Avenue. The January 22 letter repeats this request, claiming that such an alternative would reduce the Proposed Project's traffic, noise, lighting and parking impacts. These requests assume that the Proposed Project will produce significant traffic, noise, lighting and parking impacts, when, as shown above and in the Initial Study and EIR, there are no such significant impacts anticipated. As such, pursuant to Guidelines § 15126.6(a) and (c), there is no need to study an alternative that purports to reduce these insignificant purported environmental impacts.

The January 22 letter adds another proposed alternative for study, a "reduced intensity alternative" that would include fewer than the 24 apartments in the Proposed Project, again claiming that this alternative would reduce impacts on traffic, parking, noise "and other significant impacts." As with the alternative ingress and egress alternative, this proposed alternative would not avoid or lessen any identified significant environmental impacts, and therefore, need not be studied.

In sum, as the EIR has already studied a reasonable range of alternatives, and there has been no evidence presented that the proposed alternatives are physically feasible, environmentally superior, or would address any identified significant impacts of the Proposed Project, there is no requirement for the proposed alternative to be studied.

Public Outreach:

The January 14 letter quotes in full CEQA Guidelines § 15083 regarding the optional public scoping process. Such a process is, of course, not mandatory, and the EIR's certification is not affected by whether or not the City undertook that process.

Furthermore, the letter admits that the City fully complied with all of the requirements for public notice with regard to the Proposed Project and the public hearing, so there is no basis for the Planning Commission's decision on the EIR to be reversed.

Project Intensity:

The January 22 letter adds a claim that the Proposed Project is too "intense" for the size of the property. Without citing to anything specific in the EIR or the record, the letter states that the "FEIR minimized the impacts of this intensive Project." Other than what is stated above, without more specificity, it is impossible to respond to this vague comment. All of the Proposed

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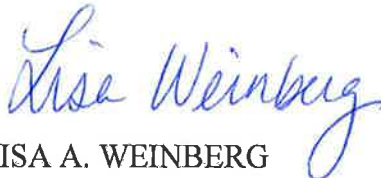
Project's potential significant impacts were fully disclosed, analyzed, and where appropriate, mitigated, in the EIR. No further environmental review is required.

Conclusion:

For all the foregoing reasons, the appeal should be denied, and the certification of the Proposed Project's EIR should be upheld. As always, please do not hesitate to contact me at any time with any questions or comments you may have.

Sincerely,

GAINES & STACEY LLP

By 
LISA A. WEINBERG