

Council File Number 13-1103

Title: Van Nuys Fire Station No. 39

Public Comment

Attach is a lawsuit titled *THE TIARA GROUP vs. CITY OF LOS ANGELES*, Case Number: BS149546. Filing Date: 07/24/2014
Case Type: Writ - Administrative Mandamus.

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County Of Los Angeles

JUL 24 2014

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By: Kristina Vargas, Deputy

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9 THE SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF LOS ANGELES
11 CENTRAL DISTRICT

NEW CASE
CITY ATTORNEY
JUL 28 2014

12 THE TIARA GROUP, an unincorporated
13 association,

14 Petitioner,

15 vs.

16 CITY OF LOS ANGELES,

17 Respondent;

18
19 DOES 1 through 25, inclusive,

20 Real Parties in Interest.
21

Case No.:

BS149546

22 VERIFIED PETITION FOR WRIT OF
23 MANDATE

(Code Civ. Proc. §1094.5; Pub. Res. Code §§
21168; 21168.5 et seq.)

D-82 Luis A. Lavin

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PETITION FOR WRIT OF MANDATE
Tiara Group v. City of Los Angeles
Case No.

1 INTRODUCTION

2 With this lawsuit, Petitioner THE TIARA GROUP ("Petitioner") challenges the June 25,
3 2014 actions of Respondent CITY OF LOS ANGELES ("City"), taken by and through its City
4 Council, approving the construction and operation of Van Nuys Fire Station No. 39 (W.O.
5 E170094B), to be located on the 14600 block of Oxnard Street in the community of Van Nuys
6 within the City ("Project").

7 Petitioner contends the City violated applicable provisions of the California Environmental
8 Quality Act ("CEQA"), Pub. Resources Code § 21000 *et seq.*, by approving the Project in reliance on
9 a mitigated negative declaration ("MND") *in lieu* of a full environmental impact report ("EIR") for
10 the Project. Under CEQA, if there is substantial evidence in the administrative record before a
11 public agency that a proposed project may have a significant impact on the environment, the agency
12 must prepare an EIR and circulate it for public review and comment before taking any action to
13 approve the project. It may not lawfully adopt or rely only on a negative declaration or mitigated
14 negative declaration. In this case, there is abundant substantial evidence in the administrative
15 record before the City that the Project not only may but will have numerous significant
16 environmental effects, primarily but not exclusively in the areas of noise, air quality, and human
17 health risk. The City therefore prejudicially abused its discretion by failing to prepare and circulate
18 an EIR before approving the Project here.

19 Petitioner accordingly seeks a peremptory writ of mandate under Code of Civil Procedure
20 section 1094.5, and Public Resources Code section 21168 and/or 21168.5, commanding the City to
21 set aside its certification of the MND and its approval of the Project, and to reconsider its actions
22 after preparing and circulating a draft EIR for public review and comment in compliance with
23 CEQA. Petitioner further seeks a stay of the effect of the City's approvals during the pendency of
24 these proceedings. Finally, Petitioner seeks an award of costs and attorneys fees under Code of
25 Civil Procedure section 1021.5, together with any other relief the Court deems necessary and
26 proper.

27 In support whereof, Petitioner alleges:
28

1 **PARTIES**

2 **The Tiara Group**

3 1. Petitioner THE TIARA GROUP is an unincorporated association of residents,
4 citizens, property owners, taxpayers and electors residing in the Van Nuys community of the City of
5 Los Angeles. Petitioner's organizational purpose includes advocating for equitable and responsible
6 land use development policies, maintaining political accountability by elected local officials, and
7 diligent enforcement of land use planning and environmental laws in and around Van Nuys and Los
8 Angeles.

9 2. Petitioner's membership includes but is not limited to Jeffrey Lynn and Robina
10 Suwol, both of whom are citizens of Los Angeles over the age of eighteen living in the residential
11 area immediately adjacent to the Project, and both of whom objected to the City's approvals of the
12 Project orally and/or in writing prior to the close of the final public hearing on the Project before
13 the Los Angeles City Council.

14 3. Petitioner's members maintain a direct and regular geographic nexus with the City of
15 Los Angeles, and will suffer direct harm as a result of any adverse environmental and/or public
16 health impacts caused by the Project.

17 4. Petitioner's members have a clear and present right to, and beneficial interest in, the
18 City's performance of its duties to comply with CEQA. As Los Angeles citizens, homeowners,
19 taxpayers, workers, and/or electors, Petitioner's members are within the class of persons to whom
20 the City owes such duties.

21 5. By this action, Petitioner seeks to protect the interests of its members and to enforce
22 a public duty owed to them by the City. Because the claims asserted and the relief sought in this
23 petition are broad-based and of a public as opposed to a purely private or pecuniary nature, direct
24 participation in this litigation by Petitioner's individual members is not necessary.

25 6. Individual members of Petitioner presented oral and/or written comments in
26 opposition to the Project prior to and/or during the public hearings culminating in the City's June
27 25, 2014 approval actions, and raised or supported all objections to the Project and alleged grounds
28 for noncompliance with CEQA and other applicable law presented herein.

1 **City of Los Angeles**

2 7. Respondent CITY OF LOS ANGELES ("City") is a California Charter City situated
3 in Los Angeles County. On or around June 25, 2014, the City, acting through its City Council,
4 approved the construction and operation of Van Nuys Fire Station No. 39 (W.O. E170094B) in
5 reliance on a mitigated negative declaration prepared under CEQA. At all times relevant hereto, the
6 City served as the "lead agency" under CEQA responsible for evaluating the environmental impacts
7 of the Project.

8 **Does**

9 8. Petitioner currently does not know the true names of Real Parties In Interest DOES
10 1 through 25 inclusive, and therefore names them by such fictitious names. Petitioner will seek
11 leave from the court to amend this petition to reflect the true names and capacities of DOES 1
12 through 25 inclusive if and when ascertained.

13 **JURISDICTION & VENUE**

14 9. This action is brought pursuant to Public Resources Code sections 21167, 21168, and
15 21168.5, and Code of Civil Procedure section 1094.5. Venue is proper in Los Angeles County
16 under Code of Civil Procedure section 395. The action is filed in the Central District in accordance
17 with Los Angeles County Superior Court Local Rule 3.232(b).

18 **FACTUAL BACKGROUND**

19 **Project Description**

20 10. The Project consists of the construction of a two-story, approximately 18,533-square-
21 foot fire station on an approximately 1.19-acre site located on the corner of Oxnard Street and
22 Vesper Avenue in the Van Nuys area of Los Angeles. The new facility would replace the existing
23 Fire Station 39, which currently operates approximately one-half mile to the northeast.

24 11. The Project site is located in an urban mixed-use residential setting, surrounded by
25 small commercial and manufacturing businesses to the north and east, a Department of Water and
26 Power building to the west, and numerous single-family residences immediately to the south. The
27 site lies within the Van Nuys-North Sherman Oaks Community Plan Area, and is bounded by
28 Aetna Street to the north, Oxnard Street to the South, Vesper Avenue to the east, and Cedros

1 Avenue to the west. Currently an undeveloped vacant lot, the site contains an abandoned
2 underground storage tank ("UST") in its northeastern portion, and a 10,000-gallon gasoline UST
3 and former 900-gallon kerosene UST in its eastern portion.

4 12. Once built, the Project would house three fire engines, one ladder truck, two rescue
5 ambulances, and one battalion chief vehicle, together with an above-ground, 4,000 gallon diesel fuel
6 storage tank. Approximately 40 parking spaces would be provided on-site to accommodate staff,
7 emergency vehicles, and visitors. Additionally, 12 covered parking spaces intended for parking and
8 storage of reserve apparatus would be included under the proposed project. The Project also
9 includes construction of a wall approximately 400 feet long and 6 to 8 feet high in the existing
10 Oxnard Street public right of way, between the sidewalk on the south side of Oxnard Street and the
11 abutting residential properties between Vesper Avenue and Cedros Avenue.

12 13. The City estimates that once operational, the Project would entail approximately 216
13 emergency response trips per day by vehicles housed in the Project, together with 88 additional
14 non-emergency trips. Fire engines would exit the facility onto Oxnard Street to the south, and enter
15 the site from the north from Aetna Street. Paramedic and other rescue vehicles and visitor vehicles
16 would exit to Vesper Avenue and enter from the same location.

17 **Relevant Procedural History**

18 14. The City approved funding for the Project in or around 2009. Between that time and
19 early 2013, City staff developed the plans for the proposed Project and conducted an Initial Study
20 of its potential environmental impacts nominally in accordance with CEQA.

21 15. On or around May 13, 2013, the City circulated the Initial Study with a proposed
22 Negative Declaration for public review and comment. The Initial Study concluded there was no
23 potential for the Project to have any significant impacts on the environment. Several individuals,
24 including members of Petitioner, submitted written comments objecting to the Initial Study's
25 methodology and conclusions, and presented testimony that the Project would actually have
26 numerous significant unmitigated impacts.

27 16. In August and September, 2013, two City advisory committees held hearings on the
28 Initial Study, the proposed Negative Declaration, and the Project. Members of the public, including

1 several of Petitioner's constituents, appeared at these hearings and spoke in opposition to the
2 Project, presenting evidence that the Project would have significant unmitigated environmental
3 impacts. Despite these objections, both committees voted to recommend that the City Council
4 adopt the Initial Study and Negative Declaration and approve the Project.

5 17. In or around January, 2014, at the request of a City Councilmember, the City
6 procured a supplemental analysis of the Project's potential noise impacts. On February 20, 2014,
7 the City circulated a revised Initial Study and proposed Mitigated Negative Declaration
8 ("IS/MND") that included the newly procured noise analysis. Once again, several individuals
9 including members of Petitioner submitted written comments objecting to the revised Initial Study's
10 methodology and conclusions, and offered testimony that the Project would have several significant
11 unmitigated impacts.

12 18. Included among the written comments on the February, 2014 IS/MND were the
13 opinions of two credentialed technical experts in the areas of noise impacts and human health risk
14 assessment. Both experts stated they had reviewed the IS/MND and relevant supporting technical
15 information contained in appendices to the IS and/or elsewhere, and that in their opinions the
16 Project would have significant unmitigated noise and human health impacts.

17 19. On April 11, 2014, the Van Nuys Neighborhood Council forwarded a Community
18 Impact Statement to the City Council stating, *inter alia*, that "The Van Nuys Neighborhood Council
19 opposes the relocation of Fire Station #39 to the corner of Oxnard and Vesper per the mitigated
20 negative declaration of February, 2014."

21 20. On May 19 and June 18, 2014, the same two advisory committees that had previously
22 considered the Project again held hearings on it and the IS/MND. After receiving further
23 opposition from Petitioner's members and other members of the public, both committees again
24 recommended that the Council adopt the IS/MND and approve the Project.

25 21. On June 25, 2014, the City Council held a public hearing on the IS/MND and
26 Project, during which Petitioner's members once again appeared in opposition to the Project. After
27 closing the public hearing, a majority of the City Council voted to adopt the IS/MND without
28 change and to approve the Project.

1 29. Here, there is substantial evidence in light of the whole record before the City that
2 the Van Nuys Fire Station No. 39 Project not only may but will have significant effects on the
3 environment in areas including but not limited to air quality, human health, and noise.

4 30. There is substantial evidence in the record in the form of facts, reasonable
5 assumptions predicated upon facts, and expert opinion supported by facts that siren noise from the
6 Project would far exceed the established community noise standards contained in the City's
7 Municipal Code, even with the inclusion of the proposed sound barrier wall as mitigation, thereby
8 causing a significant unmitigated impact.

9 31. There is also substantial evidence in the record in the form of facts, reasonable
10 assumptions predicated upon facts, and expert opinion supported by facts that disturbance of
11 contaminated soils underlying the site, and exposure to particulates and other contaminants during
12 Project construction will cause adverse individual and cumulative health effects to nearby residents,
13 and that these risks will be aggravated by exposure to diesel exhaust emissions from the numerous
14 emergency vehicles entering and exiting the Project each day.

15 32. The City thus had an affirmative and unequivocal duty under CEQA to prepare and
16 circulate a full EIR that disclosed, evaluated, and mitigated these and other potentially significant
17 environmental impacts before taking any action to approve the Project.

18 33. Accordingly, the City prejudicially abused its discretion by adopting a MND for the
19 Project *in lieu* of preparing a full EIR.

20 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

21 34. This action is brought consistent with the requirements of Public Resources Code
22 section 21177 and Code of Civil Procedure section 1094.5. Petitioner and/or its individual
23 members objected to the City's approvals of the Project orally or in writing prior to the close of the
24 final public hearing on the Project. Petitioner, its members, and/or other agencies, organizations
25 and individuals raised or affirmed each of the legal deficiencies asserted in this petition orally or in
26 writing during the public comment provided by CEQA, or prior to the close of the public hearing
27 on the Project.

28

1 35. Petitioners have performed all conditions precedent to filing this action by complying
2 with the requirements of Public Resources Code section 21167.5 in serving notice of the
3 commencement of this action on July 25, 2014.

4 **INADEQUATE REMEDY AT LAW**

5 36. Petitioner declares that it has no plain, speedy, and adequate remedy in the ordinary
6 course of law for the improper action of the City.

7 **NEWLY PRODUCED EVIDENCE**

8 37. In accord with Code of Civil Procedure section 1094.5(e), Petitioner may, prior to or
9 during the hearing on this petition, offer additional relevant evidence that could not, in the exercise
10 of reasonable diligence, have been produced at the administrative hearing.

11 **ATTORNEYS FEES**

12 38. Petitioner is entitled to recover attorneys' fees as provided under Code of Civil
13 Procedure section 1021.5 if it prevails in this action and the Court finds that a significant benefit has
14 been conferred on the general public or a large class of persons, and that the necessity and burden
15 of private enforcement is such as to make an award of fees appropriate.

16 **PRAYER**

17 WHEREFORE, Petitioner prays for entry of judgment as follows:

18 1. For a peremptory writ of mandate directing the City:

19 (a) to set aside its actions taken on or about June 25, 2014 adopting a Mitigated Negative
20 Declaration and approving the project known as Van Nuys Fire Station No. 39 (W.O. E170094B);
21 and

22 (b) to comply fully with CEQA before taking any subsequent action or actions taken to
23 approve the Project.

24 2. For an order staying the effect of the City's actions pending the outcome of this
25 proceeding.

26 3. For a preliminary and permanent injunction directing the City and/or any Real Party
27 Does to cease and refrain from engaging in any activities in reliance upon the approvals challenged
28 herein until the City takes any necessary action to bring its actions into compliance with CEQA.

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- 4. For costs of suit.
- 5. For an award of attorneys' fees.
- 6. For other legal or equitable relief that the court deems just and proper.

Dated: July 24, 2014

Respectfully submitted,
M. R. WOLFE AND ASSOCIATES, P.C.



By: _____
Mark R. Wolfe

Attorney for Petitioner

VERIFICATION

I, Jeffrey Lynn, declare:

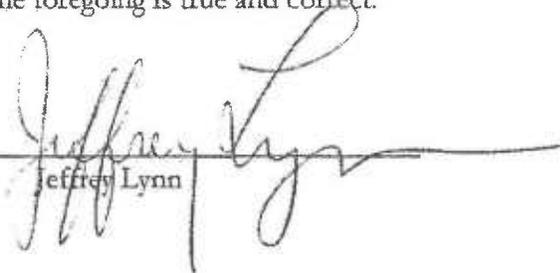
I am a principal member of THE TIARA GROUP, the Petitioner in the above-captioned action. I am authorized to make this verification on its behalf.

I have read the foregoing PETITION FOR WRIT OF MANDATE and know its contents. The statements made therein are true of my own knowledge, except as to those matters which are alleged on information and belief, and as to those matters I believe them to be true.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Dated: July 22, 2014

By: _____



Jeffrey Lynn

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JUL 24 2014

Sherri R. Carter, Executive Officer/Clerk
By: Kristina Vargas, Deputy

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8 Attorney for Petitioner

9 THE SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF LOS ANGELES
11 CENTRAL DISTRICT

12 THE TIARA GROUP, an unincorporated
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14 Petitioner,

15 vs.

16 CITY OF LOS ANGELES,

17 Respondent;

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19 DOES 1 through 25, inclusive,

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21 Real Parties in Interest.

Case No.: **BS149546**

**REQUEST TO PREPARE RECORD OF
PROCEEDINGS (COST ESTIMATE);
CONDITIONAL NOTICE OF
ELECTION OF PREPARATION BY
PETITIONER**

(California Environmental Quality Act, Public
Res. Code § 21167.6.)

1 Pursuant to Public Resources Code section 21167.6, and Code of Civil Procedure section
2 1094.5(a), Petitioner THE TIARA GROUP hereby requests that Respondent CITY OF LOS
3 ANGELES provide Petitioner with a cost estimate for preparing the administrative record in the
4 above-captioned matter, including indexing, page-numbering, and photocopying.

5 Petitioner requests that Respondent designate in the record all documents, including all
6 transcripts, minutes of meetings, notices, correspondence, reports, studies, proposed decisions, final
7 decisions, findings, and any and all other documents relating to its actions made through its City
8 Council on or about June 25, 2014 adopting a Mitigated Negative Declaration under the California
9 Environmental Quality Act and approving the project known as the Van Nuys Fire Station No. 39
10 (W.O. E170094B), to be located on the 14600 block of Oxnard Street in the community of Van
11 Nuys within the City. Please refer to Public Resources Code section 21167.6(e) for a list of
12 materials required to be included in the administrative record.

13 PLEASE TAKE NOTICE that pursuant to Public Resources Code section 21167.6(b)(2),
14 Petitioner hereby reserves the right to elect to prepare the record itself after receiving Respondent's
15 cost estimate, subject to future discussion and any alternative arrangement to which the parties to
16 this action may agree.

17 Dated: July 24, 2014

M. R. WOLFE AND ASSOCIATES, P.C.

18
19
20
21 By: _____

Mark R. Wolfe

22 Attorney for Petitioner
23
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25
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27
28

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9 THE SUPERIOR COURT OF CALIFORNIA
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12 THE TIARA GROUP, an unincorporated
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16 CITY OF LOS ANGELES,

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Sherri R. Carter, Executive Officer/Clerk
By: Kristina Vargas, Deputy

Case No.:

BS149546

**NOTICE OF COMMENCEMENT OF
ACTION**

(California Environmental Quality Act, Public
Res. Code § 21176.5)

1 Notice is hereby given to respondent CITY OF LOS ANGELES of commencement of this
2 lawsuit challenging its actions made through its City Council on or about June 25, 2014 adopting a
3 Mitigated Negative Declaration under the California Environmental Quality Act and approving the
4 project known as the Van Nuys Fire Station No. 39 (W.O. E170094B), to be located on the 14600
5 block of Oxnard Street in the community of Van Nuys within the City.

6 The action is brought by Petitioner THE TIARA GROUP, an unincorporated association,
7 pursuant to the judicial review provisions of the California Environmental Quality Act ("CEQA"),
8 Public Resources Code sections 21167 and/or 21168.5, and the writ of mandate provisions of Code
9 of Civil Procedure section 1094.5.

10 Dated: July 24, 2014

M. R. WOLFE AND ASSOCIATES, P.C.

11
12 

13 By: _____

14 Mark R. Wolfe

15 Attorney for Petitioner
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1 PROOF OF SERVICE

2 I hereby declare that I am employed in the City San Francisco, County of San Francisco,
3 California. I am over the age of eighteen years and not a party to this action. My business address
4 is 1 Sutter Street, Suite 300, San Francisco, CA 94104. I am familiar with this firm's practice for the
5 collection and processing of mail sent via U.S. Mail, which provides that mail be deposited with the
6 U.S. Postal Service on the same day in the ordinary court of business.

7 On July 24, 2014, I served the attached **NOTICE OF COMMENCEMENT OF**
8 **ACTION** in this action via the U.S. Mail by placing a true copy thereof enclosed in a sealed
9 envelope with postage thereon fully prepaid addressed to:

10
11 City of Los Angeles
12 Attn: City Clerk
13 200 N. Spring Street, Room 360
14 Los Angeles, CA 90012

15 for collection and deposit with the U.S. mail on this date according to ordinary business practices.

16 I declare under penalty of perjury that the foregoing is true and correct and that this
17 declaration was executed at San Francisco, California on July 24, 2014.

18 

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20 _____
21 Alexis Mackenzie
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200 NORTH SPRING STREET

ROOM 395

LOS ANGELES, CA 90012

PUBLIC COMMENT

COUNCIL AND PUBLIC SERVICES

DIVISION