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**CF 18-0412; 6650 Franklin Avenue SCEA**

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**David Lawrence Bell** <dlawrencebell@gmail.com>

Fri, Feb 15, 2019 at 3:55 PM

To: Holly Wolcott &lt;holly.wolcott@lacity.org&gt;, "city.clerk@lacity.org" &lt;city.clerk@lacity.org&gt;, "clerk.plumcommittee@lacity.org" &lt;clerk.plumcommittee@lacity.org&gt;, "craig.bullock@lacity.org" &lt;craig.bullock@lacity.org&gt;

Please see attached.

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3262K

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February 15, 2019

Los Angeles City Council  
Room 395, City Hall  
Los Angeles, CA 90012

**Re: Objections to Sustainable Communities Environmental Assessment (“SCEA”);  
Construction Noise Impacts to Senior Residents of Montecito Apartments;  
C.F. 18-0412; 6650-6668 Franklin Avenue; CPC-2017-1503-DB-CU-SPR;  
AA-2017-1505-PMLA; ENV-2017-1504-SCEA.**

Council President Wesson and Honorable Councilmembers:

This office represents Friends of the Montecito, an unincorporated association, Kathleen Larsen, an individual, and Dennis Luna, an individual and a resident of the Montecito Apartments (collectively “Petitioners”). Petitioners object to the Montecito II Senior Housing Project (“Project”) on the basis that it would expose vulnerable low-income senior residents of the existing Montecito Apartments to significant construction noise levels not disclosed, analyzed or mitigated in the SCEA as required by the California Environmental Quality Act (“CEQA”). Petitioners and other members of the public have vociferously objected to the Project’s construction noise impacts, yet the responses to comments ignored noise impacts to the Montecito Apartments residents altogether. This office respectfully requests that the City Council require the disclosure, analysis and mitigation of noise impacts to existing senior residents at the Montecito Apartments.

**I. The SCEA Improperly Fails to Disclose the On-Site Senior Housing Units as a Noise-Sensitive Use.**

The L.A. CEQA Thresholds Guide defines noise-sensitive uses to include residences and nursing homes.<sup>1</sup> The Montecito Apartments, a 118-unit affordable senior housing development is a quintessential noise-sensitive use as it consists of residences occupied by senior citizens, and it is comparable to a nursing home because many of its residents are impacted by health complications of advanced age and have limited ability to leave the premises during disruptive construction.

The SCEA discloses only four noise-sensitive receptors, *not including the Montecito Apartments*: (1) Canyon Co-Op School to the west of the project site; (2) Las Palmas Senior Citizen Center to the west of the project site; (3) Franklin Avenue Residences to the north of Franklin Avenue; and (4) Cherokee Avenue Residences across Cherokee Avenue from the project site and directly south of the project site.

<sup>1</sup> L.A. CEQA Thresholds Guide, Page I.1-3

After identifying these four noise sensitive receptors, the SCEA analyzed the Project's noise impacts at the sensitive uses and identified mitigation measures purporting to maintain noise levels below the City's threshold of significance. For example, MM-2 requires temporary sound barriers adjacent to Canyon Co-Op School, Las Palmas Senior Citizen Center, and Franklin Avenue Residences and MM-3 requires temporary sound barriers adjacent to the Cherokee Avenue Residences. ***None of the mitigation measures are applicable to the Montecito's vulnerable senior residents.***<sup>2</sup>

To be clear, nothing in applicable law provides any basis to ignore outright a noise-sensitive use merely because the property is owned by the proponent of the Project. In fact, because the low-income senior residents of the Montecito Apartments have limited ability to campaign and to pay for legal services – and because some have expressly mentioned fears of retaliation – it is imperative for the City to consider how environmental noise impacts would jeopardize their health and well-being.

The existing senior housing units are unquestionably part of the “environment” protected by CEQA. Public Resources Code Section 21060.5 defines “environment” as the physical conditions which exist *within the area which will be affected by a proposed project*, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance.” Because the senior housing units of the Montecito Apartments are within the area which will be affected by the project, they are part of the “environment.” Even if the absence of noise analysis on the Montecito Apartments was claimed to be based on the L.A. CEQA Thresholds Guide, a project's impacts can be significant even if they do not exceed a local agency's thresholds.<sup>3</sup> Therefore, pursuant to Public Resources Code 21152.2(b)(5), all potentially significant noise impacts on the senior residents of the Montecito Apartments shall be mitigated to a level of insignificance before the lead agency approves the SCEA.

Not only is the Montecito Apartments a noise-sensitive uses pursuant to the L.A. CEQA Thresholds Guide, its residents are uniquely exposed to construction noise impacts. Unlike occupants of typical residences who may work or leave their residence during construction hours, many senior residents of the Montecito Apartments are unable to leave the premises due to mobility issues, dementia, or other health considerations associated with advanced age.<sup>4</sup> As a result, many would be continually exposed to construction noise from 8 a.m. to 6 p.m. Monday

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<sup>2</sup> This fact undermines the City's assertion that the Project would comply with the City's Noise Ordinance (Ordinance 161,574) which mandates that Project construction noise shall be reduced to the extent technically feasible. If the Project is not required to install noise barriers adjacent to the Montecito Apartments, to install noise-insulating windows in impacted units, or to consider temporary relocation assistance, then the Project has not reduced excessive construction noise impacts to the extent technically infeasible.

<sup>3</sup> See *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 732-733.

<sup>4</sup> See comment letter from Montecito Apartments resident Terry Stepusin dated April 1, 2018, noting that “many of these low income residents have significant or serious health issues such as respiratory, heart, emotional, or other assorted physical problems associated with the aging process. Some are even in the end stages of their life.”

through Friday for the duration of construction. Thus, approval of the SCEA without disclosing and analyzing the Montecito Apartments as a noise-sensitive use would be an abuse of discretion.

## **II. The City Improperly Dismissed Comments Objecting to Construction Noise Impacts on the Senior Residents of the Montecito Apartments.**

Public Resources Code 21155.2(b)(4) requires that, before approving a SCEA, a lead agency shall consider all comments received. In this case, members of the public vociferously objected to the construction noise impacts of the project in verbal and written comments to the City.<sup>5</sup> Based on the construction noise impacts, many also objected to the developer's refusal to provide temporary relocation assistance for residents. Additional comment letters from concerned members of the public are attached hereto.

Notwithstanding the specific objections regarding noise, the Responses to Comments published by the City on January 31, 2019 ignored the issue entirely. In fact, the City's Commenter Matrix identifies a host of issue areas addressed in public comments: aesthetics, open space, historic resources, traffic, parking, geotechnical and "construction" – but fails to acknowledge whether any of the "construction" comments in fact address noise. In Master Response 7 regarding Construction comments, the City addresses air quality impacts of fugitive dust emissions and particulate matter – but does not even address noise impacts.

## **III. The SCEA Must Disclose, Analyze and Mitigate Significant Construction Noise Impacts to the Montecito Apartments.**

The SCEA must be re-circulated with information about the magnitude of construction noise impacts to the Montecito Apartments, in addition to all feasible mitigation measures to reduce those impacts. It is impossible to state the extent of construction-related noise impacts because the SCEA ignored the issue entirely, but there can be no question that construction impacts on the vulnerable senior residents will be significant and adverse. The only reference to construction noise impacts is a note in the SCEA asserting *without any legal citation or technical basis* that "onsite receptors are not required to be analyzed under CEQA" and that "the impacts at these receptors would be similar to the impacts experienced at the neighboring 1847 N. Cherokee Residences, which would be less than significance."<sup>6</sup> As described above, this claim is incorrect as a matter of law because onsite receptors are defined as part of the "environment" and case law requires disclosure and mitigation of significant noise impacts even if a project complies with a local agency's threshold of significance.

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<sup>5</sup> See comment letters in Council File from Terry Stepusin (April 1, 2018); Normajeon Jonz (April 1, 2018); Kathleen Larsen (September 17, 2018); and Inna Shvartsur (undated but uploaded to Council File on September 21, 2018).

<sup>6</sup> SCEA page III-53.

Because construction of the Project would occur to the west and south of the Montecito Apartments, approximately half of the 118 senior housing units would directly face construction activities with minimal setback. Unlike the two-story residential building at 1851 N. Cherokee abutting the Property to the south, which are buffered by noise attenuating walls, the Montecito Apartments is a ten-story structure with residences on each level. Even if a noise attenuating wall were required as a mitigation measure, the wall would not obstruct the line-of-sight propagation of sound from excavation and construction activities mere feet away.

Moreover, the SCEA's claim that noise impacts to on-site receptors would be the same as those experienced at the abutting residences is a ***fatal concession of a significant noise impact***. The SCEA measured ambient noise levels at the Cherokee Avenue Residences, immediately south of the Property, as 59.5 dBA and disclosed that the combined dBA from the excavator and loader is 79.1 dBA, yielding an unmitigated increase of 19.7 dBA<sup>7</sup> – far exceeding the 5 dBA threshold of significance in the L.A. CEQA Thresholds Guide. Conservatively assuming the distance between the Project and the Montecito Apartments would result in *double* the attenuation (10 dBA) as that achieved for the Cherokee Avenue Residences (5 dBA), the noise impact would remain significant at 9.7 dBA. Assuming the SCEA is correct that noise impacts to the Montecito Apartments would be the same as those experienced at the Cherokee Apartments – but without a 15 dBA reduction due to noise barriers – ***the data and analysis within the SCEA itself provides uncontested substantial evidence of a significant noise impact***.

If the record contains substantial evidence that a project may have a significant environmental impact – the only conclusion that may be reached based on the analysis in the SCEA – then an Environmental Impact Report (“EIR”) must be prepared. “Substantial evidence” is “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions may be reached. [...] Substantial evidence shall include facts, reasonable assumptions predicated on facts, and expert opinion supported by facts.”<sup>8</sup> “Significant effects” are “substantial, or potentially substantial,” adverse changes in physical conditions that exist within the area that will be affected by a proposed project.<sup>9</sup> Physical conditions include land, air, water, minerals, flora, fauna, noise, historic and cultural sites, and aesthetics.<sup>10</sup>

The California Supreme Court has held that “significant” is “not a term of precision but encompasses a range of meaning. In interpreting section 21151, our principal guide is the fact, recognized in Friends of Mammoth, ‘that the Legislature intended [CEQA] to be interpreted in such manner as to afford the fullest possible protection of the environment within the reasonable scope of the statutory language.’ (Friends of Mammoth v. Board of Supervisors [(1972) 8 Cal.3d 247, 259].” Whether the administrative record contains a fair argument sufficient to trigger

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<sup>7</sup> DKA Planning, SCEA Appendix F, “Cherokee Avenue Residences: Demolition and Grading”, Appendix page 24.

<sup>8</sup> CEQA Guidelines Section 15384.

<sup>9</sup> CEQA Guidelines Sections 21068, 21100 and 21151.

<sup>10</sup> CEQA Guidelines Section 21060.5.

preparation of an EIR is a question of law, not a question of fact. Under this unique test, “deference to the agency’s determination is not appropriate and its decision not to require an EIR can be upheld only when there is no evidence to the contrary.”<sup>11</sup>

**IV. Conclusion.**

The SCEA is fatally flawed because it fails to identify the Montecito Apartments as a noise-sensitive receptor; it neglects to respond to comments specifically addressing noise impacts on senior residents; and it fails to disclose, analyze and mitigate significant construction noise impacts on residents of the Montecito Apartments. This office respectfully requests that the City Council require re-circulation of the SCEA with proper analysis and mitigation measures, including temporary relocation during construction and physical improvements to provide noise insulation for impacted dwelling units.

Sincerely,



David L. Bell  
Attorney for Petitioners

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<sup>11</sup> Sierra Club v. County of Sonoma (1992) 6 Cal.App.4<sup>th</sup> 1407, 1318.

Los Angeles City Council -- ATTN: Sharon Dickinson, Legislative Assistant

VIA EMAIL – February 14, 2019

[cityclerk@lacity.org](mailto:cityclerk@lacity.org)

cc: [kalertfin@yahoo.com](mailto:kalertfin@yahoo.com)

RE: CF 18-0412, from CD 13 – ENV 2017-1504-SCEA (The Montecito II Project)

Subject: NOISE IMPACT TO AT-RISK SENIORS

Dear Council Members:

What's the negative impact of the Montecito II Project? With 2 years of big construction in a small place loaded with ill people?

Constant noise, when they need calm? Confusion, when they should have peace and quiet? Stress and anxiety, trapped in their apartments until they feel like they're losing their minds?

Behavior problems, flare ups of alcoholism, out-of-control diabetes, heart conditions worsened, TIAs and strokes, increased issues with PTSD—that's what the Montecito II will build.

The "construction site" is home to 120 vulnerable people, who'd be trying to live in their 10 floors while all Hell is breaking out all around them. Please DENY THIS PROJECT.

Sincerely,

Audrey Forgach

6650 Franklin Ave, Apt. #106

Hollywood, CA 90028

Los Angeles City Council -- ATTN: Sharon Dickinson, Legislative Assistant

VIA EMAIL – February 14, 2019

[cityclerk@lacity.org](mailto:cityclerk@lacity.org)

cc: [kalertfin@yahoo.com](mailto:kalertfin@yahoo.com)

RE: CF 18-0412, from CD 13 – ENV 2017-1504-SCEA (The Montecito II Project)

Subject: NOISE IMPACT TO AT-RISK SENIORS

Dear Council Members:

Noise, like we're talking about in this two-year project, is an assault. It's just like being hit with a baseball bat, over and over again. There are physical and emotional responses: a huge amount of stress.

It's beating up on a vulnerable group of innocent people: Seniors, who've sought refuge in the safe and quiet environment of the historic Montecito. Some have called it home for over 20 years.

The noise will come at residents from all angles. It'll seep through 90 year-old windows, along with air pollutants. The noise will shadow residents all day long because many stay home because they have no jobs. Some get out just for their doctors' appointments. For two years they won't be able to enjoy the outside in the safe environment of the Montecito property. Every inch will be devoted to construction.

There will be results of being stuck in the Montecito noise torture chamber: worsening of heart conditions, anxiety, mental problems, dementia.

Why are planners and developers allowed to literally sacrifice 120 elderly residents' basic quality of life just to get 68 small units? REJECT this demeaning project.

Sincerely,

David Kearse

6650 Franklin Ave, Apt. 205

Hollywood, CA 90028



Los Angeles City Council –ATTN: Sharon Dickinson

VIA Email – February 14, 2019

[cityclerk@lacity.org](mailto:cityclerk@lacity.org)

cc: [kalertfin@yahoo.com](mailto:kalertfin@yahoo.com)

RE: CF 18-0412; ENV 2017-1504-SCEA (The Montecito II Project)

Subject: NOISE IMPACT TO AT-RISK SENIORS

Dear Council Members:

Forcing low-income elderly to live in the middle of an active construction site for two years plus is a terrible idea.

All day long with the pounding, how's that help the heart patient that needs quiet to get extra sleep?

There'd be no peace for nervous, high blood pressure residents.

Why do you ignore the added stress to fragile residents? Don't you see the harm you are encouraging?

People will be harmed. Will you please care about them? REJECT this project.

Sincerely,

Inna Shvartsur

6650 Franklin Ave, Apt. 602

Hollywood, C 90028

Los Angeles City Council –ATTN: Sharon Dickinson

VIA Email – February 14, 2019

[cityclerk@lacity.org](mailto:cityclerk@lacity.org)

cc: [kalertfin@yahoo.com](mailto:kalertfin@yahoo.com)

RE: CF 18-0412; ENV 2017-1504-SCEA (The Montecito II Project)

Subject: NOISE IMPACT TO AT-RISK SENIORS

Dear Council Members:

The motto of Thomas Safran and Associates, the owner/ developer, is:

“We enrich the lives of the people who reside in our buildings.”

Unfortunately, the Montecito II Project will turn that motto on its head. Elderly residents are supposed to live in the middle of an active construction site for 2 years and remain completely safe and healthy.

Look at what residents are being told to endure in the area of noise. Being that it is their own property that is the subject of the construction, they'll be surrounded by it. It's a small lot that already has their own 10-story building. So, the action will be right on top of them. That “action” will make a tremendous amount of noise. In turn, the noise will affect their health and safety.

Disrupted sleeping patterns, stress, anxiety, irritableness, increased problems with high blood pressure and heart conditions can be expected. The noise can be disorienting, which would affect those with mobility issues, and make falls more likely, especially when two of the three building exits will be blocked with new construction.

Do these residents' lives seem enriched? DENY the project. It is unworthy for all concerned.

Sincerely,

Kathleen Law

6650 Franklin Ave, Apt. 704

Hollywood, C 90028

Los Angeles City Council –ATTN: Sharon Dickinson

VIA Email – February 14, 2019

[cityclerk@lacity.org](mailto:cityclerk@lacity.org)

cc: [kalertfin@yahoo.com](mailto:kalertfin@yahoo.com)

RE: CF 18-0412; ENV 2017-1504-SCEA (The Montecito II Project)

Subject: NOISE IMPACT TO AT-RISK SENIORS

Dear Council Members:

It's terrible to think of how 2 years of construction and all the noise will affect the elderly people. All of that heavy equipment working will mean it's not possible for people to sleep in the mornings.

Some need siestas during the day, but there'd be too much noise, so their medical conditions would get worse. They could get startled by sudden, unexpected noises, which might cause them to fall or have a stroke or heart attack. Or, the noise might make them panic and get hurt trying to get out.

The stress of 8 hours a day with everything from excavation to trucks with concrete to hammering for 2 years will be very stressful for them living right on the construction site. It could easily mean permanent damage to them. The project is not worth hurting the elderly people. REJECT it.

Sincerely,

Jose L. Fernandez

1639 W. 12<sup>th</sup> Pl. Apt. 3

Los Angeles, CA 90015-1911

Los Angeles City Council –ATTN: Sharon Dickinson

[cityclerk@lacity.org](mailto:cityclerk@lacity.org)

cc: [kalertfin@yahoo.com](mailto:kalertfin@yahoo.com)

RE: CF 18-0412; ENV 2017-1504-SCEA (The Montecito II Project)

Subject: NOISE IMPACT TO AT-RISK SENIORS

Dear Council Members:

Why aren't you considering the awful and up-close noise you're trying to subject us residents to for 2 or more years? What did we do to deserve that sentence? We pay our rent.

The pounding, the unbearable pounding, and we'd be in the middle of it! All we'd have separating us from the noise are some beautiful, but very old windows that'd do nothing to shield us from the sound. We can even hear the pounding from Franklin and Highland, a block away. What's going to happen when it's just a dozen feet away?

That noise will be right on top of us and we'll be trapped in our apartments and can't get away from it. Many of already have serious medical conditions that we're stressed about. And you're trying to add more stress to our lives? That'll just make our conditions worse.

You've got 120 of us residents that are supposed to be protected. Please protect us. REJECT the folly of this weird project.

Sincerely,

Steve Sambol

6650 Franklin Ave, Apt. 402

Hollywood, C 90028