

February 17, 2022

Mr. Adam Rush, Community Development Director  
City of Banning  
99 East Ramsey Street  
Banning, California 92220

**SUBJECT: (Design Review 21-7008 & Tentative Parcel Map 38164): Responses to Comments Submitted on February 15, 2022, by Shute Mihaly & Weinberger on Behalf of the Pass Area Action Group**

Dear Mr. Adam Rush:

We submit this letter to provide additional responses, specifically addressing issues raised in Shute Mihaly's February 15, 2022, letter. As detailed below, Shute Mihaly's letter asserts more inaccurate and erroneous statements about the Project and its CEQA documentation. Shute Mihaly does not raise any substantial evidence showing that the Project will have a new or substantially more severe environmental impact than what was previously disclosed in the program EIR ("PEIR") that was certified for the 2021 Sun Lakes Village North Specific Plan Amendment No. 5 ("SLVNSP"). As such, the responses and analyses provided in this letter shows that it is proper for the City to adopt the Addendum as the method for CEQA compliance in approving the Project.

### **COMMENT 1**

The Noise Study presents estimated Project noise levels using Leq and CNEL and evaluates the noise impacts against the City's noise standards. See, e.g., Noise Study Table 9-3: Nighttime Project Operational Noise Levels (showing noise levels in Leq.) However, under well-established case law, the City must also analyze the extent and severity of noise impacts based on single event noise (e.g., noise from each truck driving by, entering/exiting the Project site).

Analyzing only average noise impacts has been rejected by California courts because impacted residents do not hear noise averages, but single events. See *Berkeley Keep Jets Over the Bay Committee v. Port of Oakland* (2001) 91 Cal.App.4th 1344, 1382. Single event noise levels have been shown to be likely to result in sleep disruption and speech interference, and heightened levels of stress and annoyance. Noting that "sound exposure level [SEL] has been found to be the most appropriate and useful descriptor for most types of single event sounds," the court in *Berkeley Keep Jets* held that the Port must prepare a supplementary noise analysis calculating the impacts of single-event sounds. *Id.* at 1382. Here, the PEIR identified significant noise impacts from the Project on nearby residents and included estimated maximum noise levels from Project activities, leading to a conclusion of significance. Accordingly, the noise study for this Project should have analyzed the impacts of single event noise on sleep, speech, stress and annoyance levels, and should have identified adequate measures to mitigate those impacts. Yet, the supplemental noise study ignores maximum noise levels and presents only average noise.

## **RESPONSE 1**

This comment incorrectly states that the case Berkeley Keep Jets rejected the adequacy of average-noise significance thresholds for assessing traffic noise. Instead, the case held that determining a significant noise impact based only on absolute thresholds was not proper, as relative increases of noise in quiet areas could result in a significant noise impact even though an absolute threshold is not exceeded. Here, consistent with Berkeley Keep Jets, the Project's Noise Study evaluated the Project's potential traffic noise, including truck traffic, against both absolute and relative noise thresholds, and the Noise Study shows that on both metrics there will not be a significance noise impact.

The Noise Study relies on the appropriate City of Banning thresholds of significance outlined in the adopted General Plan Noise Element and the City Municipal Code Section 8.44.050. Consistent with guidance from the General Plan Noise Element, the off-site traffic noise analysis relies on the 24-hour CNEL to describe the incremental project related noise level increases. To assess the Project related operational noise level impacts, the Project was developed to satisfy the noise level standards identified in Section 8.44.050 of the City Municipal Code.

Noise thresholds for determining the significance of traffic noise source activities are well established and have consistently relied on the use of the 24-hour average CNEL or peak hour  $L_{eq}$  noise levels. In the CNEL scale, noise occurring between the hours of 7:00 pm and 10:00 pm is penalized by approximately five (5) dB. This penalty accounts for the greater potential for noise to cause annoyance during these hours, as well as typically lower ambient noise levels during these hours. Noise that takes place during the night, from 10:00 pm to 7:00 am, is penalized by ten (10) dB. This penalty was selected to account for the higher sensitivity to noise in the nighttime and the expected further decrease in background noise levels that typically occurs in the nighttime. It is important to note that the penalties in these thresholds adjust for relative changes in ambient noise, consistent with the Berkeley Keep Jets case. The noise thresholds for determining the significance of the operational noise source activities are based on the adopted City of Banning Municipal Code Section 8.44.050 exterior noise standards.

The comment suggests that the Sound Exposure Level (SEL) is *the most appropriate and useful descriptor* and...*this Project should have analyzed the impacts of single event noise*. The SEL describes a single acoustic event normalized to one second. However, there are no generally accepted noise level thresholds of significance for SEL. Rather, SEL reference noise levels are commonly used to calculate the 24-hour CNEL and hourly dBA  $L_{eq}$  noise levels necessary to demonstrate compliance with established thresholds of significance. The Berkeley Keep Jets case did not reject this standard principle. In the Berkeley Keep Jets case, the lead agency determined the significance of the noise impacts based solely on whether the estimated level of sound with the project would exceed an absolute noise level of 65 dB CNEL, and the court held that this analysis alone was inadequate.

Noise level increases resulting from the Project are evaluated based on the Appendix G CEQA Environmental Checklist Form XIII (a) Noise Guidelines at the nearest sensitive receiver locations. Under CEQA, consideration must be given to the magnitude of the increase, the existing ambient noise levels, and the location of noise-sensitive receivers to determine if a noise increase represents a significant adverse environmental impact. This approach *recognizes that there is no single noise increase that renders the noise impact significant (Gray v. County of Madera, F053661, October 2008)*. Consistent with Berkeley Keep Jets, the Project's Noise Study evaluated the Project against both absolute and relative noise-significance thresholds, utilizing the City's appropriate thresholds of significance outlined in the adopted General Plan Noise Element and the City Municipal Code Section 8.44.050.

### **COMMENT 2**

Consistency Analysis's consideration of both traffic and noise do not appear to take into account 24-hour truck access, seven days a week. The only nighttime noise analysis is of onsite operations, not neighborhood traffic. (Consistency Analysis at 72-74.) Nighttime traffic through a residential neighborhood is precisely the activity that requires SEL analysis.

### **RESPONSE 2**

The Project's Noise Study fully considers both the off-site truck traffic and on-site 24-hour truck access. The off-site traffic analysis includes the full Project which is anticipated to generate a total of 2,292 actual vehicle trip-ends per day (1,996 passenger car trips and 296 truck trips). Even though the proposed Project results in an overall reduction in vehicle trips, the off-site traffic noise analysis in the Noise Study was prepared to assess the incremental noise level increase attributed fully to the proposed Project without any credit for the previously approved project. The off-site traffic noise analysis fully considers the daytime, evening, and nighttime truck noise level impacts on Highland Springs Avenue and Sun Lakes Boulevard. Noise level increases resulting from the Project are evaluated based on the Appendix G CEQA Environmental Checklist Form XIII (a) Noise Guidelines at the nearest sensitive receiver locations. Under CEQA, consideration must be given to the magnitude of the increase, the existing ambient noise levels, and the location of noise-sensitive receivers to determine if a noise increase represents a significant adverse environmental impact. This approach *recognizes that there is no single noise increase that renders the noise impact significant.* (14)

### **COMMENT 3**

Supplementary noise analysis calculating the impacts of single-event sounds from trucks accessing the Project site at night.

### **RESPONSE 3**

The on-site operational analysis fully considers the on-site truck movement activities as shown on Exhibit 9-A. Using reference truck movement sound power level of 93.2 dBA Lw the on-site trucks are included in the Daytime and Nighttime Project operational noise analysis. Section 9.5 shows that Project related

operational noise impacts with the on-site truck movements are considered less than significant at the nearest noise-sensitive receiver locations. In addition, the Project will generate daytime and nighttime operational noise level increases ranging from 0.0 to 0.4 dBA Leq at the nearest receiver locations. Project-related operational noise level increases will satisfy the operational noise level increase significance criteria presented on Table 4-1. Therefore, the incremental Project operational noise level increase is considered less than significant at all receiver locations.

**COMMENT 4**

The Specific Plan Amendment acknowledges that Project-related trucks, especially those travelling westbound along Sun Lakes Boulevard, would drive directly through the Sun Lakes Community, east of the site. Id. However, as discussed below, the noise analyses prepared as part of the PEIR fail to analyze noise impacts from trucks traveling east of the site and cutting through the Sun Lakes community.

**RESPONSE 4**

This Project's Traffic Assessment, similar to studies of other industrial projects, identifies truck routes using the allowable roadways with the shortest path to the State Freeway System. Given the Project's truck access via Sun Lake Village Drive, the most direct access to the I-10 Freeway is Highland Springs Avenue, approximately ½ a mile away. Thus, if Sun Lakes Blvd were to connect to Sunset Ave (approximately 2.5 miles away), which it currently does not connect, use of Sunset Ave to access the I-10 Freeway would not be considered an industry-standard route for the Project's trucks to take. Also travel along this path (although unlikely because of the distance) would only be applicable to any I-10 eastbound traffic. Westbound traffic would utilize Highland Springs given the ultimate destination and proximity to this interchange. The off-site traffic noise impact analysis was developed based on and consistent with the Project's Traffic Assessment with trucks using the most direct access to the I-10 Freeway via Highland Springs Ave. If you have any questions, please contact me directly at (949) 660-1994.

Respectfully submitted,

URBAN CROSSROADS, INC.



Bill Lawson, P.E., INCE  
Principal

