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November 4, 2019

Ms. Damaris Abraham,  
Senior Planner  
City of Lake Elsinore  
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Lake Elsinore, CA 92530  
Email: [dabraham@lake-elsinore.org](mailto:dabraham@lake-elsinore.org)

Re: Kassab Travel Center  
Recirculated Draft Mitigated Negative Declaration (MND) (the “Project”)

Dear Ms. Abraham,

Thank-you for the opportunity to provide questions and comments regarding the Kassab Travel Center Recirculated MND.

Better Neighborhoods Inc. is an organization established to help people have a voice in local development decisions as prominent as that of planners and developers. Our aim is to encourage smart growth consistent with the needs of the community while protecting the natural environment and places of historic and aesthetic significance, supporting California’s need for affordable housing and balancing the desire for growth with the need for features that make cities livable.

There are still a number of problems with this proposal. The Project’s restaurant drive-through window would require the Applicant to obtain a Municipal Code Amendment No. 2017-02, Conditional Use Permit No. 2018-03, and Commercial Design Review No. 2016-17) but the City has been less than candid about the hurdles involved in obtaining them. As Appendix M reveals, there is still considerable confusion among stakeholders regarding the nature of the changes sought and the requirements to obtain each.

As we discovered, neither the General Plan nor its appendices make any reference to the zoning designation, Commercial-Manufacturing (C-M), applied to the Project site. The only reference to this designation is in the Municipal Code, which specifically excludes drive-in and drive-through

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uses. The Recirculated MND omits this information. Nor does it explain the City's rationale for having excluded such uses in the first place. To what purpose, one wonders?

There are several key facts missing and issues unresolved. For example, we don't yet know the Project's hours of operation so any noise and traffic studies as well as mitigation measures are based on incomplete information. We know that drive-through uses are excluded without a conditional use permit but we don't know why or the standard of review for obtaining such a permit in circumstances like this in which the proposed use clashes with existing uses in surrounding areas with potentially dangerous effect.

We know that the Project site was once a water reservoir but somehow (how?) there are no records of its decommissioning so we don't know why it was decommissioned or whether it was decommissioned according to a set of procedures to ensure there are no lingering dangers affecting subsequent use. Why hasn't the local water board been consulted?

What is the 'unknown square structure from at least 1978 to at least 1985' identified in the Recirculated MND at page 53? This should be a simple question for the City.

What happened to the soil during the site's use as a water reservoir? Appendix G, the Phase I Environmental Site Assessment, doesn't tell us very much. By its own admission:

The purpose of the Phase I ESA was to **identify certain obvious environmental concerns** (emphasis added) arising from activities on the Subject Property or nearby properties. Activities of concern are those that may have contaminated, or have the potential to contaminate, the Subject Property's soil or ground water. The purpose of this assessment was not to determine the actual presence, degree, or extent of contamination, if any, on the Subject Property. Such a determination would require additional exploratory work. (Introduction, p. 1-1).

The report goes on to raise a red flag regarding potential contamination by nearby EZ Products, a manufacturer of small hardware parts, but for reasons known only to GeoRox Engineering and the Applicant, further soil investigation was not recommended. Why not?

The absence of soil investigation unacceptably leaves open questions regarding the effect/s of the site's previous use as a water reservoir and whether and how further exploration might affect geotechnical findings regarding, for example, lateral spreading, liquefaction and the risk posed by severe seismic shaking during an earthquake.

What about potential soil contamination by EZ Products and possibly from pesticides from previous agricultural uses nearby?

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If soil at the Project site is, in fact, contaminated, what would be the potential environmental impact of disturbing it during construction? What would be the effect of contaminated soil on food preparation on a large scale?

The purpose of the California Environmental Quality Act (CEQA) is to provide decision makers and the public full and frank disclosure of potential environmental impacts associated with a particular project. Here, even the Recirculated MND has literally just scratched the surface. Further investigation clearly is needed to resolve outstanding issues and questions before this Project and the Recirculated MND could be properly approved.

### **Project Description:**

The proposed Kassab Travel Center, 26 feet high, would consist of an 8,360 square foot (SF)-convenience store with concurrent sales of alcoholic beverages, three quick-serve restaurants, two covered gas dispensaries with 18 pumps, a 2,543-SF fast food restaurant with drive-through window, multiple parking areas with 78 parking spaces, hardscape, landscape, on-site stormwater management improvements, various signs, a trash enclosure, lighting and bicycle parking.

### **Multiple Zoning Issues**

According to the Recirculated MND, the Project site is zoned Commercial Manufacturing (C-M) with allowable uses that include service stations. Eating places/fast food establishments (excluding drive-in and drive-through establishments) are permitted but only subject to a Conditional Use Permit.

Whence does this zoning information derive, we wondered. There is only a one-line reference to C-M in General Plan 2011 Appendix B but no description of allowed uses. Nor does General Plan EIR 2011 section 3.1 Land Use and Planning include the C-M designation. The closest it comes to describing Commercial Manufacturing is at page 3.1-8 of the EIR, which provides:

#### **Mixed-Use**

This designation is intended to provide for a creative mix of commercial and residential uses to encourage a healthy urban environment in the more urban and redevelopment areas. The Residential Mixed-Use designation emphasizes a majority of intense residential uses while the Commercial Mixed-Use designation emphasizes a majority of commercial uses.

As described, a Mixed-Use designation provides only for the vague possibility of Commercial-Manufacturing - nothing more. So, what is the authority for the Recirculated MND statement of C-M allowed uses? It's the Municipal Code, which states as follows:

17.132.010 Purpose.

The intent of the C-M district is to provide opportunities consistent with the General Plan for uses which combine commercial and industrial characteristics and for certain commercial uses which require large display or storage areas. Properties assigned this designation shall be located on streets that are categorized as secondary, major, or arterial highways in order to accommodate the intensity of use and increased truck traffic associated with the C-M district and, also, to ensure a high degree of visibility to benefit the commercial aspects of the businesses. In a like manner C-M projects should demonstrate a higher quality of appearance befitting their more commercial nature than would a typical industrial project. [Ord. 772 § 17.54.010, 1986. Code 1987 § 17.54.010].

17.132.020 Permitted uses.

Uses permitted in the C-M district shall include those businesses listed below which operate in compliance with the intent and standards of this district and are **conducted entirely within a completely enclosed building**. (emphasis added) Each business shall be evaluated in terms of its operational characteristics and specific site location. ...

D. Eating places and fast food establishments; **excluding drive-in and drive-through establishments**. (emphasis added).

The Recirculated MND claims that drive-through uses would be permitted at the Project site by virtue of its Commercial-Manufacturing C-M zoning subject to approval for a Condition Use Permit precondition. Unfortunately, the report doesn't explain why the city currently prohibits drive-through uses or what the standard of review would be for a conditional use permit in this case, which would necessarily involve conflicting standards and approaches to the Project's potential noise impact.

## Noise

The Project may generate noise levels at the site that exceed City limits for nearby sensitive receptors. Noise sources would include rooftop mechanical equipment, air/water machine, gas fueling activities, parking lot, garbage and delivery truck activities and the drive-through window speaker. (Recirculated MND, p. 117).

Furthermore, worst-case scenario combined noise levels of 74 dBA at the northwest property line and 64 dBA at the southwest property line would exceed the City's commercial daytime noise standard of 65 dBA on the northwest property line and the nighttime noise standard of 60 dBA at both the northwest and southwest property lines. This would be considered a significant impact. (Ibid., p. 118). Such conclusions suggest *prima facie* that the Project would exceed City noise limits thus the Project should be rejected on that basis alone.

The next question is, would the proposed eight-foot-high masonry wall on the northwest and southwest property lines of the Project Site under MM NOI-2 fully mitigate the noise problem but

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create an even bigger eyesore than the 26-foot-high, fast-food and quick-serve restaurants and convenience store “big box” contemplated by the Applicant?

Neither the General Plan nor CEQA defines what constitutes a “substantial permanent increase to ambient noise levels.” (Ibid. p. 121).

### **Noise: CEQA versus Conditional Use Permit Standard of Review**

In *Jensen v. City of Santa Rosa*, 23 Cal. App. 5th 877, 233 Cal. Rptr. 3d 278, 2018 Cal. App. LEXIS 480 (Cal. App. 1st Dist. May 1, 2018):

The California Environmental Quality Act, Pub. Resources Code, § 21000 et seq., defines a significant effect on the environment as a **substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including impacts on ambient noise.** (emphasis added) Cal. Code Regs., tit. 14, § 15382; Pub. Resources Code, §§ 21060.5, 21151, subd. (b).

According to this reasoning, the proposed Project would create a substantial adverse noise impact.

In *Mission Bay Alliance v. Office of Community Investment & Infrastructure*, 6 Cal. App. 5th 160, 211 Cal. Rptr. 3d 327, 2016 Cal. App. LEXIS 1035 (Cal. App. 1st Dist. November 29, 2016), the legal test is described as follows:

In contrast, the permit decision is discretionary and requires a determination of **whether the project lacks adequate safeguards to prevent emissions of noise that would substantially interfere with the public health, safety and welfare or the peaceful enjoyment of neighboring property.** (emphasis added) Although overlapping, the focus of each is different.

Here, the test seems to be based on a presumption that adequate safeguards would be available and sufficient to properly mitigate against noise. It’s not clear such a presumption is valid in this case.

The Recirculated MND fails to explain why drive-through uses are excluded or the applicable standard of review for a conditional use permit. Nor is there any reference to a similarly-sized travel center or a drive-through window to compare the potential noise such uses typically generate. Why not?

### **Municipal Code Noise Provisions**

The Municipal Code offers some guidance regarding noise.

17.176.010 Purpose.

In order to control unnecessary, excessive and annoying noise and vibration in the City, it is hereby declared to be the policy of the City to prohibit such noise and vibration generated from or by all sources as specified in this chapter. It shall be the policy of the City to maintain quiet in those areas which exhibit low noise levels and to implement programs aimed at reducing noise in those areas within the City where noise levels are above acceptable values.

It is determined that certain noise levels and vibrations are detrimental to the public health, welfare and safety, and are contrary to public interest. Therefore, the City Council does ordain and declare that creating, maintaining, causing or allowing to be created, caused or maintained, any noise or vibration in a manner prohibited by or not in conformity with the provisions of this chapter, is a public nuisance and shall be punishable as such. [Ord. 772 § 17.78.010, 1986. Code 1987 § 17.78.010].

“Ambient noise level” means the composite of noise from all sources near and far. In this context, the ambient noise level constitutes the normal of existing level of environmental noise at a given location.

“Commercial area” means property which is zoned for commercial purposes, including, but not limited to, retail and wholesale businesses, personal services, and professional offices.

“Intrusive noise” means that noise which intrudes over and above the existing ambient noise at a given location. The relative intrusiveness of a sound depends upon its amplitude, duration, frequency and time of occurrence, and tonal or informational content as well as the prevailing ambient noise level.

**The Municipal Code requires the Noise Control Officer to review a Project for compliance with this chapter**

**17.176.030 Authority and duties of the Noise Control Office(r) (NCO).**

B. Powers. In order to implement and enforce this chapter and for the general purpose of noise abatement and control, the NCO shall have, in addition to any other authority vested in it, the power to:

1. Conduct, or cause to be conducted, studies, research, and monitoring related to noise, including joint cooperative investigation with public or private agencies, and the application for, and acceptance of, grants.

2. On all public and private projects which are likely to cause noise in violation of this chapter and which are subject to mandatory review or approval by other departments.

- a. **Review for compliance with the intent and provisions of this chapter.** (emphasis added)
- b. Require sound analyses which identify existing and projected noise sources and associated noise levels.
- c. Require usage of adequate measures to avoid violation of any provision of this chapter.

The factors which shall be considered in determining whether a violation of the provisions of this section exists shall include, but not be limited to, the following:

- A. The sound level of the objectionable noise.
- B. The sound level of the ambient noise.
- C. The proximity of the noise to residential sleeping facilities.
- D. The nature and zoning of the area within which the noise emanates.
- E. The number of persons affected by the noise source.
- F. The time of day or night the noise occurs.
- G. The duration of the noise and its tonal, informational or musical content.
- H. Whether the noise is continuous, recurrent, or intermittent.
- I. Whether the noise is produced by a commercial or noncommercial activity. [Ord. 772 § 17.78.040, 1986. Code 1987 § 17.78.040].

#### **Exterior noise limits**

Limited Commercial and Office	10:00 p.m. – 7:00 a.m.	55
	7:00 a.m. – 10:00 p.m.	60
General Commercial	10:00 p.m. – 7:00 a.m.	60
	7:00 a.m. – 10:00 p.m.	65

#### **17.176.080 Prohibited acts.**

No person shall unnecessarily make, continue, or cause to be made or continued, any noise disturbance. The following acts, and the causing or permitting thereof, are declared to be in violation of this chapter:

- A. Operating, playing or permitting the operation or playing of any radio, television set, phonograph, drum, musical instrument, or similar device which produces or reproduces sound:

1. Between the hours of 10:00 p.m. and 7:00 a.m. in such a manner as to create a noise disturbance across a residential or commercial real property line or at any time to violate the provisions of LEMC 17.176.060(A), **except for which a variance has been issued by the City.** (emphasis added)
2. In such a manner as to exceed the levels set forth for public space in Table 1, measured at a distance of at least 50 feet (15 meters) from such device operating on a public right-of-way or public space.

Why doesn't the Recirculated MND apply the City's own test for noise as described in the Municipal Code to each of the Project's potential noise sources and the combined result to determine compliance?

What is the test to obtain a variance by the City for a use such as the proposed Project that would exceed current noise restrictions?

### **Construction Noise**

Proposed mitigation measure MM NOI-3 would address excessive construction noise by restricting the operation of the following equipment within the listed distances from the shared property lines with the adjacent commercial uses during construction: • Large Bulldozer - 50 feet from shared property line; • Loaded Truck (on dirt road) – 43 feet from shared property line; • Jackhammer – 23 feet from shared property line; and • Small Bulldozer – 2.5 feet from shared property line. With implementation of MM NOI-3, the construction-related vibration level would be reduced to within threshold of perception as required by Section 17.176.080(G) of the City's Municipal Code.

While this measure may be sufficient to mitigate during a long, weary year of construction, construction noise is but one aspect of the potential noise impact created by the Project. There would also be noise from increased traffic and noise from Project operations. We still don't know the proposed hours of operation.

### **Project Location**

The proposed Project is unlike any of the other uses nearby. The Project site consists of two vacant parcels surrounded by vacant property to the southwest, west and south; and commercial/industrial uses to the north and east - self-storage to the northeast across Collier Avenue, recreational vehicle sales and auto parts sales to the northwest, and concrete manufacturing, auto care and recycling facilities diagonally across the intersection of Riverside Drive and Collier Avenue to the east. Wouldn't such uses conflict with basic health and hygiene requirements for food service? The Recirculated MND doesn't even discuss the possibility.



## **Light and Glare**

Yes, the Project would introduce an imposing new source of light at the undeveloped site regardless of compliance with Municipal Code (LEMC) Section 17.112.040. Mere compliance with the law does not fully and properly explain the impact of this new source of light and glare as CEQA requires.

The Project would also introduce new sources of daytime glare caused building surfaces and traffic to and from the site. The Project represents an unplanned use. There is insufficient information to conclude that light and glare at the Project would be consistent with that of surrounding uses or that no mitigation would be required.

## **Solid Waste/Recycling**

Measure S-1.1 from the Climate Action Plan would require Applicant to contract with a waste provider that provides recycling services that diverts a minimum of 65 percent of the solid waste generated by the Proposed Project. How much waste would three quick serve and one fast food restaurant generate? What of the risk of used cooking oil contaminating the wastewater? Could this be one of the reasons why the proposed uses would require not only a change to the Municipal Code but a Conditional Use Permit and a Commercial Design Review?

## **Air Quality**

According to the Recirculated MND, the Project would generate air pollutant emissions that are inconsequential on a regional basis and would not result in significant impacts based on SCAQMD thresholds of significance. We find Appendix A to be unpersuasive. How would the addition of an 18-pump gas station with multiple fast food outlets, including a drive-through window, **not** impact local air quality? Is there an example of a travel center of similar size and feature that so easily meets air quality restrictions?

## **Biological Resources**

### **Vernal pools**

No basins, ponds, or obvious depressional features were observed during the survey. However, a small area exhibiting surface soil cracks was present in the southwest portion of the survey area. Surface soil cracks, where clay sediment is deposited by infiltration and evaporation of water, are an indicator of hydrology and possible ponding. If the area holds surface water, it may provide habitat for vernal pool branchiopods (i.e., fairy shrimp). One fairy shrimp, Riverside fairy shrimp (*Streptocephalus woottonii*), was reported from the literature review in the vicinity of the Proposed Project (CDFW 2017a). Given that the

survey was conducted during the dry season, it was not possible to directly determine whether this area holds water for any length of time. (Recirculated MND, p. 78).

Wouldn't it be prudent to study pooling water at the site more carefully, especially considering the site's previous use as a water reservoir? What else might soil investigation reveal?

### **Energy**

What criteria are used to determine whether a proposed development would result in a potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation? Are there any examples of proposals that have failed this test?

### **Geology and Soils**

**STRONG GROUND MOTION POTENTIAL** The project site is located in a seismically active area typical of Southern California and **likely to be subjected to a strong ground shaking due to earthquakes on nearby faults**. (emphasis added) (Appendix E, Geotechnical Investigation, p. 4).

Although the probability of primary surface rupture is considered low, ground shaking hazards caused by earthquakes along regional active faults do exist, these would be accounted for in the design and construction of the proposed structures, according to the Recirculated MND. What typically happens to a gas station during seismic shaking? Are there any examples?

### **LIQUEFACTION POTENTIAL**

For liquefaction to occur, all of three key ingredients are required: liquefaction-susceptible soils, groundwater within a depth of 50 feet or less, and strong earthquake shaking. Soils susceptible to liquefaction are generally saturated loose to medium dense sands and non-plastic silt deposits below the water table. Groundwater was encountered within our borings B-1 through B-5 at 15 feet. Historic high groundwater at the site is as deep as 50 feet. Soil materials encountered within our borings are clayey soil. It is our opinion that potential for liquefaction at the site is low. (Appendix E, Geotechnical Investigation, p. 5).

What is the effect of site's previous use as a water reservoir? Wouldn't it be prudent to investigate?

### **GHG**

Somehow an 18-pump gas station and fast food complex would not generate an unacceptable increase in GHG emissions.

The GHG emissions from the Proposed Project were analyzed for year 2020 conditions. Table 7- Proposed Project Greenhouse Gas Annual Emissions shows that for the year 2020, the Proposed Project would create 2,219.09 MTCO<sub>2</sub>e per year, which is within the SCAQMD's draft threshold of significance for all land use types of 3,000 MTCO<sub>2</sub>e per year. It should be noted that the Year 2020 emissions are based on approved statewide GHG reduction measures and the required GHG reduction measures provided in the City's Climate Action Plan. Therefore, potential impacts associated with greenhouse gas emissions would be less than significant. (Recirculated MND, p. 98).

Has the City ever used the formula applied here to find that a development proposal exceeded GHG limits? Such a formula reads more like a no-fail insurance policy than a credible inquiry into potential environmental impacts.

### **Hazards and Hazardous Materials Appendix G**

"The Subject Property did not appear on current regulatory database lists that were reviewed during this assessment." (Appendix G, Executive Summary)

Is the City satisfied with the inquiry documented in Appendix G, which describes EZ Products as an environmental issue?

EZ Products, 17999 Collier Avenue, is located approximately 200 to the northwest of the Subject Property and is presumed to be higher elevation (hydrologically up/cross gradient). EZ Products is an active manufacturer of bolt, nut, screw, rivet, and washers. According to the regulatory database, this facility is listed as a RCRA-SQG, FINDS and ECHO site. Online research from the California DTSC Hazardous Waste Tracking System revealed evidence of tetrachloroethylene (PERC) on site for the years 1999 (1.48 tons), 2000 (0.34 tons), and 2001 (2.13 tons). According to the EPA ECHO website and the regulatory database, this facility specified a three-year period of no violations. Based on the inferred direction groundwater flow, the amount (over two tons) of PERC onsite for three years, and close proximity to the Subject Property, this facility represents an environmental issue. Based on the amount of PERC onsite (3.95 tons), inferred direction of groundwater flow, and relative distance from the Subject Property, this facility represents an environmental issue. Based on the lack of documented release, this site is not expected to represent an environmental concern to the Subject Property, at this time. (Appendix G, Executive Summary).

What changes did EZ Products make to remove the threat of hazardous releases? Why did GeoRox Engineering decline soil testing? How would EZ toxins affect possible pesticide residue from previous agricultural uses nearby? How would soil contamination impact food preparation at the Project site? What would be the effect of disturbing contaminated soil during construction? These are serious questions the Recirculated MND fails to resolve.

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Why was the subject property owner not available for interview? The owner might have valuable insights regarding previous uses. Ron Graves, a real estate broker from San Diego, completed the questionnaire on the owner's behalf. Unfortunately, his repeated underlining of "prior" in the phrase, "prior knowledge" suggests uncertainty about what's actually being asked. Is the owner aware of unreported contaminants? Has the City asked? If not, why not?

"The proposed facility would be subject to Program requirements for regulated substances including preparation of a risk management plan (RMP) to include an off-site consequence analysis, compliance audit, certified program elements, and a seismic assessment." (Recirculated MND, p. 102).

Shouldn't the public and decision makers have the opportunity to review something as important as the risk management plan before any decision about the Project is made? In the absence of this information, there is no support for the assertion that the potential impacts regarding hazardous materials would be less than significant.

### **Land Use and Planning**

The lack of inquiry regarding a previous use of the Project site as a water reservoir and the absence of references to the Commercial Manufacturing (C-M) zoning designation in any planning documents, such as the General Plan, is troubling, to say the least. The proposed use is contemplated nowhere but in the Municipal Code. Not surprisingly, the Project would be a poor fit with surrounding uses, which may also pose a serious health and safety hazard to food preparation especially at the scale contemplated.

"Drive-through establishments are not currently listed as a permitted or conditionally permitted use in the C-M zone. The City is currently in the process of updating certain sections of the Municipal Code and has identified the addition of drive-through establishments as being an appropriate use subject to the approval of a Conditional Use Permit in the C-M Zone." (Recirculated MND, p. 111).

This is a revelation that appears late in the report and more as a convenient afterthought. How do we know the City is contemplating such a change? Coincidence? Has a proposed change appeared on planning committee agendas and, if so, when?

Drive-through restaurants and windows are nothing new to the American urban landscape. Why is such a change suddenly contemplated now? Why did the City reject them previously?

Why is the C-M zoning designation not referenced in any official planning documents - just the Municipal Code?

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### **Mandatory Findings of Significance**

Yes, the Project does have the potential to degrade the quality of the environment by impeding a scenic view with an ugly, noisy, big box-style building that would be a new source of light and glare, that would likely attract traffic noise and emissions beyond acceptable limits, especially those from heavy transport trucks, and that would not blend well with existing uses or structures.

The soil may be contaminated with toxins from surrounding and previous uses, which may pose a significant public health risk if disturbed.

Surrounding uses and potential soil toxins may also pose a health risk to intended use for food preparation.

Failure to fully and properly consider the issue of the site's previous use as a water reservoir and the impact such use may have had on soil stability makes geotechnical conclusions questionable at best. It makes no sense to leave such a question unanswered when the Project site is in an area subject to severe seismic shaking.

The fact that the site's zoning designation as Commercial-Manufacturing (C-M) appears in no official planning documents but exclusively in the Municipal Code is evidence that the proposed use has not been properly considered or contemplated.

There are no criteria to explain how the City assesses whether the proposed use would be a reasonable expense of energy.

Much more information is needed to bring the Recirculated MND to a report worthy of adoption.

Sincerely,

A handwritten signature in black ink that reads "J. Michael Goolsby". The signature is written in a cursive, flowing style.

J. Michael Goolsby  
President and CEO  
Better Neighborhoods, Inc.