Appeal of PA20-043 San Mateo City Council January 19, 2021

Appellant: Laurianna Ceja Diaz Counsel for Appellant: Jonathan Kathrein, Esq.; A. Jeanne Grove, Esq.; Morgan Cahill-Marsland, Esq. Kaufman, Dolowich & Voluck LLP Jkathrien@KDVlaw.com

PROTECT THE COMMUNITY

1) Grant the Appeal & Conduct a full EIR

2) Enforce violation of existing COAs (PA18-013) Noise, Dust, and Vibrations

3) Add new COAs

City must conduct full environmental review

- The time is now. The City must make a new determination when it approves a change or further approval of a project. (Guidelines § 15064(f)(7).)
- The threshold is low. The City must prepare an EIR for any project which *may* have a significant effect on the environment. (PRC § 15162.)
- If it is a tie, the City must do an EIR. The City must prepare an EIR if there is a "fair argument" that a project may have significant environmental effects, even if there is evidence otherwise. (*Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 884.; PRC 21151.)
- Conclusion: The City must conduct an EIR.

Existing IS/MND is not enough

- **Relying on past IS/MND requires substantial evidence.** Any documentation prepared to show that further environmental review is not required must be based on substantial evidence in the record. (CEQA Guidelines § 15162.)
- City does not support decision with substantial evidence. Substantial evidence is evidence of ponderable legal significance, reasonable in nature, credible, and of solid value, evidence that a reasonable mind might accept as adequate to support a conclusion. (*American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145 CA4th 1062, 1070.)
- Conclusion: Evidence demonstrates that additional environmental review *is* necessary.

Mandatory Finding of Significance

- Impacts are Significant. A change to the physical environment that might otherwise be minor must be treated as significant if people would be significantly affected. (Guidelines § 15065.)
- Conclusion: Additional environmental review *is* necessary because impacts are significant.

Enforce Existing COAs





These failures damage the property, health, and well-being of residents.

Impose COAs that protect the community. (1 of 2)

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- NOISE The noise barrier requirement is insufficient because Pulte operates the heavy equipment above the height of the barrier. The barrier should be 12 feet tall, not 8ft.
- HOURS Construction is allowed 7 days per week in a residential neighborhood. Residents are working from home and their kids are learning from him. The community needs a break. Pulte must be prohibited from working on evenings and weekends.
- **HEAVY EQUIPMENT** The COAs already prohibit certain heavy equipment. The COAs must impose clear consequences for Pulte's disregard.

Impose COAs that protect the community. (2 of 2)

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- VECTORS Pulte ignores the vectors they are chasing into the neighborhood. Pulte must fund a 3rd party on-call vector control company.
- DAMAGE FUND Much like the COAs make Pulte responsible for damage to streets, Pulte must be responsible for damage it causes to homes. Pulte must fund, in advance, an account that is administered by a 3rd party to repair homes.

Summary of Our Requests

(in descending order)

- 1. Grant the Appeal & Conduct full EIR
- 2. Enforce the COAs
 - COAs 21 (sound), 27 (vectors), and 82 (noise).
- 3. Add additional COAs
- 4. Continue to study these issues.