BEFORE THE ENVIRONMENTAL PROTECTION BOARD OF THE CITY OF JACKSONVILLE

IN RE: Application for Noise Variance of

**San Pablo Parkway**

# ORDER APPROVING APPLICATION FOR NOISE VARIANCE

This matter came to be heard upon the Application for Noise Variance filed by Matthew McAfee (“Agent”), on behalf of San Pablo 1 MF, LLC (“Applicant”), the owner of certain real property located at 3695 San Pablo Parkway, RE No. 1674520315, seeking a variance from 1) Jacksonville Environmental Protection Board (JEPB) Rule 4.209A. to allow the operation of construction and maintenance equipment during nighttime hours, 2) JEPB Rule 4.209C. to allow the operation of construction equipment during daytime hours in exceedance of sound levels established by rule, and 3) JEPB Rule 4.208 to allow operations with impulsive sounds that may exceed sound levels established by rule[[1]](#footnote-1).

Having duly considered both the testimonial and documentary evidence presented at the public hearing on May 16, 2022, including the Report of the Environmental Quality Division and the attachments thereto (“Staff Report”), a copy of which is attached as **Exhibit A**, the Environmental Protection Board of the City of Jacksonville hereby:

**FINDS AND DETERMINES**:

1. That the Applicant has complied with all application requirements set forth in Section 360.111 of the Jacksonville Ordinance Code.
2. That the need for the variance applied for arises out of a necessity to relieve or prevent a hardship and is based on sound technical, economic, or environmental data.
3. That the record contains sufficient substantial competent evidence to demonstrate that the Application meets, to the extent applicable and as modified by any conditions contained herein, the standards and criteria set forth in Section 360.111 of the Jacksonville Ordinance Code and that just cause exists to grant the variance.
4. That the findings and recommendations in the Staff Report for the Application, to the extent consistent with this **Order,** are hereby adopted and incorporated herein.
5. That the land to which this variance is granted is owned by **San Pablo 1 MF, LLC**.

**NOW THEREFORE**, it is **ORDERED** by the Environmental Protection Board:

The Application for Noise Varianceis hereby **APPROVED** and a variance is hereby **GRANTED** to San Pablo 1 MF, LLC, allowing for a variance to 1) JEPB Rule 4.209A. to operate construction and maintenance equipment during nighttime hours, 2) JEPB Rule 4.209C. to operate construction equipment during daytime hours in exceedance of sound levels established by rule, and 3) JEPB Rule 4.208 to allow operations with impulsive sounds that exceed sound levels established by rule, subject to the following restrictions and conditions:

1. This variance establishes a maximum noise level of 60 dBA for nighttime construction activities, and 70 dBA for daytime construction operations, as measured from any residential receptor, and 65 dBA for impulsive sound (daytime) as measured from any residential receptor.
2. All equipment shall be fitted with proper exhaust systems and silencers as required by Rule 4.209 D.
3. Nighttime construction activities will consist of only those related to concrete pours.
4. Construction equipment operated before 7 a.m., including concrete pump trucks, concrete mixer trucks, forklifts, loaders, etc., must have the traditional single frequency backup alarm either disabled (and use of a flagman, as allowed by OSHA), or replaced with an OSHA approved broadband (white noise) backup alarm.
5. A sound barrier will be used on all concrete pours starting before 7:00 a.m., placed between the concrete pump and residences to the east. The barrier will, at a minimum, be constructed of three 40-foot Conex boxes, placed as close together end-to-end as practical. In order to have the maximum effectiveness, the barrier shall be placed as close as practical to the sources (pump truck, hopper area).
6. Concrete mixer trucks must not air off (bag tires) on or near the construction site before 7 a.m.
7. Concrete mixer trucks used for concrete pours before 7 a.m. must be staged as far from residential properties as practical.
8. To minimize disturbance to residences and to the extent practical, the contractor must attempt to route concrete trucks used for concrete pours before 7 a.m. away from residences and shall instruct drivers (by voice or sign) to minimize acceleration while near the site.
9. The Environmental Quality Division is granted the ability to require additional noise mitigation measures if conditions warrant.
10. Communications to residents of sensitive receptors to include:
	1. Provide notification, by written or electronic means, to each residential property within 200 meters of the closest anticipated location that a concrete pump truck will be situated. The notification will be provided at least 48 hours in advance of each anticipated nighttime concrete pour.
	2. Signage announcing upcoming nighttime construction activity displayed on site in locations visible to area residents and businesses, advising the dates and times of potential nighttime pours.
	3. Contact information for a 24-hour noise complaint hotline
11. Petitioner shall provide a monthly status report regarding the construction project to the Air and Odor Committee via email to epb@coj.net. The status report shall include:
	1. Report should be for the previous month and received on or before the 10th day (e.g., June 10th for the month of May, July 10th for the month of June, etc.).
	2. Number of complaints and a plan for remediation or corrective action in response to complaints.
	3. Project progress, including any substantial changes.
12. This variance shall expire on August 31, 2022.

Executed on this 17th day of May 2022.

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 David Wood

 Chairman,

Environmental Protection Board

FORM APPROVED:



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Sharon M. Wyskiel

Assistant General Counsel

Copies to:

**Applicant/Owner:**

San Pablo 1 MF, LLC

177 4th Avenue North

Suite 200

Jacksonville Beach, FL 32250

**Agent:**

Matthew McAfee

San Pablo 1 MF, LLC

177 4th Avenue North

Suite 200

Jacksonville Beach, FL 32250

**EXHIBT A – Staff Report**

**Report of the Environmental Quality Division**

**for Application for**

**variance to jepb noise rules 4.208, 4.209A, & 4.209C at 3695 San Pablo parkway\_**

**May 16, 2021**

The Environmental Quality Division forwards to the Air Quality Committee and the Environmental Protection Board its comments and recommendation regarding Application for Variance to JEPB Noise Rules 4.208, 4.209A and 4.209C.

***Location:*** 3695 San Pablo Parkway

***Real Estate Number:*** 167452 0315

***Applicant/Owner:*** San Pablo 1 MF LLC

***Agent:*** Matthew McAffee

***Staff Recommendation:*** approve with conditions

**General Information**

*Rules from Which Variance is Sought*

Application for a variance to JEPB noise rules 4.208 (added by EQD staff), 4.209A, and 4.209C seeks to 1) allow operations with impulsive sounds that may exceed the sound levels stipulated in Rule 4.208 (55 dBA for Class A and B land use); 2) allow operations of construction equipment during nighttime hours, and 3) allow the operation of construction equipment during daytime hours that may exceed the sound level limits stipulated in Rule 4.209C (75 dBA for Class C, 65 dBA for Class A and B land use).

A variance is being requested for the period ending August 31,2022. During this period the applicant expects to perform approximately twenty nighttime concrete pours, five to begin as early as 1 a.m., with the remaining to begin about 5 a.m.

*Status of Applicant’s Compliance with Above Rules*

Site work had begun in January 2022 as shown on the Duval Civil Planning Map pictometry. EQD has not received noise complaints resulting from construction activities at this site to date.

*Other Relevant Information*

The activity for which a variance is being sought is the construction of multiple apartment buildings. The project area occupies about 23 acres. The closest concrete pump location for nighttime concrete pours is about 80 meters from the residential buildings to the east.

**Criteria for Review**

Pursuant to Ordinance Code 360.111, the Environmental Protection Board shall evaluate and consider the following criteria of an application for variance.

1. ***Are there facts which show that a variance should be granted because of one of the following reasons?***
2. ***There is no practicable means known or available for the adequate control of the pollution involved.***
3. ***Compliance with the particular requirement or requirements from which a variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time.***
4. ***It is necessary to relieve or prevent hardship of a kind other than those provided above.***

Construction projects with large concrete pours typically desire to start the pour at night or very early in the morning. The reasons generally provided by the contractors include:

* Some pours have been known to require over 100 loads of concrete. It has been stated that with daytime traffic and limited supply of trucks during the day, large pours are difficult to coordinate during the day in Jacksonville.
* Daytime heat and afternoon showers can negatively affect the curing of concrete on large pours.
* Early morning concrete pours are safer for the workers as opposed to working during the heat of the day during the summer.

There is currently no practicable alternative to early morning concrete pours that address contractors’ concerns.

For the reasons stated above, it appears that there is no practicable means for adequate control of the potential noise from the activity described in the variance application. However, there are a number of noise mitigation measures that can be implemented to minimize impact to sensitive receptors (see Recommendations).

***2. The period of time for which the variance is sought, including the reasons and facts in support thereof.***

The applicant is requesting a variance for through August 2022, which is reasonable for a project of this size and less than the time allowed under ordinance code 360.111(b)(2).

***3. The damage or harm resulting or which may result to the person requesting the variance from compliance with the rule.***

See the application.

***4. The requirements which the person requesting the variance can meet and the date when the person can comply with these requirements.***

See the application.

***5. The steps the person seeking the variance is taking to meet the requirements from which the variance is sought and when compliance will be achieved.***

The contractor will be required to meet the conditions of the variance which include required noise mitigation measures. See the Recommendation section of this report for EQD recommended variance conditions.

***6. Any beneficial or adverse impact to residents and the environment in the affected area resulting from the Board’s requiring compliance or granting a variance.***

Due to the proximity of the construction site to residential properties, it is unlikely that the project can be constructed in compliance with Rule 4 noise limits. Therefore, a noise variance would be required to continue the project. There is no impact to the environment by granting the variance but there will be some temporary impact to residents.

***7. Economic or social impacts of granting or denying the variance.***

See the application.

***8. Will granting the variance likely cause the health of the citizens to be in imminent danger?***

No.

**Supplemental Information**

Nighttime concrete pours were modeled using iNoise (version 2022.01) to predict the noise impact on residential properties near the construction site. Noise impact modeling from concrete pour #2 represents the closest that a concrete pump will be to the nearby residences to the east. The use of a sound barrier between the concrete pump and the residences to the east was evaluated. The noise impact on the residential buildings was predicted to be 59 dBA without the use of a barrier, 55 dBA using three Conex boxes placed end to end, and 52 dBA using 16-foot-high barrier 120 feet long made using sound absorbing material.

The following documents are attached to this report:

* Contractor’s noise site plan.
* Noise model results: Pour 1, no barriers.
* Noise model results: Pour 1, 3 Conex boxes as barriers.
* Noise model results: Pour 1, 16-foot-high sound absorbing barrier.

**Recommendation**

Based on the foregoing, it is the recommendation of the Environmental Quality Division that Application for Variance to JEPB Rules 4.208, 4.209A, and 4.209C be APPROVED with the following CONDITIONS.

1. The variance application and presentation, and the commitments therein, shall be adopted and incorporated as part of the conditions of this variance.
2. The variance establishes a maximum noise level of 60 dBA for nighttime construction operations and 70 dBA for daytime construction operations, as measured from any residential receptor, and 65 dBA for impulsive sound (daytime), as measured from any residential receptor.
3. All equipment will be fitted with proper exhaust systems and silencers as required by Rule 4.209D.
4. Nighttime construction activities will consist of only those related to concrete pours.
5. Construction equipment operated before 07:00, including concrete pump trucks, concrete mixer trucks, forklifts, and loaders, etc., must have the traditional single frequency backup alarm either disabled (and use of a flagman, as allowed by OSHA), or replaced with a broadband (white noise) backup alarm.
6. A sound barrier will be used on all concrete pours starting before 07:00, placed between the concrete pump and residences to the east. The barrier will, at a minimum, be constructed of three 40-foot Conex boxes, placed as close together end to end as practical. Preferably, a barrier constructed by hanging sound absorbing panels, 16-feet high, at least 120 feet long, is recommended. In order to have the maximum effectiveness, the barrier shall be placed as close as practical to the sources (pump truck, hopper area).
7. Concrete mixer trucks must not air off (bag tires) on or near the construction site before 07:00.
8. Concrete mixer trucks used for concrete pours before 07:00 must be staged as far from residential properties as practical.
9. The contractor will attempt to route concrete trucks used for concrete pours before 07:00 in order to minimize disturbance of residences to the extent practical and shall instruct the drivers (by voice or sign) to minimize acceleration while near the site.
10. The Environmental Quality Division is granted the ability to require additional noise mitigation if conditions warrant.
11. Communications to residents of sensitive receptors to include:
	1. Provide notification, by written or electronic means, to each residential property within 200 meters of the closest anticipated location to residences that a concrete pump truck will be situated. The notification will be provided at least 48 hours in advance of each anticipated nighttime concrete pour.
	2. Signage announcing upcoming nighttime construction activity will be displayed on site in locations visible to area residents and businesses, advising the dates and times of potential nighttime pours.
	3. Contact information for 24-hour hotline.
12. Petitioner shall provide a monthly status report of the construction project to the Air & Odor Committee via email to epb@coj.net.  The report shall include:
	1. Report should be for the previous month and received on or before the 10th day (e.g., June 10th for the month of May, July 10th for the month of June, etc.).
	2. Number of complaints and any plan for remediation or corrective action in response to complaints.
	3. Project progress, including substantial changes.
13. This variance shall expire on August 31, 2022**.**
1. Environmental Quality Division staff determined during its technical review of the Petition that a variance from JEPB Rule 4.208 is necessary to conduct daytime operations. [↑](#footnote-ref-1)