



Tel: 310.420.1100  
F: 310.420.1101

1500 Spring Street, Suite 1500  
Los Angeles, CA 90012

[www.lozeau-drury.com](http://www.lozeau-drury.com)  
Marjorie A. Drury, Esq.

*Via Email*

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Planning and Land Use Management Committee  
Councilmember Marqueece Harris-Dawson, Chair  
Councilmember Monica Rodriguez  
Councilmember Katy Yaroslavsky  
Councilmember John S. Lee  
Councilmember Heather Hutt  
John Ferraro Council Chamber  
200 N. Spring Street, Room 340  
Los Angeles, CA 90012  
c/o Candy Rosales, Legislative Assistant  
clerk.plumcommittee@lacity.org

Michelle Carter, City Planner  
Department of City Planning  
City of Los Angeles  
200 North Spring St., Room 763  
Los Angeles, CA 90012  
michelle.carter@lacity.org  
c/o Oliver Netburn, City Planner  
Oliver.netburn@lacity.org

**Re: Appeal on Proposed CEQA Infill Exemption for Mixed-Use Project at 3800 North Pasadena Avenue February 20, 2024 PLUM Hearing**

Dear Chair Harris-Dawson and Members of the PLUM Committee:

I am writing on behalf of **Supporters Alliance for Environmental Responsibility (“SAFER”)** regarding the proposed Class 32 In-fill Development Categorical Exemption (“Exemption” or “Class 32 Exemption”) for a seven-story mixed use building with 100 dwelling units and 14,734 square feet of ground floor commercial space with 13 commercial condominium units, proposed in the City of Los Angeles (“Project”).

SAFER objects to the City of Los Angeles’ (“City”) decision to exempt the Project from review under the California Environmental Quality Act (“CEQA”) pursuant to Section 15332 of the CEQA Guidelines. SAFER previously submitted comments on the Project on January 2024, in which SAFER argued that the Project did not qualify for the Exemption because the Project proposed mitigation to render traffic impacts less than significant, and CEQA prohibits mitigated exemptions. SAFER incorporates those comments herein by reference.

As demonstrated below, the Exemption is further inapplicable because the Project will have significant air quality impacts, precluding use of the Class 32 Exemption. Since the Project is not exempt from CEQA, an initial study must be prepared to determine the appropriate level of CEQA review required.

## PROJECT DESCRIPTION

The Applicant, Naim Associates, seeks to develop the Project at 3800-3830 N. Pasadena Avenue. The Project includes the construction, use, and maintenance of a seven-story mixed-use building with 100 dwelling units, including 10 dwelling units set aside for Extremely Low Income Households and 14,734 square feet of ground floor commercial space with 13 commercial condominium units. The Project will provide 114 automobile parking spaces, 16 short-term and 210 long-term bicycle parking spaces. The property is within the Northeast Los Angeles Community Plan with a Community Commercial land use designation. The Project site currently has one duplex and a recycling center, which would be demolished in order to construct the Project.

The Project is claiming the following Tier 3 Base and Additional Incentives pursuant to the Transit Oriented Communities Affordable Housing Incentive Program: (1) a 70 percent density increase; (2) a Floor Area Ratio increase; (3) a reduction in required parking spaces; and (4) a height increase.

## DISCUSSION

### **I. The City Incorrectly Applied CEQA's Class 32 In-Fill Development Categorical Exemption to the Project and Thus a Full CEQA Analysis Is Required.**

The proposed Project does not qualify for a Class 32 In-fill Development Categorical Exemption under CEQA because of the Project's significant environmental impacts. The City must prepare an Initial Study to determine the appropriate level of CEQA review, be it a mitigated negative declaration or an environmental impact report. The Class 32 exemption provides:

Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section.

- (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- (c) The project site has no value, as habitat for endangered, rare or threatened species.
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.**
- (e) The site can be adequately served by all required utilities and public services.

(14 CCR § 15332 [emph. added].)

One of the key limitations of the Categorical Exemption is that it does not apply if the project will have any significant effects relating to noise. (14 CCR § 15332(d).) In short, the Categorical Exemption cannot apply because there is substantial evidence submitted to the record that the Project will have potentially significant noise impacts, the Project will use a mitigation measure to reduce Project impacts below significance, and the Applicant's Noise and Vibration Technical Report ("Noise Report") prepared by Douglas Kim + Associates ("DKA") cannot constitute substantial evidence.

Mr. Jack Meighan of the expert acoustical consulting firm Wilson Ihrig reviewed the Project, including the applicable Noise Report, and concluded that the Project's analysis of noise impacts reviewed incorrectly, and the Project's use of mitigation measures renders them ineligible for the Categorical Exemption. Wilson Ihrig is a long-established and esteemed consulting firm in the field of acoustics. Wilson Ihrig's comments are attached as Exhibit A.

## **II. The Noise Report Likely Does Not Constitute Substantial Evidence.**

Despite acknowledging the presence of numerous sensitive receptors surrounding the Project site, the noise levels measured by DKA do not constitute substantial evidence. Substantial evidence does not include "[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate. . . ." (Pub. Resources Code, § 21080(e)(2); Guidelines, § 15384(a).) Wilson Ihrig first identified the Noise Report's reliance on and clear misinterpretation of LAMC Section 112.05, of which the Noise Report uses as a foundation to analyze the Project's impacts. (Ex. A, p. 3.) To be deemed substantial evidence, it must, at a bare minimum, be accurate. Portions of the Noise Report are unsupported and merely speculate that Project impacts will fall below significance thresholds because LAMC Section 112.05 "would ultimately limit any noise levels from powered construction equipment to 75 dBA." (Noise Report, p. 10.)

Additionally, DKA characterized numerous sensitive noise receptors surrounding the Project site, including residential developments immediately adjacent to the Project site. (Noise Report, pp. 9-10.) However, the noise levels for the Noise Report taken "near the Project site" do not accurately capture the extent of the Project's anticipated noise levels since they only measure noises from across the street and a block away. As shown by the red dots in the Noise Report, the noise monitoring locations are not measured from 50 feet, pursuant to LAMC Section 112.05 and as reported by the Applicant. In fact, as DKA admits, the closest noise monitoring location is **over 100 feet from the Project site.**<sup>1</sup> (Noise Report, p. 9.) The other monitoring location was 170 feet from Figueroa Street, significantly further away from the Project. (*Id.*) The Noise Report indicates that it had taken measurements from receivers along Avenues 38 and 39, but such measurements were in relation to analyzing vibration impacts and reasonably limited to impacts from the use of a "small dozer." (Construction Vibration Impact Analysis, p. 1).

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<sup>1</sup> A Google map review reveals that the nearest noise monitoring location is approximately 135 feet from the beginning of the Project site: <https://www.google.com/maps/@34.0906832,-118.2115462,135m/data=!3m1!1e3?entry=ttu>.

It is therefore reasonable to conclude that the noise levels captured on April 29, 2018, the only time that measurements were captured, are clearly erroneous and not accurate. Thus, the DKA's analysis cannot constitute substantial evidence, and the City incorrectly relied on these findings to conclude that the Project will not have any potentially significant noise impacts.



(Source: Google Maps)

In addition, Wilson Ihrig highlighted numerous portions of the Noise Report that are unsupported by substantial evidence. The Noise Report relies on numerous assumptions to conclude that the Project's noise impacts remain below significance thresholds. However, Wilson Ihrig notes that because the Noise Report assumed that haul trucks would not substantially raise noise levels or that it relies on uncited or unsupported noise and vibration levels, DKA's analysis underestimates the noise and vibration impacts. (Ex. A, pp. 3-5.) As such, the Noise Report cannot constitute substantial evidence, and the Categorical Exemption cannot be relied upon to make any conclusions regarding the Project's purported significant impacts.

### **III. The Exemption Cannot Apply Because of Potentially Significant Noise Impacts.**

A Categorical Exemption cannot apply for projects if there is a potentially significant noise impact. (14 CCR § 15332(d).) The City relies on DKA's analysis to conclude that the Project's measured impacts would be less than significant. However, the Noise Report contains significant flaws that do not make the document and resulting Categorical Exemption reliable. Wilson Ihrig's review additionally shows that the Noise Report was not only erroneously



prepared, but contained critical omissions that require further reviews, such that updated analyses will likely demonstrate a significant impact. In spite of the omission of critical information, Wilson Ihrig predicts that the Project will have potentially significant impacts.



(Noise Report, p. 16.)

The Noise Report concluded that all construction noise levels fell just below the 75 dBA threshold pursuant to LAMC Section 112.05. However, DKA's monitoring location was captured further away from the Project site, not in conformity with the 50 foot parameter under Section 112.05. Wilson Ihrig additionally points out that the Project will utilize equipment that will have maximum noise levels that exceed the 75 dBA threshold at 50 feet, meaning that the Project will likely have potentially significant impacts that the Noise Report does not analyze. (Ex. A, p. 3.) Wilson Ihrig concludes how the Project's improper analysis hides the fact that noise impacts will exceed significance thresholds, thereby requiring mitigation. (Ex. A, pp. 4-5).

The City may attempt to rely on Table 3 of the Noise Report to conclude that all (inaccurately) measured noise levels fall below the 75 dBA threshold. That is incorrect. Not only does Wilson Ihrig point out the clear miscalculations made to conclude the Project's impacts fall below significance, but also how Table 3 does not measure all construction equipment that will be used for the Project. Wilson Ihrig, for example, found that "the table does not even include a grader **which is louder than any of the pieces of equipment shown in Table 3**. The Air Quality section of the [Categorical Exemption] indicates that a grader will be used for this project." (Ex. A, p. 4 (emph. added).) Therefore, the Project will have potentially significant

noise impacts that were left unanalyzed and unmitigated. The City cannot rely on a Categorical Exemption to proceed.

#### **IV. Categorical Exemptions from CEQA are Prohibited Where Mitigation Measures are Required to Reduce a Project's Possible Significant Impacts.**

A Categorical Exemption is not allowed for this Project because the City intends to apply mitigation measures to reduce Project impacts to a level below significance. A project that requires mitigation measures cannot be exempted from CEQA, nor can the agency rely on mitigation measures as a basis for determining that one of the significant effects exceptions does not apply. (*Salmon Pro. & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1102 (“*SPAWN*”).) The Court in *SPAWN* thoroughly explained why projects that require mitigation are not eligible for an exemption from CEQA. (*Id.* at 1106-08.) Mitigation includes the minimization of impacts by limiting the degree or magnitude of the action and its implementation. CEQA Guidelines § 15370. If mitigation measures are required, the public has a right to review and comment on the adequacy of those mitigation measures, which can only be accomplished through the public review process provided for an MND or EIR.

Here, the Project's noise-reducing measures are mitigation measures that are intended to minimize the noise impacts. The Noise Report explains that “temporary noise barriers may be erected between the Project Site and nearby residences located **along Avenue 39 and Avenue 38.**” (Noise Report, p. 11 (emph. added).) The corresponding Table 3 “Construction Noise Levels” attempt to reinforce the Noise Report's assertion that noise limits will not exceed the threshold set in LAMC Section 112.05.

Much like the response to SAFER's comment about the Project's use of TDM measures, the City may allege that the use of noise barriers is not a mitigation measure. The Noise Reports insists that it is using construction “best practices.” (Noise Report, p. 11.) However, the Categorical Exemption does not provide the public of any comparison to demonstrate the difference in noise levels with and without noise barriers. Wilson Ihrig even explains how the Noise Report “fails to disclose any details about those barriers or their effectiveness.” (*Id.*) As such, the Noise Report fails to adequately give the public an opportunity to view the Project without noise-reducing measures, thereby precluding them of the required disclosures of a Project's environmental impacts and efficiency of the proposed mitigation measures.

The City cannot exempt the Project because the public has a right to know the unmitigated Project impacts and comment on the adequacy of the analysis and proposed mitigation measures. Absence of such review and comment period is improper because the City evaluated the Project conditionally rather than evaluating whether the Project could result in a significant impact without the mitigation described in the Exemption. (See *SPAWN*, supra, 125 Cal.App.4th at 1103-04, 1107-09.) As such, the City's mitigated categorical exemption violates CEQA and the Project cannot proceed with the Class 32 Exemption.

**a. The Noise Mitigation Measures are Not Feasible, Enforceable, or Effective.**

Even if the measures are not mitigation measures (which is incorrect), there is no guarantee that the mitigation measures proposed will reduce Project impacts below significance. A public agency may not rely on mitigation measures of uncertain efficacy or feasibility. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation measure because no record evidence existed that replacement water was available).) “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors. (14 CCR § 15364.)

The proposed mitigation measures are not enforceable. The measures are neither included in the Project’s Conditions of Approval, meaning that the City cannot legally enforce or bind the Applicant from actually using noise-reducing sound measures. Even the Applicant fails to fully commit to using the noise barriers, instead explaining that the mitigation measure *may* be utilized for the Project.

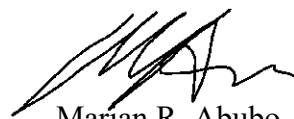
Furthermore, there is nothing to suggest from the Noise Report that the Project will be effective. Because the only noise measurements that were captured for the Noise Report are unreliable, there is no basis for the Applicant to conclude that, even assuming the noise mitigation measures will be applied, noise levels will fall below significance thresholds. Even the Noise Report fails to address to what extent these purported noise measures will reduce Project impacts. To note, the Applicant is only proposing the use of noise mitigation measures along Avenues 38 and 39. However, there are numerous sensitive residential receptors that will remain directly exposed to construction noise because they are situated immediately adjacent to the Project site. Applicant does not address how to reduce these impacts.

The City is assuming compliance without doing adequate analysis to ensure that Project impacts will actually fall below significance. Thus, proceeding with the Project as-is clearly violates CEQA.

**CONCLUSION**

The City cannot rely on a Class 32 exemption because the Project does not meet the terms of the exemption and because it uses a mitigation measure disguised as “industry best practice.” Accordingly, the City must prepare an initial study to determine the appropriate level of environmental review to undertake under CEQA. Thank you for considering these comments.

Sincerely,



Marjan R. Abubo  
Lozeau Drury LLP