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Via Email

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Councilmember Monica Rodriguez
Councilmember Katy Yaroslavsky
Councilmember John S. Lee
Councilmember Heather Hutt
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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 and February 2024, in which SAFER argued that the Project did not qualify for the Exemption because the Project proposed mitigation to render impacts less than significant, and CEQA prohibits mitigated exemptions. SAFER incorporates those comments herein by reference.

As explained in further detail, SAFER maintains the position that the noise report prepared for this Project was done incorrectly, meaning that any findings based on the noise report have been made on unsubstantiated and unreliable evidence. As such, a Class 32 Categorical Exemption is not allowed for this Project.

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, and the Applicant's Noise and Vibration Technical Report ("Noise Report") prepared by Douglas Kim + Associates ("DKA") cannot constitute substantial evidence because it is unsubstantiated.

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 noise and acoustics. Wilson Ihrig's comments are attached as Exhibit A.

II. The Noise Report Is Unreliable and Cannot Effectively Represent Project Impacts.

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 a 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 and substantiated. 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.)

As Wilson Ihrig underlines, the Noise Report erroneously utilizes the City's municipal code, Section 112.05, as a "self-enforcing mitigation measure" and stops short of analyzing whether the Project would actually exceed significance thresholds. (Ex. A, p. 3.) All throughout the Noise Report, the Project merely assumes regulatory compliance with the municipal code without actually providing evidence to support such claims. For example, with regard to HVAC noise, the Noise Report concludes that "[r]egulatory compliance with LAMC Sec.112.02 would ultimately ensure that noises from sources such as heating, air conditioning, and ventilation systems not increase ambient noise levels at neighboring occupied properties by more than 5 dBA." (Noise Report, p. 11.)

However, Wilson Ihrig underlines that "[t]he result is circular – the source levels would always be low enough using this method to ensure there is not an impact, no matter how unrealistic the source levels may be. Typical noise levels associated with mechanical equipment can be placed in a noise model with distance attenuation and project geometry to determine if there is an impact that would require mitigation." (Ex. A, p. 6.) Despite the feasibility of

analyzing these operational noise impacts, the Noise Report falls short of conducting such review. Therefore, without such analysis, the Noise Report fails to substantiate its findings.

Additionally, Wilson Ihrig explains how the Noise Report's incomplete baseline noise level characterizations, which serves as the basis for the Project's noise analysis, were done without adequately measuring daytime and nighttime conditions. (Ex. A, p. 2.) As Wilson Ihrig explains, "[e]nvironmental noise can vary widely throughout the day (perhaps +/-10 dBA or more for areas with intermittent local traffic) and relying on measurements that represent only 2% of the time on one particular day during only afternoon hours is not a sound basis for a technical analysis." (Ex. A, p. 2.) Given the Noise Report's failure to adequately capture its baseline noise levels, any subsequent analyses remain unreliable. This includes, for example, an underestimation of significance thresholds based on ambient noise levels. (Ex. A, pp. 3-4.) As such, an updated noise analysis that properly captures the proper baseline noise conditions must be prepared for this Project.

Given the inaccurate Noise Report in which the Categorical Exemption is relying on, as well as submitted findings that demonstrate a potentially significant impact, substantial evidence on the record supports the conclusion that a Categorical Exemption is inappropriate for this Project. Thus, the City must not approve this Project under a Categorical Exemption and further environmental review must be conducted before making any approvals.

CONCLUSION

The City cannot rely on a Class 32 exemption because the Project does not meet the terms of the exemption. 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
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