



T 510.836.4200
F 510.836.4205

1939 Harrison Street, Ste. 150
Oakland, CA 94612

www.lozeaudrury.com
Amalia@lozeaudrury.com

Via Email

February 6, 2023

Los Angeles City Planning Commission
Samantha Millman, President
Caroline Choe, Vice President
Helen Campbell, Commissioner
Helen Leung, Commissioner
Yvette Lopez-Ledesma, Commissioner
Karen Mack, Commissioner
Dana Perlman, Commissioner
Renee Dake Wilson, Commissioner
Cecilia Lamas, Commission Executive
Assistant
200 North Spring Street
Los Angeles, CA 90012
cpc@lacity.org

Oliver Netburn, City Planner
Department of City Planning
City of Los Angeles
200 North Spring St., Room 763
Los Angeles, CA 90012
Oliver.netburn@lacity.org

**Re: Supplemental Comment on Proposed CEQA Infill Exemption for Mixed-Use Project at 3800 North Pasadena Avenue
February 9, 2023 City Planning Commission Hearing, Agenda Item 9**

Dear President Millman, Vice President Choe, Honorable Members of the Planning Commission, and Ms. Carter:

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. CEQA review is required for the Project.

SAFER previously submitted comments on the Project on December 14, 2022, 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.

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 potentially 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.

a. The Class 32 Exemption Does Not Apply on its Face.

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 Exemption is that it does not apply if the project will have any significant effects relating to traffic, noise, air quality, or water quality. (14 CCR § 15332(d).) Here, the Exemption cannot apply because there is substantial evidence that the Project will have a significant impact on air quality.

b. The Project will have significant indoor and outdoor air quality impacts, precluding reliance on the Class 32 Exemption.

i. The Project will have significant outdoor air quality impacts.

Environmental chemist Dr. Paul Rosenfeld and certified hydrogeologist Matt Hagemann of the environmental consulting firm Soil Water Air Protection Enterprise (“SWAPE”) reviewed the Categorical Exemption document prepared in support of the Exemption. SWAPE’s comment letter is attached as Exhibit A and incorporated herein by reference.

SWAPE found that the Exemption incorrectly estimated the Project’s construction and operational emissions and therefore cannot be relied upon to determine the significance of the Project’s impacts on local and regional air quality. The Exemption relies on emissions calculated from the California Emissions Estimator Version 2016.3.1 (“CalEEMod”). (Exemption, p. 42.) This model, which is used to generate a project’s construction and operational emissions, relies on recommended default values based on site specific information related to a number of factors. (Ex. A, p. 4.) CEQA requires any changes to the default values to be justified by substantial evidence. (*Id.*)

SWAPE reviewed the Exemption’s CalEEMod output files and found that the values input into the model were inconsistent with information about the Project. (Ex. A, p. 4.) As a result, the Exemption’s air quality analysis cannot be relied upon to determine the Project’s emissions.

Specifically, SWAPE found that the following values used in the Exemption’s air quality analysis were either inconsistent with information provided elsewhere in the Exemption or otherwise unjustified:

1. Underestimated Land Use Sizes.
2. Underestimated Operational Daily Vehicle Trip Rates.

Due to the use of these incorrect parameters, the Exemption cannot be relied upon to determine the significance of the Project’s impacts.

SWAPE prepared a screening-level health risk assessment (“HRA”) to evaluate potential impacts from Project construction and operation using air quality dispersion model AERSCREEN. (*Id.* at 9.) SWAPE applied a sensitive receptor distance of 75 meters and analyzed impacts to individuals at different stages of life based on OEHHA and SCAQMD guidance utilizing age sensitivity factors. (*Id.* at 11-13.) SWAPE found that the excess cancer risk over the course of Project construction and operation is approximately 10.4 in one million for the 3rd trimester of pregnancy, 99.4 in one million for infants, and 18 in one million for children. (*Id.* at 12.) Moreover, SWAPE found that the excess cancer risk over the

course of a residential lifetime of 30 years is 130 in one million. (*Id.*) The cancer risks for the 3rd trimester of pregnancy, infants, children, and lifetime residents therefore exceed the SCAQMD threshold of 10 in one million. (*Id.*)

SWAPE also found that the GHG impacts of the Project were not adequately analyzed. (Ex. A, pp. 13-14.) Specifically, SWAPE found that the City's analysis of GHG impacts and the City's subsequent less-than-significant conclusion as to GHG impacts, is incorrect for three reasons:

- (1) The Exemption's quantitative GHG analysis relies on a flawed air model;
- (2) The Exemption's quantitative GHG analysis relies upon an outdated threshold; and
- (3) The Exemption fails to identify a potentially significant impact.

(*Id.*) Based on these inadequacies, SWAPE found that a full CEQA analysis is necessary to adequately assess the Project's potential GHG impacts.

SWAPE's analysis demonstrates potentially significant air quality and GHG impacts from the Project that necessitate mitigation. The Project therefore does not qualify for an infill exemption. A full CEQA analysis should be prepared which includes an updated air quality and GHG analysis and which proposes feasible measures to mitigate any significant impacts.

ii. The Project will have significant indoor air quality impacts.

Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH, conducted a review of the proposed Exemption and relevant documents regarding the Project's indoor air emissions. Indoor Environmental Engineering Comments (January 25, 2023). Mr. Offermann concludes that it is likely that the Project will expose residents and commercial employees of the Project to significant impacts related to indoor air quality, and in particular, emissions of the cancer-causing chemical formaldehyde. Mr. Offermann is a leading expert on indoor air quality and has published extensively on the topic. Mr. Offermann's expert comments and curriculum vitae are attached as Exhibit B.

Mr. Offermann explains that many composite wood products used in building materials and furnishings commonly found in offices, warehouses, residences, and hotels contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. He states, "[t]he primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particleboard. These materials are commonly used in building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims." (Ex. B, p. 2-3.)

Formaldehyde is a known human carcinogen. Mr. Offermann states that future residents of the Project would be exposed to a 120 in one million cancer risk, and commercial employees of the Project would be exposed to a 17.7 in one million risk, *even assuming* all materials are compliant with the California Air Resources Board's formaldehyde airborne toxics control measure. (*Id.* at 4-5.) This potential exposure level exceeds the SCAQMD CEQA significance threshold for airborne cancer risk of 10 per million.

Mr. Offermann identifies mitigation measures that are available to reduce these significant health risks, including the installation of air filters and a requirement that the applicant use only composite wood materials (e.g. hardwood plywood, medium density fiberboard, particleboard) for all interior finish systems that are made with CARB approved no-added formaldehyde (NAF) resins or ultra-low emitting formaldehyde (ULEF) resins in the buildings' interiors. (*Id.* at 12-13.) These significant environmental impacts preclude the use of an infill exemption for the Project. These impacts should be considered in a full CEQA analysis and mitigation measures should be imposed to reduce the risk of formaldehyde exposure.

II. The Unusual Circumstances Exception Precludes Reliance on the Class 32 Exemption.

A categorical exemption is inapplicable “where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.” (14 CCR 15300.2(c).) Here, the Project does not present the same general risk of environmental impacts as other projects falling under Class 32 exemptions and therefore the exemption cannot apply.

In *Berkeley Hillside Preservation v. City of Berkeley*, the California Supreme Court explained that there are two ways a party may invoke the unusual circumstances exception. First, “a party may establish an unusual circumstance with evidence that the project *will* have a significant environmental effect. That evidence, if convincing, necessarily also establishes ‘a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.’” (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105 [emph. added].) Alternatively, “[a] party invoking the exception may establish an unusual circumstance without evidence of an environmental effect, by showing that the project has some feature that distinguishes it from others in the exempt class, such as its size or location. In such a case, to render the exception applicable, the party need only show a reasonable possibility of a significant effect due to that unusual circumstance.” (*Id.*)

As discussed above, we have submitted substantial evidence that the Project will have significant air quality impacts. The fact that these significant impacts will occur constitutes an unusual circumstance, precluding the City's reliance on an exemption.

Comment on 3800 North Pasadena Ave Project
City Planning Commission Hearing
February 6, 2023
Page 6 of 6

CONCLUSION

The City cannot rely on a Class 32 exemption because the Project does not meet the terms of the exemption and because the unusual circumstances exception to the exemption applies. Accordingly, the City must prepare an initial study to determine the appropriate level of environmental review to undertake pursuant to CEQA. Thank you for considering these comments.

Sincerely,

A handwritten signature in black ink that reads "Amalia Bowley Fuentes". The signature is written in a cursive, flowing style.

Amalia Bowley Fuentes
Lozeau | Drury LLP