Justification/Reason for Appeal

Noho Lankershim Project

DIR-2022-6485-TOC-SPR-VHCA; ENV-2022-6486-CE

I. REASON FOR THE APPEAL

Supporters Alliance for Environmental Responsibility ("SAFER") appeals the approval by Los Angeles City Planning Commission of the Site Plan Review entitlements for the Noho Lankershim Project (DIR-2022-6485-TOC-SPR-VHCA; ENV-2022-6486-CE). The Site Plan Review approvals are invalid because they are based on incorrect findings. Specifically, the Planning Commission's finding that the project is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15332 of the CEQA Guidelines ("Infill Exemption") is incorrect.

II. SPECIFICALLY THE POINTS AT ISSUE

Specifically, for the reasons detailed in the attached comment letter dated September 26, 2023, the Planning Commission's finding that the Project is exempt from CEQA pursuant to Section 15332 of the CEQA Guidelines is in error because the Project will have significant indoor air quality impacts, noise impacts, and environmental impacts due to soil gas contamination at the Project site, and the reasonable possibility that there will be a significant effect on the environment due to unusual circumstances. Therefore, the Project does not meet the terms of the exemption.

Because the Infill Exemption prepared for the Project fails to comply with CEQA, the Planning Commission's approval of the Project's Site Plan Review entitlements is invalid. Proper CEQA review must be complete *before* the City approves the Project's entitlements (*Orinda Ass'n. v. Bd. of Supervisors* (1986) 182 Cal.App.3d 1145, 1171 ["No agency may approve a project subject to CEQA until the entire CEQA process is completed and the overall project is lawfully approved"]. Additionally, by failing to properly conduct environmental review under CEQA, the City lacks substantial evidence to support its findings for the Site Plan Review entitlements.

Because the Project does not qualify for an infill exemption, the Planning Commission's Project approvals are based upon incorrect findings. The City must fully comply with CEQA prior to any approvals in furtherance of the Project. Since the Project is not exempt from CEQA, the City must prepare an initial study and determine the appropriate level of review required under CEQA prior to *any approvals* in furtherance of the Project.

III. HOW YOU ARE AGGRIEVED BY THE DECISION

Members of appellant, SAFER, live and/or work in the vicinity of the proposed Project. They breathe the air, suffer noise impacts, and will suffer other environmental impacts of the Project unless those impacts are properly mitigated.

IV. WHY YOU BELIEVE THE DECISION-MAKER ERRED OR ABUSED THEIR DISCRETION

The Los Angeles City Planning Commission approved the Site Plan Review (DIR-2022-6485-TOC-SPR-VHCA) and approved an Infill Exemption for the Project, despite substantial evidence presented by SAFER of the Project's significant indoor air quality, noise, and significant environmental impacts due to unusual circumstances. Rather than exempt the Project from CEQA, the City should have prepared an

initial study followed by an EIR or negative declaration in accordance with CEQA prior to consideration of approvals for the Project. The City is not permitted to approve the Project's entitlements until proper CEQA review has been completed.

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September 26, 2023

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Re: Appeal on Proposed CEQA Infill Exemption for the 5240 Lankershim Boulevard Mixed-Use Project, September 28, 2023 City Council Meeting, Agenda Item No. 7

Dear President Millman and Honorable Commissioners of the Los Angeles Planning Commission,

I am writing on behalf of Supporters Alliance for Environmental Responsibility ("SAFER") regarding the proposed Class 32 Infill Development Categorical Exemption ("Categorical Exemption" or "Class 32 Exemption") for a seven-story mixed-use project proposed at 5240 Lankershim Blvd. in the City of Los Angeles ("Project").

SAFER objects to the City of Los Angeles' ("City") decision by the Hearing Officer to exempt the Project (DIR-2022-6485-TOC-SPR-VHCA) from review under the California Environmental Quality Act ("CEQA") on April 28, 2023. In preparation for the Planning Commission hearing, SAFER timely submitted substantive comments to the City and incorporates those comments herein. As discussed below, the Project fails to meet the requirements for a Class 32 CEQA Infill Exemption. Since the Project is not exempt from CEQA, an Initial Study must be prepared to determine the appropriate level of CEQA review

required, be it a Mitigated Negative Declaration ("MND") or an Environmental Impact Report ("EIR").

PROJECT DESCRIPTION

The Applicant, Grubb Properties, seeks to build the Project at 5240 Lankershim Blvd. The Project includes the demolition of a movie theater building (Laemmle Theatre NoHo 7) and the construction, use, and maintenance of a seven-story mixed-use building with 128 dwelling units, including 13 very low-income units, and approximately 5,000 square feet of ground commercial space with parking at-grade and subterranean levels.

LEGAL STANDARD

As the California Supreme Court has held, "[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR." (*Communities for a Better Env't v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319-20 [citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 88 ("*No Oil")*]; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504–505). "Significant environmental effect" is defined very broadly as "a substantial or potentially substantial adverse change in the environment." (Pub. Res. Code ("PRC") § 21068; see also, 14 Cal. Code Regs ("CCR") § 15382). An effect on the environment need not be "momentous" to meet the CEQA test for significance; it is enough that the impacts are "not trivial." (*No Oil, Inc.*, 13 Cal.3d at 83). "The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *(Communities for a Better Env't v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 109).

To achieve its objectives of environmental protection, CEQA has a three-tiered structure. 14 CCR § 15002(k); *Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1185-86 (*"Hollywoodland"*). First, if a project falls into an exempt category, or it can be seen with certainty that the activity in question will not have a significant effect on the environment, no further agency evaluation is required. *Id*. Second, if there is a possibility the project will have a significant effect on the environment, the agency must perform an initial threshold study. *Id*; 14 CCR § 15063(a). If the study indicates that there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment the agency may issue a negative declaration. *Id*.; 14 CCR §§ 15063(b)(2), 15070. Finally, if the project will have a significant effect on the environment, an environmental impact report ("EIR") is required. *Id*. Here, since the City exempted the Project from CEQA entirely, we are at the first step of the CEQA process.

CEQA identifies certain classes of projects which are exempt from the provisions of CEQA, called Categorical Exemptions. 14 CCR §§ 15300, 15354. "Exemptions to CEQA are narrowly construed and "'[e]xemption categories are not to be expanded beyond the reasonable scope of their statutory language.'" (*Mountain Lion Foundation v. Fish & Game Com*. (1997) 16 Cal.4th 105, 125). The determination as to the appropriate scope of a categorical exemption is a question of law subject to independent, or de novo, review. (*San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist*., (2006) 139 Cal. App. 4th 1356, 1375 ("[Q]uestions of interpretation or application of the requirements of CEQA are matters of law. (Citations.) Thus, for example, interpreting the scope of a CEQA exemption presents 'a question of law, subject to de novo review by this court.' (Citations).").

The City alleges that the Class 32 (Infill Development) Exemption applies. A Class 32 Exemption consists of projects characterized as infill 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).)

Also a project may never be exempted from CEQA if there is a "fair argument" that the project may have significant environmental impacts due to "unusual circumstances." (14 CCR §15300.2(c).) The Supreme Court has held that since the agency may only exempt activities that do not have a significant effect on the environment, a fair argument that a project will have significant effects precludes an exemption. (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 204.)

After a thorough review, and with the support of our independent expert analyses, the Project does not qualify for a Class 32 Exemption because of the Project's potentially significant environmental impacts on air quality and noise. The Project may have adverse impacts due to the unusual circumstance of the presence of toxic soil contamination. Therefore, the City must prepare an Initial Study to determine the appropriate level of CEQA review, be it an EIR or MND.

DISCUSSION

I. The City Fails to Support with Substantial Evidence that the Project Will Have Less Than Significant Air Quality Impacts.

A project cannot qualify for CEQA's Class 32 Exemption if the project results in significant air quality impacts. 14 CCR § 15332(d). Environmental engineers Patrick Sutton, PE and Cem Atabek of Baseline Environmental Consulting ("Baseline") have reviewed the proposed exemption and all relevant documents prepared by CAJA Environmental Services, LLC regarding the Project's indoor air emissions. Based on this review, Baseline concludes the City's analysis inadequately analyzed the significance determination in the Categorical Exemption. Baseline's expert comments and CVs are attached as Exhibit A.

a. The Exemption Inadequately Analyzes Construction-Related Air Pollutant Emissions.

In their report, the City explains that, "[t]he project's environmental impacts were fully analyzed in the Categorical Exemption document dated November 2022 prepared by CAJA Environmental Services. As noted in this analysis and the supporting technical data in the Appendices, the project will not exceed any air quality thresholds of significance for construction or operation." (August 24, 2023 Appeal Recommendation Report, p. A-3.) However, this analysis is incorrect for a couple reasons.

First, the Exemption explains that the Project not expose sensitive receptors to substantial diesel particulate matter ("DPM") concentrations because "[a]verage daily emissions of [DPM] would be less than one pound per day throughout the court of the Project construction. [This level] would not be sufficient to result in substantial pollutant concentrations at off-site locations nearby." (Exemption Document, pp. 2-74 to 2-75.) Baselines contends, however, that the conclusion is unsubstantiated because "the CE failed to define a threshold concentration of DPM that would be considered a substantial pollutant concentration at off-site locations or provide scientific evidence to justify such a threshold." (Ex. A, p. 4.)

Additionally, Baseline rebuts the Exemption's conclusion that "[b]ecause there is such a short-term exposure period, construction TAC emissions would result in a less than significant impact. Therefore, construction of the Project would not expose sensitive receptors to substantial diesel PM concentrations, and this impact would be less than significant." (Exemption Document, p. 2-75.) However, Baseline points to guidance from the Office of Environmental Health Hazard Assessment (OEHHA), which not only states that "a higher exposure to a carcinogen over a short period of time may be a greater risk than the same total exposure spread over a much longer time period,"[1] but also provides guidance on how to evaluate cancer risk for short-term projects. (Ex. A, p. 4.) As applied to this Project, "construction is expected to last 24 months, which is substantially longer than the two-month limitation for short-term exposures recommended by OEHHA." (*Id.*)

[1] Office of Environmental Health Hazard Assessment (OEHHA). 2015. Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments. February.

Taken together, the Exemption report falls short of being an information document because of its inability to completely analyze the Project and its associated impacts. Baseline recommends that the City perform a "quantitative health risk assessment…to estimate the incremental increase in cancer risk at nearby sensitive receptors (e.g., residences and schools) that would be exposed to DPM emissions during project construction in accordance with the OEHHA guidance. If needed, the health risk assessment should also evaluate the effectiveness of implementing exhaust control measures (e.g., use of Tier 4 engines) to reduce health risks below the SCAQMD's recommended thresholds of significance." (Ex. A, p. 4.) Therefore, the City cannot proceed with a Class 32 Exemption until an HRA that adequately captures all potentially significant impacts is prepared.

b. An Updated Health Risk Assessment is Required Because the Project May Have Potentially Significant Air Quality and Vapor Intrusion Impacts.

The City failed to adequately analyze the health risks associated with vapor intrusion on residential receptors. Soil vapor intrusion is a well-documented phenomenon that occurs when volatile toxic organic chemicals vaporize and pass through porous cement foundations. The toxic chemicals then vaporize into the living space above where they concentrate over time. As Baseline points out, a sub-slab oil gas survey performed in 2021 concluded that the concentration of volatile organize compounds (VOCs) were below the screening levels for a commercial receptor. (Ex. A, p. 5.) However, the Project before the Planning Commission today proposes more than just a commercial space; rather, the Applicant is proposing 128 residential units on top of the approximately 5,000 sf of commercial space. As shown in the chart below, Baseline's analysis of the "maximum predicted indoor air concentrations for benzene and tetrachloroethene **would exceed the DTSC's screening levels for a residential property** using DTSC's current established attenuation factor of 0.03 for sub-slab soil gas samples. Therefore, the vapor intrusion of VOCs would pose a substantial health risk to future residents on the project site and result in a potentially significant impact." (*Id*., pp. 5-6 (emph. added).)

Predicted Indoor Air Quality from Vapor Intrusion

Volatile Organic Compound	Max Soil Gas Concentration[1] (µg/cm^3)	Attenuation Factor[2]	Predicted Indoor Air Concentration (µg/cm^3)	Residential Indoor Air Screening Level[3] (µg/cm^3)	Exceed Screening Level?
Benzene	5.9	0.03	0.177	0.097	Yes
Tetrachloroethene	21	0.03	0.63	0.46	Yes

Notes:
[1] California Environmental, 2021. Sub-slab Soil Gas Screening Survey - Phase II, Commercial Property, APN 2350-018-091, 5240 Lankershim Boulevard, North Hollywood, California 91601, April 12.
[2] DTSC and State Water Board, 2023. Final Draft, Supplemental Guidance: Screening and Evaluating Vapor Intrusion, February.
[3] DTSC, 2022. Human Health Risk Assessment (HHRA) Note Number 3, DTSC-Modified Screening Levels (DTSC-SLs), Revised May.

(Ex. A, Table 2, p. 6.)

Benzene and Tetrachloroethylene are highly toxic chemicals.

Benzene: US EPA has classified benzene as known human carcinogen for all routes of exposure. Acute (short-term) inhalation exposure of humans to benzene may cause drowsiness, dizziness, headaches, as well as eye, skin, and respiratory tract irritation, and, at high levels, unconsciousness. Chronic (long-term) inhalation exposure has caused various disorders in the blood, including reduced numbers of red blood cells and aplastic anemia, in occupational settings. Reproductive effects have been reported for women exposed by inhalation to high levels, and adverse effects on the developing fetus have been observed in animal tests. Increased incidence of leukemia (cancer of the tissues that form white blood cells) have been observed in humans occupationally exposed to benzene. (https://www.epa.gov/sites/default/files/2016-09/documents/benzene.pdf)

Tetrochloroethylene: US EPA has classified tetrachloroethylene as likely to be carcinogenic to humans. Effects resulting from acute (short term) high-level inhalation exposure of humans to tetrachloroethylene include irritation of the upper respiratory tract and eyes, kidney dysfunction, and neurological effects such as reversible mood and behavioral changes, impairment of coordination, dizziness, headache, sleepiness, and unconsciousness. The primary effects from chronic (long term) inhalation exposure are neurological, including impaired cognitive and motor neurobehavioral performance. Tetrachloroethylene exposure may also cause adverse effects in the kidney, liver, immune system and hematologic system, and on development and reproduction. Studies of people exposed in the workplace have found associations with several types of cancer including bladder cancer, non-Hodgkin lymphoma, multiple myeloma. (https://www.epa.gov/sites/default/files/2016-09/documents/tetrachloroethylene.pdf).

The Project site formerly served as an automotive repair shop and so there is a likelihood that a more comprehensive analysis will yield results showing the significant impacts that exposure of VOCs will have on residential tenants. That said, the City does not provide supplemental information when proposing this Project. Baseline suggests that the City prepare an updated health risk assessment ("HRA") to "disclose the potential health risks to future residents on the project site, and mitigation measures should be identified to reduce the potential health risks to a less-than-significant level." (*Id.*, p. 6.)

Baseline's findings constitute substantial evidence that the Project will have significant air quality and vapor intrusion impacts on its residential tenants. Therefore, it would be inappropriate to proceed under the Class 32 Exemption. A CEQA document is required to analyze and mitigate the Project's significant impacts related to soil vapor intrusion of toxic chemicals.

II. The Project May Have Potentially Significant Noise Impacts Not Adequately Analyzed in the Exemption.

A project cannot qualify for CEQA's Class 32 Exemption if the project results in significant noise impacts. 14 CCR § 15332(d). The City explains that approval of the Project would not result in any significant effects relating to noise. However, as Baseline found in their analysis of the Project, the City relies on unsupported analyses in forming their conclusion and that additional analysis prepared by Baseline shows potentially significant noise impacts on sensitive receptors.

a. The Exemption Failed to Support with Substantial Evidence that the Project's Noise Impacts are Less-Than-Significant.

Baseline explains how the City improperly assumed that the Project would implement best practices techniques as required under the City's Building and Safety Code. However, neither the Exemption analysis nor the analysis prepared by Douglas Kim + Associates, LLC ("DKA") identified the actual noise levels at sensitive receptors prior to implementing best practices; the types of best practices techniques that would be applied to the Project; and the specific amounts of noise reduction that could be achieved by implementing the best practices techniques.

Failure to provide such critical information impedes the ability to comprehensively determine whether such impacts exceed significant thresholds and evaluate the feasibility of which best practices techniques should be employed. Therefore, the City cannot support with substantial evidence that the noise impacts arising from the Project will truly be less-than-significant.

b. The Project Will Have Significant Noise Impacts Not Previously Analyzed on Sensitive Receptors.

The City's failure to measure noise levels from a sensitive receptor ignores the significant noise impacts the Project will have on adjacent properties. Specifically, Baseline's review of the Exemption revealed that despite measuring noise levels from the adjacent Kaiser Permanente building's western façade (which yielded less-than-significant impacts), the analysis fell short of evaluating the noise levels from the southern façade, which directly faces the Project site. As shown in the graphic below, the southern façade will undoubtedly be impacted by demolition and construction activities, but the Exemption fails to measure noise levels from that direction.

As Baseline explains, "the modeled construction-generated noise levels along the southern facade of the Kaiser Permanente building would increase the existing ambient noise level by 6.3 to 10.5 dBA, which is above the threshold of 5 dBA." (*Id.*, p. 2.) This finding, coupled with the above-mentioned fact that the Exemption failed to disclose what types of otherwise best practices techniques were being used for the Project, means that Project noise levels may well exceed Baseline's predictions. As such, there exists substantial evidence that the Project will have potentially significant noise impacts.

Since the Project will have significant noise impacts, the City cannot continue with approving the Project under the Class 32 Exemption. A CEQA document is required to analyze and mitigate the Project's significant noise impacts.

III. The Project's Use of the Private Roadway Conflicts with Local Plans

The Project's access and circulation plans may be incompatible with long-established plans in the area. A project cannot qualify for CEQA's Infill Exemption if the project is inconsistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations. (14 CCR 15332(a).) A project cannot be found consistent with a general plan if it conflicts with a general plan policy that is "fundamental, mandatory, and clear," regardless of whether it is consistent with other general plan policies. (See *Endangered Habitats League v. County of Orange* (2005) 131 Cal. App. 4th 777, 782-83; *Families Unafraid to Uphold Rural El Dorado County v. Bd. of Supervisors* (1998) 62 Cal. App. 4th 1332, 1341-42 ["*FUTURE*"].) Moreover, even in the absence of such a direct conflict, an ordinance or development project may not be approved if it interferes with or frustrates the general plan's policies and objectives. (See *Napa Citizens*, 91 Cal. App. 4th at 378-79; see also *Lesher*, 52 Cal.App. 3d at 544 [zoning ordinance restricting development conflicted with growth oriented policies of general plan].) Here, the Project intends to utilize Academy Way as the primary access way to the parking garage entrances, located in the rear of the Project site. (July 2022 Site Plan, p. 2.) Such use of Academy Way conflicts with the applicable regulations, barring the City from invoking the Class 32 Exemption.

In a February 27, 2023 letter addressed to the City, the Television Academy of Arts and Science ("Academy") explained that the Project's design, which uses Academy Way to access both parking garages, would be inconsistent with existing regulations surrounding the use of Academy Way. Specifically, the Academy argued that "the 2008 [Reciprocal Easement Agreements ("REA")] between the Academy and the Applicant's predecessor (a covenant that runs with the land) characterizes the Fire/Alley Lane as a "secondary access road" for the Project

Site, and limits uses of the Alley/Fire Lane by the Project Site owner to "tenant's employees and emergency access." (February 28 Venable Letter. p. 2 ("Venable Letter").)

(5240 Lankershim Site Plans, p. 2.)

As shown above in the Project's Site Plan, the design will rely on Academy Way (titled, "PRIVATE DRIVEWAY") as the primary access way to the garages. As the Venable Letter explains, this is in direct conflict with the City's local plans. The Project unmistakably intends to design Academy Way to accommodate residential and commercial garage access by removing four trees and adding two curb cuts on Academy Way. (Project Description, p. 1-15.) This poses an issue with the City's applicable regulations because the Project will undoubtedly conflict with restrictions and limitations formalized in recorded documents that apply to the use of Academy Way. In particular, the Project site must only use Academy Way as a secondary access road for the Project; however, the Applicant fails to design the Project in such a way that there is primary access to the garages that is independent of Academy Way.

This is clearly in conflict the originally intended purpose of the private access road, and the Applicant has failed to address this issue in its design of the Project site. Therefore, unless and until the Applicant addresses the inconsistency with the formal access restrictions and limitations for Academy Way, the City cannot approve the Project under the Class 32 Exemption.

IV. 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).) 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 explained here, the Project site's location on a seismic hazard zone as well as the site's storied history as an automotive repair shop provides a reasonable probability that the Project will have a significant environmental impact.

a. The Project Will Potentially Exposure Residential Tenants to Soil Gas Contamination.

Soil contamination at a proposed Project site creates a fair argument that there may be significant adverse impacts, which necessitates the preparation of an EIR. In *McQueen v. Mid-Peninsula Board,* 202 Cal.App.3d 1136, 1149, the court held, "the known existence of…..hazardous wastes on property to be acquired is an unusual circumstance threatening the environment" and the project may not be exempted from CEQA review. *Association for a Cleaner Environment v. Yosemite Comm. College*, 110 Cal.App.4th 629 (2004) (presence of hazardous materials makes CEQA exemption improper).

In *Citizens for Responsible Equitable Envt'l Dev. v. City of Chula Vista* ("CREED"), Target proposed to build a new store on the site of a former gas station. Since the site was contaminated with petroleum products, the Court held that an EIR was required under CEQA. *Citizens for Responsible Equitable Envt'l Dev. v. City of Chula Vista* (2011) 197 Cal.App.4th 327, 331-333. In *CREED*, the City argued that its public health department would develop a remedial action plan after project approval that would adequately safeguard human health. The Court of Appeal rejected this argument, holding that an EIR was required, and that the mitigation plan must be set forth in the EIR and subjected to public review and comment. The Court held, "it can be fairly argued that the Project may have a significant environmental impact by disturbing contaminated soils." 197 Cal. App. 4th at 332. The City could not defer development of the remediation plan until after Project approval. *Id*.

The Project cannot proceed under a Class 32 Exemption. In *ACE v. Yosemite*, 116 Cal.App.4th 629, the court held that an EIR was required to disclose, analyze, and cleanup existing lead contamination on a site from an old shooting range. The court stated that CEQA review was required because "lead contamination could spread at the removal site as well as the site receiving the salvageable portions. …cars driving on lead-contaminated soil could lift lead-contaminated dust into the air. Students and staff walking through the area could pick up lead

contamination on their shoes and clothing, potentially spreading it throughout the campus or taking it to their homes." *Id*. at 640 (emphasis added). Other contamination cases, and CEQA's legislative history, hold similarly. See *McQueen*, 202 Cal.App.3d at 1149 (site contaminated with PCBs could not be exempted from CEQA review and CEQA analysis was required to propose cleanup plan for public review and scrutiny); *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1599 (petitioners raised, but court did not reach issue of "toxic contamination on the subdivision property").

Here, the known presence of toxic chemicals in the soil of the Project site is an unusual circumstance. There is a fair argument that this unusual circumstance may lead to adverse environmental impacts of future residents of the building being exposed to toxic soil vapors. In its Exemption Document, the City concludes that the Project "would not create a hazard to the public or the environment as a result of being listed on a list of hazardous materials sites." (Exemption Document, p. 2-124.) However, as explained above, Baseline's identification of VOCs at levels that exceed significance thresholds means that the Project may pose an adverse public health hazard. The Project site was formerly occupied by automotive repair shops, which necessitated the implementation of a Phase II Environmental Site Assessment ("ESA"). (Exemption Document, p. 2-124.) Soil sampling on the Project site revealed benzene and tetrachloroethene concentrations on the site. While such concentrations fell slightly below significant thresholds for commercial tenants, the soil sampling in which the City forms its conclusions cannot be relied upon because the analysis performed assumed that the building was exclusively built for commercial purposes. Residential thresholds are much more stringent than commercial thresholds since commercial workers only occupy the facility eight hours each day, while residents sleep in the premises, often work from home and may spend the vast majority of their day in the building – particularly infant children or elderly people.

Furthermore, "the source of soil gas contamination has not been identified." (Ex. A, p. 5.) This raises additional unanswered questions that the prior samples taken around the vicinity of the Project site does not resolve. Simply put, the unusual circumstances surrounding the Project site's repair shop history, hazardous concentrations of VOCs, and unidentified contamination sources creates a reasonable probability that the Project will lead to significant environmental impacts.

The City cannot proceed with issuing a Class 32 Exemption for the Project because there is a fair argument that the Project may have adverse environmental impacts due to unusual circumstances.

b. The Project fails to adequately analyze the Project's proximity to a fault line.

Projects located within an earthquake fault zone pose a seismic risk, and properties located near a fault zone also pose a seismic hazard. PRC §§ 2622 & 2696. Here, the Project site

is located just one block away from a recognized fault line.[2] However, in a letter prepared by the Southwest Mountain States Carpenters ("SWMSRCC"), the City failed to prepare a geological survey that includes an evaluation of fault rupture-related hazards as specified under the California Geological Survey ("CGS"). Specifically, the letter explains that scientists hypothesize the Santa Monica, Malibu, Raymond, and the Hollywood faults "could rupture together with slip transferring from one to the other, in a cascading event that would result in a larger magnitude event and much larger displacements on each of the faults." (SWMSRCC Letter, p. 17.) As such, SWMSRCC explains that the City must prepare an EIR that integrates a seismic hazard report and geologic survey. Therefore, the City cannot proceed under a Class 32 Exemption because unusual circumstances exist such that the Project site's close proximity to the fault line may have potentially significant and catastrophic impacts that must be analyzed in an EIR and supplemental technical documents.

CONCLUSION

The City cannot invoke a Class 32 Exemption because the Project does not meet the terms of the Exemption and because unusual circumstances raise a reasonable probability that the Project will have significant environmental effects. 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,

Marjan Abubo

Lozeau | Drury LLP

[2] Jennings, C.W., and Bryant, W.A., 2010, Fault activity map of California: California Geological Survey Geologic Data Map No. 6, map scale 1:750,000.

EXHIBIT A

September 26, 2023
23213-00

Marjan Abubo
Lozeau Drury LLP
1939 Harrison St., Suite 150
Oakland, CA 94612

Subject: **Review of Noise, Air Quality, and Hazardous Materials Impacts Analyzed for the 5240 Lankershim Project**

Dear Mr. Abubo:

Baseline Environmental Consulting (Baseline) has reviewed the Class 32 Categorical Exemption (CE) prepared by CAJA Environmental Services, LLC for the proposed 5240 Lankershim Project (project) located at 5240 N. Lankershim Boulevard in Los Angeles, California (site). The purpose of this review is to determine whether potential environmental impacts related to noise, air quality, and hazardous materials were appropriately evaluated. Based on our review, we have identified flaws in the analysis used to support the significance determinations for the CE, as described in detail below.

Unsubstantiated Analysis of Construction Noise Impacts

The construction noise impacts at nearby sensitive receptors were modelled using SoundPLAN Essential model (version 5.1). As stated on page 2-39 of the CE, the use of best practices techniques required by the City's Building and Safety code, such as temporary sound barriers, was assumed to be included in the project construction activities and therefore the noise modeling results are representative of reduced noise levels that would be achieved through use of best practices techniques. However, the CE and the Construction Noise Calculations included in Appendix D of the CE did not identify the following:

1. The noise levels at sensitive receptors prior to implementing best practices techniques;

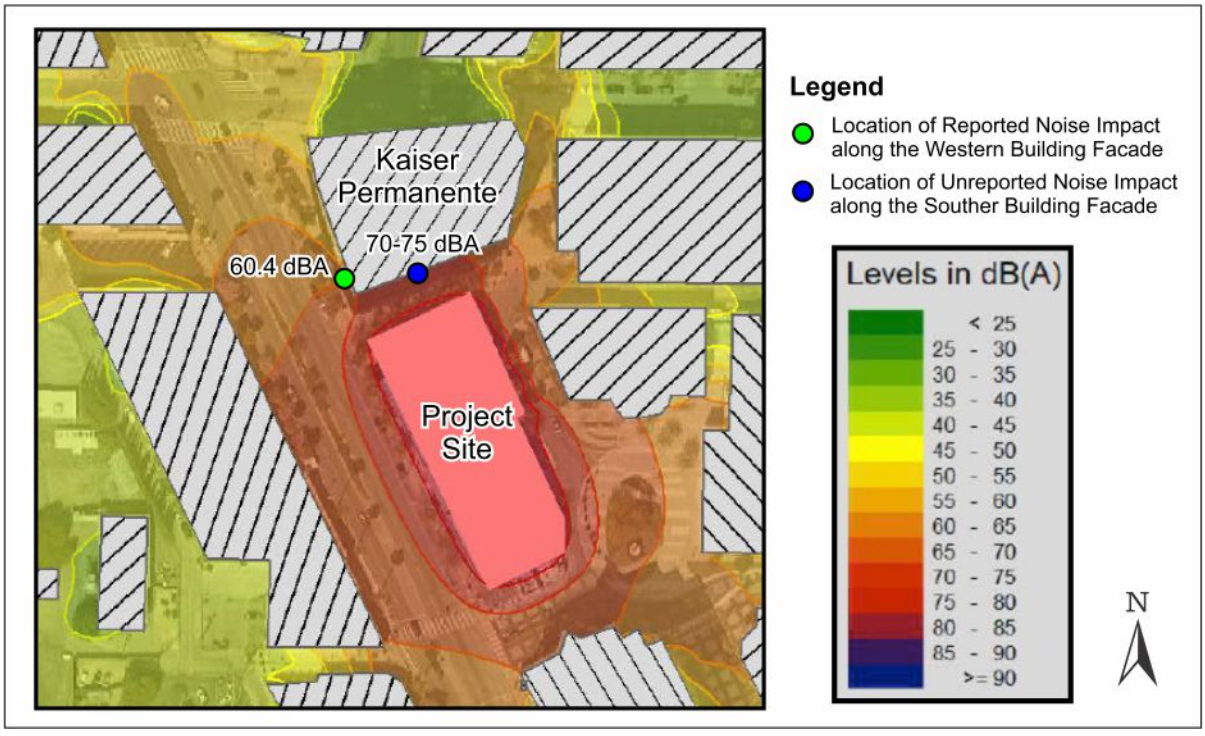
2. The types of best practices techniques that would be used; and

3. The specific amounts of noise reduction that could be achieved by implementing the best practices techniques (e.g., 3 dBA noise reduction from temporary sound barriers).

Disclosing this information in the CE is critical for evaluating the significance of construction-generated noise impacts at nearby sensitive receptors prior to implanting best practices techniques, as well as the effectiveness and feasibility of implementing specific best practices techniques to reduce noise levels below the City's recommended thresholds of significance.

In addition to the lack of required information, the CE failed to properly evaluate the construction-generated noise levels at the nearest sensitive receptor: the southern facade of the Kaiser Permanente building located adjacent and north of the proposed project site. As shown in **Figure 1**, the CE reported a construction-generated noise level of 60.4 dBA along the western facade of the building. However, the southern facade of the building is closer and within the direct line of sight of the proposed project site and would be exposed to construction-generated noise levels ranging between 70 and 75 dBA according to the modeled sound level contour map on page 2-40 of the CE.

Figure 1. Modeled Noise Level Contours at the Kaiser Permanente Building



As shown in **Table 1**, the CE reported that construction-generated noise would increase the existing ambient noise level at the western facade of the Kaiser Permanente building by 1.3 dBA, which is below the City's applicable threshold of 5 dBA. However, the modeled construction-generated noise levels along the southern facade of the Kaiser Permanente building would increase the existing ambient noise level by 6.3 to 10.5 dBA, which is above the threshold of 5 dBA. These estimates of unmitigated noise levels are conservative because the

modeled noise contours presented in the CE included undisclosed noise reductions associated with best practices techniques, as discussed above. Therefore, project construction-generated noise levels would result in a potentially significant impact.

Table 1. Modeled Noise Level Contours at the Kaiser Permanente Building

Receptor	Max Construction Noise Level (dBA Leq)	Existing Ambient Noise Level (dBA Leq)	New Ambient Noise Level (dBA Leq)	Increase in Ambient Noise (dBA Leq)	Potentially Significant?
Kaiser Building Western Facade	60.4	64.9	66.2	1.3	No
Kaiser Building Southern Facade	70 to 75	64.9	71.2 to 75.4	6.3 to 10.5	**Yes**

Notes: Maximum construction-generated noise levels at the southern building facade based on the modeled sound contour map on page 2-40 of the CE.
Combined noise levels at receptor calculated using the following equation:
L = 10 * log10 (10^(L1/10)+10^(L2/10))
L = Combined noise level
L1 = Existing ambient noise level
L2 = Maximum construction noise level

Inadequate Analysis of Health Risks from Construction-Related Air Pollutant Emissions

In 1998, the California Air Resources Board (CARB) identified diesel particulate matter (DPM) from diesel-powered engines as a toxic air contaminant based on its potential to cause cancer and other adverse health effects.[1] Project construction would generate DPM emissions from the exhaust of off-road diesel construction equipment. The nearest off-site sensitive receptors to the project site which could be exposed to DPM emissions generated by project construction include residential apartments 215 feet north and 270 feet east of the project site, and an elementary school 240 feet west of the project site, as identified in the CE.

As discussed on page 2-75 of the CE, the project would not expose sensitive receptors to substantial DPM concentrations during construction due to the following two reasons:

1. The project's daily DPM emissions would be less than one pound per day throughout the course of project construction. The level of daily DPM emissions would not be sufficient to result in substantial pollutant concentrations at off-site locations nearby.

2. The anticipated duration of construction activities is approximately 24 months, but health risks are typically performed for receptors that are exposed to toxic air contaminants over a 30-year period.

[1] California Air Resources Board (CARB), 1998. Initial Statement of Reasons for Rulemaking; Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, June.

Regarding reason 1 above, the CE failed to define a threshold concentration of DPM that would be considered a substantial pollutant concentration at off-site locations or provide scientific evidence to justify such a threshold; and therefore, the CE's conclusion that less than one pound per day of DPM emissions would not result in substantial pollutant concentrations at off-site locations is not substantiated.

Regarding reason 2 above, the Office of Environmental Health Hazard Assessment (OEHHA) states that "there is valid scientific concern that the rate of short-term exposure may influence the risk – in other words, a higher exposure to a carcinogen over a short period of time may be a greater risk than the same total exposure spread over a much longer time period".[2] OEHHA also provide guidance for evaluating cancer risk from short-term projects, such as construction. According to the OEHHA guidance, cancer risk should not be estimated for projects lasting less than two months due to the uncertainty in assessing very short-term exposures. As stated above, project construction is expected to last 24 months, which is substantially longer than the two-month limitation for short-term exposures recommended by OEHHA.

Therefore, a quantitative health risk assessment should be performed to estimate the incremental increase in cancer risk at nearby sensitive receptors (e.g., residences and schools) that would be exposed to DPM emissions during project construction in accordance with the OEHHA guidance. If needed, the health risk assessment should also evaluate the effectiveness of implementing exhaust control measures (e.g., use of Tier 4 engines) to reduce health risks below the SCAQMD's recommended thresholds of significance.

Inadequate Analysis of Vapor Intrusion Concerns

In 2021, California Environmental prepared a sub-slab soil gas screening survey for the project site to evaluate vapor intrusion concerns associated with potential subsurface contamination from former automotive repair shops on the project site.[3] Soils gas samples were collected from two temporary sub-slab soil gas probes and analyzed for volatile organic compounds (VOCs). Based on the soil gas results, the predicted indoor air concentrations were compared to the Department of Toxic Substances Control's (DTSC's) screening levels for ambient air at a commercial property: the predicted indoor air concentrations were below the screening levels for a commercial receptor.

The sub-slab soil gas survey did not evaluate potential health risks to residential receptors, which the proposed project would introduce to the site. As summarized in **Table 2**, the maximum predicted indoor air concentrations for benzene and tetrachloroethene would exceed the DTSC's screening levels for a residential property using DTSC's current established

[2] Office of Environmental Health Hazard Assessment (OEHHA). 2015. Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments. February.
[3] California Environmental, 2021. Sub-slab Soil Gas Screening Survey - Phase II, Commercial Property, APN 2350-018-091, 5240 Lankershim Boulevard, North Hollywood, California 91601. April 12.

attenuation factor of 0.03 for sub-slab soil gas samples. Therefore, the vapor intrusion of VOCs would pose a substantial health risk to future residents on the project site and result in a potentially significant impact. Given that the source of soil gas contamination has not been identified and concentrations of VOCs in sub-slab soil gas exceeded residential screening levels (and were only slightly below commercial screening levels), higher concentrations of VOCs could be present in soil gas beneath other areas of the project site and additional soil gas sampling may be required to fully characterize site conditions. An updated health risk assessment for the sub-slab soil gas survey should be prepared for the CE to disclose the potential health risks to future residents on the project site, and mitigation measures should be identified to reduce the potential health risks to a less-than-significant level.

Table 2. Predicted Indoor Air Quality from Vapor Intrusion

Volatile Organic Compound	Max Soil Gas Concentration[1] (µg/cm^3)	Attenuation Factor[2]	Predicted Indoor Air Concentration (µg/cm^3)	Residential Indoor Air Screening Level[3] (µg/cm^3)	Exceed Screening Level?
Benzene	5.9	0.03	0.177	0.097	Yes
Tetrachloroethene	21	0.03	0.63	0.46	Yes

Notes:
[1] California Environmental, 2021. Sub-slab Soil Gas Screening Survey - Phase II, Commercial Property, APN 2350-018-091, 5240 Lankershim Boulevard, North Hollywood, California 91601, April 12.
[2] DTSC and State Water Board, 2023. Final Draft, Supplemental Guidance: Screening and Evaluating Vapor Intrusion, February.
[3] DTSC, 2022. Human Health Risk Assessment (HHRA) Note Number 3, DTSC-Modified Screening Levels (DTSC-SLs), Revised May.

Conclusions

Based on our review of the CE analysis regarding noise, air quality, and hazardous materials impacts for the project, Baseline recommends that the City of Los Angeles prepare an updated analysis to address the environmental concerns described above.

Sincerely,

Patrick Sutton
Principal Environmental Engineer

Cem Atabek
Senior Environmental Engineer

RESUMES

Patrick Sutton, P.E.

Principal Environmental Engineer

Areas of Expertise

Air Quality, GHGs, Noise, Hazardous Materials, Geology, and Hydrology

Education

M.S., Civil and Environmental Engineering, University of California – Davis

B.S., Environmental Science, Dickinson College

Registration

Professional Engineer No. 13609 (RI)

Years of Experience

19 Years

Patrick Sutton is an environmental engineer who specializes in the assessment of hazardous materials released into the environment. Mr. Sutton prepares technical reports in support of environmental review, such as Phase I/II Environmental Site Investigations, Air Quality Reports, Greenhouse Gas (GHG) Reduction Plans, and Health Risk Assessments. He has prepared numerous CEQA/NEPA evaluations for air quality, GHGs, geology, hazardous materials, and water quality related to residential, commercial, and industrial projects, as well as large infrastructure developments. His proficiency in a wide range of modeling software (AERMOD, CalEEMod, RCEM, CT-EMFAC) as well as relational databases, GIS, and graphics design allows him to thoroughly and efficiently assess and mitigate environmental concerns.

For mixed-use development projects, Mr. Sutton has prepared health risk assessments for sensitive receptors exposed to toxic air contaminants based on air dispersion modeling. He has also prepared GHG Reduction Plans to demonstrate how projects can comply with State and/or local GHG reduction goals. For large highway infrastructure improvement projects, Mr. Sutton has prepared air quality and hazardous materials technical reports in accordance with Caltrans requirements. Air quality assessments include the evaluation of criteria air pollutants, mobile source air toxics, and GHG emissions to support environmental review of the project under CEQA/NEPA and to determine conformity with the State Implementation Plan. Hazardous materials investigations include sampling and statistically analysis of aerially-deposited lead adjacent to highway corridors.

Project Experience

Oakland Downtown Specific Plan EIR. Prepared a program- and project-level Air Quality and GHG Emissions analysis. Developed a mitigation measure with performance standards to ensure GHG emissions from future projects comply with the Citywide 2030 GHG reduction target.

I-680 Express Lanes from SR 84 to Alcosta Boulevard Project. Prepared Initial Site Assessment and Preliminary Site Investigation to evaluate contaminants of potential concern in soil and groundwater. Prepared Air Quality Report to determine the project's conformity to federal air quality regulations and to support environmental review of the project under CEQA and NEPA.

Altamont Corridor Expressway (ACE/Forward) Project EIR/EIS. Prepared a program- and project-level Hazardous Materials analysis for over 120 miles of railroad corridor from San Jose to Merced. Hazardous materials concerns, such as release sites, petroleum pipelines, agricultural pesticides, and nearby school sites were evaluated in GIS.

Stonegate Residential Subdivision EIR. Prepared a project-level Hydrology and Water Quality analysis for a residential development located within the 100-year floodplain. The proposed project included modifications to existing levees and flood channels.

BART Silicon Valley Extension Project. Prepared Initial Site Assessment and Hazardous Materials EIS/EIR section for extending 6 miles of proposed BART service through the Cities of San Jose and Santa Clara.

Cem Atabek

Senior Environmental Engineer

Areas of Expertise

Hazards and Hazardous Materials, Geology and Soils, and Hydrology and Water Quality

Education

B.S., Environmental Engineering, University of California, Berkeley

Registrations/Certifications

40-hour HAZWOPER training

Years of Experience

16 Years

Cem Atabek is an environmental engineer who specializes in hazardous materials management, site characterization, development and implementation of remedial actions, and soil vapor intrusion mitigation for city, county, port, commercial/industrial, and school district clients. He has extensive experience in preparation of technical content for CEQA documents including Initial Studies/Mitigated Negative Declarations (IS/MNDs), and Environmental Impact Reports (EIRs). He has worked on CEQA documents for school districts, utility districts, remediation projects, transportation/rail projects, dredging projects, levee projects, landfills, biomedical facilities/campuses, residential and mixed-use developments. His CEQA work has been heavily focused on the topics of hazards and hazardous materials, geology and soils, and hydrology and water quality.

He has conducted investigations and remediation activities on contaminated properties and leaking underground storage tank sites, including media contaminated with petroleum hydrocarbons, solvents, metals, and manufactured gas plant wastes. He has designed and provided oversight for the installation of remedial surface caps to prevent exposure to impacted soils, and soil vapor intrusion mitigation systems. Through his work, he has developed a thorough understanding of regulatory requirements and established working relationships with regulatory agency staff on the state and local levels. His technical background and experience provide useful insights into the development of feasible and practical mitigation measures for identified significant CEQA impacts.

Project Experience

Former General Electric Oakland Facility Redevelopment EIR. Prepared hazardous materials, geology, and hydrology analyses for the remediation and redevelopment of a former GE manufacturing facility which was heavily contaminated with volatile organic compounds and polychlorinated biphenyls. Coordinated with regulatory agencies and developed a mitigation measure to ensure the adequacy of proposed remedial actions and management of hazardous materials.

Former Potrero Power Plant IS/MNDs. Deputy project manager and prepared hazardous materials, geology, and hydrology analyses for two IS/MNDs that reviewed two separate remedial actions, one addressing contaminated soils in the upland area and the other address nearshore sediments.

Making Waves Academy IS and EIR. Prepared hazardous materials, geology, and hydrology analyses for the remediation and redevelopment of a former manufacturing facility with asbestos-containing materials and former bulk fuel storage facility into a charter school campus and sports facility. The proposed project included construction within a flood zone and required soil stabilization near the shoreline to address potential liquefaction hazards. Developed mitigation measures to ensure that the project would not result in the release of hazardous materials into the environment, exacerbate flooding conditions, or impact water quality.

Altamont Corridor Express (ACE*forward and ACEextension)* Project EIR/EIS. Prepared the hydrology analyses for two commuter rail expansion projects involving over 120 miles of rehabilitation and new tracks, bridges, trains stations, and intermodal connections. Many segments of the project alignment crossed levees and flood zones and sea level rise was a major concern due to tracks crossing through wetlands of San Francisco Bay. Developed mitigation measures to ensure that the project would not exacerbate flooding conditions, impact water quality, or deplete groundwater resources due to tunnel dewatering.