

## **Justification/Reason for Appeal**

4260 N. Arch Drive Mixed-Use Building

(CPC-2021-10345-DB-SPP-SPR-WDI-HCA ; ENV-2021-10346-CE)

### **I. REASON FOR THE APPEAL**

The Categorical Exemption prepared for 4260 N. Arch Drive Mixed-Use Building (CPC-2021-10345-DB-SPP-SPR-WDI-HCA ; ENV-2021-10346-CE) ("Project") fails to comply with the California Environmental Quality Act ("CEQA"). Furthermore, the approval of the Site Plan Review entitlements (DIR-2020-7846-DB-SPR-HCA) was in error because (1) the City of Los Angeles ("City") must fully comply with CEQA prior to any approvals in furtherance of the Project and (2) the findings are not supported by substantial evidence. Therefore, the City of Los Angeles ("City") must set aside the Site Plan Review entitlements and prepare and circulate an environmental impact report ("EIR") prior to considering approvals for the Project.

### **II. SPECIFICALLY THE POINTS AT ISSUE**

For the specific reasons set forth in the attached comment letter dated August 25, 2023, the Project does not qualify for a categorical exemption pursuant to Section 15332 of the CEQA Guidelines ("Infill Exemption"). Furthermore, 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."].) As such, the approval of the Project's Site Plan Review entitlements was in error. 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.

### **III. HOW YOU ARE AGGRIEVED BY THE DECISION**

Members of appellant Supporters Alliance for Environmental Responsibility ("SAFER") live and/or work in the vicinity of the proposed Project. They breathe the air, suffer traffic congestion, and will suffer other environmental impacts of the Project unless it is properly mitigated.

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

The City Planning Commission sustained the Planning Director's April 24, 2023 decision, approved the Site Plan Review and approved a Categorical Exemption for the project pursuant to Section 15332 of the CEQA Guidelines, despite a lack of substantial evidence in the record that the Project met the requirements for the Infill Exemption. 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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August 25, 2023

***Via Email***

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**Re: Comment on Proposed CEQA Infill Exemption for the 4260 Arch Drive  
Multi-family Project (CPC-2021-10345-DB-SPP-SPR-HCA), September XX,  
2023 City Planning Commission Meeting**

Dear Honorable Members of the Los Angeles City 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 five-story residential project proposed at 4260 North Arch Drive in the City of Los Angeles (CPC-2021-10345-DB-SPP-SPR-HCA) (“Project”). On July 27, 2023, the Planning Commission recommended the Project to proceed with the Class 32 Exemption. SAFER submitted written comments prior to the July 27, 2023 hearing and respectfully incorporates those concerns herein.

After further review, SAFER appeals to the City of Los Angeles’ (“City”) determination which will exempt the Project from review under the California Environmental Quality Act

(“CEQA”) As discussed below, the City cannot demonstrate how their decision to exempt the Project (ENV-2021-10346-CE) fully complies with the terms of a Class 32 Exemption. Since the Project is not exempt from CEQA, an Initial Study must be prepared and circulated to determine the appropriate level of CEQA review required.

## **PROJECT DESCRIPTION**

The Project is located at 4260 North Arch Drive and 11201 West Ventura Boulevard. The Project includes the construction, use, and maintenance of a five-story residential building with 129 dwelling units, including seventeen units set aside for Very Low-Income Households, and approximately 117,000 square feet of floor area. The proposed building will reach a maximum height of 75 feet with stepbacks at the upper floors toward the rear of the building. The Project will provide 145 parking spaces, 43 of which will be compact spaces. Parking is provided within a partially subterranean garage. The Project will provide a publicly accessible path between Arch Drive and the Los Angeles River path.

## **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]; *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 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).”).

## DISCUSSION

### **A. The City Incorrectly Applied CEQA’s Class 32 Infill Development Categorical Exemption to the Project and Thus a Full CEQA Analysis Is Required.**

On its face, the proposed Project does not qualify for a Class 32 Exemption because of the Project’s potentially significant environmental impacts on air quality and noise. 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 (EIR).

The Class 32 exemption provides:

Class 32 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])

#### **a. The Project will have Significant Indoor Air Quality Impacts, Precluding Reliance on the CEQA Infill Exemption.**

A project cannot qualify for CEQA’s Class 32 Exemption if the project results in significant air quality impacts. 14 CCR § 15332(d). Certified Industrial Hygienist, Francis “Bud”

Offermann, PE, CIH and environmental engineers Patrick Sutton, PE and Yilin Tian, PhD of the environmental consulting firm Baseline Environmental Consulting (“Baseline”) have conducted a review of the proposed Project and relevant documents regarding the Project’s indoor air emissions. Mr. Offermann is a leading expert on indoor air quality and has published extensively on the topic and Baseline is a premier consulting firm focusing on environmental impacts related to hazardous waste and human exposures to toxic air contaminants (“TAC”).

In accordance with their previous analysis of the Project along with additional review, Mr. Offermann and Baseline both conclude 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’s expert comments and CV are attached as Exhibit A. Baseline’s expert comments, along with input parameters and base assumptions for their Health Risk Assessment (“HRA”), and CVs are attached as Exhibit B.

The Project fails to analyze the indoor and outdoor air quality impacts. As expressed in SAFER’s July 24 written comment, the City failed to perform an adequate analysis concerning the cancer risks associated with long-term exposure to TACs. Baseline prepared an HRA to estimate the increased cancer risk at nearby sensitive receptors exposed to diesel particulate matter (“DPM”). As summarized in Table 1 below, “[t]he estimated cancer risk at the MEIR location from exposure to DPM emissions during project construction emissions is 65.2 in a million, which is above the SCAQMD’s threshold of 10 in a million. Therefore, project construction would expose sensitive receptors to substantial pollutant concentrations and the impact would be potentially significant.”

**Table 1. Health Risks at MEIR During Project Construction**

Construction Scenario	Diesel Particulate Matter	
	Cancer Risk (per million)	Chronic Hazard Index
Unmitigated Emissions	65.2	0.047
Thresholds of Significance	10	1
Thresholds Exceedance?	Yes	No

Source: See Attachment A

*Id.*, p. 4.

Even after raising these initial concerns, the City did not seek additional analysis regarding the Project’s failure to analyze the increased cancer risk arising from the Project. The Applicant contests that a HRA is not required but provides no substantial evidence to support the conclusion that the Project’s air quality impacts will be less than significant. To the contrary, Baseline’s HRA analysis provides substantial evidence that the Project will have potentially significant air quality impacts that remain unmitigated. Because the Project failed to adequately consider air quality, the City cannot support a conclusion that the Project will not have any significant air quality impacts. Therefore, it is improper to allow the Project to continue under the Class 32 Exemption.

Furthermore, given the Project site's location, the Project fails to adequately review and analyze the additional impacts of motor vehicle traffic and the subsequent increase in exposure to particulate matter ("PM2.5"). As Mr. Offermann highlights, the Project site is within the South Coast Air Basin, a state and federal non-attainment area for PM2.5, and in an area with moderate to high traffic. "Additionally, the SCAQMD's MATES V study cites an existing cancer risk of 422 per million at the Project site due to the site's high concentration of ambient air contaminants resulting from the area's high levels of motor vehicle traffic." (Ex. A, p. 11)

Mr. Offermann predicts that the projected traffic noise levels, the annual average PM2.5 concentrations will exceed both state and federal standards, thereby necessitating installation of technology in order to reduce the impacts to a less-than-significant level. (*Id.*) However, the City again fails to analyze these issues, as well as the cumulative impacts associated with the Project's emissions.

Mr. Offermann's and Baseline's expert reviews constitute substantial evidence of a fair argument of a significant environmental impact to future users of the Project, and an EIR must be prepared to disclose and mitigate those impacts.

**b. The Project will have Significant Biological Impacts, Precluding Reliance on the CEQA Infill Exemption.**

A project cannot qualify for CEQA's Class 32 Exemption if the project has habitat value for rare, endangered, or unique species. 14 CCR § 15332(c). Expert wildlife biologist Dr. Shawn Smallwood, Ph.D., reviewed the July 2023 Staff Report as well as the 2017 City of Los Angeles Tree Report prepared by Carlberg Associates, to inform his comments. Dr. Smallwood's comments and CV are attached as Exhibit C.

Dr. Smallwood's associate, Ms. Noriko Smallwood, a wildlife biologist, surveyed the Project site and took photos of existing wildlife and habitat there on July 29, 2023. (Ex. C., p. 1) During her site visit, Ms. Smallwood detected 21 species of vertebrate wildlife at or near the site, including 4 species with special status of vertebrate wildlife and another of an arthropod (Table 1)." (*Id.*, p. 3) Among the species Ms. Smallwood identified at or near the Project site are monarch butterfly (*Danaus plexippus*), Allen's hummingbird (*Selasphorus sasin*), Cooper's hawk (*Accipiter cooperii*), and the California gull (*Larus californicus*). (*Id.*)

For instance, Allen's hummingbird is listed by the U.S. Fish and Wildlife Service ("USFWS") as a Bird of Conservation Concern ("BCC"). The USFWS explains that its BCC list "identifies the migratory and non-migratory bird species (beyond those already designated as federally threatened or endangered) that represent [the agency's] highest conservation priorities (emph. added)." Based on these observations, Dr. Smallwood concluded that the Project would likely result in significant impacts to existing biological resources at the Project site.

The Staff Report is silent on any biological and wildlife studies performed onsite to determine whether there would not be significant environmental impacts associated with the Project. The Applicant concedes that the Project will require the cutting down of 25 on-site trees,

but neither consider the species that may rely on the site. Over the three-hour period that Ms. Smallwood surveyed the area, there are a multitude of species, including special-status species, that exist on or near the Project site. Specifically, Ms. Smallwood observed a couple Cooper's hawks perched on trees on the Project site, and Dr. Smallwood further explains that such observation "typifies behaviors [he has] seen at the end of the breeding season, when parents must force fledglings to live on their own," though additional research and surveys is required to confirm that such breeding takes place on site. (*Id.*, Table 1.)

This finding provides substantial evidence that at least a few special-status species are relying on the site as valuable habitat, which provides new information on the Project's biological impacts and which neither the City nor the Applicant discuss in their findings. The Applicant contends that the Project site has no value as habitat for endangered, rare, or threatened species, and relies merely on the fact that the Project site is not within or near a designated Significant Ecological Area. However, even the Applicant's supplemental analysis fails to consider the biological significance associated with the Project site's location along the Los Angeles River habitat. As Dr. Smallwood observes, the survey "proves that the site is valuable to wildlife, including to multiple species of endangered, rare and threatened species of wildlife. The animals she saw at and around the site would not be there if the site was of no value." (*Id.*, p. 7)

As such, the City cannot rely on the Class 32 Exemption because of the habitat value the Project sites brings for endangered, rare, or threatened species. An EIR is required to properly assess and more extensively mitigate these impacts.

**c. The City Fails to Provide Substantial Evidence that the Project is Consistent with the City's Green New Deal Policy.**

A project cannot qualify for CEQA's Class 32 Exemption if the project is inconsistent with all applicable general plan policies. 14 CCR § 15332(a). Here, the City explains that the applicable plan relating to the City's efforts to reduce GHG emissions is the LA Green New Deal Sustainable city pLAn of 2019, which updates the City's Sustainable City pLAn of 2015 ("City Plan"). In its Focused Air Quality, Greenhouse Gas, and Energy Impact Evaluation ("Focused Evaluation"), the City explains how the Project is consistent with its targets to recycle wastewater, capture more stormwater, and increase energy efficiency through storage and demand response programs. (Focused Evaluation, p. 6). To justify their consistency analysis, the City relies on the mandatory standards provided under the 2019 edition of the California Green Building Standards Code ("Code"). However, the City incorrectly concludes that the standards are consistent with the City Plan because the Project is not subject to the Code's voluntary standards, which is independent of the mandatory standards of a separate chapter of the Code. Even if the Project is subject to mandatory standards, such standards are not consistent with the City's more stringent targets with regard to water, energy, and materials conservation.

Therefore, it is improper for the City to conclude without substantial evidence that the Project will be consistent with the City Plan. The City may not proceed with the Class 32 Exemption until it comprehensively analyzes the Project's consistency with the City Plan.

## **CONCLUSION**

The City cannot invoke 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 pursuant to CEQA. Thank you for considering these comments.

Sincerely,

Marjan R. Abubo

Lozeau | Drury LLP