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**Re: Appeal Comment for the California Environmental Quality Act Class 32
Categorical Exemption for the 18434 West Vanowen Street Project (CPC-2022-
8567-DB-CDO-SPR-VHCA; ENV-2022-8568-CE)**

Dear Honorable Members of the Planning & Land Use Management Committee and Mr. Woon:

This comment is submitted on behalf of Supporters Alliance for Environmental Responsibility (“SAFER”) and its members living or working in the City of Los Angeles (“City”), regarding the appeal of the proposed California Environmental Quality Act (“CEQA”) Class 32 Categorical Exemption for the 18434 West Vanowen Street Project (CPC-2022-8567-DB-CDO-SPR-VHCA; ENV-2022-8568-CE) (“Project”). The Project involves the demolition of an existing commercial building and carport, and the construction and use of a new, seven-story residential building with 95 dwelling units and two levels of parking, located at 18430-18434 West Vanowen Street, Los Angeles, CA 91335. The Los Angeles City Planning Commission (“CPC”) approved the Project at its November 21, 2024 hearing and in its December 19, 2024 Letter of Determination.

On November 19, 2024, SAFER submitted written comments to the CPC providing that the CEQA Class 32 Categorical Exemption, or Infill Exemption (“Exemption”), which exempts the Project from further review under CEQA, does not apply to the Project because the Project will have significant adverse impacts on indoor air quality. This appeal comment supplements the prior SAFER comment and includes additional expert comments from (1) noise expert Ani Toncheva from the acoustical consulting firm Wilson Ihrig, and (2) air quality experts Matt Hagemann, P.G., C.Hg., and Dr. Paul Rosenfeld, Ph.D., from the environmental consulting firm

Soil/Water/Air Protection Enterprise (“SWAPE”). Ms. Toncheva’s written comments and C.V. are attached as Exhibit A and are incorporated herein by reference in their entirety. SWAPE’s written comments and C.V. are attached as Exhibit B and are incorporated herein by reference in their entirety.

After careful review, SAFER maintains its appeal that the Project does not qualify for the Infill Exemption because, as discussed below, (1) the Project will have significant adverse impacts on noise and air quality, and (2) the unusual circumstances exception to the Exemption applies. Instead, further CEQA review, either through a mitigated negative declaration (“MND”) or environmental impact report (“EIR”), is required to analyze and mitigate these impacts before project approval. SAFER thus respectfully requests that the Planning & Land Use Management (“PLUM”) Committee require the City to prepare an MND or EIR for the Project and find that the Infill Exemption does not apply.

I. LEGAL STANDARD

CEQA mandates that “the long-term protection of the environment . . . shall be the guiding criterion in public decisions” throughout California. (Public Resources Code [“PRC”] § 21001(d).) A “project” is “the whole of an action” directly undertaken, supported, or authorized by a public agency “which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” (PRC § 21065; 14 California Code of Regulations [“CCR”] § 15378(a).) CEQA requires environmental factors to be considered at the “earliest possible stage . . . before [the project] gains irreversible momentum,” (*Bozung v. Loc. Agency Formation Com.* (1975) 13 Cal. 3d 263, 284), “at a point in the planning process where genuine flexibility remains.” (*Sundstrom v. Mendocino County* (1988) 202 Cal.App.3d 296, 307.)

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 if it can be seen with certainty that the activity in question will not have a significant effect on the environment, no further evaluation is required under CEQA. (14 CCR § 15002(k)(1).) Second, if the project is not exempt, and there is a possibility the project will have a significant environmental effect, then the agency must perform an initial threshold study. (14 CCR § 15002(k)(2).) Third, if the initial study indicates that there is no substantial evidence that the project may have a significant environmental effect (*id.*), then a mitigated negative declaration (“MND”) is required, but if the initial study shows that the project may have a significant environmental effect, then an environmental impact report (“EIR”) is required. (14 CCR § 15002(k)(3).) Here, because the City exempted the Project from CEQA entirely, the first step of the CEQA process applies.

CEQA identifies certain classes of projects as exempt from CEQA’s provisions. These are 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.’ [Citations].” (*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.’”].) Here, the City has recommended that the Project is categorically exempt from CEQA’s requirements pursuant to the Class 32 Exemption, or “Infill Exemption.” (14 CCR § 15332.)

Under CEQA’s Infill Exemption, a project is exempt from CEQA’s requirements if the project meets the following five conditions:

- (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].) Importantly, mitigated categorical exemptions are not allowed. (*Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1102 [“*SPAWN*”]; *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1200 [“*Azusa*”].) Agencies may not rely on mitigation measures as a basis for concluding that a project is categorically exempt, or as a basis for determining that one of the significant effects exceptions does not apply.

II. DISCUSSION

A. CEQA’s Infill Exemption does not apply on its face to the Project and thus a full CEQA analysis is required.

The CPC has determined that the CEQA Infill Exemption applies to the Project. The Exemption does not apply on its face if the project will have any significant effects related to traffic, noise, air quality, or water quality. (14 CCR § 15332(d).) Here, the Exemption does not apply to the Project on its face because the Project will have significant adverse impacts on noise and air quality. Therefore, the City must prepare an initial study to determine the appropriate level of CEQA review of these impacts before approval, whether an MND or an EIR.

1. The Project will have significant adverse impacts on noise, precluding reliance

on the Infill Exemption.

Noise expert Ani Toncheva from the acoustical consulting firm Wilson Ihrig has reviewed the November 2024 Staff Report, Categorical Exemption Justification Report (“CER”), and Noise Technical Report (“Noise Report”) the City prepared for the Project. As discussed below, Ms. Toncheva concluded that the Project will significantly affect noise levels because (1) the CER’s noise analysis relies on a noise baseline that was improperly established; (2) the Project will result in potentially significant construction noise impacts; and (3) the Noise Report’s operational noise analysis is incomplete. Thus, Ms. Toncheva’s expert comments constitute substantial evidence that the Project will have significant adverse impacts on noise.

a. The City’s noise analysis relies on an improperly established noise baseline.

Ms. Toncheva found that the manner in which the CER determined the existing noise baseline was flawed. The noise section of the CER claims that sensitive receptors are located 1,000 feet from the Project site, whereas the Noise Report shows that the closest residence, 6727 Darby Avenue, is only 20 feet away. (CER at 16; Noise Report at 8; Ex. A at 3.) The Noise Report shows that no noise measurements were made at the closest residence. (Noise Report at 10.) Instead, the closest measurements were taken on Darby Avenue, where traffic levels would be lower, rather at the back of the buildings close to the Project. (Ex. A at 3.) Furthermore, the ambient noise levels the City reported were based on short-term, 20-minute measurements. (*Id.*; Noise Report at 10.) However, ambient noise levels fluctuate throughout the day and change based on distance and relative location from the Project site. (Ex. A at 3.) The City’s 20-minute measurements account for neither fluctuations in noise over the course of the day nor adjustments with distance from the sources studied. (*Id.*) Therefore, Ms. Toncheva concluded that the City must conduct properly documented ambient measurements near sensitive receptors in an MND or EIR to capture the baseline ambient noise conditions across the day to determine the impact of construction and operational noise.

b. There is substantial evidence that the Project will result in potentially significant construction noise impacts.

Ms. Toncheva concluded that the City failed to disclose and mitigate the Project’s potentially significant construction noise impacts. The City performed the construction analysis using a SoundPLAN model (“Model”), which uses an area noise source for the entire construction site. (*Id.* at 4; Noise Report at 14.) Ms. Toncheva explained that this Model effectively lowers the predicted noise levels by averaging out the sound across the entire site. (Ex. A at 4.) Additionally, Ms. Toncheva found it unclear which reference noise levels were used for the predictions. (*Id.*) The Noise Report mentioned that equipment will be occasionally idle but provided no assumptions on usage factors or the individual equipment to be used. (*Id.*; Noise Report at 13.)

The City’s SoundPLAN model used noise contours to represent demolition and grading work. (Noise Report at 13; Ex. A at 4.) The Model also only showed building outlines, not

specific noise receptor locations. (Noise Report at 13; Ex. A at 4.) The Model showed a 75 dBA contour touching the nearest residential building, 6727 Darby Avenue. (Noise Report at 13; Ex. A at 4.) However, Table 5 of the Noise Report showed a much lower noise level, 35.7 dBA, at 6727 Darby Avenue. (Noise Report at 13; Ex. A at 4.) The Report claimed that these predictions included “best practices” like sound barriers, but it did not quantify what mitigation was applied, and the Model did not show any such barriers. (Ex. A at 4.) Ms. Toncheva concluded that it is highly unlikely that this discrepancy between the 75 dBA noise contour in the Model and the 36 dBA level in Table 5 is from the effect of a noise barrier. (*Id.*) Additionally, Ms. Toncheva calculated that construction noise of 75 dBA is 19.5 dB above the ambient noise level measured at a sensitive receptor site on the east side of 6727 Darby Avenue. (*Id.*) As discussed in the Noise Report, a 5- to 10-dBA increase, depending on the duration of the construction activity, is considered significant. (Noise Report at 11.) Moreover, a 10-dB increase is subjectively heard as an approximate doubling in loudness. (Ex. A at 4.)

Because the Noise Report provided no reference noise levels, and there is a discrepancy between the levels shown in the Model and Table 5 of the Report, Ms. Toncheva also estimated construction noise levels for grading, incorporating the reference levels and usage factors for the equipment typically used during grading from the Federal Highway Administration Roadway Construction Noise Model as comparison. (*Id.* at 5.) Ms. Toncheva found that construction noise levels are 84 to 89 dBA for individual equipment at 6727 Darby Avenue, 20 feet from the site, and 64 to 69 dBA at 6751 Darby Avenue, 200 feet from the site. (*Id.*) Combined activity levels are 95 dBA and 75 dBA at these two receptors, ranging as high as 39 dB above measured ambient levels. (*Id.*)

The City did not discuss construction mitigation measures for any of these potentially significant noise impacts. (*Id.*) Ms. Toncheva estimates that noise barriers at the perimeter of the Project site could provide 10 to 15 dB of noise reduction, depending on the site geometry and barrier construction. (*Id.*) She notes, however, that contractors are often reluctant to employ barriers because they slow production. (*Id.*) Thus, the City must prepare an MND or EIR to properly evaluate construction noise impacts, including the construction noise increase over ambient levels at sensitive receptor locations. (*Id.*) If the increase is significant, then the City must properly evaluate mitigation measures to reduce the impacts to less-than-significant.

c. The City’s operational noise analysis is incomplete.

Lastly, Ms. Toncheva found that the City failed to provide a proper quantitative analysis of operational noise. The Noise Report claimed, without evidence, that the Project will have no operational noise impact. The Report identified HVAC noise as a potential source of operational noise but fails to offer any numerical assessment of predicted mechanical noise levels. (Noise Report at 23; Ex. A at 6.) The CER also mentioned a ground floor oil transformer that is neither evaluated nor mentioned in the Noise Report. (CER at 18; Ex. A at 6.) Furthermore, the Report fails to address noise from the parking garage entrance or ventilation system. (Ex. A at 6.) Thus, the Project’s operational noise must be properly evaluated in an MND or EIR.

2. The Project will have significant adverse impacts on air quality, precluding reliance on the Infill Exemption.

Air quality experts Matt Hagemann, P.G., C.Hg., and Dr. Paul Rosenfeld, Ph.D., from the environmental consulting firm Soil/Water/Air Protection Enterprise (“SWAPE”) have reviewed the November 2024 Staff Report, Categorical Exemption Justification Report (“CER”), and Air Quality Technical Report (“AQ Report”) the City prepared for the Project. As discussed below, SWAPE concluded that the Project will significantly affect air quality because (1) the City inadequately evaluated the Project’s diesel particulate matter (“DPM”) emissions; (2) the Project will have significant impacts related to air pollutant health risks that the City failed to adequately address; and (3) the Project requires mitigation measures to reduce its DPM emissions. SWAPE recommends that a “full analysis, compliant with the California Environmental Quality Act . . . requirements, should be prepared to adequately assess and mitigate the health risk impacts that the project may have on the surrounding community.” (Ex. B at 1.)

a. The City inadequately evaluated diesel particulate matter (“DPM”) emissions.

SWAPE found that the City failed to conduct a construction or operational health risk analysis (“HRA”). (Ex. B at 1.) Instead, based on conservative modeling assumptions, the City merely asserted that the Project would produce minimal emissions of diesel particulate matter (“DPM”), a known human carcinogen, and that the Project’s toxic air contaminant (“TAC”) emissions would be less than significant. (*Id.* at 1-2.)

SWAPE highlighted that CEQA requires agencies to make “a reasonable effort to substantively connect a project’s air quality impacts to likely health consequences.” (*Id.* at 2; *see Sierra Club v. Cnty. of Fresno* (2018) 6 Cal.5th 502.) Additionally, CEQA Guidelines § 15332 specify that a project can only qualify for the Infill Exemption if it will not result in significant effects on air quality, among other things. (14 CCR § 15332(d).) Therefore, to establish consistency with the Infill Exemption criteria, the City should have performed a construction and operational HRA to evaluate the health risks posed to nearby sensitive receptors from the Project’s construction DPM emissions. (Ex. B at 2.) Furthermore, SWAPE found that the City failed to compare the Project’s excess cancer risk to the South Coast Air Quality Management District’s (“SCAQMD”) specific significance threshold of 10 per million. (*Id.*) Thus, to align with the most recent guidance, a comprehensive HRA should be prepared in an MND or EIR to evaluate the potential health impacts of the Project’s construction and operation emissions on nearby sensitive receptors.

b. There is substantial evidence that the Project will have significant impacts related to air pollutant health risks that the City failed to adequately address.

SWAPE performed a preliminary HRA of the Project’s construction health risk impact on sensitive residential receptors using AERSCREEN, a screening-level air quality dispersion model, and the City’s total annual particulate matter estimates from its California Emissions

Estimator Model (“CalEEMod”). (*Id.*) The CalEEMod showed that the Project’s construction activities will produce about 1,039 pounds of DPM over the 2-year construction period. (*Id.*) SWAPE found that the maximally exposed individual receptor (“MEIR”) is approximately 100 meters (328 feet) south of the Project site. (*Id.* at 3.) According to the City’s Staff Report, the site is also located directly adjacent to a multi-family residential building. (*Id.*)

SWAPE calculated the Project’s excess cancer risk to the MEIR using applicable HRA methodologies from the Office of Environmental Health Hazard Assessment, as recommended by SCAQMD. (*Id.*) SWAPE found that, over the Project’s 2-year construction period, the excess cancer risks at the MEIR about 100 meters from the site are approximately 14.9 per million for the third trimester of pregnancy and 315 per million for infants. (*Id.* at 5.) Additionally, SWAPE found that the excess cancer risk during a residential lifetime of 30 years is about 330 per million. (*Id.*) The third trimester, infant, and lifetime cancer risks all exceed the SCAQMD threshold of 10 per million, resulting in a potentially significant impact that the City failed to identify. (*Id.*) Thus, the Project’s construction could pose significant health risks, and a full CEQA analysis should be prepared, including a comprehensive HRA. (*Id.*)

c. The Project requires mitigation measures to reduce its DPM emissions.

To address the Project’s health risks, the City must review all feasible mitigation measures. (*Id.* at 6.) SWAPE offers various mitigation measures the City could implement to reduce the DPM emissions from Project construction. Such measures include, among other things, minimization of unnecessary vehicular and machinery activities, utilization of clean fuel generators and existing power sources, use of alternative fuel and electric equipment, and required implementation of Tier 4 equipment or better for all engines above 50 horsepower. (*Id.*) SWAPE states that a “full CEQA analysis should be conducted that includes all feasible mitigation measures, along with the preparation of an HRA, to ensure emissions are reduced to the maximum extent feasible.” (*Id.* at 7.)

B. The Project does not qualify for CEQA’s Infill Exemption due to the Unusual Circumstances Exception.


The Unusual Circumstances Exception (“Exception”) prohibits categorical exemptions where there is a “reasonable possibility” that a project will significantly impact the environment “due to unusual circumstances.” (14 CCR § 15300.2(c).) To determine whether the Exception applies, agencies use a two-part test. They first ask whether a project presents unusual circumstances. If it does, they then ask whether there is a reasonable possibility that a significant environmental effect will result from those unusual circumstances. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1098.) The California Supreme Court has held that “a party may establish an unusual circumstance with evidence that the project *will* have a significant environmental effect.” (*Id.* at 1105 [emph. added].) That evidence, if convincing, necessarily also establishes a reasonable possibility that the project will significantly affect the environment due to those unusual circumstances. (*Id.*)

As discussed above, we have submitted substantial evidence that the Project will have significant adverse impacts on noise and air quality. The fact that these impacts will occur constitutes an unusual circumstance, thereby precluding the City's determination that the Exemption applies to the Project.

III. CONCLUSION

The City cannot rely on a CEQA Infill Exemption because the Project does not meet the terms of the Exemption. Instead, in accordance with CEQA, the City must prepare an initial study, followed by either an MND or EIR, to examine the Project's adverse environmental effects before approval. Therefore, SAFER respectfully requests that the PLUM Committee find that the Project does not qualify for the Infill Exemption under CEQA.

Sincerely,

A handwritten signature in cursive script, appearing to read "Hayley Uno".

Hayley Uno
LOZEAU DRURY LLP