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Re: 956-966 South Vermont Ave.; DIR-2022-4433-TOC-SPR-HCA-1A (APN: 5076-001-021 & -031)

Dear Honorable Members of the City Council:

I am writing on behalf of Supporters Alliance for Environmental Responsibility ("SAFER"), whose members live or work in the City of Los Angeles ("City"), regarding the proposed Class 32 Categorical Exemption from review pursuant to the California Environmental Quality Act ("CEQA") for DIR-2022-4433-TOC-SPR-HCA-1A, including all actions related or referring to the proposed demolition of two existing two-story commercial buildings for the construction of a new six-story, 89-foot-high mixed-use building with 90 residential units, located at 956-966 S. Vermont Ave., Los Angeles, CA 90006 (APN: 5076-001-021 & -031) (the "Project").

The City cannot rely on a Class 32 exemption because the Project does not meet the required terms of the exemption under Section 15332 of the CEQA Guidelines. In order to be eligible for such an exemption, a Project must be "consistent 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).) Additionally, a Project is not eligible for exemption unless a lead agency presents substantial evidence showing that "[a]pproval of the project **would not result in any significant effects** relating to traffic, noise, air quality, or water quality." (14 CCR § 15332(d) [emph. added]).

SAFER's comments are informed by the independent review of environmental engineers Patrick Sutton and Yilin Tian, Ph.D. of Baseline Environmental Consulting ("Baseline"); and certified industrial hygienist Francis "Bud" Offermann, PE, CIH. The CVs and expert comments of the Baseline consultants and Mr. Offermann are attached as **Exhibit A** and **Exhibit B**, respectively.

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). 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 EIR is required. (*Id.*).

Certain classes of projects are exempt from the provisions of CEQA if the project comes within a statutory or categorical exemption set forth in the CEQA Guidelines or another statute. .

(Pub. Res. Code §§ 21080(b), 21080.01-21080.35, 20184(a); 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.' [Citations]."]).

In order to be eligible for a Class 32 exemption, a lead agency must demonstrate that a proposed Project site has "**no value, as habitat for endangered, rare or threatened species**," and that development of the Project will "**not result in any significant effects relating to traffic, noise, air quality, or water quality**." (14 CCR § 15332; emph. added.) Additionally, the California Supreme Court has ruled, substantial evidence showing that a Project ***will have*** a significant adverse environmental impact makes a Project ineligible for exemption because the presence of such impacts constitutes "unusual circumstances" which fall outside the narrow, intended scope of CEQA exemptions (*Berkeley Hillside Pres. v. City of Berkeley* (2015) 60 Cal. 4th 1086, 1105 ("*Berkeley Hillside*").

The court distinguishes this scenario from one in which the evidence presented merely indicates that a Project *may* have a significant impact on the environment. "[E]vidence that [a] project *will* have a significant effect does tend to prove that some circumstance of the project is unusual." (*Berkeley Hillside*, at 1105.) Therefore, "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.' ([CEQA] Guidelines, § 15300.2, subd. (c).)" (*Id*.)

The courts have recently reiterated this analysis, explaining that "Categorical exemptions are subject to exceptions. (See [CEQA] Guidelines, § 15300.2.) **Among other things, a 'categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.'** (*Id.,* subd. (c).)" (*Saint Ignatius Neighborhood Ass'n v. City etc. of San Francisco* (2022) 85 Cal.App.5th 1063.)

The proposed Project involves unusual circumstances because substantial evidence demonstrates that it will result in significant environmental impacts, including adverse impacts to air quality, greenhouse gas emissions, and energy use. Therefore, the proposed exemption is unlawful and violates CEQA. To comply with state law, the City must deny the exemption and direct staff to prepare an initial study to determine the appropriate level of environmental review, whether a mitigated negative declaration or an environmental impact report.

ENVIRONMENTAL IMPACTS

I. The City has Failed to Present Any Evidence Showing that the Project Will Not Have Significant Noise Impacts.

The CEQA Guidelines provide that a Class 32 exemption is not permitted unless "Approval of the project **would not result in any significant effects** relating to traffic, noise, air quality, or water quality." (14 CCR § 15332(d) [emph. added]). However, the City has failed to prepare any quantified analysis of the Project's likely noise impacts.

The City must conduct an appropriate analysis and provide substantial evidence to support its conclusory statements and findings that the Project will not have adverse air quality impacts. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 [agency findings must be supported by substantial evidence in the record].) Where an agency makes findings not supported by substantial evidence, an abuse of discretion is established. (*Id.*)

In addition, "CEQA places the burden of environmental investigation on government rather than the public. If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record." (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1378–79 [quotations omitted].) Indeed, "[d]eficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." (*Id*.; see also *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 197 [holding that city's failure to undertake adequate environmental analysis further supported fair argument that project would have significant impacts].)

Baseline Environmental Consulting ("Baseline" reviewed the environmental assessment for the Project and found that it failed to quantitatively evaluate the Project's noise impacts in accordance with applicable City guidance, namely, the City's 2006 "L.A. CEQA Thresholds Guide." (Ex. A., p. 2.) As a result, the City lacks any evidence to support findings that approval of the project would not result in significant noise impacts, precluding reliance on the Class 32 exemption, and the City has failed to meet its burden to investigate the Project's environmental impacts.

Based on the foregoing, the City must prepare an Initial Study to determine the appropriate level of CEQA review—be it a mitigated negative declaration ("MND") or an environmental impact report ("EIR")—and conduct the necessary environmental review of the Project pursuant to CEQA.

II. There is Substantial Evidence that the Project Will Likely Have Significant Noise Impacts.

Baseline's review relied upon the City's CEQA guidance screening thresholds and upon recent recordings of existing ambient daytime noise levels in the vicinity of the Project site,

which "were obtained from an Initial Study/Mitigated Negative Declaration prepared for another project located at 1000 South Vermont Avenue (Initial Study), about 400 feet south of the project site." (*Id*.) "In accordance with the City's CEQA guidance, construction noise impacts were evaluated based on the construction-generated noise levels at the nearest noise sensitive receptor and the existing ambient noise levels." (*Id*., p. 4.) Baseline's analysis specifically considered potential noise impacts at a nearby existing sensitive receptor, "a multi-family apartment building located at 971 Menlo Avenue, approximately 20 feet to the east of the project site." (*Id*., p. 2.)

In conclusion, Baseline's review found that "project construction would generate noise levels ranging from 80 dBA Leq to 95 dBA Leq, which are above the significance threshold of 73.4 dBA (5 dBA above the existing daytime ambient noise level of 68.4 dBA Leq) and would require mitigation to reduce the project's significant noise impacts." (*Id.*, p. 4.) Therefore, Baseline writes, "a CEQA analysis is required to further evaluate and mitigate potentially significant noise impacts associated with the project, and the project is not eligible for a Class 32 Exemption." (*Id*.)

III. The City Has Failed to Present Any Evidence Showing that the Project Will Not Have Significant Air Quality and Related Health Impacts.

According to the City's air quality screening criteria for infill development projects, a quantified air quality study is not required for projects with less than 80 residential units or less than 75,000 square feet of non-residential use, and which involve less than 20,000 cubic yards of soil export. (*Id*., p. 5.). However, the proposed Project exceeds these screening criteria because it "includes construction of a new six-story mixed-use building with 90 residential units along with 2,815 square feet of commercial space on the ground floor, and would export 25,000 cubic yards of soil." (*Id*.)

Therefore, in accordance with its own guidance, the City is required to prepare an air quality study for the Project, in order to "demonstrate that the project would not result in any significant effects relating to air quality, such as a cumulatively considerable net increase in criteria air pollutant emissions or exposure of nearby sensitive receptors to toxic air contaminants." (*Id*., pp. 5-6). Furthermore, in accordance with guidance from the Office of Environmental Health Hazard Assessment ("OEHHA"), any future health risk assessment prepared for the Project "should be conducted to calculate the incremental increase in cancer risk for sensitive receptors (e.g., apartment building located approximately 20 feet to the east of the project) exposed to diesel particulate matter emissions during project construction." (*Id.*, p. 6.)

The failure to address potential health-related impacts resulting from the Project's likely air emissions is problematic because operation of construction equipment during construction, as well as truck trips during future operations, will release diesel particulate matter ("DPM") emissions into the air, affecting local and regional air quality. DPM is a known human carcinogen which poses unique health risks to nearby sensitive receptors. Importantly, CEQA requires a quantified analysis to determine whether a Project's toxic air contaminant ("TAC")

emissions—including DPM emissions—will have potentially adverse impacts on human health. *Sierra Club v. Cty. of Fresno* (2018) 6 Cal. 5th 502, 518 (an EIR must make "a reasonable effort to substantively connect a project's air quality impacts to likely health consequences.")

DPM has been listed as a known human carcinogen by the California Office of Health Hazard Assessment ("OEHHA"). DPM contains 40 toxic chemicals, including benzene, arsenic and lead. (www.p65warnings.ca.gov/fact-sheets/diesel-engine-exhaust.) DPM is listed separately by the State of California as a toxic air contaminant known to cause cancer in humans. (https://oehha.ca.gov/media/downloads/proposition-65//p65chemicalslistsinglelisttable2021p.pdf.) According to the U.S. Environmental Protection Agency, "Exposure to diesel exhaust can lead to serious health conditions like asthma and respiratory illnesses and can worsen existing heart and lung disease, especially in children and the elderly. These conditions can result in increased numbers of emergency room visits, hospital admissions, absences from work and school, and premature deaths." (https://www.epa.gov/dera/learn-about-impacts-diesel-exhaust-and-diesel-emissions-reduction-act-dera).

Based on the foregoing, the City has failed to present any evidence showing that the Project will not produce significant air quality impacts, as CEQA requires for all projects utilizing the urban infill exemption. (14 CCR § 15332(d).) Therefore, the use of an exemption is improper, and the City must prepare an initial study to more accurately characterize and mitigated the Project's air quality and related health impacts.

IV. The City Has Failed to Present Substantial Evidence Showing that the Project Will Not Have a Significant Impact Upon Greenhouse Gas Emissions and Energy.

Baseline has presented substantial evidence showing that the Project *will have* a significant impact on greenhouse gas ("GHG") emissions and energy. In contrast, the City has failed to evaluate the Project's energy and GHG impacts. In accordance with the Supreme Court's decision in *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, a project's GHG emissions should be evaluated based on its effect on California's efforts to meet the State's long-term climate goals. Pursuant to Executive Order B-55-18, California is committed to achieving carbon neutrality by 2045. However, the City has failed to evaluate to what extent, if any, the Project will contribute its "fair share" in GHG reductions that will be necessary to meet this ambitious goal. (Ex. A., p. 6.)

According to Baseline, the "primary sources of GHG emissions from the project would be from building energy use and transportation. With respect to building energy use, the project should consider the replacement of natural gas with electric power to support California's transition away from fossil fuel-based energy sources and bring the project's GHG emissions associated with building energy use down to zero as the electric supply becomes 100 percent carbon free." (*Id*.)

Regarding transportation, "the project should be designed to provide sufficient electric

vehicle (EV) charging infrastructure to support the shift to zero-emission vehicles. Currently, the project plans indicate that 30 percent of the parking spaces will be dedicated for EV. However, the 2022 CalGreen Tier 2 EV parking guidelines recommend that 40 percent of total parking spaces be EV Ready with Low Power Level 2 Receptacles and 15 percent of the total parking spaces be installed with Level 2 EV Supply Equipment (EVSE)." (*Id*.)

Therefore, the City should prepare a GHG Emissions and Energy Use Study to "determine whether and how the project will be designed to meet the State's long-term climate action and energy efficiency goals of carbon neutrality by 2045." (*Id*., p. 7.) Unless and until the City makes such findings, its use of an exemption is improper because there is substantial evidence that the Project *will have* significant GHG and energy impacts that could be feasibly mitigated further. *Berkeley Hillside*, *supra*, at 1105.

V. Substantial Evidence Shows That the Project Will Likely Have Significant Adverse Indoor Air Quality and Health Impacts.

Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH, has reviewed the proposed exemption and all relevant documents regarding the Project's indoor air emissions. Based on this review, Mr. Offermann concludes that the Project will likely expose future residents living at the Project to significant impacts related to indoor air quality, and in particular, emissions of the cancer-causing chemical formaldehyde. Mr. Offermann is a leading expert on indoor air quality and has published extensively on the topic. Mr. Offermann's CV and expert comments are attached as Exhibit B.

Formaldehyde is a known human carcinogen and is listed by the State of California as a Toxic Air Contaminant ("TAC"). The South Coast Air Quality Management District ("SCAQMD"), the agency responsible for regulating air quality within the South Coast Air Basin—which includes the City of Los Angeles—has established a cancer risk significance threshold from human exposure to carcinogenic TACs of 10 per million. (Ex. B., p. 2.)

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

Mr. Offermann concludes that future residents of the proposed Project will be exposed to a cancer risk from formaldehyde of approximately 120 per million, ***even assuming*** that all furnishing materials are compliant with the California Air Resources Board's formaldehyde airborne toxics control measure. (*Id*., p. 4.) This risk level is **12 times greater** than the SCAQMD's CEQA significance threshold for airborne cancer risk of 10 per million.

The California Supreme Court has emphasized the importance of air district significance thresholds in providing substantial evidence of a significant adverse environmental impact under CEQA. (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 327 ["As the [South Coast Air Quality Management] District's established significance threshold for NOx is 55 pounds per day, these estimates [of NOx emissions of 201 to 456 pounds per day] constitute substantial evidence supporting a fair argument for a significant adverse impact."].) Since expert evidence demonstrates that the Project will exceed the SCAQMD's CEQA significance threshold, there is substantial evidence that an "unstudied, potentially significant environmental effect[]" exists. (See, *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 958.)

Mr. Offermann concludes that these significant impacts should be further mitigated to reduce the significant health risks that will result from indoor formaldehyde emissions. (*Id*., pp. 12-14.) Mr. Offermann proposes various feasible mitigation measures to reduce these impacts, including by imposing a requirement that the Project applicant install high-capacity air filters throughout the building and commit to using only composite wood materials that are made with CARB approved no-added formaldehyde (NAF) resins, or ultra-low emitting formaldehyde (ULEF) resins, for all of the buildings' interior spaces.

Mr. Offermann's observations constitute substantial evidence that the Project will produce potentially significant air quality and health impacts which the exemption has failed to address. Therefore, the City must prepare an initial study to further evaluate and mitigate these impacts to the Project's future residents.

VI. CONCLUSION

The City cannot rely on a Class 32 exemption because the Project does not meet the required terms of the exemption. SAFER has presented substantial evidence, based on independent experts' review, that the Project *will* have significant air quality, greenhouse gas, and energy impacts.

Accordingly, the City must prepare an initial study to determine the appropriate level of environmental review required under CEQA, and thereafter, conduct the necessary environmental in accordance with applicable CEQA requirements. SAFER respectfully requests that you deny approval of the Project and direct staff to conduct further environmental review as required by state law. Thank you for considering these comments.

Sincerely,

Adam Frankel
LOZEAU | DRURY LLP