

**DEPARTMENT OF  
CITY PLANNING**

COMMISSION OFFICE  
(213) 978-1300

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CALIFORNIA**



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**EXECUTIVE OFFICES**

200 N. SPRING STREET, ROOM 525  
LOS ANGELES, CA 90012-4801  
(213) 978-1271

VINCENT P. BERTONI, AICP  
DIRECTOR

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DEPUTY DIRECTOR

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DEPUTY DIRECTOR

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April 27, 2023

Los Angeles City Council  
c/o Office of the City Clerk  
City Hall, Room 395  
Los Angeles, California 90012

Attention: PLUM Committee

Dear Honorable Members:

**STAFF RECOMMENDATION REGARDING APPEALS OF CLASS 32 CATEGORICAL EXEMPTION (ENV-2020-7847-CE-1A) FOR PROPERTY LOCATED AT 212-220 SOUTH SPRING STREET WITHIN THE CENTRAL CITY COMMUNITY PLAN AREA (CF 23-0106)**

On September 21, 2022, the Director of Planning issued a Class 32 Categorical Exemption (Class 32 CE) for a Density Bonus-Site Plan Review Project (City Planning Case No. DIR-2020-7846-DB-SPR-HCA-1A) consisting of the demolition of an existing commercial building and the construction, use and maintenance of a 17-story mixed-use building containing 103,550 square feet of floor area, including 3,013 square feet of commercial space, having 120 dwelling units reserving 11 percent, or 14 units, of the base density units for Low Income Households. The project is located at 212-220 South Spring Street.

On October 5, 2022, the Department of City Planning received two (2) appeals of the Director of Planning's Determination to approve Case No. DIR-2020-7846-DB-SPR-HCA. The first appeal was filed by, CREED LA, represented by Adams, Broadwell, Joseph & Cardozo. Their appeal claims that the Director of Planning's Determination was inappropriate because: (a) A CEQA Exemption is inapplicable because the project may result in significant effects related to air quality and health risk. The City lacks substantial evidence to conclude that the project's health risk impacts from air emissions are less than significant, (b) The project has potentially significant health risk impacts, (c) Project impacts associated with operational diesel exhaust from the backup generator may be significant, (d) The Class 32 Exemption is inapplicable because the City improperly relies on noise mitigation measures, (e) The project's noise mitigation measures do not effectively mitigate potentially significant construction noise impacts, (f) The City's analysis of operational and construction noise impacts are not supported by substantial evidence, (g) The City's noise significance thresholds are not supported by substantial evidence, (h) The Director's approval of the project's Site Plan Review was contrary to law and unsupported by substantial evidence, (i) The Director's approval of the Density Bonus was contrary to law and unsupported by substantial evidence, because the City failed to quantify the health risk from the Project's air emissions on nearby sensitive receptors and failed to accurately analyze noise impacts.

A second appeal submitted by Supporters Alliance for Environmental Responsibility (SAFER) claimed that the Director of Planning's Determination for the Site Plan Review approval was in error because the Categorical Exemption ("CE") prepared for the project (ENV-2020-7847-CE) fails to comply with the California Environmental Quality Act ("CEQA"). [...] SAFER specifically appeals all findings related to the Project's Site Plan Review (DIR-2020-7846-DB-SPR-HCA). The project does not qualify for a categorical exemption pursuant to Section 15332 of the CEQA Guidelines ("Infill Exemption") because the Project does not meet the terms of the exemption. [...] Members of the 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. The Director of City Planning 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.

At its meeting on December 15, 2022, the City Planning Commission, following consideration of the materials and oral testimony, denied the appeals and sustained the Director of Planning's Determination dated September 21, 2022, under Case No. DIR-2020-7846-DB-SPR-HCA.

Subsequently, on January 13, 2023, two (2) California Environmental Quality Act (CEQA) appeals to the Los Angeles City Council were filed for the Categorical Exemption (Case No. ENV-2020-7847-CE). The following represents a summary and response to the appeal points identified in the appeal.

#### CEQA Appeal 1: CREED LA

A-1 *The CEQA Exemption is inapplicable because the project may result in significant effects related to air quality and health risks because the City lacks substantial evidence to conclude that the project's health risk impacts from air emissions are less than significant.*

The appellant contends that the City failed to analyze the health risk impacts of project construction and operation to workers and nearby sensitive receptors and that the project would increase health risks in the surrounding community by contributing toxic air contaminants (TACs) such as diesel particulate matter (DPM) during construction.

Contrary to the appellant's claim, the project's air quality impacts were analyzed in the environmental analysis in the record pursuant to the thresholds established by the South Coast Air Quality Management District (SCAQMD). The Categorical Exemption analysis included a quantification of the project's air quality emissions during construction and operation using the California Emissions Estimator Model (CalEEMod). The proposed project's construction and operational emissions would not exceed any regional significance thresholds for any of the criteria pollutants. Furthermore, as explained by Parker Environmental Consultants in their Responses to Appeal Letters for the 216 Spring Street Project [DIR-2020-7846-DB-SPR-HCA; ENV-2020-7847-CE] (Responses to Appeal Letters), dated November 21, 2022, DPM is a subset of both PM<sub>10</sub> and PM<sub>2.5</sub>. Approximately 94 percent of all DPM particles are less than 2.5 microns in diameter and the remaining 6 percent are between 2.5 microns in diameter and 10 microns in diameter, and as such, DPM is accounted for within the PM<sub>10</sub> and PM<sub>2.5</sub> emissions thresholds. According to Parker Environmental Consultants, since PM<sub>10</sub> and PM<sub>2.5</sub> would be

substantially below SCAQMD's thresholds of significance and DPM represents a fraction of the total PM<sub>10</sub> and PM<sub>2.5</sub> emissions generated during construction, the emissions of DPM within PM<sub>10</sub> and PM<sub>2.5</sub> would not rise to the level of significance for PM<sub>10</sub> and PM<sub>2.5</sub>, and thus would not warrant the preparation of an HRA. Furthermore, the proposed project would be required to comply with the California Air Resources Board's (CARB) Air Toxics Control Measure that limits diesel powered equipment and vehicle idling to no more than five minutes at a location. Therefore, the proposed project would result in a less-than-significant impact related to construction TACs.

The appellant also claims that CEQA requires analysis of human health impacts, and that the Office of Environmental Health Hazard Assessment's (OEHHA) risk assessment guidelines recommend a formal health risk analysis (HRA) for development projects like this one. There is no law or regulatory guidance that requires the preparation of an HRA for the proposed project, as the proposed project is not a facility that is subject to a toxic air emissions permit.

OEHHA's 2015 Air Toxics Hot Spots Program Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments (Guidance Manual) states that "the intent in developing this Guidance Manual is to provide HRA procedures for use in the Air Toxics Hot Spots Program or for the permitting of existing, new or modified stationary sources". Stationary sources of air pollution include factories, refineries, boilers and power plants that emit a variety of air pollutants, according to the Environmental Protection Agency. The Air Toxics Hot Spots Program was established by the Air Toxics "Hot Spots" Information and Assessment Act (AB 2588), enacted in 1987 and applies to stationary sources (facilities) if it: 1) manufactures, formulates, uses, or releases a substance subject to the Act (substance which reacts to form such a substance) and emits 10 tons or more per year of total organic gases, particulate matter, nitrogen oxides or sulfur oxides; (2) is listed in any district's existing toxics use or toxics air emission survey, inventory or report released or compiled by a district; or (3) manufactures, formulates, uses, or releases a substance subject to the Act (or substance which reacts to form such a substance) and emits less than 10 tons per year of criteria pollutants and is subject to emission inventory requirements. As such, AB 2588 applies to certain commercial and industrial operations that have the potential to generate quantities of criteria and toxic air emissions that could present health risks.

The proposed project is not part of the Air Toxics Hot Spots Program and is an infill mixed-use development that does not meet any of the criteria. As such, the 2015 OEHHA Guidance Manual does not apply. Furthermore, the Categorical Exemption was prepared in accordance with the SCAQMD guidance, which does not recommend analysis of TACs from short-term construction activities. SCAQMD recommends that HRAs be conducted only for substantial sources of diesel particulate matter. Based on this guidance, an HRA is not required as the proposed mixed-use project would not generate substantial amounts of diesel particulate matter during operation.

Lastly, the appellant asserts that because the Categorical Exemption only analyzed localized significance thresholds provided by the SCAQMD (NO<sub>x</sub>, CO, PM<sub>10</sub>, and PM<sub>2.5</sub>), the project's emission analysis excludes DPM and other TACs. As explained in Parker Environmental Consultants' Responses to Appeal Letters, this assumption is incorrect, as CARB has over 200 toxic substances identified on the California Air Toxics Program's TAC List. TACs are not classified as "criteria" air pollutants, and there is no threshold determination for a majority of these pollutants. Therefore, the Categorical Exemption is not required to analyze impacts from over 200 pollutants on the TAC list. According to

Parker Environmental Consultants, the greatest potential for TAC emissions during construction is related to DPM emissions associated with heavy-duty equipment. As previously explained, DPM emissions of the project would not rise to the level of significance for PM<sub>10</sub> and PM<sub>2.5</sub>. Therefore, the proposed project would not have a significant impact on air quality. For these reasons, the Director of Planning did not err or abuse its discretion in determining that the proposed project is categorically exempt from CEQA under Class 32 Urban In-Fill Development.

*A-2 The project has potentially significant health risk impacts.*

The appellant claims that the project's emissions of DPM would exceed applicable significance thresholds for health risk, and the project's significant impacts must be disclosed and mitigated in an EIR.

As previously explained, OEHHA's Guidance Manual for assessing health risks and hot spots are intended to address health risks from airborne contaminants released by stationary sources and not meant for a health risk evaluation of typical non-stationary source land use projects, such as the proposed mixed-use development.

Furthermore, the analysis provided by the appellant is not representative of the proposed project or any real-life scenario. The appellant does not provide any substantial evidence to support their estimated health risks. Therefore, the Director of Planning did not err or abuse its discretion in determining that the proposed project is categorically exempt from CEQA under Class 32 Urban In-Fill Development.

*A-3 The project impacts associated with operational diesel exhaust from the backup generator may be significant.*

The appellant claims that the project underestimates the operation of the backup generator because the City's air quality analysis assumes that the backup generator will only be operated for 12 hours a year whereas SCAQMD Rules 1110.2 and 1470 allow backup generators to operate for up to 200 hours per year and maintenance can be up to 50 hours per year. The appellant further asserts that the City's analysis underestimates emissions because use of emergency generators is expected to rise due to climate change and increased instances of Public Safety Power Shutoff events and extreme heat events.

The Categorical Exemption environmental analysis prepared for the project estimated that the project's emergency generator would operate a total of 30 minutes per day for routine monthly testing, resulting in a total of 12 hours per year. As Parker Environmental Consultants explained in their Responses to Appeal Letters, electricity blackouts, public safety power shut-off events and extreme heat events represent emergency situations and are difficult to predict. The estimated peak daily operational emissions in the Categorical Exemption represent realistic daily activities, and it would not be reasonable to assume an emergency event as the future project condition. Because the proposed project's emissions for PM<sub>10</sub> and PM<sub>2.5</sub> are well below SCAQMD's thresholds of significance, temporarily operating a diesel-powered emergency generator during emergency events is not anticipated to significantly increase project emissions that would result in a significant impact. Therefore, the Director of Planning did not err or abuse its discretion in determining that the proposed project is categorically exempt from CEQA under Class 32 Urban In-Fill Development.

*A-4 The Class 32 Exemption is inapplicable because the City improperly relies on noise mitigation measures.*

The appellant asserts that the City incorrectly incorporates noise reductions from mitigation measures by labeling them project design features. These noise reduction measures include: (1) avoiding conducting demolition and construction activities concurrently; (2) using noise-muffled equipment; (3) implementing a sound barrier at least 8 feet tall that achieves a minimum 15 dBA noise reduction; and (4) using portable barriers during jackhammering and structural framing.

Contrary to the appellant's assertion, the project design features described in the Categorical Exemption are not considered mitigation measures, as they are steps that the Applicant has incorporated into the project to address noise related to the project and will be enforced during construction as conditions of approval. These project design features are standard best practices for typical mixed-use, commercial and residential projects in an urban area and would be implemented regardless of the noise impact to sensitive receptors as a means to reduce overall construction noise for the safety of construction workers, pedestrians and bystanders. As such, the implementation of project design features does not aim to reduce noise impacts to reduce impact levels to less than significant. Therefore, the Director of Planning did not err or abuse its discretion in determining that the proposed project is categorically exempt from CEQA under Class 32 Urban In-Fill Development.

*A-5 The project's noise mitigation measures do not effectively mitigate potentially significant construction noise impacts.*

The appellant claims that a sound barrier that is at least eight feet tall would not provide line of sight shielding for sensitive receptors on second floors and above of neighboring buildings.

As stated in the Categorical Exemption, the project would include a minimum eight-foot sound barrier along the perimeter of the project site. The Echo Barrier information sheet provided in Attachment 3 of the Categorical Exemption shows that the acoustic performance of Echo Barriers results in a reduction of 10 to 20 dB and greater when the barrier is doubled up. As such, Echo Barriers would efficiently reduce construction noise levels as required by the Noise Ordinance.

Furthermore, Parker Environmental Consultants explains in their Responses to Appeal Letters that the Echo Barriers would reduce noise levels at sensitive receptors by breaking the direct line-of-sight between the heavy-duty construction equipment and sensitive receptors. Sound energy reaches the receiver only by bending (diffracting) over of the top of the barrier. This diffraction over the barrier reduces the sound level that reaches a sensitive receptor. Therefore, with the presence of the barrier, noise at the ground level would be absorbed by the ground and then diffused with height. Thus, noise levels for the residences above the ground floor would experience attenuated and diffused noise levels compared to noise levels received at the ground level.

Additionally, the use of heavy construction equipment would only be utilized on the ground level. Sensitive receptors in upper floor levels are located at the farther distance from the project site's ground level activities; thus, construction noise would further attenuate before reaching sensitive receptors in the upper floors. As the construction finishes the

exterior facades, construction noise would be further attenuated and insulated within the walls of the new building. Therefore, construction noise would be considered less than significant for nearby sensitive receptors located above grade. Therefore, the Director of Planning did not err or abuse its discretion in determining that the proposed project is categorically exempt from CEQA under Class 32 Urban In-Fill Development.

*A-6 The City's analysis of operational and construction noise impacts are not supported by substantial evidence.*

The appellant contends that the City fails to adequately establish the baseline noise level, because the noise analysis relies on a short-term measurement of 15-minute duration during the day to describe existing conditions and does not consider evening and nighttime conditions.

The 15-minute duration is based on the "ambient noise" definition in LAMC Section 111.01:

"Ambient noise shall be averaged over a period of **at least 15 minutes** at a location and time of day comparable to that during which the measurement is taken of the particular noise source being measured." [emphasis added **in bold**]

As detailed in the noise monitoring data sheets in Attachment 3 of the Categorical Exemption and as shown in Figure 1 – Noise Monitoring and Sensitive Receptor Location Map, three 15-minute noise measurements were taken adjacent to the surrounding multi-family residential sensitive receptors during the daytime on a weekday when all construction activities and a majority of operation would occur. As such, the baseline noise level measured in 15-minute duration is consistent with the LAMC.

The appellant also asserts that the City's analysis assumes only the two loudest pieces of equipment are used per stage of construction, measured at the center of the project site, which underestimates noise impacts which may be greater than disclosed when construction equipment is used closer to the borders of the project site.

As explained by Parker Environmental Consultants in their Responses to Appeal Letters, the Categorical Exemption utilizes the approach provided in the Federal Transit Administration's Transit Noise and Vibration Impact Assessment Manual (September 2018). This Manual provides guidance on quantitatively estimating construction noise from typical construction equipment for a general assessment. The Manual states "only determine  $L_{eq\ equip}$  for the two noisiest pieces of equipment expected to be used in each phase of construction. Then, sum the levels for each phase of construction using decibel addition." Additionally, this approach also states that the distance value assumes all equipment operates at the center of the project. The noise impact was determined to be less than significant based on analysis using this Manual's approach.

The appellant also contends that the mechanical units required for a 17-story mixed-use building will likely be larger and louder than a two-story commercial building. They also argue that the Categorical Exemption does not mention the use of pile driving during construction.

The design and placement of HVAC units and exhaust fans would be required to comply with LAMC Section 112.02, which prohibits noise from air conditioning, refrigeration, heating, pumping and filtering equipment from exceeding the ambient noise level on the

premises of other occupied properties by more than five decibels. Furthermore, the roof level of the proposed building will be well above the surrounding sensitive receptor locations, and acoustic shielding provided by the edge of the roof would attenuate noise from the HVAC equipment. The appellant has not provided any resources or evidence to support their claim that the proposed project's HVAC equipment would result in significant noise levels.

Regarding the comment about pile driving during construction, a pile driver was not listed as anticipated construction equipment in Table 9 of the Categorical Exemption, because a pile driver will not be used during construction. Therefore, the Director of Planning did not err or abuse its discretion in determining that the proposed project is categorically exempt from CEQA under Class 32 Urban In-Fill Development.

*A-7 The City's noise significance thresholds are not supported by substantial evidence*

The appellant claims that the project's operational noise significance thresholds are not supported by substantial evidence, because they do not reflect sleep disturbance impacts.

The proposed project is a mixed-use building consisting of 3,013 square feet of commercial space on the ground floor and 120 dwelling units. Based on the proposed uses, it is not expected that sleep disturbance would occur. Furthermore, as previously mentioned, the project is subject to LAMC Section 112.02 for the design and placement of HVAC units and LAMC Section 116.01, which prohibits all future users of the proposed project from willfully making or continuing any loud, unnecessary and unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area. As detailed in the noise impact analysis in the Categorical Exemption, the project is not expected to result in significant construction or operational noise impacts.

The appellant asserts that the project has potentially significant sleep disturbance impacts on nearby residential receptors due to its open space on the roof deck which may increase ambient noise near the project site.

As analyzed in Parker Environmental Consultants' Responses to Appeal Letters, noise levels from the rooftop deck were quantified. The analysis is based on a conservative estimate that 60 individuals would occupy the 17<sup>th</sup> level rooftop space at one time, which is the maximum occupancy level, and up to 50 percent of the people would be talking at the same time. The noise quantification resulted in noise levels of approximately 78.5 dBA Leq within the 17<sup>th</sup> level roof deck. However, after factoring in the distance to nearby sensitive receptors, the noise levels would be 54.1 dBA Leq. Additionally, the roof deck would be surrounded with glass railing and planters that would further attenuate noise in the surrounding area. It should be noted that as Parker Environmental Consultants explained in their analysis, this noise level estimate is conservative because the proposed roof level is well above the surrounding sensitive receptor locations, and there would be acoustic shielding provided by the edge of the roof. Based on the ambient noise level (Leq 61.3 dB) recorded at the nearest sensitive receptor, Higgins Building Apartments, the proposed projects roof deck that would have noise levels of 54.1 dBA Leq would not increase ambient noise levels by more than 5 dBA. Therefore, the Director of Planning did not err or abuse its discretion in determining that the proposed project is categorically exempt from CEQA under Class 32 Urban In-Fill Development.

- A-8 *The Director's approval of the project's Site Plan Review was contrary to law and unsupported by substantial evidence.*

The appellant claims that the purposes of Site Plan Review set forth in LAMC Section 16.05(a) have not been fulfilled, as the project's environmental document failed to adequately evaluate and mitigate significant environmental impacts. The appellant further asserts that the appropriate environmental clearance for this project is an EIR.

As detailed in the Categorical Exemption, the proposed project meets all criteria necessary to qualify for a Categorical Exemption from CEQA under Class 32 Urban In-Fill Development pursuant to CEQA Guidelines Section 15332 and none of the exceptions to an exemption identified in CEQA Guidelines Section 15300.2 applies to the proposed project. The appellant failed to provide any substantial evidence to support their assertion that the proposed project would result in any significant impacts and does not qualify for a Categorical Exemption. Therefore, the Director of Planning did not err or abuse its discretion in determining that the proposed project is categorically exempt from CEQA under Class 32 Urban In-Fill Development.

- A-9 *The Director's approval of the Density Bonus was contrary to law and unsupported by substantial evidence.*

Pursuant to LAMC Section 12.22 A.25(g)(2)(i)f, only an applicant or any owner or tenant of a property abutting, across the street or alley from, or having a common corner with the subject property may appeal the Director's decision to the City Planning Commission. As this appellant does not meet the qualification to appeal the Director's decision on the Density Bonus request, this appeal point is irrelevant. Nonetheless, as previously mentioned, the proposed project meets all criteria necessary to qualify for a Categorical Exemption from CEQA under Class 32 Urban In-Fill Development pursuant to CEQA Guidelines Section 15332 and none of the exceptions to an exemption identified in CEQA Guidelines Section 15300.2 applies to the proposed project. The appellant failed to provide any substantial evidence to support their assertion that the proposed project would result in any significant impacts and does not qualify for a Categorical Exemption. Therefore, the Director of Planning did not err or abuse its discretion in determining that the proposed project is categorically exempt from CEQA under Class 32 Urban In-Fill Development and approving the On-Menu Incentive to increase the FAR under the Density Bonus Affordable Housing Incentive Program.

#### CEQA Appeal 2: SAFER LA

- A-1 *The Project cannot be exempt from CEQA because the project relies on Mitigation Measures to reduce noise impacts to less than significant.*

Please see responses to Appeal Point 5 above.

- A-2 *The Project does not qualify for CEQA Infill exemption because the project will result in significant indoor quality impacts from emissions of formaldehyde.*

The appellant fails to provide any reasoning or credible evidence demonstrating why the proposed project would not qualify for an exemption under CEQA. As such, their assertion is unsubstantiated, and the Director of Planning did not err or abuse its discretion in



determining that the proposed project is categorically exempt from CEQA under Class 32 Urban In-Fill Development.

The Categorical Exemption prepared for the proposed project has detailed analysis on how the Class 32 Exemption applies to the proposed project that is characterized as in-fill development and how none of the five exceptions to an exemption applies to the project. If a project qualifies for an exemption and no exception to an exemption applies to the project, the Lead Agency does not need to prepare an Initial Study.

*A-3 The Project's Air Quality Analysis is not supported by Substantial Evidence.*

Please see responses to Appeal Point 1 above.

Conclusion

Planning Staff recommends that the PLUM Committee and City Council deny the appeal and sustain the Determination of the City Planning Commission to determine that based on the whole of the administrative record as supported by the justification prepared and as found in the environmental case file, the Project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Section 15332, Class 32 (Infill Development Project), and there is no substantial evidence demonstrating that any exceptions contained in Section 15300.2 of the State CEQA Guidelines regarding cumulative impacts, significant effects or unusual circumstances, scenic highways, or hazardous waste sites, or historical resources applies.

Sincerely,

VINCENT P. BERTONI, AICP  
Director of Planning

A handwritten signature in blue ink, appearing to read "Vanessa Soto".

Vanessa Soto, AICP  
Senior City Planner

VPB:JC:VS:NC