

Communication from Public

Name:

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Comments for Public Posting: Response to Appeal.



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February 7, 2023

Los Angeles Department of City Planning
City Planning Commission
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Responses to Administrative Appeal re: 966 Vermont Project (Project).

We write in response to the appeal (Appeal) dated November 28, 2022, submitted by appellant Supporters Alliance for Environmental Responsibility (SAFER) prepared by Lozeau Drury (Appellant), challenging the Director of Planning's (Director) issuance of a Site Plan Review Approval in case No. DIR-2022-4433-TOC-SPR-HCA (Approval) and the related adoption of a Categorical Exemption (CE) in Case No. ENV-2022-4434-CE for a new proposed 90-unit, six-story mixed-use development (Project) pursuant to the California Environmental Quality Act (CEQA).

While the Appeal purports to challenge the Project's Site Plan Review approval, it only addresses CEQA issues and only makes generic arguments that do not address the Project or the CE. The Appeal, in fact, lacks any evidence whatsoever in support of its generalized claims of CEQA violations. Further responses to the two points raised in the Appeal are provided below. On these points, the Appeal lacks merit and should be denied.

On Monday, February 6, 2023 – less than three days before its scheduled hearing on the Appeal - Appellant submitted a new letter that, with attachments, is 45 pages in total, which is dated February 6, 2023 (Appellant Letter). The Appellant Letter does not address the Site Plan Review approval, but instead raises a variety of new CEQA issues and arguments that were not addressed the November 28, 2022 Appeal. The applicable provision for Site Plan Review appeals under Los Angeles Municipal Code (LAMC) Section 16.05-H.2 states that appeals must be filed within 15 days of a decision, must be in writing, and must "set forth specifically the reasons why the decision should not be upheld." Because the arguments and issues set forth in the Appellant Letter were not raised in the Appeal but nearly three months after the Appeal was filed and three days before the hearing, they are waived. For that reason, alone, the Appeal should be denied. Moreover, for the reasons set out below, the issues and arguments in the Appellant Letter lack substantive merit and do not meet the Appellant's burden to show any error on the part of the Director in issuing the Approval and adopting the CE. The Appeal should be denied.

Appeal Point 1:

Specifically, the Project does not qualify for an Infill Exemption because the Project will have significant air quality, hazardous waste, and energy impacts, and it is therefore ineligible for exemption.

Appeal Response 1:

The arguments in the Appeal are not supported by substantial evidence, as required by case law under CEQA and the Appeal offers no substantial evidence to suggest potential significant air quality, hazardous

waste, and energy impacts at the Project Site. The Appeal ignores the substantial evidence in record supporting the conclusion that the Project would not result in significant impacts, found in the CE and technical appendices.

An opponent challenging a City's factual determinations in support of a statutory exemption "must lay out the evidence favorable to the other side and show why it is lacking. Failure to do so is fatal."¹ Here, the Appeal makes no attempt to discuss the substantial evidence in support of the CE, much less lay that evidence out and show why its lacking. For this reason alone, the Appeal fails to meet its burden to show any error in the Director's Determination adopting the CE for the Project. An opponent challenging a City's factual determinations in support of a statutory exemption must lay out the evidence favorable to the other side and show why it is lacking, or it fails.

In addition, though not relevant in light of its failure to address the substantial evidence supporting the Director's adoption of a CE for the Project, the Appeal does not produce substantial evidence of any alleged significant impacts related to air quality, hazardous waste, and energy. The Appeal instead makes wholly unsupported and conclusory claims of alleged significant impacts with no analysis or technical support. Such bare speculation is not substantial evidence.²

Re: Air Quality:

As set forth on pages 2-70 to 2-75 of the CE, and supported by Project-specific CalEEMod modeling included as Appendix E to the CE (Air Quality Technical Modeling, DKA Planning, June 2022), the Project's construction and operation would not generate emissions that exceed South Coast Air Quality Management District (SCAQMD) significance thresholds.

Re: Hazardous Waste:

A CE is required to show that none of the exceptions to an exemption are triggered, including confirming that a Project Site is not included on a hazardous waste sites list compiled pursuant to section 65962.5 of the government code. As shown on page 2-113 of the CE, databases that are commonly referred to as the Cortese List were searched for the Project Site. There were no listed sites on the Project Site.

As set forth on pages 2-113 to 2-114 of the CE, under City standards, a Phase I Environmental Site Assessment (ESA) is not required by the City if the project site was not previously developed with a dry cleaning, auto repair, gasoline station, industrial/manufacturing use, or other similar type of use that may have resulted in site contamination.³ As discussed on page 2-114 of CE, the current buildings were constructed in 1958 1979 and as office buildings and were converted to restaurant uses which remain today. Therefore, the Site did not have a previous use that may have resulted in site contamination that would warrant the preparation of a Phase I ESA.

Re: Energy:

As set forth on pages 1-18 to 1-19 of the CE, all building systems would meet applicable Title 24 Energy Standards. These standards would reduce energy and water usage and waste and, thereby, reduce associated greenhouse gas emissions and help minimize the impact on natural resources and infrastructure. The Project will provide smart thermostats and Energy Star rated dishwashers and

¹ Defend the Bay v. City of Irvine (2004) 119 Cal.App.4th 1261, 1266.

² See Public Resources Code, § 21082.2(c); CEQA Guidelines, § 15384.

³ City of Los Angeles, Class 32 Special Requirement Criteria: <https://planning.lacity.org/odocument/ad70d15e-11b8-49ef-aba3-b168f670a576/Class%2032%20Categorical%20Exemption.pdf>

refrigerators in every unit. The Project will comply with the applicable California Building Code (CALGreen) and City Code (LA Green Building Code).

Appeal Point 2:

Because 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"]), 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.

Appeal Response 2:

Valid CEQA analysis in the CE was adopted by the City as Lead Agency. The CE includes substantial evidence to support the City's findings and the claims to the contrary in the Appeal lack merit and are not supported by any evidence, much less substantial evidence.

Based on the foregoing, the Appellant fails to meet its burden to show any error on the part of the Director in issuing the Approval or adopting the CE under CEQA. For this reason, alone, the Appeal fails.

The Untimely, Procedurally Invalid Appellant Letter Does Not Present Any Valid Grounds for Granting the Appeal.

The untimely, eleventh-hour additional arguments raised in the February 6, 2023 Appellant Letter were not raised in the Appeal, are therefore procedurally invalid, and should be denied. However, for the reasons that follow, the points raised in the Appellant Letter are also substantively invalid.

1. The Appellant Letter Fails to Show The "Unusual Circumstances Exception" To the Class 32 CE Adopted for the Project Applies Here.

The Appellant Letter incorrectly argues that the that the "unusual circumstances" exception to the CE under CEQA Guidelines Section 15300.2(c) applies here, citing the Berkeley Hillside Preservation v. City of Berkeley case.⁴ Notably, the Appellant Letter does not attempt to demonstrate the existence of an "unusual circumstance" here, nor could it, as the Project is a standard multi-family residential development on a flat, rectangular, unremarkable, highly urbanized infill site in the Wilshire Community Plan Area, and is thus exactly the kind of project to which the Class 32 CE was made to apply.⁵

The CE properly concludes no such unusual circumstances exist for the Project, a conclusion supported by substantial evidence in the record the Appellant makes no effort to refute.⁶ Instead of trying to show an unusual circumstance, the Appellant Letter attempts to rely on the Court's statement in Berkeley Hillside that substantial evidence showing a project "will", as opposed to "may", have a significant impact can establish the exception on its own.⁷ The Appellant Letter then attempts to rely on its invalid and unsupported claims of significant impacts to support its conclusion. However, for the reasons set forth here, the alleged "evidence" relied on in the Appellant Letter is: (1) insufficient to show the substantial evidence relied on by the City in the CE is lacking; (2) does not even constitute valid substantial evidence

⁴ Berkeley Hillside Preservation v. City of Berkeley (2015) 60 Cal.4th 1086

⁵ See Berkeley Hillside, 60 Cal.4th, at 1105, 1127

⁶ See CE, at p. 2-109,

⁷ Berkeley Hillside, 60 Cal.4th, at 1105.

that the Project “may” result in a significant impact; and thus (3) fails to meet the much higher burden of establishing such an impact “will” occur with certainty, as is required to meet the secondary unusual circumstance test under the Berkeley Hillside case. The City appropriately determined the unusual circumstances exception does not apply here and nothing in the Appellant Letter demonstrates otherwise.

2. The Appeal Letter Improperly Ignores the Substantial Evidence Supporting the CE’s Noise Analysis and Puts Forward its Own Irrelevant, Flawed Noise Analysis.

The Appeal Letter makes the false assertion that the CE failed “to quantitatively evaluate the Project’s noise impacts in accordance with” the City’s 2006 CEQA Thresholds Guide. This claim fails for several reasons. First, the City is under no obligation to use the 2006 L.A. CEQA Thresholds Guide in the first place. Under CEQA, the City has broad discretion to select an appropriate, project specific threshold of significance, which must only be based on substantial evidence to be valid.⁸

Second, the threshold utilized in the CE is the noise threshold recommended in the 2006 CEQA Thresholds Guide. That threshold is triggered when noise levels exceed 3 A-weighted decibels (dbA) for high noise environments, and 5 dbA over a measured ambient noise level in lower noise environments.⁹ The analysis in the CE for the Project thus uses the very threshold the Appellant Letter faults it for allegedly not using, an admission by Appellant that the Project utilizes a valid threshold.

Third, the claim in the Appellant Letter that no quantitative analysis of the Project’s potential noise impacts in the CE was conducted is totally false. An even cursory review of the CE plainly reveals that a Project-specific noise analysis was conducted based on ambient noise measurements taken from the area surrounding the Project site, which then utilizes the adopted 5 dbA over ambient threshold and conducts noise modeling analysis to assess the Project’s potential noise impacts, ultimately determining such impacts with respect to on and offsite construction noise, and on and offsite operational noise would be less than significant.¹⁰ The complete failure of the Appellant Letter to even acknowledge this analysis, much less meet its burden to lay this substantial evidence out and show why it is lacking, results in a complete failure of the Appellant Letter to demonstrate any flaw in the CE that would warrant granting the Appeal.¹¹ The CE’s noise analysis complies fully with CEQA and the Appellant Letter fails to establish otherwise.

3. The Appellant Letter’s Purported Attached Noise Study is Irrelevant and Baseless.

The Appellant Letter attaches a purported noise study from a consultant calling itself Baseline which asserts that the Project’s construction noise impacts would be significant. First, this analysis also fails to lay out and explain why the analysis relied on by the City in the CE is not valid, and again fails to meet its burden for this reason, alone.¹² Second, the Baseline analysis is flawed and does not reflect the Project’s actual impacts. Among other critical flaws addressed by the Project’s noise consultant in a separate memorandum transmitted to the City Planning Commission, the Baseline noise analysis fails to account for requirements under the LAMC that regulate construction noise, including most notably under LAMC Section 112.05, which requires the use of mufflers, noise barriers, and other noise reduction measures for construction equipment. Such regulatory compliance requirements are appropriately considered in a

⁸ Clover Valley Found. v City of Rocklin (2011) 197 Cal.App.4th 200, 243; Sierra Club v City of Orange (2008) 163 Cal.App.4th 523, 541

⁹ See L.A. CEQA Thresholds Guide, City of Los Angeles, 2006, at pp. I.1-3 and I.1-4.

¹⁰ CE, at pp. 2-35 through 2.41.

¹¹ Defend the Bay, 119 Cal.App.4th at 1266.

¹² *Ibid.*

CEQA analysis,¹³ and the Baseline report's failure to account for such requirements results in a falsely inflated and overstated noise analysis that does not reflect the true Project, which is obligated to comply with applicable City noise ordinances, including LAMC Section 112.05.

4. The City Was Not Required to Prepare a Health Risk Assessment for the Project.

The Appellant Letter next claims the City was required to prepare a Health Risk Assessment (HRA) for the Project due to alleged diesel emissions (DPM). This claim fails for several reasons. First, the Appellant Letter again ignores the extensive analysis of the Project's construction and operational DPM emissions in the CE, which determines that human health impacts from potential emissions of DPM are less than significant based on substantial evidence.¹⁴ The Appellant Letter thus yet again fails to meet its burden for this reason, alone.¹⁵

Second, the Appellant Letter's claims are not supported by any purported technical analysis showing significant DPM-related impacts. The Appellant Letter instead merely asserts that an HRA was required. A demand for additional testing is not substantial evidence of a significant impact.¹⁶ The claim that an HRA was required due to significant DPM emissions fails for this additional reason.

Third, the claim that an HRA was required here by any applicable regulation is false. The Department of City Planning relies on methodologies established by the regional expert air quality agency, the South Coast Air Quality Management District (SCAQMD) for preparation of CEQA air quality analyses. SCAQMD published the CEQA Air Quality Handbook in November 1993 to assist lead agencies, as well as consultants, project proponents, and other interested parties, in evaluating potential air quality impacts of projects proposed in the region. The SCAQMD CEQA Handbook does not recommend analysis of toxic air contaminants (TACs) from short-term construction activities. Rather, as stated in the CE:

SCAQMD recommends that health risk assessments be conducted for substantial sources of diesel particulate emissions (e.g., truck stops and warehouse distribution facilities) and has provided guidance for analyzing mobile source diesel emissions. The Project would not generate a substantial number of truck trips. Based on the limited activity of TAC sources, the Project would not warrant the need for a health risk assessment associated with on-site activities.¹⁷

The Appellant Letter also misrepresents the Office of Environmental Health Hazards Assessment (OEHHA) requirements under AB 2588, the Air Toxic Hot Spots Program. AB 2588 only applies to "facilities" as defined in Health and Safety Code Section 44322(a), which the state has determined applies to industrial facilities requiring operational air permits that use, manufacture, formulate, or release certain listed hazardous substances. Covered facilities do not include residential or mixed-use residential developments, which are not regulated under the Toxic Hot Spots Program. Notably, the OEHHA Guidelines assess cancer risks over 30-year exposures, they do not mandate analysis for "short-term" projects even under the Toxic Hot Spots Program, and thus the OEHHA Guidelines do not apply here, where the only DPM emissions would occur during a few months of construction activities as part of the

¹³ See, e.g., San Francisco Beautiful v. City and County of San Francisco (2014) 226 Cal.App.4th 1012, 1033 ("An agency may rely on generally applicable regulations to conclude an environmental impact will not be significant and therefore does not require mitigation.")

¹⁴ See CE, at pp. 2-72 through 2-75.

¹⁵ Defend the Bay, 119 Cal.App.4th at 1266.

¹⁶ See, e.g., Parker Shattuck Neighbors v. Berkeley City Council (2013) 222 Cal.App.4th 768, 785–786 ("a suggestion to investigate further is not evidence, much less substantial evidence, of an adverse impact."); Assn. of Irrigated Residents v. County of Madera (2003) 107 Cal.App.4th 1383, 1396 ("CEQA does not require that an agency conduct every recommended test and perform all recommended research in evaluating a project's environmental impacts.")

¹⁷ CE, at p. 2-74 (citing South Coast Air Quality Management District, Health Risk Assessment Guidance for Analyzing Cancer Risks from Mobile Source Diesel Emissions, December 2002.)

Project. Rather, as stated at pages 8-17 and 8-18 of the OEHHA Guidelines, the information regarding “short term” cancer exposures is provided to assist local air districts when they make permitting decisions for projects requiring AQMD permits related to shorter-term exposures, noting also that “there is considerable uncertainty in trying to evaluate the cancer risk from projects that will only last a small fraction of a lifetime.”

As indicated above, with respect to requiring quantitative HRAs related to DPM emissions from mobile sources – which describes the pollutant and type of source at issue here – SCAQMD only requires quantitative HRAs to be prepared for substantial mobile sources of DPM emissions, including truck stops and warehouse distribution facilities that generate more than 100 trucks per day or more than 40 trucks with operating transport refrigeration units.¹⁸ SCAQMD’s AB 2588 Supplemental Guidelines for Preparing Risk Assessments for the Air Toxics Hot Spots Information and Assessment Act only applies to permitted industrial facilities and does not address so called “short term” projects.¹⁹

SCAQMD Rule 1402, which implements the Toxic Hot Spots Program in the region, only applies to facilities with one or more AQMD permits to operate, which the Project is not required to obtain, and also does not require analysis of short-term TAC or DPM emissions. Thus, the comment’s assertion that a quantitative HRA is required for the Project is incorrect, as no agency has recognized infill mixed-use residential development as a significant source of toxic air emissions requiring quantitative HRAs. As Project construction activities would vary throughout the site and would be short-term during only one brief portion of onsite construction activities, stationary source rules would not be appropriate for assessing impacts associated with DPM and an HRA is not required.

5. The Class 32 CE Does Not Require Analysis of Greenhouse Gas or Energy Impacts And the Appellant Letter Does Not Even Attempt to Argue Significant Impacts Would Occur Here.

The Appellant Letter next asserts the CE failed to analysis Greenhouse Gas (GHG) or Energy impacts, which it asserts are allegedly significant. First, the Class 32 CE does not require any demonstration of less than significant GHG or Energy impacts.²⁰ The argument in the Appellant Letter fails for this reason, alone. Moreover, the Appellant Letter does not attempt to assert or demonstrate the Project would result in significant GHG or Energy impacts. Instead, the Appellant Letter merely asserts that the Project “should consider” replacement of natural gas with electric power and the use of 40 percent electric vehicle (EV) parking, rather than the 30 percent the Project would provide in accordance with City code requirements.

These general suggestions do not provide analysis demonstrating or even suggest the Project would result in any significant impacts with respect to GHG or Energy. Moreover, as set forth above, as set forth on pages 1-18 to 1-19 of the CE, all building systems would meet applicable Title 24 Energy Standards, which would reduce energy and water usage, waste and associated GHG emission. The Project would also provide smart thermostats, Energy Star rated dishwashers and refrigerators in every unit, and would comply with the applicable California Building Code (CALGreen) and LA Green Building Code. The Appellant Letter fails to establish the relevance or existence of purportedly significant GHG or Energy impacts by the Project.

¹⁸ SCAQMD, *Health Risk Assessment Guidance for Analyzing Cancer Risks from Mobile Source Diesel Idling Emissions for CEQA Air Quality Analysis*, 2002, found at <http://www.aqmd.gov/home/rules-compliance/ceqa/air-quality-analysis-handbook/mobile-source-toxics-analysis>, last accessed Nov. 14, 2022.

¹⁹ SCAQMD, *AB 2588 and Rule 1402 Supplemental Guidelines (Supplemental Guidelines for Preparing Risk Assessments for the Air Toxics Hot Spots Information and Assessment Act)*, October 2020, found at <http://www.aqmd.gov/docs/default-source/planning/risk-assessment/ab-2588-supplemental-guidelines.pdf>, last accessed Nov. 14, 2022.

²⁰ See, CEQA Guidelines, § 15332.

6. The Appellant Letter's Claims of Formaldehyde Impacts to Indoor Air Fails to Establish a Valid CEQA Impact.

The Appellant Letter asserts and includes a purported expert analysis asserting that the Project would result in significant impacts from construction materials and furniture that would allegedly release formaldehyde and cause significant indoor air quality impacts. First, as with its other claims, the Appellant Letter ignores the substantial evidence in record supporting the conclusion that the Project would not result in significant TAC impacts, found at pages 2-72 through 2-75 of the CE, and again fails to meet its burden for this reason, alone.

The Appellant Letter's analysis of alleged formaldehyde impacts also relies on speculation regarding the furniture to be used future residents – which is not an impact caused by the Project in the first place – and construction materials that would be utilized by the Project, asserting without evidence that the Project would utilize unspecified “composite wood products” indoors with no evidence. Moreover, the Appeal's purported indoor air quality analysis here is not a CEQA analysis, but instead relies on an invented “threshold” not adopted by the City or SCAQMD to assess the speculative alleged impacts of the Project on indoor air quality.

The air quality technical analysis performed for the Project in the CE is fully compliant with CEQA in its focus on regional and localized impacts from emissions of criteria pollutants and other relevant air quality concerns, including potential emissions of TACs related to outdoor air quality. This scope of analysis is appropriate in light of CEQA's general focus on projects' potential impacts on the human environment in general and not future project users.²¹ In furtherance of this scope and general focus of CEQA analyses, the State's CEQA Guidelines require CEQA-compliant air quality impacts analyses to assess the impacts a project would have on *outdoor* air quality, directing air quality analyses to address whether a project would conflict with or obstruct implementation of the applicable air quality plan, contribute to an existing air quality violation, or result in a cumulatively considerable increase in a criteria pollutant for which the region is in non-attainment, among other similar relevant factors.²² Indoor air quality is also not regulated by the applicable air quality plan, the SCAQMD's 2016 Air Quality Management Plan (AQMP). The USEPA, the California Air Resources Board (CARB) and SCAQMD have also not promulgated ambient air quality standards for indoor air quality.

Moreover, the Project would comply with applicable regulations that address this issue. These include the California Green Building Standards Code (CALGreen Code)²³, applicable to new commercial and industrial buildings, which is designed to promote “environmentally responsible, cost-effective, healthier places to live and work.” “CALGreen includes both required measures and voluntary measures, a number of which help assure healthful indoor air quality, such as those addressing chemical emissions from composite wood products, carpets, resilient flooring materials, paints, adhesives, sealants, and insulation, and also ventilation.”

More specifically, Section 4.5, Environmental Quality, of the CALGreen Code provides mandatory residential measures to reduce the quantity of air contaminants that are odorous, irritating and/or harmful to the comfort and wellbeing of a building's installers, occupants and neighbors. It includes VOC limits for paints, coatings, adhesives, adhesive bonding primers, sealants, sealant primers, and caulk. Section

²¹ California Building Industry Association v. Bay Area Air Quality Management District (2015) 62 Cal.4th 369, 377 (“In light of CEQA's text, statutory structure, and purpose, we conclude that agencies subject to CEQA generally are not required to analyze the impact of existing environmental conditions on a project's future users or residents.”)

²² See CEQA Guidelines, Appendix G.

²³ California Green Building Standard Code: <https://ww2.arb.ca.gov/our-work/programs/building-decarbonization/building-standards-code>, accessed August 2, 2022.

4.504.3, Carpet Systems, of the CALGreen Code establishes product requirements to meet one of the following: (1) Carpet and Rug Institute's Green Label Plus Program; (2) California Department of Public Health, "Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions from Indoor Sources Using Environmental Chambers," Version 1.1; (3) NSF/ANSI 140 at the Gold Level; or (4) Scientific Certifications Systems Indoor Advantage Gold. Furthermore, Section 4.504.5, Composite Wood Products, of the CALGreen Code establishes limits for formaldehyde as specified in ARBS's Air Toxics Control Measure for Composite Wood (e.g., particle board). These measures have been established through the CALGreen Code and are designed to reduce the quantity of air contaminants to acceptable levels.

CARB's ATCM (Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products) is a regulation that has a purpose of "reducing formaldehyde emissions from composite wood products, and finished goods that contain composite wood products, that are sold, offered for sale, supplied, used, or manufactured for sale in California. The composite wood products covered by this regulation are hardwood plywood, particleboard, and medium density fiberboard."²⁴ The measure applies to manufacturers, distributors, importers, fabricators (that use such materials to make other goods), retailers, third party certifiers who manufacture, offer for sale or supply these goods in California. The control measure assures that all building materials and furnishings manufactured, distributed, imported and used in new construction in California meet the maximum allowable concentrations that assure healthful indoor air quality.

According to CARB, from a public health standpoint, the Composite Wood Products (CWP) Regulation's emission standards are set at low levels intended to protect public health.²⁵ The CWP Regulation, adopted in 2007, established two phases of emissions standards: an initial Phase I, and later, a more stringent Phase 2 that requires all finished goods, such as flooring, destined for sale or use in California to be made using complying composite wood products. As of January 2014, only Phase 2 products are legal for sale in California. Thus, all new wood products installed in the Project would comply with the more stringent Phase 2 requirements.

Based on the foregoing, the Appellant Letter provides no valid basis to invalidate the well-considered conclusion of the Director in adopting the CE for the Project.

²⁴ CARB, Composite Wood Products Airborne Toxic Control Measure: <https://ww2.arb.ca.gov/our-work/programs/composite-wood-products-program>, accessed August 2, 2022.

²⁵ CARB, Frequently Asked Questions for Consumers, Reducing Formaldehyde Emissions from Composite Wood Products, https://ww3.arb.ca.gov/toxics/compwood/consumer_faq.pdf?_ga=2.32900281.682464648.1573169874-1026610208.1565143819, accessed August 2, 2021.

Communication from Public

Name:

Date Submitted: 05/12/2023 11:33 AM

Council File No: 23-0343

Comments for Public Posting: Response to Appeal.



DOUGLASKIM+ASSOCIATES,LLC

To: File
From: Douglas Kim, AICP
Date: February 7, 2023
Re: 966 Vermont Avenue Appeal

This memo responds to the December 29, 2022 letter report from Baseline Environmental Consulting and comments (Baseline Report) regarding the air quality and noise analyses prepared for the Class 32 Categorical Exemption (CE) adopted by the Director of Planning for the 966 Vermont Avenue project (Project).

1. Page 5, Table 1. The Baseline Report identifies potential noise levels at the nearest sensitive receptor that do not comply with the City's Municipal Code. Specifically, Los Angeles Municipal Code Section 112.05(a) limits noise from any powered construction equipment to a maximum of 75 dBA at a distance of 50 feet between 7:00 A.M. and 10 P.M. in any residential zone or within 500 feet, requiring powered construction equipment to meet the standard through the implementation of control measures including mufflers, shields, noise barriers and any other noise reduction device or techniques during the operation of noise-emitting construction equipment. The analysis in the CEQA document appropriately reflects the Project's required compliance with the Municipal Code and addresses its incremental impact on ambient noise levels, in accordance with CEQA.
2. Page 5, Potential Air Quality Impacts. The Baseline Report cites SCAQMD's recommendations regarding screening analyses for projects, noting that an Air Quality Study may be required if a project exceeds the applicable screening thresholds. As set forth in the CE, the air quality analysis in the CE is consistent with these guidelines, which do not require an Air Quality Study for the Project. But while SCAQMD does not require an Air Quality Study for the Project, the CE includes a thorough, CEQA compliant analysis of regional and localized emissions impacts and consistency with the AQMP, RTP/SCS, and General Plan Air Quality Element prepared in accordance with SCAQMD guidelines. The CE's analysis was based on guidelines in the State's CEQA Guidelines and the City's guidance on environmental analyses, which concluded based on substantial evidence that the Project would not result in a significant impact on air quality.
3. Page 6, Potential Air Quality Impacts: The Baseline Report states without any supporting citations that OEHHA recommends preparation of a Health Risk Assessment for construction projects lasting more than two months. However, OEHHA requirements as regulated under the AB 2588 program would apply to a construction project for a residential development that is not subject to the AB 2588 program. Neither SCAQMD nor OEHHA require HRAs for residential projects that are not regulated under the Air Toxics "Hot Spots" program, which apply to major stationary sources that require SCAQMD permits. Further, construction activities that produce short-term emissions of diesel particulates or other air toxics are not required to undergo an HRA.
4. Air Quality Technical Modeling: The Baseline Report's CalEEMod air quality modeling arbitrarily adjusts the scope of the Project and construction activities to yield higher emissions levels in manner that does not reflect the true Project or its potential impacts:

- a. Incorrect lot acreage. The size of the Project Site was arbitrarily increased to two acres in the Baseline Report analysis, which is 4.3 times larger than the actual project site, which artificially increases the air quality emissions produced by the model (see comment 4c below).
 - b. Incorrect construction schedule. The Baseline Report substantially altered the developer's planned construction schedule for the Project, which was assessed in the CE based on actual Project plans. The Baseline Report artificially increased the daily emissions for construction activities (e.g., demolition, grading).
 - c. Arbitrary modifications to construction equipment. The CE analysis relied on default assumptions from the CalEEMod model in the absence of project-specific information, which is appropriate under CEQA in the absence of such information on the Project. The Baseline Report arbitrarily altered the construction equipment, adding additional equipment without providing any justification in a manner that is inconsistent with the scale of the Project and size of the Project Site. The additional construction equipment appears to be due to the incorrect increasing of the Project Site to a two-acre lot by the Baseline Report, which produces higher equipment counts and thus increases emission impacts from all phases of construction in a manner that is not consistent with the Project or Project Site.
 - d. Adding false paving phase. The Baseline Report's analysis arbitrarily adds a paving phase to the construction plan. The CalEEMod guidance defines paving as "the laying of concrete or asphalt such as in parking lots, roads, driveways, or sidewalks." Since the project involves vertical development consisting of a building that encompasses the entire lot, it does not involve any paving of surfaces. Adding this additional phase of construction that would not occur for the Project improperly overstates emissions and thus overstates potential air quality impacts.
 - e. Failure to provide necessary information. The Baseline Report's analysis omits its assumptions in Section 5.3 of CalEEMod's output that delineates assumptions about worker trips, hauling, and other factors that strongly influence air quality emissions. In the absence of this information, a complete assessment of the accuracy of Baseline Report's analysis cannot be made.
5. Noise Technical Modeling: In addition to arbitrarily increasing its air emission assumptions, the Baseline Report's arbitrary and inaccurate increase to the size of the Project Site and the consequent increase to the number of pieces of large construction equipment (see comment 4a and 4c above) increase noise impacts from additional equipment that cannot properly be assumed to be used on the much smaller Project Site, leading to a falsely inflated determination of noise levels from additional construction equipment that should not be included in the analysis. As indicated above, the Baseline Report's noise analysis also fails to recognize maximum noise levels (L_{max}) that comply with LAMC Section 112.05(a) (see comment 1 above). These errors individually and collectively serve to artificially elevate construction noise levels at the nearest sensitive receptor. In addition, the Baseline Report determines the noisiest construction phase would be the alleged paving phase, to which it arbitrarily assigns the highest equipment count. However, as indicated, a paving phase is not part of the Project, as noted in Comment #4d, and thus the highest assumed noise levels in the Baseline Report would not occur as part of the Project. The construction noise analysis in the CE document reflects an accurate analysis based on the actual proposed construction phases, an appropriate count of construction equipment in light of the true size of the Project Site, and compliance with applicable regulatory requirements established by the City of Los Angeles noise ordinance and municipal code. The CE analysis is thus a far more accurate and reliable assessment of potential Project impacts with respect to both noise and air quality.