

From: [Bihl, Lauren \(CPC\)](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [Jain, Devyani \(CPC\)](#); [Gibson, Lisa \(CPC\)](#); [Cooper, Rick \(CPC\)](#); [Christensen, Michael \(CPC\)](#)
Subject: Planning Department Appeal Response: Appeal of CEQA Exemption Determination for 2000 Oakdale Avenue
Date: Monday, February 7, 2022 10:52:13 AM
Attachments: [Final Planning Appeal Response Memo - 2000 Oakdale - BOS File No. 220031.pdf](#)

Good morning,

Attached is the planning department's response to the appeal of the CEQA exemption determination for the proposed 2000 Oakdale Avenue project (Board of Supervisors File No. 220031).

Kind regards,

Lauren Bihl, Planner (she/her)
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COMMON SENSE EXEMPTION APPEAL

2000 Oakdale Avenue

Date: February 7, 2022
To: Angela Calvillo, Clerk of the Board of Supervisors
From: Lisa Gibson, Environmental Review Officer – (628) 652-7571
Lauren Bihl, lauren.bihl@sfgov.org or (628) 652-7498

RE: **Planning Record No. 2021-004141PRJ**
Appeal of Common Sense Exemption for 2000 Oakdale Avenue

Hearing Date: February 15, 2022

Project Sponsor: Cesar Angobaldo, Bayview Ventures, Inc., (510) 435-1632
Appellant(s): Michael Lozeau on behalf of Libkra Investments Corp.

Introduction

This memorandum and the attached documents are a response to the letter of appeal to the board of supervisors (the board) regarding the planning department's (the department) issuance of a common sense exemption under the California Environmental Quality Act (CEQA determination) for the proposed 2000 Oakdale Avenue project.

The department, pursuant to Article 5 of the CEQA Guidelines, issued a common sense exemption for the project on September 8, 2021 finding that the proposed project is exempt from CEQA per CEQA Section 15061(b)(3).

The decision before the board is whether to uphold the department's decision to issue a common sense exemption and deny the appeal, or to overturn the department's decision to issue a common sense exemption and return the project to the department's staff for additional environmental review.

Site Description and Existing Use

The approximately 42,500-square-foot project site is located in the Bayview neighborhood on assessor's block 5315, lot 051 which is bound by Selby Street to the west, Newcomb Avenue to the north, Rankin Street to the east, and Oakdale Avenue to the south. Oakdale Avenue is a two-way road with one general travel lane each in both the east and west directions. This segment of Oakdale Avenue also has parking on both sides of

the street and a standard bike lane in both directions. Selby Street runs under the elevated I-280 right-of-way and is a two-way road with one general travel lane each in both the north and south directions. The portions of Newcomb Avenue and Rankin Street surrounding the project block do not have street markings and are primarily used for parking and commercial vehicle storage for the surrounding businesses. The surrounding area is characterized by a mix of industrial, commercial, and residential land uses with buildings that are typically one to two stories tall.

The project site is currently occupied by a one-story, 42,500-square-foot industrial building containing light industrial and office space. The topography is generally flat. The site is located within a liquefaction hazard zone and the Air Pollutant Exposure Zone (APEZ). The site is subject to provisions in Government Code section 65962.5 (Cortese List – State Database of Hazardous Sites) as well as Health Code Article 22A (Maher Ordinance).

Project Description

The proposed project consists of interior tenant improvement work to an existing 3,130-square-foot light industrial/office suite within the subject building and a change of use from office to retail/commercial/office space to be occupied by a cannabis retail establishment. The project would not include any structural work to the existing building. Improvements would result in approximately 628 square feet of retail space, 1,123 square feet of commercial space, and 1,379 square feet of office space at the project site.

Background

On March 19, 2021, Cesar Angobaldo (hereinafter project sponsor) filed an application with the planning department (hereinafter department) for CEQA evaluation of the proposed project.

On September 8, 2021, the department determined that the project is exempt from CEQA and issued a common sense exemption under CEQA Guidelines section 15061(b)(3).

On January 5, 2022, Michael Lozeau on behalf of Libkra Investments Corp. (hereinafter appellant) filed an appeal of the common sense exemption determination.

CEQA Guidelines

Review for Exemption

In accordance with CEQA Guidelines section 15061(a), once a lead agency has determined that an activity is a project subject to CEQA, the lead agency shall determine whether the project is exempt from CEQA. Guidelines section 15061(b)(3) (common sense exemption) states that a project is exempt from CEQA if it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

In determining the significance of environmental effects caused by a project, CEQA Guidelines section 15064(f) states that the decision as to whether a project may have one or more significant effects shall be

based on substantial evidence in the record of the lead agency. CEQA Guidelines section 15064(f)(5) offers the following guidance: “Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumption predicated upon facts, and expert opinion supported by facts.”

Planning Department Responses

The concerns raised in the appeal letter are addressed in the responses below.

Response 1: The proposed project’s compliance with the planning code does not impact the CEQA determination.

The appellant states that the proposed project would not conform to existing planning code requirements regarding the type and amount of retail proposed on site. The project’s compliance with the Planning Code does not affect the review of the project pursuant to CEQA. For informational purposes only, the department notes that the project conforms to the requirements of the Planning Code. Cannabis Retail is a principally permitted land use within the PDR-1-B Zoning District. The Industrial Protection Zone Special Use District applies the controls of the M-1 Zoning District, which principally permits Cannabis Retail with no size limitation.

Response 2: The proposed project would be required to comply with the City’s Office of Cannabis permitting process, which requires an approved odor mitigation plan.

The appellant states that the proposed project would have significant cannabis-related odor impacts and states that currently no odor control plan has been submitted for the business. Odors typically do not rise to the level of being a significant impact unless they affect a substantial number of people. The multi-phased permitting process for the City’s Office of Cannabis would ensure that no adverse odors escape the premises. The first phase of the process requires the business owners to undergo background checks, submit information about the business structure, provide proof that they can operate, and obtain any other applicable permits. In the second step of the process the applicants are required to demonstrate, through the responses to the relevant application forms, how they will prevent any noxious or offensive cannabis-related odors from escaping the premises.

Applicants are required to include a clear description of the cannabis business activities in the permit application form, the total square footage of the area(s) in which the cannabis business activity will take place, and any and all measures that will be used to prevent any noxious or offensive odors from escaping the premises. If odor control equipment is planned to be used, a thorough description is required to be provided in the permit application form as to how that equipment will eliminate or mitigate odors originating from the cannabis facility. All manufacturers’ specifications sheets for odor control equipment shall be required to be submitted as part of the applicant’s permit documentation. An operation and maintenance plan for the odor control equipment and methods for recordkeeping to ensure that the operation and maintenance plan is followed is also required. Once approved, the final odor mitigation plan would become a condition of the cannabis business permit.

The city's regulatory process requires an odor mitigation plan for cannabis businesses. As a result, the cannabis odor control report that has been submitted by the appellant as part of this appeal is not substantial evidence of odor impacts of the project, because that report simply recommends the imposition of odor control measures. Such measures will be included as part of the normal city permitting process for a cannabis business permit.

The appellant also references a nearby cannabis facility (at 75 Industrial Street) and claims that the city's odor control requirements fail to effectively mitigate odor at that location. This issue would be considered an existing condition and does not relate to the CEQA determination for the proposed project. Furthermore, the 75 Industrial Street facility is a preexisting, unauthorized cannabis operation that is going through a legalization process. Because of this, 75 Industrial Street has not yet submitted the required odor mitigation plan for its facility to the city. Any existing odor issues at 75 Industrial Street, which has yet to be legalized and where no odor mitigation plan has been implemented to date, are therefore not indicative that the odor mitigation plan requirement is ineffective.

There is no substantial evidence to support the conclusion that the proposed project, which will be subject to the city's requirement of an odor mitigation plan, would have a significant environmental impact. Therefore, the project is appropriately exempt from CEQA review under the common sense exemption.

Conclusion

The department has determined that the proposed project is exempt from environmental review under CEQA on the basis that it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The appellant has not demonstrated that the department's determination is not supported by substantial evidence in the record.

For the reasons stated above and, in the September 8, 2021 CEQA, common sense exemption determination, the CEQA determination complies with the requirements of CEQA, and the department properly found that the project is exempt from environmental review pursuant to the cited exemption. The department therefore respectfully recommends that the board uphold the CEQA common sense exemption determination and deny the appeal of the CEQA determination.