



GENERAL PLAN EVALUATION APPEAL SUPPLEMENTAL RESPONSE 3

2395 Sacramento Street

Date: February 5, 2024
To: Angela Calvillo, Clerk of the Board of Supervisors
From: Lisa Gibson, Environmental Review Officer – (628) 652-7571
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RE: Board File No. 231285
Planning Case Nos. 2022-004172ENV and 2022-004172APL
Appeal of General Plan Evaluation for 2395 Sacramento Street

Hearing Date: February 6, 2024, continued from January 23, 2024

Project Sponsor: Tuija Catalano of Reuben Junius & Rose, LLP, on behalf of
Eduardo Sagues, Gokovacandir, LLC

Appellant: Richard Toshiyuki Drury of Lozeau Drury LLP, on behalf of Jonathan Clark

Introduction

This memorandum addresses the Planning Department's (the department's) response to the appellant's supplemental appeal brief dated February 1, 2024 regarding the noise and vibration analysis for the Planning Department's general plan evaluation (GPE) determination for the proposed 2395 Sacramento Street project.

Planning Department Further Supplemental Responses

Supplemental Response 17: The department's analysis of project-related noise and vibration impacts was conducted in accordance with the requirements of CEQA, and the mitigation is not improperly deferred. The GPE's determination is based on substantial evidence.

The appellant asserts significant vibration and noise "off-site" impacts during construction have not been addressed. The appellant incorrectly states the General Plan Evaluation (GPE) does not allow for mitigation and the vibration mitigation measure applied to the project amounts to deferred mitigation. The Housing Element EIR fully evaluated the potential for projects to result in off-site construction noise and vibration impacts and the GPE, following the HE EIR methodology, similarly evaluated the potential for construction vibration and noise impacts as further described below. The department's supplemental response 2 dated February 2, 2024 details why the GPE as a CEQA document allows for the department to apply mitigation

measures from the programmatic EIR to the project as applicable. This is also addressed in the department's initial appeal response dated January 16, 2024.

Vibration Analysis

Vibration impacts to people

The appellant presents an analysis prepared by a noise and vibration consultant that evaluates vibration impacts to people, finding the vibration levels exceed the Federal Transit Administration (FTA's) human annoyance criteria.

Construction noise and vibration effects from development projects are a common annoyance in an urban environment. However, construction vibration annoyance does not rise to a significant level unless that vibration would occur at night and potentially result in sleep disturbance and the associated adverse health effects related to sleep disturbance. Per page 183 of the FTA guidelines, construction vibration assessment is not required for many small projects, such as "erecting small buildings and facilities, which are similar in scale to the surrounding development."

As stated in the Housing Element EIR page 4.5-28, the FTA guidelines are used in the analysis of vibration effects on people. A significant vibration impact related to sleep disturbance could occur when nighttime construction activities generate vibration levels that meet or exceed the FTA category 2 vibration levels. Should vibration levels meet or exceed the category 2 vibration levels **during nighttime** construction, the analysis then evaluates the duration, frequency, and intensity of the exceedance to determine whether the nighttime construction vibration impact is significant. The project does not propose nighttime construction and therefore would not have the potential to generate vibration levels during construction that could cause sleep disturbance.

Furthermore, the equipment that would generate vibration during construction is a caisson drill and bore/drill rigs. This equipment would be used for approximately 2 months. Thus, vibration during construction that may be felt and may be considered an annoyance to nearby people would be limited and would not persist after this two-month period. Therefore, construction vibration effects to people, because it would occur during daytime hours, would not result in sleep disturbance, and would be limited in duration, would not be significant.

Lastly, the GPE identifies a significant vibration impact related to the potential for building damage and incorporates a mitigation measure to reduce vibration levels to below the building damage criteria, monitor vibration levels, and repair any damage should that occur. The Appellant's consultant recommends incorporating human-centric criteria into the vibration mitigation measure. However, for the reasons stated above, the impact related to human annoyance is not significant and does not require mitigation. Nevertheless, the Housing Element EIR mitigation measures applied to the project as Project Mitigation Measure 5 would also reduce the vibration felt by people in nearby buildings.

Vibration Mitigation

The GPE finds that construction activities would result in vibration at levels that could cause damage to adjacent buildings, finds this impact to be significant, and requires implementation of mitigation identified in the housing element EIR. Appellant claims this is improper for two reasons:

1. A CEQA exemption is not allowed if project requires mitigation- see planning department appeal response 1.

The department determined that the project did not qualify for a categorical exemption and determined that a general plan evaluation (GPE) would be appropriate. A GPE requires the department to implement mitigation measures from the programmatic EIR based on the project specific technical analysis conducted through the GPE review process.

2. The mitigation measure in the housing element EIR and applied to the project constitutes deferred mitigation.

Project Mitigation Measure 5 does not constitute deferred mitigation because the 3-page mitigation measure identifies the contents of the mitigation measure in detail. Specifically, the measure:

- a. Identifies the specific buildings that could be affected
- b. Requires a pre-construction survey of those buildings to document the existing condition and existing damage
- c. Identifies the specific criteria to be included in the Vibration Management and Monitoring Plan, such as:
 - i. Maximum vibration levels that cannot be exceeded based specific performance standards, for example, for historic buildings - a peak particle velocity or PPV not to exceed 0.25 in/sec
 - ii. Identification of measures to reduce vibration levels
 - iii. Vibration monitoring
 - iv. Actions to be taken in the event monitors exceed the performance criteria including:
 1. Using different equipment
 2. Establishing buffer distances
 3. Inspections and reporting
 - v. Requirements for periodic inspections
 - vi. Repair of all damage due to construction vibration to the building's pre-construction condition
 - vii. A final report of all monitoring records, building condition summaries instances of vibration level exceedance, identification of any damage and corrective actions to report damage.

As the specific locations of where vibration generating construction equipment may operate on the site may be refined and the specific construction equipment required for the construction activities could also be refined following detailed construction drawings, it is not feasible at this time to prepare a Vibration Management and Monitoring Plan that meets the detailed criteria identified in the mitigation measure.

As allowed by CEQA guidelines section 15126.4, “The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project’s environmental review, provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard that will be considered, analyzed, and potentially incorporated in the mitigation measure.” Project Mitigation Measure 5 has been adopted and includes the requirements above, including a commitment to mitigation, specific performance standards, and a clear list of the actions that would mitigate the impact. Thus the vibration mitigation measure does not constitute deferred mitigation. Endangered Habitats League v. County of Orange, which appellant cites, is inapplicable. In that case the court rejected a mitigation measure because it “does no more than require a report be prepared and followed, or allow approval by a county department without setting any standards.” (Habitats League, Inc. v. Cnty. of Orange (2005) 131 Cal. App. 4th 777, 794). Here, the standards are clearly set out in the mitigation measure, as CEQA allows. (See. e.g., N. Coast Rivers All. v. Marin Mun. Water Dist. Bd. of Directors, (2013) 216 Cal. App. 4th 614, 648 [rejecting a claim that mitigation had been improperly deferred when the mitigation clearly identified the thresholds used to determine if pile-driving impacts on fish will be significant]).

Construction Noise Analysis

Appellant provides a construction noise analysis that contains a quantitative assessment of construction noise and uses that assessment to state that a significant construction noise impact would occur. However, both the Appellant and their consultant misconstrue the quantitative analysis of construction noise as a CEQA significance threshold.

The quantitative analysis of construction noise, when required, evaluates the potential for construction activities to result in noise levels of 90 dBA or more at receptors and whether construction noise would increase the ambient noise levels by 10 dBA or more, which is a perceived doubling of loudness. However, this quantitative analysis is only part of the evaluation for determining whether construction noise impacts are to be considered significant and emphasis in the determination of significance is based on the intensity, frequency, and duration of noise levels that exceed these standards. This is clearly stated on Housing Element EIR page 4.5-35.

In fact, because construction noise analyses in accordance with FTA guidelines is based on the two noisiest pieces of equipment operating on a site simultaneously, as can be seen in Housing Element EIR Table 4.5-12, use of construction equipment will commonly exceed 90 dBA when construction is 25 feet from receptors. For example, two loaders operating on a site would produce a noise level of 92 dBA at 25 feet. However, use of such equipment for a limited period of time, in an urban environment where construction activity is not uncommon, and individual pieces of equipment are limited to 80 dBA at 100 feet per the noise ordinance is not a significant impact.

The noisiest phases of construction are typically the demolition, site preparation, grading and foundation phases. As shown in the project’s construction equipment information, these phases would occur for approximately 9 months. During this time, not all of the equipment would be in use all of the time. For example, the loader is expected to be used for 5 months. Construction noise levels would also be reduced during interior construction due to the attenuation of noise from a building’s exterior walls. Construction

noise is an annoyance to nearby receptors, but individual pieces of equipment are limited to 80 dBA at 100 feet per the noise ordinance and would cease upon completion of the project's construction. For these reasons, the Housing Element EIR (page 4.5-37) identifies screening criteria listing the types of projects that generally result in a less than significant noise impact and do not require further analysis. The proposed project meets the screening criteria because the project:

- Does not require impact equipment, such as pile drivers or hoe-rams
- Demolition, site preparation, excavation, foundation work, and shoring would occur for less than 12 months
- No nighttime construction is required or proposed.

Nighttime Construction

The consultant hired by the appellant does not provide a logical discussion of nighttime construction noise. The consultant acknowledges that the project does not require nighttime construction, but then goes on to analyze the noise impact of construction activities assuming such activities would occur at night. The Appellant goes on to state that the consultant's recommended mitigation for these perceived significant impacts is to prohibit construction at night.

Well, in fact, as stated on GPE page 2, in the project description, the project DOES NOT propose any nighttime construction. All construction activities would be conducted during daytime hours consistent with the Noise Ordinance and no nighttime construction (between 8 pm and 7 am) would occur.

Conclusion

The planning department conducted site-specific, project-level CEQA review for the project and prepared over 150 pages of documentation supporting the GPE analysis and conclusions. Preparation of an MND or EIR would have resulted in the same level of technical analysis, disclosure of impacts, and reduction of environmental harm as the GPE. With GPEs, compliance takes less time, and projects are still required to implement applicable mitigation measures to provide environmental protection. The comprehensive analysis in the Housing Element EIR was appropriately used for the streamlined CEQA analysis for this project as mandated by CEQA section 21083.3 and CEQA Guidelines section 15183. The significant vibration impacts identified in the 2395 Sacramento Street GPE are not dissimilar from impacts identified for development anticipated under the Housing Element EIR. The department determined that there would not be a significant construction noise impact and no mitigation is required. In addition, the department determined that the significant construction vibration impact for this project can be mitigated to less than significant with the identified measure. The determinations in the GPE are based on substantial evidence. The appellant has not provided substantial evidence demonstrating otherwise. Therefore, the planning department respectfully recommends that the board of supervisors uphold the department's determination that the GPE conforms with the requirements of CEQA and reject the appeal.