



SAN FRANCISCO PLANNING DEPARTMENT

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MEMO

Categorical Exemption Appeal (Supplemental Appeal Response) 3637-3657 Sacramento Street

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DATE: January 24, 2019
TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Lisa Gibson, Environmental Review Officer – (415) 575-9032
Don Lewis, Senior Environmental Planner – (415) 575-9168
RE: Board File No. 181233, Planning Department Case No. 2007.1347E
Appeal of Categorical Exemption for the 3637-3657 Sacramento Street Project
HEARING DATE: January 29, 2019

PROJECT SPONSOR: Annie Chen, Litke Properties, Inc., (415) 922-0178

APPELLANT: Brandon Ponce, Jennifer Kopczynski, Alexander W. Thompson, Marcia E. Herman, Susan Foslien, Jack Kaus, Patrick Richards, John M. Burns, and Douglas Engmann, on behalf of the California-Locust Neighbors' Association

INTRODUCTION

This memorandum is a response (“supplemental appeal response”) to a second supplemental letter of appeal to the board of supervisors (“the board”) regarding the planning department’s (the department) issuance of a categorical exemption under the California Environmental Quality Act (“CEQA”). The department submitted an appeal response memorandum on January 7, 2019 (“original appeal response”) that addressed concerns raised in the original appeal letter dated December 7, 2018 and the first supplemental appeal letter dated January 4, 2019.

PROJECT DESCRIPTION

Please see the department’s original appeal response, dated January 7, 2019 for a description of the proposed project.

PLANNING DEPARTMENT RESPONSES

The department’s original appeal response includes responses 1 through 9. This supplemental appeal response includes responses 10 through 12.

Class 32 Exemption

As discussed in the original appeal response, the Class 32 exemption applies to projects characterized as in-fill developments that are: (a) consistent with the general plan; (b) occur within City limits on a site no

larger than five acres that is substantially surrounded by urban uses; (c) has no value as habitat for endangered, rare or threatened species; (d) would not result in significant traffic, noise, air quality, or water quality effects; and (e) can be adequately served by all required utilities and public services.

The proposed project demonstrates each of the required factors for a Class 32 exemption: (a) the proposed four-story building with medical, residential, and retail uses on the project site is entirely consistent with the general plan; (b) the project site is less than five acres and is located in an urban setting; (c) the project site is not valued habitat for endangered, rare, or threatened species; (d) the proposed project would not result in any significant impact to traffic, noise, air quality, or water quality; and (e) the proposed project would be served by existing utilities and public services. As discussed in the CEQA determination, the proposed project is eligible for an infill exemption, and potential impacts would be addressed by the project's adherence to normal requirements for San Francisco construction projects, including the San Francisco Building Code, the San Francisco Municipal Transportation Agency's (SFMTA) Regulations for Working in San Francisco Streets, the Noise Ordinance, the Dust Control Ordinance, the Maher Ordinance and Bay Area Air Quality Management District regulations.

The CEQA Guidelines include exceptions to the applicability of categorical exemptions. A categorical exemption may not be applied for activities that create a reasonable possibility of having a significant effect on the environment due to unusual circumstances. This exception is only invoked when both: (1) unusual circumstances exist; and (2) as a result of these unusual circumstances, a project could create significant environmental impacts. The proposed project presents no "unusual circumstances" that would subject it to this exception. The alleged issues raised by the appellant are typical of those encountered in San Francisco during project development, are not unusual, and are addressed by existing legal requirements applicable to all similar projects. The use of the Class 32 exemption is entirely appropriate for the proposed project.

Response 10: Construction of the proposed project would not result in a substantial temporary or periodic increase in ambient noise levels.

The appellant asserts that the anticipated construction equipment list that the project sponsor provided to the planning department was incomplete. The appellant asserts that an excavator with a hoe ram attachment would be required to demolish the existing parking garage structure. Contrary to this assertion by the appellant, the project sponsor has confirmed that a hoe ram is not proposed.¹ The project sponsor's list of anticipated construction equipment, along with their approximate construction schedule, provides the planning department with adequate details to understand the construction characteristics of the proposed project.

The planning department evaluated the proposed project's potential noise impact by comparing the project's anticipated construction noise levels with the quantitative standards of the noise ordinance. As discussed in the original appeal response, the proposed project involves standard construction equipment subject to section 2907 of the noise ordinance (Article 29 of the San Francisco Police Code) and does not include the use of impact equipment that would affect the same sensitive receptors for a sustained and repeated period of time.

¹ Annie Chen, project sponsor, email correspondence to Don Lewis, planning department, January 23, 2019.

The noise ordinance criteria of section 2907(a) limits construction noise from individual pieces of equipment to 80 dBA at 100 feet from the noise source. Construction equipment that exceeds the noise ordinance include concrete saws, jackhammers, mounted impact hammers (hoe ram), and pile drivers. The noise ordinance provides exemptions to the section 2907(a) limit for impact tools (such as jackhammers, hoe rams, and pile drivers) and certain equipment provided that impact tools are fitted with intake and exhaust mufflers and that pavement breakers and jackhammers are equipped with acoustically attenuating shields or shrouds recommended by their manufacturers and approved by the director of the building department as best accomplishing maximum noise attenuation. An exceedance of the noise ordinance does not necessarily lead to a determination that a significant impact would occur, as it is necessary to review the circumstances surrounding the exceedance. As stated in the original appeal response (see response 5), the project's use of a jackhammer and concrete saw would be sporadic and limited in duration, and impact hammers or pile drivers are not required. Therefore, the project would not result in a significant noise impact and mitigation is not required.

Although the noise impacts of the project are not significant, should the Board deny the appeal of the CEQA determination, the Board could apply additional conditions of approval on the conditional use authorization to further reduce any impacts. These additional conditions could include (1) placing barriers between the sensitive receptors and the noise source; (2) ensuring that equipment (and trucks) used for project construction use the best available noise control techniques (e.g., improved mufflers, equipment redesign, intake silencers, ducts, engine enclosures, acoustically attenuating shields or shrouds); and (3) operating noisy equipment as far as possible from sensitive receptors.

Response 11: Construction of the proposed project would not generate excessive groundborne vibration levels.

The appellant alleges that the anticipated construction equipment list that the project sponsor provided to the planning department is incorrect and that a vibratory roller would be needed to compact the underlying fill materials. Contrary to this assertion by the appellant, the project sponsor has confirmed that a vibratory roller is not proposed.² While the 2009 preliminary geotechnical investigation³ recommends soil compaction, it does not state that a vibratory roller would be required. However, the appellant assumes a vibratory roller would be required to meet what they allege to be an "aggressive" construction schedule. Soil compaction is a common occurrence in site preparation for project developments in the city and would not be considered an unusual circumstance. Additionally, the project sponsor's anticipated construction duration of approximately 20 months is not unusual for a four-story, mixed-use development.

As discussed in the original appeal response (see response 7), construction-related vibration primarily results from the use of impact equipment such as pile drivers, hoe rams, and vibratory compactors. Since the project sponsor does not propose the use of pile drivers, hoe rams, and vibratory compactors, construction of the proposed project is not anticipated to expose structures to excessive groundborne vibration. Furthermore, the building code would require the project sponsor's construction contractor to adequately protect adjacent structures during project construction.⁴

² Annie Chen, project sponsor, email correspondence to Don Lewis, planning department, January 23, 2019.

³ Harold Lewis & Associates Geotechnical Consultants, *Preliminary Geotechnical Investigation, Proposed Mixed-Use Building at 3637 Sacramento Street, San Francisco, California*, July 15, 2009.

⁴ International Building Code, Section 3307.1: Protection of Adjoining Property.

Final plans for the proposed building would be reviewed by the building department for conformance with recommendations in the site-specific design-level geotechnical investigation. The building department would also review the proposed building permit applications for compliance with the 2016 San Francisco Building Code and California Building Code. In particular, California Building Code Chapter 18, Soils and Foundations, provides the parameters for geotechnical investigations and structural considerations in the selection, design, and installation of foundation systems to support the loads from the structure above. Adherence to building code requirements would minimize any risk of damage to onsite or offsite structures and adjacent sidewalks.

Although the vibration impacts of the project are not significant, should the Board deny the appeal of the CEQA determination, the Board could decide to apply additional conditions of approval on the conditional use authorization to further reduce any impacts. These additional conditions could include: (1) pre-construction assessment of an adjacent structure by a qualified professional to identify potential structural vulnerabilities and the maximum vibration limit allowable to prevent damage; (2) under the direction of a qualified professional, pre-construction bracing of an adjacent structure's vulnerable components to reduce the potential for vibration-related damage; (3) monitoring of vibration levels at an adjacent structure to ensure that vibration limits are not exceeded; and (4) remediate an adjacent structure to pre-construction conditions.

Response 12: The proposed project's temporary and intermittent construction activities would not have a significant effect on mental health therapists or patients in the project vicinity.

The appellant claims that there is a high concentration of mental health therapists along the Sacramento Street neighborhood commercial district and claims that this is an unusual circumstance that would require further environmental review. As discussed in the original appeal response, and in this supplemental appeal response, construction of the proposed project would not result in a substantial temporary increase in ambient noise levels or excessive groundborne vibration levels. As such, the project would not result in a significant noise or vibration impact on sensitive receptors. The clustering of medical uses near hospitals (e.g., near UCSF campuses) is a common occurrence in the city. Whether or not the project block contains a significant concentration of mental health therapists, the CEQA determination correctly analyzed the proposed project's physical changes to the environment. Moreover, an analysis of subjective psychological feelings or social impacts are beyond the purview of CEQA. While noise can cause annoyance and can trigger emotional reactions, the proposed project's construction activities would be transitory, temporary, and intermittent. These short-term construction impacts of the proposed project could create effects that are considered welfare rather than health effects, and are not considered environmental impacts under CEQA.

CONCLUSION

For the reasons stated above, and in the September 20, 2018 CEQA categorical exemption determination and the original appeal response, the CEQA determination complies with the requirements of CEQA, and the project is appropriately exempt from environmental review pursuant to the cited exemption. Therefore, the department respectfully recommends that the board uphold the categorical exemption determination and deny the appeal of the CEQA determination.