

DEPARTMENT OF
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(213) 978-1300

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CITY OF LOS ANGELES CALIFORNIA



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

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July 28, 2021

Honorable Council Members
Planning and Land Use Management Committee
City of Los Angeles
City Hall, Room 350
Los Angeles, CA 90012

APPEAL OF ENV-2018-2454-CE; CF 19-1603-S1

On January 28, 2021, the Director of Planning issued a Determination that approved a Redevelopment Plan Project Compliance Review, permitting a 2.47% density increase to match the base density of the LAMC pursuant to the Exposition/University Park Redevelopment Plan, Sections 1304 and 1306, for the construction of a new four-story (45 feet high), approximately 185,985 square-foot residential complex with 102 residential units along with the adoption of ENV-2018-2454-CE which is a determination that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, section 15332 (Class 32).

On February 16, 2021, an appeal of the entire Director's Determination was filed by Jean Frost on behalf of the West Adams Heritage Association.

On June 15, 2021, the South Los Angeles Area Planning Commission conducted a public hearing to consider the appeal under Case No. DIR-2020-4338-RDP-1A and denied the appeal and sustained the Planning Director's Determination, dated January 28, 2021. The Letter of Determination of the South Los Angeles Area Planning Commission was issued on June 23, 2021.

On June 28, 2021, a CEQA appeal was filed by an aggrieved party (Jean Frost on behalf of the West Adams Heritage Association) to the City Council relative to the action of the South Los Angeles Area Planning Commission's adoption of ENV-2018-2454-CE.

As discussed below, upon careful consideration of the appellants' points, planning staff has determined that the appellants have failed to establish, or present new substantial evidence, that the project is not exempt from CEQA pursuant CEQA Guidelines, Section 15332, and there is no substantial evidence demonstrating that any of the exceptions to a categorical exemption set forth in CEQA Guidelines, Section 15300.2 applies. The appeal in its entirety is located within Council File No.19-1603-S1. Below is a summary of the appeal points with a staff response to each point.

APPEAL ANALYSIS

The main appeal points raised were related to the following: 1) Exception for a Class 32 Categorical Exemption; 2) Mitigation Measures; 3) Cumulative Impacts.

1) Exception for a Class 32 Categorical Exemption

Appeal Point 1 (Historic Resources):

Appellants challenge the Commission's determination that the Project is exempt from CEQA pursuant to CEQA Guidelines section 15332, Class 32. Appellants allege that the Class 32 exemption is inapplicable to the Project because the Project site's adjacency to historic resources is an "unusual circumstance," precluding application of the exemption. (Appeal Letter, pp. 3-5.)

Staff Response 1:

Specifically, Appellants claim that the location of the Project may result in damage to the Fraternity Sorority Row National Register District (eligible) to the south, the Chester Place Historic District, the St. James Park National Register District and University Park HPOZ to the north, the North University Park Specific Plan to the west, and other historic resources. (Ibid.)

Under the "unusual circumstances" exception in CEQA Guidelines section 15003.2(c), a categorical exemption "shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." The "unusual circumstances" exception to the exemptions focuses on whether there is something unusual about a particular project that would take it outside the scope of physical changes typically associated with projects in the same exemption category. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1101-02.) "[T]o establish the unusual circumstances exception, it is not enough for a challenger merely to provide substantial evidence that the project may have a significant effect on the environment, because that is the inquiry CEQA requires absent an exemption." (Id. at 1105.) Rather, the challenger must show "that the project has some feature that distinguishes it from others in the exempt class, such as its size or location," and that there is a reasonable possibility of a significant effect due to that unusual circumstance. (Id.)

There is no evidence of historic resources at or near the project site that would demonstrate an unusual circumstance under CEQA Guidelines section 15003.2(c).

None of the existing structures on the project site are designated as historic cultural monuments and the project site is not located within a Historic Preservation Overlay Zone. The subject property is comprised of four lots at 758 - 832 West Adams Boulevard and 2610 South Severance Street. The Project site is currently occupied by a two-story plaster building used by the University of Southern California as an office, childcare, and classroom facility, as well as a surface parking lot and ornamental trees and landscaping. The project site previously contained a separate two-story office, childcare,

and classroom facility that was demolished in 2017 as a separate action that is not part of the currently proposed project. The existing building was constructed in 1971. Furthermore, a historic resource evaluation, dated June 14, 2018, was conducted by the Historic Resources Group that reviewed the existing buildings and determined that, based on visual observation, research of primary and secondary sources, and an analysis of established eligibility criteria, the existing onsite building is not eligible for historic designation at the local, state, or national level.

With respect to the Project site's adjacency to historic resources and/or districts, there is no evidence that the Project would have any impacts on those resources. Moreover, the Project site's location near identified historic resources is not an unusual circumstance in the City. The City's historic resources inventory database, HistoricPlacesLA, identifies 58,571 actual or potential historic contributors, resources or district within the City. Thus, the Project site's location near historic districts, resources or contributors is not unusual or unique for the purposes of CEQA.

Appeal Point 2 (Scenic Highway):

Appellants assert that the Project's location on Adams Boulevard precludes application of the Class 32 categorical exemption because Adam Boulevard is locally designated by the City of Los Angeles Mobility Plan 2035 as a Scenic Highway. (Appeal Letter, p. 7.)

Staff Response 2:

CEQA Guidelines section 15003.2(d) provides that a "categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway."

The Project will not trigger the scenic highways exception under CEQA Guidelines section 15003.2(d) because that exception only applies to *state* scenic highways. While Adams Boulevard is identified in the City of Los Angeles Mobility Plan 2035 as a Scenic Highway, it is not designated as a "state scenic highway." There are no designated state scenic highways located at or near the Project site.

To the extent Appellants claim that the Project is inconsistent with the City designation of Adams Boulevard as a scenic highway under the Los Angeles Mobility Plan 2035, there is no evidence to support this claim. The City of Los Angeles Mobility Plan 2035, Appendix B, identifies the following five factors related to the maintenance of identified Scenic Highways: (1) Roadway Design and Alignment; (2) Parkway Planting/Landscaping; (3) Signs/ Outdoor Advertising Restrictions; (4) Utilities (e.g. undergrounding of new or relocated utility facilities); and (5) Opportunity for Enhanced Non-Motorized Circulation. The Project will not affect the design or alignment of West Adams Boulevard, the earthwork/grading, planting/landscaping and utilities work required for the Project will not alter the Adams Boulevard parkway and trees, and as a residential project, the Project will not contain any outdoor advertising. In addition, no podium parking is visible along the Project's frontage along Adams Boulevard as the parking podium is fully screened and the setback is fully landscaped. Therefore, the Project is not inconsistent with the Scenic Highway Guidelines or Citywide Design Guidelines to the extent that these guidelines would be applicable to any CEQA analysis.

Appeal Point 3 (Plan Consistency):

Appellants also assert that the Project's scale and massing are inconsistent with the surrounding community and the Redevelopment Plan for the area, and that the project's size will result in parking impacts. (Appeal Letter, p. 5.)

Staff Response 3:

As noted above, pursuant to LAMC Section 11.5.14 D.5(g), the SLAAPC determination with respect to Redevelopment Plan Project Compliance Review is final and not subject to this appeal. To the extent that Appellants appear to be arguing that the Project does not qualify for a Class 32 exemption under CEQA Guidelines Section 15332 because it is allegedly not consistent with the applicable general plan designation and all applicable general plan policies as well as with the applicable zoning designation and regulations, the City Council has already rejected those claims on the prior appeals when it upheld the City Planning Commission's determination that the project would be compatible with current uses in the immediate area and substantially conforms with the purpose, intent and provisions of the General Plan, the applicable community plan, and any specific plan. In addition, because the residential project is located within a transit priority area, it is exempt from any aesthetic impacts pursuant to Public Resources Code, section 21099(d)(1).

2) Mitigation Measures**Appeal point 4:**

Appellants assert that "[c]ategorical exemptions cannot be relied upon for projects such as this one where mitigation measures are required." (Appeal Letter, p. 7, citing *Salmon Protection and Watershed Network v. County of Marin* (2004) (125 Cal.App.4th 1098, 1108; *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1191, 1201 [agency may not "evade these standards by evaluating proposed mitigation measures in connection with the significant effect exception to a categorical exemption"].)

Staff Response 4:

To support their claim that mitigation measures are required for the Project, Appellants point to two conditions of approval requiring that (1) the Project be constructed in accordance with the revised plans and materials and (2) that hours of operation for the shared rooftop amenity spaces are limited to 7:00 a.m. to 10:00 p.m. Sunday through Thursday and 7:00 a.m. to 12:00 midnight Friday and Saturday.

Appellants' assertion that the CEQA determination relied upon mitigation measures to avoid potentially significant environmental impacts is incorrect. While Appellants are correct that the courts have held it is generally improper to rely upon mitigation measures to grant a categorical exemption under CEQA (*Salmon Protection and Watershed Network, supra*, 125 Cal.App.4th at 1107), neither of the conditions of approval Appellants point to in their appeal letter are "mitigation measures" under CEQA.

First, with regard to the condition of approval requiring that the project be constructed in accordance with the revised project plans, CEQA requires that "a finding of environmental impacts must be based on the proposed project as actually approved." (*Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, 824, quoting *Berkeley Hillside Preservation, supra*, 60 Cal.4th at 1119.) Here, all revisions to the project design

and site plans that occurred during the planning process became the “project” for purposes of environmental impact review. It was determined that if the Project is constructed as approved, the Project qualifies for the Class 32 categorical exemption. A condition of approval requiring that the Project be constructed as approved is not a mitigation measure under CEQA.

Second, Appellants’ assertion that the Project’s limitations on shared rooftop hours of operation constitutes a mitigation measure under CEQA is also incorrect. Appellants fail to provide substantial evidence of a potentially significant noise impact resulting from the shared rooftop amenity spaces which would trigger the need for mitigation. To the contrary, the August 2018 Environmental Noise Study for the 806 W Adams Residential Project (ICF, 2018) determined that, during operations, the incorporation of noise control methods by the Project would ensure that all noise-generating mechanical equipment (e.g., heating, ventilation, and air conditioning equipment) would comply with the requirements of LAMC Section 112.02, and that noise from the Project’s outdoor residential amenity spaces would comply with noise limits set forth in the LAMC.

The conditions of approval restricting hours of operation for the shared rooftop amenity spaces are substantially similar to the conditions of approval upheld by the court of appeal in *Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809. In that case, a group of neighbors filed a petition for writ of mandate challenging the city’s approval of a combined car wash and coffee shop project. There, the city determined that the project was exempt from CEQA review pursuant to the so-called “small facilities” exemption. (CEQA Guidelines, § 15303.) In challenging the exemption determination, the neighbors argued that a condition of approval requiring that the applicants install equipment to ensure compliance with the city’s noise ordinance violated CEQA’s requirement that environmental impacts must be reviewed and mitigated before approval of a land use project. (*Walters, supra*, 1 Cal.App.5th at 824.) The court rejected the neighbors’ argument and upheld the city’s exemption determination, noting that, as is the case here, the city found “the project will not have a significant effect on the environment, subject to the modifications of the design review and conditions of approval. Hence, the [c]ity concluded that the project, as approved, complies with the noise ordinance requirements...” (*Ibid.*) The same reasoning applies here and Appellants’ claims lack merit.

3) Cumulative Impacts

Appeal point 5 (Cumulative Impacts):

Appellants argue that the Project would result in cumulatively considerable impacts, therefore, the Class 32 exemption is inapplicable. To support this argument, Appellants assert that:

The City adopted the NSO for this area to address the negative impacts multi-habitable room projects cause, including traffic impacts due to lack of parking, incompatible character of multi-habitable room projects, impacts to the quality of life for existing residents from noise and traffic. Thus, the NSO acknowledges an existing cumulative impact caused by the type of student housing provided by the Project. (Appeal Letter, p. 8.)

Staff Response 5:

The cumulative impacts exception to categorical exemptions provides that “[a]ll exemptions...are inapplicable when the cumulative impact of successive projects of the

same type in the same place, over time is significant.” (CEQA Guidelines, 15300.2(b).) Under CEQA, “‘Cumulative impacts’ refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. [¶] (a) The individual effects may be changes resulting from a single project or a number of separate projects. [¶] (b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.” (CEQA Guidelines, § 15355.)

Appellants fail to provide substantial evidence of a cumulative impact as a result of the project. “Substantial evidence” for purposes of CEQA is defined as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” (CEQA Guidelines, § 15384(a).) “Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” (CEQA Guidelines, § 15384(b).)

Here, Appellants have not provided any substantial evidence of a cumulative impact as a result of the Project and, instead, assert only that the Project is in an NSO area and that the purpose of the NSO is to address impacts of multi-habitable room projects. (Appeal Letter, p. 8.) Appellants fail to demonstrate how compliance with the NSO would result in a significant environmental impact. Under CEQA, “speculation that potential future projects similar to the one under consideration *could* cause a cumulative adverse impact is not sufficient to negate a categorical exemption.” (*Robinson v. City and County of San Francisco* (2012) 208 Cal.App.4th 950, 959–960, citing *Hines v. California Coastal Com.* (2010) 186 Cal.App.4th 830, 857–858.) In this case, it was determined that the Project would be consistent with the North University Park-Exposition Park-West Adams NSO District and Appellants do not challenge that determination.

Moreover, it was expressly determined that the project would not make a cumulatively considerable contribution to any significant cumulative impacts and that the cumulative impacts exception does not apply. As explained in the CEQA Narrative supporting the Notice of Exemption for the Project:

The Project Site is previously developed and located in an urbanized area surrounded by other residential uses, in addition to some education and commercial uses. The Project is consistent with the South Los Angeles Community Plan as well as zoning and the requirements of the LAMC. As discussed above, the Project’s impacts on biological resources would be less than significant as the Project Site has no value as habitat and standard pre-construction surveys would ensure that special-status species are not present in the onsite trees or landscaping that would be impacted prior to construction activities. The Project’s impact on water quality would be less than significant as the project would adhere to all applicable laws and ordinances which would require LID features incorporated into the project design and stormwater BMPs to reduce potential impacts related to stormwater runoff during construction. The Project is not located on or visible from a scenic highway nor would the Project lead to a substantial adverse change in the significance of a historic resource, as determined by the Project’s Phase 1 Historical Resource Assessment Report, 806 W. Adams Blvd. (Historic Resources Group, 2018). The Limited Phase I ESA for the Project Site determined there is a low probability of encountering hazardous materials at

the Project Site. The Project would be served by existing utility lines and existing public services. The Traffic Impact Study (Gibson, 2018) considered the Project's contributions to traffic and determined them to be less than significant. The TIS also considered the Project's potential cumulative impacts, considering the Project's contributions to all future cumulative traffic growth (including related projects and ambient traffic growth) and determined them to be less than significant. Similarly, the Project's Air Quality Analysis (ICF, 2018) determined that the Project construction emissions would not exceed SCAQMD's regional mass or localized significance thresholds. Project operation emissions would not exceed SCAQMD's regional mass or localized significance thresholds and the Project would not result in any significant air quality impacts. Therefore, the Project's impacts as a whole would be less than significant and are not cumulatively considerable.

The immediate vicinity of the Project Site is undergoing intensification. There are over 70 related projects within a 1.5-mile radius of the Project Site, including at 2455 S Figueroa Street (145 apartments), 3101 S Figueroa Street (275 hotel rooms), 243 W Adams Boulevard (300 apartment units), and 505 W 31st Street (7 story student housing building). The related project closest to the Project Site is at 2716 S Severance Street (a 9,955- square foot childcare center), directly south of the Project Site. Based on a review of the types and locations of the related projects, and considering the less than-significant impacts that would result from the Project, the Project would not make a cumulatively considerable contribution to any significant cumulative impacts when considering it along with other related present, past, and reasonably foreseeable future projects. Therefore, this exception is not applicable to the Project.

Accordingly, there is no substantial evidence of a cumulative impact from successive projects of the same type in the same place. (CEQA Guidelines, 15300.2(b).)

CONCLUSION

For the reasons stated herein, and in the findings of the South Los Angeles Area Planning Commission's Determination, the proposed project complies with CEQA. Planning staff evaluated the proposed project and determined that the project qualifies for a Class 32 Categorical Exemption. Based on the complete plans submitted by the applicant and considering the appellant's arguments for appeal, staff has determined that the project meets the required findings. The Appellant has raised no new information to dispute the Findings of the Class 32 Categorical Exemption.

Therefore, Staff recommends that the Planning and Land Use Committee take the following actions: determine that based on the whole of the administrative record, the project is exempt from CEQA pursuant to CEQA Guidelines, Section 15332, and there is no substantial evidence demonstrating that an exception to a categorical exemption pursuant to CEQA Guidelines, Section 15300.2 applies, deny the appeal filed by Jean Frost and sustain the decision of the Director to determine that based on the whole of the administrative record, the project is exempt from CEQA pursuant to CEQA Guidelines, Section 15332, and there is no substantial evidence demonstrating that any of the exceptions to a categorical exemption set forth in CEQA Guidelines, Section 15300.2 applies.