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☒ Appeal of Planning Commission Decision/Rehearing
(Must be submitted to the City Clerk's Office):

☐ Residential: \$1,335

☒ Other Appeals: \$2,670

☐ Appeal of Zoning Administrator/Building Official/Staff Decision
(Must be submitted to the Planning Division): \$2,645

APPLICATION FOR APPEAL OR REVIEW

Applicant name*: Supporters Alliance for Environmental Responsibility ("SAFER")

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REQUEST FOR: ☒ **APPEAL** ☐ **REVIEW****

Case Number: 2024-0277 Date of Decision: March 5, 2025

Decision by: Planning Commission

Reasons for requesting appeal or review (include a general statement specifying the basis for the appeal and the specific aspect of the decision being appealed based upon an error in fact, dispute of findings, or inadequacy of conditions to mitigate potential impacts—attach additional sheets, if necessary):

The Planning Commission erred in approving the project when the project has been improperly assigned a Class 32 Infill Exemption to the California Environmental Quality Act ("CEQA"). The project exceeds the height limit of the City's General Plan and the project is on the Cortese List, which prohibits an exemption from CEQA. The Administrative Adjustment for the height of the project constitutes a mitigation measure, which also makes the project ineligible for a Class 32 CEQA exemption. SAFER appeals the project and requests that the City conduct environmental review pursuant to CEQA to analyze the project's impacts before making any project approvals.

Date: 3/17/2025

Signature: *Victoria Ghant*

*If you are serving as the agent for another person, please identify the person you represent and provide proof of authorization.

**Review may be requested only by Planning Commission Member or Mayor/City Council Member.

Signed application and fee must be submitted within 15 days after the decision date identified in the notice of decision. (WMC 17.640.030)



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March 4, 2025

VIA EMAIL

K.C. Wolbert, Chair
Don Anderson, Vice Chair
Tony Bui, Commissioner
Alin Hamade, Commissioner
Laura Rose, Commissioner
Planning Commission
City of Westminster
8200 Westminster Boulevard
Westminster, CA 92683
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Stephanie Tomaino, Contract Principal Planner
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**Re: Comment on Infill Exemption for Development Review and Administrative Adjustment (Case No. 2024-0277) (Proposed Development of a 69,498 Square-Foot Warehouse Located at 7474 Garden Grove Boulevard in the City of Westminster)
March 5, 2025 Planning Commission Agenda Item 8.2**

Dear Chair Wolbert, Vice-Chair Anderson, Honorable Commissioners and Ms. Tomaino:

This comment is submitted on behalf of Supporters Alliance for Environmental Responsibility ("SAFER"), regarding the project known as Development Review and Administrative Adjustment (Case No. 2024-0277), which proposes the demolition of eight existing industrial buildings totaling 52,000 square feet to make way for the development of a 69,498 square-foot industrial warehouse located at 7474 Garden Grove Boulevard on Assessor Parcel Numbers 096-021-14 in the City of Westminster ("Project"), which is scheduled to be heard by the Planning Commission on March 5, 2025 as Agenda Item 8.2.

SAFER objects to the City's decision to exempt the Project from environmental review under the California Environmental Quality Act ("CEQA") based on a Class 32 Categorical Exemption (In-fill Development). Exempting the Project from CEQA based on the Class 32 Exemption violates CEQA because terms of the Class 32 exemption do not apply. SAFER requests that an initial study be conducted and a CEQA document prepared to analyze and mitigate the Project's environmental impacts. The Planning Commission should decline to approve the Project until proper CEQA review is completed.

The CEQA Infill Exemption only applies if, “The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.” (14 Cal.Code Regs. Section 15332(a).) The Project exceeds the 35-foot height limit set forth in the General Plan and zoning. The Planning Commission staff report acknowledges that the Project exceeds the applicable height limit stating, “The project complies with all applicable development standards, except for building height, for which the applicant is requesting an Administrative Adjustment to allow an increase of up to 10% above the 35-foot height limit.” (Staff Report, p. 1). As such, the Infill Exemption does not apply as a matter of law.

Also, a project that requires mitigation measures cannot be exempted from CEQA, nor can the agency rely on mitigation measures as a basis for determining that one of the significant effects exceptions does not apply. (*Salmon Pro. & Watershed Network v. County of Marin* (2004) 125 Cal.App4th 1098, 1102.) Here, the Staff Report recommends mitigation measures to reduce the Project’s aesthetic impacts. The Staff Report states:

Additionally, because the property abuts the SR-22 freeway and is highly visible, staff is recommending a condition of approval (COA #23) prohibiting unscreened storage within the fenced rear yard area. This requirement ensures that the rear yard remains orderly and is used as intended for vehicle parking, preventing long-term storage or visual clutter. (Planning Commission Staff Rept. p. 4).

Since the City has imposed mitigation measures, a CEQA document is required to analyze the adequacy of these mitigation measures, and to determine if the measures will reduce impacts to less than significant levels.

Finally, a project may not be exempted from CEQA review if it is located on a contaminated site. (*McQueen v. Mid-Peninsula Board*, 202 Cal.App.3d 1136, 1149 (1988) (“the known existence of....hazardous wastes on property to be acquired is an unusual circumstance threatening the environment” and the project may not be exempted from CEQA review); *Association for a Cleaner Environment v. Yosemite Comm. College*, 110 Cal.App.4th 629 (2004) (presence of hazardous materials makes CEQA exemption improper).) If the Project is listed on the State’s Cortese List of contaminated sites, then it may not be exempted from CEQA review. CEQA is quite clear, a categorical exemption:

“shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code [Cortese List].” (14 CCR §15300.2(e)).

The CEQA statute states:

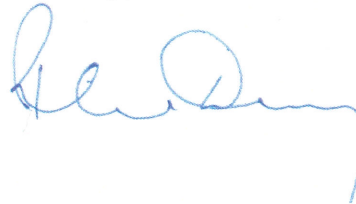
“No project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code [Cortese List] shall be exempted from this division pursuant to subdivision (a)[categorical exemptions].” (Pub. Res. Code § 21084(c)).

“The provisions in Government Code Section 65962.5 are commonly referred to as the ‘Cortese List’” As the Court of Appeal has stated, “We agree that the Legislature intended that projects on these [Cortese List] sites should not be categorically exempt from CEQA because they may be more likely to involve significant effects on the environment.” *Parker Shattuck Neighbors v. Berkeley City Council*, 222 Cal. App. 4th 768, 781 (2013).

The CEQA Analysis admits that the Project Site is on the Cortese List. (CEQA Analysis, p.12). The Analysis attempts to dismiss this fact by stating that no further action is required. However, this is irrelevant. If the Project site is on the Cortese List, the proposed Project may not be exempted from CEQA review. This is because existing site contamination may be disturbed or released during construction activities, such as excavation and soil disturbance. Since there is no dispute that the Project site is on the Cortese List, it may not be exempted from CEQA review.

For these reasons, we ask the City to decline to approve the Project until CEQA review is conducted to analyze and mitigate the Project’s impacts.

Sincerely,



Richard Drury
Lozeau Drury LLP