



Planning & Community Development Department

**Quasi-Judicial Action: Appeal of Design
Commission's Concept Design Review
Approval for a New Mixed-Use Development
740-790 East Green Street**

City Council

October 16, 2023





Project Background

Planning & Community Development Department

- **Original Project**: Submitted in 2018 as a Planned Development (PD) and withdrawn by the applicant in 2022.
- **Revised Project**: Submitted in 2022 as a Design Review with the Concept Design Review approved by the Design Commission on June 13, 2023.
- **CEQA Review**: An Initial Study/Mitigated Negative Declaration (IS/MND) was prepared by a consultant firm in compliance with the California Environmental Quality Act (CEQA), and was circulated from December 1, 2020 to January 13, 2021.
- **Project Appealed**: Lozeau Drury, LLP, representing the Supporters Alliance for Environmental Responsibility (“SAFER”), appealed the project on June 23, 2023.
- **Appeal Hearing**: Presented to the City Council on October 2, 2023 and continued to October 16, 2023.
- **SB330**: Limits qualified housing projects to 5 public meetings total. This hearing is meeting no. 4



Project Evolution

Planning & Community Development Department

	Preliminary Consultation 2018	Concept Design Review 2023
Applications	Planned Development	Design Review
	Affordable Housing Concession Permit for FAR and Height	Affordable Housing Concession Menu for FAR and Height
Height	Up to 82 ft.	Up to 62 ft.
Stories	3 to 6	3 to 5
FAR	3.0 (304,836 sq. ft.)	2.5 (254,152 sq. ft.)
Units	273	263
Affordable Units	30 (11%)	41 (16%)
Commercial	19,660 sq. ft. of restaurant, café, and retail	14,346 sq. ft. of office



Project Evolution Renderings

(View looking SE at the corner of E. Green St. and Oak Knoll Ave.)

Planning & Community Development Department



**Preliminary
Consultation
(2018)**



**Concept
Design
Review
(2023)**



Project Evolution Renderings

(View looking NE from Hudson Ave.)

Planning & Community Development Department



**Preliminary
Consultation
(2018)**



**Concept
Design
Review
(2023)**



CEQA Review

Planning & Community Development Department

- **Technical Studies Completed:**

- > Air Quality and Greenhouse Gas Emissions Modeling;
- > Arborist Report;
- > Cultural Resources Technical Report;
- > Energy Consumption Calculations;
- > Geotechnical Engineering Investigation;
- > Noise Assessment;
- > Phase I Environmental Site Assessment (ESA) and Vapor Intrusion Risk Assessment (VIRA);
- > Transportation Impact Analysis – CEQA Evaluation; and
- > Utility Analyses.

- **Note:** No additional or more detailed technical environmental studies would be conducted for an EIR. The City uses the same methodology and level of analysis for technical studies in an MND or EIR.



CEQA Review

Planning & Community Development Department

- **Less than Significant Impacts:**

- > Aesthetics
- > Agriculture/Forestry Resources
- > Air Quality
- > Biological Resources
- > Energy
- > Greenhouse Gas Emissions
- > Hydrology and Water Quality
- > Land Use and Planning
- > Mineral Resources
- > Noise
- > Population and Housing
- > Public Services
- > Utilities and Service Systems
- > Wildfire

- **Less than Significant with Mitigation Measures:**

- > Cultural Resources
- > Geology and Soils
- > Hazards and Hazardous Materials
- > Noise
- > Transportation
- > Tribal Cultural Resources



Appellant Arguments

Planning & Community Development Department

Argument #1: *There is substantial evidence that the project will have a significant health risk impact from indoor air emissions, particularly formaldehyde in building materials.*

- > **Response:** Discussion on indoor air quality is not required per CEQA or California's air district guidelines. Only **outdoor air** should be studied. The project was not found to exceed established thresholds of significance.

Argument #2: *The MND fails to establish a baseline for hazardous substances and its conclusion that the project will not have a significant impact is not supported by substantial evidence.*

- > **Response:** A Phase I ESA and a Vapor Intrusion Risk Assessment were completed, which resulted in no hazardous materials being identified.
- > **Mitigation Measure:** Because all soil could not be tested, a Mitigation Measure was added to ensure that appropriate measures are taken during construction to identify, collect and dispose of any hazardous materials that may be encountered, reducing impacts to less than significant.



Appellant Arguments

Planning & Community Development Department

Argument #3: *The greenhouse gas analysis is based on unsupported assumptions.*

- > **Response:** The Greenhouse Gas Analysis was completed when 2016 Building Standards were in place and the draft IS/MND determined that any impacts would be less-than-significant. The final IS/MND, completed in 2020, further clarified that the project would be subject to the newer 2019 Building Standards, which has **more stringent** requirements to reduce greenhouse gas emissions.

Argument #4: *The analysis of energy impacts violates CEQA (Received on September 18, 2023 – not presented to the Design Commission).*

- > **Response:** The CEQA Guidelines cited apply to potentially significant effects identified in Environmental Impact Reports (EIRs). The appellant cited projects of a completely different magnitude and setting:
 - *Woodland:* 234-acre regional shopping center on undeveloped land.
 - *Lake Tahoe:* 775-acre project with 760 residential units and commercial uses.
 - *This project:* Redevelopment of an urban infill site of only 2.33 acres.



Additional Public Comment

Planning & Community Development Department

Public Comment: *States that the vehicle trip (VT) metrics analyzed the in initial MND showed significant impacts and that the project reduced the office space by 2,135 sq. ft. to reduce those impacts – How does such a small reduction reduce the impact? (Received on September 18, 2023).*

Response:

- > The original project analyzed included 16,481 sq. ft. of restaurant/café and commercial/retail space and resulted in exceeding VT thresholds.
- > The revised project reduced the area by 2,135 sq. ft. to 14,346 sq. ft. and changed the entire use to **office only**.
- > The reduction in area and change in use resulted in no VT impact.



Staff Recommendation

Planning & Community Development Department

It is recommended that the City Council:

1. Adopt the Mitigated Negative Declaration and Mitigation Monitoring Reporting Program;
2. Approve a Private Tree Removal to allow for the removal of a 21.5” DBH *Ulmus parvifolia* (Chinese Elm) and a 30.6” DBH *Ficus macrocarpa* ‘Nitida’ (Indian laurel fig) tree;
3. Find that the project will comply with the purposes of design review, the design-related goals and policies of the Land Use Element of the General Plan, and the Design Guidelines in the Central District Specific Plan; and
4. Deny the appeal and approve the application for Concept Design Review subject to the conditions in Attachment B, which shall be further reviewed by the Design Commission during Final Design Review.



Planning & Community Development Department

**Quasi-Judicial Action: Appeal of Design
Commission's Concept Design Review
Approval for a New Mixed-Use Development
740-790 East Green Street**

City Council

October 16, 2023





Findings for Concept Design Review

Planning & Community Development Department

1. Find that the project, upon implementation of the conditions of approval, will comply with the purposes of design review, the design-related goals and policies of the Land Use Element of the General Plan, and the Design Guidelines in the Central District Specific Plan



Findings for Tree Removal

Planning & Community Development Department

1. Find that the removal of the two protected trees meets finding number 6 of the Tree Protection Ordinance (PMC Section 8.52.075.A): “The project, as defined in Section 17.80.020, includes a landscape design plan that emphasizes a tree canopy that is sustainable over the long term by adhering to the replacement matrix prepared by the city manager and included in the associated administrative guidelines;”



Design Commission Authority

Planning & Community Development Department

- **Pasadena Municipal Code Chapter 2.80.110 (B) – The Commission shall:**
 1. Conduct design review for "public projects" as defined and set forth in the zoning code (Title 17). Jurisdiction shall include architecture, materials, scale, massing, color, lighting, landscaping, open space and any other design concept. After the first meeting of the design commission at which a public project is considered, and at the request of a public agency with concerns about the effect of design review on exceeding a budget, impacting a schedule, or in direct conflict with neighborhood requests about design, the city manager or his/her designee may directly forward an application for design review of a "public project" to the city council. The general manager of the Rose Bowl Operating Company and the chief operating officer of the Pasadena Center Operating Company shall have this same authority with regard to applications submitted by their respective operating companies;
 2. Develop and recommend to the city council objectives and criteria of design for all streetscapes and all features thereof within the public right-of-way, including, but not limited to, street lights, poles, benches, signs, hydrants, trash receptacles and other street furniture and street trees, sidewalks, parkways and special paving treatments for traffic islands and pedestrian crossings. This paragraph shall not affect the installation, maintenance or removal of traffic control devices described in Title 10 of this code, provided, however, that the commission may advise on such matters as the mounting and positioning of traffic control devices within the context of developing overall streetscape design criteria;
 3. Review and recommend to the city council the aesthetic design concepts of all construction undertaken by the city, including structures, streets, bridges, subways, sidewalks, street trees, parkways, landscaping, street furniture and street lights. This paragraph includes projects in which the city is a participant;
 4. Develop and recommend to the city council general objectives and standards of aesthetic design for use by all departments of the city;
 - 5. Undertake design reviews and hear such matters as are required by Title 17 of this code;**
 6. Develop and recommend to the city council general design objectives, goals and criteria for areas and districts in the city, and for areas of city development, such as the civic center area, redevelopment areas and park areas;
 7. Develop and recommend to the city council policies relating to architecture and urban design;
 8. Work closely with the planning commission, historic preservation commission, community development committee and other advisory bodies and city departments to assure changes to the built environment will be orderly and will not diminish the architectural, aesthetic or design quality of the city;
 9. Comment and make recommendations for proposed amendments to the zoning ordinance or map, subdivisions, general plan amendments, significant public improvements, and such other land use proposals or projects that may affect the architectural, aesthetic or design quality of Pasadena;
 10. Participate in revisions of the urban design element of the general plan of the city;
 11. Review, advise and make recommendations to the city council relating to the city's master street tree plan and undertake such other reviews pertaining to public trees as are specified in the city trees and tree protection ordinance, Section 8.52.050 of this code.



Design Commission Authority

Planning & Community Development Department

- **Zoning Code Section 17.60.070:**

- > After acceptance of a complete application, the project shall be reviewed as required by the California Environmental Quality Act (CEQA) and the City's Environmental Policy Guidelines. **In addition to the elected City Council, any non-elected City Body, Official, Agency, Board, Commission, Department Official, Director, or employee ("City Bodies") who has the authority under the City's Charter, Municipal Code, Ordinance, Resolution, or State law to approve a discretionary action for a project shall have the authority to approve, certify, or deny approval, or deny certification of any CEQA Document related to the discretionary action. City Bodies include but are not limited to the Planning Commission, Design Commission, Historic Preservation Commission, Board of Zoning Appeals, Hearing Officer, Zoning Administrator, Director of Planning and Community Development and his/her designees, and the City Manager and his/her designees. For purposes of this section, "CEQA Documents" include, but are not limited to, any documents prepared pursuant to CEQA, or documents which are required to be acted upon concurrently with CEQA, such as (A) Environmental Impact Reports, (B) **Negative Declarations or Mitigated Negative Declarations**, (C) determinations that a project is exempt from CEQA pursuant to Statutory or Categorical Exemptions, (D) and all variations thereto, including, but not limited to, Subsequent and Supplemental environmental documents, Addenda, Master EIRs, Focused EIRs, joint CEQA and NEPA documents, (E) Water Supply Assessments prepared pursuant to Water Code Section 10910 et seq., (F) CEQA Findings, (G) CEQA Statements of Overriding Considerations, and (H) CEQA Mitigation Monitoring and Reporting Programs.**



SB330

Planning & Community Development Department

- Passed in 2019
- Limitations: Not more than 5 public meetings
 - > Including public hearings
- At least 2/3 residential or 100% housing
 - > Project includes:
 - 14,346 square-feet office (5.6 %)
 - 232,749 square-feet residential (91.6%)



Less than Significant, with Mitigation Measures

Planning & Community Development Department

- **Cultural Resources:**
 - > Potential to uncover previously unknown archaeological resources
 - > Mitigation Measure CUL-1
 - Construction personnel must attend a training conducted by a qualified archaeologist.
 - > Mitigation Measure CUL-2
 - If cultural resources are discovered during construction, are ground disturbing activities shall be halted until the find is evaluated by a Registered Professional Archaeologist.



Less than Significant, with Mitigation Measures

Planning & Community Development Department

- **Geology and Soils:**
 - > Potential to uncover previously unknown paleontological resources
 - > Mitigation Measure GEO-1
 - Retain qualified paleontologist per the Society of Vertebrate Paleontology guidelines to prepare a Paleontological Resources Impact Mitigation Program for Project.



Less than Significant, with Mitigation Measures

Planning & Community Development Department

- **Hazards and Hazardous Materials:**
 - > Site formerly occupied by a service station, so there could be an underground storage tank.
 - > Potential for existing asbestos, lead-based paint, and other potentially hazardous building materials (such as mercury thermometers, lighting and electrical appurtenances).
 - > Mitigation Measures HAZ-1 & HAZ-2
 - Hazardous Materials Contingency Plan to addresses potential impacts in soil and the potential presence of underground tanks.
 - Survey two southern buildings to identify existing hazardous building materials and process for disposal.



Less than Significant, with Mitigation Measures

Planning & Community Development Department

- **Noise:**
 - > Mitigation Measure NOI-1
 - Prior to approval of grading plans and/or prior to issuance of demolition, grading and building permits, a vibration monitoring plan shall be prepared.



Less than Significant, with Mitigation Measures

Planning & Community Development Department

- **Transportation:**
 - > Original project would exceed adopted VT (vehicle trip) per capita threshold (2.8) at 3.8.
 - > Mitigation Measure TRA -1
 - Transportation Demand Management Plan to reduce the Project's vehicle trips by a minimum of 27% or implement mix of uses that achieves a minimum of 27% reduction of VT
 - » Unbundled residential parking
 - » 121 Metro passes at 50% discount
 - » Annual TDM survey to show reduction
 - > VT reduction from 5,711 to 3,418



Less than Significant, with Mitigation Measures

Planning & Community Development Department

- **Tribal Cultural Resources:**
 - > Potential impacts related to discovery of cultural resources during construction (excavation, grading)
 - > Mitigation Measures TCR-1-8
 - Includes on-site monitoring and procedures to deal with any archaeological resources that may be uncovered.



Appeal Arguments

Planning & Community Development Department

- On June 23, 2023, an appeal was filed by Lozeau Drury, LLP, representing the Supporters Alliance for Environmental Responsibility (“SAFER”).
- Appellant makes 4 arguments related to the Environmental Review only:
 1. Potential for impacts from indoor air emissions;
 2. Potential for impacts related to hazardous substances;
 3. The greenhouse gas analysis adequacy; and
 4. Energy analysis violates CEQA (new argument submitted on September 18, 2023).



Appellant Argument #1

Planning & Community Development Department

- *There is substantial evidence that the project will have a significant health risk impact from indoor air emissions, particularly formaldehyde in building materials.*
- **Staff Response:**
 - > Discussion of impacts on indoor air quality is not specified or required by the CEQA Guidelines or California's air district guidelines.
 - > CEQA requires study of pollutant levels in **outdoor air** that could harm the public's health. The project was found to not exceed the levels specified by the established standards and therefore will have a less-than-significant impact on air quality.
 - > Furthermore, building materials are required to reduce exposure to toxic substances through compliance with the U.S. Environmental Protection Agency and the California Air Resources Board (CARB) regulations, such as 40 CFR Part 770, Formaldehyde Emission Standards for Composite Wood Products.



Appellant Argument #2

Planning & Community Development Department

- *The MND fails to establish a baseline for hazardous substances and its conclusion that the project will not have a significant impact on related to hazardous substances is not supported by substantial evidence.*
- **Staff Response:**
 - > The project underwent a Phase I Environmental Site Assessment (ESA) and a Vapor Intrusion Risk Assessment as part of the IS/MND, which did not result in any hazardous materials being identified on the site in the areas tested.
 - > Because not all of the soil on the site could be tested, the IS/MND includes a Mitigation Measure to ensure that appropriate measures are taken during construction to identify, collect and dispose of any hazardous materials that may be encountered and to minimize and protect individuals from potential exposure to hazardous materials.
 - > With this Mitigation Measure implemented, the project was found to have a less than significant impact related to hazardous materials.



Appellant Argument #3

Planning & Community Development Department

- *The MND's greenhouse gas analysis is based on unsupported assumptions.*
- **Staff Response:**
 - > The IS/MND thoroughly reviewed the potential for greenhouse gas emissions from the project based on established best practices.
 - > The Greenhouse Gas Analysis was completed when 2016 Building Standards were in place and the draft IS/MND determined that any impacts would be less-than-significant.
 - > The final IS/MND, completed in 2020, further clarified that the project would be subject to the newer 2019 Building Standards, which has **more stringent** requirements to reduce greenhouse gas emissions.
 - > Further, the California Energy Commission (CEC) concluded the 2019 Building Standards for non-residential projects would generate 30% less greenhouse emissions compared to 2016 standards. This reference is contained as a general example of how reductions are achieved, and is not necessary or relied upon for this project.



New Appellant Argument #4

Planning & Community Development Department

- *The appellant submitted a new environmental argument September 18, 2023 (this was not presented to the Design Commission).*
- *The MND's analysis of energy impacts violates CEQA.*
- **Staff Response:**
 - > The IS/MND thoroughly reviewed potential energy impacts from construction and operation of the project.
 - > The CEQA Guidelines cited in this new argument apply to potentially significant effects identified in an EIR:
 - This is an MND and energy was not identified as a potentially significant effect.
 - > The cases cited by appellant are EIR cases, and analyze projects of a completely different magnitude and setting than the project:
 - *Woodland*: 234 acre regional shopping center on undeveloped agricultural land.
 - *Lake Tahoe*: 775 acre project with up to 760 residential units and 6.6 acres of land reserved for commercial uses.
 - This project: Redevelopment of an urban infill site of only 2.33 acres.



Additional Public Comment

Planning & Community Development Department

- *Received September 18, 2023.*
- *States that the VT metrics analyzed in initial MND showed significant impacts and that the project reduced the office space by 2,135 sq. ft. to reduce those impacts – How does such a small reduction reduce the impact?*
- **Staff Response:**
 - > The original project analyzed included 16,481 sq. ft. of restaurant/café and commercial/retail space and resulted in exceeding VT thresholds.
 - > The revised project reduced the area by 2,135 sq. ft. to 14,346 sq. ft. and changed the entire use to **office only**.
 - > The reduction in area and change in use resulted in no VT impact.