

Mt. Shasta Tomorrow

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**SUMMIT LOFTS PROJECT - Public Comments - Agenda Item # 5**

Planning Commissioners:

4-19-2022

This Project proposes an attractive design for renovating an old building. The life-like illustrations in the application are gorgeous, probably the best the Planning Commission has ever been presented with. The Staff Report appropriately recommends some beneficial changes to the Project application too. But the City misses a few important issues that you Planning Commissioners now have an opportunity to rectify.

There is a serious problem with the Project's decorative roof canopy structure. It could injure pedestrians because its architectural framing encroaches too far into the public right-of-way and much too close to the sidewalk. This design feature violates both the building code and the Zoning Ordinance.



Elderly people shuffling along the sidewalk while looking downward, as well as blind people using a white cane, could seriously hit their heads on this structure which is proposed to extend about three feet beyond the property line above the public sidewalk. This structure's design is unsafe and impermissible.

The existing building was constructed right at the Project site's northwest property line. That is obvious because the distance from this building to the Fifth Season building across the street is just shy of 80-feet. The Staff Report, p. 8, also notes this is a "zero lot line," meaning there is no required setback distance. Thus the sidewalk is entirely within the 80-foot wide East Lake Street public right-of-way.

The lower legs of this decorative structure which the Staff Report identifies as an "A-frame element" are obviously unsuited immediately above a pedestrian sidewalk. They might be seen as attractive but have no purpose whatsoever other than as mere architectural flair or pompous aggrandizement to make the hotel more profitable or its entrance more prominent. There are other ways that won't injure pedestrians to draw attention to a mediocre entry door that the architect understandably wants to emphasize. Unfortunately this design was conceived in haste without its architect understanding the requirements for public safety and public access rights. It would be easy for you Planning Commissioners to have the applicant delete the lower, non-functional portion of this structure to make it safe for everyone.

If as the Staff Report correctly acknowledges overhead signs are not allowed lower than 10 feet above a sidewalk, then why would anyone think that these two, tapered, massive decorative elements that could cause some people to hit their heads be allowable only about five feet above the sidewalk? Such an injury could even be fatal. Not everyone walks looking upwards and assuming nothing above a sidewalk might harm them. Blind and visually impaired people have a right to use our sidewalks safely.

### **THIS PROJECT'S ARCHITECTURAL DESIGN VIOLATES VARIOUS LAWS AS WELL.**

The building code, IBC § 3202.2.2 for architectural features, **prohibits** this Project's proposed A-frame element from encroaching its proposed approximate 3 feet (as shown on applicant's drawings) into the public right-of-way above the sidewalk when that encroachment would be less than 8 feet above the sidewalk. For that reason alone the Planning Commission should insist feature this be corrected.

The City's Municipal Code § 18.20.060(A) prohibits such an encroachment of this architectural feature beyond the property line [i.e. "plan line."], stating: "*In no case shall the provisions of this title be construed as permitting any encroachment upon said plan line.*" So even if the building code didn't prohibit it, the Zoning Ordinance would.

Municipal Code § 12.34.020(C) defines an "encroachment" as occupying City property, which would occur with the protruding canopy support structures that extend 3 feet beyond the applicant's property line above the sidewalk. But no permanent encroachment permit is being applied for pertaining to this architectural feature.

Contrary to the Staff Report, Municipal Code § 18.20.060(B)(2) does not apply here because that section defines extensions into otherwise non-buildable yards, called "setbacks". Residential properties have yards. C-1 commercial zoned properties like this site don't. There is no "yard" along E. Lake Street because the existing building is constructed right up to the property line.

Municipal Code § 18.28.010 prohibits any "device" or "supporting structure" overhanging a sidewalk in front of a building unless at least 10 feet above the sidewalk.

Therefore this Project needs to be modified before any Architectural Permit can be approved.

## **PROJECT IS NOT CATEGORICALLY EXEMPT FROM ENVIRONMENTAL REVIEW**

Contrary to what the City Attorney may have said to City Staff, there are substantial reasons why this Project is *not* categorically exempt from CEQA. The main reason is that the Staff Report is proposing nearly a dozen different Conditions of Approvals to reduce various environmental impacts.

But the City is not permitted by California law to impose these conditions to reduce this Project's environmental impacts as a means to qualify for a categorical exemption and evade a more demanding CEQA review.<sup>1</sup> Even if the Project utilized a Mitigated Negative Declaration ("MND"), which it is not, CEQA requires a lead agency to recirculate the MND if additional mitigation measures or Conditions of Approval like these are subsequently added after the MND's initial circulation in order to publicly-vet the adequacy of the new mitigation measures.<sup>2</sup> These are the various conditions being currently proposed in the Staff Report:

Implementation Measure OC-8.1(b)

Implementation Measure OC-8.1(d)

Implementation Measure OC-8.1(e)

Implementation Measure OC-8.1(f)

Recommended Condition 1. The "proposed service area" located in the alleyway will not be used as a vehicle access loading zone or parking area.

Recommended Condition 2. The applicant shall be required to obtain permission from City Council for approval of an ADA on street parking space, to be delineated and maintained by Public Works. (Note, this Condition is inconsistently labeled number 3 on page 18 of the Staff Report)

Recommended Condition 3. String lighting in or around the patio area shall not be located where it can be seen from the residential property to the southeast.

Recommended Condition 4: Proposed signage for the project shall be approved through the Graphics Application process and are not included in the Architectural Review approval. (This is an illegally-piecemealed part of the overall project, where the City is proposing a later subsequent signage approval process. The Staff Report acknowledges that the proposed signage do not meet sign codes or streets-and-sidewalk code requirements, thus by definition they have a significant environmental impact. Piecemealing the Project like this to lessen the environmental review requirement of the architectural design clearly violates CEQA.)

Conditions #4 - #7 (see Staff Report pp. 18 – 19) are also proposed.

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<sup>1</sup> See e.g., *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1102, 1108 (stating while "mitigation measures may support a negative declaration but not a categorical exemption ... Reliance upon mitigation measures (whether included in the application or later adopted) involves an evaluative process of assessing those mitigation measures and weighing them against potential environmental impacts, and that process must be conducted under established CEQA standards and procedures for EIR's or negative declarations."); *Azusa Land Reclamation Co. v. Main San Gabriel basin Watermaster* (1997) 52 Cal.App.4th 1165, 1200 ("In determining whether the significant effect exception to a categorical exemption exists, '[i]t is the possibility of a significant effect . . . which is at issue, not a determination of the actual effect, which would be the subject of a negative declaration or an EIR. Appellants cannot escape the law by taking a minor step in mitigation and then find themselves exempt from the exception to the exemption.' [Citation].").

<sup>2</sup> See *Gentry v. Murrieta* (1995) 36 Cal.App.4th 1359, 1380 ("if there was substantial evidence to support a fair argument that the Project would have a significant effect... then the City could not adopt new mitigation conditions aimed at this effect without recirculating its proposed negative declaration. Nevertheless, the City added mitigation condition... without recirculating. In so doing, it abused its discretion.").

As an example of why environmental review is now required, the string lighting proposed in or around the outdoor patio area has the potential to be disturbing to the adjacent residential neighbor. While Condition 3 is proposed requiring that such string lighting will be located where it cannot be seen from the residential property to the southeast, that is insufficient as a mitigation because it is so vague in not specifying how bright that lighting will be, since even shielded lighting can emit so much glare at nighttime to interfere with views of the nighttime skies. Similarly, such string lighting can be excessively bright and create glare impacts to other people and motorists on Mt. Shasta Boulevard. Moreover, the Project proposes other wall-mounted lighting fixtures, some which may face the neighboring residence. But Condition 3 does not apply to such lighting which, even if shielded from direct light transmission, may nonetheless emit *reflected* light of an intensity or color great enough to disturb the neighboring residents. The applicant has not submitted any lighting plan to analyze the brightness of such outdoor lighting impacts upon nearby properties. This too is an issue that should be studied in the environmental review process

The Project proposes an outdoor gas fireplace to be located on the southeast wall of the building facing the adjacent residence. But the Staff Report contains no information about that fireplace or its potential risk of contributing to a fire hazard in the neighborhood. During times of increasing wildfires and summer drought conditions, such fire risk analysis is critical and should be evaluated in an environmental review unless strict conditions are imposed.

The General Plan Noise Element includes an implementation measure to protect the neighboring residence from noise created by this Project's new outdoor patio area. Yet the Staff Report is entirely silent on this matter. At first glance, seating shown for just 10 people does not seem like a large crowd could gather here. However, the outdoor patio of approximately 13 feet x 30 feet in size, excluding the stairway, planter and fireplace, could nonetheless allow over 40 people to use this patio at one time while standing without violating the occupancy standards. A crowd of even half that size, speaking in raised voices in order to be heard, and possibly with music at times, could create significant noise levels just from their voices in excess of the City's noise standards at the neighboring home just a few feet away.

The noise level from several people speaking outdoors at average loud voice levels can exceed 73 dBA at a distance of 3 feet.<sup>3</sup>

“To assess noise levels associated with conversation speech at these areas, speech levels for humans ranging from ‘casual’ to ‘shout’ obtained from USEPA was used. Based on information provided by the USEPA, and in an effort to provide a conservative analysis, a reference noise level of 73 dBA  $L_{eq}$  at approximately three feet, which represents an average ‘loud’ voice level, was used to evaluate potential noise impacts from the Project's ground-level plaza area. It was assumed that at any given moment, 50 percent of the people in those two areas would be talking at a ‘loud’ voice level simultaneously.”

As compared to typical residential uses where residents have a vested interest to monitor their outdoor noise volumes (e.g., talking on front porches heard by adjacent homes), hotel guests have little reason to keep their voices down and respect neighbors at night because their stays will be short-term and they will not know these neighbors. At as close as about six feet to the neighboring house, such vocal noise levels

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<sup>3</sup> See 333 S. La Cienega Blvd. (DCP Case No. ENV-2015-897-EIR) DEIR Appendix B-Noise Technical Report, p. 35, [http://planning.lacity.org/eir/333LaCienega/files/Appendix%20B%20-%20Noise%20Technical%20Report\\_102015.pdf](http://planning.lacity.org/eir/333LaCienega/files/Appendix%20B%20-%20Noise%20Technical%20Report_102015.pdf).

would reduce to about 67 dBA  $L_{eq}$ .<sup>4</sup> At nighttime with an assumed nighttime ambient noise level of 50 dBA, the vocal noise impacts from exterior patio usage, even without music, could be 17 dB above ambient levels<sup>5</sup>—much greater than the 5-dB threshold typically used as a threshold of significance for increases in noise levels throughout California. At nighttime, the City’s noise standard for exterior noise levels at that residence is a maximum of 45 dBA  $L_{eq}$ . Noise from *just several people* speaking on the Project’s patio as close as 6 feet to that residence at nighttime could exceed the City’s noise threshold of significance in General Plan Noise Element Table 7-5 by 22 dBA. (67 – 45 = 22 dB).

If the occupancy load for this patio area without fixed seating is calculated at 7 SF per person per the California Building Code, then in approximately 340 square feet of area, 48 people could be standing at once.<sup>6</sup> If 48 of these people are conversing at one time on the patio (assuming voices are not abnormally raised), with as many as 24 talking at one time if speaking in pairs, then their combined vocal levels could create a significant noise impact to neighboring residents at nighttime.<sup>7</sup> In larger crowds, people tend to raise their typical speech levels so that they can be heard over the voices of others nearby. This phenomenon is known as the “Lombard effect” involving the involuntary tendency of speakers to increase their vocal effort when speaking in noisier environments to enhance the audibility of their voice. Studies confirm that broadband noise containing speech-similar frequencies “significantly increased” the intensity, duration, and frequency of adult speakers and not just a general response an increase in ambient noise.<sup>8</sup> Because people tend to raise their voices to be heard in crowds, the noise level of voices as heard at the neighboring home from the Project’s patio usage may be louder than if only a few people were speaking.

The nighttime ambient noise level is essential in determining noise impact significance.<sup>9</sup> However, the public has not been presented with acoustical facts supporting the Project’s approval. *The applicant has not submitted any noise tests of existing ambient noise levels at nighttime.* Such measurements are critical

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<sup>4</sup> Noise level attenuation due to distance is calculated as reduced by about 6 dB for each doubling of distance from a point source.

<sup>5</sup> Calculated: (67 dBA  $L_{eq}$ ) – (50 dBA presumed ambient level) = 17 dB increase in noise.

<sup>6</sup> See California Building Code § 310.3 (classifying hotel with transient guests as occupancy group “R-1”); Table D-1 “assembly area without fixed seats”. (see <https://codes.iccsafe.org/public/chapter/content/9992/>)

<sup>7</sup> The assumption that up to half the crowd in a gathering on an exterior patio could be talking at one time is reasonable and accepted by other cities for other projects. See e.g., 333 S. La Cienega Blvd. (DCP Case No. ENV-2015-897-EIR) DEIR Appendix B-Noise Technical Report, p. 35 (“It was assumed that at any given moment, 50 percent of the people in those two areas would be talking at a “loud” voice level simultaneously.”), [http://planning.lacity.org/eir/333LaCienega/files/Appendix%20B%20-%20Noise%20Technical%20Report\\_102015.pdf](http://planning.lacity.org/eir/333LaCienega/files/Appendix%20B%20-%20Noise%20Technical%20Report_102015.pdf).

<sup>8</sup> The Journal of the Acoustical Society of America (May 2013) Evidence That The Lombard Effect Is Frequency-Specific In Humans, PDF pp. 1, 7, [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3985863/pdf/JASMAN-000134-000640\\_1.pdf](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3985863/pdf/JASMAN-000134-000640_1.pdf); see also Ninth Iberian Acoustics Congress (June 2016) Analysis of The Acoustic Behavior of People in A Restaurant, p. 7 (confirming “substantial influence” of effect in 80-seat restaurant where one-third to one-half of the patrons would simultaneously talk with the Lombard effect adding up to 12 dB increase in sound levels), <http://www.sea-acustica.es/fileadmin/Oporto16/76.pdf>; Acoustical Society of America (2017) Analyses of Crowd-Sourced Sound Levels of Restaurants and Bars in New York City, PDF pp. 12-13 (noting average dBA for a New York City bars and restaurants is 78 and 81 dBA, respectively, and that a random person walking into these areas is “more likely than not to encounter a Loud or Very Loud auditory environment,” which “approach levels that are known to be dangerous to hearing health.” As such, local agencies should encourage public and venue employees to employ digital sound level meters to collect and report to the public recorded noise levels), <https://asa.scitation.org/doi/pdf/10.1121/2.0000674>.

<sup>9</sup> The baseline ambient noise level is either the actual measured ambient noise level or the City’s presumed ambient noise level, whichever is greater. Where the ambient noise level is established by an actual measurement, the measurement must be averaged over a period of at least 15 minutes. Where the actual measured ambient conditions are not known, the City’s presumed daytime (7:00 a.m. to 10:00 p.m.) and nighttime (10:00 p.m. to 7:00 a.m.) ambient noise levels defined in the General Plan Noise Element should be used. In the case of this Summit Project, the ambient noise levels are not adequately known as previously discussed.

if the City is to protect nearby residential neighbors from adverse sleep-disturbing impacts from new hotel noise occurring at night.

Absent meaningful and credible noise measurements, the City's 45-dBA  $L_{eq}$  ambient nighttime noise level must be presumed. As discussed above, voices from just several people speaking from the patio could be approximately 22 dBA above ambient noise conditions at this nearby home—well above the 5-dBA threshold that should be used. With a larger crowd, the noise levels could be significantly louder. Any increase greater than 5 dBA above ambient noise levels existing without this Project is considered to be a significant noise impact.

### **WHY THESE VARIOUS ENVIRONMENTAL IMPACTS MATTER AND MUST BE STUDIED.**

As recognized by one court, lead agencies are not required to evaluate mitigation measures during its preliminary review of projects and therefore that review (such as has occurred in the Staff Report) *is not appropriate* in the context of categorical exemptions; instead consideration of mitigation measures is reserved (as relevant here) for MNDs subject to CEQA's fair argument standard whereby "[i]f there is a disagreement between experts over the significance of an effect . . . the lead agency shall treat the effect as significant . . . ." *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4<sup>th</sup> 1165, 1200-1201 (citing CEQA Guidelines § 15064(h)(2)). As discussed in this comment letter, there is a fair argument of pedestrian safety impacts, lighting impacts, signage impacts, noise impacts and potentially even fire safety impacts, therefore mitigation measures should be considered pursuant to a CEQA-compliant MND being prepared.

### **CONCLUSION:**

The City is required to correct significant problems with this Project's inconsistency with the Zoning Ordinance and to prepare a MND compliant with CEQA before proceeding with this Project as it is proposed. This may turn out to be a very positive remodeling Project that will benefit the City, but until these various potential problems are evaluated and properly mitigated, the public has no certainty that significant problems will not occur.

Thank you for considering these comments. Please notify Mt. Shasta Tomorrow in the future of any opportunities to review this Project.



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