

DEPARTMENT OF
CITY PLANNING
200 N. SPRING STREET, ROOM 525
LOS ANGELES, CA 90012-4801
AND
6262 VAN NUYS BLVD., SUITE 351
VAN NUYS, CA 91401
—
CITY PLANNING COMMISSION
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GABRIELE WILLIAMS
COMMISSION EXECUTIVE ASSISTANT
(213) 978-1300

CITY OF LOS ANGELES
CALIFORNIA



ANTONIO R. VILLARAIGOSA
MAYOR

EXECUTIVE OFFICES

S. GAIL GOLDBERG, AICP
DIRECTOR
(213) 978-1271
VINCENT P. BERTONI, AICP
DEPUTY DIRECTOR
(213) 978-1272
JOHN M. DUGAN, AICP
DEPUTY DIRECTOR
(213) 978-1274
EVA YUAN-MCDANIEL
DEPUTY DIRECTOR
(213) 978-1273
FAX: (213) 978-1275
INFORMATION
(213) 978-1270
www.planning.lacity.org

Date: December 5, 2008

CASE NO.: ENV-2008-2529-CE
The Home Depot of Sunland

Home Depot USA, Inc
Mike Nichols
3800 W. Chapman Ave
Orange, CA 92868

The Department of City Planning has reviewed your project for an environmental clearance and determined that a categorical exemption is not appropriate.

The applicant proposed several different categorical exemptions.

1. Class 1 exemptions:

The applicant filed for two Categorical Exemptions pursuant to Los Angeles City CEQA Guidelines Article III, Class 1: Category 1 and Category 12. Class 1 consists of "the operation, repair, maintenance or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing."

Category 1 is "Interior or exterior alterations involving remodeling or minor construction where there be negligible or non expansion of use."

Category 12 is "Outdoor lighting and fencing for security and operations"

The Class 1 Guideline is based on State CEQA Guideline section 15301 (Title 14, California Code of Regulations, Section 15301) which states that Class 1 exemptions are for projects "...involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination."

The applicant originally sought approval from the City for its project in November, 2005, when it filed an application to the Department of Building and Safety for a permit to remodel the property. No environmental clearance was sought at that time, since a building permit does not normally require a CEQA clearance.

After appeals, the City determined in August 15, 2007 that the work contemplated constituted a "project" within the meaning of the specific plan, and thus a project permit was also required for this project. The project permit requires an associated environmental clearance.

The applicant filed an application for a project permit on June 19, 2008, and submitted documentation along with a request that the City issue a categorical exemption for the project on June 20, 2008.

According to the evidence submitted in support of the request for an exemption, a Kmart store was previously operating on the site between 1977, and October, 2004. A book store operated there until May, 2006.

The Planning Department has determined that a Class 1 categorical exemption is not appropriate for this project because it does not consist of "negligible or no expansion of use beyond that existing at the time of the lead agency's determination." It is not clear whether the "determination" referenced in section 15301 refers to the initial determination of what type of environmental clearance is required or the City's final determination of the environmental clearance issued at the time of final project approval, which has not yet occurred.

However, this exemption is not available regardless of whether the operative date is the date the applicant first applied to the City for any permit, the date the applicant first applied for a discretionary permit requiring a CEQA clearance or the date in the future that the City actual acts on the application for the project permit because the Kmart use was not "existing" on any of those dates. To the extent the bookstore was "existing" on any of the operative dates, the Department believes that the proposed use is more than a "negligible expansion" of that use of the property.

2. Class 2 Exemptions.

The applicant also filed for two Categorical Exemptions pursuant to Los Angeles City CEQA Guidelines Article III, Class 2: Category 3 and Category 6. Class 2 consists of "replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.

Category 3 is "Replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity."

Category 6 is "Replacement or reconstruction of existing heating and air-conditioning systems."

The Class 2 Guideline is based on State CEQA Guideline section 15302 which also indicates that the exemption is for structures and facilities with substantially the same purpose and capacity as that existing. For the same reasons that the Class 1 exemptions are inapplicable, the Class 2 exemptions do not apply. As indicated above, the site was vacant during applicable periods, and the current project would thus involve an expansion of the facilities. Although not necessary to the Department's conclusion, Category 3 even specifically repeats the same language indicating there is no negligible or no expansion of capacity. Moreover these exemptions do not cover the use of the facility, just a portion of the physical changes to the structure itself.

3. Class 4, Category 3 Exemption

This exemption consists of "minor public or private alterations to the condition of land, water and/or vegetation which do not involve removal of mature, scenic trees except for forestry and agricultural purposes. [including] 3) New gardening, tree planting, or landscaping, but not including tree removal except dead, damaged or diseased trees or limbs."

4. Class 11, Category 1 Exemption

This exemption "consists of construction or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities. [including] 1) On-premise signs."

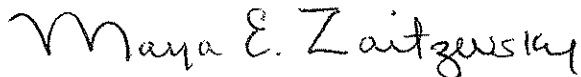
Although these two exemptions each may cover a minor aspect of the project, as with the other exemptions discussed above, these class 4 and 11 exemptions do not permit the use to operate. Moreover, the signage on the site has already been changed.

Based on the whole of the record, it is the opinion of the Department of City Planning that it is inappropriate to use one or more categorical exemptions to permit the operation of the Home Depot store at this currently vacant site.

Since the Department has determined that the project is not categorically exempt, the applicant should fill out and submit an environmental assessment form ("EAF") so the Department can prepare an initial study to determine whether a negative declaration, a mitigated negative declaration, or an EIR is required for the project approval. Attached is the Department's EAF form for your use.

In filling out that form, in section II "Existing Conditions", the applicant should specify the conditions as of the date the EAF is submitted. If the applicant believes that existing conditions on alternate dates would be relevant, that information can be provided as well, and the Department will consider that information in filling out the Initial Study.

S. Gail Goldberg, AICP
Director of Planning



MAYA E. ZAITZEVSKY
Associate Zoning Administrator

CC: Michael Nytzen
Bruce Lackow
Abby Diamond