



# COMMUNITY PLAN EVALUATION APPEAL

## 350-352 San Jose Avenue

**Date:** November 30, 2020  
**To:** Angela Calvillo, Clerk of the Board of Supervisors  
**From:** Lisa Gibson, Environmental Review Officer – (628) 652-7571  
Tania Sheyner, Principal Environmental Planner – (628) 652-7578  
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**RE:** **Planning Case No. 2017-015039ENV**  
**Appeal of community plan evaluation for 350-352 San Jose Avenue**

**Hearing Date:** December 8, 2020  
**Attachment(s):** A – Shadow Analysis, 350-352 San Jose Ave, April 23, 2019  
B – 350-352 San Jose Avenue Community Plan Evaluation and Initial Study, September 23, 2020

**Project Sponsor:** James Nunemacher, 350 San Jose LLC, (415) 321-7007  
**Appellant(s):** Stephen M. Williams, on behalf of Elisabeth Kranier

## Introduction

This memorandum and the attached documents are a response to the letter of appeal to the board of supervisors (the board) regarding the Planning Department’s (the department) issuance of a community plan evaluation (CPE) under the Eastern Neighborhoods Programmatic Environmental Impact Report (PEIR) in compliance with the California Environmental Quality Act (CEQA) for the proposed 350-352 San Jose Avenue project.<sup>1</sup>

As described below, the appellant has not demonstrated nor provided substantial evidence to support a claim that the CPE fails to conform to the requirements of CEQA for a CPE pursuant to CEQA section 21083.3 and CEQA Guidelines section 15183. Accordingly, the department recommends that the board of supervisors uphold the department’s determination for the CPE and reject the appeal.

The department, pursuant to CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code, determined that the project is consistent with the development density established by zoning, community plan, and general plan policies in the Eastern Neighborhoods Plan for the project site, for which a PEIR was

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<sup>1</sup> The Planning Commission certified the Eastern Neighborhoods Rezoning and Area Plan Final EIR (Planning Department Case No. 2004.0160E), State Clearinghouse No. 2005032048) on August 7, 2008. Available at: [https://sfplanning.org/environmental-review-documents?field\\_environmental\\_review\\_categ\\_target\\_id=214&items\\_per\\_page=10](https://sfplanning.org/environmental-review-documents?field_environmental_review_categ_target_id=214&items_per_page=10). Accessed November 25, 2020. The project site is within the Eastern Neighborhoods Rezoning and Area Plan project area.

certified, and issued the CPE for the project on September 23, 2020<sup>2</sup>. CEQA limits the city's review of a CPE to consideration of the following factors:

1. Whether there are significant effects that are peculiar to the project or its parcel, not examined in the PEIR;
2. Whether the effects were already analyzed as significant effects in the PEIR;
3. Whether the effects are potentially significant off-site or cumulative impacts that were not discussed in the PEIR;
4. Whether there is substantial new information that was not known at the time the Eastern Neighborhoods PEIR was certified, which indicates that a previously identified significant impact had a more severe adverse impact than was discussed in the PEIR.

If an impact is not peculiar to the project, has been addressed as a significant impact in the PEIR, or can be substantially mitigated by imposition of uniformly applied development policies or standards, then CEQA provides that an additional EIR need not be prepared for the project.

Accordingly, the department conducted project-specific analysis to evaluate whether the project would result in new significant environmental effects, or effects of greater severity than were already analyzed and disclosed in the PEIR. Based on this analysis, the department determined that the project is exempt from further environmental review beyond what was conducted in the project-specific CPE initial study and the Eastern Neighborhoods PEIR in accordance with CEQA section 21083.3 and CEQA Guidelines section 15183. This analysis is presented in the project-specific CPE initial study and is supported by substantial evidence in the record.

The decision before the board is whether to uphold the planning department's determination that the project is not subject to further environmental review beyond that conducted in the CPE initial study and the PEIR pursuant to CEQA section 21083.3 and CEQA Guidelines section 15183 and deny the appeal, or to overturn the department's CPE determination for the project and return the CPE to the department for additional environmental review. The board's decision must be based on substantial evidence in the record. (See CEQA Guidelines section 15183(b) and (c).)

## Site Description and Existing Use

The approximately 7,150-square-foot project site is located on the west side of San Jose Avenue, on the block bounded by 25th Street to the north, Valencia Street to the east, Guerrero Street to the west, and 26th Street to the south, in the Mission neighborhood. The existing on-site building is an approximately 3,560-square-foot, approximately 34-foot-tall, two-story-over-basement residential building constructed circa 1875. The building contains four dwelling units and is set back 40 feet from the front property line. The site is relatively flat, sloping up from San Jose Avenue less than 4 percent. An existing approximately 10-foot-wide curb cut on San Jose

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<sup>2</sup> Initially, a CPE was issued on October 1, 2019; however, it was reissued on September 23, 2020, to reflect updated project design submitted on September 17, 2020.

Avenue provides access to a driveway that extends underneath a cantilevered portion of the building, providing vehicle access to a paved rear yard with five parking spaces.

The immediate project site vicinity is characterized by residential uses. The block on which the project site is located contains RM-1 (Residential-Mixed, Low Density), RH-3 (Residential-House, Three Family), and RM-2 (Residential-Mixed, Moderate Density) use districts. The blocks to the south and west of the project site contain RH-3 and Valencia Street NCT (Neighborhood Commercial Transit) use districts.

The subject block is within a 40-X height and bulk district. The blocks to the south and west have a variety of higher height limits, ranging from 45-X to 145-E.<sup>3</sup> The existing low- to medium-density scale of development in the project vicinity primarily includes two- to three-story buildings. The buildings on San Jose Avenue and 25th Street are primarily residential; the buildings on 26th Street are a mixture of residential and retail.

The project site shares a property line with Juri Commons, a park under the jurisdiction of the San Francisco Recreation and Park Department. The park is a narrow, diagonal, 10,650-square-foot, through-block park accessible from the intersection at Juri Street and San Jose Avenue at the northern entrance and Guerrero Street near 26th Street at the southern entrance. The park is located on a former railroad right-of-way that bisects the project block.

## Project Description

The sponsor proposes to move the existing on-site building 23 feet eastward on the lot (toward the San Jose Avenue frontage), reducing the front set back from approximately 40 feet to approximately 17 feet. The project would also include horizontal and vertical additions to the building that would increase the residential square footage by approximately 8,670 square feet to a new total of approximately 12,235 square feet. One vertical floor would be added to the building, with a resulting height of 40 feet, with an additional 3 feet to the top of the rooftop mechanical features. The proposed vertical addition is within the existing 40-X height limit allowed on the site.<sup>4</sup> Eight dwelling units would be added to the building—at the basement, first, second, and third floors, for a total of 12 dwelling units and an accessory dwelling unit (ADU). The ADU unit would be added on the basement level.<sup>5</sup> The final unit mix would be six one-bedroom units, six two-bedroom units, and one two-bedroom ADU. The existing curb cut would be removed and a new 10-foot curb cut would be installed in the same location. The proposed project would not include any off-street vehicle parking. Space for 10 Class 1 bicycle spaces will be provided in the rear yard.

Construction of the project is estimated to take approximately 14 months. First, the existing building would be disconnected from its foundation and held up while excavation and new foundation construction would occur.

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3 San Francisco Planning Code section 260(a)(3) and 270, Bulk Limits: Measurement. X and E refer to the method of height measurement.

4 San Francisco Planning Code section 260(b)(1)(A), mechanical equipment and appurtenances necessary to the operation or maintenance of the building shall be limited to the top 10 feet of such features where the height limit is 65 feet or less.

5 Throughout this appeal response, the proposed ADU is differentiated from the proposed dwelling units, although CEQA impacts would be the same for both unit types as they would function in the same way. Pursuant to San Francisco Planning Code section 209.2, the RM-2 zoning district permits residential density of up to one unit per 600 square feet of lot area. The lot area of this parcel is 7,148 square feet; therefore, a maximum of 12 dwelling units is permitted on the site. Pursuant to planning code section 207, ADUs are exempt from density limits; thus the proposed ADU is also permitted on the site but is counted separately from the proposed dwelling units per the planning code.

Then the existing structure would be moved eastward and placed on the new conventional spread footing foundation. Lastly, the sponsor would construct the horizontal and vertical additions to the existing structure. The project would result in excavation of up to 10 feet in depth and up to 930 cubic yards of soil. The building's existing footprint is approximately 1,520 square feet at the basement level; the project would increase the basement level footprint by 2,380 square feet to 3,900 square feet in total.

## Background

On April 2, 2018, James Nunemacher (project sponsor) filed an application with the planning department for a CEQA determination (case no. 2017-015039ENV). The project qualified for a building permit as the approval action, because it was consistent with the existing zoning and height and bulk district. The original CPE was issued on October 1, 2019 and the department's 311 notification sent out on November 6, 2019. Discretionary review (DR) was filed on December 10, 2019. Subsequent DRs were filed and the project sponsor entered into negotiations with the DR filers. These negotiations led to changes in the project, which are reflected in the September 17, 2020 plan set. On September 23, 2020, the department reissued the CPE certificate and initial study, based on the updated plan set and the following determinations:

1. The proposed project is consistent with the development density established for the project site in the Eastern Neighborhoods PEIR;
2. The proposed project would not result in effects on the environment that are peculiar to the project or the project site that were not identified as significant effects in the Eastern Neighborhoods PEIR;
3. The proposed project would not result in potentially significant off-site or cumulative impacts that were not identified in the Eastern Neighborhoods PEIR;
4. The proposed project would not result in significant effects, which, as a result of substantial new information that was not known at the time the Eastern Neighborhoods PEIR was certified, would be more severe than were already analyzed and disclosed in the PEIR; and
5. The project sponsor will undertake feasible mitigation measures specified in the Eastern Neighborhoods PEIR to mitigate project-related significant impacts.

The planning commission considered the project on September 24, 2020 as a Discretionary Review item. On that date, the planning commission took discretionary review for the project (planning commission discretionary review action DRA-722), which constituted the approval action under Chapter 31 of the Administrative Code.

On October 26, 2020, Stephen M. Williams, on behalf of Elisabeth Kranier, filed an appeal of the CPE determination.

## CEQA Guidelines

### Community Plan Evaluations

As discussed in the Introduction above, CEQA section 21083.3 and CEQA Guidelines section 15183 mandate that projects that are consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified, shall not require additional environmental review unless

there are project-specific effects that are peculiar to the project or its site and that were not disclosed as significant effects in the prior EIR.

### **Significant Environmental Effects**

CEQA Guidelines section 15064(f) provides that the determination of whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency. CEQA Guidelines 15604(f)(5) offers the following guidance: “Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumption predicated upon facts, and expert opinion supported by facts.”

### **San Francisco Administrative Code**

Section 31.16(e)(3) of the San Francisco Administrative Code states: “The grounds for appeal of an exemption determination shall be limited to whether the project conforms to the requirements of CEQA for an exemption.”

Administrative code section 31.16(b)(6) provides that, in reviewing an appeal of a CEQA decision, the board of supervisors “shall conduct its own independent review of whether the CEQA decision adequately complies with the requirements of CEQA. The Board shall consider anew all facts, evidence and issues related to the adequacy, accuracy and objectiveness of the CEQA decision, including, but not limited to, the sufficiency of the CEQA decision and the correctness of its conclusions.”

### **Planning Department Responses**

The general concerns raised in the appeal letter are addressed in the responses below.

**Response 1:** The department conducted a thorough project-specific and cumulative environmental analysis of the proposed project and determined that: (a) the project would not result in new or more severe peculiar impacts - due to any alleged exceptional or extraordinary circumstances - that were not already disclosed as significant in the PEIR and (2) no new information was discovered during the preparation of the CPE, nor presented by the appellant, that would render the project’s shadow impacts more severe than the significant unavoidable shadow impacts already identified in the PEIR. Thus, the CPE was issued appropriately and no additional review is required.

It is unclear as to what is meant by the appellant’s assertion that the project’s shadow impacts on Juri Commons are “exceptional” and “extraordinary,” since applicable sections of CEQA statute and guidelines do not use this terminology. Instead, the CPE issued for the proposed project meets the two requirements for CPE eligibility that are most relevant to the appellant’s argument. First, department staff properly analyzed the project’s site-specific shadow impacts in the CPE, and shadow impacts were already examined programmatically in the PEIR and determined to be significant and unavoidable. Based on this thorough analysis, the department concluded that the project’s shadow impact would contribute to the significant unavoidable shadow impact identified in the PEIR. Second, the PEIR adequately analyzed shadow impacts that would result from development similar to the proposed project, on parcels where the Eastern Neighborhoods Area Plan did not propose height limit increases

and where future projects were expected to be constructed up to existing 40-X height limits. Given that both of these types of analysis – programmatic and project-specific – were conducted properly and completely, no additional environmental review is required.

### **CPE Appropriately Considered Peculiar Circumstances of the Project and Site**

As articulated in section 15183(b) of the CEQA Guidelines, when preparing a CPE, the public agency shall limit its examination, among other criteria, to impacts that are peculiar to the project or the site (on which the project would be located) that were not already examined in the PEIR. Referring to the particular size, shape, and location of Juri Commons, the appellant contends that project-related peculiar impacts on this park were not analyzed in the PEIR and therefore require additional study. As discussed in more detail below, the appellant is incorrect in this assertion.

The appellant erroneously cites the October 12, 2018 Urban Design Advisory Team (UDAT) meeting notes as the supposed evidence that the project's location adjacent to Juri Commons constitutes an extraordinary circumstance and that, given this circumstance, the project's shadow impacts on the park were not considered in the PEIR's shadow impact conclusions. However, these UDAT meeting notes are taken out of context, as they are not intended or designed to support CEQA analysis. Although the notes acknowledge the location of Juri Commons as a mid-block public open space as "[a]n exceptional condition" and encourage minimizing shadows on this park, the department's UDAT team – which issued these notes – is guided by the department's Residential Design Guidelines, not the CEQA Statute, CEQA Guidelines, or Chapter 31 of the City's Administrative Code. As such, these comments do not equate to, nor serve as a proxy for, a CEQA threshold of significance. As discussed in more detail below, the department determined that potential shadows cast by the project would be significant and unavoidable. However, given the prevalence of residential uses adjacent to open spaces and parks in the city, the proposed project would not be considered exceptional; thus, these impacts were already disclosed in the Eastern Neighborhoods PEIR.

The CPE properly considered peculiar impacts of the proposed project and the project site, including the existing on-site building's location adjacent to the park, its historic significance, and shadows that would result from the proposed building expansion up to 40 feet. Additionally, the department considered future park renovations proposed by the Recreation and Park Department. While the department conducted project-specific impact analysis, circumstances surrounding this project are not considered to be exceptional or extraordinary, as argued by the appellant. This is because the proposal would add 8 feet to an existing 32-foot tall residential building, resulting in a 40-foot-tall building in a 40-X height and bulk district. Furthermore, additions to residential buildings located adjacent to or in close proximity to parks and/or open spaces is a common occurrence throughout the Eastern Neighborhoods Plan Area and is not considered unique within such an urban setting. As discussed and illustrated in the PEIR, many public parks and open spaces throughout Eastern Neighborhoods are either bordered by or within close proximity of residential uses. For example, other parks within the Mission subarea of the Eastern Neighborhoods plan area, such as Parque Niños Unidos, Mission Center, and Jose Coronado Playground, are all located on blocks otherwise dominated by residential uses. These parks range in sizes, shapes, and programming, which includes open field areas, children's play structures, picnic areas, a soccer field, and paved sports areas. Within this diverse context, neither the project, nor its location adjacent to Juri Commons, would be considered exceptional or extraordinary. Since shadow impacts from comparable medium density residential sites near and adjacent to parks were analyzed in the PEIR, this would not be considered a peculiar impact since such shadow impacts were already found to be significant and unavoidable in the PEIR.

### No Substantial New Information Since Publication of PEIR

Under the City's CEQA significance criterion, shadow impacts are considered significant if they would "create new shadow that would substantially and adversely affect the use and enjoyment of publicly accessible open spaces." In making such a determination, the City considers the amount of annual net new shadow, the time of day that the shadow would occur, where the shadow would fall, and how that affected location is used.

New shadow on Juri Commons from potential future projects, such as the project in question, was anticipated and discussed in the PEIR. The shadow analysis for the PEIR considered revisions to height limits that were proposed by the Eastern Neighborhoods rezoning and how such changes could affect shading on parks and other publicly accessible open spaces. To conservatively assess the potential new shadow attributable to increased height limits under each Eastern Neighborhoods rezoning option, the shadow analysis extrapolated each parcel to its maximum height limit. The project block was not subject to height rezoning under the Mission Plan. Therefore, the shadow analysis considered the maximum height limit of the project parcel was assumed to be 40 feet in all three of the Eastern Neighborhood rezoning options. For parcels where height increases were anticipated, the shadow analysis only considered impacts of maximizing existing height limits under the No Project scenario.

The PEIR reviewed potential shadow impacts on all 24 parks and open spaces within the boundaries of the Eastern Neighborhoods project area, as well as planned parks, and identified nine parks surrounded by parcels and blocks in which the existing height limits would remain the same or decrease under all analysis scenarios. Five of these nine parks identified are within the Mission subarea of the Eastern Neighborhoods Plan Area. Juri Commons is among these parks.

The PEIR states the following on page 390:

Some of the above parks could be shaded by development pursuant to existing height limits (i.e., under the No-Project scenario). Those in the Mission District would have the greatest potential for new shadow under existing height limits, as many of these parks are relatively small and some are nestled within city blocks. In particular, Juri Commons, located on a former railroad right-of-way that cuts through the block bounded by 25th, 26th, Guerrero, and Valencia Streets, is a narrow open space. Although taller buildings than those that exist could be constructed within the current 40-foot height limit, the effect on Juri Commons would be limited because the narrowness of the space means existing buildings already cast substantial shadows except at midday. Moreover, this park is heavily landscaped, with several mature trees that also cast shade.<sup>6</sup>

Based on the above, the department correctly issued a CPE for the proposed 40-foot-tall project because the potential shadow impacts on Juri Commons do not require additional analysis to its peculiar (or, as stated by the appellant, "exceptional") circumstances because such impacts were explicitly considered in the PEIR and were concluded to be significant. Moreover, the appellant did not provide any substantial new information that was not known at the time the PEIR was certified. The conclusions reached in the PEIR regarding shadow impacts remain valid and no substantial evidence of new information has been presented by the appellant to suggest otherwise.

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<sup>6</sup> Eastern Neighborhoods PEIR, I. Shadow, footnote, page 390.



**Response 2: The CPE initial study correctly characterized shadow impact findings in the Eastern Neighborhoods PEIR, which were found to be significant and unavoidable, including shadow from parcels not subject to San Francisco Planning Code section 295. Given that the proposed project would be 40 feet tall and not subject to section 295, the PEIR specifically considered impacts from this type of a project. Therefore, this information would not be considered new or more severe than disclosed in the PEIR.**

San Francisco Planning Code section 295, the Sunlight Ordinance, prohibits proposed buildings over 40 feet tall from adversely shading City parks under the jurisdiction of the Recreation and Park Department, except during early morning and late afternoon hours. As stated above under Response 1, the subject property is located within a 40-X height district and was not rezoned as part of the Eastern Neighborhoods plan. The existing building is 32 feet tall and the proposed project would include a vertical addition up to the existing allowable height limit of 40-X. Because the proposed structure would not be taller than 40 feet in height (excluding the permitted additional 3 feet to the top of rooftop appurtenances), the project is not subject to the Sunlight Ordinance. Projects not subject to the Sunlight Ordinance were explicitly discussed in the PEIR as follows:

Projects not subject to Section 295—either because they are 40 feet tall or less or because they affect non-Recreation and Park Department open space—could potentially have significant shadow effects under CEQA, apart from Section 295.<sup>7</sup>

The appellant contends that “the PEIR specifically concluded that Juri Commons would not be adversely impacted by the adoption of the Area Plan and that no significant new shadows would result.” However, based on the above citation from the PEIR shadow conclusion, it is clear the PEIR anticipated that development on parcels such as the project site could cast new shadow and have a significant and unavoidable impact on parks and open space.

Although the proposed project would not extend above 40 feet in height (and therefore would not trigger section 295 review), the CPE analyzed project-specific shadow impacts on Juri Commons for informational purposes, to determine whether the project would have the potential to cast new shadow on Juri Commons in a way that could substantially and adversely affect the use and enjoyment of this open space.<sup>8,9,10</sup>

The shadow analysis found that, not considering shadow cast by trees or other vegetation, the park is presently in shadow during early morning hours, year-round, with shadow being present from sunrise and receding completely by around 1 p.m at the latest, over the course of the year.<sup>11</sup> This is in alignment with the PEIR’s

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7 Eastern Neighborhoods PEIR, I. Shadow, footnote, page 398.

8 San Francisco Planning Department, Initial Shadow Fan, 350-352 San Jose Avenue, June 5, 2018.

9 PreVision Design, Shadow Analysis Report for the Proposed 350 San Jose Avenue Per SF Planning and California Environmental Quality Act (CEQA) Standards, April 23, 2019 Final R3.

10 It is noted that the detailed shadow study, which was prepared in April 2019, does not reflect the updated plan set submitted on September 17, 2020. However, the building’s shift to the east and other associated revisions reflected in the September 2020 plan set would result in a net reduction in shadow cast by the project as compared to the project iteration analyzed in the April 2019 shadow study. Shadow impacts associated with the project are described below and are based on the April 2019 shadow study; nevertheless, they reflect shadow calculations that are greater and more conservative than would occur with the revised plans and would therefore not result in a greater shadow impact than is discussed below.

11 PreVision Design, Shadow Analysis, page 12.



conclusion that the “narrowness of [Juri Commons] means existing buildings already cast substantial shadows except at midday.”<sup>12</sup>

The shadow analysis further found that the proposed project would cast net new shadow on Juri Commons year-round. The overall size of the new shadows would vary, with the largest new shaded area occupying about 15 percent of Juri Commons; it would range from 2 hours and 45 minutes on the summer solstice to 5 hours and 45 minutes on the winter solstice. As noted above, on the winter solstice, net new shadow would fall on Juri Commons from one hour after sunrise (8:20 am) and be present until about 2 pm.

The proposed project is not subject to section 295 and would cast new shadow on Juri Commons. Shadow impacts associated with both of these scenarios were considered and disclosed in the PEIR shadow analysis, as follows:

Nevertheless it cannot be stated with certainty that compliance with Section 295 would always mitigate any potential significant effects under CEQA. Moreover, sites surrounding many of these parks could be redeveloped with taller buildings without triggering Section 295. Therefore, under both existing height limits (the No-Project Alternative) and with implementation of the project, there could potentially be significant shadow impacts in the project area parks. It cannot be concluded that this impact would be less than significant because of the potential existing for new shadow, possibly in substantial amounts depending on subsequent individual proposal(s) that may be put forth, and because the feasibility of complete mitigation for potential new shadow impacts of currently unknown development proposals cannot be determined at this time. Therefore the project impact with respect to shadow is judged to be significant and unavoidable for all three rezoning options and for the No-Project Alternative.<sup>13</sup>

For projects that could result in significant shadow impacts, the most effective way to reduce such impacts is by reducing the proposed building massing. This is typically achieved through coordination between department staff and the project sponsor to revise the project description, and not through a mitigation measure. However, as noted above, the requirement to reduce massing would typically only be considered for projects over 40 feet in height that would either trigger Section 295 review or would require shadow analysis through the CEQA process. In this case, however, the significant unavoidable conclusion reached in the PEIR regarding overall shadow impacts, combined with the PEIR’s analysis of shadow on Juri Commons and conclusions reached regarding shadows from parcels that would not exceed 40-foot height limits, support the department’s conclusion that the project would contribute to the significant unavoidable shadow impact identified in the PEIR. Such impacts would not be considered new or more severe than previously disclosed; hence, the department appropriately issued a CPE and, within the CPE, appropriately described and characterized the potential impacts of the proposed project.

**Response 3:** The proposed project met all eligibility requirements for a CPE, including those related to consistency with the development density established by the community plan for which the PEIR was certified and consistency with general plan policies. Therefore, the department properly issued the CPE, as mandated by CEQA.

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<sup>12</sup> Eastern Neighborhoods PEIR, I. Shadow, page 390.

<sup>13</sup> Eastern Neighborhoods PEIR, I. Shadow, page 418.

CEQA Guidelines sections 21083.3 and 15183 mandate that projects that are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified, shall not be subject to additional environmental review except as might be necessary to examine whether there are project-specific significant effects that are peculiar to the project or its site that were not already identified in the PEIR. The project received a consistency determination on June 8, 2018, stating that the project was eligible for a CPE, was consistent with RM-2 Zoning District, and the development density envisioned in the Mission Area Plan.<sup>14</sup>

The appellant contends that the proposed project is not eligible for a CPE because it is inconsistent with San Francisco General Plan policies that promote preservation of existing affordable housing, and specifically, the appellant contends that the project violates two priority policies of the Residence (Housing) Element of the General Plan:

- That the City's supply of affordable housing be preserved and enhanced.
- That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.<sup>15</sup>

Given the number and range of the objectives and policies contained in the City's General Plan, a proposed project's consistency with this document is considered on balance, and inconsistency with one or more individual policies does not necessarily render the overall project as being inconsistent with the General Plan. The proposed project is generally consistent with the General Plan's applicable goals and policies, including the two policies noted above. The existing building is a four-unit residential building on a lot that is permitted to accommodate up to 12 residential units and associated accessory dwelling units. The sponsor's proposal would be consistent with this permitted density.

Because the project was determined to be consistent with the site's zoning designations, it initially required a building permit and not any approvals granted through a planning commission hearing (e.g., conditional use permit). Ultimately, given the opposition from some of the site's neighbors, the approval action ended up being a discretionary review by the planning commission. As was discussed at the September 24, 2020, discretionary review hearing, the property owner would be required to rent four of the remodeled units as rent-controlled units, in accordance with the City's rent control ordinance.

It is also noted that one of the primary goals of Eastern Neighborhoods Area Plan was to encourage residential development throughout the plan areas. Therefore, the project received a consistency determination because it would retain four existing rent-controlled units and maximize the allowable density at the site. The proposed project would create an additional nine residences near transit and amenities, which is also in alignment with the goals of the Eastern Neighborhoods Area Plan.

The department properly issued a CPE for the proposed project and the appellant has not provided any substantial evidence to the contrary.

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<sup>14</sup> San Francisco Planning Department, Consistency Determination, June 8, 2018

<sup>15</sup> San Francisco Planning Department, 2014 Housing Element, [https://generalplan.sfplanning.org/2014HousingElement-AllParts\\_ADOPTED\\_web.pdf](https://generalplan.sfplanning.org/2014HousingElement-AllParts_ADOPTED_web.pdf), accessed November 25, 2020.

**Response 4: The CPE conducted a thorough and complete analysis of the project's impacts on historical resources and appropriately concluded that such impacts would be less than significant.**

The existing building at 350-352 San Jose Avenue was constructed circa 1875 and was evaluated in the planning department's 2010 South Mission Historic Resource Survey. The building was assigned a California Historical Resources status code of 3CS, indicating that the property appeared eligible for the California Register of Historical Resources (California Register) as an individual property through survey evaluation. Thus, the building is considered to be a "Category A" known historic resource under CEQA.

Department staff followed standard historic preservation review protocol to determine whether the proposed project would result in a significant impact to the resource under CEQA. First, a consultant-prepared Historic Resources Evaluation Part 2 (HRE Part 2) was prepared (given that the subject property was evaluated as part of a prior historic resource survey, no HRE Part 1 was required).<sup>16</sup> As part of the HRE Part 2, character-defining features of the existing building and project site were confirmed. The HRE Part 2 concluded that the proposed project would conform to all of the Secretary of the Interior's Standards for Rehabilitation (the Standards) and would not result in an adverse impact to a historic resource.

Subsequently, on March 27, 2019, the project sponsor submitted revised plans showing the subject building being moved eastward (toward the front property line) by 15 feet. The department's preservation staff reviewed and concurred with the conclusions of the HRE Part 2 in an April 3, 2019 Preservation Team Review (PTR) form, noting the subsequent changes to the project description proposed by the project sponsor and determined that the revised project would not cause an adverse impact to a historic resource.<sup>17</sup>

Following the April 2019 preservation review, the project sponsor submitted updated plans to the department dated September 17, 2020, proposing the building be moved an additional 8 feet eastward (a total of 23 feet from its current location). The department preservation staff conducted supplemental review of the updated plans and summarized this review in a September 22, 2020 memorandum.<sup>18</sup> Although the front setback would be reduced by the proposed project, the department determined that the relationship of the historic resource with the surrounding buildings would continue to be expressed. Therefore, staff found the project with the reduced front setback would not materially impair the historic resource and would not result in an adverse impact under CEQA.

The appellant contends that the proposed changes to the existing building create a "very strong impression of de facto demolition and facadism." Yet there is no evidence in the appellant's letter to support these claims.

In contrast to the appellant's claims, the project would retain much more than the front façade: the project would retain the majority of exterior walls and the form of the building. Additionally, the CEQA threshold of what constitutes "material impairment" is surpassed when a project "[d]emolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that

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<sup>16</sup> Watson Heritage Consulting, Historic Resources Evaluation Part 2, August 1, 2018;

<sup>17</sup> San Francisco Planning Department, Preservation Team Review Form, April 3, 2019.

<sup>18</sup> San Francisco Planning Department, Memorandum: 350-352 San Jose Ave, September 22, 2020.

justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources.”<sup>19</sup> In this case, the subject building has been determined eligible for individual listing in the California Register under Criterion 3 (architecture) because it embodies the distinctive characteristics of a late nineteenth century (c.1875) Italianate-style residence. Planning staff found that the proposed changes to the subject building (all changes including moving the building forward 23 feet) would not materially alter the subject building’s character-defining features and the building would continue to express its historical significance as an Italianate-style residence even with project implementation. Furthermore, the department determined that the proposed horizontal and vertical additions would not visually overwhelm or compete with the historic resource and were compatible in size, scale, and massing with the existing building.<sup>20</sup>

In asserting that both the neighborhood and Juri Commons are “historic,” the appellant appears to be using the term “historic” colloquially and not as it is defined under CEQA. Furthermore, based on the department’s historic resources database, Juri Commons has not been identified as a historic resource. Furthermore, the project site is not located within a historic district.

Based on the above, the department conducted a thorough and complete analysis of the project’s impacts on historic resources and appropriately concluded that such impacts would be less than significant.

## Conclusion

The appellant has not demonstrated that the planning department’s determination that the proposed project qualifies for a CPE pursuant to CEQA section 21083.3 and CEQA Guidelines section 15183 is not supported by substantial evidence in the record. The planning department conducted necessary studies and analyses and provided the planning commission with the information and documents necessary to make an informed decision at a noticed public hearing in accordance with the planning department’s CPE initial study and standard procedures, and pursuant to CEQA and the CEQA Guidelines. Therefore, the planning department respectfully recommends that the board of supervisors uphold the department’s determination that the CPE conforms with the requirements of CEQA and reject the appeal.

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<sup>19</sup> CEQA Guidelines section 15064.5(b)(2)(B): Determining the Significant of Impacts to Archaeological and Historical Resources.

<sup>20</sup> Additionally, the department’s preservation staff reviewed the demolition calculations provided in the project plans. The plans illustrate that the proposed project would not exceed demolition calculations under either planning code section 317 or the more restrictive section 1005(f).