



CATEGORICAL EXEMPTION APPEAL

1719 WALLACE AVENUE

Date: December 9, 2024
To: Angela Calvillo, Clerk of the Board of Supervisors
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RE: Planning Record No. 2023-008006PRJ
Appeal of Categorical Exemption for 1719 Wallace Avenue

Hearing Date: December 17, 2024

Project Sponsor: Fiona Lee, InnCon Design, (415)702-6889
Appellant: Barbara Tassa

Introduction

This memorandum is a response to the letter of appeal to the board of supervisors (the board) regarding the planning department's (the department) issuance of a categorical exemption under the California Environmental Quality Act (CEQA determination) for the proposed 1719 Wallace Avenue project.

The department, pursuant to Article 19 of the CEQA Guidelines, issued a categorical exemption for the project on September 30, 2024, finding that the proposed project is exempt from CEQA under Class 1 and Class 3.

The decision before the board is whether to uphold the department's decision to issue a categorical exemption and deny the appeal, or to overturn the department's decision to issue a categorical exemption and return the project to the department staff for additional environmental review.

Site Description and Existing Use

The project site is located on an approximately 2,500 square foot lot, which has approximately 25 feet of frontage along Wallace Avenue. The site contains a one-story 2,500 square foot vacant industrial building that covers the entire lot.

Project Description

The proposed project would establish an Industrial Agriculture use for the purpose of cannabis cultivation. The facility would not include any cannabis retail or on-site consumption activities and would not be open to the general public. To accommodate the proposed use, the sponsor would undertake various interior modifications to the existing one-story industrial building, including legalizing existing unpermitted restrooms and an approximately 42-square-foot storage space on the mezzanine level and installing various heating, ventilation, and air conditioning (HVAC), electrical, and plumbing equipment to support the proposed use. The only exterior alteration to the building would be the removal of seven skylights and the addition of metal security gates on the front facade. No excavation or ground disturbance is proposed as part of project construction. No diesel generators exist on the site and none are proposed as part of the project.

Background

On June 20, 2023, the Department of Building Inspection issued a Notice of Violation which observed development of the interior with a new mezzanine, and a bathroom without the benefit of a permit and directed the property owner to obtain a building permit.

On August 7, 2023, Fiona Lee of InnCon Design (project sponsor) filed a Conditional Use Application No. 2023-008006CUA (application) with the department to establish an Industrial Agriculture use for the purpose of cannabis cultivation in an existing, one-story industrial building (proposed project or project) at 1719 Wallace Avenue, Block 5415 Lot 015 (project site).

The project was presented to the Bayview Hunter's Point Citizens Advisory Committee (BVHP CAC) on March 6, 2024, May 1, 2024, June 24, 2024, and August 7, 2024. The project sponsor stated at the August 7, 2024 BVHP CAC meeting that they conducted additional community outreach in July 2024 per the BVHP CAC's direction.

On September 30, 2024, the department determined that the project was categorically exempt under CEQA Guidelines Class 1, Existing Facilities, and Class 3, New Construction/Conversion of Small Structures, and that no further environmental review was required.

On October 10, 2024, the San Francisco Planning Commission (commission) conducted a duly noticed public hearing at a regularly scheduled meeting on the Conditional Use Authorization Application No. 2023-008006CUA and approved the CUA.

On November 8, 2024, Barbara Tassa (appellant) filed an appeal of the categorical exemption determination.

On November 18, 2024, the department determined that the appeal was timely.

CEQA Guidelines

Categorical Exemptions

CEQA requires that the CEQA Guidelines include a list of projects which have been determined to not have a significant effect on the environment and which shall, therefore, be exempt from the provisions or CEQA

(categorical exemptions). The Guidelines further provide that a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to, among other things, unusual circumstances.

CEQA Guidelines sections 15301 through 15333 list the categorical exemptions for classes of projects that have been determined not to have a significant effect on the environment and that are exempt from further environmental review.

CEQA Guidelines section 15301 (Existing Facilities), or Class 1, applies to minor alterations of existing facilities, including demolition and removal of small structures such as a small commercial structure and additions to existing structures provided that the addition will not result in an increase of more than 10,000 square feet if the project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan, and further provided that the area in which the project is located is not environmentally sensitive (CEQA Guidelines Section 15301).

CEQA Guidelines section 15303 (New Construction or Conversion of Small Structures), or Class 3, applies to projects that include new construction or changes of use under 10,000 square feet, if such change of use is principally permitted or permitted with a Conditional Use Authorization (CEQA Guidelines Section 15303). Additionally, Guidelines section 15300.2 establishes exceptions to the application of a categorical exemption.

When any of the exceptions below apply, a project that otherwise fits within a categorical exemption must undergo additional environmental review.

(a) *Location*. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -- a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

(b) *Cumulative Impact*. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

(c) *Significant Effect*. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

(d) *Scenic Highways*. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

(e) *Hazardous Waste Sites*. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

(f) *Historical Resources*. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

In determining the significance of environmental effects caused by a project, Guidelines Section 15064(f) states that the decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency. Guidelines Section 15064(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.”

Planning Department Responses to CEQA-Related Concerns

Response 1: The department properly considered air quality impacts of the proposed project and accurately determined that there are no unusual circumstances that would result in significant impacts related to air quality (including odors).

The project would establish a cannabis cultivation facility within an approximately 2,500-square-foot existing building. Given the limited scope of proposed construction and operational uses, the department appropriately determined that the project would not result in any unusual circumstances that could result in project-specific or cumulative significant air quality impacts. The appellant has not provided any evidence to the contrary. The project would consist of installing equipment to facilitate cannabis plant growth, including HVAC, lighting, plumbing, and electrical systems.

Cannabis cultivation naturally produces biogenic volatile organic compounds (VOCs).¹ The proposed project would be subject to various regulations, including building code and health code requirements to ensure that any air emissions and odors are controlled such that no perceptible odor would be experienced outdoors by the public, as discussed in more detail below.²

All cannabis businesses in San Francisco must receive licensing with the City’s Office of Cannabis (OOC) and the State of California Department of Cannabis Control (DCC). As part of OOC licensing, all cannabis applicants must submit additional materials for review and approval, including:

- *Security Plan*. This plan is reviewed and commented on by the San Francisco Police Department.
- *Good Neighbor Policy*. The business must hold a community outreach meeting to gather feedback on their proposed Good Neighbor Agreement. The community can request specific commitments be included in the agreement. Any commitments will become conditions of the license issued by the Office of Cannabis. Additionally, the Good Neighbor Agreement must identify a community liaison contact.

1 The biogenic VOCs produced as a natural byproduct of cannabis cultivation is primarily beta-myrcene, which is the California Office of Environmental Health Hazard Assessment includes on the Proposition 65 list, and notes that it is a “natural constituent of food plants, such as hop, bay, verbena, lemongrass, citrus, pomegranate, and carrot, and of their juices and essential oils.” Source: <https://oehha.ca.gov/proposition-65/crn/notice-intent-list-beta-myrcene>, accessed December 4, 2024.

2 San Francisco Office of Cannabis permitting process requires that cannabis operations “must have ventilation so the public cannot smell cannabis from outside,” <https://www.sf.gov/information/cannabis-cultivation-business-operations>, accessed December 4, 2024.

- *Odor Mitigation Plan.* Cannabis cultivation operations must occur entirely indoors within an enclosed structure. The Odor Mitigation Plan must demonstrate mechanical ventilation systems that prevent detectable cannabis odors outside the building.
- *Renewable Energy Mandate.* As part of OOC licensing, the business is required to reduce the environmental impact of its operation by selecting one of the following options:
 - By participating in the San Francisco Public Utilities Commission (SFPUC) CleanPowerSF Service, or procurement from electricity suppliers that provide at least equivalent renewable energy, as determined by the Power Content Label reported to the California Energy Commission for the most recent available year;
 - By procuring energy from the SFPUC's Hetch Hetchy hydroelectric power supply; or
 - By including on-site renewable energy generation as part of the project.

This multi-phased permitting process would ensure that no adverse odors escape the premises. The first phase of the process requires the business owners to undergo background checks, submit information about the business structure, provide proof that they can operate, and obtain any other applicable permits. In the second step of the process, applicants are required to demonstrate, through the responses to the relevant application forms, how they will prevent any noxious or offensive cannabis-related odors from escaping the premises. Applicants are required to include a clear description of the cannabis business activities in the permit application form, the total square footage of the area(s) in which the cannabis business activity will take place, and all measures that will be used to prevent any noxious or offensive odors from escaping the premises, such as the use of charcoal filters or other similar methods shown to effectively filter air flowing outside such that the public cannot perceive cannabis odor from outside. If odor control equipment is planned to be used, a thorough description is required to be provided in the permit application form as to how that equipment will eliminate or mitigate odors originating from the cannabis facility. All manufacturers' specifications sheets for odor control equipment shall be required to be submitted as part of the applicant's permit documentation. An operation and maintenance plan for the odor control equipment and methods for recordkeeping to ensure that the operation and maintenance plan is followed is also required. Once approved, the final odor mitigation plan would become a condition of the cannabis business permit. The odor mitigation plan, which is a requirement for cannabis uses through the city's regulatory process, would ensure that no significant impacts related to odors would occur.

The appellant states that the property was subject to a prior notice of violation because it was operating as a cannabis cultivation facility without proper permits and resulted in noticeable cannabis odors around the property. However, since prior operations were carried out without proper permitting, the sponsor did not achieve compliance with any odor minimization plans or similar requirements that would have reduced or eliminated such impacts.

As discussed in greater detail under Response 3, the project would also not result in a significant environmental effect due to unusual circumstances. The project's circumstances are not unusual, but rather typical: this is because the proposed facility would be principally permitted in the project area, where other similar operations already exist, its proposed interior and exterior tenant improvements would be minor, and its scale of operations would also be modest.

In conclusion, the appellant has not provided substantial evidence in support of a fair argument that the proposed project, which will be subject to the city's requirement of an odor mitigation plan and other

applicable regulations, would have a significant environmental impact related to air quality or unusual circumstances. The department properly determined that there are no impacts related to air quality that disqualify the project for the categorical exemption.

Response 2: The department could not have considered any plans or policies pursuant to California State Assembly Bill 617 since the Bayview Hunters Point/Southeast San Francisco Community Emissions Reduction Plan (CERP) has not been adopted. Thus, the department did not violate Assembly Bill 617.

Assembly Bill (AB) 617 was enacted in 2017 to reduce air pollution and preserve public health, with specific direction for local air districts to take measures to protect communities disproportionately impacted by air pollution. The Bayview Hunters Point/Southeast San Francisco Community was selected by the California Air Resources Board (air board) in February 2023 as an AB 617 community because of its air quality challenges, environmental justice grievances, and health inequities. In particular, this community is impaired by legacy pollution from the Hunters Point Naval Shipyard; dust and asbestos from ongoing large-scale redevelopment; odors and emissions from a wastewater treatment facility, diesel truck idling, and industrial rendering plants; and mobile source pollution burdens from the two busy freeways that traverse the community.³ The Bay Area Air Quality Management District (Air District) has partnered with the Bayview Hunters Point Community Advocates and the Marie Harrison Community Foundation to conduct a Community Emissions Reduction Plan process that will serve as a blueprint for improving air quality in Bayview Hunters Point and southeast San Francisco.⁴

When evaluating air quality impacts, the department determines whether a project would conflict with or obstruct implementation of the applicable air quality plan. In this case, the applicable air quality plan is the 2017 Clean Air Plan, which was adopted by the Air District. There are no inconsistencies that have been identified with the proposed project and the 2017 Clean Air Plan.

The appellant raises that potential that the proposed project could conflict with the CERP that is currently under development. The CERP is currently in the “Plan Preparation Phase,” which is slated to last through the end of 2024, with the “Planning Phase” expected to start in 2025, with a draft of the plan being possibly available in the second half of 2025 or 2026.⁵ Therefore, no adopted CERP currently exists for the department to consider in evaluating air quality impacts for specific projects, and it would be speculative to assume the outcomes of a community-led planning effort currently in progress.

The project site is within the City’s air pollutant exposure zone (APEZ), which is identified as having elevated levels of air pollution, particularly fine particulate matter (PM_{2.5}) and associated health risks. In addition, the project site is within zip code 94124, which is considered a Health Vulnerable Zip Code, which more health-protective standard for inclusion in the APEZ. Therefore, the department considers the project area to be burdened with higher levels of air pollution. However, given the scope of the proposed project, which

3 Bayview Hunters Point Community Advocates and Marie Harrison Community Foundation, September 21, 2020, Letter to Bay Area Air Quality Management District re AB 617 Community Self-Nomination Submittal for Bayview Hunters Point, <https://www.baaqmd.gov/~media/files/ab617-community-health/bayview-hunters-point/documents/bvhp-colead-community-self-nomination-letter-to-baaqmd-ocr-pdf.pdf?la=en&rev=a16bd7025d364ff097889af509ac08f1>, accessed December 4, 2024.

4 Bay Area Air Quality Management District website, <https://www.baaqmd.gov/community-health/community-health-protection-program/bayview-hunters-point-community-emissions-reduction-plan>, accessed November 26, 2024.

5 Bay Area Air Quality Management District website, <https://www.baaqmd.gov/community-health/community-health-protection-program/bayview-hunters-point-community-emissions-reduction-plan>, accessed November 26, 2024.

consists of minor interior and exterior tenant improvements (with no ground-disturbing activities) and permitted and regulated operation as a cannabis cultivation business, it would not be expected to result in a significant air quality impact. While project operations would result in a small number of employees traveling to and from the project site, this, too, would not result in any significant impacts related to air quality or any other environmental topics given the small magnitude of increased activity compared to existing conditions.

Based on the above, while the department recognizes that the construction and operation of the proposed project may result in some level of nuisance to the immediately surrounding community, this is not considered a significant impact under CEQA and therefore does not constitute an exception that would make the project ineligible for a Class 1 and a Class 3 categorical exemption.

Response 3: The department properly found that the project is exempt from environmental review pursuant to Class 1 and Class 3 exemptions.

The project is categorically exempt under both Class 1 and 3 for the reasons discussed below.

First, as described in the categorical exemption, the project is categorically exempt from CEQA because it meets the criteria for Class 1, Existing Facilities exemption. A Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The proposed project includes interior remodel of an existing vacant structure to accommodate proposed cannabis cultivation uses and does not include any expansion of the existing structure. Therefore, the proposed work meets the criteria for a Class 1 exemption. The appellant has not provided any substantial evidence that the proposed project does not meet the criteria for a categorical exemption under Class 1. Substantial evidence supports the department's determination that the project fits within the parameters of a Class 1 categorical exemption.

Second, the project is also categorically exempt from CEQA because it meets the criteria for a Class 3, New Construction/ Conversion of Small Structures exemption. A Class 3 exemption consists of construction and location of limited numbers of new, small facilities or structures in urbanized areas not exceeding 10,000 square feet in floor area; installation of new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. In this instance, the proposed project involves a change of use in which an existing (currently vacant) light industrial building would be converted into a cannabis cultivation facility and would involve only minor exterior modifications, which would be consistent with a Class 3 exemption. The appellant has not provided any substantial evidence that the proposed project does not meet the criteria for a categorical exemption under Class 3. Substantial evidence supports the department's determination that the project qualifies for a Class 3 categorical exemption.

Third, CEQA Guidelines section 15300.2(c) states that a "categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." CEQA establishes a two-part test to determine whether there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances:

- 1) The lead agency first determines whether unusual circumstances are present. If a lead agency determines that a project does not present unusual circumstances, that determination will be upheld if it is supported by substantial evidence. CEQA Guidelines define substantial evidence as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”
- 2) If the lead agency determines that a project does present unusual circumstances, then the lead agency must determine whether a fair argument has been made supported by substantial evidence in the record that the project may result in significant effects due to the unusual circumstances.

CEQA Guidelines section 15384 states that whether “a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.”

In part one, the department found there are no unusual circumstances surrounding this project site. As part of the CEQA review for the proposed project, it was determined that a project of such limited scope and magnitude would not be expected to result in any significant environmental impacts. While a cannabis cultivation facility may be a nuisance or inconvenience to some nearby residences for a variety of reasons, it would not represent a significant impact to the physical environment pursuant to CEQA. The appellant notes that there are already a number of cannabis-related uses in the project area, with others in the pipeline. This suggests that the use that is proposed on the project site is not an unusual circumstance in the area (and considering that the OOC is an established City department, such uses are also not unusual in San Francisco).

Accordingly, the department determined there are no unusual circumstances associated with establishing a cannabis cultivation facility at the project site. The categorical exemption is consistent with determinations for other projects in San Francisco with similar characteristics that do not involve any unusual circumstances that could result in a reasonable possibility of a significant effect. CEQA Guidelines section 15300.2(a) states that a categorical exemption is qualified by consideration of where the project is to be located; that is, a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, the Guidelines provide that a Class 3 may not be applicable for a project that may impact “an environmental resource of hazardous or critical concern” designated, precisely mapped, and officially adopted under federal, state or local law. The 1719 Wallace Avenue site, while located in an area of elevated air quality pollution (i.e., the APEZ), is not an area that has been mapped as containing sensitive environmental resources, so as to preclude reliance on a Class 3 categorical exemption. Moreover, the project is also located in a PDR-1-B zoning district, which the Planning Code notes is intended to “create a buffer area between residential neighborhoods and light industrial areas, primarily in the Bayview Hunters Point neighborhood. Thus, this District prohibits residential uses and limits Office, Retail, and Institutional uses. Generally, all other uses are permitted.”

Based on the above, the project area is not considered to be a particularly sensitive environment for CEQA purposes and the appellant has not submitted any evidence to demonstrate unusual circumstances involved with the project.

Planning Department Responses to Issues Raised by Appellant that Are Not Pertinent to CEQA

The concerns raised in the appeal letter that are not pertinent to CEQA are addressed in the responses below, as a courtesy.

Response 4: The project would not violate the intent of the site's underlying PDR-1-B zoning district.

The intent of the PDR-1-B zoning district, Planning Code Sec. 210.3, is to provide space for a wide variety of PDR and other non-residential activities while creating a buffer area between residential neighborhoods and more intensive light industrial areas, primarily in the Bayview Hunters Point neighborhood. Thus, this district allows for less intensive PDR activities within enclosed structures that generate less external noise, odors, and vibrations and engage in fewer trucking activities than those permitted in the other PDR districts. The proposed Industrial Agriculture use is designed to be a plant cultivation space within an enclosed structure, without any retail components, and is therefore not expected to generate significant amounts of noise, odor, vibration or vehicular trips from the immediate neighborhood or citywide. Thus, the project is generally in keeping with the characteristic of uses within the PDR-1-B zoning district.

Response 5: The proposed use would be consistent with Conditional Use Authorization requirements.

The Planning Commission, after consideration of all written materials and testimony presented to it at the public hearing on October 10, 2024, exercised its discretion and approved the Conditional Use Authorization, making the findings provided in Section 303(c) and findings of consistency with the Planning Code and the General Plan. As concluded in Planning Commission Motion 21624, the project is necessary and desirable because it would establish a light industrial use within the existing industrial space, promote local employment opportunities and contribute the economic growth in the neighborhood. The project would improve the streetscape and safety conditions by improving lighting and adding surveillance to enhance security in the immediate neighborhood. The project would complement the uses in the district and contribute to the economic vitality of the neighborhood by activating a vacant industrial space. The size of the proposed use is in keeping with other small scale industrial and commercial properties in the vicinity. The proposed industrial agriculture use would not impact traffic or parking in the District because it is not open to the public and is providing one off street parking space for employee use.

Response 6: The department does not see any evidence of misrepresentation or lack of transparency on the project sponsor's part.

In regard to the alleged misrepresentation of the project and neighborhood by the project sponsor, the project application materials state that the proposed use is classified as a light industrial use within an industrial buffer zone, which is consistent with the Planning Code, as explained above. The project site received a Notice of Violation from the Department of Building Inspection on June 20, 2023, following which the applicant was required to cease any activity within the subject building and apply for appropriate planning entitlement and building permits. The applicant then submitted a conditional use application in August 2023. Per the information received from the OOC and confirmed by the Planning Department, the

applicant is an equity applicant and is confirmed to have applied for a new business permit with the OOC. As discussed in Response 1, the approved cannabis cultivation operation would be required to implement an odor mitigation plan as a condition of the cannabis business permit.

Conclusion

The department has determined that the proposed project is categorically exempt from environmental review under CEQA on the basis that: (1) the project meets the definition of one or more of the classes of projects that the Secretary of Resources has found do not have a significant effect on the environment, and (2) none of the exceptions specified in CEQA Guidelines section 15300.2 prohibiting the use of a categorical exemption are applicable to the project. The appellant has not demonstrated that the department's determination is not supported by substantial evidence in the record.

For the reasons stated above, and as documented in the September 30, 2024 CEQA determination, the CEQA determination complies with the requirements of CEQA and the project is appropriately exempt from environmental review pursuant to the cited exemption. The department therefore respectfully recommends that the board uphold the CEQA determination and deny the appeal of the CEQA determination.