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BY JOB

August 19, 2021

President Shamann Walton
San Francisco Board of Supervisors
City Hall, 1 Dr. Carleton B. Goodlett Place
San Francisco, CA 94102

Re: Appeal of Mitigated Negative Declaration of 1525 Pine Street
Development

Dear Supervisor Walton:

On behalf of Ms. Patricia Rose and Claire Rose and other neighbors of 1545 Pine Street (the "Appellants"), we are appealing the grossly inadequate environmental review of the Mitigated Negative Declaration (the "MND") for the proposed project at 1525 Pine Street (the "Project"). The MND ignores its required legal obligations under the California Environmental Quality Act ("CEQA") by failing to acknowledge and analyze the most obvious potential significant environmental impacts ---those impacts that negatively impact the actual lives of the residents of San Francisco. The impacts were considerable, in and of themselves, and should require an Environmental Impact Report ("EIR") but the severity of those impacts was increased by the addition of two floors above the existing height limit through the authorization of the State Density Bonus.

History of the Hearing Process

Patricia and Claire Rose filed an appeal of the Preliminary Mitigated Negative Declaration on February 6, 2021 and raised the issues stated below. On May 6, 2021 the Planning Commission heard the Appeal and additional comments from multiple other neighbors and after considerable discussion between the Planning Commissioners the Appeal was denied and the MND was approved.

After consideration of the multiple significant environmental impacts, particularly those impacts related to shadow impacts on adjacent neighbors, a Motion was made to approve the Project. **That Motion to Approve failed by a vote of 4-3 thereby disapproving the Project.** [Planning Code Section 306.5 prevents the Planning Code from reconsidering the application that was disapproved that is the "same or substantially the same as that which was disapproved" for one year.] The Commission then moved to continue the Project Application to June 22, 2021 with direction to the Project Sponsor to address the concerns of the shadow impacts on the adjacent neighbors.

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The Project Sponsor did not reach out to the adjacent neighbors about any possible mitigations to the shadow impacts but instead chose to supplement its earlier shadow impacts analysis and so requested to continue the June 22 Hearing to July 22, 2021. The supplemental shadow analysis was completed and presented to the Commission and the public approximately a week before the July 22 Hearing. That supplemental analysis suggested that new lights being added to the Project directed at the adjacent residents of 1545 Pine Street would mitigate the shadow impacts on the adjacent neighbors.

Prior to the scheduled hearing of July 22, the Appellants requested additional time in order to present the Appellants' shadow analysis and respond to and rebut the shadow impact analysis prepared by the Project Sponsor. Additional time was denied by the Commission. Appellants were given directions to have speakers use the one-minute allocation that the Commission granted for each speaker in opposition to present incremental facts of the Appellants' shadow analysis to describe the opposing shadow data. This process did not permit a full presentation by the Appellants of the data and analysis of the shadow impacts on the adjacent neighbors at 1545 Pine Street.

While substantial evidence had been delivered to the Department and the Commission creating a fair argument that significant environmental effects existed, the Appellants were not permitted the necessary opportunity to present that evidence to the Commission.

The Conditional Use Permit Application, which incorporated a State Density Bonus that added two additional floors to the Project, was approved on July 22, 2021 (the vote was 4-2). This Appeal of the MND is filed pursuant to the provisions of San Francisco Administrative Code Section 31.16(d)(2).

Shadow Impacts Beyond Public Spaces Must Be Analyzed for CEQA As They Are Foreseeable and Negative to Sensitive Receptors

The response by the Planning Department staff regarding the potential negative shadow impacts to adjacent neighbors/ sensitive receptors/ humans is that the only analysis required is to study impacts on publicly accessible open spaces. They claim that is all that is required under CEQA. There is no citation in CEQA that says there should not be analysis of shadow impacts on humans. CEQA guidelines specifically require that there be a mandatory finding of significance when there is a significant environmental impact on humans.

CEQA Guidelines Section 15065. MANDATORY FINDINGS OF SIGNIFICANCE (a) A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where there is substantial evidence, in light of the whole record, that any of the following conditions may occur:

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(4) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly

We have prepared substantial evidence for the record and, with adequate time to present it, there is a compelling case for the significant environmental impact on humans and mandatory finding of significance must be found and an EIR must be required.

The MND neglected to analyze the impacts of shadows on other sensitive receptors, including seniors and other neighbors to the development. In order to appropriately analyze the shadow impacts of the Project, additional analysis must be prepared to review the impacts to the seniors at the Leland- Polk Senior Community Housing as well as those residents of 1545 Pine Street whose only natural light will be lost due to the additional height allowed by the State Density Bonus for the development of the Project at 1525 Pine Street. To repeat, these are foreseeable and potentially significant environmental impacts and must be undertaken through the EIR process.

By just reviewing the history of this Project, it is unquestionable that there are significant shadow impacts that require an EIR. **First**, a shadow study was prepared for the PMND; **then** widespread testimony at the hearing causes the Commission to disapprove the Project and ask for improvements to address the shadow impacts; then the Project Sponsor prepares a supplemental shadow analysis to attempt to minimize the shadow impacts; **then**, even after a minimal presentation of additional data on shadow impacts by the Appellants; the Commission barely approves the Project with one Commissioner voting for approval “reluctantly” because he believes the State Density Bonus Law requires the City to do so. Can there be any doubt that the shadow impacts are significant enough to require further analysis through the EIR process?

Cultural Resources Mitigation Measures Are Inadequate To Insure Preservation and Restoration of the Grubstake

It should be understood that the Appellants do not disagree with the findings of the MND that the Grubstake is a historical resource. Quite the contrary! The Appellants believe that the mitigation measures in the MND do not require enough measures to insure that the Grubstake is preserved and restored in the manner required of a significant legacy historic resource.

The MND, beginning with the Historic Resource Evaluation Report, takes the positive step of identifying the **Grubstake** diner as a **historic resource** as it is a **contributor to the Polk Gulch LGBTQ Historic District** and is eligible for listing in the California Register. The PMND also cites the CEQA Guidelines and states that a historical resource is materially impaired when a project "demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that conveys its historical significance."

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Then, inexplicably, the MND says the demolition of the Grubstake " would not cause a substantial change in the significance of [the] historical resource" so the demolition of the Grubstake is "Less than Significant". Adding even more confusion to its findings, the MND then states that the existing building, even though it has undergone major alterations, has retained its integrity and continues to convey its significance as a contributor to the historic district.

To summarize, the Grubstake is a historic resource and a contributor to a historic district, its building has retained its integrity to the historic district and the total demolition of the building is "less than significant". This is inconsistent with the CEQA guidelines and the prevailing law of CEQA.

It is noted that there are proposals within the proposed project that attempt to replicate the Grubstake within the proposed new building by removing and reincorporating specific features in the new project. Curiously, though, these specific efforts are not mitigation measures. These efforts are insufficient to mitigate the loss of the historic resource. There is not sufficient discussion in the HRER that could help determine what measures would actually be sufficient to retain some of the key features that would reduce this loss to "less than significant" More importantly though, these are not identified as " mitigation measures"; there is no guarantee that these efforts would actually occur. Further, if these are not "mitigation measures", then the loss of a significant historic resource to the historic district has not reduced this demolition of the resource to "less than significant".

The treatment of this historic resource is embarrassingly inadequate. In order to overcome the demolition of this resource a minimum amount of protections must be present in the MND and would more appropriately be contained in an Environmental Impact Report. First, specific, detailed mitigation measures must be included in order to either preserve or replicate the integrity of the resource. In any case, the Planning Commission would also need to find "overriding circumstances" to approve the project before permitting the demolition of this historic resource.

The discussion of Cultural Resources is wholly inadequate and an EIR must be prepared.

Transportation and Circulation

The MND completely ignores the potential significant environmental impact when it fails to provide any substantive analysis of the potential cumulative impacts of all the development that it has identified in the immediate vicinity of the Project.

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Cumulative Impacts are Potentially Devastating

The MND identifies that within a quarter-mile of the proposed project there are developments which are either under construction or being processed by the Department for 522 dwelling units, 155,770 square feet of medical office, commercial or office uses. It should also be noted that only about 300 parking spaces will be added with all this cumulative development. The MND then **concludes without any detailed analysis** of the potential impacts of all this development in this neighborhood that there will be **no significant impacts to transportation or circulation**. This becomes obviously incredible when the MND states that the mere 21 units and 2,800 square feet of commercial space of the proposed project at 1525 Pine will generate 112 vehicle trips, 429 walking trips, 213 transit trips, and 70 trips by other modes (e.g., bicycle, motorcycle, taxi).

That would mean that cumulative development, within a quarter-mile of the project, conservatively would be in excess of 3,000 vehicle trips; 6,000 walking trips; 700 transit trips; and 2000 other modes of trips. Yet, the MND has done no significant analysis to determine this would create significant environmental impacts. **Public Transit Must be Impacted Significantly**

More specifically, the MND concludes that there would be no significant impacts and no mitigation measures are necessary for mitigating the potential impacts on Public Transit.

There is Public Transit on Pine, Polk and Sutter Streets and Van Ness Avenue. Only about 300 parking spaces will be added within all the cumulative development projects. So public transit must bear the burden of accommodating all the transportation needs of this cumulative development. It is beyond credibility to imagine how many vehicles will be circling these few blocks in this neighborhood while trying to find parking to go home or those looking for parking before their doctor's appointments. It is incomprehensible that this traffic would not delay or interrupt Public Transit. Yet no analysis of any intersections was done in the MND. Further, no analysis of the impacts on pedestrians along Polk Street, the narrow, one-way Austin Alley, Pine Street or Van Ness will be impacted. Again, there would only be 27 vehicle trips generated by the Project during the P.M. peak hours for a 21-unit development. How many vehicle trips would be generated by over 522 units and 155,700 square feet of commercial uses? The PMND does not provide this calculation. This is seriously deficient.

Vehicle Miles Traveled Analysis is Grossly Inadequate

The MND focuses its analysis of Vehicle Miles Traveled ("VMT") solely on the impacts within Transportation Analysis Zone 327 (TAZ 327). [See the attached drawing showing the TAZ 327.] It concludes then that there would be no significant impacts and no mitigation measures would be necessary. When reviewing this carefully, it is obvious that the analysis is

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remarkably deficient when considering cumulative impacts. The size of TAZ 327 is approximately 4 blocks from Van Ness Avenue to Leavenworth. Of the 522 dwelling units and 155,700 square feet of commercial space of cumulative development only 5 new dwelling units are within TAZ 327. To repeat, in addition to the Project, only 5 new units are in TAZ 327. So 517 dwelling units and 155,700 square feet of commercial space are entirely ignored. Of course there would not be any significant impacts if only considering the Project plus 5 new dwelling units. Yet, the analysis completely ignores the cumulative impacts of the remaining 517 dwelling units and 155,700 square feet of medical offices and commercial space. Yet the MND concludes that no significant impact will occur and no mitigation measures are necessary.

The MND makes 3 conclusions that are just not supported by the evidence and analysis provided in the document:

Impact C-TR-2: Operation of the proposed project, in combination with cumulative projects, would not create potentially hazardous conditions for people driving, walking, or bicycling, or for public transit operations. (Less than Significant)

Impact C-TR-3: The proposed project, in combination with cumulative projects, would not interfere with accessibility of people walking or bicycling to and from the project site and adjoining areas or result in inadequate emergency access. (Less than Significant)

Impact C-TR-4: The proposed project, in combination with cumulative projects, would not substantially delay public transit. (Less than Significant)

Impact C-TR-5: The proposed project, in combination with cumulative projects, would not cause substantial additional VMT or substantially induce automobile travel by increasing physical roadway capacity in congested areas or by adding roadways to the network.

It just takes common sense to realize that this requires much more and much better analysis of the cumulative transportation and circulation impacts because the potential impacts to this neighborhood are overwhelming.

Wind Analysis is Limited and Incomplete

The wind impacts from the proposed project have not been adequately analyzed. It is clear that there are sensitive receptors immediately adjacent to the proposed development at 1545 Pine Street. We have previously identified the senior housing facilities and medical facilities in the neighborhood whose residents would be particularly impacted by the wind conditions immediately adjacent to the Project and such wind impacts should be considered in light of frail elderly and medical patients. Further, the RWDI analysis has reviewed some of the impacts on

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pedestrian and sensitive receptors at the ground level, there is an obvious omission to the analysis by not considering the wind impacts to the deck areas of the adjacent building which are 22 feet wide. This condition is quite likely to create a dangerous wind tunnel at the higher levels which could then create dangers to pedestrians below.

This potential negative impact is foreseeable and significant and should be analyzed before this MND could be considered complete and adequate. It should be noted that this potential wind impact at the higher levels could be a direct result of the additional height being proposed through the State Density Bonus. An additional 18 feet plus a 17-foot mechanical penthouse create an unusual and potentially harmful environmental impact. **Only after such a complete wind analysis of both the impacts on senior citizens and on the upper levels of the adjacent building could the MND determine that there are no significant wind impacts.**

Summary

The MND for the 1525 Pine Street is completely inadequate, incomplete and without proper supportive documentation for its findings and conclusions.

The feeble analysis of shadow impacts are the most glaring omission in the MND as it did not take into consideration the substantial and significant loss of natural sunlight to residents of the adjacent property at 1545 Pine Street. After the weak and apologetic supplemental analysis by the Project Sponsor and its offering of useless inadequate lighting improvements can it still be a question that further analysis is necessary as a minimum. The additional data provided by the Appellants will show the unhealthy conditions these impacts force on humans.

Further, the demolition of the Grubstake diner which is an identified historic resource, contributor to a historic district and is eligible for inclusion to the California Register, has inexplicably not been treated as a historic resource. There are no specific, detailed mitigation measures to mitigate the loss of the historic resource. Moreover, there are no identifiable overriding circumstances that have been prepared to justify the loss of the historic resource.

The Traffic and Circulation analysis completely ignores the cumulative impacts to pedestrians, vehicle trips and public transit. We have pointed out the omission to review the cumulative development projects in the immediate vicinity for their impacts on the neighborhood.

Finally, we have identified the limited analysis of wind impacts as the MND only analyzed the pedestrian impacts when there are clearly other foreseeable and potentially significant impacts which should be considered in order to protect sensitive receptors within the vicinity of the Project.

law offices of
DAVID P. CINCOTTA

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To repeat, CEQA requires mandatory findings of significance and requires an EIR when it can be shown there are environmental impacts on humans. CEQA doesn't say the humans have to be in parks or on sidewalks to experience negative environmental impacts.

In closing, it should be noted that many, if not all, of the impacts we have identified which are potentially significant negative impacts appear to be a direct result of the increased height being proposed for the Project through the State Density Bonus. An EIR should show the differences in the impacts to Traffic, Wind and Shadow for a project without the State Density Bonus. This would be more appropriately reviewed as an Alternative Project in an Environmental Impact Report. There are ten exceptions identified in the PMND that are being sought through the State Density Bonus--- height, bulk, rear yard, usable open space, permitted obstructions, dwelling unit exposure, setbacks on narrow streets, ground-floor ceiling height, ground floor transparency and fenestration. It was never contemplated that the State Density Bonus would be used to grant so many exceptions particularly when the resulting project would create so many significant environmental impacts.

We urge you to require the further analysis of an Environmental Impact Report to adequately review the significant environmental impacts and the Alternatives for the proposed Project. Thank you for your attention.

Very truly yours,



DAVID P. CINCOTTA
Law Offices of David P. Cincotta

DPC/lw
Enclosures

cc: Lisa Gibson, Environmental Review Officer
Michael Li



PLANNING COMMISSION MOTION NO. 20909

HEARING DATE: MAY 6, 2021

Case No.: 2015-009955ENV
Project Address: 1525 PINE STREET
Zoning: Polk Street Neighborhood Commercial District
65-A Height and Bulk District
Block/Lot: 0667/020
Project Sponsor: 1525 Pine Street Dev LLC
c/o Toby Morris – Kerman Morris Architects LLP
139 Noe Street
San Francisco, CA 94114
Property Owner: 1525 Pine Street Dev LLC
1555 Pacific Avenue
San Francisco, CA 94109
Staff Contact: Michael Li
628.652.7538, michael.j.li@sfgov.org

ADOPTING FINDINGS RELATED TO THE APPEAL OF THE PRELIMINARY MITIGATED NEGATIVE DECLARATION, FILE NUMBER 2015-009955ENV, FOR THE PROPOSED DEVELOPMENT THAT WOULD DEMOLISH A ONE-STORY RESTAURANT AND CONSTRUCT A NEW EIGHT-STORY, 83-FOOT-TALL BUILDING CONTAINING 21 DWELLING UNITS AND APPROXIMATELY 2,855 SQUARE FEET OF COMMERCIAL SPACE (“PROJECT”) AT 1525 PINE STREET, ON ASSESSOR’S BLOCK 0667, LOT 020, IN THE POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT AND A 65-A HEIGHT AND BULK DISTRICT.

MOVED, that the San Francisco Planning Commission (hereinafter “Commission”) hereby AFFIRMS the decision to issue a Mitigated Negative Declaration, based on the following findings:

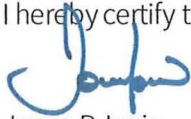
1. On May 9, 2016, pursuant to the provisions of the California Environmental Quality Act (“CEQA”), the State CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code, the San Francisco Planning Department (“Department”) received an Environmental Evaluation Application form for the Project, in order that it might conduct an initial evaluation to determine whether the Project might have a significant impact on the environment.

2. On January 27, 2021, the Department determined that the Project, as proposed, could not have a significant effect on the environment.
3. On January 27, 2021, a notice of determination that a Preliminary Mitigated Negative Declaration (PMND) would be issued for the Project was duly published in a newspaper of general circulation in the City, and the PMND was posted on the Department website and distributed in accordance with law.
4. On February 16, 2021, an appeal of the decision to issue a PMND was timely filed by David Cincotta on behalf of Patricia Rose, Claire Rose, and other neighbors.
5. A staff memorandum, dated April 29, 2021, addresses and responds to all points raised by appellant in the appeal letter. That memorandum is attached as Exhibit A and staff's findings regarding those points are incorporated by reference herein as the Commission's own findings. Copies of that memorandum have been delivered to the Commission, and a copy of that memorandum is on file and available for public review at 49 South Van Ness Avenue, Suite 1400, San Francisco, California.
6. On May 6, 2021, amendments were made to the PMND to update two footnotes in the project description in which the project plans were cited and to replace the plans dated July 31, 2020 with plans dated April 20, 2021 (Attachment A). Such amendments do not include new, undisclosed environmental impacts and do not change the conclusions reached in the PMND. The changes do not require "substantial revision" of the PMND, and therefore recirculation of the PMND would not be required.
7. On May 6, 2021, the Commission held a duly noticed and advertised public hearing on the appeal of the PMND, at which testimony on the merits of the appeal, both in favor of and in opposition to, was received.
8. All points raised in the appeal of the PMND at the May 6, 2021 hearing have been addressed either in the memorandum or orally at the public hearing.
9. After consideration of the points raised by appellant, both in writing and at the May 6, 2021 hearing, the Department reaffirms its conclusion that the proposed project could not have a significant effect upon the environment.
10. In reviewing the PMND issued for the Project, the Commission has had available for its review and consideration all information pertaining to the Project in the Department's case file.
11. The Commission finds that Department's determination on the Mitigated Negative Declaration reflects the Department's independent judgment and analysis.
12. The Commission Secretary is the Custodian of Records; the File for Record No. 2015-009955ENV is located at 49 South Van Ness Avenue, Suite 1400, San Francisco, California.

DECISION

The Commission HEREBY DOES FIND that the proposed Project could not have a significant effect on the environment, as shown in the analysis of the Mitigated Negative Declaration, and HEREBY DOES AFFIRM the decision to issue a Mitigated Negative Declaration, as prepared by the Department.

I hereby certify that the Commission ADOPTED the foregoing Motion on May 6, 2021.



Jonas P. Ionin
Digitally signed
by Jonas P. Ionin
Date: 2021.05.21
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Jonas P. Ionin
Commission Secretary

AYES: Tanner, Chan, Diamond, Fung, Koppel
NAYS: Imperial, Moore
ABSENT: None
ADOPTED: May 6, 2021



EXHIBIT A TO DRAFT MOTION PLANNING DEPARTMENT RESPONSE TO APPEAL OF PRELIMINARY MITIGATED NEGATIVE DECLARATION

PLANNING CASE NO. 2015-009955ENV – 1525 PINE STREET PUBLISHED ON APRIL 29, 2021

Background

The project sponsor submitted an application, 2015-009955ENV, for the proposed project at 1525 Pine Street on May 9, 2016 for a proposal to demolish a one-story restaurant and construct a new eight-story, 83-foot-tall building containing 21 dwelling units and approximately 2,855 square feet (sf) of commercial space. The project site is within the Polk Street Neighborhood Commercial use district and a 65-A height and bulk district. The proposed project would require conditional use authorization from the Planning Commission (Commission).

The Planning Department (Department) issued a preliminary mitigated negative declaration (PMND) for the proposed project on January 27, 2021. On February 16, 2021, the appellant filed an appeal of the PMND. A copy of the appeal letter is included with this appeal response packet.

Appeal Filed

David Cincotta submitted the appeal on February 16, 2021.

A copy of the appeal letter is included with this appeal response packet.

Planning Department Responses

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

Response 1: The PMND analyzes the project-level and cumulative transportation impacts associated with the proposed project, and that analysis was conducted in accordance with the methodology established in the Department's 2019 Transportation Impact Analysis Guidelines (TIA Guidelines). The proposed project would generate 12 vehicle trips during the p.m. peak hour, and the Department's transportation planners determined that an in-depth study was not required.

The appeal does not provide any substantial evidence supporting a fair argument to refute the Department's determination that the proposed project would not combine with other projects to result in significant cumulative transportation impacts other than to state the estimated number of vehicle trips that would be generated by the

cumulative projects. Congestion in and of itself is not an impact under CEQA. The appeal does not demonstrate how congestion would create hazardous conditions, interfere with emergency access, or delay public transit.

Impacts C-TR-2, C-TR-3, and C-TR-4 (PMND pp. 38-39) discuss how the proposed project would not combine with cumulative projects to create hazardous conditions for people walking, bicycling, or driving or for public transit operations (C-TR-2), interfere with accessibility of people walking or bicycling or result in inadequate emergency access (C-TR-3), or substantially delay public transit (C-TR-4). Impact C-TR-2 states that the proposed project and five of the seven cumulative projects¹ would not include garages. Collectively, these six projects would not result in vehicles entering and exiting off-street garages at the respective project sites and potentially conflicting with people driving, walking, or bicycling or with public transit operations. The two cumulative projects that include garages, 1101 Sutter Street and 1200 Van Ness Avenue, are each located on a site with three street frontages. Each of these projects could be designed in such a way that the garage fronts on a street that does not include a bicycle lane or public transit service. Impact C-TR-3 discusses how the proposed project and the cumulative projects would not alter the established street grid, degrade or permanently close any streets or sidewalks, eliminate or reconfigure any existing bicycle routes, or preclude or restrict emergency vehicle access to the project sites and surrounding areas. Impact C-TR-4 states that operation of the proposed project and cumulative projects would result in an increase in the number of vehicles on the local roadway network. The cumulative projects are geographically dispersed throughout the project vicinity, and all of the additional vehicle trips would be distributed along the local street network instead of being concentrated on one or two streets on which public transit operates. In addition, the proposed project and six of the seven cumulative projects would also not result in relocation or removal of any existing bus stops or other changes that would alter transit service; the Van Ness Bus Rapid Transit Project is a cumulative project that would implement right-of-way improvements along a two-mile-long segment of Van Ness Avenue (from Mission Street to Lombard Street) to accommodate bus rapid transit service. The PMND concluded that for all three topics discussed above, the cumulative impacts would be less than significant. No further analysis is required under CEQA.

In accordance with the methodology established in the TIA Guidelines, the analysis of the proposed project's transportation impacts related to vehicle miles traveled (VMT) was based on VMT estimates for the Transportation Analysis Zone (TAZ) in which the project site is located; TAZ 327 covers four blocks from Van Ness Avenue to Leavenworth Street between Pine and Bush streets.

As discussed under Impact TR-5 (PMND p. 39), the future 2040 average daily VMT per capita for residential uses and future 2040 average daily VMT per employee for office uses in TAZ 327 are more than 15 percent below the future 2040 regional VMT estimates. Thus, the PMND concluded that the proposed project would not combine with cumulative projects to cause substantial additional VMT. This impact would be less than significant, and no further analysis is required under CEQA.

The appellant contends that the VMT analysis for the cumulative scenario should have considered other TAZs in the project vicinity. The surrounding TAZs (322, 330, 332, 334, 734, and 760) all exhibit similar future 2040 VMT estimates for residential and retail uses as TAZ 327 (i.e., the VMT estimates are all more than 15 percent below the regional VMT estimates).

The VMT methodology established in the TIA Guidelines is consistent with technical advisories published by the California Governor's Office of Planning and Research in January 2016 and December 2018. The use of VMT estimates at the TAZ level is appropriate for the proposed project as it is an infill development in an established neighborhood that is well-served by

¹ The seven cumulative projects are 1567 California Street, 1240 Bush Street, 1101 Sutter Street, 955 Post Street, 1200 Van Ness Avenue, 1033 Polk Street, and the Van Ness Bus Rapid Transit Project.

public transit. Furthermore, the appeal does not provide any evidence to refute the Department's determination that the VMT methodology, significance threshold, approach to analysis, and impact conclusion are based on substantial evidence.

Response 2: The appellant argues that the project's potential impacts on historic resources warrant a higher level of environmental review under CEQA. The appellant does not dispute the Department's finding that the existing building on the project site is not individually eligible as a historic resource or that the existing building is a contributor to the California Register-eligible Polk Gulch LGBTQ Historic District (District). The appellant disputes the Department's finding that the proposed project would not result in a significant effect on a historic resource. The Department determined that the proposed demolition of a district contributor would not result in a significant effect on the District, which is the historic resource. The appellant argues that the district contributor is individually an historic resource but does not substantiate this claim.

The Department has determined that the project would not cause a substantial adverse change in the significance of the historic resource for reasons outlined below:

A. The existing building is a district contributor and not an individually eligible historic resource.

The appellant does not dispute the Department's findings that the subject property is not an individually eligible historic resource. The information included below is a summary of the Department's evaluation process and it provides context for the Department's findings, based on the Department's records and the Historic Resource Evaluation (HRE) Part I filed with the Department.

The project site is a through lot located on the south side of Pine Street with a secondary frontage on Austin Street. The surrounding neighborhood consists of mixed-use commercial and residential uses representing a variety of architectural styles and types including Renaissance Revival, Edwardian, Art Deco/Eclectic, post-war Modern, and contemporary. The existing building at 1525 Pine Street is a raised, one-story lunch wagon-style diner that houses Grubstake, a restaurant that has operated at the site since the 1960s. From the 1960s and well into the 1980s and 1990s, Grubstake became well known and loved as a welcoming and open establishment to the LGBTQ community during a time when other businesses did not open their doors to them. The restaurant catered mostly to after-hours crowds searching for late-night meals after a night out and eventually became frequented by transgender women and artists who would perform and participate in drag shows at nearby venues.

The rectilinear plan building covers two-thirds of the frontmost portion of the parcel and includes a large paved space at the rear. The building is comprised of two volumes: a lunch wagon originally constructed before 1916 by an unknown manufacturer/designer that features a sheet metal curved roof and four metal sash, single lite casement windows with awning toplites; and a main wood-frame rectangular volume that was added to the lunch wagon in 1975 and consists of a flat roof, vertical wood siding, two aluminum sliding windows and a partially glazed wood door. To supplement the HRE, an oral history conducted by Page & Turnbull was submitted to the Department which consisted of interviews with local residents and patrons of Grubstake who discussed the history of and their experiences at the restaurant. Based on Department records and the findings of the HRE and oral history, Department staff determined that the existing building at 1525 Pine Street is not individually eligible for inclusion in the California Register. For a property to be considered eligible for listing in the California Register, it must be found significant under one or more of these four criteria: Criterion 1 (Events); Criterion 2 (People); Criterion 3 (Architecture); Criterion 4 (Information Potential). As outlined in the Department's HRER Part I, Department staff determined that the subject property is not individually eligible under any of the four criteria, as it is not directly associated with any qualifying events or persons, does not possess a high degree of architectural interest, and is not a significant example of the work of a master architect. Criterion 4 applies mostly to archeological sites,

and that review was completed by the Department’s archeological staff. As such, the proposed project would not result in a significant impact to an individual historic resource.

B. The Department determined that the existing building is a contributor to the California Register-eligible Polk Gulch LGBTQ Historic District and that the project would not cause a significant impact to the District.

The appellant disputes the Department’s finding that the proposed project would not result in a significant impact to a historic resource. The appellant misunderstands that the historic district, not 1525 Pine Street individually, is the historic resource. Under CEQA, a “project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.” (CEQA Guidelines Section 15064.5(b)). In this case, the “historic resource” is the California Register-eligible Polk Gulch LGBTQ Historic District. The existing building on the project site was determined to be a contributor to the District, but not individually eligible for inclusion in the California Register. Therefore, the Department appropriately analyzed whether the project would cause a substantial adverse change to the California Register-eligible Polk Gulch LGBTQ Historic District.

The California Register-eligible Polk Gulch LGBTQ Historic District was initially identified and discussed in the Department’s *Citywide Historic Context Statement for LGBTQ History in San Francisco* (adopted October 2015), which discussed the Polk Gulch neighborhood as a potentially significant LGBTQ neighborhood. The District was evaluated in the Historic Resource Evaluation (HRE) prepared by Page & Turnbull (March 13, 2019) and confirmed in the HRER and found to be significant under Criterion 1 for its association with the development of early LGBTQ enclaves in the Polk Gulch neighborhood beginning in the 1960s through the 1990s.

Although not formally surveyed by the Department, the boundaries of the California Register-eligible Polk Gulch LGBTQ Historic District are generally Washington Street to the north, Geary Street to the south, Hyde Street to the east, and Franklin Street to the west. The district consists of properties associated with LGBTQ businesses and social groups during Polk Gulch’s development as a queer enclave during the 1960s and 1970s. The period of significance for the Polk Gulch historic district is identified as approximately 1960 to the 1990s. This period begins with the establishment of the first LGBTQ-associated business in the neighborhood and ends with a period that is associated with the relevant themes identified in the LGBTQ Historic Context Statement. The HRE identified 15 properties that are considered contributors to the Polk Gulch historic district; there is a potential for more properties to be identified upon further research. These properties are not located immediately adjacent to one another, but rather form a noncontiguous physical pattern of development.

Character-defining features associated with the California Register-eligible District include:

- Polk Street commercial corridor “spine” with clusters of contributing properties
- Dense urban fabric with one- and two-way streets, paved sidewalks, and minimal street trees
- Commercial uses of contributing resources, which historically included a variety of LGBTQ-associated businesses such as bars, nightclubs, restaurants, clothing stores, record stores, bathhouses, and theaters.
- Twentieth century commercial blocks and residential-over-commercial buildings (most built between 1907 and 1921) with:
 - One- to four-story massing
 - Classical Revival (Edwardian era), Eclectic, and altered styles
 - Ground-floor storefronts (most are altered)
 - Angled bay windows at upper floors of some buildings
 - Flat roofs

According to the HRER Part I, staff determined that 1525 Pine Street is a contributor to the California Register-eligible Polk Gulch LGBTQ Historic District as an early business established in the Polk Gulch neighborhood that accepted and catered to the growing LGBTQ community beginning in the 1960s. The business gained a reputation for being an open and welcoming establishment to the LGBTQ community during a time when businesses often did not open their doors to them.

After reviewing the proposed project and the character-defining features of the California Register-eligible Polk Gulch LGBTQ Historic District identified above, the Department determined that, for the purposes of CEQA, the proposed demolition and new construction would not result in a significant impact to the California Register-eligible District. The proposed project includes the reuse or replication of many of the contributor's character-defining features, including but not limited to: signage, windows, and lighting.² Additionally, the demolition of one contributor would not result in the District's inability to continue to convey its significance as the District would continue to retain its character-defining features after project implementation.

A substantial adverse change is defined as: "physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of a historic resource would be materially impaired." (CEQA Guidelines Section 15064.5(b)(1).) The significance of a historical resource is materially impaired when a project "demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in" a local register of historical resources pursuant to local ordinance or resolution. Thus, a project may cause a change in a historic resource, but still not have a significant adverse effect on the environment as defined by CEQA, as long as the impact of the change on the historic resource is determined to be less than significant. Where the historic resource is a historic district, as here, a significant impact would exist if the project would result in a substantial adverse change to the historic district. After project completion, the California Register-eligible Polk Gulch LGBTQ Historic District would consist of 14 identified contributing properties, with a potential for more to be identified through further research. The proposed project for the subject property at 1525 Pine Street will incorporate a substantial amount of salvage and reuse of historic materials such that the new construction was found to be compatible with the existing district. Therefore, the California Register-eligible Polk Gulch LGBTQ Historic District would remain eligible for the California Register for its association with the development of early LGBTQ enclaves in the Polk Gulch neighborhood beginning in the 1960s through the 1990s.

C. The Department determined that the project would not cause a significant impact to a historic resource and therefore determined that no mitigation measures are required.

The appellant states that the Department should have considered mitigation measures in order to reduce the impact to historical resources. As discussed above, the Department determined that the project would not result in a significant impact to the historic district. CEQA Guidelines 15126.4(3) clearly states that "Mitigation measures are not required for effects which are not found to be significant."

Response 3: As discussed under Impact WI-1 (PMND p. 67), the CEQA significance criterion for wind focuses on whether a project would create wind hazards in publicly accessible areas of substantial pedestrian use. The wind analysis was based on an assessment prepared by a wind consultant with extensive experience in evaluating wind effects from proposed development projects. The wind analysis concluded that the adjacent 12-story, 130-foot-tall building to the west, The Austin, would largely shelter the proposed project from prevailing westerly winds. Due to this sheltering effect, the proposed project would have little to no potential to intercept overhead winds and redirect them downward to the Pine

² For a complete list of features to be reused or replicated, see *Historic Resource Evaluation Response, Part II, 1525 Pine Street*, October 22, 2020, pp. 1-2.

Street sidewalk. The proposed project would not create wind hazards in publicly accessible areas of substantial pedestrian use. This impact would be less than significant, and no further analysis is required under CEQA.

A project's wind impact on privately accessible spaces does not fall under the scope of CEQA. The appellant's concerns regarding the proposed project's wind effect on the private decks of The Austin may be addressed through the design review/entitlement process and/or may be considered by the Commission during their deliberations on the merits of the proposed project.

Response 4: As discussed under Impact SH-1 (PMND pp. 68-69), the CEQA significance criterion for shadow focuses on whether a project would create new shadow in a manner that substantially and adversely affects the use and enjoyment of publicly accessible open spaces. A shadow analysis prepared by a shadow consultant confirmed that shadow from the proposed project would not reach any nearby publicly accessible open spaces at any time during the year. This impact would be less than significant, and no further analysis is required under CEQA.

A project's shadow impact on private properties, including privately accessible spaces like decks, does not fall under the scope of CEQA. The PMND acknowledges that although occupants of nearby properties may regard the increase in shadow as undesirable, the limited increase in shading of private properties as a result of the proposed project would not be considered a significant impact under CEQA. The appellant's concerns regarding the proposed project's shadow effect on the private decks and units of The Austin with east-facing windows may be addressed through the design review/entitlement process and/or may be considered by the Commission during their deliberations on the merits of the proposed project.

Comment Letters on the PMND, in Addition to Appeal

In addition to the appeal described above, five comment letters were received on the PMND. These letters, which are attached, raise several issues regarding the analyses contained in the PMND. The concerns raised in the comment letters are addressed in the responses below.

Response 1: Some of the comment letters raise issues that are the same or similar to the issues raised in the appeal. These issues include concerns about traffic congestion, pedestrian safety, the historic significance of Grubstake, wind, and shadow/sunlight. These issues are not addressed separately here. Please see the previous discussions of these issues earlier in this appeal response.

Response 2: As discussed under Impact AQ-1 (PMND pp. 55-57), the proposed project's construction activities are subject to the provisions of the Construction Dust Control Ordinance. Required compliance with this ordinance would reduce the quantity of dust generated by the proposed project's construction activities. This impact would be less than significant, and no further analysis is required under CEQA.

Land use projects typically result in emissions of criteria air pollutants (CAPs) and toxic air contaminants (TACs), primarily from an increase in motor vehicle trips. As discussed under Impact AQ-3 (PMND p. 61), the Bay Area Air Quality Management District (air district) has developed screening criteria to determine whether a project requires an analysis of project-generated CAPs. If all of the screening criteria are met by a proposed project, then the lead agency or applicant does not need to perform a detailed air quality assessment, and it is presumed that such a project would generate CAPs at levels that would not exceed the air district's CEQA significance thresholds. With 21 dwelling units and approximately 2,855 sf of commercial space, the proposed project is expected to generate 97 daily vehicle trips to and from the project site. The proposed project would be 24 times below the screening criterion for the "apartment, high-rise" land use type (510 dwelling units) and 16 times below the screening criterion for the "quality restaurant" land use type (47,000 sf). A

detailed air quality assessment is not required, and the proposed project would not exceed any of the significance thresholds for CAPs. This impact would be less than significant, and no further analysis is required under CEQA.

As discussed under Impact AQ-4 (PMND pp. 61-62), individual projects result in emissions of TACs, primarily from an increase in vehicle trips. The air district considers roads with fewer than 10,000 vehicles per day “minor, low-impact” sources that do not pose a significant health impact even in combination with other nearby sources and recommends that these sources be excluded from the environmental analysis. The proposed project’s 97 daily vehicle trips would be 103 times below the 10,000-vehicles-per-day threshold. Therefore, a detailed air quality assessment is not required, and the proposed project would not generate a substantial amount of TAC emissions that could affect nearby sensitive receptors. This impact would be less than significant, and no further analysis is required under CEQA.

The restaurant would have exhaust vents located on the roof of the proposed building. It may be possible to reorient the exhaust vents so that they do not face the existing units at The Austin. This concern may be addressed through the design review/entitlement process and/or may be considered by the Commission during their deliberations on the merits of the proposed project.

Response 3: As discussed under Impact NO-1 (PMND pp. 40-42), the proposed project’s construction activities would result in temporary and intermittent increases in noise levels. As shown in Table 2: Typical Noise Levels from Proposed Project Construction Equipment (PMND p. 41), the noise levels generated by the anticipated construction equipment would not exceed the limits established in the San Francisco Noise Ordinance. The increases in noise levels are not expected to be substantially greater than ambient noise levels in the project vicinity, which are already high (greater than 70 dBA during a typical 24-hour period). The proposed project’s construction activities would not expose individuals to temporary increases in noise levels that are substantially greater than ambient noise levels. This impact would be less than significant, and no further analysis is required under CEQA.

Response 4: Loss of privacy due to the proximity between new and existing buildings is not an issue that falls under the scope of CEQA. Comments regarding loss of privacy may be addressed through the design review/entitlement process and/or may be considered by the Commission during their deliberations on the merits of the proposed project.

Response 5: The additional building height proposed under state density bonus law would obstruct views from some of the units at The Austin. Loss of private views from private properties is not an issue that falls under the scope of CEQA. Comments regarding the loss of views from some of the units at The Austin may be addressed through the design review/entitlement process and/or may be considered by the Commission during their deliberations on the merits of the proposed project.

Response 6: CEQA focuses on the physical environmental effects that may result from a proposed development project. Pursuant to CEQA Guidelines Section 15131(a), “economic or social effects of a project shall not be treated as significant effects on the environment. An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes.”

The proposed project’s perceived economic effect on the property values of some of the units at The Austin or other adjacent or nearby properties is not a physical effect on the environment that must be analyzed under CEQA. Comments regarding this issue may be considered by the Commission during their deliberations on the merits of the proposed project.

Conclusion

For the reasons provided in this appeal response, Department staff recommends that the Commission deny the appeal of the CEQA determination. The appellant has not provided substantial evidence supporting a fair argument that the project would have significant impacts on the environment with implementation of feasible mitigation measures identified in the PMND that would warrant preparation of an environmental impact report.

DAVID P CINCOTTA
DBA LAW OFFICES OF DAVID P CINCOTTA
2200 PARADISE DR
TIBURON, CA 94920-1946

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August 20, 2021
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David P. Cincotta

MP