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To: [BOS Legislation, \(BOS\)](#); [FielderStaff](#)
Cc: [Gibson, Lisa \(CPC\)](#); [Dwyer, Debra \(CPC\)](#)
Subject: Planning Department Appeal Response - Mid-Valencia Curbside Protected Bikeway Project
Date: Friday, January 17, 2025 10:11:06 AM
Attachments: [Mid-Valencia Curbside Protected Bikeway Project-Planning Appeal Response-1.17.2025.pdf](#)

Good morning –

Please find attached the planning department's response to the appeal of the statutory exemption for the **Mid-Valencia Curbside Protected Bikeway Project** (Board File No. 241192, Hearing Date: January 28, 2025).

Please let me know if you require anything else.

Sincerely,

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STATUTORY EXEMPTION APPEAL

Mid-Valencia Curbside Protected Bikeway Project

Date: January 17, 2025
To: Angela Calvillo, Clerk of the Board of Supervisors
From: Lisa Gibson, Environmental Review Officer, (628) 652-7571
Jennifer McKellar, Senior Planner, jennifer.mckellar@sfgov.org, (628) 652-7563

RE: **Board File No. 241192**
Planning Record No. 2024-004482ENV/2024-004482APL
Appeal of Statutory Exemption for Mid-Valencia Curbside Protected Bikeway Project

Hearing Date: January 28, 2025

Project Sponsor: Paul Stanis, San Francisco Municipal Transportation Agency, (415) 646-2784
Through: Jenny Delumo, San Francisco Municipal Transportation Agency, (415) 646-2382

Appellant(s): Julio Ramos of the Law Office of Julio J. Ramos, on behalf of VAMANOS

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 statutory exemption under the California Environmental Quality Act (Public Resources Code section 21000 et seq.; CEQA determination) for the proposed Mid-Valencia Curbside Protected Bikeway Project.

The department, pursuant to CEQA section 21080.25, issued a statutory exemption for the project on November 4, 2024, finding that the proposed project is exempt from CEQA.

The decision before the board is whether to uphold the CEQA determination and deny the appeal, or to overturn the CEQA determination and return the project to the department for additional environmental review.

Site Description and Existing Use

The project site consists of an eight-block section of Valencia Street (from 15th Street to 23rd Street) located in the Mission neighborhood of San Francisco. Between 15th Street and 23rd Street, Valencia Street is a north-south, two-way street with one travel lane in each direction. A two-way, center-running bikeway runs along this corridor with two- to six-foot buffers between the bikeway and travel lanes. Rubber mountable curbs and K-71 bollards¹ are installed in the buffer area to provide vertical separation between the bicycle

¹ K-71 bollards are flexible plastic delineator posts that re-erect themselves to the vertical position if hit.

facility and the travel lanes. Parking spaces, loading spaces, and parklets are provided along the curb on both sides of the street. There are 13- or 15-foot-wide sidewalks on both sides of the street between 15th and 19th streets, and 10-foot-wide sidewalks on both sides between 19th and 23rd streets.

Project Description

Under the proposed project, the San Francisco Municipal Transportation Agency (SFMTA) would remove the existing two-way, center-running bikeway on Valencia Street and install curbside protected Class IV bikes lanes from 15th Street to 23rd Street (i.e., the project corridor). The proposed bike lanes would be located directly adjacent to the curb or weave around curbside parklets. Buffer zones would be placed between the proposed bike lanes and parking and loading spaces to provide space for people to get in and out of vehicles and provide more distance between people biking and parked vehicles. These buffered areas would include plastic delineators and provide physical separation between the bike lanes and the parking and loading spaces. On cross streets intersecting the project corridor, the proposed project would modify the color curb designation of existing loading spaces (e.g., from passenger loading to commercial loading) and would convert some parking spaces into bikeshare stations. Implementation of the proposed project would result in changes to the location and overall number of parking and loading spaces, parklets, on-street bike share stations, and bicycle corrals (on-street bicycle parking) throughout the project corridor.

Background

On May 30, 2024, SFMTA (hereinafter project sponsor) filed an application with the department for the purpose of obtaining a CEQA determination for the project.

On November 4, 2024, the department determined that the project was statutorily exempt under CEQA Section 21080.25 and issued a statutory exemption for the project.

On November 19, 2024, the SFMTA Board of Directors approved the project.

On December 4, 2024, Julio Ramos of the Law Office of Julio J. Ramos, on behalf of VAMANOS (hereinafter appellant), filed an appeal of the statutory exemption determination.

On December 9, 2024, the department determined that the appeal was timely.

CEQA Statutory Exemption

Statutory exemptions are created by the State Legislature to exempt certain projects from the purview of CEQA, in order to achieve other policy goals deemed important enough to justify forgoing environmental review. A project that qualifies for a statutory exemption generally is not subject to CEQA regardless of whether it has the potential to significantly affect the environment, unless otherwise specified in the criteria for eligibility for the exemption.

CEQA section 21080.25 exempts from CEQA certain pedestrian facility, bicycle facility, transit prioritization, safety, access, and transportation demand management (including the removal or restriction of parking) projects that meet specified criteria. The criteria that section 21080.25 specifies for this exemption are enumerated in the department's CEQA determination issued for the project.

To determine whether a statutory exemption applies to a proposed project, the sole question for the agency is whether the project fits within the language of the exemption. An agency's factual findings that a statutory exemption applies to a project is subject to the substantial evidence standard of review. (North Coast Rivers Alliance v. Westlands Water Dist. (2014) 227 Cal.App.4th 832, 850.) This means that a court will uphold an agency's finding that a statutory exemption applies if substantial evidence supports that finding. CEQA Guidelines section 15384 offers that: "...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... Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts."

Planning Department Responses

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

Response 1: The project qualifies for a CEQA section 21080.25 statutory exemption, which does not require an analysis of environmental impacts, nor is it subject to exceptions that apply to categorical exemptions. Furthermore, the legal standard of review for a statutory exemption is the substantial evidence standard, not the fair argument standard.

Under CEQA there are two types of exemptions: statutory and categorical. As described above (see CEQA Statutory Exemption section), a statutory exemption is an exemption from CEQA, or from certain CEQA requirements, provided that the proposed project satisfies the defined criteria for the specific exemption. When reviewing a statutory exemption, the nature and extent of the project's environmental impacts are irrelevant. Unless the statute includes an exception to the exemption, the sole question is whether the project has the elements necessary to fit within the scope of the statutory exemption. There are no separately specified exceptions to the statutory exemption the Legislature created in CEQA section 21080.25.

By contrast, categorical exemptions are not created by the Legislature, but by the Natural Resources Agency, pursuant to a mandate in the statute that the agency list, in the CEQA regulations known as the CEQA Guidelines, "classes of projects that have been determined not to have a significant effect on the environment and shall be exempt" from the statute. (CEQA section 21084(a).) They are exemptions for classes of project types that are presumed not to result in significant environmental effects, but which are subject to exceptions that would prohibit a project from qualifying for a categorical exemption, even if the project otherwise fits the description of the class type. The exceptions for categorical exemptions are codified in the statute and the CEQA Guidelines, and include factors such as project location, cumulative impact, significant effect due to unusual circumstances, and potentially significant impacts to historic resources. (CEQA section 21084(c)-(e); CEQA Guidelines section 15300.2.)

As explained above, to rely upon the statutory exemption, a lead agency must have substantial evidence in the record demonstrating that the project satisfies the requirements specified in the provisions of the statutory exemption itself. Such evidence is provided in the department's CEQA determination, which documents how this project qualifies for a statutory exemption pursuant to CEQA section 21080.25, including because:

- it would implement pedestrian and bicycle facilities that improve safety, access, or mobility, including new facilities, within the public right-of-way by constructing a curbside protected Class IV bike lane with safety features (e.g., buffer zones, plastic delineators, soft hit posts, painted protected corners, and wheel stops) and Americans with Disabilities Act (ADA) compliant access points between the sidewalk and floating parking, loading and parklet spaces along an eight-block segment of Valencia Street;
- it would be carried out by a local agency that is also the lead agency for the project (i.e., the SFMTA, an agency within the City and County of San Francisco, which is the CEQA lead agency for the project);
- construction of the project would not require the demolition of affordable housing units because its construction/demolition activities are within the public right-of-way, would not involve any housing units, and would be limited to the removal or relocation of existing facilities and addition of new facilities along an eight-block segment of Valencia Street;
- the project would not induce single-occupancy vehicle trips, add additional highway lanes, widen highways, add physical infrastructure or striping to highways, or include the addition of any auxiliary lanes because it would relocate an existing two-way center-running bike lane to curbside protected bike lanes along an eight-block segment of Valencia Street, and make the following non-vehicle-trip-inducing modifications to facilitate this relocation: move the existing northbound and southbound vehicle travel lanes to the center of the street, change the location and overall number of parking and loading spaces, parklets, on-street bike share stations, and bicycle corrals throughout the project corridor, and retain existing left turn restrictions at all project corridor intersections;
- the project, which would cost up to \$2,500,000, would not exceed \$50,000,000 dollars; and
- the project would be constructed by SFMTA Shops, Public Works Shops, and contractors (contracted though Public Works), who would be subject to the City's Citywide Project Labor Agreement

There are two different legal standards of review for CEQA determinations, the substantial evidence standard (see CEQA Statutory Exemption section) and the fair argument standard. The appellant asserts that the department's determination was improper under the fair argument standard. Under CEQA, when the fair argument standard applies, if substantial evidence supports a fair (reasonable) argument that a project may result in significant environmental effects, an EIR is required, even if there is contradicting evidence that no significant impact would result [CEQA Guidelines section 15064(f)(1)]. The appellant asserts that the legal standard of review for a statutory exemption is the fair argument standard, which it is not. The legal standard of review for a statutory exemption is the substantial evidence standard, which is more deferential to the lead agency than the fair argument standard. When a lead agency determines the project is subject to a statutory exemption, it need not also evaluate potential environmental impacts using a fair argument standard. The exceptions that apply to categorical exemptions do not apply in the context of statutory exemptions.

The department was not required to evaluate potential environmental impacts at all because it determined the project met the requirements for the statutory exemption. Therefore, the appellant's concerns regarding the project's impacts on the topics of aesthetics, noise, air quality, transportation (safety, accessibility,

hazardous conditions), cultural, and socio-economic effects are not germane to the project's eligibility for the 21080.25 statutory exemption.

For the above reasons, the department's CEQA determination is supported by substantial evidence; the appellant has not demonstrated otherwise.

Response 2: Under CEQA section 21080.25, there are no notification or public outreach requirements applicable to the project during the environmental review process. The department has satisfied all notification requirements required by Chapter 31 of the San Francisco Administrative Code.

CEQA section 21080.25 requires projects that would exceed \$50,000,000 to meet certain notification and public outreach requirements during the environmental review process. None of these requirements apply to the project because it would cost less than \$50,000,000. Therefore, the department was not required to consult stakeholders, such as residents and merchants, during the environmental review process for this statutorily exempt project, contrary to the appellant's assertions. In addition, in accordance with Chapter 31 of the San Francisco Administrative Code, the department posted the CEQA determination to the department's exemption web page, and SFMTA cited the determination in the staff report and calendar item prepared for the project in advance of the project's approval hearing before the SFMTA Board of Directors.

Although not required for the CEQA process, as part of project development, SFMTA's practice is to conduct public outreach and community engagement for capital or quick-build projects like this project. SFMTA has conducted the following public outreach for the project. In February 2024, the SFMTA Board of Directors directed SFMTA staff to investigate a side-running bikeway design option for the project corridor. SFMTA project team staff then initiated a planning and design process for the Mid-Valencia Curbside Protected Bikeway Project, which was informed by extensive community engagement. Key dates in this process are provided below.

- February and March 2024: the project team met with all 26 parklet owners to discuss initial tradeoffs and considerations with parklet placement under a side-running bikeway design.
- March and April 2024: individual merchant outreach expanded beyond parklet owners and the project team met with over 100 merchants and business owners along the project corridor. These meetings focused on introducing the concept of a side-running bikeway design, sharing design tradeoffs, and understanding merchant preferences for the parking and loading mix.
- May and June 2024: the project team hosted block-by-block meetings to share the conceptual designs for each block. Merchants were able to see their initial input and feedback from the March and April outreach on parking and loading spaces and parklet placement reflected in the conceptual design. These meetings were held at two-block intervals and 12 to 15 businesses attended each of the four meetings.
- June 18, 2024: the project team presented to the SFMTA Board a conceptual design of a side-running bike lane, which the board endorsed and directed staff to develop into a detailed design.

- July and August 2024: the project team worked closely with the 26 parklet owners to reach a decision on parklet placement under a side-running bikeway design.
- September 2024:
 - four walking tours were held with businesses to share the final design and receive minor feedback.
 - approximately 150 members of the public attended two open house sessions with many of them spending at least an hour speaking with neighbors and project staff.
- August 2024: the project team established a construction working group that includes SFMTA project staff, SFMTA shops staff, transportation safety advocates, businesses owners, and residents.
- November 19, 2024: the project team presented the final design for the project at a noticed joint Public Hearing and SFMTA Board of Directors meeting. During the hearing, SFMTA staff shared community feedback received during the design and outreach project and addressed comments and questions from the Board and public.

Additionally, the project team meets weekly with the Valencia Corridor Merchants Association (VCMA) to discuss and finetune the side-running bikeway design. Beyond outreach to VCMA, SFMTA staff have continued to provide updates to community stakeholder groups, such as Friends of Valencia, San Francisco Bike Coalition, KidSafeSF, WalkSF, San Francisco Bay Area Planning and Urban Research Association (SPUR), Liberty Hill Neighbor Association, Mission Merchants Association, Calle 24, San Francisco Council of District Merchant Associations (CDMA), San Francisco Multimodal Accessibility Advisory Committee (MAAC), SFMTA Citizens' Advisory Council (CAC), San Francisco County Transportation Authority CAC, and San Francisco Mayor's Disability Council.

For the above reasons, the department has substantial evidence demonstrating that it has satisfied the state and local requirements for public notification and outreach prior to issuance of the CEQA section 21080.25 exemption for the proposed project. The appellant has not demonstrated otherwise.

Conclusion

The department has determined that the proposed project is statutorily exempt from environmental review under CEQA on the basis that it meets the definitions and criteria set forth in CEQA section 21080.25. Further, the department satisfied CEQA and Chapter 31 of the Administrative Code public notification requirements prior to issuance of the CEQA determination for the proposed project. The appellant has not demonstrated that the department's compliance with the above-cited substantive and procedural requirements is not supported by substantial evidence in the record.

For the reasons stated above, the CEQA determination complies with the requirements of CEQA, and the project is appropriately exempt from environmental review pursuant to the cited statutory exemption. Therefore, the department respectfully recommends that the board uphold the statutory exemption determination and deny the appeal.