



## Appeal Timeliness Determination Correction

**DATE:** September 3, 2020  
**TO:** Angela Calvillo, Clerk of the Board of Supervisors  
Jocelyn Wong, Board of Supervisors  
**FROM:** Lisa Gibson, Environmental Review Officer  
**RE:** Appeal of Final Mitigated Negative Declaration, 2417 Green Street Project, Planning Case No. 2017-002545ENV

This timeliness determination correction supplements the timeliness determinations dated August 12, 2020 and August 24, 2020 (collectively, Board Case No. 200137) to provide clarification regarding how the appeals should be calendared for a Board of Supervisors hearing.

As noted in the August 24, 2020 appeal timeliness determination, Richard Drury of Lozeau Drury LLP on behalf of Philip Kaufman filed two appeal letters challenging the final mitigated negative declaration (FMND) for the proposed project at 2417 Green Street with the Office of the Clerk of the Board of Supervisors – one on February 5, 2020 and one on August 7, 2020.

The purpose of this memorandum is to clarify that, because the February 5, 2020 appeal was filed prior to the proposed project's approval action (which was the July 16, 2020 Discretionary Review by the Planning Commission), it was therefore not ripe. After the Planning Commission approved the project, Appellant filed a second letter appealing the same FMND. Thus, the first appeal letter should be considered moot and superseded by the second appeal that was filed on August 7, 2020. Should the Appellant wish to reserve arguments made in the first appeal, Appellant may raise any arguments stated in the original appeal letter or its exhibits in the second appeal.

The Clerk is advised to file the second appeal letter and its attachments in Board Case No. 200137, and schedule this as a single appeal. Since this project received one CEQA determination (the FMND) and one project approval (Discretionary Review), there will be one appeal hearing scheduled for this case.

**Approval Action:** On June 26, 2019, Environmental Planning staff issued a preliminary mitigated negative declaration (PMND), which is the subject of two appeal letters submitted by Richard Drury of Lozeau Drury, LLP, on behalf of Philip Kaufman, the owner of 2421 Green Street. At the January 9, 2020 public hearing, the Planning Commission adopted a motion upholding the PMND, and the Planning Department issued the FMND. The Approval Action for the project was the July 16, 2020 Discretionary Review by the Planning Commission.

<b>Date of Approval Action</b>	<b>30 Days after Approval Action</b>	<b>Appeal Deadline (Must be Day Clerk of the Board's Office is Open)</b>	<b>Date of Appeal Filing</b>	<b>Timely?</b>
<b>July 16, 2020</b>	<b>Saturday, August 15, 2020</b>	<b>Monday, August 17, 2020</b>	<b>February 5, 2020</b>	<b>No (unripe)</b>
<b>July 16, 2020</b>	<b>Saturday, August 15, 2020</b>	<b>Monday, August 17, 2020</b>	<b>August 7, 2020</b>	<b>Yes</b>

**Appeal Deadline:** San Francisco Administrative Code Chapter 31, Section 31.16(d) states that any person or entity that has filed an appeal of the preliminary negative declaration with the Planning Commission during the public comment period provided in Chapter 31 may appeal the Planning Commission's approval of the final negative declaration. The code further provides that the appellant shall submit a letter of appeal to the Clerk of the Board within 30 days after the Date of Approval Action for the project taken in reliance of the negative declaration. The Approval Action occurred on July 16, 2020, and the first business day after the 30th day after the Date of the Approval Action is August 17, 2020 (Appeal Deadline).

**Appeal Filing and Timeliness:** The Appellant filed two appeals of the FMND, one on February 5, 2020, and one on August 7, 2020, both before the Appeal Deadline. As noted above, the first appeal was not ripe; however, the second appeal is considered ripe and timely and should proceed to a hearing.

**Appellant Standing:** The appellant appealed the PMND to the Planning Commission, which held an appeal hearing on January 9, 2020. Therefore, the appellant has standing to appeal the FMND.