

File No. 230592

Committee Item No. \_\_\_\_\_

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

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***By Hand Delivery & Email***

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**Re: Notice of Appeal and Appeal of the San Francisco Planning Commission's Approval of the San Francisco Planning Department's Categorical Exemption Determination for the 1151 Washington Street Project (2022-010833ENV; 2022-010833CUA) at the Planning Commission Public Hearing on April 20, 2023**

Dear San Francisco Board of Supervisors, Ms. Calvillo, and Ms. Gibson:

PLEASE TAKE NOTICE THAT, on behalf of Clayton Timbrell ("Appellant")<sup>1</sup>, who resides at 1157 Washington Street, this letter appeals the San Francisco Planning Commission's approval of the Planning Department's draft Class 32 (in-fill development) categorical exemption from the California Environmental Quality Act ("CEQA") for the proposed project at 1151 Washington Street ("Project"), which was considered at the at the Planning Commission's April 20, 2023 meeting as Agenda Item 12.<sup>2</sup> The CEQA exemption determination for the Project is attached as Exhibit A to this letter.

**I. INTRODUCTION**

On April 20, 2023, the San Francisco Planning Commission considered and approved at a public hearing the Planning Department's draft CEQA Class 32 (in-fill development) categorical exemption for the Project. The Planning Commission voted to approve the exemption four to two. The notice and minutes from this public hearing are attached as Exhibit B to this letter. On behalf of Mr. Timbrell, Lozeau Drury LLP provided written comments to the Planning Commission on April 17, 2023 and verbal comments at the public hearing on April 20, 2023 regarding the Project's adverse impacts on health, safety and the physical environment. At the Planning Commission hearing, many neighborhood organizations filed written or oral comments opposing the CEQA exemption and/or the Project, including the Committee for Better Parks and

<sup>1</sup> A letter authorizing this firm to represent Mr. Timbrell is attached hereto as Exhibit H.

<sup>2</sup> This appeal is filed pursuant to San Francisco Administrative Code section 31.16.

Recreation in Chinatown, Chinatown Community Development Center (CCDC), Upper Chinatown Neighborhood Association, Pacific Avenue Neighborhood Association, and SOMA Pilipinas, (Attached hereto as Exhibit C). Despite these impacts, the Planning Commission narrowly approved the Class 32 exemption in violation of CEQA and improperly relied on the State Density Bonus Law, as discussed below. Mr. Timbrell submits this notice of appeal and appeal, along with the following comments, to the San Francisco Board of Supervisors.

Mr. Timbrell lives next door to the Project site and supports redevelopment of the parcel with a reasonably-sized project. But he has serious concerns with the proposed Project's potential for human health and environmental impacts. Therefore, Mr. Timbrell opposes the Planning Department's use of a categorical exemption because there is substantial evidence that the Project would result in numerous potentially significant environmental impacts under CEQA. The project also requires conditional use authorization under Planning Code Section 303(c) because as proposed it is inconsistent with San Francisco zoning laws. The developer seeks to invoke the State Density Bonus Law to bypass San Francisco land use requirements.<sup>3</sup> However, the Court of Appeals has held that CEQA must be "harmonized" with the Density Bonus Law, and that agencies must comply with both laws.<sup>4</sup> Therefore, the Project is subject to all of the same CEQA requirements as any other residential development.

These comments were prepared with the assistance of Matt Hageman, P.G., C.Hg. and Dr. Paul E. Rosenfeld, Ph.D., principals with environmental consulting firm Soil Water Air Protection Enterprise (SWAPE). Mr. Hageman and Dr. Rosenfeld investigated the Project files and publicly available information and concluded that the Project site is contaminated with highly toxic chemicals, and mitigation measures adopted by the City are inadequate to ensure that risks to construction workers, future residents and users of the adjacent Betty Ann Ong Recreation Center are reduced to less than significant levels. SWAPE's expert comments are attached as Exhibit D to this appeal letter.

In addition to SWAPE's expert findings, a review of the City's and developer's materials show that the Project would impact public services by creating safety risks associated with emergency access for firefighters. In addition, the site is subject to San Francisco's Slope Protection Act requiring additional analyses. Finally, shadow impacts on the Betty Ann Ong Recreation Center require CEQA review. In short, the Project cannot be exempted from CEQA, therefore an initial study must be prepared to determine the appropriate level of CEQA review.

## **II. PROJECT DESCRIPTION**

The project site is a 3,571-square-foot parcel in the Nob Hill neighborhood. Currently the site is occupied by a single-family home built in 1940 that is approximately 3,050 square feet. Immediately east of the Project site is the Betty Ann Ong Recreation Center, which is downslope and approximately 6 to 20 feet lower than the subject site.

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<sup>3</sup> CA Govt. Code § 65915 *et. Seq.*

<sup>4</sup> *Wollmer v City of Berkeley* (2011) 193 Cal.App.4th 1329, 1349.

The developer proposes to demolish the existing residence and construct a 50-foot-tall, four-story over basement building with penthouses and roof decks. The proposal is for ten four-story, for-sale townhouses and one off-street van parking space. The building itself would be approximately 12,312 square feet in size (a 9,262 sq/ft increase). A front unit along Washington Street would be approximately 2,070 square feet in size with three bedrooms, while the nine rear units would be approximately 940 square feet with two bedrooms. The proposed roof decks would include approximately 7-foot-tall privacy walls and there would be condenser units on the roof of each unit. Access to the proposed units would be from a 5-foot-wide, 137-foot-long pathway that would step up along the eastern edge of the property and would be the only access to nine of the units. The proposed pathway would include a bicycle ramp. Each unit would be equipped with an exterior hoist to facilitate moving furniture and other bulky items from the outside. The 6 existing trees on the subject property would be removed and the project would plant two trees in front of the project site. The proposed development would be supported on micropyles. The project would require approximately 130 cubic yards of excavation with a depth of approximately 12.5 feet below ground surface.

### III. LEGAL STANDARD

CEQA mandates that “the long-term protection of the environment...shall be the guiding criterion in public decisions” throughout California. PRC § 21001(d). A “project” is “the whole of an action” directly undertaken, supported, or authorized by a public agency “which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” PRC § 21065; CEQA Guidelines, 14 CCR § 15378(a). For this reason, CEQA is concerned with an action’s ultimate “impact on the environment.” *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283. CEQA requires environmental factors to be considered at the “earliest possible stage . . . before [the project] gains irreversible momentum,” *Id.* 13 Cal.3d at 277, “at a point in the planning process where genuine flexibility remains.” *Sundstrom v. Mendocino County* (1988) 202 Cal.App.3d 296, 307.

To achieve its objectives of environmental protection, CEQA has a three-tiered structure. 14 CCR § 15002(k); *Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1185-86 (“*Hollywoodland*”). First, if a project falls into an exempt category, or it can be seen with certainty that the activity in question will not have a significant effect on the environment, no further agency evaluation is required. *Id.* Second, if there is a possibility the project will have a significant effect on the environment, the agency must perform an initial threshold study. *Id.*; 14 CCR § 15063(a). If the study indicates that there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment the agency may issue a negative declaration. *Id.*, 14 CCR §§ 15063(b)(2), 15070. Finally, if the project will have a significant effect on the environment, an environmental impact report (“EIR”) is required. *Id.* Here, since the City exempted the Project from CEQA entirely, we are at the first step of the CEQA process.

### **A. CEQA Exemptions.**

CEQA identifies certain classes of projects which are exempt from the provisions of CEQA. These are called categorical exemptions. 14 CCR §§ 15300, 15354. “Exemptions to CEQA are narrowly construed and “[e]xemption categories are not to be expanded beyond the reasonable scope of their statutory language.” (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 125.)

The determination as to the appropriate scope of a categorical exemption is a question of law subject to independent, or de novo, review. (*San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.*, (2006) 139 Cal. App. 4th 1356, 1375 (“[Q]uestions of interpretation or application of the requirements of CEQA are matters of law. (Citations.) Thus, for example, interpreting the scope of a CEQA exemption presents ‘a question of law, subject to de novo review by this court.’ (Citations).”)

The City has issued a notice of exemption alleging that the Project is exempt from CEQA review as an “in-fill” project (Class 32).

### **B. Exceptions to CEQA Exemptions.**

There are several exceptions to the categorical exemptions. 14 CCR § 15300.2.

- (1) Significant Effects. A project may never be exempted from CEQA if there is a “fair argument” that the project may have significant environmental impacts due to “unusual circumstances.” 14 CCR §15300.2(c). The Supreme Court has held that since the agency may only exempt activities that do not have a significant effect on the environment, a fair argument that a project will have significant effects precludes an exemption. *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 204.

### **C. Limitations to In-Fill Exemption.**

The Class 32 In-Fill exemption can only be applied where “[a]pproval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.” 14 Cal. Admin. Code §§ 15332(c), (d).

## **IV. THE PLANNING DEPARTMENT ERRONEOUSLY PROPOSES TO EXEMPT THE PROJECT FROM CEQA REVIEW.**

The Planning Department invoked a Class 32 (in-fill development) categorical exemption for the Project. Class 32 consists of projects characterized as in-fill development that are shown to be consistent with the City’ general plan as well as with applicable zoning designations and regulations. To be lawful the Planning Department must show that approval of the Project would

not result in any significant effects relating to traffic, noise, air quality, or water quality, and can be adequately served by all required utilities and public services.<sup>5</sup>

In addition, a project may not be exempted from CEQA if there is a “fair argument” that the project may have significant environmental impacts due to “unusual circumstances.”<sup>6</sup> The Supreme Court has held that since the agency may only exempt activities that do not have a significant effect on the environment, a fair argument that a project will have significant effects precludes an exemption.<sup>7</sup> Under the “fair argument” standard, an agency is precluded from relying on a categorical exemption when there is a fair argument that a project will have a significant effect on the environment.<sup>8</sup> In other words, “where there is any reasonable possibility that a project or activity may have a significant effect on the environment, an exemption would be improper.”<sup>9</sup>

As shown below, the Class 32 exemption cannot apply here because there is expert opinion and other evidence showing it may pose significant impacts related to public services due to access limitations for firefighters, hazardous soils and vapor contamination, steep slope and seismic concerns, and shadow and shading at Betty Ann Ong Recreation Center. The Planning Department must prepare an initial study and a mitigated negative declaration or an environmental impact report to analyze the Project’s impacts and propose all feasible mitigation measures.

**A. The Project Will Have Significant Air Quality Impacts from Diesel Particulate Matter, Precluding Reliance on the Class 32 Exemption.**

The Planning Department’s draft categorical exemption admitted the Project has the “potential to emit substantial pollutant concentrations from the use of diesel construction equipment, backup diesel generators, heavy industry, diesel trucks.”<sup>10</sup> Thus, the Infill Exemption is improper under Section 15332(d).

**B. The Unusual Circumstances Exception Precludes Reliance on the Class 32 Exemption.**

A categorical exemption is inapplicable “where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.”<sup>11</sup> There are two ways a party may invoke the unusual circumstances exception to a CEQA exemption: First, “a party may establish an unusual circumstance with evidence that the project will have a

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<sup>5</sup> CEQA Guidelines § 15332.

<sup>6</sup> CEQA Guidelines §15300.2(c).

<sup>7</sup> *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 204.

<sup>8</sup> *Banker’s Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal. App. 4th 249, 266.

<sup>9</sup> *Id.*

<sup>10</sup> Categorical Exemption at p. 2.

<sup>11</sup> CEQA Guidelines 15300.2(c).

significant environmental effect. That evidence, if convincing, necessarily also establishes ‘a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.’”<sup>12</sup> Alternatively, “[a] party invoking the exception may establish an unusual circumstance without evidence of an environmental effect, by showing that the project has some feature that distinguishes it from others in the exempt class, such as its size or location. In such cases, to render the exception applicable, the party need only show a reasonable possibility of a significant effect due to that unusual circumstance.”<sup>13</sup>

As detailed below, both prongs are satisfied. As shown above, there is evidence of significant environmental effects due to construction-air quality impacts. And the parcel itself is contaminated with hazardous materials that could pose health risks to construction workers, future residents and children playing at the Betty Ann Ong Recreation Center. The Project would impact fire protection services because of its highly unusual design of a single building containing 10 four-story residential units on a narrow and small parcel, accessible only by a steep, 5-foot-wide, 137-foot-long pathway; this would be atypical even by San Francisco standards. Also, it is subject to slope stability and liquefaction impacts. Finally, shadow impacts on the Betty Ann Ong Recreation Center would pose a significant effect in violation of San Francisco’s Prop. K.

**1. The Project Site Has Unmitigated Soil and Vapor Contamination That Could Pose Health Risks.**

The Project site is heavily contaminated with toxic chemicals. Both the developer and the Planning Department’s analysis acknowledged as much, and have proposed measures to mitigate the project’s health risks.<sup>14</sup> Mr. Hageman and Dr. Rosenfeld reviewed the Project materials and concluded that the CEQA exemption underestimated and inadequately addressed the health-risk impacts associated with construction and operation of the proposed Project, and impermissibly relied on a mitigation plan.<sup>15</sup> They also concluded that the SMP’s mitigation measures are inadequate to reduce risks to a less than significant level and additional mitigation is necessary. SWAPE recommended that a full CEQA analysis be prepared to adequately assess and mitigate the potential impacts from the hazardous materials at the site.<sup>16</sup> The chemicals on site can cause cancer and lead to numerous acute health problems. The public has a right to understand the site’s potential health and environmental risks through a public CEQA process.

Specifically, the developer documented subsurface soils as contaminated with “low concentrations of hexavalent Chrome VI and thallium exceeding regulatory screening levels.”<sup>17</sup>

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<sup>12</sup> *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105.

<sup>13</sup> *Id.*

<sup>14</sup> Site Mitigation Plan for 1151 Washington Street (October 2022).

<sup>15</sup> Exhibit. A at p. 1.

<sup>16</sup> *Id.*

<sup>17</sup> Site Mitigation Plan, at p. 1.

Soil vapor beneath the site is impacted with volatile organic compounds (specifically, PCE or tetrachloroethylene) at concentrations exceeding regulatory screening levels.”<sup>18</sup>

Chrome VI, thallium and PCE are highly toxic chemicals:

- **Chrome VI:** Chrome VI can cause the following health effects: lung cancer and nasal cancers; irritation of the nose, throat and lungs (runny nose, coughing); allergic symptoms (wheezing, shortness of breath).<sup>19</sup>
- **Thallium:** Thallium was used as rat poison until 1972. Thallium can affect the nervous system, lung, heart, liver, and kidney. Temporary hair loss, vomiting, and diarrhea can also occur and death may result after exposure to large amounts of thallium for short periods. Thallium can be fatal from a dose as low as 1 gram.<sup>20</sup>
- **PCE (Perchloroethylene):** PCE is listed as a chemical known to cause cancer in humans.<sup>21</sup> Effects resulting from acute (short term) high-level inhalation exposure of humans to tetrachloroethylene include irritation of the upper respiratory tract and eyes, kidney dysfunction, and neurological effects such as reversible mood and behavioral changes, impairment of coordination, dizziness, headache, sleepiness, and unconsciousness. The primary effects from chronic (long term) inhalation exposure are neurological, including impaired cognitive and motor neurobehavioral performance. Tetrachloroethylene exposure may also cause adverse effects in the kidney, liver, immune system and hematologic system, and on development and reproduction. Studies of people exposed in the workplace have found associations with several types of cancer including bladder cancer, non-Hodgkin lymphoma, multiple myeloma. EPA has classified tetrachloroethylene as likely to be carcinogenic to humans.<sup>22</sup>

The presence of these three toxic chemicals on the project site above regulatory screening levels, particularly given the fact that the site is adjacent to a children’s playground, may result in significant environmental impacts for construction workers, future residents, or users of the adjacent playground.<sup>23</sup> More specifically, according to the developer’s “Phase II environmental assessment” (“ESA”), PCE was found in all three soil vapor samples (up to 67 µg/m<sup>3</sup>), and exceeded the residential Environmental Screening Level (“ESL”) of 15 µg/m<sup>3</sup>. Concentrations of hexavalent chromium and thallium in both soil samples exceeded the residential ESLs but were below the applied construction worker ESLs.

Regarding soil vapor contamination, the SMP stated that the “source and full extent of these impacts is currently unknown”.<sup>24</sup> Were excavation of the site to occur, visual and olfactory observations indicative of contamination “if a significant issue” would trigger “environmental

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<sup>18</sup> *Id.*

<sup>19</sup> See <https://oehha.ca.gov/media/downloads/faqs/hexchromiumairfact111616.pdf>.

<sup>20</sup> Available at: <https://wwwn.cdc.gov/TSP/PHS/PHS.aspx?phsid=307&toxid=49>.

<sup>21</sup> Available at: <https://oehha.ca.gov/chemicals/tetrachloroethylene>.

<sup>22</sup> Available at: <https://www.epa.gov/sites/default/files/2016-09/documents/tetrachloroethylene.pdf>.

<sup>23</sup> Exhibit D at p. 1.

<sup>24</sup> SMP at p. 4.



professional and/or appropriate regulatory agency” notification.<sup>25</sup> In lay terms, this would be far too little, far too late. In scientific terms, SWAPE’s expert opinion is that this measure would present a risk that construction workers may not have a sufficiently fine sense of smell to detect these toxic chemicals. Furthermore, since thallium and chrome VI are tasteless and odorless, relying on “olfactory” and “visual” observations will not detect this chemical.<sup>26</sup> In legal terms, this measure constitutes improper deferral of mitigation since it relies on future “visual and olfactory observations” to develop as yet undefined mitigation measures.

The Phase II ESA and the mitigation plan were both prepared for a previous project and, as shown in the diagram attached as Exhibit E, only cover a small portion of the site. The proposed Project is going to cover the entire site and no samples were taken from the rear of the site which encompasses over half of the site. The CEQA document therefore fails to adequately describe the Project’s environmental setting, which is an essential element for any CEQA document. (14 C.C.R. § 15125(a)).

Rather than preparing an initial study for the public under CEQA to investigate the extent of site contamination and associated potential health risks, the Planning Department’s exemption document pointed to the developer’s site mitigation plan to provide a “decision framework and specific risk management measures for managing soil and soil vapor beneath the Site.”<sup>27</sup> While the SMP contains mitigation measures, they are inadequate to ensure that all contamination will be remediated to less than significant levels. For example, the SMP inadequately mitigates soil-vapor impacts. The Project would include a subgrade bedroom.<sup>28</sup> To address the potential for vapor intrusion of PCE into indoor airspace, the SMP would provide for a vapor intrusion mitigation system (VIMS) to be installed within the subgrade following excavation.<sup>29</sup> A deed restriction would be required to ensure the proper operation and maintenance of the planned VIMS. In SWAPE’s expert opinion, mitigation measures like this should be analyzed in a CEQA document for adequacy. A CEQA document should be prepared to ensure that the mitigation measures are adequate and also to ensure that they are enforceable.<sup>30</sup>

The known existence of hazardous substances at the Project site is an unusual circumstance creating the likelihood of significant environmental impacts. *McQueen v. Bd. of Directors* (1988) 202 Cal. App. 3d 1136, 1149. It is undisputed that the Project site contains toxic and hazardous substances. In *McQueen*, 202 Cal.App.3d 1136, 1149, the Court held that “the known existence of . . . hazardous wastes on property to be acquired is an unusual circumstance threatening the environment.” In that case, a regional open space district sought to acquire open land from the Air Force. The district exempted the purchase from CEQA review based on the “public open space” categorical exemption. *Id.* at 1141. After it had made its

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<sup>25</sup> SMP at p. 10.

<sup>26</sup>[https://www.cdc.gov/niosh/erashdb/emergencyresponsecard\\_29750026.html#:~:text=Thallium%20is%20tasteless%20and%20odorless,amounts%20in%20the%20earth's%20crust;https://www.atsdr.cdc.gov/toxfaqs/tfacts7.pdf](https://www.cdc.gov/niosh/erashdb/emergencyresponsecard_29750026.html#:~:text=Thallium%20is%20tasteless%20and%20odorless,amounts%20in%20the%20earth's%20crust;https://www.atsdr.cdc.gov/toxfaqs/tfacts7.pdf).

<sup>27</sup> SMP at p. 1.

<sup>28</sup> SMP at p. 4

<sup>29</sup> SMP at p. 11

<sup>30</sup> Exhibit D at p. 3

CEQA exemption, the agency was notified by the Air Force about the existence of hazardous waste materials, including PCBs, at the site. *Id.* Rather than vacate the exemption and conduct CEQA review, the district instead proceeded with the project under the open space categorical exemption, and relied instead on future investigation and decontamination activities to be undertaken by the federal government at the site to address the contamination issues.

As in *McQueen*, the presence of recognized hazardous wastes on the site is an unusual circumstance, which creates a reasonable possibility that the project would have a significant effect on the environment, as defined by CEQA. *Id.* at 1148-49; 14 CCR §15300.2(c). The court required the district to conduct CEQA review before implementing any plan for the acquired property. *Id.* at 1140. See also, *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572; *Citizens for Responsible Equitable Environmental Development v. City of Chula Vista* (2011), 197 Cal.App.4th 327 (toxic contamination on project site precludes reliance on mitigated negative declaration).

Finally, the SMP is evidence in itself of a potentially significant impact. And, as a matter of law, an agency may not rely on a categorical exemption if to do so would require the imposition of mitigation measures to reduce potentially significant effects.<sup>31</sup> If mitigation measures are necessary, then at a minimum, the agency must prepare a mitigated negative declaration to analyze the impacts, and to determine whether the mitigation measures are adequate to reduce the impacts to below significance.<sup>32</sup> ““An agency should decide whether a project is eligible for a categorical exemption as part of its preliminary review of the project’ without reliance upon any proposed mitigation measures.”<sup>33</sup> In other words, the City was required to look at the Project application, and decide on its face, whether a categorical exemption applied, rather than assessing the Project’s impacts based on the site mitigation plan. Since mitigation measures would be necessary to abate the potentially serious contamination impacts at the Project site, a CEQA exemption is improper.

Additionally, the presence of hazardous substances is an environmental issue that must be addressed at a Project’s outset, and cannot be deferred to a future time to avoid CEQA review. *McQueen*, 2 Cal.App.3d at 1148. By including mitigation measures for future remediation of existing soil contamination in a Use Permit condition, the City improperly deferred detection and mitigation of hazardous substances to a future time. A CEQA document must be prepared to address and mitigate the significant impacts of the Project.

## **2. The Project’s Design Would Cause Impacts to Public Services Because of Safety Risks and Inadequate Firefighter Access.**

According to the Project’s plans, the proposed townhomes would be built front to back, north to south. The building itself would be 12,312 square-feet on a steep, 3,571 square-foot,

<sup>31</sup> *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1108 (“SPAWN”); *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1198-1201.

<sup>32</sup> SPAWN, 125 Cal.App.4th at 1108.

<sup>33</sup> SPAWN, 125 Cal.App.4th at 1106 (quoting *Azusa*, 52 Cal. App. 4th at 1199-1200).

exceedingly narrow parcel. Also, egress and ingress would be via a 5-foot-wide, 137-foot-long alleyway with eight flights of stairs. No other means of access are provided. Were a fire to occur in one or more of the front townhomes, residents living behind a burning unit would have no means of escape. Residents would be forced to run towards the fire, down a total of eight flights, and make way down a 137-foot-long alley before reaching Washington Street.

As discussed in the expert comments of Burt Engineering and Construction (Exhibit F), California's Building Codes expressly prohibit such dangerous conditions by requiring two exits, or special exit-access doorways from spaces who share a common path of egress over a certain distance.<sup>34</sup> A path of 137-feet exceeds the 125-foot maximum travel distance for fire and life safety.<sup>35</sup> The Project's proposed exit route is unsafe, hazardous, defies common sense and cannot be approved.

Equally concerning and noncompliant is the absence of proper firefighter access and emergency escape options to and from each of the townhomes' upper floors, keeping in mind each unit will have four stories. In California, upper floor bedrooms are required to have emergency escape and rescue windows. This requirement allows residents to escape should a fire occur, and also provides firefighters with access to windows to contain fires as quickly as possible.<sup>36</sup>

Finally, California's Fire Code is specific about access for firefighters' ladders, and properties must provide approved access walkways where required by fire officials. The California Fire Marshal requires that rescue windows be accessible using ground ladders.<sup>37</sup> Firefighters must be able to place their ladders at the access walkway at an angle no greater than 70° from horizontal, approximately 8 feet from a building, which would be impossible on the proposed 5-foot-wide path. Based on the above public services impacts and safety hazards, CEQA review is required to:

1. Investigate options to ensure the Project is constructed with legally compliant rescue windows;
2. Investigate whether additional and/or improved egress and ingress alternatives would ensure firefighters could easily carry ground ladders along the walkway to the areas around townhome windows in a safe and readily accessible manner; and,
3. Investigate whether firefighters could set up ladders on the ground in proximity to the rescue windows in a safe and secure manner in accordance with the San Francisco Fire Department Ladder Manual.<sup>38</sup>

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<sup>34</sup> CA Building Code § 1028.1; *see also* Table 1006.3.4.

<sup>35</sup> *Id.*

<sup>36</sup> CA Fire Code § 504.1.

<sup>37</sup> *See* Cal Fire Interpretation 18-005; <https://osfm.fire.ca.gov/divisions/code-development-and-analysis/code-interpretations/all-code-interpretations/>.

<sup>38</sup> The proposed project runs afoul of:

The above-described Project flaws would pose unacceptable safety risks to both residents and firefighters. The Planning Department must investigate these serious design flaws and propose project alternatives to the public in a CEQA document for review and comment.

**3. The Project's Shadow Impacts Will Harm the Betty Ann Ong Recreation Center.**

The Project site is immediately east of the Betty Ann Ong Recreation Center, which is downslope and approximately 6 to 20 feet lower. The proposed Project would cause shadowing and shading of the recreation center in violation of San Francisco's Prop. K. In order to carry out Prop. K's mandate, the San Francisco's Planning Code, requires the Planning Commission to investigate and make findings that any shadow cast by a proposed project exceeding 40 feet in height would not have a significant effect on properties under the Recreation and Park's jurisdiction.<sup>39</sup>

The fact that the Project is immediately adjacent to the sensitive receptor of Betty Ann Ong Recreation Center is an "unusual circumstance" which make the shadow impact highly significant. (*Lewis v. Seventeenth Dist. Agric. Assn.* (1985) 165 Cal. App. 3d 823, 831 ("with the adjacency of residential neighborhoods to the racetrack the 'unusual circumstances' exception to the categorical exemption applies to its project as a matter of law."))

The Project's plans show the Project would severely shade the recreation center's basketball courts and playground area. An independent shadow analysis shows that the Project will throw much of the play area of Betty Ann Ong Recreation Center into shadow during peak times of use. (Exhibit G). The developer's shadow analysis claimed the shadowing is acceptable because the Project, as proposed, would cast the same shadow as a code-compliant proposal. But that is no answer. All projects that cast shadow on a public park have a significant impact under Prop. K, regardless of whether the project is code-compliant. Therefore, the Planning Department must prepare a CEQA document that includes this potentially significant project impact for Planning Commission review.

**4. The Project Is Subject to the San Francisco Slope and Seismic Hazard Zone Protection Act.**

San Francisco's Slope and Seismic Hazard Zone Protection Act ("SSPA") applies to all properties that exceed an average slope of 4H:1V (25%) or fall within certain mapped areas of the City. A review of the Planning Department maps makes clear the subject property is within an identified hazardous zone. The Planning Department's draft exemption recognized the Project

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- California Code of Regulations' minimum fire and life safety regulations.
  - California State Fire Marshal's minimum fire and life safety regulations.
  - San Francisco Fire Department's minimum fire and life safety regulations.
  - San Francisco's minimum building egress regulations.

<sup>39</sup> Planning Code § 295.

would be subject to the SSPA. Per the exemption's screening assessment: The average slope of the parcel is equal to or greater than 25%,<sup>40</sup> and the project involves new building construction, and construction would excavate more than 50 cubic yards of fill (approximately 130 cubic-feet in this case). In addition, San Francisco's Seismic Hazard Zones Map indicates that the front portion of the site is located in an area that is potentially susceptible to liquefaction during a major earthquake.<sup>41</sup>

The developer's geotechnical study identified four seismic and/or slope concerns:

- The thickness of the undocumented and variable fill (up to about 30 feet deep below existing site grades) across the site, which may be prone to sloughing or caving;
- The proximity of the existing, neighboring 6 to 20 feet high retaining wall along the eastern property line;
- The presence of the loose to medium dense sands that are potentially subject to dynamic densification following a strong seismic event, i.e., up to 4 inches of settlement estimated;
- The potential for severe ground shaking at the site during a major earthquake.<sup>42</sup>

To address the Project's numerous and complex landslide and seismic concerns, the developer's geotechnical study contains ten pages of recommendations to mitigate potential impacts. As discussed above, the Planning Department may not rely on a categorical exemption if doing so would require the imposition of mitigation measures to reduce potentially significant effects.<sup>43</sup> There can be little argument that these types of impacts and proposed mitigation measures should be investigated and disclosed to the public. Seismic and slope hazards are highly unusual compared to the typical in-fill residential project, and thus must be addressed and mitigated in a CEQA document.

#### **V. THE STATE DENSITY BONUS LAW DOES NOT APPLY BECAUSE THE PROJECT WILL HAVE SPECIFIC ADVERSE IMPACTS ON HEALTH, SAFETY, AND THE PHYSICAL ENVIRONMENT.**

Lastly, the Planning Department misapplied the State Density Bonus Law to the Project. The Project is not entitled to any concessions or waivers pursuant to the Density Bonus Law because the Project will have a "specific adverse impact ... upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the

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<sup>40</sup> "Topographic Map of San Francisco," *see* [https://s3.amazonaws.com/sfplanninggis/Slopes+Poster\\_lowRes70DPI.pdf](https://s3.amazonaws.com/sfplanninggis/Slopes+Poster_lowRes70DPI.pdf); in addition, the PIM mapping designates the site as having slopes of 25 percent or greater, *see* <https://sfplanninggis.org/pim/map.html?search=1151%20WASHINGTON%20ST&layers=Slope%20of%2025%20percent%20or%20greater>.

<sup>41</sup> California Division of Mines and Geology, 2001.

<sup>42</sup> Geotechnical Investigation, prepared for Davis Townhome Development at p. 9 (Nov. 2022).

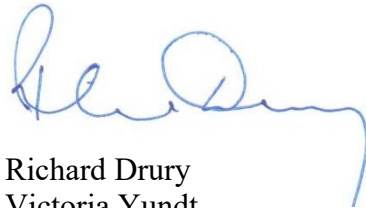
<sup>43</sup> *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1108.

specific adverse impact.”<sup>44</sup> As discussed above, there is expert opinion and other evidence showing that the Project will pose significant impacts related to public services due to access limitations for firefighters, hazardous soils and vapor contamination, and steep slope and seismic concerns. These are “specific adverse impact[s] upon health and safety... and the physical environment.” For these reasons, the Planning Department may not grant any concessions or waivers for the Project, including exempting the Project from CEQA, and the Project must undergo a full CEQA analysis and be redesigned to fully comply with all General Plan and zoning requirements.

## VI. CONCLUSION

The Planning Commission improperly exempted the proposed Project from CEQA review. The Project does not meet the requirements for a Class 32 Infill Exemption. Accordingly, we respectfully request that the Board of Supervisors grant this appeal and direct the Planning Department to prepare an initial study followed by a mitigated negative declaration or EIR. The CEQA document must analyze the Project’s health and environmental impacts and propose feasible mitigation measures and alternatives. Thank you for considering these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard Drury". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Richard Drury  
Victoria Yundt  
LOZEAU | DRURY LLP

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<sup>44</sup> Gov’t Code § 65915 (e)(1).

# EXHIBIT A



## CEQA Exemption Determination

### PROPERTY INFORMATION/PROJECT DESCRIPTION

|  |  |   |
|--|--|---|
| <b>Project Address</b>   |  | <b>Block/Lot(s)</b>   |
| 1151 WASHINGTON ST   |  | 0213025   |
| <b>Case No.</b>  |  | <b>Permit No.</b>   |
| 2022-010833ENV   |  |   |
| <input type="checkbox"/> <b>Addition/ Alteration</b>   | <input checked="" type="checkbox"/> <b>Demolition (requires HRE for Category B Building)</b> | <input checked="" type="checkbox"/> <b>New Construction</b> |
| <p><b>Project description for Planning Department approval.</b></p> <p>The project site is a 3,571-square-foot parcel in the Nob Hill neighborhood. The project site is occupied by an existing 30-foot-tall, three-story, single-family residence that is approximately 3,050 square feet in size with two off-street parking spaces. Immediately east of the project site is a lower playground area of the Betty Ann Ong Recreation Center that is approximately 6 to 20 feet lower than the subject property's rear yard. The change in elevation is supported by a retaining wall ranging between 6 to 20 feet that extends the length of the playground. Utilizing the state density bonus program, the project sponsor proposes the demolition of the existing single-family residence and construction of a 40-foot-tall (50-foot-tall with penthouses), four-story over basement residential building containing 10 for-sale townhouses and one off-street van parking space. The proposed building would be approximately 12,312 square feet in size. Each of the 10 residential units would be 4 stories and would include a penthouse and roof deck. The proposed front unit along Washington Street would be approximately 2,070 square feet in size with three bedrooms while the nine rear units would be approximately 940 square feet with two bedrooms. The proposed roof decks would include approximately 7-foot-tall privacy walls and there would be</p> <p><b>FULL PROJECT DESCRIPTION ATTACHED</b></p> |  |   |

### STEP 1: EXEMPTION TYPE

|  |   |
|--|---|
| <b>The project has been determined to be exempt under the California Environmental Quality Act (CEQA).</b> |   |
| <input type="checkbox"/>   | <b>Class 1 - Existing Facilities.</b> Interior and exterior alterations; additions under 10,000 sq. ft.   |
| <input type="checkbox"/>   | <b>Class 3 - New Construction.</b> Up to three new single-family residences or six dwelling units in one building; commercial/office structures; utility extensions; change of use under 10,000 sq. ft. if principally permitted or with a CU.  |
| <input checked="" type="checkbox"/>  | <p><b>Class 32 - In-Fill Development.</b> New Construction of seven or more units or additions greater than 10,000 sq. ft. and meets the conditions described below:</p> <p>(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.</p> <p>(b) The proposed development occurs within city limits on a project site of no more than 5 acres substantially surrounded by urban uses.</p> <p>(c) The project site has no value as habitat for endangered rare or threatened species.</p> <p>(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.</p> <p>(e) The site can be adequately served by all required utilities and public services.</p> <p><b>FOR ENVIRONMENTAL PLANNING USE ONLY</b></p> |
| <input type="checkbox"/>   | <b>Other</b> _____  |
| <input type="checkbox"/>   | <b>Common Sense Exemption (CEQA Guidelines section 15061(b)(3)).</b> It can be seen with certainty that there is no possibility of a significant effect on the environment. <b>FOR ENVIRONMENTAL PLANNING USE ONLY</b>  |



**STEP 2: ENVIRONMENTAL SCREENING ASSESSMENT**

**TO BE COMPLETED BY PROJECT PLANNER**

|   |  |
|---|--|
| <input checked="" type="checkbox"/>   | <p><b>Air Quality:</b> Would the project add new sensitive receptors (specifically, schools, day care facilities, hospitals, residential dwellings, and senior-care facilities within an Air Pollution Exposure Zone? Does the project have the potential to emit substantial pollutant concentrations (e.g. use of diesel construction equipment, backup diesel generators, heavy industry, diesel trucks, etc.)? (refer to <i>The Environmental Information tab on the <a href="https://sfplanninggis.org/pim/">https://sfplanninggis.org/pim/</a></i>)</p>  |
| <input checked="" type="checkbox"/>   | <p><b>Hazardous Materials:</b> If the project site is located on the Maher map or is suspected of containing hazardous materials (based on a previous use such as gas station, auto repair, dry cleaners, or heavy manufacturing, or a site with underground storage tanks): Would the project involve 50 cubic yards or more of soil disturbance - or a change of use from industrial to residential?</p> <p><b>Note that a categorical exemption shall not be issued for a project located on the Cortese List if box is checked, note below whether the applicant has enrolled in or received a waiver from the San Francisco Department of Public Health (DPH) Maher program, or if Environmental Planning staff has determined that hazardous material effects would be less than significant.</b> (refer to <i>The Environmental Information tab on the <a href="https://sfplanninggis.org/pim/">https://sfplanninggis.org/pim/</a></i>)</p> |
| <input checked="" type="checkbox"/>   | <p><b>Transportation:</b> Does the project involve a child care facility or school with 30 or more students, or a location 1,500 sq. ft. or greater? Does the project have the potential to adversely affect transit, pedestrian and/or bicycle safety (hazards) or the adequacy of nearby transit, pedestrian and/or bicycle facilities?</p>  |
| <input checked="" type="checkbox"/>   | <p><b>Archeological Resources:</b> Would the project result in soil disturbance/modification greater than two (2) feet below grade in an archeological sensitive area or eight (8) feet in a non-archeological sensitive area? If yes, archeology review is required.</p>  |
| <input type="checkbox"/>  | <p><b>Subdivision/Lot Line Adjustment:</b> Does the project site involve a subdivision or lot line adjustment on a lot with a slope average of 20% or more? (refer to <i>The Environmental Information tab on the <a href="https://sfplanninggis.org/pim/">https://sfplanninggis.org/pim/</a></i>) <b>If box is checked, Environmental Planning must issue the exemption.</b></p>  |
| <input checked="" type="checkbox"/>   | <p><b>Average Slope of Parcel = or &gt; 25%, or site is in Edgehill Slope Protection Area or Northwest Mt. Sutro Slope Protection Area:</b> Does the project involve any of the following: (1) New building construction, except one-story storage or utility occupancy, (2) horizontal additions, if the footprint area increases more than 50%, or (3) horizontal and vertical additions increase more than 500 square feet of new projected roof area? (refer to <i>The Environmental Planning tab on the <a href="https://sfplanninggis.org/pim/">https://sfplanninggis.org/pim/</a></i>) <b>If box is checked, a geotechnical report is likely required and Environmental Planning must issue the exemption.</b></p>  |
| <input checked="" type="checkbox"/>   | <p><b>Seismic Hazard:</b> <input type="checkbox"/> <b>Landslide or</b> <input checked="" type="checkbox"/> <b>Liquefaction Hazard Zone:</b></p> <p>Does the project involve any of the following: (1) New building construction, except one-story storage or utility occupancy, (2) horizontal additions, if the footprint area increases more than 50%, (3) horizontal and vertical additions increase more than 500 square feet of new projected roof area, or (4) grading performed at a site in the landslide hazard zone? (refer to <i>The Environmental tab on the <a href="https://sfplanninggis.org/pim/">https://sfplanninggis.org/pim/</a></i>) <b>If box is checked, a geotechnical report is required and Environmental Planning must issue the exemption.</b></p>   |
| <p><b>Comments and Planner Signature (optional):</b> Don Lewis</p> <p>PLEASE SEE ATTACHED</p> |  |

**STEP 3: PROPERTY STATUS - HISTORIC RESOURCE  
TO BE COMPLETED BY PROJECT PLANNER**

|   |  |
|---|--|
| <b>PROPERTY IS ONE OF THE FOLLOWING:</b> <i>(refer to Property Information Map)</i> |  |
| <input type="checkbox"/>  | <b>Category A:</b> Known Historical Resource. <b>GO TO STEP 5.</b>   |
| <input type="checkbox"/>  | <b>Category B:</b> Potential Historical Resource (over 45 years of age). <b>GO TO STEP 4.</b>                  |
| <input checked="" type="checkbox"/>   | <b>Category C:</b> Not a Historical Resource or Not Age Eligible (under 45 years of age). <b>GO TO STEP 6.</b> |

**STEP 4: PROPOSED WORK CHECKLIST  
TO BE COMPLETED BY PROJECT PLANNER**

|  |  |
|--|--|
| <b>Check all that apply to the project.</b>                          |  |
| <input type="checkbox"/>   | 1. <b>Change of use and new construction.</b> Tenant improvements not included.  |
| <input type="checkbox"/>   | 2. <b>Regular maintenance or repair</b> to correct or repair deterioration, decay, or damage to building.  |
| <input type="checkbox"/>   | 3. <b>Window replacement</b> that meets the Department's <i>Window Replacement Standards</i> . Does not include storefront window alterations.   |
| <input type="checkbox"/>   | 4. <b>Garage work.</b> A new opening that meets the <i>Guidelines for Adding Garages and Curb Cuts</i> , and/or replacement of a garage door in an existing opening that meets the Residential Design Guidelines.  |
| <input type="checkbox"/>   | 5. <b>Deck, terrace construction, or fences</b> not visible from any immediately adjacent public right-of-way.   |
| <input type="checkbox"/>   | 6. <b>Mechanical equipment installation</b> that is not visible from any immediately adjacent public right-of-way.   |
| <input type="checkbox"/>   | 7. <b>Dormer installation</b> that meets the requirements for exemption from public notification under <i>Zoning Administrator Bulletin No. 3: Dormer Windows</i> .  |
| <input type="checkbox"/>   | 8. <b>Addition(s)</b> that are not visible from any immediately adjacent public right-of-way for 150 feet in each direction; does not extend vertically beyond the floor level of the top story of the structure or is only a single story in height; does not have a footprint that is more than 50% larger than that of the original building; and does not cause the removal of architectural significant roofing features. |
| <b>Note: Project Planner must check box below before proceeding.</b> |  |
| <input type="checkbox"/>   | Project is not listed. <b>GO TO STEP 5.</b>  |
| <input type="checkbox"/>   | Project <b>does not conform</b> to the scopes of work. <b>GO TO STEP 5.</b>  |
| <input type="checkbox"/>   | Project involves <b>four or more</b> work descriptions. <b>GO TO STEP 5.</b>   |
| <input type="checkbox"/>   | Project involves <b>less than four</b> work descriptions. <b>GO TO STEP 6.</b>   |

**STEP 5: ADVANCED HISTORICAL REVIEW  
TO BE COMPLETED BY PRESERVATION PLANNER**

|   |  |
|---|--|
| <b>Check all that apply to the project.</b> |  |
| <input type="checkbox"/>                    | 1. <b>Reclassification of property status.</b> <i>(Attach HRER Part I)</i><br><br><input type="checkbox"/> Reclassify to Category A<br>a. Per HRER<br>b. Other <i>(specify):</i><br><br><input type="checkbox"/> Reclassify to Category C<br><i>(No further historic review)</i> |
| <input type="checkbox"/>                    | 2. Project involves a <b>known historical resource (CEQA Category A)</b> as determined by Step 3 and conforms entirely to proposed work checklist in Step 4.   |
| <input type="checkbox"/>                    | 3. <b>Interior alterations to publicly accessible spaces that do not remove, alter, or obscure character defining features.</b>  |
| <input type="checkbox"/>                    | 4. <b>Window replacement</b> of original/historic windows that are not "in-kind" but are consistent with existing historic character.  |
| <input type="checkbox"/>                    | 5. <b>Façade/storefront alterations</b> that do not remove, alter, or obscure character-defining features.   |

|   |   |
|---|---|
| <input type="checkbox"/>  | 6. <b>Raising the building</b> in a manner that does not remove, alter, or obscure character-defining features.   |
| <input type="checkbox"/>  | 7. <b>Restoration</b> based upon documented evidence of a building's historic condition, such as historic photographs, plans, physical evidence, or similar buildings.  |
| <input type="checkbox"/>  | 8. <b>Work consistent</b> with the <i>Secretary of the Interior Standards for the Treatment of Historic Properties (Analysis required)</i> :                            |
| <input type="checkbox"/>  | 9. <b>Work compatible</b> with a historic district (Analysis required):   |
| <input type="checkbox"/>  | 10. <b>Work that would not materially impair</b> a historic resource (Attach HRER Part II).   |
| <b>Note: If ANY box in STEP 5 above is checked, a Preservation Planner MUST sign below.</b> |   |
| <input type="checkbox"/>  | <b>Project can proceed with exemption review.</b> The project has been reviewed by the Preservation Planner and can proceed with exemption review. <b>GO TO STEP 6.</b> |
| <b>Comments (optional):</b>   |   |
| <b>Preservation Planner Signature:</b>  |   |

**STEP 6: EXEMPTION DETERMINATION**  
**TO BE COMPLETED BY PROJECT PLANNER**

|                                     |  |                                |
|-------------------------------------|--|--------------------------------|
| <input checked="" type="checkbox"/> | <b>No further environmental review is required. The project is exempt under CEQA. There are no unusual circumstances that would result in a reasonable possibility of a significant effect.</b>  |                                |
|                                     | <b>Project Approval Action:</b><br>Planning Commission Hearing   | <b>Signature:</b><br>Don Lewis |
|                                     |  | 04/07/2023                     |
|                                     | <p>Supporting documents are available for review on the San Francisco Property Information Map, which can be accessed at <a href="https://sfplanninggis.org/pim/">https://sfplanninggis.org/pim/</a>. Individual files can be viewed by clicking on the Planning Applications link, clicking the "More Details" link under the project's environmental record number (ENV) and then clicking on the "Related Documents" link.</p> <p>Once signed and dated, this document constitutes an exemption pursuant to CEQA Guidelines and Chapter 31 of the SF Admin Code. Per Chapter 31, an appeal of an exemption determination to the Board of Supervisors shall be filed within 30 days after the Approval Action occurs at a noticed public hearing, or within 30 days after posting on the Planning Department's website a written decision or written notice of the Approval Action, if the approval is not made at a noticed public hearing.</p> |                                |

## **Full Project Description**

The project site is a 3,571-square-foot parcel in the Nob Hill neighborhood. The project site is occupied by an existing 30-foot-tall, three-story, single-family residence that is approximately 3,050 square feet in size with two off-street parking spaces. Immediately east of the project site is a lower playground area of the Betty Ann Ong Recreation Center that is approximately 6 to 20 feet lower than the subject property's rear yard. The change in elevation is supported by a retaining wall ranging between 6 to 20 feet that extends the length of the playground.

Utilizing the state density bonus program, the project sponsor proposes the demolition of the existing single-family residence and construction of a 40-foot-tall (50-foot-tall with penthouses), four-story over basement residential building containing 10 for-sale townhouses and one off-street van parking space. The proposed building would be approximately 12,312 square feet in size. Each of the 10 residential units would be 4 stories and would include a penthouse and roof deck. The proposed front unit along Washington Street would be approximately 2,070 square feet in size with three bedrooms while the nine rear units would be approximately 940 square feet with two bedrooms. The proposed roof decks would include approximately 7-foot-tall privacy walls and there would be a mini-split heat pump (condenser unit) on the roof of each unit.

Access to the proposed units would be from a 5-foot-wide pathway that would step up along the eastern edge of the property. The proposed pathway would include a bicycle ramp. Each unit would be equipped with an exterior hoist to facilitate the moving of furniture and other bulky items from the outside. The project would include 10 class 1 bicycle parking spaces and there would be 1 class 2 bicycle parking space on the sidewalk in front of project site. The existing 13-foot-wide curb cut would be reduced to a 10-foot-wide curb cut. The 6 existing trees on the subject property would be removed and the project would plant two trees in front of the project site. Trash and recycling for the proposed building would be located in the shared garage space located at the street level basement.

The proposed development would be supported on micropiles. The project would require approximately 130 cubic yards of excavation with a depth of approximately 12.5 feet below ground surface. Construction duration is approximately 15 months.

## **Step 2: Environmental Screening Comments**

**Geology and Soils:** A geotechnical report was prepared by Romig Engineers (dated November 2022), confirming that the proposed project is on a site subject to 25 percent slope and liquefaction. The project's structural drawings would be reviewed by the building department, where it would be determined if further geotechnical review and technical reports are required.

**Archeological Resources:** The department's staff archeologist conducted preliminary archeological review on January 23, 2023 and determined that no CEQA-significant archeological resources are expected within project-affected soils.

**Hazardous Materials:** The project is subject to the Maher Ordinance (Article 22A of the Health Code), which is administered by the Department of Public Health. The project sponsor enrolled in the Maher Program (Environmental Health Branch, Contaminated Sites Assessment and Mitigation Program Case No. 1905), and on January 10, 2023 the health department approved the site mitigation plan.

**Transportation:** The department's transportation staff reviewed the proposed project on 9/13/2022 and determined that additional transportation review is not required.

**Noise:** The project would use typical construction equipment that would be regulated by Article 29 of the Police Code (section 2907, Construction Equipment). No impact pile driving or nighttime construction is required. Construction vibration would not be anticipated to affect adjacent buildings. The proposed project would not generate sufficient vehicle trips to noticeably increase ambient noise levels, and the project's fixed noise sources, such as heating, ventilation, and air conditioning systems, would be subject to noise limits in Article 29 of the Police Code (section 2909, Noise Limits).

**Air Quality:** The proposed project's construction would be subject to the Dust Control Ordinance (Article 22B of the Health Code). The proposed land uses are below the Bay Area Air Quality Management District's construction and operational screening levels for requiring further quantitative criteria air pollutant analysis. The project site is located within an air pollutant exposure zone but would not add new stationary sources of toxic air contaminants. Pursuant to Director's Bulletin No. 2 for Type 3, Clean Construction projects, the project sponsor has committed to using Tier 4 engines on all diesel-fueled construction equipment. Thus, no significant construction or operational air quality impacts would occur.

**Water Quality:** The project's construction activities are required to comply with the Construction Site Runoff Ordinance (Public Works Code, article 2.4, section 146). The project sponsor would be required to implement Best Management Practices to prevent construction site runoff discharges into the combined or separate sewer systems. Stormwater and wastewater discharged from the project site during operations would flow to the City's combined sewer system and be treated to the standards in the City's National Pollution Discharge Elimination System permit.

**Natural Habitat:** The project site is within a developed urban area. The project site has no significant riparian corridors, estuaries, marshes, wetlands, or any other potential wildlife habitat that might contain endangered, rare or threatened species. Thus, the project site has no value as habitat for rare, threatened, or endangered species.

**Vehicle Parking and Aesthetics:** The proposed development qualifies as a transit-oriented infill project. Therefore, in accordance with CEQA section 21099, vehicular parking and aesthetics shall not be considered to have the potential to result in significant environmental effects.

**Shadow:** The proposed building height per the Planning Code does not exceed 40 feet; the rooftop penthouse areas do not exceed 20 percent of the total roof area. The project is not subject to Section 295 shadow analysis.

**Public Notice:** A "Notification of Project Receiving Environmental Review" was mailed on January 13 2023 to adjacent occupants and owners of buildings within 300 feet of the project site and to the Nob Hill neighborhood group list.

## STEP 7: MODIFICATION OF A CEQA EXEMPT PROJECT

### TO BE COMPLETED BY PROJECT PLANNER

In accordance with Chapter 31 of the San Francisco Administrative Code, when a California Environmental Quality Act (CEQA) exempt project changes after the Approval Action and requires a subsequent approval, the Environmental Review Officer (or his or her designee) must determine whether the proposed change constitutes a substantial modification of that project. This checklist shall be used to determine whether the proposed changes to the approved project would constitute a "substantial modification" and, therefore, be subject to additional environmental review pursuant to CEQA.

### MODIFIED PROJECT DESCRIPTION

Modified Project Description:

### DETERMINATION IF PROJECT CONSTITUTES SUBSTANTIAL MODIFICATION

Compared to the approved project, would the modified project:

|                          |  |
|--------------------------|--|
| <input type="checkbox"/> | Result in expansion of the building envelope, as defined in the Planning Code;   |
| <input type="checkbox"/> | Result in the change of use that would require public notice under Planning Code Sections 311 or 312;  |
| <input type="checkbox"/> | Result in demolition as defined under Planning Code Section 317 or 19005(f)?   |
| <input type="checkbox"/> | Is any information being presented that was not known and could not have been known at the time of the original determination, that shows the originally approved project may no longer qualify for the exemption? |

**If at least one of the above boxes is checked, further environmental review is required**

### DETERMINATION OF NO SUBSTANTIAL MODIFICATION

|                          |   |
|--------------------------|---|
| <input type="checkbox"/> | The proposed modification would not result in any of the above changes. |
|--------------------------|---|

If this box is checked, the proposed modifications are exempt under CEQA, in accordance with prior project approval and no additional environmental review is required. This determination shall be posted on the Planning Department website and office and mailed to the applicant, City approving entities, and anyone requesting written notice. In accordance with Chapter 31, Sec 31.08j of the San Francisco Administrative Code, an appeal of this determination can be filed to the Environmental Review Officer within 10 days of posting of this determination.

|                      |              |
|----------------------|--------------|
| <b>Planner Name:</b> | <b>Date:</b> |
|                      |              |

# EXHIBIT B



# NOTICE OF PUBLIC HEARING

Hearing Date: **THURSDAY, APRIL 20, 2023**  
Time: **Not before 1:00 PM**  
Location: **City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 400 and Remote -**  
<https://sfplanning.org/remotehearings>  
Case Type: **Conditional Use**  
Hearing Body: **Planning Commission**

## PROJECT INFORMATION

Project Address: **1151 Washington Street**  
Cross Streets: **Tyler & Mason Streets**  
Block / Lot No.: **0213 / 025**  
Zoning District(s): **RM-3 / 65-A**  
Area Plan: **N/A**  
Record No.: **2022-010833CUA**

## APPLICANT INFORMATION

Applicant: **Dana Manea**  
Company: **MACY Architecture**  
Address: **315 Linden Street**  
City, State: **San Francisco, CA**  
Telephone: **(415) 652-4535**  
Email: [danam@macyarchitecture.com](mailto:danam@macyarchitecture.com)

## PROJECT DESCRIPTION

The proposal is for a Conditional Use Authorization, pursuant to Planning Code Sections 209.2, 303 and 317 to permit the demolition of a single-family dwelling on the subject property and construct a four-story, 40-foot tall building containing 10 dwelling units (1 three-bedroom unit and 9 two-bedroom units), one off-street parking space and 10 Class One bicycle parking spaces, under the Individually Requested State Density Bonus Program pursuant to Planning Code Section 206.6 and California Government Code Section 65915 within the RM-3 (Residential, Mixed – Medium Density) Zoning District and a 65-A Height and Bulk District.

A Planning Commission approval at the public hearing would constitute the Approval Action for the project for the purposes of CEQA, pursuant to San Francisco Administrative Code Section 31.04(h).

## ADDITIONAL INFORMATION

**Architectural Plans:** To view the plans and related documents for the proposed project, visit <https://sfplanning.org/notices> and search the Project Address listed above. The plans will also be available one week prior to the hearing through the hearing agenda at: <https://sfplanning.org/hearings> or by request at the Planning Department office located at 49 South Van Ness Avenue, Suite 1400.

**For more information, please contact Planning Department staff:**

Planner: **Christopher May** Telephone: **(628) 652-7359** Email: [Christopher.May@sfgov.org](mailto:Christopher.May@sfgov.org)



# General Information About Procedures

## HEARING INFORMATION

You are receiving this notice because you are either a property owner or resident that is adjacent to the proposed project or are an interested party on record with the Planning Department. **You are not required to take any action. For more information regarding the proposed work, or to express concerns about the project, please contact the Applicant or Planner listed on this notice as soon as possible.** Additionally, you may wish to discuss the project with your neighbors and/or neighborhood association as they may already be aware of the project.

Persons who are unable to attend the public hearing may submit written comments regarding this application to the Planner listed on the front of this notice, Planning Department, 49 South Van Ness Avenue, Suite 1400, San Francisco, CA 94103, by 5:00 pm the day before the hearing. These comments will be made a part of the official public record and will be brought to the attention of the person or persons conducting the public hearing.

Comments that cannot be delivered by 5:00 pm the day before the hearing may be taken directly to the hearing at the location listed on the front of this notice. Comments received at 49 South Van Ness Avenue after the deadline will be placed in the project file, but may not be brought to the attention of the Planning Commission at the public hearing.

Members of the public are not required to provide personal identifying information when they communicate with the Commission or the Department. All written or oral communications, including submitted personal contact information, may be made available to the public for inspection and copying upon request and may appear on the Department's website or in other public documents.

## BUILDING PERMIT APPLICATION INFORMATION

Pursuant to Planning Code Section 311, the Building Permit Application for this proposal may also be subject to a 30-day notification of property owners and residents within 150-feet of the subject property. **This notice covers the Section 311 notification requirements, if required.**

## APPEAL INFORMATION

An appeal of the approval (or denial) of a **Conditional Use application** and/or building permit application associated with the Conditional Use application may be made to the **Board of Supervisors within 30 calendar days** after the date

of action by the Planning Commission pursuant to the provisions of Section 308.1(b). Appeals must be submitted in person at the Board's office at 1 Dr. Carlton B. Goodlett Place, Room 244. For further information about appeals to the Board of Supervisors, including current fees, contact the Clerk of the Board of Supervisors at (415) 554-5184.

An appeal of the approval (or denial) of a **building permit application** by the Planning Commission may be made to the **Board of Appeals within 15 calendar days** after the building permit is issued (or denied) by the Director of the Department of Building Inspection. Appeals must be submitted in person at the Board's office at 49 South Van Ness Avenue, Suite 1475. For further information about appeals to the Board of Appeals, including current fees, contact the Board of Appeals at (628) 652-1150.

Pursuant to California Government Code Section 65009, if you challenge, in court, the decision of an entitlement or permit, the issues raised shall be limited to those raised in the public hearing or in written correspondence delivered to the Planning Commission prior to, or at, the public hearing.

## ENVIRONMENTAL REVIEW

This project has undergone preliminary review pursuant to California Environmental Quality Act (CEQA). If, as part of this process, the Department's Environmental Review Officer has deemed this project to be exempt from further environmental review, an exemption determination will be prepared and can be obtained through the Exemption Map at [www.sfplanning.org](http://www.sfplanning.org) prior to the approval action. An appeal of the decision to **exempt the proposed project from CEQA may be made to the Board of Supervisors within 30 calendar days** after the project approval action identified on the determination. The procedures for filing an appeal of an exemption determination are available from the Clerk of the Board at City Hall, Room 244, or by calling (415) 554-5184.

Under CEQA, in a later court challenge, a litigant may be limited to raising only those issues previously raised at a hearing on the project or in written correspondence delivered to the Board of Supervisors, Planning Commission, Planning Department or other City board, commission or department at, or prior to, such hearing, or as part of the appeal hearing process on the CEQA decision.



Date: **03/31/2023**

The attached notice is provided under the Planning Code. It concerns property located at **1151 Washington Street (2022-010833CUA)**. A hearing may occur, a right to request review may expire or a development approval may become final by **04/20/2023**.

To obtain information about this notice in Spanish, Chinese, or Filipino, please call **628.652.7550**. Please be advised that the Planning Department will require at least one business day to respond to any call.

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附上的是三藩市城市規劃的法定通告。

此通告是與位於 **1151 Washington Street (2022-010833CUA)**

的建築計劃有關。如果在 **04/20/2023** 之前無人申請聽證會來檢討這一個建築計劃, 這計劃最終會被核准。

如果你需要用華語獲得關於這通告的細節, 請電 **628.652.7550** .

然後, 請按 “8” 及留言。城市規劃局將需要至少一個工作天回應。華語資料提供只是城市規劃局的一項服務, 此項服務不會提供額外的權利或延伸任何要求檢討的期限。

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El documento adjunto es requerido por el Código de Planeación (Planning Code) y es referente a la propiedad en la siguiente dirección: **1151 Washington Street (2022-010833CUA)**. Es posible que ocurra una audiencia pública, que el derecho a solicitar una revisión se venza, o que la aprobación final de proyecto se complete el: **04/20/2023**.

Para obtener más información sobre esta notificación en español, llame al siguiente teléfono **628.652.7550**. Por favor tome en cuenta que le contestaremos su llamada en un periodo de 24 horas.

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Ang nakalakip na paunawa ay ibinibigay alinsunod sa Planning Code. Tinatalakay nito ang propyedad na matatagpuan sa **1151 Washington Street (2022-010833CUA)**. Maaring may paglilitis na mangyayari, may mapapasong paghiling ng isang pagrerepaso (review), o ang na-aprobahang pagpapatayo ay malapit nang ipagtibay sa **04/20/2023**.

Para humiling ng impormasyon tungkol sa paunawang ito sa Tagalog, paki tawagan ang **628.652.7550**. Mangyaring tandaan na mangangailangan ang Planning Department ng di-kukulangin sa isang araw ng pangangalakal para makasagot sa anumang tawag.

# SAN FRANCISCO PLANNING COMMISSION



## Meeting Minutes

Commission Chambers, Room 400  
City Hall, 1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**Thursday, April 20, 2023**  
**1:00 p.m.**  
**Regular Meeting**

COMMISSIONERS PRESENT: Tanner, Moore, Braun, Diamond, Imperial, Koppel  
COMMISSIONERS ABSENT: Ruiz

THE MEETING WAS CALLED TO ORDER BY PRESIDENT TANNER AT 1:03 PM

STAFF IN ATTENDANCE: Aaron Starr, Mat Snyder, Lily Langlois, Christopher May, Lisa Gibson, Jeff Horn, Nick Foster, Trent Greenan, Liz Watty – Director of Current Planning, Rich Hillis – Planning Director, Laura Lynch – Acting Commission Secretary

### SPEAKER KEY:

- + indicates a speaker in support of an item;
- indicates a speaker in opposition to an item; and
- = indicates a neutral speaker or a speaker who did not indicate support or opposition.

### A. CONSIDERATION OF ITEMS PROPOSED FOR CONTINUANCE

The Commission will consider a request for continuance to a later date. The Commission may choose to continue the item to the date proposed below, to continue the item to another date, or to hear the item on this calendar.

1. 2019-000499DRM (J. HORN: (628) 652-7366)  
1 LA AVANZADA STREET – Sutro Tower, Lot 003 in Assessor's Block 2724 (District 7) – **Mandatory Discretionary Review**, pursuant to Planning Code Section 306.9, of Building Permit Application No. 2019.0108.9873, proposing the permanent removal of the exterior

cladding on the vertical elements of Sutro Tower. The subject property is located within a RH-1 (D) (Residential - House, One Family) Zoning District and 40-X Height and Bulk Districts.

*Preliminary Recommendation: Take Discretionary Review and Approve with Conditions*  
**(Proposed for Continuance to May 25, 2023)**

SPEAKERS: Rich Hillis – Response to comments and questions regarding the continuance  
 Taylor Jordan – Response to comments and questions regarding the continuance  
 ACTION: Continued to May 25, 2023  
 AYES: Braun, Diamond, Imperial, Koppel, Moore, Tanner  
 ABSENT : Ruiz

## B. CONSENT CALENDAR

All matters listed hereunder constitute a Consent Calendar, are considered to be routine by the Planning Commission, and may be acted upon by a single roll call vote of the Commission. There will be no separate discussion of these items unless a member of the Commission, the public, or staff so requests, in which event the matter shall be removed from the Consent Calendar and considered as a separate item at this or a future hearing.

2. [2023-001585PCA](#) (V. FLORES: (628) 652-7525)  
NON-CONFORMING PUBLIC PARKING LOTS IN THE MISSION STREET NCT DISTRICT [BF 230164] – **Planning Code Amendments** – An ordinance, sponsored by Supervisor Ronen, to amend the Planning Code to allow continued use of existing shared spaces in specified public parking lots in the Mission Street Neighborhood Commercial Transit (NCT) District without triggering abandonment of the underlying vehicular parking use; affirming the Planning Department’s determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

*Preliminary Recommendation: Approve*

SPEAKERS: None  
 ACTION: Approved  
 AYES: Braun, Diamond, Imperial, Koppel, Moore, Tanner  
 ABSENT : Ruiz  
 RESOLUTION: 21302

## C. COMMISSION MATTERS

3. Land Acknowledgement

### Commissioner Braun:

The Planning Commission acknowledges that we are on the unceded ancestral homeland of the Ramaytush Ohlone, who are the original inhabitants of the San Francisco Peninsula. As the indigenous stewards of this land and in accordance with their traditions, the Ramaytush Ohlone have never ceded, lost, nor forgotten their responsibilities as the

caretakers of this place, as well as for all peoples who reside in their traditional territory. As guests, we recognize that we benefit from living and working on their traditional homeland. We wish to pay our respects by acknowledging the Ancestors, Elders, and Relatives of the Ramaytush Ohlone community and by affirming their sovereign rights as First Peoples.

4. Consideration of Adoption:

- [Draft Minutes for March 30, 2023](#)

SPEAKERS: None

ACTION: Adopted

AYES: Braun, Diamond, Imperial, Koppel, Moore, Tanner

ABSENT : Ruiz

5. Commission Comments/Questions

**President Tanner:**

Great, thank you. I just want to share Commissioners, I was able to talk with Commissioner Ruiz a little bit over the weekend and saw a picture of her new daughter, Violet. Mom and baby are both doing very well. So, if she happens to be watching, we're wishing you the best and we do miss you, but I hope you are having a good time as a new mom. And then, of course tonight is the Warriors' game so we want to send some good wishes for a win. First win of this playoff for them here at home. So, looking forward to that.

**Commissioner Moore:**

Well, I'll chime in go Warriors. But I actually wanted to ask Director Hillis for some wisdom here. Wisdom. I am reading with increased frequency about projects becoming more and more questionable. The latest I've heard was the disagreement between partners at Treasure Island. And in light of everything what we're doing, I am very disturbed about that. That is obviously the closing of One Oak as we know it and the list goes on. And I'm kind of wondering where that leaves us. Is there anybody who is carefully assessing that this is happening and in what kind of predicament it puts us in? Because these are significant numbers in our Housing Element and they seriously tracked on our ability to meet our goals since we have diligently, and you and I know that best, worked on this project for almost over a decade. What do we do? Who's listening to us and gives us a break?

**Rich Hillis, Planning Director:**

It's a great question and we are working on it with other agencies including OEWD, the board, the Controllers Office. I was going to mention in my Director's report that the TAC, which is the Technical Advisory Committee, which is not the greatest sounding name of a committee, but they've got an important role to look at project feasibility and look at the inclusionary rates and other fees we charge to see why projects may not be moving forward as, you know, construction costs, can fees play a role, do we provide additional time on entitlements? And so, they've made a recommendation to the Board of Supervisors which will ultimately become legislation and come to you all. But I think we are grappling with them and other agencies on just this question. So, you will have a chance to weigh in on that as well as, you know, the Mayor put forward changes to our

processes to make it easier to entitle projects. I know this doesn't help projects that are already entitled but the TAC changes do because they are looking to make changes to existing entitled projects. On DA projects, again, the mayor put forward a legislation that allows project sponsors that have significant infrastructure requirements to tap in to tax increment financing to be able to meet those obligations which could help some of these larger DA projects. So, it's a huge issue and definitely on our radars with other agencies in the city to try to get those projects moving. One Oak for example, their entitlement stay, right, I mean just because the project sponsor were, is not the one who's necessarily executing that project. Those entitlements still exist. The bank who took over that project will look for another entity to carry forward on those entitlements. And hopefully some of these changes that the TAC is recommending will see them subsume through an ordinance and make changes that will help those projects.

**Commissioner Moore:**

So, all very large number projects and that's why they are really just staking out.

**Rich Hillis, Planning Director:**

Yup.

**Commissioner Moore:**

And these are south sites, not to mention [inaudible] which is even around longer --

**Rich Hillis, Planning Director:**

Park Merced.

**Commissioner Moore:**

And we are basically holding the bag which promises which have been made and can't be delivered. Thank you.

**Commissioner Imperial:**

Actually that was also something that I want to bring up is about the news about One Oak that, you know, it came before us and we also asked, scrutinized, in a way asked the feasibility of the development. But I guess my way to look into it as well as part of the Housing Element because part of the policy goals that we put in of course is prioritizing the affordable housing. And whether, you know, this site or other sites that may not be feasible by the private market perhaps that can be identified for land banking or affordable housing. Again, it calls for funding as well. So, that is something also to think about for us, or for the city as these projects are becoming infeasible. So, that would be my comment on that. Thank you.

**President Tanner:**

Yeah. Thank you for that, Commissioner Imperial. Certainly I think there is the group that the mayor put together that is looking how to meet our affordable housing goals and maybe that can be, I know it's part of our Housing Element so certainly a strategy to think about how to possibly acquire those, those sites.

**Commissioner Diamond:**

Thank you. Just to follow on to Commissioner Moore's question. So we are completely reliant on the private market to produce the housing and as a Commission, we approve tens of thousands of units and it doesn't do much good. They just sit on paper. And we're told these projects are infeasible. But I'm wondering if it might be helpful to have --

**Laura Lynch, Acting Commission Secretary:**

I hate to interrupt. I just want to make sure that we're not having a discussion about something that's not on today's agenda so,

**Commissioner Diamond:**

We're not.

**Laura Lynch, Acting Commission Secretary:**

I just want to advise you all of that.

**President Tanner:**

Thank you.

**Commissioner Diamond:**

I'm wondering if it might be possible to put together an information session with the, a number of the private housing providers in count. Not about their particular projects but the factors that go into their proformas. Obviously, our fees are one element of that but the construction costs, both supplies and labor, and the trend on rents and sales prices so that we're all on a level playing field about how the providers of our housing regard feasibility. You know there -- most of these developers, you know, were not the financiers of their projects. They rely on pension funds or private equity money. I just think it might be helpful to all of us to understand the factors that go into their decision making instead of just having to live with the result which we do. I feel like we could make more informed decision making if we were sensitive to how they look at these issues. So anyways, it's a suggestion and I wonder Director Hillis if you would --

**Rich Hillis, Planning Director:**

Sure. In the TAC, to have information, I mean, they were looking at kind of generic projects but I mean your point about hearing from developers who are actually in the midst of trying to get projects financed and looking up where rents are going and our construction costs and fees are a good one. So, yeah.

**President Tanner:**

When is the TAC's report going to come to us when that legislation. Is it still a while...

**Rich Hillis, Planning Director:**

The legislation, I mean we can have a hearing on recommendations if you want it in advance of the ordinance.

**President Tanner:**

Yeah.

**Rich Hillis, Planning Director:**

The recommendations, I mean the TAC had their final meeting yesterday and so they have made their recommendations.

**President Tanner:**

Yeah. I think that will be a good opportunity to have this discussion. Certainly bring that forward and have this discussion there.

**Rich Hillis, Planning Director:**

Sure.

**President Tanner:**

The last thing I want to make Commissioners if, were you done, Commissioner Diamond? Is around Director Hillis and I attended – was it just last week, the Reparations Task Force? So, you may report on that. But one of the outcomes of that I would like to see is us host. I would like to talk about having discussion here of their draft recommendation on which I believe they were working to finalize this by June of this year, is when there're, they are set to finalized. So, whether it's before or after or around when they finalized, to have a discussion here at this Commission about the recommendations and kind of integrating that into our efforts to pursue racial and social equity and taking a look at that. And of course we know that we've left kind of a trail of breadcrumbs in our Housing Element towards their recommendations and so I think it's good to bring it back here when they actually have made their final recommendations.

**Laura Lynch, Acting Commission Secretary:**

Thank you. I did want to bring to everyone's attention that we received a request to adjourn today's hearing in memoriam of Marvis Philips who passed away recently. Marvis was an active community member and specifically within District 6.

**D. DEPARTMENT MATTERS****6. Director's Announcements****Rich Hillis, Planning Director:**

I think we've covered everything. Just the one other point which is Housing Element implementation related as we had a meeting last night about the site permit process. It was a public meeting to get input from customers, users, of our permitting process. We hosted it with DBI. Ms. Watty and Mr. Christiansen kind of led the charge in answering questions and talking about potential reforms to our site permit process. So well received. We got good feedback and you're going to hear the [inaudible] in our joint meeting with DBI. If I can also add, if we can also adjourn today's meeting in honor of Eleanor Johns who passed away recently too. She was Mayor Brown's Chief of Staff for decades, both in Sacramento and here at City Hall, and also was the wife of Richard Johns who is a Commissioner on the Historic Preservation Commission.

**Commissioner Diamond:**

And also chair at the Airport Land Use Commission.



**Rich Hillis, Planning Director:**

Yeah.

**President Tanner:**

Certainly, thank you. And maybe lastly, I don't know if you have any comments Director on the Mayor's legislation that was introduced also earlier this week or if Mr. Starr may be addressing that in his comments.

**Rich Hillis, Planning Director:**

Yeah. And so again it feeds off the Housing Element. Many of the recommendations we had are the requirements in the Housing Element, were put in the legislation that the Mayor has to improve the process, it reduces hearings and CUs and other things we'll get into when the legislation is before us. We'll also hear a little bit about it next week. We've got more of a broader overview on Housing Element implementation so we'll touch on it then but we'll also talk more about it and get your recommendations in a month or so.

**President Tanner:**

Great. Thank you.

7. Review of Past Events at the Board of Supervisors, Board of Appeals and Historic Preservation Commission

**Aaron Starr, Manager of Legislative Affairs:**

Good afternoon, Commissioners, Aaron Starr Manager of legislative affairs.

It's been a minute. I hope you enjoyed your break, and happy 420 to all who celebrate. It's actually been an auspicious week; this past Saturday was 415 Day or the day SF was incorporated in 1850. Tuesday was the anniversary of the 1906 earthquake and fire, and yesterday was Bicycle Day. For those that don't know, Bicycle Day commemorates the first recorded LSD "trip" by Swiss scientist Albert Hofmann in 1943. Apparently, Hoffman rode his bike home after ingesting ¼ mg of LSD, hence Bicycle Day. Yesterday was also my husband's 70<sup>th</sup> birthday. A self-described old hippie who unfortunately likes the Grateful Dead, it's fitting he shares a birthday with first LSD trip. So, a shout out to my wonderful husband, Bill Weber, happy birthday. Moving on...

**Land Use Committee**

**[221105](#)** Planning Code - HOME-SF. Sponsor: Peskin. Staff: V. Flores.

**[221021](#)** Planning, Administrative Codes - HOME-SF. Sponsors: Dorsey; Peskin. Staff: V. Flores.

Both HOME SF ordinances were continued for one week.

**[220340](#)** Planning Code - Neighborhood Commercial and Mixed-Use Zoning Districts. Sponsor: Dorsey. Staff: Starr.

Also, this week, the Committee considered the long-stalled Article 8 Reorganization ordinance, also known as Neighborhood Commercial and Mixed-Use Zoning Districts ordinance, sponsored by Supervisor Dorsey. The Commission may recall this ordinance has been continued several times. This commission heard the ordinance on November 17<sup>th</sup> of 2022, and voted to recommend approval with modifications. Those modifications included:

1. Exempt Childcare Facilities and Residential Care Facilities from FAR limits in the South Park, RED and RED-MX zoning districts.
2. Remove the language referencing adequate lighting and the Planning Department's lighting guidelines from the definition of Walk-Up Facility.
3. Principally permit Nighttime Entertainment on properties fronting Folsom Street between 7th Street and Division Street and properties fronting 11th Street between Howard Street and Division Street. and
4. Encourage the Entertainment Commission to evaluate how best to mitigate impacts in RED and RED-MX districts from noise and other quality of life impacts related to Nighttime Entertainment uses.

Supervisor Dorsey did add those amendments at a previous committee hearing. Supervisor Peskin also made some minor amendments intended to maintain existing controls for adult businesses at a past hearing.

This week, with only a short presentation from Supervisor Dorsey's aide Madison Tam, the Committee voted unanimously to move the item forward with a positive recommendation.

**220971 Planning Code - Gates, Railings, and Grillwork Exceptions for Cannabis Retail Uses and Existing Non-Residential Uses. Sponsor: Safai. Staff: Merlone. Item 5**

Next on the docket was Supervisor Safai's ordinance that would exempt certain existing gates, railings, and grillwork from transparency requirements; create an amnesty program for existing non-conforming gates; and exempt Cannabis Retail uses from transparency requirements for gates. Commissioners, you heard this item on December 8<sup>th</sup> of last year and voted to approve the ordinance with modifications. The Commission's proposed modifications were:

1. Require artwork on all solid security gates.
2. Allow 3 years for businesses with a non-compliant security gate to apply for a permit to legalize the gate. Businesses that failed to legalize would then be subject to the existing security gate requirements.
3. Clarify that the amnesty program does not exempt historic buildings from other required review procedures; and
4. Instruct the Commission to adopt objective design standards for gate mechanisms.

At the Land Use Committee hearing two weeks ago, Supervisor Safai introduced a host of amendments, including:

1. Change the transparency requirement for ALL security gates in the City from 75% open, to at least 20% open;
2. Require all new gates to have a "viewing window" at least 10 inches in height for fire safety;
3. Require Cannabis businesses who propose to install a new gate that is less than 20% open to also install a mural on that gate;

4. Require businesses with existing, non-conforming gates to file a building permit within 3 years to legalize the gate. Those that do not meet that deadline would be subject to fines; however, the business owner could still legalize their non-conforming gate, and;
5. Remove the provision requiring gate mechanisms to be laid flush with or recessed behind storefronts but require both the mechanisms and gates to comply with any adopted objective design standards.

After some brief discussion the Committee voted unanimously to adopt Sup. Safai's amendments before continuing the item for two weeks. This week the item was passed out of committee with little to no discussion.

**230192 Planning Code - Landmark Designation Amendment - 429-431 Castro Street (the Castro Theatre). Sponsor: Mandelman. Staff: Westhoff.**

Also a few weeks ago, the Land Use Committee considered amendments to the Castro Theatre's Landmark designation. While the Castro theater is already landmark, this new ordinance would revise the landmark designation to include portions of the interior. The HPC heard this item on February 1<sup>st</sup>, 2023 and voted to approve the amendments as proposed by staff.

At the hearing there were numerous members of the public many who urged the Committee to landmark the seat.

Supervisor Mandelman urged the Committee members to continue the item two weeks and in the meantime instruct the City Attorney to draft amendment language that would include fixed theatrical seating as part of the Landmark designation. It was the Supervisor's hope that in the intervening two weeks the sponsor, APE, would work with the community to address their concerns regarding preserving the integrity of the space as a movie palace. If that happened, the amendment would no longer be necessary.

After hearing public comment, the Committee agreed to continue the item two weeks, and urged APE to work with the community in the interim.

This week the committee took the issue up again. During public comment, which took a few hours, both sides of the argument were well represented. After the public comment period, the committee voted to include fixed raked seating as a character defining feature and forwarded the item to the full board on a 2-1 vote. Supervisor Melgar voted against the motion.

### Full Board

**220340 Planning Code - Neighborhood Commercial and Mixed Use Zoning Districts. Sponsor: Dorsey. Staff: Starr. Passed First Read**

**220971 Planning Code - Gates, Railings, and Grillwork Exceptions for Cannabis Retail Uses and Existing Non-Residential Uses. Sponsor: Safai. Staff: Merlone. Passed First Read**

**230285 Hearing - Appeal of Conditional Use Authorization Approval - 800 Taraval Street.  
Staff: Alexander.**

Also, this week, the Board considered the Conditional Use appeal for the Cannabis Retail use proposed at 800 Taraval St, doing business as The Green Mirror. The new use would occupy a mezzanine space above the Italian Restaurant named The Gold Mirror. This commission heard the item on February 2, 2023, and voted unanimously to approve the project.

The appellant had three reasons for filing the appeal. Those were 1) Misrepresentation and lack of notice of on-site consumption, 2) Misrepresentation of the restaurant as vacant storefront, and 3) Incompatibility with neighborhood/Failure to alter the neighborhood for the better.

Public comment in favor of the appeal was lengthy, and the issues brought up were like what this commission heard during its hearing on the matter. There were no commentators in support of the project.

After Staff's presentation, Supervisor Melgar asked staff questions about the approval, specifically why on-site consumption was called out as an accessory use for the business when the applicant had no intention of doing on-site consumption, and why the space was described as vacant when it had been used as a restaurant.

Staff response was that the accessory use is allowed by the Planning Code, but that calling it out in the Resolution wasn't necessary. Further, we would be reevaluating how we draft these approval motions in the future. Regarding the space, it was vacant when the application was submitted due to COVID, but also staff visited the space more recently and it was not being used by the restaurant at the time. Melgar also expressed sympathy for the speakers in favor of the appeal, noting that our process can be overly bureaucratic, and can make people feel as if they are not being heard.

Supervisor Stefani also spoke, stating her support for the appeal and concern that the Cannabis Retail use wasn't appropriate at this location given that several surrounding uses catered to children. Supervisor Edgardio also spoke in favor of the appellants, noting that the neighborhood was clearly against this cannabis retail location.

Supervisor Melgar then made a motion to overturn the Commission's action, and amend the approval to include additional conditions, which included:

Maintaining all of the Commission's conditions of approval, except hours of operation, which she amended to be from 9 am to 9 pm, instead of 10 pm; no onsite consumption of edibles or smoking and vaping; deliveries can only take place between 9 am and 4:30 pm; and additional good neighbor policies related to community engagement, parking and loitering.

When put to a vote the motion to overturn and amend the Commission's approval passed on a 9-2 vote, with Supervisors Stefani and Engardio voting against the motion.

**Laura Lynch, Acting Commission Secretary:**

The Historic Preservation Commission did meet yesterday. The recommended approval of three legacy business applications. Pirro's Pizzeria at 2244 Taraval Street, Ng Hing Kee at 648 Jackson Street and Maitri Compassionate Care at 401 Duboce Avenue. They also Recommended Landmark Designation to the Board of Supervisors for The Church For The Fellowship Of All Peoples (2041 Larkin Street). Lastly, they Adopted a Recommendation for a legislative item - Commercial To Residential Adaptive Reuse And Downtown Economic Revitalization that you will be hearing in a couple of weeks. No report from the Board of Appeals

**E. GENERAL PUBLIC COMMENT**

At this time, members of the public may address the Commission on items of interest to the public that are within the subject matter jurisdiction of the Commission except agenda items. With respect to agenda items, your opportunity to address the Commission will be afforded when the item is reached in the meeting. Each member of the public may address the Commission for up to three minutes. When the number of speakers exceed the 15-minute limit, General Public Comment may be moved to the end of the Agenda.

**SPEAKERS:** Georgia Schuttish – April 15-16<sup>th</sup> WSJ article on housing supply (“How many Homes the U.S. Really Needs”) raises questions that should also be raised regarding RHNA numbers forced on San Francisco during implementation of Housing Element. Other important issue raised in article is affordability. The housing crisis in San Francisco is a crisis of affordable housing, particularly for people/families at the lower AMIs. Other issue raised in article is not only building new housing, but preserving existing housing. Unfortunately Section 317 TTD adjusting values to preserve housing never happened, despite Commission empowered with legislative authority per Section 317 (b) (2) (D). 2014 Housing Element never fully implemented. Existing housing is “cheaper” per article. This is common sense. Preserving housing: Codify the Residential Flat Policy preserving the existing configuration of Flats. Preserve UDUs. Additionally: SF Entitlements are for sale. Housing is unoccupied, tenant buy-outs, more housing commodification. See examples submitted with article.

**F. REGULAR CALENDAR**

The Commission Hearing Procedures provide for presentations by staff; when applicable, followed by a presentation of the project sponsor team; followed by public comment. Please be advised that the project sponsor team includes: the sponsor(s) or their designee, lawyers, architects, engineers, expeditors, and/or other advisors.

- 8a. [2019-023037GPA](#) (M. SNYDER: (628) 652-7460)  
WATERFRONT PLAN RELATED GENERAL PLAN AMENDMENTS – An ordinance, initiated by the Planning Commission, to amend the Recreation and Open Space Element, the Northeastern Waterfront Area Plan and the Central Waterfront Area Plan. The Port of San Francisco's recently updated Waterfront Plan updates the 1997 Waterfront Land Use Plan, which sets long-term goals and policies to guide the use, management, and improvement of 7.5 miles of properties owned and managed by the Port of San Francisco. The General

Plan Amendments would update the two area plans and element to assure they are reflective of the same policy and developments now incorporated into the updated Waterfront Plan along with other City policy actions and developments that have occurred since they were last updated; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 340.

*Preliminary Recommendation: Approve*

SPEAKERS: = Mat Snyder – Staff presentation  
 ACTION: Approved  
 AYES: Braun, Diamond, Imperial, Koppel, Moore, Tanner  
 ABSENT : Ruiz  
 RESOLUTION: 21303

- 8b. [2019-023037PCA](#) (M. SNYDER: (628) 652-7460)  
WATERFRONT PLAN RELATED PLANNING CODE AMENDMENTS – An ordinance, initiated by the Planning Commission, to amend Planning Code Section 240, the Waterfront Special Use District, by (1) creating a new Special Use District (SUD), Waterfront Special Use District No. 4 for the properties owned and managed by the Port of San Francisco generally south of the Mission Rock Special Use District and subjecting development projects on such properties to the review procedures of the Waterfront Design Advisory Committee (WDAC); (2) making minor changes to the composition of the WDAC; (3) making minor administrative procedural changes to the WDAC; and (4) removing the conditional use requirement for uses not screened from view from adjacent streets or other public areas; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

*Preliminary Recommendation: Approve*

SPEAKERS: Same as item 8a.  
 ACTION: Approved  
 AYES: Braun, Diamond, Imperial, Koppel, Moore, Tanner  
 ABSENT : Ruiz  
 RESOLUTION: 21304

- 8c. [2019-023037MAP](#) (M. SNYDER: (628) 652-7460)  
WATERFRONT PLAN RELATED ZONING MAP AMENDMENTS – An ordinance, initiated by the Planning Commission, to amend (1) Zoning Map ZN-08 by rezoning Lot 031 in Assessor's Block 3941 from P (Public) to M-1 (Light Industrial); and (2) Zoning Maps SU-08 and SU-09 by rezoning the following parcel so that they are included in the newly created Waterfront Special Use District No. 4: Block 9900/ Lots 050, 050H, 052, 054, 064, 064H, 068, 070, and 098; Block 3941/ Lots 021, 028, 031, and 041; Block 4111/Lot 008, Block 4301/Lot 001, Block 4302/Lot 001, Block 4303/Lot 001, Block 4304/Lot 002, Block 4307/Lot 006, Block 4308/Lots 005 and 007, Block 4379/Lot 001, Block 4380/Lot 010, Block 4502A/Lot 002, Block 4827/Lots 001 and 002 and Block 4845/Lot 002; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section

101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

*Preliminary Recommendation: Approve*

SPEAKERS: Same as item 8a.  
 ACTION: Approved  
 AYES: Braun, Diamond, Imperial, Koppel, Moore, Tanner  
 ABSENT : Ruiz  
 RESOLUTION: 21305

9. (L. LANGLOIS: (628) 652-7472)

UNION SQUARE ALLIANCE STRATEGIC PLAN – **Informational Presentation** – On February 23, 2023, the Planning Department and Office of Economic and Workforce Development presented coordinated City efforts to address Downtown revitalization. The presentation included an overview of the [City's Roadmap to Downtown San Francisco's Future](#) and the Planning Department's [Future of Downtown](#) effort focused on four themes; Economic Diversification and The Future of Office, Expanding Downtown Housing, Public Life and Retail, and Union Square. At this hearing, The Union Square Alliance will present an overview of its new [Strategic Plan](#) and share their vision for Union Square and how it fits into the future of Downtown.

*Preliminary Recommendation: None - Informational*

SPEAKERS: = Lily Langlois – Staff report  
 + Marissa Rodriguez – Union Square Alliance presentation  
 + Ken Rich - Union Square Alliance presentation  
 = Rich Hillis – Response to comments and questions  
 ACTION: Reviewed and Commented

10. [2017-014833ENV](#) (J. DELUMO: (628) 652-7568)

469 STEVENSON STREET PROJECT – Certification of the **Final Environmental Impact Report** (EIR). The project site is located on the block bounded by Stevenson Street to the north, Jessie Street to the south, 6<sup>th</sup> Street to the west, and 5<sup>th</sup> Street to the east on lot 045 of Assessor's block 3704 (District 6). The proposed project would demolish the existing parking lot and construct a new 27-story mixed-use building approximately 274 feet tall with three below-grade parking levels providing approximately 178 parking spaces and freight/service loading spaces. The approximately 535,000-gross-square-foot building would consist of approximately 495 dwelling units, 4,000 square feet of commercial retail use on the ground floor, and 30,000 square feet of private and common open space. The proposed project would also provide approximately 200 Class 1 bicycle spaces, 27 Class 2 bicycle parking spaces, and passenger loading zones on Stevenson Street and Jessie Street. The proposed project would use the Individually Requested State Density Bonus Program and provide affordable housing units onsite. The Governor's Office of Planning and Research certified the project as an environmental leadership development project under the Jobs and Economic Improvement through Environmental Leadership Act of 2021. The Project Site is located within a C-3-G (Downtown General Commercial) Zoning District, Downtown Plan Area, and 160-F Height and Bulk District.

**Note: The public hearing on the partially recirculated draft EIR is closed. The public comment period for the partially recirculated draft EIR ended on December 19, 2022.**

**Public comment will be received when the item is called during the hearing. However, comments submitted will not be included in the Final EIR.**

*Preliminary Recommendation: Certify*

SPEAKERS: = Jenny Delumo – Staff presentation  
 = Nick Foster – Staff presentation  
 + Lou Vasquez – Project sponsor presentation  
 + Strachan Forgan – Project sponsor presentation  
 + Donna Horwitz – Advantages and benefits of having more housing  
 + Brett Young – Allows the neighborhood to develop  
 + Eric Kaplan – Housing crisis, we don't need a parking lot  
 + Pat Steeler – Looking forward to construction  
 - Jerry Dratler – Is it a viable project?  
 + Corey Smith – San Francisco can take a step forward  
 + James Steichen – Supports the project  
 + Richard Perino – It will provide a lot of affordable housing including to seniors  
 + Ryan Patterson – Code compliant project  
 + Jane Natoli – Continue to do the right thing  
 + Joanna Gubman – Project doesn't harm the environment  
 + Fujima Dasani – Help with the housing crisis in the city  
 + Kent Rikani – People are hyper local  
 + Dave Alexander – Transit oriented  
 + Christopher Roach – In a transit oriented location  
 + Jim Chappell – Pass entitlements today  
 + Annette Billingsley – Will add vitality to the area  
 + Nathan Williams – Embarrassing it is taking this long

ACTION: Certified EIR  
 AYES: Braun, Diamond, Imperial, Koppel, Moore, Tanner  
 ABSENT : Ruiz  
 MOTION: 21306

- 11a. [2017-014833ENV](#) (N. FOSTER: (628) 652-7330)  
469 STEVENSON STREET – south side between 5<sup>th</sup> and 6<sup>th</sup> Streets; Lot 045 in Assessor's Block 3704 (District 6) – Request for **Adoption of Findings** and a Statement of Overriding Considerations pursuant to the California Environmental Quality Act (CEQA). The proposed project ("Project") includes construction of a new 27-story residential building reaching a finished roof height of 274-feet tall (290-feet including inclusive of rooftop mechanical equipment, or 296-feet inclusive of the elevator overrun), with a total Gross Floor Area of approximately 426,000 square feet devoted to residential uses, including approximately 4,000 square feet of ground-floor retail. The Project includes a total of 495 dwelling units, with a mix of 192 studio units, 149 one-bedroom units, 96 two-bedroom units, 50 three-bedroom units, and eight five-bedroom units totaling, with 73 dwelling units provided as on-site affordable dwelling units. The Project would provide 166 off-street vehicle parking spaces, up to 12 car-share spaces, 200 Class 1 and 27 Class 2 bicycle parking spaces, and three freight loading spaces within a below-grade garage. The Project is utilizing the Individually Requested State Density Bonus Program to achieve a 42.5% density bonus thereby maximizing residential density on the Site pursuant to California Government Code Sections 65915-95918, as revised under Assembly Bill No. 2345 (AB 2345). The Project



Site is located within a C-3-G Zoning District, Downtown Plan Area, and 160-F Height and Bulk District.

*Preliminary Recommendation: Adopt Findings*

SPEAKERS: Same as item 10.  
 ACTION: Adopted CEQA Findings  
 AYES: Braun, Diamond, Koppel, Tanner  
 NAYS : Imperial, Moore  
 ABSENT : Ruiz  
 MOTION: 21307

- 11b. [2017-014833DNX](#) (N. FOSTER: (628) 652-7330)  
469 STEVENSON STREET – south side between 5<sup>th</sup> and 6<sup>th</sup> Streets; Lot 045 in Assessor's Block 3704 (District 6) – Request for **Downtown Project Authorization** to permit a project greater than 50,000 square feet of floor area within a C-3 Zoning District (Sections 210.2 and 309). The proposed project ("Project") is utilizing the Individually Requested State Density Bonus Program pursuant to California Government Code Sections 65915-95918, as revised under Assembly Bill No. 2345 (AB 2345) to achieve a 42.5% density bonus. The Project requests six (6) waivers from: Maximum Floor Area Ratio (Section 123); Rear Yard (Section 134); Common Useable Open Space (Section 135); Dwelling Unit Exposure (Section 140); Ground-Level Wind Current (Section 148); Bulk (Section 270); and one (1) incentive from Height (Section 250). The Project includes construction of a new 27-story residential building reaching a finished roof height of 274-feet tall (290-feet including inclusive of rooftop mechanical equipment, or 296-feet inclusive of the elevator overrun), with a total Gross Floor Area of approximately 426,000 square feet devoted to residential uses, including approximately 4,000 square feet of ground-floor retail. The Project includes a total of 495 dwelling units, with a mix of 192 studio units, 149 one-bedroom units, 96 two-bedroom units, 50 three-bedroom units, and eight five-bedroom units totaling, with 73 dwelling units provided as on-site affordable dwelling units. The Project would provide 166 off-street vehicle parking spaces, up to 12 car-share spaces, 200 Class 1 and 27 Class 2 bicycle parking spaces, and three freight loading spaces within a below-grade garage. The Project Site is located within a C-3-G Zoning District, the Downtown Plan Area, and 160-F Height and Bulk District.

*Preliminary Recommendation: Approve with Conditions*

SPEAKERS: Same as item 10.  
 ACTION: Approved with Conditions  
 AYES: Braun, Diamond, Koppel, Tanner  
 NAYS : Imperial, Moore  
 ABSENT : Ruiz  
 MOTION: 21308

- 11c. [2017-014833CUA](#) (N. FOSTER: (628) 652-7330)  
469 STEVENSON STREET – south side between 5<sup>th</sup> and 6<sup>th</sup> Streets; Lot 045 in Assessor's Block 3704 (District 6) – Request for **Conditional Use Authorization** to permit additional square footage above that permitted by the base floor area ratio limits for the construction of on-site, affordable dwelling units (Sections 124(f) and 303). The proposed project ("Project") includes construction of a new 27-story residential building reaching a finished roof height of 274-feet tall (290-feet including inclusive of rooftop mechanical equipment,

or 296-feet inclusive of the elevator overrun), with a total Gross Floor Area of approximately 426,000 square feet devoted to residential uses, including approximately 4,000 square feet of ground-floor retail. The Project includes a total of 495 dwelling units, with a mix of 192 studio units, 149 one-bedroom units, 96 two-bedroom units, 50 three-bedroom units, and eight five-bedroom units totaling, with 73 dwelling units provided as on-site affordable dwelling units. The Project would provide 166 off-street vehicle parking spaces, up to 12 car-share spaces, 200 Class 1 and 27 Class 2 bicycle parking spaces, and three freight loading spaces within a below-grade garage. The Project is utilizing the Individually Requested State Density Bonus Program to achieve a 42.5% density bonus thereby maximizing residential density on the Site pursuant to California Government Code Sections 65915-95918, as revised under Assembly Bill No. 2345 (AB 2345). The Project Site is located within a C-3-G Zoning District, Downtown Plan Area, and 160-F Height and Bulk District.

*Preliminary Recommendation: Approve with Conditions*

SPEAKERS: Same as item 10.  
 ACTION: Approved with Conditions  
 AYES: Braun, Diamond, Koppel, Tanner  
 NAYS : Imperial, Moore  
 ABSENT : Ruiz  
 MOTION: 21309

12. [2022-010833CUA](#) (C. MAY: (628) 652-7359)  
1151 WASHINGTON STREET – south side between Taylor and Mason Streets; Lot 025 in Assessor's Block 0213 (District 3) – Request for **Conditional Use Authorization** pursuant to Planning Code Sections 206.6, 209.2, 303 and 317 and Adoption of Findings related to State Density Bonus pursuant to Planning Code Section 206.6, to allow the demolition of a single-family dwelling on the subject property and the construction of a four-story, 40-foot tall building containing 10 dwelling units (one three-bedroom unit and nine two-bedroom units), one unbundled off-street parking space and 10 Class 1 bicycle parking spaces, within a RM-3 Zoning District and 65-A Height and Bulk District. The project seeks waivers from Development Standards including Front Setback (Section 132), Rear Yard (Section 134), Dwelling Unit Exposure (Section 140), and Bicycle Parking (Section 155), pursuant to State Density Bonus Law. The Planning Department found that the project is exempt from the California Environmental Quality Act (CEQA). The Commission's action constitutes the Approval Action for the project for the purposes of CEQA, pursuant to San Francisco Administrative Code section [31.04\(h\)](#).

*Preliminary Recommendation: Approve with Conditions*

SPEAKERS: = Chris May – Staff report  
 + Mark Macy – Project sponsor presentation  
 - Richard Drury – Require CEQA review, toxic chemical in the site  
 + Richard Perino – Replacing one unit with 10 units is good policy, availability to seniors  
 + Jane Natoli – Meet the housing goals, creative ways to build homes  
 + Ira Kaplan – Creative thinking to get us out of the housing crisis  
 - Bob – Fundamental code flaws  
 - Scott Emblige – Respect the neighborhood's topography

- + Fujima Dasani – Densifying the neighborhood is good for the environment
- + Max – Abide by the regulations that we already have
- + Joanna Gubman – No housing available in the area, environmental benefit
- + Speaker – More shade is not a bad thing, fits in the neighborhood well
- Alex Balm – Design will cause harm to neighborhood
- Chu Fong – Shadow in the park will affect the people living around the neighborhood
- Jennifer – Significant negative impact to the playground
- Han Minh Lu – Social space, health issue
- + James Steichen – More space for people to live in
- Deborah Holley – Demolition findings, detracts rather than enhances the neighborhood character
- + Mike Chen – Near transit and jobs
- Ana Fung – Concerns with shadows, health of the elders
- Maggie Dong – Impact to the park will be detrimental to the community
- Speaker – Shadow study, affordable housing not market rate housing
- + Speaker – Creative design, will allow people to stay in San Francisco
- + Frank – Building close to transit
- + Yonathan Randolph – State laws, stay objective and approve
- Lisa – Shadows that will cast on the playground
- = Lisa Gibson – Response to comments and questions
- = Don Lewis – Response to comments and questions
- = Rich Hillis – Response to comments and questions
- = Austin Yang, Deputy City Attorney – Response to comments and questions
- = Liz Watty – Response to comments and questions

**ACTION:** Edit Conditional Use Findings found on page 8 of the draft motion to add “in the context of State Density Bonus Law” to the last paragraph. Approved with conditions including those read into the record by staff with regards to fire department review, zoning administrator review and require any increase in volume to return to the Planning Commissions. Staff to work with Architect on materiality of the façade.

**AYES:** Braun, Diamond, Koppel, Tanner  
**NAYS :** Imperial, Moore  
**ABSENT :** Ruiz  
**MOTION:** 21310

- 13a. [2020-001610SHD-02](#) (J. HORN: (628) 652-7366)  
3832 18<sup>TH</sup> STREET – north side between Church and Sanchez Streets; Lot 018 in Assessor’s Block 3580 (District 8) – Request for **Adoption of Shadow Findings** pursuant to Section 295 that net new shadow from the project would not adversely affect the use of Mission Dolores Park under the jurisdiction of the Recreation and Park Commission. The Project Site is located within a RM-1 (Residential-Mixed, Low Density) Zoning District and 40-X Height and Bulk District.

*Preliminary Recommendation: Adopt Findings*

**SPEAKERS:** = Jeff Horn – Staff Report

- + Bryan O’Neil – Project sponsor presentation
- Thanos Diacakis – Organized opposition
- Giacomo DiGrigoli – Organized opposition
- Cindy Wong – Organized opposition
- + Jane Natoli – Learning opportunity
- + Joanna Gubman – Near a park and transit
- David Sage – Not a family housing
- + Fujima Dasani – Diversity is suffering due to lack of housing
- + Max – Single adults
- + Mike Chen – Objective findings on health and safety
- Robin Lewis – Lack of light, community housing
- + Speaker – Follow state law
- + Kent Rekani – Housing for all
- Amy Silverstein – Not group housing units
- + James Steichen – Place of refuge
- + Speaker – Make space for more neighbors
- + Eric Kaplan – Comply with state law and approve
- + Speaker – We need lots of housing
- + Yonathan Randolph – More affordable condos

ACTION: Adopted Findings  
 AYES: Braun, Diamond, Koppel, Tanner  
 NAYS : Imperial, Moore  
 ABSENT : Ruiz  
 MOTION: 21311

13b. [2020-001610CUA-02](#) (J. HORN: (628) 652-7366)  
3832 18<sup>TH</sup> STREET – north side between Church and Sanchez Streets; Lot 018 in Assessor’s Block 3580 (District 8) – Request for **Conditional Use Authorization** pursuant to Planning Code Sections 209.2, 253, and 303, to allow the new construction of a six-story, 60-foot-tall, 19-unit Group Housing residential project, with a 390-square-foot communal space, 890 square feet of common usable open space, 314 square feet of private usable open space (for two units), and 19 Class 1 and two Class 2 bicycle parking spaces and making findings of eligibility for the individually requested State Density Bonus Project. The Project would invoke the State Density Bonus law (California Government Code Sections 65915-65918) to receive waivers for: Height (Section 260), Rear Yard (Section 134), and Dwelling Unit Exposure (Section 140). The Project Site is located within a RM-1 (Residential-Mixed, Low Density) Zoning District and 40-X Height and Bulk District.  
*Preliminary Recommendation: Approve with Conditions*

SPEAKERS: Same as item 13a.  
 ACTION: Approved with Conditions  
 AYES: Braun, Diamond, Koppel, Tanner  
 NAYS : Imperial, Moore  
 ABSENT : Ruiz  
 MOTION: 21312

**G. DISCRETIONARY REVIEW CALENDAR**

The Commission Discretionary Review Hearing Procedures provide for presentations by staff; followed by the DR requestor team; followed by public comment opposed to the project; followed by the project sponsor team; followed by public comment in support of the project. Please be advised that the DR requestor and project sponsor teams include: the DR requestor and sponsor or their designee, lawyers, architects, engineers, expeditors, and/or other advisors.

14. [2022-003158DRP](#) (T. GREENAN: (628) 652-7324)  
2207 31<sup>ST</sup> AVENUE – west side between Rivera and Santiago Streets; Lot 002 in Assessor's Block 2318 (District 4) – Request for **Discretionary Review** of Building Permit No. 2022.1114.6484 to comply with NOV#202174501, to legalize work constructed without a permit to a single story one family residence within a RH-1 (Residential House - One Family) Zoning District and 40-X Height and Bulk District. The Planning Department found that the project is exempt from the California Environmental Quality Act (CEQA). The Commission's action constitutes the Approval Action for the project for the purposes of CEQA, pursuant to San Francisco Administrative Code section [31.04\(h\)](#).  
*Preliminary Recommendation: Do Not Take Discretionary Review and Approve*

SPEAKERS: = Trent Greenan – Staff report  
 - Lop Woo – DR presentation  
 - Paul Horcher – DR Presentation  
 + Diane Neighbor – Project sponsor presentation  
 + Brett Gladstone – Project sponsor presentation  
 + David – Common pattern  
 - Nora – Concerns, illegal stairway

ACTION: No DR  
 AYES: Braun, Diamond, Imperial, Koppel, Moore, Tanner  
 ABSENT : Ruiz  
 DRA: 824

ADJOURNMENT 6:31 PM – IN MEMORY OF MARVIS PHILLIPS AND ELEANOR JOHNS  
 ADOPTED MAY 4, 2023

# EXHIBIT C

# 華埠公園康樂會

Committee for Better Parks and Recreation in Chinatown

January 27, 2023

Don Lewis  
San Francisco Planning Department  
49 South Van Ness Avenue, Suite 1400  
San Francisco, California 94103

Re: **Letter in Opposition to the Shadows Cast by the Project at 1151 Washington Street on Betty Ann Ong Recreation Center**  
Case No.: 2022-010833ENV

Dear Mr. Lewis,

The **Committee for Better Parks and Recreation in Chinatown** (CBPRC) opposes the shadow cast by the 1151 Washington Street project.

Founded in 1969, Committee for Better Parks and Recreation in Chinatown (CBPRC) has advocated for open space and recreation areas in Chinatown. Because of Chinatown's high density, open space and parks are an especially important and a limited resource to our community. Our committee members have a long history of being engaged and active in the community processes in Chinatown including the renovation of many San Francisco Recreation and Park facilities and open spaces. Our members include volunteer architects, district council staff, community youth organizations, community childcare providers, and community members, as well as staff from neighborhood service providers like Chinatown Community Development Center, Community Youth Center, and Self-Help for the Elderly.

Chinatown is the most densely populated area west of Manhattan and has one of the lowest park and recreation space per capita in the City as well as one the highest poverty rates in the City. Many of the Chinatown residents are elderly and live in single-room occupancy units and in very cramped living conditions. Outdoor and park space and community space is crucial for Chinatown seniors, residents, families, children and park users.

The 1151 Washington Street project will cast shadows on Betty Ann Ong Recreation Center. CBPRC is in receipt of a shadow study conducted by FastCast (the Shadow Report). The Shadow Report states:

“The maximum shadow from the proposed project on Betty Ong Recreation Center at single time would occur on August 9/May 3 and cover approximately 17% of the overall open space.”

Letter in Opposition to the Shadows Cast  
by the 1151 Washington Street Project  
January 27, 2023  
Page 2

This be a significant and adverse impact on Betty Ann Ong Recreation Center. The shadow cast by the 1151 Washington Street project will be on active play areas and when the play area will be heavily used by children and adults. The Betty Ann Ong Recreation Center is already in shadow for 77% of available sunlight hours, and the project will add significant shadows during available sunlight hours. Moreover, as the study uses the Recreation and Parks Department's definition of open space (which includes the gym building), the actual percentage of added shadows on *outdoor* open space would be much higher—a concern in a community like Chinatown which needs sunshine-accessible open space.

CBPRC opposes the 1151 Washington Street project because of the shadows cast on Betty Ann Ong Recreation Center.

Sincerely,



Allan Low  
on behalf of **Committee for Better Parks and Recreation in Chinatown**

cc: Christopher May  
San Francisco Planning Department

President Aaron Peskin  
San Francisco Board of Supervisors

#### **About CBPRC:**

*Founded in 1969, CBPRC is a community and volunteer based parks, recreational and community development advocacy group. Our mission is to protect, preserve and create open space, recreational programs and facilities for Chinatown. Our value is based in social and environmental justice and empowerment of our grassroots residents and community in shaping our open space needs and agenda. In the last decade, we have led the community effort and partner with the city and designers in rebuilding the Betty Ann Ong Chinese Rec Center, a new restroom at Portsmouth Square, a new park at St Mary's Square, a new plaza park at the new Chinatown central subway station, rebuilding of the Willie Woo Wong Playground as well as advocating for CBPRC member organizations to operate and programming at Woh Hei Yuen, Willie Woo Wong Chinese Playground and Portsmouth Square clubhouses. The current Portsmouth Square redesign and visioning is the last piece yet most ambitious of our decade old Chinatown parks and recreation master plan.*





615 Grant Avenue  
San Francisco, CA 94108  
TEL 415.984.1450  
FAX 415.362.7992  
TTY 415.984.9910  
[www.chinatowncdc.org](http://www.chinatowncdc.org)

Via Email: [Rachael.Tanner@sfgov.org](mailto:Rachael.Tanner@sfgov.org)

April 19, 2023

Rachel Tanner, President  
San Francisco Planning Commission

Re: Letter in Opposition to the Proposed Project at 1151 Washington St.

Dear Commissioner Tanner,

Chinatown Community Development Center (CCDC) is writing in opposition to the proposed project at 1151 Washington St. CCDC is a nonprofit community development organization that aims to build community and enhance the quality of life for San Francisco residents.

1151 Washington St is located next to Betty Ann Ong Recreation Center, a heavily used and well-loved resource to the community. As a service provider for families and seniors who live in Single Room Occupancy (SRO) hotels, we know how important free and accessible open space is for dense neighborhoods like Chinatown and Nob Hill. Chinatown has some of the fewest open spaces per capita and faces high rates of poverty.

CCDC is opposing the proposed project at 1151 Washington due to the additional shadow that will be cast onto the play areas at Betty Ann Ong Recreation Center. The shadow report commissioned for this project states: "The maximum shadow from the proposed project on Betty Ong Recreation Center at single time would occur on August 9/May 3 and cover approximately 17% of the overall open space." The recreation center is already in shadow for 77% of available sunlight hours.

CCDC was involved in the years-long community design process in the most recent renovation of the recreation center. Sunlight and air are extremely important to the users of the recreation center as many of them live in small SRO buildings with no open space and common areas. The proposed project at 1151 Washington does not take into consideration that the recreation center is the community's living room, a space to gather and socialize for those who cannot afford to have their own.

CCDC opposes the project at 1151 Washington St due to the additional shadow that will be cast onto Betty Ann Ong Recreation Center.

Sincerely,

A handwritten signature in black ink that reads "M. Dong". The signature is written in a cursive, flowing style.

Maggie Dong  
Planner

Rachael Tanner, President  
San Francisco Planning Commission  
49 South Van Ness Avenue  
San Francisco, CA 94103  
*VIA EMAIL TO: rachael.tanner@sfgov.org*

RE: Opposition to Item 12, 2022-010833CUA, 1151 Washington Street Project

Dear President Tanner,

On behalf of the Upper Chinatown Neighborhood Association, I am writing to express our opposition to the proposed project at 1151 Washington Street, agenda item 12 at this week's Planning Commission meeting. Specifically, we are concerned about the significant negative impact the project would have on the Betty Ann Ong Recreation Center and the precedent set for shadowing critical public recreation spaces and what we see as spiritual refuges located in mid-block open spaces.

As you are likely aware and as has been described in the January 27<sup>th</sup>, 2023 letter from the Committee for Better Parks and Recreation in Chinatown (CBPRC), the proposed project would cast shadow over the recreation center, negatively affecting the outdoor spaces and activities of the center. The center provides a vital resource for the neighborhood, offering residents in the City's highest-density community access to outdoor spaces for sports and recreation. The proposed project's height would result in meaningful portions of the recreation center's outdoor spaces being cast in shadow, limiting the amount of sunlight and fresh air available to those using the center.

Moreover, the reduced access to natural light and fresh air could impact the health and wellbeing of those using the center, particularly children and the elderly. This could also negatively impact the vegetation in the surrounding area, which requires adequate sunlight to thrive.

It is important to note the role of mid-block open spaces in Chinatown as you consider this proposal to remove one. Rear yards were designed to strengthen communal and familial connections in densely populated living quarters in neighborhoods like Chinatown. The presence of a courtyard, or rear yard, strengthens the cultural fabric, provides stability and comfort, and advances livability in the face of hardship. The 1151 Washington Street proposal both removes a mid-block open space as well as diminishes the quality of the adjacent public recreation facility.

Lastly, the proposed project would not provide adequate affordable housing, which is a critical need in San Francisco as a whole and in this neighborhood, specifically. In light of the current housing crisis, it is essential that new development projects prioritize affordable housing options for low- and middle-income residents. However, the proposed project at 1151 Washington Street does not meet these requirements.

In conclusion, I strongly urge the Planning Commission to reconsider the proposed project at 1151 Washington Street. The shadow cast over the Betty Ann Ong Recreation Center would significantly

impact the outdoor spaces and activities of the center, and there are better alternatives that would be more appropriate for the community and its residents.  
Thank you for considering my concerns.

Sincerely,

Hanmin Liu and Jennifer Mei, Co-Team Leaders  
Upper Chinatown Neighborhood Association

Pacific Avenue Neighborhood Association  
(PANA)

April 19, 2023

Rachel Tanner, President  
San Francisco Planning Commission

VIA EMAIL TO: [rachael.tanner@sfgov.org](mailto:rachael.tanner@sfgov.org)

RE: Opposition to 2022-010833CUA, 1151 Washington Street

Dear President Tanner,

On behalf of the Pacific Avenue Neighborhood Association, I am writing to express our opposition to the proposed project at 1151 Washington Street, which will be heard at this week's Planning Commission meeting.

The three areas that we are extremely concerned about are:

- Loss of mid-block open space,
- Shadowing of the Betty Ann Ong Recreation Center, and
- The Precedent being set that allows shadowing of critical public AND private spaces and the loss of mid-block open space.

Mid-Block Open Space – preserve existing open space

Mid-block open space plays a critical role in the health and well-being of our entire city and especially, our neighborhoods. Densely populated neighborhoods, like Chinatown, covet their open space. Mid-block open space provides much needed light and fresh air, a place to sit outdoors and to play, a place to gather or to be quiet. There should be no exception but to preserve the open space that exists and encourage more where possible. The presence of a courtyard or rear yard strengthens the community's cultural fabric, provides stability and comfort, and advances livability in the face of hardship. The 1151 Washington Street proposal both removes mid-block open space and diminishes the quality of the adjacent public recreation facility. We, respectfully ask, that the rear yard be preserved at this location.

Building Height & Mass - reconsider

PANA is also very concerned about the serious negative impact the project would have on the Betty Ann Ong Recreation Center and the precedent this project would set allowing for shadowing of critical public recreation spaces, as this center provides a vital resource for the neighborhood, offering residents in the City's highest-density community access to outdoor spaces for sports and recreation. The proposed project's height would result in meaningful portions of the recreation center's outdoor spaces being cast in shadow, limiting the amount of healthy sunlight and fresh air available to those using the center.

Impact to Health & Wellness

Reduced access to natural light and fresh air negatively impacts the health and wellbeing of those using the center, particularly children and the elderly. The health benefits provided by access to light and air is generally known and accepted, and well-documented as well. Greening of our public spaces is so appreciated by all who use the space and who live in the surrounding area. Significant shadowing could negatively impact the much-needed vegetation at the Center and in the surrounding area. Most vegetation needs adequate sunlight to thrive.

Affordable Housing Is Absent

The proposed project would not provide adequate affordable housing, which is a critical need in San Francisco as a whole and in this neighborhood, specifically. Because of the current housing crisis, it is

Pacific Avenue Neighborhood Association  
(PANA)

essential that new development projects prioritize affordable housing options for low- and middle-income residents. The proposed project at 1151 Washington Street does not meet these requirements.

We respectfully ask the Planning Commission to direct the developer of 1151 Washington Street to consider the concerns set forth herein by neighbors and neighborhood leaders and modify the design plans accordingly.

Thank you for your consideration,

Sincerely,

Robyn Tucker & Andrew Madden  
Co-Chairs, Pacific Avenue Neighborhood Association



April 19, 2023

San Francisco Planning Commission  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

President Tanner and Members of the Planning Commission,

SOMA Pilipinas is writing in opposition to the proposed project at 1151 Washington Street. SOMA Pilipinas is in support of the position articulated by the Upper Chinatown Neighborhood Association, that the proposed project will have a significant negative impact on the Betty Ann Ong Recreation Center.

The South of Market similarly struggles with lack of adequate open space and recreation space for our children, youth, families, and seniors. The little open space that does exist is critical to maintaining a balanced and healthy neighborhood for residents, workers, and community members. New shadows from private development on open spaces in neighborhoods like South of Market and Chinatown have an extremely significant negative impact.

We ask the Commission to protect the health and well being of our neighborhoods, and prioritize the preservation and protection of the limited open space in our neighborhoods. This is an issue of racial and social equity, and we urge the Commission to view it through that lens.

Thank you,

David Woo  
Community Development and Policy Coordinator  
SOMA Pilipinas

# EXHIBIT D



Technical Consultation, Data Analysis and  
Litigation Support for the Environment

2656 29<sup>th</sup> Street, Suite 201  
Santa Monica, CA 90405

Matt Hagemann, P.G., C.Hg.  
(949) 887-9013  
[mhagemann@swape.com](mailto:mhagemann@swape.com)

Paul E. Rosenfeld, PhD  
(310) 795-2335  
[prosenfeld@swape.com](mailto:prosenfeld@swape.com)

April 12, 2023

Richard Drury  
Lozeau | Drury LLP  
1939 Harrison Street, Suite 150  
Oakland, CA 94618

**Subject:           Comments on the 1151 Washington Street Project**

---

Dear Mr. Drury,

We have reviewed the April 2023 CEQA Exemption Determination (“Exemption”) and the October 2022 Site Mitigation Plan (“SMP”) for the 1151 Washington Street Project (“Project”) located in the City of San Francisco (“City”). The Project proposes to demolish the existing 3,050-square-foot residential building and construct a 12,312-SF building consisting of 10 dwelling units on the Project site.

Our review concludes that the Exemption fails to adequately evaluate the Project’s hazards and hazardous materials impact. As a result, emissions and health risk impacts associated with construction and operation of the proposed Project are underestimated and inadequately addressed. A full CEQA analysis should be prepared to adequately assess and mitigate the potential hazards and hazardous materials impact that the project may have on the environment.

## **Hazards and Hazardous Materials**

### **Inadequate Disclosure and Analysis of Impacts**

The SMP purports to offer a “decision framework and specific risk management measures for managing soil and soil vapor beneath the Site” (p. 1). The SMP documents subsurface soils to be contaminated with “low concentrations of hexavalent Chrome VI and thallium exceeding regulatory screening levels” (p. 1). Soil vapor beneath the Site is documented to have been “impacted with VOCs [volatile organic compounds] (specifically, PCE [tetrachloroethylene]) at concentrations exceeding regulatory screening levels” (p. 1). Guidelines are presented in the SMP to protect construction workers from soil contamination and future residents from soil vapor contamination.



Chrome VI, thallium and PCE are toxic chemicals. The presence of these three toxic chemicals on the project site above regulatory screening levels, particularly given the fact that the site is adjacent to a children's playground, is an unusual circumstance that may result in significant environmental impacts for construction workers, future residents, or users of the adjacent playground.

Chrome VI: Chrome VI can cause the following health effects: lung cancer and nasal cancers; irritation of the nose, throat and lungs (runny nose, coughing); allergic symptoms (wheezing, shortness of breath).

(<https://oehha.ca.gov/media/downloads/faqs/hexchromiumairfact111616.pdf>)

Thallium: Thallium was used as rat poison until 1972. Thallium can affect the nervous system, lung, heart, liver, and kidney. Temporary hair loss, vomiting, and diarrhea can also occur and death may result after exposure to large amounts of thallium for short periods. Thallium can be fatal from a dose as low as 1 gram.

(<https://wwwn.cdc.gov/TSP/PHS/PHS.aspx?phsid=307&toxid=49>).

PCE (Perchloroethylene): PCE is listed as a chemical known to cause cancer in humans.

(<https://oehha.ca.gov/chemicals/tetrachloroethylene>). Effects resulting from acute (short term) high-level inhalation exposure of humans to tetrachloroethylene include irritation of the upper respiratory tract and eyes, kidney dysfunction, and neurological effects such as reversible mood and behavioral changes, impairment of coordination, dizziness, headache, sleepiness, and unconsciousness. The primary effects from chronic (long term) inhalation exposure are neurological, including impaired cognitive and motor neurobehavioral performance.

Tetrachloroethylene exposure may also cause adverse effects in the kidney, liver, immune system and hematologic system, and on development and reproduction. Studies of people exposed in the workplace have found associations with several types of cancer including bladder cancer, non-Hodgkin lymphoma, multiple myeloma. EPA has classified tetrachloroethylene as likely to be carcinogenic to humans.

(<https://www.epa.gov/sites/default/files/2016-09/documents/tetrachloroethylene.pdf>).

Given the toxicity of these chemicals, it is necessary to ensure that the site is adequately mitigated to safeguard future residents, construction workers and children at the adjacent playground. While the SMP contains mitigation measures, they are not adequate to ensure that all contamination will be remediated to less than significant levels.

The SMP was prepared for review by the San Francisco Department of Public Health ("SFPDH"). Soil and soil vapor contamination was delineated in a Maher Ordinance Phase II investigation under Article 22A of the San Francisco Health Code per a SFPDH request according to the SMP (p. 2). On January 10, 2023 the SFPDH approved the SMP.

The Phase II Environmental Site Assessment (ESA) found PCE in all three soil vapor samples (up to 67  $\mu\text{g}/\text{m}^3$ ) to exceed the residential Environmental Screening Level ("ESL") of 15  $\mu\text{g}/\text{m}^3$ . Concentrations of hexavalent chromium and thallium in both soil samples exceeded the residential ESLs but were below the applied construction worker ESLs. Regarding soil vapor contamination, the SMP states that the

“source and full extent of these impacts is currently unknown” (p. 4). As excavation of the Site proceeds, visual and olfactory observations indicative of contamination “if a significant issue” would trigger “environmental professional and/or appropriate regulatory agency” notification (p. 10). This constitutes improper deferral of mitigation since it relies on future “visual and olfactory observations” to develop as yet undefined mitigation measures. It also presents a risk that construction workers may not have a sufficiently fine sense of smell to detect these toxic chemicals. Furthermore, since thallium and chrome VI are tasteless and odorless, relying on “olfactory” observations will not detect this chemical. ([https://www.cdc.gov/niosh/ershdb/emergencyresponsecard\\_29750026.html#:~:text=Thallium%20is%20tasteless%20and%20odorless,amounts%20in%20the%20earth's%20crust;](https://www.cdc.gov/niosh/ershdb/emergencyresponsecard_29750026.html#:~:text=Thallium%20is%20tasteless%20and%20odorless,amounts%20in%20the%20earth's%20crust;) <https://www.atsdr.cdc.gov/toxfaqs/tfacts7.pdf>). Thus, this mitigation measure is inadequate.

The proposed development includes a subgrade bedroom (p. 4). To address the potential for vapor intrusion of PCE into indoor airspace, the SMP as approved by SFDPH, will provide for a vapor intrusion mitigation system (VIMS) to be installed within the subgrade of the proposed development following excavation (p. 11). A deed restriction will be required to ensure the proper operation and maintenance of the planned VIMS according to the January 10, 2023 SFDPH approval letter. These are mitigation measures that should be analyzed in a CEQA document for adequacy. A CEQA document should be prepared to ensure that the mitigation measures are adequate and also to ensure that they are enforceable.

We recommend the preparation of full CEQA analysis to further evaluate and disclose soil and soil vapor contamination and the control measures that are outlined in the SMP. The preparation of a full CEQA analysis would allow for inclusion of the control measures as enforceable mitigation measures. Mitigation measures in a CEQA document, as we propose, should also include a process where state agencies, including the DTSC and the Regional Board are notified of the Phase II findings. State-agency review is important because of the Phase II finding that the source and extent of the PCE contamination is unknown. Without knowing the source and addressing it through remedial actions like removal or isolation, contaminants may persist and even increase in severity as PCE moves through the subsurface, potentially rendering control measures like the vapor intrusion mitigation system less effective over time.

## **Disclaimer**

SWAPE has received limited discovery regarding this project. Additional information may become available in the future; thus, we retain the right to revise or amend this report when additional information becomes available. Our professional services have been performed using that degree of care and skill ordinarily exercised, under similar circumstances, by reputable environmental consultants practicing in this or similar localities at the time of service. No other warranty, expressed or implied, is made as to the scope of work, work methodologies and protocols, site conditions, analytical testing results, and findings presented. This report reflects efforts which were limited to information that was reasonably accessible at the time of the work, and may contain informational gaps, inconsistencies, or otherwise be incomplete due to the unavailability or uncertainty of information obtained or provided by third parties.

Sincerely,

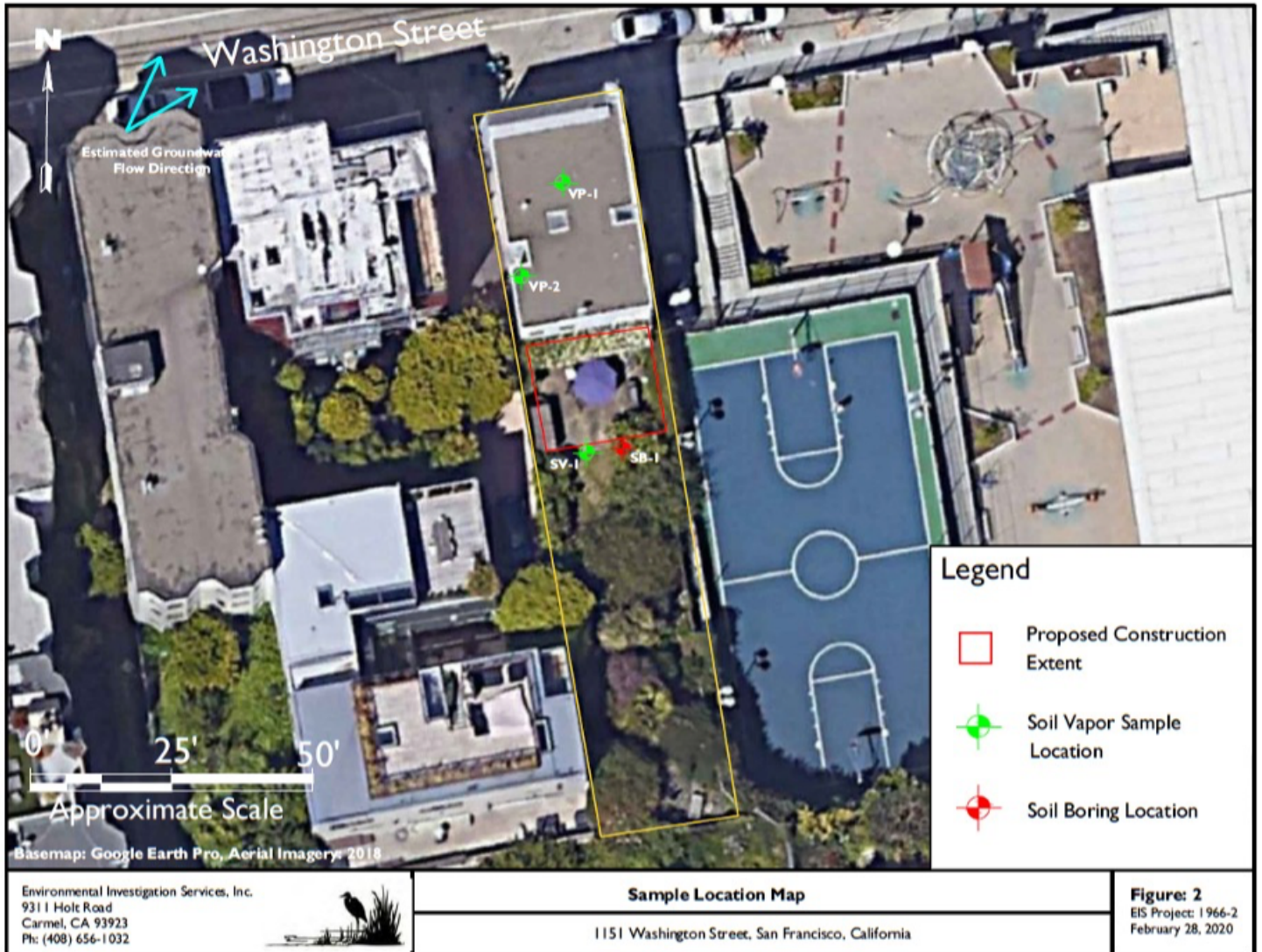
A handwritten signature in blue ink that reads "Matt Hagemann". The signature is fluid and cursive, with a long horizontal stroke at the end.

Matt Hagemann, P.G., C.Hg.

A handwritten signature in blue ink that reads "Paul Rosenfeld". The signature is cursive and clearly legible.

Paul E. Rosenfeld, Ph.D.

# EXHIBIT E



# EXHIBIT F

# BURTT ENGINEERING & CONSTRUCTION

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120 Village Square #150, Orinda CA. 94563      OFFICE (510) 540 - 0155

April 17, 2023

Richard T. Drury, Partner  
Lozeau Drury LLP  
1939 Harrison St Suite 150  
Oakland, CA 94612

RE:     1151 Washington St. Proposed Development  
         1151 Washington St., San Francisco, CA 94108  
         **Fire and Life Safety Engineering Opinion Letter**

Dear Mr. Drury:

We have reviewed the proposed 1151 Washington St. development project and associated plan set, dated December 1<sup>st</sup>, 2022. The project represents a very unique and unusual construction development, with several key features that may be a safety issue and appear to lack compliance under California Code of Regulations and San Francisco Municipal Code. We would recommend jurisdictional authority perform careful review of the project's fire and life safety risks against City, State, and Federal standards and building code requirements to ensure it meets minimum standards prior to approval of the project.

Resident evacuation and egress from the townhomes:

The townhomes are built front to back, north to south. The means of egress and access to the townhomes appears to be limited to a 5-foot wide, 137-foot long pedestrian walkway with eight flights of stairs. It appears that this is the only means of egress from the property. As such, if a fire occurs in any of the townhomes, occupants must travel down a 137-foot long alleyway before reaching the public road. This is an unusual condition that appears to not meet the intent of California Building Code. California typically requires such exit routes be limited to a maximum of 125 feet in travel distance for fire and life safety in accordance with 2022 California Building Code Section 1028.1 and 2022 California Building Code Table 1006.3.4. The current proposed 137-foot long exit route should be carefully studied to confirm it meets minimum City, State, and Federal fire and life safety standards, codes, and egress requirements.

Firefighter ladder access and emergency escape windows on the upper floors:

It appears that the development's bedrooms each require emergency escape and rescue window in accordance with state regulation. Typically this is required to allow residents to escape from their home if a fire occurs, and also to allow firefighters to access the windows to contain the fire and ensure the safety of the community.

California regulations require rescue windows be "readily accessible" by firefighter ladders. The California Fire Marshal requires that rescue windows must to be accessible using ground ladders (California Fire Marshal Interpretation 18-005).

This typically means that the development must be designed so that firefighters:

- 1). Can readily carry their ground ladders along the walkway to the townhome window area in a safe and readily accessible manner.
- 2). Can set ladders on the ground to the rescue windows in a safe and secure manner following the San Francisco Fire Department Ladder Manual.

It is unclear where ground ladders would be able to be safely placed on the development property for safe window access. The San Francisco Fire Department Ladder Manual and typical firefighter standards note

a maximum accessible ladder angle of 70° from horizontal. To safely access the development's third-story rescue windows (24'-6" high), the ground ladder would be placed at least 8 feet away from the building. The development walkway appears to be only 5 feet wide, with at least 6-inches of obstructing guardrails and handrails. From a mathematical perspective, it appears that at least an additional 3'-6" of walkway may be required to meet safe firefighter ladder angle access. Further and more detailed study may identify additional issues which may require additional walkway clearance. The development walkway width of 5 feet is unusually restrictive to firefighter access of required emergency escape and rescue windows. We would suggest firefighter access to upper stories of the development be reviewed carefully to confirm meets minimum City, State, and Federal firefighter access requirements.

Firefighter access walkway:

As discussed previously, the means of access to the townhomes appears to be limited to a single 5-foot wide, 137-foot long walkway with approximately eight sets of stairs. This access walkway is a very unusual condition and appears to represent the only means of access and egress from the townhomes. In addition to aforementioned egress requirements, California Fire Code Section 504.1 states that access walkways leading from the road to the exterior opening of the townhomes shall be approved where required by the fire code official.

It is unclear if the fire code official has previously been consulted. We would recommend the fire code official perform careful review of the walkway for safe firefighter access in accordance with California Fire Code Section 504.1 to ensure it meets minimum standards.

Overall, the development has several unusual elements which appear to lack compliance under California Code of Regulations and San Francisco Municipal Code. We would recommend the jurisdictional authority perform careful review of the project's fire safety, life safety, and associated public health and safety risks against City, State, and Federal standards to ensure it meets minimum standards prior to approval of the project. We would recommend further study, and more clarification be provided to ensure these standards are met to maintain the public health and safety of occupants, firefighters, adjoining properties, and the community. This engineering opinion letter is preliminary only. Further review and more detailed study may identify additional hazards, building code issues, violations, etc...

Sincerely,



Robert E. Burt, P.E.

*Fire Protection Engineer*





# EXHIBIT G

1151 Washinton Street  
Case Number: 2021-010236PPA

September 17, 2022

To: Clayton Timbrell & Company Inc.  
1033 Polk Street  
San Francisco, CA 94109

PRELIMINARY MEMORANDUM OF POTENTIAL SHADOW EFFECT:

1151 Washington Street, SAN FRANCISCO

To whom it may concern,

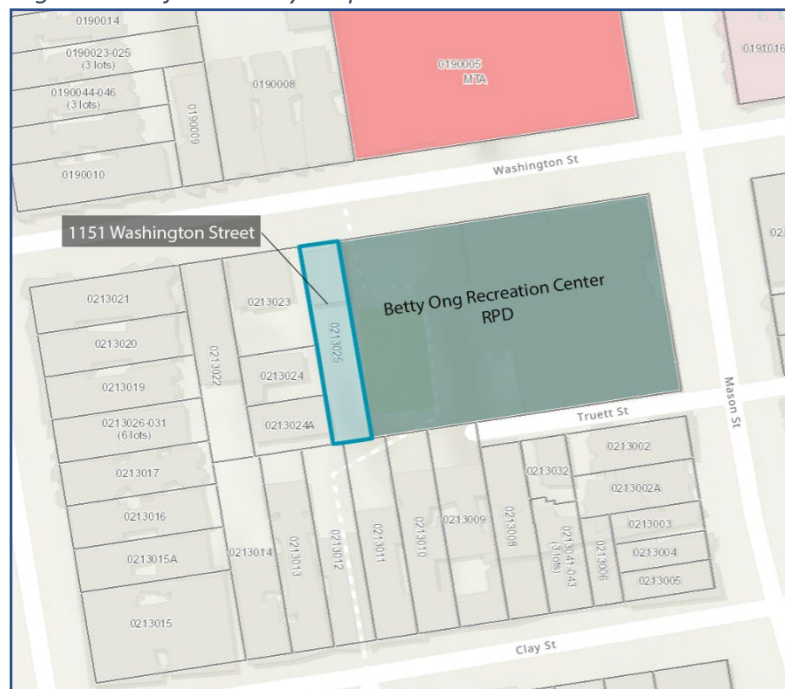
Fastcast has performed a preliminary shadow analysis for the proposed 1151 Washington Street Housing Project (Planning Case# 2022-008223PPA), in accordance with San Francisco Planning Department and CEQA standards and procedures, as encoded in the July 2014 Memorandum “Shadow Analysis Procedures and Scope Requirements” and as modified by other subsequent written directives from SF Planning in San Francisco.

**Site Details Block/Lot(s):** 0213/025

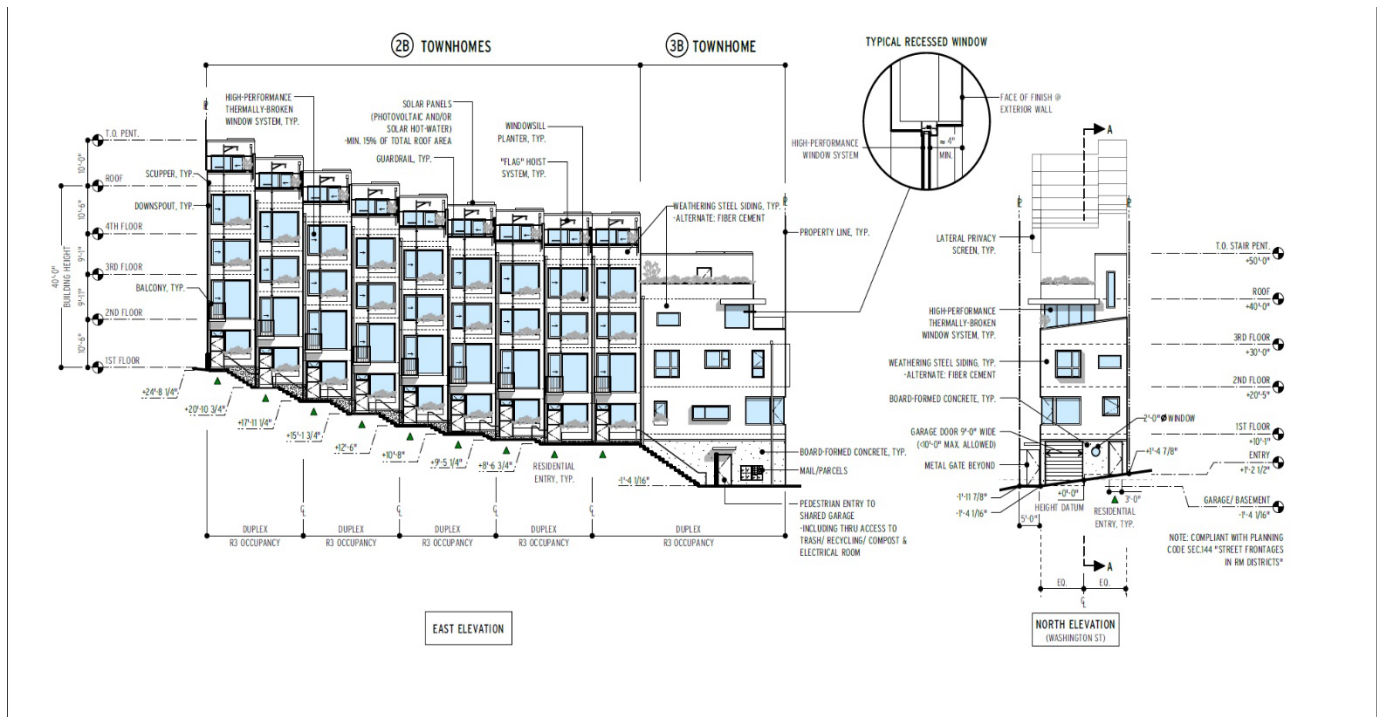
**Parcel Area:** 3,575 sq. ft.

**Zoning District(s):** [RM-3 - Residential- Mixed, Medium Density](#)

Figure 1: Project Vicinity Map



The site is a single 3,575 sf parcel that is 26'-0" wide x 137'-6" deep. It slopes up from the street with an average gradient of approximately 18% (+24.84'; front-to-back) and has an average cross-slope at the sidewalk of approximately 13%. It is located in the RM-3 "Residential Mixed, Medium Density" Zoning District and 65-A Height/Bulk District. It contains an existing 3-story, approximately 3005 sf single-family home built in 1940 that has been determined by the Planning Department to not be an historic resource. The Project Sponsor proposes to demolish the existing structure and redevelop the property per the State Density Bonus Law into a multi-family project consisting of (10) for-sale townhomes<sup>1</sup>



0' 5' 10' 20' 40' 1" = 20'-0"

ELEVATIONS 08/17/22

**MACY ARCHITECTURE** 315 Linden Street, San Francisco CA 94102, Tel 415 551 7630, www.macyarchitecture.com

All Rights Reserved. The ideas represented are the proprietary intellectual property of Macy Architecture. © 2022 Macy Architecture

PRELIMINARY PROJECT ASSESSMENT (PPA)  
1151 WASHINGTON STREET, SAN FRANCISCO, CA 94108  
BLOCK 0213, LOT 025  
PAGE 10 OF 17

Figure 2: Macy Architecture Project Elevation (PPA 08/17/22)

The proposed project, as documented in the PPA plan set, is over 40 feet in height and is therefore considered subject to review under CEQA and Section 295 of the Planning Code.

To conduct this analysis, Fastcast utilized existing building and topographical data from city blessed sources to generate the existing ground surface and 3D built environment surrounding the project site in order to determine the existing shadow conditions in the vicinity of the project.<sup>2</sup>

<sup>1</sup> [PPA Application - 1151 Washington Street.pdf](#)

<sup>2</sup> In addition to the certified boundary, Due to the varied and sloping terrain and rec center grading Fastcast recommends that a high-resolution detailed survey of the recreation center and surrounding area be provided if a SF Planning certified analysis is to be developed.



Trees and existing landscape elements are not included in the baseline shadow conditions. The proposed project general massing was inserted into this baseline condition model and used to analyze the net change in shadow conditions prior to, and after the completion of the proposed project.

The proposed project was modeled based on the plans prepared by Macy Architecture submitted to the City as part of the Preliminary Project Assessment opened 8/22/2022 and is still under review.

Clayton Timbrell requested Fastcast prepare a preliminary analysis of the proposed 1141 Washington PPA submitted design to better understand the potential shadow on Betty Ong Recreation Center. It should be noted that this analysis is preliminary in nature and while is consistent with the CEQA Standard and City Shadow Analysis Procedures does not meet the standard of a final shadow analysis for submittal to SF Planning.

## Shadow Results

With this data, Fastcast calculated a full year net new shadow result, quantifying the total aggregate of all net new project-generated shadow (in excess of shadow cast under current conditions) that would occur at any point between 1 hour after sunrise through 1 hour before sunset, throughout the year.

With this data, Fastcast generated a graphical full year net new shadow diagram, depicting the total aggregate extents of all net new project-generated shadow (in excess of shadow cast under current conditions) that would occur at any point between 1 hour after sunrise through 1 hour before sunset, throughout the year.

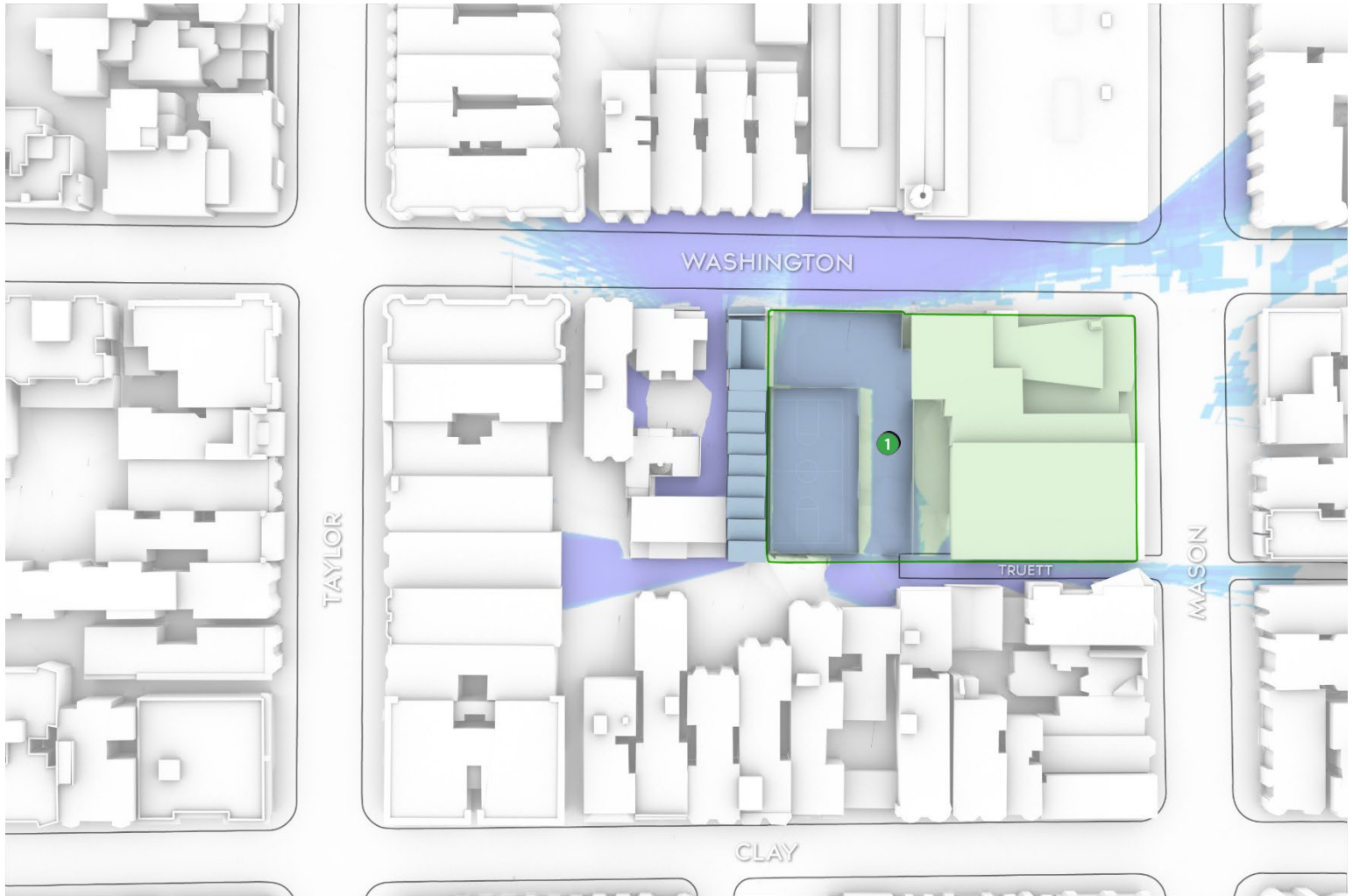
The annual accrual shadow fan graphic (included as Figure 1) determined new shadow from the project would intersect within the Betty Ong Recreation Center boundary across all hard courts play areas within the Betty Ong Recreation Center.<sup>3</sup>

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<sup>3</sup> Note: The Betty Ong Recreation Center boundary was defined by City GIS resource but has not been certified by Environmental Planning and/or RPD



f.01 1151 WASHINGTON STREET PROJECT - ANNUAL ACCRUAL MAP  
Plan View



COMBINED YEAR ROUND SHADOW FAN



LEGEND

- Existing Structures
- 1151 Washington Street Project
- Proposed Project's Net New Shadow
- Open Spaces
- 1 Betty Ong Courts

Figure 3: 1151 Washington Generalized Annual Accrual Shadow Map depicting all areas potentially affected by shadow from the 1151 Washington Street project as proposed in PPA.



**Maximum Shadow Coverage**

The maximum shadow from the proposed project on Betty Ong Recreation Center at a single time would occur on August 9/May 3 and cover approximately 17% of the overall open space. Figure 4 below shows the maximum shadow coverage time at 5:00 p.m. as well as the projection sun angles prior at 4:45 p.m. and after at 5:15 p.m.

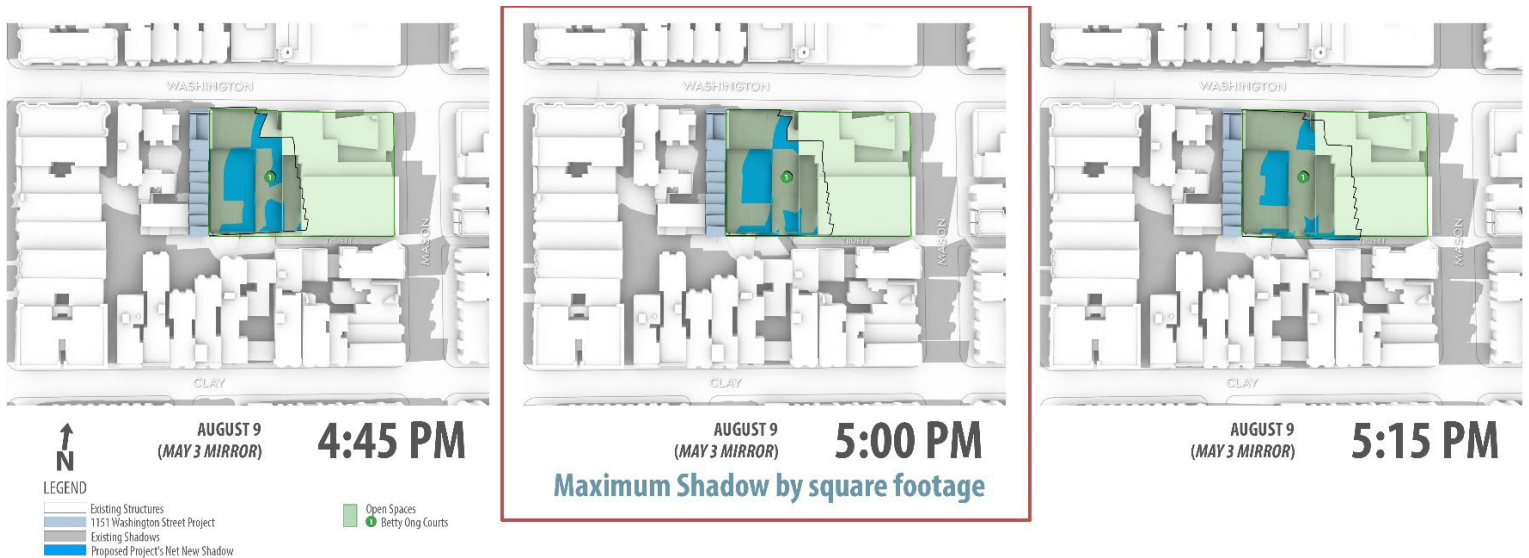


Figure 4: 1151 Washington Shadow Projections on maximum shadow day of August 9<sup>th</sup>/May 3<sup>rd</sup>.

**Quantified Results**

The quantified annual results show the proposed project has the potential to add approximately **2.97%** new shading against the overall theoretical annual available sunlight (TAAS)<sup>4</sup> on the Betty Ong Recreation Center throughout the year. Potential new shading is most prevalent during the spring afternoons from approximately 1:30 p.m. to 4:30 p.m. The largest shadow from the project on the recreation center would occur on August 9 (Mirror May 3) at 5:00 p.m. and cover approximately 17% of the overall open space. Summary of results provided in Table 1 below. The maximum coverage on August 9 at 5:00 p.m. adds approximately 48% of shadow on the Betty Ong Recreation's upper hardcourt and approximately 18% of the lower play area hardcourt along Washington Street.

<sup>4</sup> Theoretical Annual Available Sunlight or TAAS represents the total amount of available sunlight to the open space if it were unaffected by shadow year round. The City represents the TAAS in square foot hours and is calculated by multiplying the square footage by the annual constant of 13.501 (park sq ft \* 13.501)



| 1151 Washington Street PPA 08/17/22<br>BETTY ONG REC CENTER ANNUAL SHADOW LOAD / SQUARE FOOT HOURS (sfh) |  |   |  |
|--|--|---|--|
| Existing / Current Shadow<br><br>76.56%<br>80,720,521 sfh  | Project Net New Shadow<br><br>2.97%<br>3,136,578 sfh | Cumulative Net New Shadow<br><br>NA                 | Remaining Sunlight<br><br>20.47%<br>77,583,943 |
| Betty Ong Rec Center Annual Shadow Load with Project (sfh)   |  | 79.53% (83,857,099 sfh)                             |  |
| EXISTING SHADOW DETAILS  |  |   |  |
| Range in existing shadow area coverage throughout the year   |  | Between 55% - 100%                                  |  |
| Time of year / time of day most affected by existing shadow  |  | Winter / Late Afternoon (after 4:30 PM)             |  |
| NET NEW SHADOW DETAILS   |  |   |  |
| Days net new shadow would occur (date range)   |  | Year-round  |  |
| Date(s) with most sfh net new shadow   |  | July 26 & May 17                                    |  |
| Season / Time of day most affected by net new shadow   |  | Spring / Afternoon (1:30-4:30 PM)                   |  |
| Area of largest net new shadow (date and time)   |  | 4,820 sf (August 9 & May 3 @ 5:00 PM )              |  |
| Percentage of Betty Ong Rec Center covered by largest shadow   |  | 17.01%  |  |
| Range in shadow coverage throughout the year (area range)  |  | Between 0% - 17% (0 - 4,820 sf )                    |  |
| Average shadow size across affected dates (percent coverage)   |  | 2,093 sf (7.39%)                                    |  |
| Date(s) with the longest duration of net new shadow (duration)   |  | June 21 (5 hr 30 min +/- 14 min)                    |  |
| Range in daily net new shadow duration across affected dates   |  | Between zero minutes up to 5 hr 30 min (+/- 14 min) |  |
| Average daily net new shadow duration across affected dates  |  | 4 hr 6 min  |  |

Table 1: 1151 Washington Summary Shadow Results

Please direct any question regarding this analysis and report to Adam Noble

[adam@fastcastcity.com](mailto:adam@fastcastcity.com)

415.816.3505



# EXHIBIT H



May 16, 2023

San Francisco Board of Supervisors  
Angela Calvillo, Clerk of the Board  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102-4689  
bos.legislation@sfgov.org

Dear Board of Supervisors:

I, Clayton Timbrell, residing at 1157 Washington Street, San Francisco, California, hereby grant written authorization to the law firm of Lozeau Drury LLP, to file an appeal of the San Francisco Planning Commission's approval of the Planning Department's draft Class 32 (in-fill development) categorical exemption from the California Environmental Quality Act ("CEQA") for the proposed project at 1151 Washington Street ("Project"), which was considered at the at the Planning Commission's April 20, 2023 meeting as Agenda Item 12 (2022-010833ENV; 2022-010833CUA).

Thank you,

Clayton Timbrell

A handwritten signature in black ink, appearing to read 'Clayton Timbrell', written in a cursive style.

**LOZEAU DRURY, LLP**

1939 HARRISON ST STE 150  
OAKLAND, CA 94612  
(510) 836-4200



JPMorgan Chase Bank, N.A.  
www.Chase.com  
90-7162/3222

5/15/2023

PAY TO THE ORDER OF San Francisco Planning Department

\$ \*\*698.00

Six Hundred Ninety-Eight and 00/100\*\*\*\*\*

DOLLARS

San Francisco Planning Department  
Clerk of the Board of Supervisors  
1 Dr. Carlton B Goodlett Place, Room 244  
San Francisco, CA 94102

MEMO

CEQA Determination Appeal Fee

*Michael R. O'Leary*  
\_\_\_\_\_  
AUTHORIZED SIGNATURE

Security features. Details on back.

ii

**LOZEAU DRURY, LLP**

San Francisco Planning Department

| Date      | Type | Reference | Original Amt. | Balance Due | 5/15/2023<br>Discount | Payment |
|-----------|------|-----------|---------------|-------------|-----------------------|---------|
| 5/12/2023 | Bill |           | 698.00        | 698.00      |                       | 698.00  |
|           |      |           |               |             | Check Amount          | 698.00  |

10020.Chase Checkin CEQA Determination Appeal Fee 698.00

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2023 MAY 17 PM 2:30  
BY *[Signature]*

By Hand Delivery and Email

May 19, 2023

San Francisco Board of Supervisors  
Angela Calvillo, Clerk of the Board  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102-4689  
bos.legislation@sfgov.org

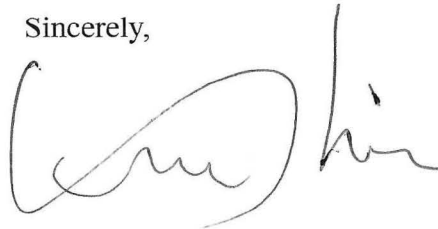
Lisa Gibson, Environmental Review Officer  
San Francisco Planning Department  
49 S. Van Ness Ave, Suite 1400  
San Francisco, CA 94103  
lisa.gibson@sfgov.org

**Re: Upper Chinatown Neighborhood Association Joinder in Appeal of the San Francisco Planning Commission's Approval of the San Francisco Planning Department's Categorical Exemption Determination for the 1151 Washington Street Project (2022-010833ENV; 2022-010833CUA) at the Planning Commission Public Hearing on April 20, 2023**

Dear San Francisco Board of Supervisors, Ms. Calvillo, and Ms. Gibson:

PLEASE TAKE NOTICE THAT, the Upper Chinatown Neighborhood Association (UNCA) hereby joins in the appeal of the San Francisco Planning Commission's approval of the Planning Department's draft Class 32 (in-fill development) categorical exemption from the California Environmental Quality Act ("CEQA") for the proposed project at 1151 Washington Street ("Project"), which was considered at the at the Planning Commission's April 20, 2023 meeting as Agenda Item 12.<sup>1</sup> The CEQA exemption determination for the Project is attached hereto. UCNA does not raise any new issues and does not enlarge the scope of the appeal.

Sincerely,

A handwritten signature in black ink, appearing to read 'Hanmin Liu', written in a cursive style.

Hanmin Liu

---

<sup>1</sup> This appeal is filed pursuant to San Francisco Administrative Code section 31.16.

**From:** [BOS Legislation, \(BOS\)](#)  
**To:** ["richard@lozeaudrury.com"](mailto:richard@lozeaudrury.com); ["danam@macyarchitecture.com"](mailto:danam@macyarchitecture.com); [ryan@pattersononeill.com](mailto:ryan@pattersononeill.com)  
**Cc:** [PEARSON, ANNE \(CAT\)](#); [JENSEN, KRISTEN \(CAT\)](#); [RUIZ-ESQUIDE, ANDREA \(CAT\)](#); [YANG, AUSTIN \(CAT\)](#); [Hillis, Rich \(CPC\)](#); [Teague, Corey \(CPC\)](#); [Tam, Tina \(CPC\)](#); [Gibson, Lisa \(CPC\)](#); [Jain, Devyani \(CPC\)](#); [Navarrete, Joy \(CPC\)](#); [Lewis, Don \(CPC\)](#); [Switzky, Joshua \(CPC\)](#); [Sider, Dan \(CPC\)](#); [Starr, Aaron \(CPC\)](#); [Watty, Elizabeth \(CPC\)](#); [Ionin, Jonas \(CPC\)](#); [May, Christopher \(CPC\)](#); [Schuett, Rachel \(CPC\)](#); [Sheyner, Tania \(CPC\)](#); [Rosenberg, Julie \(BOA\)](#); [Longaway, Alec \(BOA\)](#); [BOS-Supervisors](#); [BOS-Legislative Aides](#); [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [BOS Legislation, \(BOS\)](#)  
**Subject:** PROJECT SPONSOR RESPONSE: Appeal of CEQA Exemption - Proposed 1151 Washington Street Project - Appeal Hearing June 27, 2023  
**Date:** Tuesday, June 20, 2023 8:53:12 AM  
**Attachments:** [image001.png](#)

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Greetings,

The Office of the Clerk of the Board is in receipt of a response from the Project Sponsor, Ryan Patterson of Patterson & O'Neill, PC, on behalf of the owners of 1151 Washington Street, for the appeal of the CEQA Exemption for the proposed project at 1151 Washington Street.

[Project Sponsor Response - June 16, 2023](#)

**The hearing for this matter is scheduled for 3:00 p.m. special order before the Board on June 27, 2023.**

I invite you to review the entire matters on our [Legislative Research Center](#) by following the link below:

[Board of Supervisors File No. 230592](#)

Best regards,

**Lisa Lew**  
San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102  
T 415-554-7718 | F 415-554-5163  
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**(VIRTUAL APPOINTMENTS)** To schedule a "virtual" meeting with me (on Microsoft Teams), please ask and I can answer your questions in real time.



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**Disclosures:** Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors' website or in other public documents that members of the public may inspect or copy.



# PATTERSON & O'NEILL, PC

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June 16, 2023

## ***VIA E-MAIL***

President Aaron Peskin and Supervisors  
San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

Re: 1151 Washington Street (2022-010833CUA)  
CEQA Exemption Appeal (Board File No. 230592)

Dear President Peskin and Supervisors:

Our office represents Alison and Todd Davis, owners of 1151 Washington Street. The proposed project includes the construction of a four-story, 40-foot-tall building with 10 total dwelling units, including 1 three-bedroom and 9 two-bedroom units (the "Project"). The Project provides one Below Market Rate (BMR) unit that will be sold at an affordable rate to moderate-income individuals, which entitles the Project to a 5% density bonus and a waiver of development standards pursuant to the state Density Bonus Law, codified at Gov. Code § 65915.

The Project is located within a fully developed urban neighborhood. On April 7, 2023, the Planning Department determined that the Project qualified for a Class 32 In-fill Development categorical exemption from the California Environmental Quality Act ("CEQA").

Clayton Timbrell, a neighbor who lives next door at 1157 Washington Street, has appealed the CEQA Exemption. The appellant states that he supports a "reasonably-sized" project, but has submitted a CEQA appeal to oppose the Project as currently designed. The appellant argues that the Project does not qualify for a Categorical Exemption for two reasons. First, the appellant argues that CEQA's "unusual circumstances" exception applies to the Project. Second, the appellant argues that the City inappropriately relied on project specific mitigation measures to find that the Project is exempt from CEQA. Both of the appellant's assertions are incorrect.

### ***The Unusual Circumstances Legal Standard.***

The Legislature directed California's Natural Resources Secretary to prepare a "list of classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt." (Pub. Res. Code § 21084.) Referred to as Categorical Exemptions, certain classes of projects, despite their *potential* to have an effect on the environment, have ***already*** "been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of CEQA." (CEQA Guidelines § 15300.) This is because "common sense tells us that the majority of private projects . . . may be approved exactly as before" CEQA's enactment. (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247,

272.)

The appellant incorrectly argues that little more than a “fair argument” that a project “may” have a significant effect on the environment is sufficient to demonstrate that a project does not qualify for a Categorical Exemption due to the “unusual circumstances” exception. This is incorrect. The California Supreme Court, in a section of an opinion entitled “A Potentially Significant Environmental Effect Is Not Alone Sufficient to Trigger the Unusual Circumstances Exception,” explicitly rejected the appellant’s argument. (*Berkeley Hillside Pres. v. City of Berkeley* (2015) 60 Cal.4th 1086, 1097.) Because projects that fall within a Categorical Exemption have *already* been determined *not* to have a significant impact on the environment despite the *potential* for impacts, a project opponent must demonstrate significantly more than a “fair argument” to show that the unusual circumstances exception applies.

To demonstrate that a project requires more in-depth CEQA review, a project opponent must “establish an unusual circumstance with evidence that the project *will* have a significant environmental effect,” and that evidence must be “convincing.” (*Berkeley Hillside Pres.*, *supra*, 60 Cal.4th at 1105.) Alternatively, a project opponent may show a “reasonable possibility” that the project will have a significant effect on the environment, if the opponent can also demonstrate that the significant effect is caused by an unusual circumstance “that distinguishes it from others in the exempt class.” (*Id.*) Here, the appellant fails to demonstrate that the unusual circumstance exception applies.

**There are No Unusual Circumstances Applicable to the Project.**

First, the appellant fails to demonstrate that there are any unusual circumstances that distinguish this project from others in its class. Try as he might to argue otherwise, there is nothing unusual regarding a proposal to construct a housing project on a residentially zoned parcel in a fully developed urban neighborhood.

The appellant primarily argues that an unusual circumstance exists due to soil samples that show concentrations of soil contaminants at levels slightly above Environmental Screening Levels (“ESLs”). The appellant was apparently unconcerned about soil contaminants when he excavated a new basement level for his own home next door (see Planning File No. 2015-006142PRJ), nor would he be concerned about this issue if the Project were “reasonably-sized,” but is now gravely concerned that *this* project will cause significant effects.

The project site is within an area that is subject to the City’s Maher Ordinance, which is designed to protect public health and safety by requiring appropriate handling and treatment of contaminated soils encountered in the construction process. Prior to expansion of Maher Ordinance sites in 2013, the Maher Ordinance was only applicable to the Eastern Shoreline, and the requirements to appropriately handle soil contaminants were “only enforceable on a case-by-case basis through CEQA mitigation measures and conditions of project approval.” (Board File No. 130369.)

To avoid case-by-case handling of soil contaminants and ensure that more projects *could* qualify for a CEQA exemption, the City enacted Ordinance No. 155-13 to significantly expand the Maher Ordinance map and require more areas of the City to comply with its requirements. As a

result, a large portion of the City is covered by the Maher Ordinance map. Encountering contaminated soils within San Francisco is the norm, not an unusual circumstance, and the City's Maher Ordinance was specifically designed to appropriately handle this process appropriately. If being subject to the Maher Ordinance were an unusual circumstance, half the City would be ineligible for a CEQA exemption.

The appellant argues that encountering slightly elevated ESLs automatically qualifies as an unusual circumstance. ESLs are established by the Regional Water Quality Control Board and provide conservative screening levels intended to expedite the identification and evaluation of common soil contaminants. Such levels do not demonstrate that adverse impacts to human health will occur, but simply that additional evaluation will occur. That is precisely what occurred here. The appellant cites to *McQueen v. Bd. of Directors* (1988) 202 Cal. App. 3d 1136 to suggest that the presence of elevated ESLs are, by law, an unusual circumstance. *McQueen* dealt with the sale of Air Force land for "public open space" that contained abandoned fuel tanks, transformers, and "drums containing solvents and other chemicals" that were highly toxic and hazardous, which an Air Force Colonel admitted "may be illegal." (*Id.* at 1142.) The illegal sale of land containing abandoned drums of toxic chemicals is a far cry from the situation here.

The appellant also appears to argue that the presence of greater than 25% slopes, *in San Francisco*, is an unusual circumstance. Topography must be assessed in context and claims that steep slopes in San Francisco are an unusual circumstance have already been specifically rejected. In *Protect Telegraph Hill v. San Francisco* (2017) 16 Cal.App.5th 261, 272, the court stated flatly that the "slope of the project lot (approximately 30%) is not unusual for San Francisco." The California Supreme Court similarly dismissed a claim that an unusual circumstance existed regarding a project that was on a "steep slope (approximately 50 percent grade) in a heavily wooded area." (*Berkeley Hillside, supra*, 60 Cal.4th at 1093.)

The appellant also argues that because the project is adjacent to the Betty Ong Recreation Center, this presents an unusual circumstance. It is unclear how the presence of an urban park with a paved playground and basketball court located next to a townhouse complex presents an unusual circumstance. Boasting over 220 parks within 46.9 square miles, the presence of an urban park within the City is clearly not an unusual circumstance. The appellant's comparison to *Lewis v. Seventeenth Dist. Agric. Assn.* (1985) 165 Cal. App. 3d 823, which involved the approval of holding stock car races within a residential neighborhood, is nearly as absurd as comparing drums of toxic waste to slightly elevated ESLs.

The project includes the construction of a housing project in a residentially zoned area in a heavily urbanized area completely surrounded by urban uses. In short, there are no unusual circumstances applicable to the project. Thus, the only way the appellant can show that the unusual circumstances exception applies is by establishing, by convincing evidence, that the Project *will* cause a significant environmental effect, which he fails to do.



**The Appellant Fails to Provide Convincing Evidence that the Project will Cause a Significant Environmental Effect.**

The appellant concedes that there is no evidence that this housing project in a residentially zoned urban area will not cause a significant environmental effect, instead stating that the project *could* have a significant effect, which is not the appropriate standard. Regardless, even the appellants' arguments regarding *potential* effects are based on inaccuracies and false statements.

The appellants' main argument is that the project could potentially cause human health impacts from contaminated soil based on elevated ESLs. Again, ESLs are conservative screening levels intended expedite evaluation of common soil contaminants and do not demonstrate adverse impacts to human health. The appellant uses deceptive quotations to suggest that the Site Mitigation Plan (SMP) is relying on "visual and olfactory observations" to determine the level of contaminants. To the contrary, soil samples have already been analyzed to determine the presence of contaminants. The appellant is quoting language from the *contingency* plan that is only relevant if construction activities "reveal conditions *substantially different from what is expected.*" (SMP, p. 9.) The fact that the SMP includes procedures to deal with issues that are "not anticipated to be encountered" demonstrates that the SMP is thorough, not inadequate.

The appellant also falsely states that the SMP was prepared for an earlier project that only included a small addition to the existing building, and that the SMP is inadequate for the project as currently proposed. This is simply wrong. Page 1 of the SMP clearly states that "the site is planned for a 4-story building with (10) new townhomes." The soil samples were taken for the original project, but the SMP was specifically designed for this project. The appellant also claims, without evidence, that the vapor intrusion mitigation system *may* be inadequate because the project includes a subgrade bedroom. Perhaps the appellant stopped reading there, because the SMP also requires a minimum of two sampling events following installation to ensure vapors do not exceed screening levels and includes converting the passive venting system to an active venting system if necessary. (SMP, p. 11.)

The appellant is clearly grasping at straws and needs to resort to distorting the record to drum up fear. As explained above, the Maher Ordinance was specifically designed to ensure public health and safety from potential soil contaminants that are extremely common in San Francisco, and its requirements have been successful in accomplishing that goal. The SMP has been reviewed and approved by the Department of Health, and there is no evidence that this Project is out of the ordinary and will cause significant environmental effects.

The appellant also argues that the project will cause significant shadow impacts to the Betty Ann Ong Recreation Center next door to the project site. The appellant acknowledges that the Planning Code only requires the City to make findings regarding shadowing when a project exceeds forty feet, which is not the case here, but the appellant nonetheless argues that the shadow impacts will be a significant environmental impact. The appellant also relies on his own shadow analysis, which *was* based on an earlier iteration of the project that included significantly larger rooftop penthouses. (See Planning File No. 2022-008223PPA; CEQA Appeal Exhibit G, p. 1.) The report also acknowledges that the analysis was "preliminary" and recommended a "high-resolution detailed survey of the recreation center" to meet City standards for conducting shadow analysis. (*Id.* 2-3.) Despite this report's preliminary analysis based on a larger project

that did not take into account additional existing shadows caused trees and landscaping, the report's likely still found that the existing shadow load was over 76% and the project's new net shadow would be less than 3%. The appellant does not provide support for the proposition that this (likely overestimate) of new shadow qualifies as a significant environmental impact.

Finally, the appellant argues that the project does not provide proper fire access, and therefore would cause significant "public services" impacts. The project architect has already addressed the appellant's incorrect code-compliance claims (see **Exhibit A**), and regardless the Project will also go through DBI and Fire review in the building permit phase. The Planning Commission has required that the Project be re-reviewed if any of the appellant's purported code-compliance complaints cause any changes to the project.

**The Project is Not Relying on Mitigation Measures to Qualify for an Exemption.**

The appellant also argues that the Project is inappropriately relying on mitigation measures to qualify for an exemption, including the Maher Ordinance SMP and geotechnical report recommendations. The appellant cites court cases where a local agency applied site-specific special conditions on a project to specifically mitigate identified environmental impacts to argue that a project cannot mitigate into an exemption. However, that is not the case here. Rather, the project developed an SMP and geotechnical report to comply with existing regulatory standards. This type of argument has already been rejected, as it is well accepted that an "agency may rely on generally applicable regulations to conclude an environmental impact will not be significant and therefore does not require mitigation." (*S. F. Beautiful v. City of S.F.* (2014) 226 Cal.App.4th 1012, 1033.) Reliance on site specific geotechnical recommendations was explicitly approved, as "customary measures should be adequate to address anticipated risks that arise during project excavation" (*Protect Telegraph Hill, supra*, 16 Cal.App.5th at 273.)

As a practical matter, the appellant's argument must be rejected. As explained above, the Maher Ordinance was amended in 2013 to encompass more of the City specifically to avoid case-by-case CEQA review for an extremely common condition. Nearly every housing project requires some amount of excavation and a geotechnical report, including the appellant's 2015 proposed basement expansion *that was also found exempt from CEQA*. Surely the appellant did not believe that *his* project required in-depth CEQA review. The appellants' position, that the City cannot rely on generally applicable regulations to qualify for an exemption, is untenable and unworkable. As the California Supreme Court confirmed decades ago, "common sense tells us that the majority of private projects . . . may be approved exactly as before." (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 272.)

**Conclusion.**

The Project provides ten units of housing in an urbanized resident zone that is completely developed and clearly qualifies for an In Fill Exemption. The appellant fails to show the existence of any unusual circumstances and fails to provide convincing evidence that the project will have a significant effect on the environment. The Board should reject this appeal, uphold the exemption, and allow this much needed housing project to move forward.

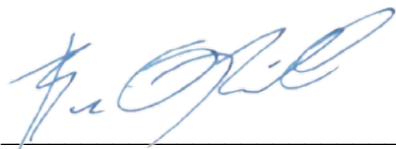
Very truly yours,

President Peskin and Supervisors

June 16, 2023

Page 6

PATTERSON & O'NEILL, PC



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Ryan J. Patterson

Brian J. O'Neill

Attorneys for Alison and Todd Davis

# **EXHIBIT A**

19 April 2023

Commission President Rachel Tanner  
**San Francisco Planning Commission**  
40 South Van Ness Avenue  
San Francisco, CA 94103

**Re: 1151 Washington CUA**  
**– Consolidated Response to Robert Baum & Richard Drury Letters dated 4/17/23**

Dear President Tanner, Vice-President Moore, and Commissioners,

This letter is in response to Architect Robert Baum’s Letter (dated 4/17/23) and Attorney Richard Drury’s Letter (dated 4/17/23) in opposition to my client’s (Alison & Todd Davis) proposed 10-unit “Townhome” Project located at 1151 Washington (Block 0213 Lot 025).

It is my understanding that Mr. Baum’s son is the owner of the single-family home located at 1155 Washington (Block 0213 Lot 024A) and that the underlying reason for Mr. Baum’s numerous objections is to preserve the existing views from his son’s property – with its numerous property line windows -- across the rear portion of my client’s property.

Mr. Drury represents Clayton Timbrell, the owner of 1157 Washington (Block 0213 Lot 024) and, similarly, based upon my client’s experience with Mr. Trimbell over several years, the real reason for his objection to the proposed Project is to preserve Mr. Trimbell’s views across the middle portions of my client’s property.

Since the preservation of private views across another’s private property is not a legitimate reason to object to a Project, both Letters seek to create sufficient confusion and doubt to thwart the Project.

Since the Planning Code and State Density Bonus Law compliance, and the CEQA issues brought up in the Letters are best addressed by the Planning Department, this Response will focus on the Building and Fire Code issues shared by the Letters, since these issues are not the area of expertise nor charge of the Planning Department.

**M A C Y**  
**A R C H**  
**I T E C**  
**T U R E**

## **CODE-COMPLIANT MEANS OF EGRESS**

**(See Figure 1, attached)**

Both Letters claim that the proposed Project's "Means of Egress" is not Code-compliant -- whereas, in truth, the Project is entirely in compliance with Building Code requirements.

In their Letters, Baum and Drury misunderstand and/or misrepresent the requirements of the 2023 San Francisco Building Code (SFBC).

The SFBC defines "Means of Egress" as *"A continuous and unobstructed path of vertical and horizontal egress travel from any occupied portion of a building or structure to a public way. A means of egress consists of three separate and distinct parts: the Exit Access, the Exit, and the Exit Discharge".*

The proposed Project possesses these 3 distinct parts. Within each "Tiny Townhome," the "Exit Access" is the route from the remotest part of the roof deck, down the spiral stair ("exit access stairway") and through the kitchen to the front door located at grade. Per the SFBC, the Townhome's front door – the transition from inside to outside -- is considered the "Exit." Once outside, one is in the "Exit Discharge." The "Exit Discharge" is in the form of a Code-compliant "Egress Court" that leads directly to a "Public Way" (i.e., Washington Street).

The Project consist of (10) Townhomes divided by 2-hour firewalls into (5) "Duplexes" of Group R-3 Occupancy. (See Project Drawings dated 03/17/23, Pages 10 thru 12.)

Per SFBC Sec. 1006.3.4.4, *"Group R-3 ... occupancies shall be permitted to have one exit or access to a single exit."*

Per SFBC Table 1006.3.4(1) "Stories with One Exit or Access to One Exit for R-2 and R-3 Occupancies," the "Maximum Exit Access Travel Distance" is 125 feet.

Per Figure 1 (attached), the Project's "Exit Access Travel Distance" is 118'-5"  
(Less than or equal to 125'-0").

**Accordingly, the Exit Access is Code-compliant.**

Per SFBC Sec. 1028.2 "Exit Discharge," *"Exits shall discharge directly to the exterior of the building. The exit discharge shall be at grade or shall provide a direct path of egress travel to grade. The exit discharge shall not reenter a building."*

Per Figure 1, the Project's "Exit" (each Townhome's front door) discharges directly to the exterior of the building (and at no point must one have to reenter a building).

**Accordingly, the Exit is Code-compliant.**

Per SFBC Sec. 1028.4 "Exit Discharge Components," *"Exit discharge components shall be sufficiently open to the exterior to minimize the accumulation of smoke and toxic gases."* The "Exit Discharge" is in the form of an open air "Egress Court" that leads to "Public Way" (i.e., Washington Street).

Per Sec. 1029.2 "Egress Courts – Width or Capacity" *"Egress courts serving Group R-3 ... occupancies shall be no less than 36 inches in width."* Per Figure 1, the Project's Egress Court is 60 inches (i.e., 5-feet) in width.

**Accordingly, the Exit Discharge is Code-compliant.**

Note: Both Baum and Drury mistakenly apply the "Maximum Exit Access Travel Distance" of 125 feet to the length of the Exit Discharge. Per the SFBC, this "125 feet maximum" only applies to the "Exit Access" and not to the "Exit Discharge."

Per the SFBC, there is no maximum allowable distance that constrains the "Exit Discharge".

**In summary, the Project's entire Means of Egress system is Code-compliant.**

### **FIREFIGHTER ACCESS & EMERGENCY ESCAPE AND RESCUE OPENINGS (EEROs)**

**(See Figure 2, attached)**

Both Letters, focusing on the Townhomes fronting the "Egress Court", claim the Building and Fire Codes (and associated Interpretations and Manuals) require that all bedrooms ("sleeping rooms" per the Code) have Emergency Escape and Rescue Openings (EEROs). The Letters go on to claim that there is insufficient room for firefighters to set up the ground ladders in order to access the EEROs.

Both claims are incorrect.

The Project's Townhomes along this frontage have bedrooms at the 3<sup>rd</sup> and 4<sup>th</sup> stories. Per SFBC Sec. 1031.2 "Emergency Escape and Rescue – Where Required" and DBI's Information Sheet No. EG-04 "Emergency Escape and Rescue Openings," *"...Basements and sleeping rooms below the 4<sup>th</sup> story above grade plane shall have not fewer than one emergency escape and rescue opening in accordance with this section."*

Accordingly, only the bedrooms at the 3<sup>rd</sup> story (i.e., “below the 4<sup>th</sup> story”) must have an EERO. The bedrooms located at the 4<sup>th</sup> story are not required to have an EERO.

As clearly shown in Figure 2 (attached), there is plenty of room for firefighters to set up a ladder (e.g., a 50-foot “Bangor” Extension Ladder”) at the ideal 70-degree angle specified in the SFFD “Truck & Ladder Manual (TLM) along the 5-foot-wide Egress Court in order to access the EEROs.

In fact, by orienting the ladder parallel, as opposed to perpendicular, to the building, firefighters do not have to rotate the ladder and, accordingly, they can deploy it more quickly and safely. Additionally, the projecting steel “Ladder Rests” allow firefighters to secure the ladder to the Rests, just as they would to a fire escape balcony, as recommended in the TLM (Page 2.6).

Furthermore, even though access is not required to the 4<sup>th</sup> story window -- as shown in Figure 2, the design of the Project goes the extra distance to provide firefighter ladder access to this 4<sup>th</sup> story bedroom as well.

**Accordingly, the Project exceeds Code requirements for EEROs and provides enhanced safety for firefighters and occupants alike.**

### **ACCESSIBILITY COMPLIANCE**

Regarding accessibility, the Project complies with the applicable requirements of the SFBC Chapter 11A “Housing Accessibility”.

Specifically, per Sec. 1102A.3.1 “Multistory Apartment or Condominium Dwellings in Buildings with No Elevators,” *“At least 10 percent, but not less than one of the multistory dwellings ... shall comply with the following:*

- 1. The primary entry to the dwelling unit shall be on an accessible route unless exempted by site impracticality test in Section 1150A.*
- 2. At least one powder room ... shall be located on the primary entry level, served by an accessible route and shall comply with the provisions in Division IV.*
- 3. All rooms or spaces locate on the primary entry level shall be served by an accessible route and shall comply with the provision in Division IV. Rooms and spaces located on the primary entry level and subject to this chapter my include, but are not limited to, kitchens, powder rooms, bathrooms, living rooms, bedrooms or hallways.*
- 4. Common use areas covered by this section shall be accessible as required by this chapter.”*



Since the Project has no elevator and consists of (10) multistory Townhome dwellings, at least (1) Townhome (i.e., 10%) must comply with the above requirements of Sec. 1102A.3.1.

The Townhome facing Washington Street has the requisite features (Items 1, 2 & 3). Its primary entry is accessible directly from the sidewalk and it has an accessible powder room, in compliance with the provisions in Division IV, located on the primary entry level that is served by an accessible route). (See Project Drawings dated 03/17/23, Page 14.)

Common use areas include the shared garage and trash, recycling & compost room located at street level. The garage contains (1) un-assigned parking stall consisting of a minimum 9-foot-wide van-accessible parking space with an adjacent 8-foot-wide loading space. All these common use areas are served by an accessible route (Item 4).

**Accordingly, the Project is Code-compliant with regard to accessibility.**

Sincerely,



Mark Macy  
Principal  
[markm@macyarchitecture.com](mailto:markm@macyarchitecture.com)  
(415) 551-7633

cc. Commission Vice-President: Kathrin Moore  
Commissioners: Derek Braun, Sue Diamond, Joel Koppel, Theresa Imperial, Gabriella Ruiz  
Commission Secretary Jonas Ionin  
Senior Planner Christopher May  
Senior Environmental Planner Don Lewis

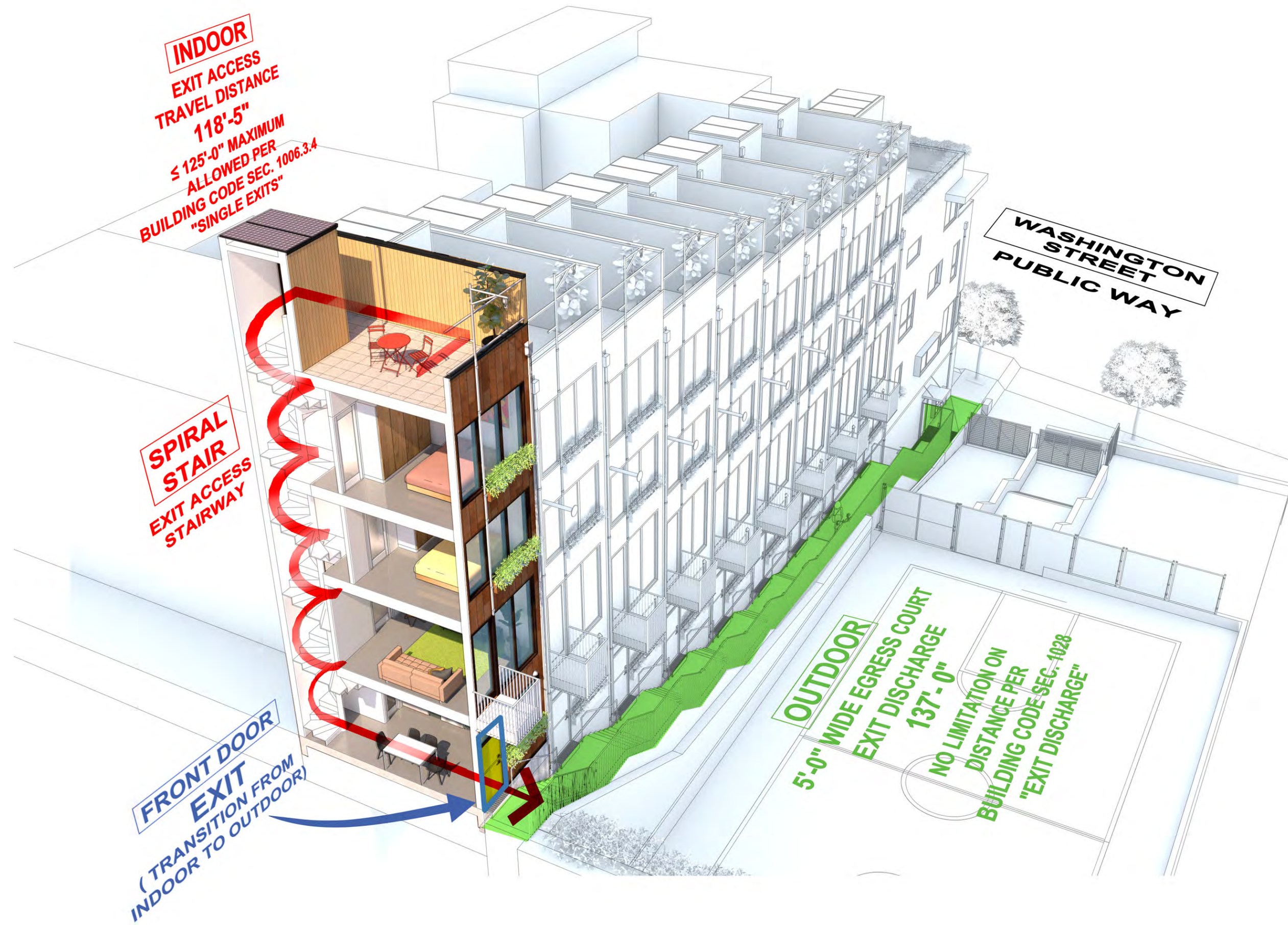


FIGURE 1 CODE-COMPLIANT MEANS OF EGRESS

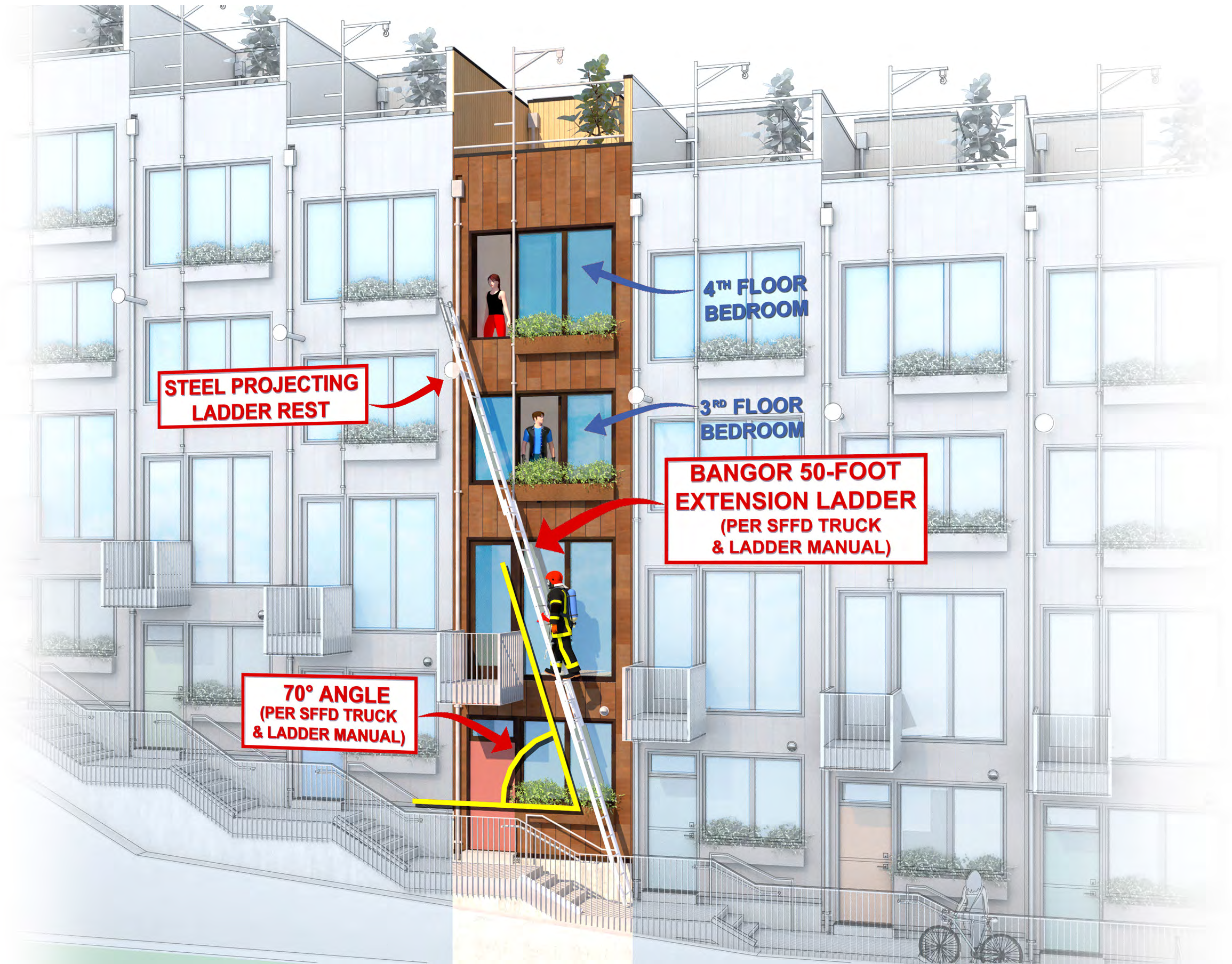


FIGURE ② CODE-COMPLIANT FIREFIGHTER ACCESS AND RESCUE OPENINGS



- (A) "DUTCH" STYLE FLAG HOIST SYSTEM
- (B) SOLAR PANELS
- (C) COMPOSITE WOOD SIDING
- (D) OUTDOOR PRIVATE DECK
- (E) ZINC/GALVANIZED DOWNSPOUTS
- (F) LARGE WINDOWS FOR ABUNDANT NATURAL LIGHT, AIR AND VIEWS
- (G) NATURAL CROSS VENTILATION
- (H) WINDOWSILL PLANTERS
- (J) WEATHERING STEEL SIDING
- (K) "DUTCH" SPIRAL STAIR CASE
- (L) PROJECTING BALCONY
- (M) "DUTCH" TYPE ENTRY DOOR
- (N) KITCHEN HERB GARDEN
- (O) DRAINAGE CHANNEL
- (P) BIKE RAMP



## THE TINY TOWNHOMES OF NOB HILL

**From:** [BOS Legislation, \(BOS\)](#)  
**To:** "richard@lozeaudrury.com"; "danam@macyarchitecture.com"  
**Cc:** [PEARSON, ANNE \(CAT\)](#); [JENSEN, KRISTEN \(CAT\)](#); [RUIZ-ESQUIDE, ANDREA \(CAT\)](#); [YANG, AUSTIN \(CAT\)](#); [Hillis, Rich \(CPC\)](#); [Teague, Corey \(CPC\)](#); [Tam, Tina \(CPC\)](#); [Gibson, Lisa \(CPC\)](#); [Jain, Devyani \(CPC\)](#); [Navarrete, Joy \(CPC\)](#); [Lewis, Don \(CPC\)](#); [Switzky, Joshua \(CPC\)](#); [Sider, Dan \(CPC\)](#); [Starr, Aaron \(CPC\)](#); [Watty, Elizabeth \(CPC\)](#); [Ionin, Jonas \(CPC\)](#); [May, Christopher \(CPC\)](#); [Schuett, Rachel \(CPC\)](#); [Sheyner, Tania \(CPC\)](#); [Rosenberg, Julie \(BOA\)](#); [Longaway, Alec \(BOA\)](#); [BOS-Supervisors](#); [BOS-Legislative Aides](#); [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [BOS Legislation, \(BOS\)](#)  
**Subject:** PLANNING DEPT RESPONSE: Appeal of CEQA Exemption - Proposed 1151 Washington Street Project - Appeal Hearing June 27, 2023  
**Date:** Friday, June 16, 2023 4:54:18 PM

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Greetings,

The Office of the Clerk of the Board is in receipt of a response from the Planning Department for the appeal of the CEQA Exemption for the proposed project at 1151 Washington Street.

[Planning Department Response - June 16, 2023](#)

**The hearing for this matter is scheduled for 3:00 p.m. special order before the Board on June 27, 2023.**

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[Board of Supervisors File No. 230592](#)

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# Categorical Exemption Appeal 1151 Washington Street

**Date:** June 16, 2023  
**To:** Angela Calvillo, Clerk of the Board of Supervisors  
**From:** Lisa Gibson, Environmental Review Officer – 628.652.7571  
Rachel Schuett, Senior Planner, [Rachel.schuett@sfgov.org](mailto:Rachel.schuett@sfgov.org), 628.652.7546

**RE:** **Planning Record No. 2022-010833ENV**  
**Appeal of Categorical Exemption for 1151 Washington Street**

**Hearing Date:** June 27, 2023

**Project Sponsor:** Dana Manea, MACY Architecture, 415.652.4535  
**Appellant(s):** Richard Drury of Lozeau Drury, LLP, on behalf of Clayton Timbrell and the Upper Chinatown Neighborhood Association

## Introduction

This memorandum is response to the May 17, 2023 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 1151 Washington Street project.

*Please Note: On June 16, 2023, as the department was finalizing this appeal response, the Appellant submitted a supplemental letter of appeal dated June 16, 2023. Thus, this appeal response does not address the supplemental appeal letter. The department will review the supplemental appeal letter and consider whether a written response is warranted.*

The department, pursuant to Article 19 of the CEQA Guidelines, issued a categorical exemption for the proposed project on April 7, 2023, finding that the proposed project is exempt from CEQA as a Class 32 exemption.

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 department staff for additional environmental review.

## Site Description and Existing Use

The project site is a 3,571-square-foot parcel in the Nob Hill neighborhood. The project site is occupied by an existing 30-foot-tall, three-story, single-family residence that is approximately 3,050 square feet in size with two off-street parking spaces. Immediately east of the project site is a lower playground area of the Betty Ann Ong Recreation Center that is approximately 6 to 20 feet lower in elevation than the subject property's rear yard. The change in elevation is supported by a retaining wall ranging between 6 to 20 feet that extends the length of the playground.

## Project Description

Utilizing the state density bonus program, the project sponsor proposes the demolition of the existing single-family residence and construction of a 40-foot-tall (50-foot-tall with penthouses), four-story over basement residential building containing 10 for-sale townhouses and one off-street van parking space. The proposed building would be approximately 12,300 square feet in size. Each of the 10 residential units would be four stories tall and would include a penthouse and roof deck. The proposed "front unit" along Washington Street would be approximately 2,070 square feet in size with three bedrooms while the nine rear units would each be approximately 940 square feet with two bedrooms. The proposed roof decks would include approximately 7-foot-tall privacy walls and there would be a mini-split heat pump (condenser unit) on the roof of each unit. Access to the proposed units would be from a 5-foot-wide pathway that would step up along the eastern edge of the property, from Washington Street. The proposed pathway would include a bicycle ramp.

The project would include 10 class 1 bicycle parking spaces on the project site; there would be one class 2 bicycle parking space installed on the sidewalk along the project site's Washington Street frontage. The existing 13-foot-wide curb cut on Washington Street would be reduced to a 10-foot-wide curb cut. Six existing trees would be removed and replaced with two trees in front of the project site. Trash, recycling and compost bins would be stored in the shared garage space at the street-level basement and would be rolled out to Washington Street for pick-up. The proposed buildings would likely be supported on micropiles. The project would require approximately 130 cubic yards of excavation to a depth of approximately 12.5 feet below ground surface. Construction is expected to last approximately 15 months.

## Background

The following bullet points provide a chronological summary of the various actions documented in the record related to the proposed project that have occurred since November 2022, when the project sponsor filed for a building permit associated with the proposed project:

- On November 1, 2022, Dana Manea (representing the project sponsor) filed a project application with the department for the project.
- On April 7, 2023, the department determined that the project was categorically exempt under CEQA Class 32 - Infill Development, and that no further environmental review was required.
- On April 20, 2023, the Planning Commission approved the Conditional Use Authorization for the proposed project.
- On May 17, 2023, Richard Drury of Lozeau Drury, LLP, on behalf of Clayton Timbrell, filed an appeal of the categorical exemption determination.



- On May 19, 2023, Hanmin Liu, on behalf of the Upper Chinatown Neighborhood Association (UCNA), filed a memorandum indicating that UCNA is joining the appeal of the exemption determination filed by Richard Dury (on May 17, 2023), and noted that UCNA is not raising any new issues or enlarging the scope of the appeal.
- On May 22, 2023, the department determined that the appeal was timely filed.

## CEQA Guidelines

### Categorical Exemptions

Pursuant to CEQA Guidelines section 15061, “Once a lead agency has determined that an activity is a project subject to CEQA, a lead agency shall determine whether the project is exempt from CEQA” [CEQA Guidelines section 15061(a)]. A project is exempt from CEQA if “the project is exempt pursuant to a categorical exemption. . . and the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2.” [CEQA Guidelines section 15061(b)(2)]

In accordance with Public Resources Code section 21084, CEQA Guidelines sections 15301 through 15333 list classes of projects that have been determined *not* to have a significant effect on the environment and are exempt from further environmental review.

CEQA Guidelines section 15332 (In-Fill Development Projects), or Class 32, consists of projects characterized as in-fill development, provided they meet various conditions. These conditions include: the project’s consistency with applicable general plan designation, general plan policies and applicable zoning designations and regulations; the project’s location within city limits on a project site of no more than five acres substantially surrounded by urban uses; the project site having no value as habitat for endangered, rare or threatened species; the project approval not resulting in any significant effects relating to traffic, noise, air quality, or water quality; and the project site being able to be adequately served by all required utilities and public services.

As noted above, a categorical exemption may not be used when an exception listed in CEQA Guidelines section 15300.2 applies. Among these exceptions are projects located on a site that is included on any list compiled pursuant to Section 65962.5 of the Government Code (known as the “Cortese list”) [CEQA Guidelines section 15300.2(e)] and projects where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances [CEQA Guidelines section 15300.2(c)].

Pursuant to CEQA Guidelines section 15300.2(c), lead agencies must apply a two-pronged analysis in determining whether the “unusual circumstances” exception applies. First, an unusual circumstance must exist, and second, the unusual circumstance must give rise to “a reasonable possibility that the activity will have a significant effect on the environment.” It is important to note that it is not enough for an Appellant to claim the project – *as a whole* – will have a substantial effect on the environment. Rather, an Appellant must show that the specific unusual circumstances themselves will potentially cause that substantial effect.

### Standards of Review

The standard of judicial review of lead agency decisions on a project’s qualification for a given class of exemption is the “substantial evidence” standard of Public Resources Code section 21168.5. Under this

substantial evidence standard, courts will defer to the agency decision as long it is supported by substantial evidence, even if there is conflicting evidence.

The standards of judicial review for the “unusual circumstance” exception are two-pronged, as follows: An agency’s determination as to whether (or not) there are “unusual circumstances” [CEQA Guidelines section 15300.2 (c)] is reviewed under the substantial evidence standard. On the other hand, an agency’s determination as to whether unusual circumstances result in “a reasonable possibility that the activity will have a significant effect on the environment” is reviewed under the non-deferential “fair argument” standard. Under the “fair argument” standard, the exception to the exemption would apply, and would require additional environmental analysis under CEQA if the record contains evidence that supports a fair argument that the unusual circumstances may produce a significant effect on the environment.

### **Substantial Evidence**

In determining the significance of environmental effects caused by a project, CEQA 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.” CEQA 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**

The responses, below, address the environmental concerns raised by the Appellant, organized by environmental topic. Each response confirms that the project meets the eligibility criteria for a Class 32 exemption pursuant to CEQA Guidelines section 15332 and issuance of an exemption is not barred by one of the exceptions identified in CEQA Guidelines section 15300.2. The Appellant has not met the legal burden of proof to demonstrate that the project is not exempt and that an initial study must be prepared.

In addition to environmental concerns, the Appellant disputes the project’s eligibility for concessions and waivers pursuant to State Density Bonus Law. Such concerns are not material to the CEQA determination and are not addressed below. Please refer to Response 6 in the department’s response to the appeal of the Conditional Use Authorization for this project, which discusses this matter (see Board of Supervisors File No. 230630).

#### **Hazardous Materials**

**Response 1:** The presence of subsurface contaminants on a residential infill development site in San Francisco is not an unusual circumstance. Even if it were, compliance with the Maher Ordinance would ensure that the project would not result in significant impacts related to exposure to contaminated soils or soil vapors. The Site Mitigation Plan and other regulatory requirements do not constitute mitigation measures under CEQA.

As noted above, the eligibility criteria for a Class 32 infill categorical exemption include that the project may not have a significant impact on traffic, noise, air quality or water quality. Hazardous materials is not among the topics in these criteria; therefore, CEQA does not preclude a project where hazardous materials are present from

relying on a Class 32 categorical exemption if other requirements are met. However, there are exceptions to categorical exemptions where hazardous materials impacts must be considered.

One exception specifies that a categorical exemption may not be issued for a proposed project on a project site that is listed on the Cortese List (Government Code section 65962.5), which consists of a series of lists or databases maintained by state regulatory agencies containing information about contaminated properties.<sup>1</sup> Here, the project site is not included on such a list and thus this exception does not apply to the project. Also, under CEQA, there is no exception to categorical exemptions for projects on contaminated sites that are *not* listed on the Cortese List.

Therefore, it stands to reason that the presence of contamination on a property alone does not preclude use of a categorical exemption. What remains to be considered regarding the presence of contamination on a property is whether it triggers another exception to the use of a categorical exemption, namely the exception for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. As described below, the department has substantial evidence in the record to support the conclusion that the presence of contamination on the project site is not an unusual circumstance **and**, even if it were, it would not give rise to a significant impact on the environment. The Appellant has not met the legal burden of proof to successfully challenge this determination.

### Contaminated Residential Infill Development Sites in San Francisco Are Not Unusual

The contaminants present on the property are commonly found on sites within San Francisco that are underlain by undocumented fill material and/or located near historically commercial and industrial areas. San Francisco is a built-out city that has a long history of diverse uses, including industrial and commercial uses interspersed with residential uses. In addition, much of the city is underlain by undocumented fill, including rubble from earthquakes, sunken ships, and sand dredged from the Bay. As such, it is not uncommon to encounter subsurface contamination. In fact, the routine nature of such encounters is part of why San Francisco has its own dedicated program (Maher program, discussed in more detail below) to manage the investigation and remediation of soil/groundwater contaminants. According to Planning Department estimates, approximately 24.2 percent of City's geographical area (or 13.7 percent of all parcels) within San Francisco is located in the Maher area.<sup>2</sup> This equates to almost a quarter of the City's geography being potentially underlain by contaminants associated with undocumented fill, present or former hazardous uses, or other reasons that require projects proposed on those sites to undergo additional regulatory process to ensure the safety of workers and future occupants, as discussed below.

### Even If the Site's Contamination Presented Unusual Circumstances, the Maher Ordinance Ensures That Significant Impacts Would Not Occur

The project site is located within the city's Maher Area, which includes sites with known or suspected soil and/or groundwater contamination.<sup>3</sup> This is because the project site is within 100 feet of a nearby site that previously contained an underground storage tank (1140 Clay Street, Geotracker Case Number T0607565888), which itself is

<sup>1</sup> <https://calepa.ca.gov/sitecleanup/corteselist/Background/>

<sup>2</sup> Mike Wynne, San Francisco Planning Department, personal communication to Tania Sheyner, Planning Department, March 13, 2023.

<sup>3</sup> <https://sf.gov/information/frequently-asked-questions-about-maher-ordinance>.

a property on the Cortese List.<sup>4</sup> As such, the proposed project is subject to San Francisco Health Code Chapter 22A (the Maher Ordinance, or Maher program), a unique and robust local regulatory program overseen by the San Francisco Department of Public Health (DPH) which provides for the characterization and mitigation<sup>5</sup> of hazardous substances found in soil, soil vapor, and groundwater within the Maher area.<sup>6</sup> This ordinance was crafted as a good government measure to require cleanup of contaminated sites to State standards tied to the proposed use of a development project, prior to building occupancy, and in a manner that is protective of public health and safety.

Pursuant to the Maher program requirements, the project sponsor submitted a Site Assessment and Mitigation Application to DPH on October 15, 2019. DPH's Environmental Health Branch, Contaminated Sites Assessment and Mitigation Program (EHB-SAM), which administers the Maher program, has been coordinating with the project sponsor to ensure that the site is properly investigated and remediated. The following discussion highlights some of the key facts demonstrating the adequacy of the Maher requirements to avoid significant impacts.

The sponsor submitted a Phase I Environmental Site Assessment (Phase I ESA) report,<sup>7</sup> which described the current and historical uses of the property, to DPH. As documented in the Phase I ESA, the project site has been either vacant or developed with residential use since records were kept (circa late 1800s). The Phase I noted the presence of undocumented fill (i.e., fill of unknown origin) on the project site as a recognized environmental condition. Following this, a Phase II Environmental Site Assessment (Phase II ESA) report<sup>8</sup> was prepared to obtain additional information concerning potential soil contamination underneath the site. As part of the Phase II ESA, soil and soil vapor borings were performed. The Phase II identified a number of contaminants at concentrations above applicable screening levels<sup>9</sup>. These contaminants included: (1) metals, such as arsenic,<sup>10</sup> chromium, and thallium<sup>11</sup> and (2) volatile organic compounds (VOCs), such as perchloroethylene (PCE) and chloroform. As noted above, these contaminants are commonly found in development project sites within San Francisco that are underlain by undocumented fill material and/or located near historically commercial and industrial areas.

Consistent with Maher Ordinance procedures, state-based screening levels were used to determine that the project site requires further investigation by DPH. As discussed in the Phase II report, "analytical results were compared to Regional Water Quality Control Board (RWQCB) Environmental Screening Levels (ESLs) for residential land use and construction worker health, where established. ESLs are guidelines established by the RWQCB and by definition, any detected concentration below its applicable ESL can be assumed to not pose a significant threat to human health, water resources, or the environment. Similarly, *the presence of a chemical at*

<sup>4</sup> [https://geotracker.waterboards.ca.gov/profile\\_report.asp?global\\_id=T0607565888](https://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T0607565888).

<sup>5</sup> The term "mitigation" within the context of hazardous materials regulation sector (such as the Maher program) refers to methods of controlling contamination for the protection of human health and environmental concerns. This use of the term in has a different meaning from "mitigation" in the context of CEQA, in which context mitigation refers to are feasible measures that would avoid, lessen, or reduce significant impacts, and would be required to be implemented if a project is approved. A "Site Mitigation Plan (SMP)" is a plan to reduce or avoid environmental impacts resulting from exposure to contaminated soils and/or ground water, similar to a "mitigation measure" under CEQA.

<sup>6</sup> [https://codelibrary.amlegal.com/codes/san\\_francisco/latest/sf\\_health/0-0-0-4093](https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_health/0-0-0-4093).

<sup>7</sup> EIS, 2019. Phase I Environmental Site Assessment, 1151 Washington Street, San Francisco, California. 18 December.

<sup>8</sup> EIS, 2020. Limited Soil and Soil Vapor Investigation, 1151 Washington Street, San Francisco, California. 11 March.

<sup>9</sup> See Regional Water Quality Control Board Environmental Screening Levels ([https://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/esl.html](https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/esl.html)).

<sup>10</sup> Arsenic was shown as being above environmental screening levels but still within the regional Bay Area background of 11 mg/kg.

<sup>11</sup> Chromium and thallium are commonly found in undocumented fill material.

*concentrations in excess of an ESL does not necessarily indicate adverse effects on human health or the environment, rather that additional evaluation is warranted.” [Emphasis added.]*

The sponsor submitted a Site Mitigation Plan (SMP), which is the plan that will be used to manage chemical contaminants during project construction and operations. In their most recent letter issued on January 10, 2023, DPH approved the SMP as being in compliance with SFHC Article 22A.10, which among other provisions, requires that the applicant “assure that the intended use will not result in public health or safety hazards in excess of the acceptable public health risk levels...” Requirements within the SMP to ensure public health and safety included entry/exit restrictions, soil and stockpile management protocols, material segregation and disposal, dust controls, contingency procedures when encountering unexpected conditions, and general worker health and safety procedures. DPH required installation of a vapor intrusion mitigation system (VIMS) to mitigate the potential vapor intrusion risk to indoor air from VOCs (specifically PCE and chloroform). DPH will oversee post-construction vapor sampling and, if required, indoor air samples to confirm the effectiveness of the VIMS prior to approving any occupancy permits for the proposed new housing units. In addition, all activities conducted at the site would be subject to current California Occupational Safety and Health Administration (Cal/OSHA) rules and regulations to protect construction workers (some of which are detailed in the SMP).

DPH has been appropriately overseeing the additional evaluation of the site to ensure it meets applicable protective standards for intended uses. As part of standard Maher Ordinance protocol, as discussed above, DPH staff has reviewed and approved all submitted documents prepared for the proposed project, including a geotechnical report, Phase I report, Phase II report, and the SMP. Presently, the project is in compliance with SFHC Article 22A and no other submittals are required by the project sponsor prior to the start of the proposed development activities.

The Appellant asserts that the SMP constitutes mitigation under CEQA and that this measure is inadequate to reduce risks to a less-than-significant level. To support this claim, the Appellant provides a memorandum authored by Matt Hageman, P.G., C.Hg. and Dr. Paul E. Rosenfeld, Ph.D. This document asserts that further CEQA review is required but does not provide substantial evidence demonstrating that the project presents unusual circumstances, in the context of San Francisco. Further, it does not provide substantial evidence to support a fair argument that the project would have a significant impact in light of the regulatory requirements imposed by the Maher Ordinance. Indeed, the main objective of the Maher program is to ensure that any exposure to hazardous materials by workers or future residents as part of new development is avoided. DPH will not sign off on the occupancy permit until and unless the final report submitted by the sponsor following completion of construction and installation of VIMS documents that any pollution from subsurface contaminants do not exceed health-protective standards applicable to residential uses, which would also protect users of the adjacent park. This regulatory process will ensure that any impacts related to release of hazardous materials during construction or operations do not rise to a significant level. The appellant does not present substantial evidence that implementation of the Maher program – which is required by law – would be insufficient to avoid significant impacts related to hazards.

### **The Site Mitigation Plan and Other Maher Program Requirements Are Not CEQA Mitigation Measures**

The Appellant conflates the regulatory requirements of the Maher program with mitigation measures under CEQA. In assessing whether a project would result in a significant impact, the lead agency must take into account regulatory requirements that apply to the project, because these are background norms that apply regardless

and independent of the CEQA process. Some of those regulatory requirements may avoid or lessen potential environmental impacts altogether; others may serve other purposes. There are many examples of this in San Francisco, including the Noise Ordinance, the Clean Construction Ordinance, the Maher Ordinance, and the building permit review process under the purview of the Department of Building Inspection (DBI), the latter of which is explained in further detail in Response 4 below. CEQA mitigation measures are not required where there are other regulatory processes in place to mitigate environmental impacts, including the SMP process under DPH's jurisdiction. It is routine in the development process to rely on these and other regulatory requirements when reviewing a project's impacts under CEQA, and courts have upheld this approach.

If, after considering the proposed project's compliance with all applicable regulatory requirements, there is still a potentially significant environmental impact, then the lead agency must identify mitigation measures to address that impact. The regulatory requirements themselves do not constitute mitigation, because, as stated above, they apply regardless and independent of the CEQA process. Moreover, treating these regulatory requirements as mitigation measures under CEQA would effectively preclude use of a categorical exemption, while resulting in no greater environmental protection. Stated another way, if the department were to ignore the Maher program requirements (which would be an improper analytical approach under CEQA) and find the impact to be significant, the mitigation measures that would be drafted for this project would be equivalent to the requirements of San Francisco Health Code Article 22A and San Francisco Building Code Section 106.3.2.4), which must be satisfied prior to occupancy permit issuance. Furthermore, ignoring regulatory requirements and requiring higher levels of environmental review than required by CEQA would be contrary to the City's adopted Housing Element, which calls for the City to practice CEQA in an efficient manner to reduce constraints to housing production.<sup>12</sup>

Thus, given that the EHB-SAM is a local program operated by the DPH, whose express purpose is to ensure that impacts from hazardous materials are mitigated/remediated during project construction in a manner that is protective of public and worker health, the proposed project would not result in significant effects associated with hazardous materials due to unusual circumstances.

### **Emergency Access**

**Response 2: Public services and utilities (including emergency access) are currently provided to the project site. The proposed project would not create unusual circumstances that could lead to a significant environmental impact.**

As noted under response 1, above, the eligibility criteria for a Class 32 categorical exemption stipulates that the project may not have a significant impact on traffic, noise, air quality or water quality. Emergency access is not among the topics in the eligibility criteria. Also, the project site is and would be adequately served by utilities and public services as required under CEQA Guidelines section 15332(e).

The appellant asserts that the project would not meet state and local requirements for San Francisco Fire Department ("fire department") emergency access because sole access to 9 of 10 proposed units would be via a 5-foot-wide pathway which steps up from Washington Street, at the eastern edge of the project site. This issue

<sup>12</sup> For example, Housing Element Implementation Program 8 is titled, "Reducing Constraints on Housing Development, Maintenance, and Improvement." Action 8.5.6 states that the City will amend local codes and update requirements that go beyond the CEQA statute and state guidelines. The Housing Element's Implementing Programs can be found at: [https://generalplan.sfplanning.org/I1\\_Housing\\_Implementing\\_Programs.htm](https://generalplan.sfplanning.org/I1_Housing_Implementing_Programs.htm).

was raised and addressed prior to the Planning Commission hearing on April 17, 2023. At that time, the San Francisco Fire Marshal confirmed that the project does not present any unresolvable life and safety concerns.

As with all new construction, minor adjustments to improve emergency access may be identified and resolved during the building permit review process. Specifically, the fire department will conduct a more detailed review of the fire alarm and sprinkler system design, Emergency Escape Rescue Openings, and all other relevant project components prior to signing off on the occupancy permit. The appellant does not present any evidence that the standard building permit review process, including fire department review, would be insufficient to resolve any issues related to fire department access or preclude development of the proposed project.

In addition, no other issues related to the provision of public services or utilities were identified, including “unusual circumstances” that could lead to a significant environmental impact.

Given the city’s age, topography, and development standards, such as the absence of side setbacks (and presence of “party walls”) in much of the city, the fire department must be prepared to access buildings in a variety of different circumstances. In some neighborhoods the fire department uses smaller ladders and apparatus that are more easily accommodated on narrow streets and steep slopes, or hand carries hoses and equipment where buildings cannot be reached by fire engines and ladder trucks. Although fire department access to 9 of 10 units at 1151 Washington Street might be somewhat atypical for newer development projects, the fire department has reviewed the proposal and has confirmed that adequate access would be provided in case of fire or other emergency situations.

In summary, the fire department has reviewed the site plan for the proposed project and has determined that adequate fire department access would be available. As such, pursuant to CEQA Guidelines section 15300.2(c), there is no reasonable possibility that the proposed project would have a significant effect on the environment due to unusual circumstances related to emergency access. Further, the project site is and would be adequately served by utilities and public services as required under CEQA Guidelines section 15332(e).

### **Shadow**

**Response 3: Forty-foot-tall buildings are common in San Francisco. As such, this aspect of the project does not present unusual circumstances, and no shadow impact analysis is required.**

As noted under responses 1 and 2, above, the eligibility criteria for a Class 32 categorical exemption stipulate that the project may not have a significant impact on traffic, noise, air quality or water quality. Shadow impacts are not among the topics in the eligibility criteria, nor are they included in the Appendix G checklist of the CEQA Guidelines, which includes a list of environmental factors that lead agencies may consider in preparing an initial study for non-exempt projects. Therefore, shadow impacts are not among the topics that must be considered in assessing a project’s eligibility for a Class 32 categorical exemption. Further, the proposed project would not present unusual circumstances that could cause a significant shadow impact. Specifically, 40-foot-high buildings are common in San Francisco, as are the shadows caused by such buildings.

Pursuant to Planning Code Section 295, the department conducts a shadow impact analysis for any project that would (a) be over 40 feet in height and (b) cast net new shadow on any property under the jurisdiction of the

Recreation and Park Commission.<sup>13</sup> The 40-foot height threshold is calculated based on the measurement from the curb level at the centerline of the building to the finished roof, per Planning Code Section 260.<sup>14</sup> Permitted rooftop appurtenances such as stair overruns, elevator penthouses and mechanical equipment, etc. are not counted toward the building height if they meet the criteria in Planning Code Section 260(b).<sup>15</sup> The 1151 Washington Street project would not exceed 40 feet in height and, therefore, no shadow impact analysis is required under Planning Code 295.

Moreover, most of the city is zoned to allow 40-foot-tall buildings. Section 295 reflects the city's policy that shadows from buildings below the Section 295 applicability threshold of 40 feet are to be tolerated, regardless of where that shadow falls. The Appellant has provided no substantial evidence to support the argument that shadow from the proposed project would be a significant impact on the environment resulting from an unusual circumstance.

For informational purposes, the department notes that the shadow memorandum provided by the appellant (Exhibit G of the appeal letter) was based on a prior iteration of the project. In addition, the memorandum does not follow the department's standard methodology for conducting shadow analysis, as acknowledged in the memorandum.

### **Geology and Soils**

**Response 4: Construction on steep slopes is common in San Francisco. Even if such construction presented unusual circumstances, DBI's building permit review process, which includes provisions for construction on hillsides, would ensure the project's structural integrity during construction and operations.**

As discussed in the responses above, the eligibility criteria for a Class 32 categorical exemption stipulate that the project may not have a significant impact on traffic, noise, air quality or water quality. Impacts to geology and soils are not among the topics in the eligibility criteria. Therefore, impacts related to geology and soils are not among the topics that must be considered in assessing a project's eligibility for a Class 32 categorical exemption. Further, the proposed project would not present unusual circumstances that could cause a significant impact to geology and soils given the prevalence of construction on slopes throughout the city ("a city of 49 hills"). The proposed project would be consistent with the density, height, and bulk limitations for its designated RM-3 (Residential, Mixed, Medium Density) zoning district and its size and construction type would be within the range of structures that predominate in the neighborhood.

To ensure that the potential for adverse effects related to geology and soils are adequately addressed, San Francisco relies on the state and local regulatory process for review and approval of building permits pursuant to the California Building Code and the San Francisco Building Code, which is the state building code plus local amendments that supplement the state code, including the building department's administrative bulletins. During the building department's review of the building permit, the building department would review the construction plans for conformance with recommendations in the project-specific geotechnical report. The

<sup>13</sup> San Francisco Planning Code, Section 295. Height Restrictions on Structures Shadowing Property Under the Jurisdiction of the Recreation and Park Commission. [https://codelibrary.amlegal.com/codes/san\\_francisco/latest/sf\\_planning/0-0-0-21861](https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_planning/0-0-0-21861)

<sup>14</sup> San Francisco Planning Code, Section 260. Height Limits: Measurement. [https://codelibrary.amlegal.com/codes/san\\_francisco/latest/sf\\_planning/0-0-0-21453](https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_planning/0-0-0-21453)

<sup>15</sup> San Francisco Planning Code, Section 260. Height Limits: Measurement. [https://codelibrary.amlegal.com/codes/san\\_francisco/latest/sf\\_planning/0-0-0-21453](https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_planning/0-0-0-21453)



building permit would be reviewed pursuant to the building department's implementation of the building code, including administrative bulletins, local implementing procedures such as the building department information sheets, and state laws, regulations, and guidelines would ensure that the proposed project would have no significant impacts related to soils, seismic, or other geological hazards.

In general, if the scope of a proposed project requires a preliminary geotechnical report for environmental review purposes, the planning department reviews this report to understand geotechnical issues and recommendations. Through its building permit review process, DBI requires the sponsor to incorporate such recommendations into the project. For environmental review purposes, department staff confirm that the preliminary geotechnical report finds that the proposed project is feasible either as proposed, or with additional construction requirements recommended by the report preparer. During environmental review, department staff confirm that the project sponsor would incorporate foundation design recommendations (and/or other recommendations) into the project design, upon approval. DBI, during its review of site and building permits (after CEQA review is completed/project approvals are issued), reviews construction documents for conformance with the preliminary and, ultimately, the final geotechnical report.

A geotechnical report prepared for the proposed project confirmed that the project site has a 25 percent slope and the underlying soil exhibit a potential for liquefaction.<sup>16</sup> Taking these site characteristics into consideration, the geotechnical report made recommendations regarding foundations that could be supported on the site and recommendations pertaining to retaining walls, temporary slopes and excavation, surface draining, and various other geotechnical issues. Whether or not the project is subject to the Slope and Seismic Hazard Zone Protection Act<sup>17</sup> (San Francisco Building Code section 106A.4.1.4) would be determined by the San Francisco Department of Building Inspection (DBI) as part of their building permit review process.

As described in DBI's Information Sheet S19,<sup>18</sup> the slope conditions at the site *as well as the scope of the project* are used to determine if a project is subject to the Slope and Seismic Hazard Zone Protection Act. If the building department determines a project is subject to this act, the project will require additional geotechnical and structural review, which may include a third-party peer review and/or assignment to a Structural Advisory Committee, as determined by the building department. The three-member Structural Advisory Committee will advise the building department on matters pertaining to the building's design and construction.<sup>19</sup>

The site's topography and geology present no unusual circumstances. The slope of the project site (25 percent) is not unusual for San Francisco. By department estimates, approximately 12.8 percent of San Francisco is on slopes of this percent or greater (which works out to be approximately 38.6 percent of parcels where at least a portion of it has a slope of 25 percent or more).<sup>20</sup> Although there are certain geotechnical complexities associated with the project site, including the slope, underlying soils and potential for seismic activity, none of them comprise unusual circumstances in San Francisco or the San Francisco Bay Area. As with all projects, the

<sup>16</sup> Romig Engineers, *Geotechnical Investigation, David Townhome Development, 1151 Washington Street, San Francisco, California 94109*, November 2022.

<sup>17</sup> Enacted by Ordinance No. 12118, effective June 23, 2018.

<sup>18</sup> Department of Building Inspection Information Sheet No. S-19, *Properties Subject to the Slope and Seismic Hazard Zone Protection Act (SSPA) Ordinance*, October 2, 2018. Available at <https://sfdbi.org/sites/default/files/IS%20S-19.pdf>.

<sup>19</sup> San Francisco Building Code Section 105A.6 establishes and defines the process and requirements for identifying the members of the Structural Advisory Committee. The three committee members must be selected from a list of qualified engineers submitted by the Structural Engineers Association of Northern California and approved by the building department.

<sup>20</sup> Mike Wynne, San Francisco Planning Department, personal communication to Tania Sheyner, Planning Department, June 15, 2023.

San Francisco Building Code and the California Building Code appropriately address geotechnical considerations and compliance with the building codes is ensured through DBI's building permit review process.

As explained in Response 1, it is routine in the development process to rely on these and other regulatory requirements when reviewing a project's impacts under CEQA, and courts have upheld this approach. Furthermore, ignoring regulatory requirements and requiring higher levels of environmental review than required by CEQA would be contrary to the City's adopted Housing Element, which calls for the City to practice CEQA in an efficient manner to reduce constraints to housing production.

### Air Quality

**Response 5: The project would not result in any significant air quality impacts during project construction or operations.**

In the appeal letter, the appellant asserts that, "The Planning Department's draft categorical exemption admitted the Project has the 'potential to emit substantial pollutant concentrations from the use of diesel construction equipment, backup diesel generators, heavy industry, diesel trucks.' Thus, the Infill Exemption is improper under Section 15332(d)."

The Appellant misrepresents the department's analysis by cherry-picking this passage from the department's documentation without providing context and failing to acknowledge that the categorical exemption includes further analysis explaining that these emission sources would not result in a significant impact.

The quoted text is from a *screening question* in the department's standard CEQA Exemption Determination checklist. The question asks:

"Would the project add new sensitive receptors (specifically, schools, day care facilities, hospitals, residential dwellings, and senior-care facilities within an Air Pollution Exposure Zone? Does the project have the potential to emit substantial pollutant concentrations (e.g. use of diesel construction equipment, backup diesel generators, heavy industry, diesel trucks, etc.)?"

The department checked the box for this item, indicating that comments are required to explain why the project still qualifies for the exemption despite this "potential." Further below in the checklist is a comments box that states, "Please see attached." This refers to an attachment that was included in the document that the Appellant attached to their appeal letter, which includes "Step 2: Environmental Screening Comments." Those comments include the following text addressing the air quality screening box that was checked:

"Air Quality: The proposed project's construction would be subject to the Dust Control Ordinance (Article 22B of the Health Code). The proposed land uses are below the Bay Area Air Quality Management District's construction and operational screening levels for requiring further quantitative criteria air pollutant analysis. The project site is located within an air pollutant exposure zone but would not add new stationary sources of toxic air contaminants. Pursuant to Director's Bulletin No. 2 for Type 3, Clean Construction projects, the project sponsor has committed to using Tier 4 engines on all diesel-fueled construction equipment. Thus, no significant construction or operational air quality impacts would occur."

The discussion, below, elaborates on the above comments from the checklist.

*Construction.* The proposed project's construction would be subject to the Dust Control Ordinance (Article 22B of the Health Code). In addition, pursuant to Director's Bulletin No. 2 for Type 3, Clean Construction projects, the project sponsor has committed to using Tier 4 engines on all diesel-fueled construction equipment; this includes cranes and diesel trucks. It should be noted that the construction period would be limited to 15 months and the use of diesel-fueled construction equipment would be temporary and intermittent.

*Operations.* The project site is located within an air pollutant exposure zone but would not add new stationary sources of toxic air contaminants. In particular, the project would not involve construction over 75 feet in height; as such, no backup generators would be required. The proposed operational equipment (i.e., rooftop condensers and lifts) would not be diesel-operated; therefore, no air quality emissions would result from the proposed mechanical equipment. Lastly, the project would result in a small number of vehicle and delivery trips, which would also not result in operational air quality impacts.

For the above reasons, the department's finding that significant construction or operational air quality impacts would not occur is supported by substantial evidence in the record. In addition, the Appellant's argument that the department's Class 32 categorical exemption determination "admitted" that the project could have a significant effect on air quality is without merit and does not meet the fair argument standard.

## **Conclusion**

The department has determined, based on substantial evidence in the record, 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. Specifically, as documented above, the Class 32 categorical exemption was appropriately issued because the proposed project would not have any significant environmental impacts related to traffic, noise, air quality, water or water quality and the project site can be adequately served by all required utilities and public services. Moreover, there are no unusual circumstances that would exclude the project from qualifying from a categorical exemption and no mitigation measures are required under CEQA.

The Appellant has not met the legal burden of proof to demonstrate that the project does not qualify for a Class 32 categorical exemption. The department therefore respectfully recommends that the board uphold the CEQA categorical exemption determination and deny the appeal of the CEQA determination.

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**Subject:** APPELLANT SUPPLEMENTAL INFO: Appeal of CEQA Exemption - Proposed 1151 Washington Street Project - Appeal Hearing June 27, 2023  
**Date:** Friday, June 16, 2023 11:18:00 AM

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Greetings,

The Office of the Clerk of the Board is in receipt of supplemental brief from Richard Drury of Lozeau Drury LLP, on behalf of the appellants, Upper Chinatown Neighborhood Association and Clayton Timbrell.

[Appellant Supplemental Brief - June 16, 2023](#)

**The hearing for this matter is scheduled for 3:00 p.m. special order before the Board on June 27, 2023.**

I invite you to review the entire matters on our [Legislative Research Center](#) by following the link below:

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**From:** [Victoria Yundt](#)  
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**Cc:** [Richard Drury](#); [Clayton Timbrell](#); [David Noyola](#); [hanmin.liu@icloud.com](#)  
**Subject:** Re: Supplemental Comment Supporting Appellant Upper Chinatown Neighborhood Association and Clayton Timbrell's Appeal of the Planning Commission's Approval of a Categorical Exemption for the 1151 Washington Street Project (2022-010833ENV; 2022-010833CUA)  
**Date:** Friday, June 16, 2023 10:55:46 AM  
**Attachments:** [2023.06.16 Appellant Supp comment-FINAL & Exhibits 1-2.pdf](#)

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Dear San Francisco Board of Supervisors, Ms. Calvillo, and Ms. Gibson:

Attached please find correspondence written on behalf of Appellants Upper Chinatown Neighborhood Association ("UCNA") and Clayton Timbrell. This letter supplements the May 17, 2023 appeal letter filed by Mr. Timbrell and joined by UCNA on May 19, 2023 appealing the Planning Commission's approval of a Class 32 (in-fill development) categorical exemption from the California Environmental Quality Act for the proposed project at 1151 Washington Street. Please note that the appeal is scheduled to be heard by the San Francisco Board of Supervisors on June 27, 2023.

Thank you for your assistance in this matter. If you could please confirm receipt of this email and the attached letter, that would be greatly appreciated. If you have any questions, please feel free to contact our office. Thank you for considering these comments.

Sincerely,  
Victoria

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June 16, 2023

***By Email***

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**Re: Supplemental Comment Supporting Appellant Upper Chinatown  
Neighborhood Association and Clayton Timbrell's Appeal of  
the Planning Commission's Approval of a Categorical Exemption for the  
1151 Washington Street Project (2022-010833ENV; 2022-010833CUA)**

**Board of Supervisors Hearing Date: June 27, 2023**

Dear San Francisco Board of Supervisors, Ms. Calvillo, and Ms. Gibson:

This letter is filed on behalf of the Upper Chinatown Neighborhood Association ("UCNA") and Clayton Timbrell ("Appellants"). This letter supplements the May 17, 2023 appeal letter filed by Mr. Timbrell and joined by UCNA on May 19, 2023 appealing the Planning Commission's approval of a Class 32 (in-fill development) categorical exemption from the California Environmental Quality Act ("CEQA") for the proposed project at 1151 Washington Street ("Project"). The appeal is scheduled to be heard by the San Francisco Board of Supervisors on June 27, 2023. Mr. Timbrell's May 17, 2023 appeal letter and accompanying exhibits are already before the Board and are incorporated by reference.

**I. CEQA REVIEW IS REQUIRED FOR THE PROJECT.**

As discussed in our May 17, 2023 letter, the Density Bonus Law ("DBL") does not exempt the Project from CEQA review. The court of appeal has held that the City must comply both with CEQA and the DBL. (*Wollmer v City of Berkeley* (2011) 193 Cal.App.4th 1329, 1349.)

**A. CEQA Review is Required Because the Site is Heavily Contaminated with Toxic Chemicals and is Adjacent to a Children's Playground.**

**1. The Site Mitigation Plan was prepared for an entirely different, smaller project, and is patently inadequate since it does not even analyze the entire site.**

As discussed in our prior letter, the Project site is contaminated with highly toxic chemicals, including hexavalent Chrome VI and thallium exceeding regulatory screening levels. Soil vapor beneath the site is impacted with volatile organic compounds (specifically, PCE or tetrachloroethylene) at concentrations exceeding regulatory screening levels. This is particularly concerning since the Project will involve extensive soil excavation adjacent to the Betty Ann Ong Recreation Center.

The City seeks to rely on a Soil Mitigation Plan ("SMP") to address the risks of the Project. However, the SMP was prepared for a different, smaller project and did not even test the soil in most of the area that will be disturbed by Project construction. As such the SMP is patently inadequate to reduce risks to less than significant levels.

As shown in the diagram attached as Exhibit E to the May 17, 2023 appeal letter, the SMP only covers a small portion of the site. The proposed Project is going to cover the entire site and no samples were taken from the rear of the site which encompasses over half of the site. The CEQA document therefore fails to adequately describe the Project's environmental setting, which is an essential element for any CEQA document. (14 C.C.R. § 15125(a)).

Moreover, the SMP states:

***This SMP is based upon current conditions*** at the Site known by EIS in regard to current laws, policies, and regulations. ***No representation is made to any present or future developer or property owner of the Site or portions of thereof with respect to future conditions***, other than those specifically identified in this SMP.<sup>1</sup>

Given that the SMP was not prepared for the current proposed Project, fails to consider a large portion of the current Project site, and clearly states that the mitigation plan should not be relied upon to determine future conditions, as is the case here, the SMP is inadequate and should not be relied upon to mitigate the Project's significant impacts from contaminated soil on the site.

Rather than preparing an initial study for the public under CEQA to investigate the extent of site contamination and associated potential health risks, the Planning Department's exemption document pointed to the developer's site mitigation plan to provide a "decision framework and specific risk management measures for managing soil and soil vapor beneath the Site." While the

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<sup>1</sup> SMP at p. 14 (emphasis added).



SMP contains mitigation measures, they are inadequate to ensure that all contamination will be remediated to less than significant levels. For example, the SMP inadequately mitigates soil-vapor impacts. The Project would include a subgrade bedroom. To address the potential for vapor intrusion of PCE into indoor airspace, the SMP would provide for a vapor intrusion mitigation system (VIMS) to be installed within the subgrade following excavation. A deed restriction would be required to ensure the proper operation and maintenance of the planned VIMS.

Environmental experts, Dr. Paul Rosenfeld and Hydrogeologist Matthew Hagemann concluded that the mitigation measures should be analyzed in a CEQA document for adequacy. A CEQA document should be prepared to ensure that the mitigation measures are adequate and also to ensure that they are enforceable. Mr. Hageman and Dr. Rosenfeld also reviewed the Project materials and concluded that the CEQA exemption underestimated and inadequately addressed the health-risk impacts associated with construction and operation of the proposed Project, and impermissibly relied on a mitigation plan.<sup>2</sup> They also concluded that the SMP's mitigation measures are inadequate to reduce risks to a less than significant level and additional mitigation is necessary. SWAPE recommended that a full CEQA analysis be prepared to adequately assess and mitigate the potential impacts from the hazardous materials at the site.<sup>3</sup>

The presence of hazardous substances is an environmental issue that must be addressed at a Project's outset, and cannot be deferred to a future time to avoid CEQA review. *McQueen v. Bd. of Directors* (1988) 202 Cal. App. 3d 1136, 1148. By including mitigation measures for future remediation of existing soil contamination as a Use Permit condition, the City improperly deferred detection and mitigation of hazardous substances to a future time.

For example, regarding soil vapor contamination, the SMP stated that the "source and full extent of these impacts is currently unknown".<sup>4</sup> Were excavation of the site to occur, visual and olfactory observations indicative of contamination "if a significant issue" would trigger "environmental professional and/or appropriate regulatory agency" notification.<sup>5</sup> In lay terms, this would be far too little, far too late. In scientific terms, SWAPE's expert opinion is that this measure would present a risk that construction workers may not have a sufficiently fine sense of smell to detect these toxic chemicals. Furthermore, since thallium and chrome VI are tasteless and odorless, relying on "olfactory" and "visual" observations will not detect this chemical.<sup>6</sup> In legal terms, this measure constitutes improper deferral of mitigation since it relies on future "visual and olfactory observations" to develop as yet undefined mitigation measures. A CEQA document must be prepared to address and mitigate the significant impacts of the Project.

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<sup>2</sup> Exhibit. A at p. 1.

<sup>3</sup> *Id.*

<sup>4</sup> SMP at p. 4.

<sup>5</sup> SMP at p. 10.

<sup>6</sup> [https://www.cdc.gov/niosh/erashdb/emergencyresponsecard\\_29750026.html#:~:text=Thallium%20is%20tasteless%20and%20odorless,amounts%20in%20the%20earth's%20crust](https://www.cdc.gov/niosh/erashdb/emergencyresponsecard_29750026.html#:~:text=Thallium%20is%20tasteless%20and%20odorless,amounts%20in%20the%20earth's%20crust;); <https://www.atsdr.cdc.gov/toxfaqs/tfacts7.pdf>.

## **2. The Maher Ordinance cannot substitute for CEQA review.**

The Planning Department has incorrectly relied on the Maher Ordinance as an adequate substitute for CEQA review. This ignores the law. The Maher Ordinance has no mechanism for public review of clean-up plans or public participation in environmental reviews. Decisions are made by unaccountable staff with no appeal available to elected or appointed decision-makers. As discussed above and in Appellant's May 17, 2023 appeal letter, contaminated soil on the Project site poses significant health risks to construction workers, future residents, or users of the adjacent playground. As such, the Maher Ordinance does not provide an adequate substitute for CEQA review.

The record is tragically replete with examples of City staff turning a blind eye, misleading the public, or apparently covering up evidence of contamination at numerous development sites in San Francisco over the years, leading to disastrous and irreversible consequences to public health. There are several examples of the City improperly relying on the Maher Ordinance to exempt residential development projects from CEQA that posed significant health risks to workers and residents from soil contamination in violation of CEQA and Article 22A of the San Francisco Health Code.

City staff has conducted patently inadequate clean-up plans under the Maher Ordinance at Hunters Point, Treasure Island and other sites, leading to disastrous consequences. Most recently, is the case of the residential project located on 2800 block of San Bruno Avenue in San Francisco, it appears that toxic chemicals were not adequately cleaned-up, despite a large residential project being built on the property.<sup>7</sup> This is precisely why public oversight under CEQA is so important.

Under CEQA, the public has a "privileged position" in the environmental review process. As the California Supreme Court has stated:

The 'privileged position' that members of the public hold in the CEQA process ... is based on a belief that citizens can make important contributions to environmental protection and on notions of democratic decision-making ... This process helps demonstrate to the public that the agency has in fact analyzed and considered the environmental implications of its action.<sup>8</sup>

In the case of San Francisco, the Maher Ordinance does not provide for the public participation and involvement that is so central to CEQA, and it therefore does not provide an adequate substitute to CEQA review. The Supreme Court has also determined that other environmental laws may not substitute for CEQA. For example, the Supreme Court held that the State Board of Forestry's Timber Harvest Plan program did not exempt the agency from CEQA

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<sup>7</sup> See Exhibit 2, <https://www.sfchronicle.com/bayarea/article/sf-developers-troubled-housing-fix-problems-17920452.php>.

<sup>8</sup> *Concerned Citizens of Costa Mesa v. 32nd Dist. Agric. Assn.*, 42 Cal. 3d 929, 936 (1986).

review. *Sierra Club v. State Bd. of Forestry*, 7 Cal. 4th 1215, 1231 (1994). As such, the City's Maher Ordinance does not exempt the City from compliance with CEQA.

**B. CEQA Review is Required Because the Project will Cast Significant Shadows on the Betty Ann Ong Recreation Center.**

As discussed in our letter of May 17, 2023, CEQA review is required because the Project will cast shadows on the Betty Ann Ong Recreation Center. Prop K was passed by the voters of San Francisco in 1984, and is codified at Planning Code section 295. Under Prop K, a proposed building that casts a shadow on a park operated by the Recreation and Parks Department has a significant adverse environmental impact.

As shown in the shadow fan analysis submitted with our prior comment, the Project will cast very significant shadows on the Betty Ann Ong Recreation Center. We submit herewith, a supplemental shadow analysis that shows that the shadow impacts will actually be much greater than shown in the prior shadow analysis. The earlier study understates the shadow impacts because it assumed that the entire Recreation Center property is open space, which distorted the results. That analysis has now been corrected and the results have been included in an updated shadow analysis attached as Exhibit 1 to this letter. The updated study demonstrates the percentage change in shadow on the play areas only. It is particularly compelling because the updated diagram shows almost the entire play area would be covered in shadow.

The developer claimed that the shadowing is acceptable because the Project, as proposed, would cast the same shadow as a code-compliant proposal. But that is no answer. All projects that cast shadow on a public park have a significant impact under Prop. K, regardless of whether the project is code-compliant. Even a project that is 40-feet may have a significant shadow impacts if it cast significant shadow on a public park. Therefore, the Planning Department must prepare a CEQA document that includes this potentially significant project impact, and considers alternatives to reduce the impact.

**II. THE CITY SHOULD NOT APPROVE THE PROJECT BECAUSE IT WILL HAVE SPECIFIC ADVERSE IMPACTS ON HEALTH, SAFETY, AND THE PHYSICAL ENVIRONMENT.**

**A. The City Should Deny the Project and the Requested Zoning Waivers Because the Project will have Specific Adverse Impact Upon Health, Safety or the Physical Environment, which have not been Adequately Mitigated.**

The State Density Bonus Law ("DBL") provides that the City is not required to approve a project or grant waivers from zoning requirements, if the Project or requested waivers will have a "specific adverse impact ... upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact."<sup>9</sup> City

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<sup>9</sup> Gov't Code § 65915 (e)(1).

staff erroneously instructed the Planning Commission that they were required to approve the Project under the Density Bonus Law. This is incorrect, the City need not approve the Project if there is evidence that it will have a “specific adverse impact ... upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.”<sup>10</sup> While staff mentioned the exception for health and safety, they conveniently neglected to mention the “physical environment” exception. Therefore, the Planning Department misapplied the Density Bonus Law to the Project.

As discussed below and in Mr. Timbrell’s May 17, 2023 appeal letter, there is expert opinion and other evidence showing that the Project will pose significant impacts to health, and safety due to access limitations for firefighters, hazardous soils and vapor contamination, air pollution, and steep slope and seismic concerns. More specifically, and as discussed in further detail below, there is evidence of significant environmental effects due to construction-air quality impacts. The parcel itself is also contaminated with hazardous materials that could pose health risks to construction workers, future residents and children playing at the Betty Ann Ong Recreation Center. The Project would impact fire protection services because of its highly unusual design of a single building containing 10 four-story residential units on a narrow and small parcel, accessible only by a steep, 5-foot-wide, 137-foot-long pathway; this would be atypical even by San Francisco standards. Also, it is subject to slope stability and liquefaction impacts. Finally, shadow impacts on the Betty Ann Ong Recreation Center would pose a significant effect in violation of San Francisco’s Prop. K.

Because there are “specific adverse impact[s] upon health and safety... and the physical environment,” the Board should not grant any concessions or waivers for the Project and should deny Project approval.

**1. The Project will have significant adverse impacts on the physical environment due to emissions of diesel particulate matter.**

The Planning Department’s draft categorical exemption admitted the Project has the “potential to emit substantial pollutant concentrations from the use of diesel construction equipment, backup diesel generators, heavy industry, diesel trucks.”<sup>11</sup> Thus, the City should not approve the Project or its requested waivers because it will have a significant adverse impact on the physical environment. Gov’t Code § 65915 (e)(1).

**2. The Project will have significant adverse impacts on health as a result of unmitigated soil and vapor contamination at the Project site.**

Since the Project will have significant adverse impacts on health and the environment from unmitigated soil and vapor contamination on the Project site, the City should not approve the Project or grant the requested waivers from zoning requirements. Gov’t Code § 65915 (e)(1).

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<sup>10</sup> Gov’t Code § 65915 (e)(1).

<sup>11</sup> Categorical Exemption at p. 2.

**3. The Project will have significant adverse impacts on safety because the site is located in San Francisco's slope and seismic hazard zone.**

The Project will result in significant adverse impacts to safety because the Project site is located in San Francisco's slope and seismic hazard zone. The City should therefore not approve the Project or grant the requested waivers from zoning requirements. Gov't Code § 65915 (e)(1). San Francisco's Slope and Seismic Hazard Zone Protection Act ("SSPA") applies to all properties that exceed an average slope of 4H:1V (25%) or fall within certain mapped areas of the City. A review of the Planning Department maps makes clear the subject property is within an identified hazardous zone. The Planning Department's draft exemption recognized the Project would be subject to the SSPA. Per the exemption's screening assessment: The average slope of the parcel is equal to or greater than 25%,<sup>12</sup> and the project involves new building construction, and construction would excavate more than 50 cubic yards of fill (approximately 130 cubic-feet in this case). In addition, San Francisco's Seismic Hazard Zones Map indicates that the front portion of the site is located in an area that is potentially susceptible to liquefaction during a major earthquake.<sup>13</sup>

The developer's geotechnical study identified four seismic and/or slope concerns:

- The thickness of the undocumented and variable fill (up to about 30 feet deep below existing site grades) across the site, which may be prone to sloughing or caving;
- The proximity of the existing, neighboring 6 to 20 feet high retaining wall along the eastern property line;
- The presence of the loose to medium dense sands that are potentially subject to dynamic densification following a strong seismic event, i.e., up to 4 inches of settlement estimated;
- The potential for severe ground shaking at the site during a major earthquake.<sup>14</sup>

To address the Project's numerous and complex landslide and seismic concerns, the developer's geotechnical study contains ten pages of recommendations to mitigate potential impacts. The Planning Department may not approve a project if there is evidence that it will have significant effects on safety requiring mitigation. These risks allow the City to deny approval of the Project and its requested zoning waivers. Gov't Code § 65915 (e)(1).

---

<sup>12</sup> "Topographic Map of San Francisco," *see* [https://s3.amazonaws.com/sfplanninggis/Slopes+Poster\\_lowRes70DPI.pdf](https://s3.amazonaws.com/sfplanninggis/Slopes+Poster_lowRes70DPI.pdf); in addition, the PIM mapping designates the site as having slopes of 25 percent or greater, *see* <https://sfplanninggis.org/pim/map.html?search=1151%20WASHINGTON%20ST&layers=Slope%20of%2025%20percent%20or%20greater>.

<sup>13</sup> California Division of Mines and Geology, 2001.

<sup>14</sup> Geotechnical Investigation, prepared for Davis Townhome Development at p. 9 (Nov. 2022).

**4. The Project will have significant adverse impacts on safety due to inadequate firefighter access and emergency escape options.**

The Project's design poses significant adverse impacts to the safety of both residents and firefighters. Therefore, the City may decline to approve the Project and its requested waivers from zoning requirements. Gov't Code § 65915 (e)(1). According to the Project's plans, the proposed townhomes would be built front to back, north to south. The building itself would be 12,312 square-feet on a steep, 3,571 square-foot, exceedingly narrow parcel. Also, egress and ingress would be via a 5-foot-wide, 137-foot-long alleyway with eight flights of stairs. No other means of access are provided. Were a fire to occur in one or more of the front townhomes, residents living behind a burning unit would have no means of escape. Residents would be forced to run towards the fire, down a total of eight flights, and make their way down a 137-foot-long alley before reaching Washington Street.

As discussed in the expert comments of Burr Engineering and Construction, included as Exhibit F to Appellant's May 17, 2023 appeal letter, California's Building Codes expressly prohibit such dangerous conditions by requiring two exits, or special exit-access doorways from spaces who share a common path of egress over a certain distance.<sup>15</sup> A path of 137-feet exceeds the 125-foot maximum travel distance for fire and life safety.<sup>16</sup> The Project's proposed exit route is unsafe, hazardous, defies common sense and cannot be approved.

Equally concerning and noncompliant is the absence of proper firefighter access and emergency escape options to and from each of the townhomes' upper floors, keeping in mind each unit will have four stories. In California, upper floor bedrooms are required to have emergency escape and rescue windows. This requirement allows residents to escape should a fire occur, and also provides firefighters with access to windows to contain fires as quickly as possible.<sup>17</sup>

Finally, California's Fire Code is specific about access for firefighters' ladders, and properties must provide approved access walkways where required by fire officials. The California Fire Marshal requires that rescue windows be accessible using ground ladders.<sup>18</sup> Firefighters must be able to place their ladders at the access walkway at an angle no greater than 70° from horizontal, approximately 8 feet from a building, which would be impossible on the proposed 5-foot-wide path.

The above-described Project flaws would pose unacceptable safety risks to both residents and firefighters. As such, the City should deny Project approval and deny the requested zoning waivers. Gov't Code § 65915 (e)(1).

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<sup>15</sup> CA Building Code § 1028.1; *see also* Table 1006.3.4.

<sup>16</sup> *Id.*

<sup>17</sup> CA Fire Code § 504.1.

<sup>18</sup> *See* Cal Fire Interpretation 18-005; <https://osfm.fire.ca.gov/divisions/code-development-and-analysis/code-interpretations/all-code-interpretations/>.

**B. The Planning Commission Prejudicially Abused its Discretion by Failing to Exercise the Discretion Conferred on Them by the State Density Bonus Law to Disapprove a Project that Will Have Specific Adverse Impacts on Health, Safety, and the Physical Environment.**

The Planning Commission prejudicially abused its discretion by failing to exercise the discretion conferred on it under the State Density Bonus Law. The DBL allows the City to disapprove a project or zoning waivers if the project or waivers will result in specific adverse impacts on health, safety, and the physical environment. Instead, the Planning Commission was misinformed regarding the nature and extent of their authority and discretion to disapprove the proposed Project. As a result, they made their decision to approve the Project and exemption based on a mistaken belief that they did not have the authority to disapprove the Project and exemption under the State Density Bonus Law. *See Bank of Italy v. Johnson* (1926) 200 Cal. 1, 15 [agency “may not . . . curtail the exercise of [its] discretion under [a] statute as to prevent the free and untrammelled exercise thereof” and “may not refuse to exercise the discretion conferred by statute]; *Valley advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039, 1063 [agency “prejudicially abused its discretion by failing to proceed in a manner required by law” because it was “misinformed regarding its discretionary authority”].)

The Planning Commission was wrongly instructed that it was required to approved the Project under the DBL, when in fact, it had discretion to disapprove the Project and its waivers since the Project will have significant impacts to health, safety and the environment. Since the Planning Commission failed to exercise its discretion, it abused its discretion in approving the Project and the requested zoning waivers.

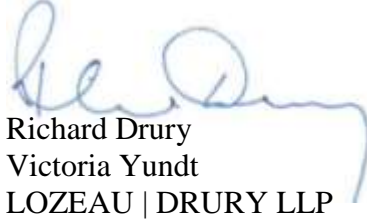
**III. CONCLUSION**

The Planning Commission improperly exempted the proposed Project from CEQA review. The Project does not meet the requirements for a Class 32 Infill Exemption. Accordingly, we respectfully request that the Board of Supervisors grant this appeal and direct the Planning Department to prepare an initial study followed by a mitigated negative declaration or EIR. The City may and should deny approval of the Project and the requested zoning waivers because the Project will have “specific adverse impact . . . upon health, safety, or the physical environment,” which have not been adequately mitigated.<sup>19</sup> CEQA document must analyze the Project’s health, safety, and environmental impacts and propose feasible mitigation measures and alternatives. Thank you for considering these comments.

---

<sup>19</sup> Gov’t Code § 65915 (e)(1).

Sincerely,



Richard Drury  
Victoria Yundt  
LOZEAU | DRURY LLP

Cc: President Aaron Peskin (Aaron.Peskin@sfgov.org)  
Sup. Connie Chan (ChanStaff@sfgov.org)  
Sup. Matt Dorsey (DorseyStaff@sfgov.org)  
Sup. Joel Engardio (EngardioStaff@sfgov.org)  
Sup. Rafael Mandelman (MandelmanStaff@sfgov.org)  
Sup. Myrna Melgar (MelgarStaff@sfgov.org)  
Sup. Dean Preston (Dean.Preston@sfgov.org)  
Sup. Hillary Ronen (Hillary.Ronen@sfgov.org)  
Sup. Ahsha Safai (Ahsha.Safai@sfgov.org)  
Sup. Catherine Stefani (Catherine.Stefani@sfgov.org)  
Sup. Shamann Walton (Shamann.Walton@sfgov.org)



# EXHIBIT 1

Approved



remaining sunlight in play areas

Play areas (indicated by dashed lines)



LEGEND

Existing Structures  
Existing Shadows

Approved Proposal  
Approved Proposal's Net New Shadow

5:00 PM

AUGUST 9  
(MAY 3 MIRROR)


# EXHIBIT 2

Most Popular

- 1. Clear ice cubes make cocktails taste better. Really
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BAY AREA

# Violations, fines and a lawsuit: S.F. builder is trying to clean up troubled housing project. Can it be fixed?

 **St. John Barned-Smith**  
Updated: May 5, 2023 6:50 p.m.



1 of 4

A city-ordered temporary emergency staircase was built at the rear of an apartment complex on San Bruno Avenue in the Portola District of San Francisco.  
Stephen Lam/The Chronicle

When they found the apartment on San Bruno Avenue in San Francisco back in 2017, Kwong Ying Yu, then 79, and his wife, Kam To, 71, were excited.

The complex seemed affordable and took Section 8 vouchers, which subsidize low-income people to live in market-rate buildings. The couple are non-English speakers, and their new landlords were Chinese.

“We didn’t think twice,” Yu said, as his daughter translated.

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The former restaurant worker and his wife moved in, happy to find a home in San Francisco he could afford that would allow him to be near his daughter and other relatives.

But Yu soon learned that his new apartment in the Portola neighborhood was too good to be true. His landlords had flouted city building rules, resulting in unsafe living conditions for Yu and his neighbors — many of whom are monolingual and low income.

The owners illegally built 29 apartment units in a series of adjacent buildings on San Bruno Avenue when they’d been permitted to build 10, and failed to build a required second exit for tenants, creating a potential firetrap, authorities said.

After years of negotiating with city officials, building owners Thursday received permission from the city’s planning commission to begin work to legalize the troubled property on the 2800 block of San Bruno Avenue.

The move is the latest in a fiasco now a decade in the making. Owners Tam Yin Kwan, Lee Yun Ling, Cindy Zhou, Tong Yin Kai Ton and Dufin Tsang first obtained permits in 2013 for five four-story buildings, which would have included retail and office space as well as 10 apartments.

The project became mired in scandal after [a corrupt senior building inspector improperly signed off on the property’s final inspection in 2017](#). In 2018, inspectors investigated a complaint and discovered the building’s owners had gone rogue, building a project out of line with what was approved.

For instance, investigators found in 2018 that developers had built 30 apartment units in the buildings, splitting larger residential units into smaller ones; and converting office space into other apartments. Contractors had installed electrical piping and plumbing without proper permits; and it was also unclear if the site, built on a former gas station, was even safe from contamination. Officials said the owners engaged in “extensive unlawful construction” without a permit, and deviated from approved plans on the facade, design features, parking, stairs, restrooms, driveways and landscaping.

Investigators also discovered that a now-disgraced city official had [signed off on the final inspection on the building without conducting other necessary building inspections](#). The official, former senior inspector Bernard Curran, pleaded guilty to corruption charges and is awaiting sentencing in federal court.

Ryan Patterson, an attorney representing owners of the troubled project, declined to say Thursday why his clients had deviated from the plans they initially had shown the city, but said his clients are “committed to complying with all applicable laws and regulations to ensure the safety and long-term success of the property.”

He said that after the city raised concerns about the project, his team submitted “at least 22 different building plan sets including a carefully constructed proposal to legalize virtually all housing units built and ensure safety.”

“It is unfortunate that proposal was rejected,” he said, “but we look forward to completing the work required and appreciate that today’s proposal was approved.”

At Thursday’s hearing, commissioners expressed shock over the project, including new revelations that the developers appeared not to have completed soil mitigation required on the former gas station site.

Commissioners ultimately agreed to approve the developer’s request for a conditional use authorization that would allow them to obtain permits necessary to begin renovating the units in a way that would conform to the project’s original proposal. While some tenants have left and their units remain vacant, at least 40 people still live in the buildings.

It will likely take years before the work is completed, Commission Vice President Kathrin Moore said.

“We’re talking easily another three to four years, if not longer, before anyone can consider moving back into these units,” she said, calling the situation “completely untenable.”

The scandal comes amid an ongoing public corruption probe in San Francisco government that has resulted in criminal charges against more than a dozen former city officials, local developers, permit expeditors and other contractors. It highlights the challenges the city faces in providing adequate housing for its most vulnerable residents, while holding bad actors accountable and deterring future fraudulent behavior.

“These owners completely flouted the process, and now it’s causing a lot of people to have to lose their housing,” said Mark Hooshmand, an attorney representing dozens of the property’s tenants.

Neighborhood residents are furious, said Alex Hobbs of the Portola Neighborhood Association. When developers first unveiled their plans for the project, neighborhood residents hoped it would be a badly needed investment in a community that has long felt overlooked. But it soon became clear that developers were building something dramatically different from what was approved.

“It was clear the concept was to fill as many units as possible with as many people as possible, because the city wouldn’t evict them because we’re in a housing crisis,” Hobbs said. “That’s what is happening. People are living there, fighting for their homes. But if you allow that, the developers have won.”

Hobbs argued that the building, which is potentially unsafe, should be razed and the residents relocated at the owners’ expense.

“It’s highly disturbing that this building has not been condemned and torn down,” he said.

The city has been trying to clean up the mess, balancing holding the owners accountable with protecting tenants living in the property.

“There were far more people living in these buildings than the code allows for how they were designed, approved or built,” Department of Building Inspection spokesman Patrick Hannan said in an email. Inspectors ultimately issued 16 violation notices and assessed \$27,000 in code enforcement fees, though more may be coming.

The city attorney sued the developers and ultimately settled the litigation for \$1.2 million.

Inspectors also required the owners to install scaffolding to give tenants a second way out of the building. The scaffolding has remained there, marring the streetscape, for years.

“This story is not over,” said Dan Sider, chief of staff of the city’s planning department. “The settlement is one piece of this puzzle — there will be very clearly major costs the developer will have to bear here to make this right. Potentially through legal costs, construction costs, or the tenant relocation process.”

Residents last month sued the owners, citing negligence and breach of contract, and alleging apartments “were built with substandard conditions and many lack heat,” and arguing that the owners’ failure to correct code violations caused undue stress and anxiety.

Supervisors Hillary Ronen and Shamann Walton recently proposed giving tenants displaced from illegal units preference in the city’s affordable housing programs.

“With good legal representation and the increased opportunity to access permanent, affordable housing elsewhere in the City,” she said, “the tenants will get some justice out of a horrible situation.”

Now, the property owners want to revert it to how it should have been built originally. But critics worry allowing them to do the work essentially rewards bad actors.

“These guys should be required to provide housing for all the people they suckered into their illegal, dangerous units,” Supervisor Aaron Peskin said. “They knew what they were doing. They should be made to suffer the consequences.”

*Reach St. John Barned-Smith: [stjohn.smith@sfchronicle.com](mailto:stjohn.smith@sfchronicle.com)*

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**To:** "richard@lozeaudrury.com"; "danam@macyarchitecture.com"; "deborah@holleyconsulting.com"; Scott Emblidge  
**Cc:** [PEARSON, ANNE \(CAT\)](#); [JENSEN, KRISTEN \(CAT\)](#); [RUIZ-ESQUIDE, ANDREA \(CAT\)](#); [Hillis, Rich \(CPC\)](#); [Teague, Corey \(CPC\)](#); [Tam, Tina \(CPC\)](#); [Gibson, Lisa \(CPC\)](#); [Jain, Devyani \(CPC\)](#); [Navarrete, Joy \(CPC\)](#); [Lewis, Don \(CPC\)](#); [Switzky, Joshua \(CPC\)](#); [Sider, Dan \(CPC\)](#); [Starr, Aaron \(CPC\)](#); [Watty, Elizabeth \(CPC\)](#); [Ionin, Jonas \(CPC\)](#); [May, Christopher \(CPC\)](#); [Rosenberg, Julie \(BOA\)](#); [Longaway, Alec \(BOA\)](#); [BOS-Supervisors](#); [BOS-Legislative Aides](#); [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [BOS Legislation, \(BOS\)](#); [Anderson, Katharine \(DPW\)](#); [Blackwell, William \(DPW\)](#); [Tse, Bernie \(DPW\)](#); [Huff, Nicolas \(DPW\)](#); [Wong, Jason \(DPW\)](#); [Schneider, Jan \(DPW\)](#)  
**Subject:** HEARING NOTICE - Appeal of CEQA Exemption Determination and Conditional Use Authorization - Proposed 1151 Washington Street Project - Appeal Hearing June 27, 2023  
**Date:** Tuesday, June 13, 2023 8:22:28 AM

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Greetings,

The Office of the Clerk of the Board has scheduled a hearing for Special Order before the Board of Supervisors on **June 27, 2023**, at 3:00 p.m., for the appeal of the CEQA Exemption Determination and Conditional Use Authorization for the proposed project at 1151 Washington Street:

**Please find the following link to the hearing notice for the matter:**

[Public Hearing Notice - June 13, 2023](#)

I invite you to review the entire matters on our [Legislative Research Center](#) by following the link below:

[Board of Supervisors File No. 230592 - CEQA Appeal](#)

[Board of Supervisors File No. 230630 - CU Appeal](#)

Best regards,

**Jocelyn Wong**

Legislative Clerk

San Francisco Board of Supervisors

1 Dr. Carlton B. Goodlett Place, Room 244

San Francisco, CA 94102

T: 415.554.7702 | F: 415.554.5163

[jocelyn.wong@sfgov.org](mailto:jocelyn.wong@sfgov.org) | [www.sfbos.org](http://www.sfbos.org)

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## NOTICE OF PUBLIC HEARING

**BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO**  
**Sent via Email and/or U.S. Postal Service**

NOTICE IS HEREBY GIVEN THAT the Board of Supervisors of the City and County of San Francisco will hold a public hearing to consider the following appeal and said public hearing will be held as follows, at which time all interested parties may attend and be heard in person or remotely.

**Date:** Tuesday, June 27, 2023

**Time:** 3:00 p.m.

**Location:** **IN-PERSON MEETING INFORMATION**  
Legislative Chamber, Room 250, located at City Hall  
1 Dr. Carlton B. Goodlett Place, San Francisco, CA

### REMOTE ACCESS

**Watch:** [www.sfgovtv.org](http://www.sfgovtv.org)

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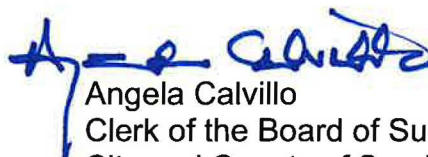
**Subject:** **File No. 230592.** Hearing of persons interested in or objecting to the determination of exemption from environmental review under the California Environmental Quality Act issued as a Categorical Exemption by the Planning Department on April 7, 2023, for the proposed project at 1151 Washington Street, Assessor's Parcel Block No. 0213, Lot No. 025 to allow the demolition of a single-family dwelling and the construction of a four-story, 40-foot tall building containing 10 dwelling units (one three-bedroom unit and nine two-bedroom units), one unbundled off-street parking space and 10 Class 1 bicycle parking spaces, within a RM-3 (Residential-Mixed, Moderate-Density) Zoning District and a 65-A Height and Bulk District. The project seeks waivers from Development Standards including front setback (Section 132), rear yard (Section 134), dwelling unit exposure (Section 140), and bicycle parking (Section 155), pursuant to State Density Bonus Law. (District 3) (Appellant: Richard Drury of Lozeau Drury LLP, on behalf of Clayton Timbrell and the Upper Chinatown Neighborhood Association) (Filed May 17, 2023)

**File No. 230630.** Hearing of persons interested in or objecting to the approval of a Conditional Use Authorization pursuant to Sections 206.6, 209.2, 303, and 317 of the Planning Code, for a proposed project at 1151 Washington Street, Assessor's Parcel Block No. 0213, Lot No. 025, identified in Planning Case No. 2022-010833CUA, issued by the Planning Commission by Motion No. 21310, dated April 20, 2023, to permit the demolition of a single-family dwelling and construct a four-story, 40-foot tall building containing 10 dwelling units (one three-bedroom unit and nine two-bedroom units), one off-street parking space and 10 Class 1 bicycle parking spaces, under the individually requested state density bonus program and seeking waivers from development standards including front setback (Section 132), rear yard (Section 134), dwelling unit exposure (Section 140), and bicycle parking (Section 155), pursuant to Planning Code, Section 206.6 and California Government Code, Section 65915, within the RM-3 (Residential-Mixed, Medium-Density) Zoning District and a 65-A Height and Bulk District. (District 3) (Appellant: Deborah Holley of Holley Consulting, on behalf of 1155 Washington Street LLC) (Filed May 19, 2023)

In accordance with Administrative Code, Section 67.7-1, persons who are unable to attend the hearing on this matter may submit written comments prior to the time the hearing begins. These comments will be made as part of the official public record in this matter and shall be brought to the attention of the Board of Supervisors. Written comments should be addressed to Angela Calvillo, Clerk of the Board, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA, 94102 or sent via email ([board.of.supervisors@sfgov.org](mailto:board.of.supervisors@sfgov.org)). Information relating to this matter is available in the Office of the Clerk of the Board or the Board of Supervisors' Legislative Research Center (<https://sfbos.org/legislative-research-center-lrc>). Agenda information relating to this matter will be available for public review on Friday, June 23, 2023.

For any questions about this hearing, please contact our office at [bos.legislation@sfgov.org](mailto:bos.legislation@sfgov.org) or call (415) 554-5184.

**Please Note:** *The Department is open for business, but employees are working from home. Please allow 24 hours for us to return your call or email.*



Angela Calvillo  
Clerk of the Board of Supervisors  
City and County of San Francisco

ll;jw:ak:ams

BOARD of SUPERVISORS



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**PROOF OF MAILING**

Legislative File No. 230592 / 230630

Description of Items: Hearing - Appeal of Determination of Exemption From Environmental Review - Proposed 1151 Washington Street Project - Hearing - Appeal of Conditional Use Authorization Approval - 1151 Washington Street - 530 Notices Mailed

I, Jocelyn Wong, an employee of the City and County of San Francisco, mailed the above described document(s) by depositing the sealed items with the United States Postal Service (USPS) with the postage fully prepaid as follows:

Date: 6/13/2023

Time: 8:30 a.m.

USPS Location: Repro Pick-up Box in the Clerk of the Board's Office (Rm 244)

Mailbox/Mailslot Pick-Up Times (if applicable): N/A

Signature: 

Instructions: Upon completion, original must be filed in the above referenced file.

**From:** [BOS Legislation, \(BOS\)](#)  
**To:** [Liu, Bella \(CPC\)](#); [Yeung, Tony \(CPC\)](#)  
**Cc:** [BOS-Operations](#); [BOS Legislation, \(BOS\)](#)  
**Subject:** CHECK PICKUP: Appeal of CEQA Determination of Exemption - Proposed 1151 Washington Street Project - Appeal Hearing June 27, 2023  
**Date:** Tuesday, May 30, 2023 8:36:15 AM  
**Attachments:** [Appeal Check Pickup.doc](#)  
[image001.png](#)

---

Hi Bella and Tony,

The check for the appeal filing fee for CEQA appeal of the proposed 1151 Washington Street project, is ready to be picked up at the Clerk's Office. Our office is opened Monday through Friday from 8:00am to 5:00pm. A fee waiver was not filed with this project. Kindly sign the attached Appeal Check Pickup form once the filing fee is picked up.

Thank you.

**Lisa Lew**  
San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102  
T 415-554-7718 | F 415-554-5163  
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---

**From:** BOS Legislation, (BOS)  
**Sent:** Friday, May 26, 2023 11:47 AM  
**To:** Drury, Richard <[richard@lozeaudrury.com](mailto:richard@lozeaudrury.com)>; 'danam@macyarchitecture.com' <[danam@macyarchitecture.com](mailto:danam@macyarchitecture.com)>  
**Cc:** PEARSON, ANNE (CAT) <[Anne.Pearson@sfcityatty.org](mailto:Anne.Pearson@sfcityatty.org)>; JENSEN, KRISTEN (CAT) <[Kristen.Jensen@sfcityatty.org](mailto:Kristen.Jensen@sfcityatty.org)>; Hillis, Rich (CPC) <[rich.hillis@sfgov.org](mailto:rich.hillis@sfgov.org)>; Teague, Corey (CPC) <[corey.teague@sfgov.org](mailto:corey.teague@sfgov.org)>; Tam, Tina (CPC) <[tina.tam@sfgov.org](mailto:tina.tam@sfgov.org)>; Gibson, Lisa (CPC) <[lisa.gibson@sfgov.org](mailto:lisa.gibson@sfgov.org)>; Jain, Devyani (CPC) <[devyani.jain@sfgov.org](mailto:devyani.jain@sfgov.org)>; Navarrete, Joy (CPC) <[joy.navarrete@sfgov.org](mailto:joy.navarrete@sfgov.org)>; Lewis, Don (CPC) <[don.lewis@sfgov.org](mailto:don.lewis@sfgov.org)>; Switzky, Joshua (CPC) <[joshua.switzky@sfgov.org](mailto:joshua.switzky@sfgov.org)>; Sider, Dan (CPC) <[dan.sider@sfgov.org](mailto:dan.sider@sfgov.org)>; Starr, Aaron (CPC) <[aaron.starr@sfgov.org](mailto:aaron.starr@sfgov.org)>; Watty, Elizabeth (CPC) <[elizabeth.watty@sfgov.org](mailto:elizabeth.watty@sfgov.org)>; Ionin, Jonas (CPC)

<jonas.ionin@sfgov.org>; May, Christopher (CPC) <Christopher.May@sfgov.org>; Rosenberg, Julie (BOA) <julie.rosenberg@sfgov.org>; Longaway, Alec (BOA) <alec.longaway@sfgov.org>; BOS-Supervisors <bos-supervisors@sfgov.org>; BOS-Legislative Aides <bos-legislative\_aides@sfgov.org>; Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>; Somera, Alisa (BOS) <alisa.somera@sfgov.org>; Mchugh, Eileen (BOS) <eileen.e.mchugh@sfgov.org>; BOS Legislation, (BOS) <bos.legislation@sfgov.org>

**Subject:** Appeal of CEQA Determination of Exemption - Proposed 1151 Washington Street Project - Appeal Hearing June 27, 2023

Greetings,

The Office of the Clerk of the Board has scheduled for a remote hearing Special Order before the Board of Supervisors on **June 27, 2023**, at 3:00 p.m. Please find linked below an appeal letter regarding the proposed 1151 Washington Street project, as well as direct links to the Planning Department's timely filing determination, and an informational letter from the Clerk of the Board.

[Appeal Letter - May 17, 2023](#)

[Upper Chinatown Neighborhood Association Request to Join Appeal - May 19, 2023](#)

[Planning Department Memo - May 22, 2023](#)

[Clerk of the Board Letter - May 26, 2023](#)

I invite you to review the entire matters on our [Legislative Research Center](#) by following the link below:

[Board of Supervisors File No. 230592](#)

Best regards,

**Jocelyn Wong**

Legislative Clerk

San Francisco Board of Supervisors

1 Dr. Carlton B. Goodlett Place, Room 244

San Francisco, CA 94102

T: 415.554.7702 | F: 415.554.5163

[jocelyn.wong@sfgov.org](mailto:jocelyn.wong@sfgov.org) | [www.sfbos.org](http://www.sfbos.org)

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**Disclosures:** Personal information that is provided in communications to the Board of Supervisors is subject to

*disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.*

BOARD of SUPERVISORS



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TDD/TTY No. (415) 554-5227

May 30, 2023

**File Nos. 230592-230595**

**Planning Case No. 2022-010833ENV**

Received from the Board of Supervisors Clerk's Office one check, one in the amount of Six Hundred Ninety Eight Dollars (\$698) the filing fee paid by Lozeau Drury, LLP for the appeal of the CEQA Determination of Exemption for the proposed 1151 Washington Street project:

**Planning Department By:**

Tony Yeung  
Print Name

[Signature] 5/31/23  
Signature and Date



**From:** [BOS Legislation, \(BOS\)](#)  
**To:** [Drury, Richard; "danam@macyarchitecture.com"](#)  
**Cc:** [PEARSON, ANNE \(CAT\); JENSEN, KRISTEN \(CAT\); Hillis, Rich \(CPC\); Teague, Corey \(CPC\); Tam, Tina \(CPC\); Gibson, Lisa \(CPC\); Jain, Devyani \(CPC\); Navarrete, Joy \(CPC\); Lewis, Don \(CPC\); Switzky, Joshua \(CPC\); Sider, Dan \(CPC\); Starr, Aaron \(CPC\); Watty, Elizabeth \(CPC\); Ionin, Jonas \(CPC\); May, Christopher \(CPC\); Rosenberg, Julie \(BOA\); Longaway, Alec \(BOA\); BOS-Supervisors; BOS-Legislative Aides; Calvillo, Angela \(BOS\); Somera, Alisa \(BOS\); Mchugh, Eileen \(BOS\); BOS Legislation, \(BOS\)](#)  
**Subject:** Appeal of CEQA Determination of Exemption - Proposed 1151 Washington Street Project - Appeal Hearing June 27, 2023  
**Date:** Friday, May 26, 2023 11:46:40 AM

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Greetings,

The Office of the Clerk of the Board has scheduled for a remote hearing Special Order before the Board of Supervisors on **June 27, 2023**, at 3:00 p.m. Please find linked below an appeal letter regarding the proposed 1151 Washington Street project, as well as direct links to the Planning Department's timely filing determination, and an informational letter from the Clerk of the Board.

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[Upper Chinatown Neighborhood Association Request to Join Appeal - May 19, 2023](#)

[Planning Department Memo - May 22, 2023](#)

[Clerk of the Board Letter - May 26, 2023](#)

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May 25, 2023

Richard Drury  
Lozeau Drury LLP  
1939 Harrison Street, Suite 150  
Oakland, CA 94612

**Subject: File No. 230592 - Appeal of California Environmental Quality Act (CEQA)  
Determination of Exemption from Environmental Review - Proposed  
1151 Washington Street Project**

Dear Mr. Drury:

The Office of the Clerk of the Board is in receipt of a memorandum dated May 22, 2023, from the Planning Department regarding their determination on the timely filing for appeal of the Categorical Exemption Determination issued by the Planning Department under the California Environmental Quality Act (CEQA) for the proposed 1151 Washington Street project.

The Planning Department has determined that the appeal was filed in a timely manner (copy attached).

Pursuant to Administrative Code, Section 31.16, a hearing date has been scheduled for **Tuesday, June 27, 2023, at 3:00 p.m.**, at the Board of Supervisors meeting.

Please provide to the Clerk's Office by noon:

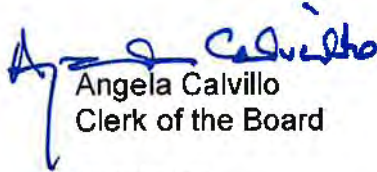
- |                                                                        |                                                                                                     |
|------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|
| <b>20 days prior to the hearing:</b><br><i>Wednesday, June 7, 2023</i> | names and addresses of interested parties to be notified of the hearing, in spreadsheet format; and |
| <b>11 days prior to the hearing:</b><br><i>Friday, June 16, 2023</i>   | any documentation which you may want available to the Board members prior to the hearing.           |

For the above, the Clerk's office requests electronic files be sent to [bos.legislation@sfgov.org](mailto:bos.legislation@sfgov.org).



Please feel free to contact our office at [bos.legislation@sfgov.org](mailto:bos.legislation@sfgov.org) or call (415) 554-5184 if you have any questions.

Very truly yours,

  
Angela Calvillo  
Clerk of the Board

ll:jw:ak:ams

- c: Anne Pearson, Deputy City Attorney  
Kristen Jensen, Deputy City Attorney  
Rich Hillis, Planning Director, Planning Department  
Corey Teague, Zoning Administrator, Planning Department  
Tina Tam, Deputy Zoning Administrator, Planning Department  
Lisa Gibson, Environmental Review Officer, Planning Department  
Devyani Jain, Deputy Environmental Review Officer, Planning Department  
Joy Navarrete, Environmental Planning, Planning Department  
Don Lewis, Environmental Planning, Planning Department  
Josh Switzky, Acting Director of Citywide Planning, Planning Department  
Dan Sider, Director of Executive Programs, Planning Department  
Aaron Starr, Manager of Legislative Affairs, Planning Department  
Elizabeth Watty, Current Planning Division, Planning Department  
Jonas Ionin, Planning Commission Secretary, Planning Department  
Christopher May, Staff Contact, Planning Department  
Julie Rosenberg, Executive Director, Board of Appeals  
Alec Longaway, Legal Process Clerk, Board of Appeals



# CATEGORICAL EXEMPTION APPEAL TIMELINESS DETERMINATION

**Date:** May 22, 2023  
**To:** Angela Calvillo, Clerk of the Board of Supervisors  
**From:** Lisa Gibson, Environmental Review Officer – (628) 652-7571  
  
**RE:** 1151 Washington Street Categorical Exemption; Planning Department Case No. 2022-010833ENV

On May 17, 2023, Richard Drury of Lozeau Drury, LLP, on behalf of Clayton Timbrell filed an appeal with the Office of the Clerk of the Board of Supervisors (the Clerk) of the Categorical Exemption for the proposed project at 1151 Washington Street. On May 22, 2023, Mr. Drury provided notice to the Clerk that the Upper Chinatown Neighborhood Association joined the appeal. (Collectively, both parties are the Appellant.) As explained below, the appeal is timely.

| Date of Approval Action  | 30 Days after Approval Action | Appeal Deadline (Must Be Day Clerk of Board's Office Is Open) | Date of Appeal Filing   | Timely? |
|--------------------------|-------------------------------|---------------------------------------------------------------|-------------------------|---------|
| Thursday, April 20, 2023 | Saturday, May 20, 2023        | Monday, May 22, 2023                                          | Wednesday, May 17, 2023 | Yes     |

**Approval Action:** On April 7, 2023, the Planning Department issued a Categorical Exemption for the proposed project. The Approval Action for the project was approval of a Conditional Use Authorization by the Planning Commission, which occurred on April 20, 2023 (Date of the Approval Action).

**Appeal Deadline:** Sections 31.16(a) and (e) of the San Francisco Administrative Code state that any person or entity may appeal an exemption determination to the Board of Supervisors during the time period beginning with the date of the exemption determination and ending 30 days after the Date of the Approval Action. The 30th day after the Date of the Approval Action was Saturday, May 20, 2023. The next day when the Office of the Clerk of the Board of Supervisors was open was Monday, May 22, 2023 (Appeal Deadline).

**Appeal Filing and Timeliness:** The Appellant filed the appeal of the exemption determination on Wednesday, May 17, 2023, prior to the end of the Appeal Deadline. Therefore, the appeal is timely.

**From:** [BOS Legislation, \(BOS\)](#)  
**To:** [Hillis, Rich \(CPC\)](#)  
**Cc:** [PEARSON, ANNE \(CAT\)](#); [JENSEN, KRISTEN \(CAT\)](#); [Teague, Corey \(CPC\)](#); [Tam, Tina \(CPC\)](#); [Gibson, Lisa \(CPC\)](#); [Jain, Devyani \(CPC\)](#); [Navarrete, Joy \(CPC\)](#); [Lewis, Don \(CPC\)](#); [Starr, Aaron \(CPC\)](#); [Watty, Elizabeth \(CPC\)](#); [Ionin, Jonas \(CPC\)](#); [May, Christopher \(CPC\)](#); [Rosenberg, Julie \(BOA\)](#); [Longaway, Alec \(BOA\)](#); [BOS-Supervisors](#); [BOS-Legislative Aides](#); [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [BOS Legislation, \(BOS\)](#)  
**Subject:** Appeal of CEQA Exemption Determination - Proposed 1151 Washington Street Project  
**Date:** Friday, May 19, 2023 9:04:37 AM  
**Attachments:** [image001.png](#)  
[COB Ltr 051923.pdf](#)  
[Appeal Ltr 051723.pdf](#)

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Dear Director Hillis,

The Office of the Clerk of the Board is in receipt of an appeal of the CEQA Exemption Determination for the proposed project at 1151 Washington Street. The appeal was filed by Richard Drury of Lozeau Drury LLP, on behalf of Clayton Timbrell.

Please find the attached letter of appeal and timely filing determination request letter from the Clerk of the Board. Kindly review for timely filing determination. Thank you.

Best regards,

**Lisa Lew**  
San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102  
T 415-554-7718 | F 415-554-5163  
[lisa.lew@sfgov.org](mailto:lisa.lew@sfgov.org) | [www.sfbos.org](http://www.sfbos.org)

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May 19, 2023

To: Rich Hillis  
Planning Director

From:  Angela Calvillo  
Clerk of the Board of Supervisors

**Subject: Appeal of California Environmental Quality Act (CEQA) Determination of Exemption From Environmental Review - 1151 Washington Street**

An appeal of the CEQA Determination of Exemption as an in-fill development project for the proposed 1151 Washington Street project was filed with the Office of the Clerk of the Board on May 17, 2023, by Richard Drury of Lozeau Drury LLP, on behalf of Clayton Timbrell.

Pursuant to Administrative Code, Chapter 31.16, I am forwarding this appeal, with attached documents, to the Planning Department to determine if the appeal has been filed in a timely manner.

Please feel free to contact our office at [bos.legislation@sfgov.org](mailto:bos.legislation@sfgov.org) or call 415-554-5184 if you have any questions.

c: Anne Pearson, Deputy City Attorney  
Kristen Jensen, Deputy City Attorney  
Corey Teague, Zoning Administrator, Planning Department  
Tina Tam, Deputy Zoning Administrator, Planning Department  
Lisa Gibson, Environmental Review Officer, Planning Department  
Devyani Jain, Deputy Environmental Review Officer, Planning Department  
Joy Navarrete, Environmental Planning, Planning Department  
Don Lewis, Environmental Planning, Planning Department  
Josh Switzky, Acting Director of Citywide Planning, Planning Department  
Dan Sider, Chief of Staff, Planning Department  
Aaron Starr, Manager of Legislative Affairs, Planning Department  
Elizabeth Watty, Current Planning Division, Planning Department  
Jonas Ionin, Planning Commission Secretary, Planning Department  
Christopher May Staff Contact, Planning Department  
Julie Rosenberg, Executive Director, Board of Appeals  
Alec Longaway, Legal Process Clerk, Board of Appeals

ll;jw:ak

# Introduction Form

(by a Member of the Board of Supervisors or the Mayor)



I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)  
*(Routine, non-controversial and/or commendatory matters only)*
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor  inquiries..."
- 5. City Attorney Request
- 6. Call File No.  from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the Board on

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission       Youth Commission       Ethics Commission
- Planning Commission       Building Inspection Commission       Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes                       No

*(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)*

Sponsor(s):

Subject:

Long Title or text listed:

Signature of Sponsoring Supervisor: