



# SAN FRANCISCO PLANNING DEPARTMENT

**MEMO**

**DATE:** January 7, 2019  
**TO:** Angela Calvillo, Clerk of the Board  
**FROM:** Lisa M. Gibson, Environmental Review Officer – (415) 575-9032  
**RE:** Appeal of the Categorical Exemption for 11 Gladys Street  
Assessor's Block 5710, Lot 027  
Planning Department Case No. 2015-004717ENV

**HEARING DATE:** January 15, 2019

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

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Information:  
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Attached is 1 copy of the Planning Department's memorandum to the Board of Supervisors regarding the appeal of the categorical exemption for 11 Gladys Street, 11 Gladys Street, San Francisco 94110.

If you have any questions regarding this matter, please contact David Young at 415-575-9041 or [david.L.young@sfgov.org](mailto:david.L.young@sfgov.org).

Thank you



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**MEMO**

## Categorical Exemption Appeal 11 Gladys Street

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David Young – (415) 575-9041  
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Appeal of Categorical Exemption for 11 Gladys Street  
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**PROJECT SPONSOR:** Rob Oliver – (415) 412-3664  
**APPELLANT(S):** David Donofrio, 19 Gladys Street

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### INTRODUCTION

This memorandum and the attached documents are a response to the letter of appeal to the board of supervisors (the board) regarding the planning department’s (the department) issuance of a categorical exemption under the California Environmental Quality Act (CEQA determination) for the proposed 11 Gladys Street project.

The department, pursuant to Article 19 of the CEQA Guidelines, issued a categorical exemption for the project on September 29, 2017 finding that the proposed project is exempt from the California Environmental Quality Act (CEQA) as a Class 1 categorical exemption.

The department received a supplemental appeal letter in the late afternoon of January 4, 2019. The department will provide responses to the claims identified in the supplemental appeal letter, under separate cover, before the January 15, 2019 appeal hearing.

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 located within the Bernal Heights neighborhood on a large block bounded by Gladys Street to the northwest, Santa Marina Street to the northeast, Elsie Street to the southeast and Appleton Avenue to the southwest. Mission Street is one block south of the project site, the Good Prospect Community Garden is 330 feet northeast of the site, the College Hill Reservoir is approximately 360 feet uphill and southeast of the project site, and Junipero Serra Early Elementary School is adjacent to the reservoir’s southern boundary. The site is zoned Residential-House, Two Family (RH-2), located in a 40-X

height and bulk district, and within the Bernal Heights Special Use District. The site is adjacent to Gladys Street to the northwest, 5 Gladys Street residence to the northeast, 48 Santa Marina Street residence to the southeast and 19 Gladys Street residence to the southwest. The surrounding vicinity is comprised primarily of residential development zoned RH-2, mostly constructed between 1900 and 1912. The project site parcel is 1,250 square feet rectangle parcel with a depth of 50 feet. The existing residence at 11 Gladys Street, constructed in 1941, is 971 square feet in size and set back from Gladys Street approximately eight feet. The first floor of the existing residence consists of a garage and storage space/basement, which is accessed from the garage and the existing second story. The second story consists of a living room, dining room, kitchen, bathroom and two bedrooms. The existing structure is constructed on a foundation of continuous and isolated spread footings. There are no existing decks. There is a decorative patio that also serves as the main entrance to the residence. The site is terraced with slopes greater than 20%. There is a retaining wall along the southeast property line ranging in height between about 7 and 12 feet tall and retaining walls within the footprint of the basement floor, which divide the garage from the storage space.

## **PROJECT DESCRIPTION**

The proposed project involves interior and exterior alterations to the existing on-site building and the construction of a 669-square-foot vertical addition, increasing the square footage from 971 square feet to approximately 1,640 square feet. The addition would add a third floor, increasing the height of the residence from 20.5 feet to 32 feet. Two new roof decks would be constructed on the new third floor, one on the north side of the residence and one on the south side. New wood siding would be added on the second and third floors and wood clad windows would be used to match the existing on-site windows. A variance was requested and granted for the front and rear yard setback as the existing home is a non-conforming structure. Section 132 of the Planning Code requires that the subject lot provide a front setback equal to the average front setback provided by the adjacent properties. Planning Code Section 134 requires a rear yard that is equal to 45 percent of the total lot depth. The property on the project site (existing and proposed) do not meet these requirements; hence, the variance. The project would include on-site drainage improvements.

## **BACKGROUND**

An Historical Resource Determination was prepared for the project site in September 2015, prior to the department's issuance of the categorical exemption determination. The department conducted a subsequent Historical Resource Determination on February 27, 2017. The subsequent Determination concluded that the building is not located within the boundaries of any identified historical district and is not eligible for listing in the California Register under any criteria individually or as a part of a historic district. A Geotechnical Investigation (hereinafter Geotech investigation) was conducted for the Subject Property on September 18, 2015.

### **September 26, 2017 - CEQA Clearance**

On September 26, 2017 the department determined that the project was categorically exempt under CEQA Class 1 – Existing Facilities. Interior and Exterior Alterations, Additions Under 10,000 square feet and that no further environmental review was required.

### **November 8, 2018 - Discretionary Review and Approval by Planning Commission**

The Planning Commission reviewed the Discretionary Review Request at the November 8, 2018 Planning Commission Hearing. Following public testimony, the Planning Commission voted not to grant the Discretionary Review and approved the project as proposed and in accordance with Chapter 31 of the San Francisco Administrative Code and directed staff to work with the project sponsor on issues related to privacy screening.

**CEQA Appeal Filed** – On December 7, 2018, Zacks, Freedman & Patterson on behalf of David Donofrio (hereinafter appellant) filed an appeal with the Board of Supervisors in opposition to the categorical exemption. The appellant is the adjacent neighbor to the south of the subject property.

#### **December 12, 2018 - CEQA Appeal Timely Filed**

The Department determined that the appeal of the CEQA determination was timely filed and advised the Clerk of the Board to schedule the CEQA appeal hearing in compliance with Section 31.16(b)(4) of the San Francisco Administrative Code.

## **CEQA GUIDELINES**

### **Categorical Exemptions**

CEQA Statutes and Guidelines, Article 19, Categorical Exemptions Section 15300 states: Section 21084 of the Public Resources Code requires a list of projects which have been determined to not have a significant effect on the environmental and which shall, therefore, be exempt from the provisions or CEQA. CEQA Section 15300.2 Exceptions states a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

In accordance with CEQA 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 15301, or Class 1 - Existing Facilities, consists of interior and exterior alterations; additions up to 10,000 square feet if the project is in an area where all public services and facilities are available for the maximum development allowable and where the area is not historically significant, or subject to landslide hazard. The key consideration is whether the project involves negligible or no expansion of an existing use.

Additionally, CEQA Guidelines section 15300.2 establishes exceptions to the application of a categorical exemption. When any of the below exceptions apply, a project that otherwise fits within a categorical exemption must undergo some form of environmental review.

(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -- a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply all instances, except where the

project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

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

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

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

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

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

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

**Response 1: The Appellant has not provided substantial evidence to support a reasonable possibility that the project could result in significant unmitigated geotechnical impacts.**

The appellant does not cite or provide evidence or information regarding unmitigated Geotech impacts associated with the proposed project. CEQA Section 15300.2 Exceptions states a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. In this case, the appellant has provided no evidence supporting the existence of an unusual circumstance related to the proposed project. The project would include the construction of a 669-square-foot vertical addition to an existing dwelling and within the same on-site building footprint; therefore, the project would not expand the use of the site beyond the existing residential use. The project would involve site preparation and grading, excavation, surface drainage improvements, new foundations and retaining walls, concrete slab-on-grade floors, and seismic design consideration and measures, all typical of residential construction projects within San Francisco.

A Geotech investigation was conducted for the 11 Gladys Street project on September 18, 2015. The investigation identified the most appropriate new foundation type(s); estimated the total and differential settlement of new foundations; provided excavation recommendations; identified lateral earth pressures on retaining/basement walls; described slab-on-grade subgrade preparation; site grading criteria; and identified potential geologic hazards. The primary geotechnical considerations for the site were excavation to lower the floor of the storage area, the potential for seasonal groundwater impacts on the new space, excavation of up to six feet in residual soil and/or bedrock, and the existing retaining wall along the southeast property line. The investigation addressed the project's proposed activities and included recommendations to lessen or eliminate potential geologic related impacts. From a geotechnical standpoint, it was concluded that the site can be developed as planned, provided the recommendations presented in the investigation are incorporated into the project plans and specifications and implemented during construction. The Geotech investigation and recommendations contained therein will be reviewed by the Department of Building Inspection (DBI) prior to issuance of the building permit. The sponsor will incorporate the approved geotechnical recommendations into the project's structural design.

Slopes greater than 20% are not unusual in San Francisco, a City with up to 48 recognized "hills." Development on such lots is routinely reviewed by city staff and construction undertaken in accordance with applicable City regulations. The Appellant has not provided information or demonstrated what unusual topographic feature of this approximately 20%-sloped lot would prevent it from being able to be developed in compliance with the Geotech investigation's recommendations or why in a City with numerous 20% or greater-sloped lots, this lot is so unusual that the site's geotechnical safety requirements could not be adequately addressed through DBI's permit review of the proposed project.

The project is consistent with the provisions set forth in Sections 15300.2 Exceptions and 15301 Class 1, because it would involve minor interior and exterior alterations and an addition under 10,000 square feet. There are no unusual circumstances associated with the project site or proposed project activities that could result in a significant environmental effect and no further environmental review is required.

**Response 2: The Appellant's concern that the requested building permit for upgrades to the nearby College Hill Reservoir is unsigned is not substantial evidence that there is a reasonable possibility that the reservoir would damage neighbor's properties downhill from the reservoir such that a significant environmental effect would occur.**

The College Hill reservoir, located at 155 Appleton Avenue, is owned and operated by the San Francisco Public Utilities Commission (SFPUC). The reservoir is approximately 450 feet southeast of the project site. The San Francisco Department of Building Inspection (DBI) issued a building permit in 2000 to the SFPUC. The Job Card and permit from DBI (Permit 929933)<sup>1</sup> for the College Hill Reservoir seismic retrofit work was reviewed by planning department staff and confirmed with SFPUC staff Sam Young on December 20, 2018. The activities described in the permit included special tests and inspections of the structural components of the reservoir in accordance with Section 1701 of the Building Code, including shear walls and diaphragm

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<sup>1</sup> San Francisco Department of Building Inspection. *Job Card and Permit Application (Permit 929933)*. Stet January 8, 2001.

systems, reinforced structural collectors, steel and wood bracing, new sampling pumps and hypochlorite disinfection systems, certification of glu-lam components, and reroofing on the reservoir. According to the SFPUC construction manager of that project, all the permitted work and required inspections were performed and completed. The permit application required special inspection of the structural work related to the reservoir. All seismic upgrades and reservoir retrofits were completed per project specifications. According to the project manager, the reservoir would not have been returned into service had the inspection not been completed successfully. There are no significant effects that would occur related to the reservoir.

**Response 3: The appellant does not provide substantial evidence or information to support the claim that the project's foundation work would destabilize the slope supporting the existing retaining wall or the College Hill Reservoir; thereby, leading to the failure of the reservoir.**

The Geotechnical investigation for the project included recommendations for the proposed foundations, new retaining walls and existing retaining walls on-site. The subsurface conditions at the site consist of fill, residual soil and bedrock. The residual soil on-site is bedrock that has been completely weathered to soil. The residual soil is suitable for foundation support. The existing foundations bear on bedrock, which is relatively strong and incompressible. The bedrock on-site is suitable for foundation support. The project's grading activities would result in excavation of up to six feet in depth and the removal of approximately 280 cubic yards of soil within the existing ground floor area; therefore, the foundations and floor slabs would be constructed on undisturbed residual soil and/or bedrock. Where new or existing foundations are planned to be located behind retaining walls, additional measures to address earth pressure and slope gradients would be taken to account for vertical and lateral foundation loading on the on-site retaining wall.

Based on field observations by the geotechnical engineer, the existing perimeter walls were repaired and capped with concrete at some point in the past. Excavation would be required for new foundations and/or to increase the headroom within the existing storage areas. The primary geotechnical issue related to excavation is the presence of existing retaining walls along the property line. The investigation included recommendations to reduce the potential for on-site foundation or retaining wall movement and to provide support during installation of the new retaining wall. The Geotech investigation concluded that the proposed project's new addition and retaining walls could be supported on the site's bedrock and/or residual soils and would not destabilize the slope supporting the reservoir. The Geotech investigation would be reviewed for compliance with DBI requirements. The project sponsor would adhere to the recommendations in the approved Geotechnical investigation; thus, the project would not destabilize the slope or lead to the failure of the reservoir.

**Response 4: The slope stability impacts of the project were adequately analyzed including the project's effects related to excavation and soil disturbance. A Geotechnical investigation was conducted on September 17, 2015 by Divis Engineering that addressed slope stability, excavation, soil disturbance, and seismic conditions for the project site.**

As discussed above, and contrary to the appellant's claims, a Geotechnical investigation was prepared for the proposed project. The purpose of this report was to identify any geotechnical issues related to the potential for landslides, liquefaction, subsidence or groundshaking as a result of seismic activity, and to recommend construction practices and techniques to protect on-site structures and neighboring properties. These recommendations will be taken into account during DBI's permit review process. The geotechnical report found the project's risks from liquefaction, surface rupture, lateral spreading, densification and landslides to be low at the project site.

With regards to geotechnical considerations, during the permit review process, DBI shall review the Geotechnical investigation to ensure that the potential settlement and subsidence impacts of project excavation are appropriately addressed in accordance with Section 1704.15 of the San Francisco Building Code. DBI would also require that the final geotechnical report include a determination as to whether a lateral movement and settlement survey should be done to monitor any movement or settlement of surrounding buildings during project construction. If a monitoring survey were recommended, DBI shall require that a Special Inspector be retained by the project sponsor to perform this monitoring. If, in the judgment of the Special Inspector, unacceptable movement were to occur during construction, corrective actions shall be used to halt this settlement. Further, the final building plans will be reviewed by DBI, which would determine if additional site-specific reports will be required.

The recommendations in the geotechnical investigation for 11 Gladys Street include, but are not limited to:

- Weak soil encountered in the bottom of footing excavations should be excavated and replaced with lean concrete,
- The bottom and sides of the excavation should be wetted following excavation and maintained in a moist condition until concrete is placed,
- Soil and rock encountered within the footing excavations prior to the placement of waterproofing, reinforcing steel or other components should be removed,
- Foundation excavations should be free of standing water, debris, and disturbed materials prior to placing concrete,
- Site Class C (Very Dense Soil and Soft Rock) should be used for the proposed project's site preparation and excavation activities

With implementation of the above recommendations provided in the geotechnical investigation, subject to review and approval by DBI, and monitoring by a DBI Special Inspector (if required) as part of DBI's existing regulatory program and the requirements of the Building Code, the proposed project would not result in a significant impact related to geotechnical impacts.

**Response 5: The Appellant has not provided substantial evidence to support a reasonable possibility that the project excavation could result in significant archeological impacts, thereby requiring the preparation of an archeological report.**

The proposed project would include a vertical addition within the same footprint as the existing on-site residence. The project site is characterized with slopes greater than 20%, and where the on-site slopes generally traverse the site in easterly and southerly directions. The footprint for the existing residence is



cut moderately into the steep slope. The appellant asserts that the project would result in cumulative soil disturbance/modification greater than eight feet in excavation depth. A six-foot maximum depth for excavation is anticipated for the project. The existing on-site residence ground floor consists of a subterranean garage and storage space supported by continuous and isolated footings and a basement slab that bear on undisturbed soils and sandstone and bedrock, which are suitable for load bearing conditions. Based on the review by planning department's in-house archeological specialist, there are no CEQA-significant archeological resources expected to be encountered on site during project development. The proposed project site is characterized as steeply sloped with a history of site disturbance and deep terracing, which indicates a low potential both for the presence and survival of archeological materials. No further archeological analysis is required and there would be no significant project-related archeological impacts.

## CONCLUSION

The department has determined that the proposed project is categorically exempt from environmental review under CEQA on the basis that: (1) the project meets the definition of one or more of the classes of projects that the Secretary of Resources has found do not have a significant effect on the environment, and (2) none of the exceptions specified in CEQA Guidelines section 15300.2 prohibiting the use of a categorical exemption are applicable to the project. No substantial evidence supporting a fair argument that a significant environmental effect may occur as a result of the project has been presented that would warrant preparation of further environmental review. The Appellant has not provided any substantial evidence or expert opinion to refute the conclusions of the Department.

As noted, the department received a supplemental appeal letter in the late afternoon of January 4, 2019. The department will provide responses to the claims identified in the supplemental appeal letter, under separate cover, before the January 15, 2019 appeal hearing.

For the reasons stated above and in the September 29, 2017 CEQA categorical exemption determination, the CEQA determination complies with the requirements of CEQA and the project is appropriately exempt from environmental review pursuant to the cited categorical exemption. The department therefore respectfully recommends that the board uphold the CEQA categorical exemption determination and deny the appeal of the CEQA determination.