



CATEGORICAL EXEMPTION APPEAL

1801 Mission Street

Date: June 4, 2021
To: Angela Calvillo, Clerk of the Board of Supervisors
From: Lisa Gibson, Environmental Review Officer, (628) 652-7571
Michael Li, michael.j.li@sfgov.org, (628) 652-7538

RE: **Planning Record No. 2020-010532PRJ**
Appeal of Categorical Exemption for 1801 Mission Street

Hearing Date: June 8, 2021
Attachment(s): None

Project Sponsor: Stephen Antonaros, Architect, (415) 864-2261
Appellant(s): Ben Terrall, Cultural Action Network

Introduction

This memorandum is a response to the May 28, 2021 supplemental appeal letter to the board of supervisors (the board) regarding the planning department's (the department's) issuance of a categorical exemption under the California Environmental Quality Act (CEQA determination) for the proposed 1801 Mission Street project (Project).

The department, pursuant to Article 19 of the CEQA Guidelines, issued a categorical exemption for the project on November 18, 2020 finding that the Project is exempt from the California Environmental Quality Act (CEQA) as a Class 1 categorical 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.

Planning Department Response

The concerns raised in the May 28, 2021 supplemental appeal letter are addressed in the response below. The numbering of the response continues the numbering from the department's June 1, 2021 appeal response.

Response 3: Appellant continues to argue the wrong CEQA standard, i.e., that of a community plan evaluation (CPE), when, in fact, Appellant has appealed a categorical exemption determination. In addition, Appellant cites legal cases that do not involve categorical exemptions and, thus, do not apply the correct standard of review.¹

The department issued a Class 1 categorical exemption under CEQA Guidelines section 15301 for the Project, not a CPE under CEQA Guidelines section 15183 as suggested in Appellant's supplemental appeal letter. Therefore, Appellant's citations to CEQA Guidelines section 15183 are not relevant. In addition, Appellant's citations of legal cases in which local agencies prepared environmental impact reports or negative declarations are not instructive, as the cited legal cases are not related to categorical exemptions and therefore do not cite the correct legal standard.

Please refer to Response 1 for a discussion of the department's determination that the Project is categorically exempt from the provisions of CEQA under CEQA Guidelines section 15301, Class 1, Existing Facilities.

CEQA Guidelines section 15300.2, Exceptions, prohibits the use of a categorical exemption for any project that would result in a significant cumulative impact, a significant impact due to unusual circumstances, or damage to scenic resources within a scenic highway, would be located on a site included on any list compiled pursuant to section 65962.5 of the Government Code (Cortese list), or may cause a substantial adverse change in the significance of a historical resource. None of these exceptions applies to the Project.

Neither Appellant's opening brief nor the May 28, 2021 supplemental brief establishes that any exception applies that would disqualify the Project from a categorical exemption under CEQA. In particular, the fact that the project site is in a cultural heritage district is not an unusual circumstance that would prohibit the use of a Class 1 categorical exemption, as there are seven other cultural heritage districts located throughout San Francisco. Even if this were an unusual circumstance, Appellant has not presented substantial evidence that the location of the Project within a cultural heritage district would give rise to a significant impact on the environment. Speculation that locating this limited restaurant use/coffee shop in the cultural heritage district might have a gentrifying impact is not substantial evidence.

The department's issuance of a Class 1 categorical exemption for the Project is appropriate, and no further environmental review is required.

Conclusion

The department has determined that the 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. Appellant has not demonstrated that the department's determination is not supported by substantial evidence in the record.

¹ While the department did issue a CPE for the proposed construction of the now-existing building at 1801 Mission Street, that determination was not appealed and is not pertinent to this appeal.

For the reasons stated in the department's appeal responses, the CEQA determination complies with the requirements of CEQA, and the Project is appropriately exempt from further environmental review pursuant to the cited exemption. The department therefore respectfully recommends that the board uphold the CEQA determination and deny the appeal.