



# SAN FRANCISCO PLANNING DEPARTMENT

**MEMO**

## Appeal of Tentative Parcel Map 40 Bernal Heights Boulevard

**DATE:** September 23, 2015

**TO:** Angela Calvillo, Clerk of the Board of Supervisors

**FROM:** AnMarie Rodgers, Senior Policy Advisor – Planning (415) 558-6395  
Brittany Bendix, Case Planner – Planning Department (415) 575-9114

**RE:** Board File No. 150858, Planning Case No. 2014.1032S –  
Appeal of the Tentative Parcel Map for 40 Bernal Heights Boulevard

**HEARING DATE:** September 29, 2015

**ATTACHMENTS:**

A. Categorical Exemption Certificate, June 22, 2015

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

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**PROJECT SPONSOR:** 1360-1364 Stevenson Street, LLC  
c/o John Kevlin  
Reuben, Junius & Rose, LLP  
One Bush Street, Suite 600  
San Francisco, CA 94107

**APPELLANT:** Bernal/Powhattan Neighbors  
c/o Chris Witteman and Betsy Brown  
114 Nevada Street  
San Francisco, CA 94110

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### INTRODUCTION:

This memorandum and the attached documents are in response to the letter of appeal (“Appeal Letter”) to the Board of Supervisors (the “Board”) regarding the Department of Public Works (“DPW”) August 24, 2015, approval of a Tentative Parcel Map for a four-lot subdivision related to a project at 40 Bernal Heights Boulevard (Assessor’s Block 5640, Lot 010, “Project Site”). The related project consists of two components: (1) the subdivision of one lot into four lots on the Project Site, (Planning Case No. 2014.1032S), and (2) the construction of four new single-family dwellings, one on each new lot, currently under review, (Building Permit Applications No. 2014.05.21.6382, 2014.05.21.6394, 2014.05.21.6395, and 2014.05.21.6396). The application for parcel map/final map subdivision was filed with DPW on May 28, 2014, and referred to the Planning Department (the “Department”) for review on June 10, 2014. The Department recommended approval of the subdivision on January 12, 2015. However, on March 13, 2015, the Department requested that DPW rescind the recommendation of approval pending completion of the proposal’s environmental review under Planning Case No. 2014-002928ENV. On June 22, 2015, the Department issued a Certificate of Determination that the subdivision and new construction project is exempt from environmental review under California Environmental Quality Act (“CEQA”) State Guidelines Section 15332, or Class 32. Subsequently, the Department re-affirmed its recommendation of

approval on August 17, 2015, and DPW granted a Tentative Map approval on August 24, 2015. The Appeal Letter to the Board was filed on September 3, 2015, by Betsy Brown and Chris Witteman on behalf of 14 named individuals referred to as the "Bernal/Powhattan Neighbors."

The decision before the Board is whether to uphold or overturn the Tentative Parcel Map approval. We write to explain the extensive process of Planning Department review, which is still presently underway. At this time the Department has completed review of the proposed subdivision. The corresponding development of the resulting four parcels with the new construction of four single-family dwellings is still undergoing review. At this time, the proposed new construction does not require authorization by the Planning Commission or exceptions from the Zoning Administrator. Upon a determination by the Department that the new construction projects are Code-complying and consistent with the General Plan, the individual projects will then be publicly noticed pursuant to the requirements of Planning Code Section 311. At that time, individuals in opposition to the new construction activities will have an opportunity to request Discretionary Review by the Planning Commission. The issues presently raised by the Appellant are generally best addressed as part of the development review, not as part of the subdivision request.

We urge the Board of Supervisors to reject this appeal; to consider these issues at this time could thwart the well-established, thoughtful and public review process that occurs at the time the Planning and Building permit review takes place, which also include rights of appeal. Both Planning staff and the Commission (if Discretionary Review is requested) can contribute to the discourse on massing; and provide specific direction relative to the applicable design guidelines. Further, we would suggest, as this memo details, that a project where the lot is subdivided into three parcels, instead of four may result in three larger houses than the four houses currently under review.

#### **SURROUNDING PROPERTIES AND NEIGHBORHOOD**

The Project Site is located within an RH-1 (Residential, House, One-Family) Zoning District, the Bernal Heights Special Use District and a 40-X Height and Bulk District. The Project Site is an irregular lot of approximately 7,612 square feet and is bounded by Bernal Heights Boulevard to the north and Powhattan Avenue to the south. Unimproved sections of Rosenkranz Street and Carver Street bind the property on the west and east sides, respectively. Directly north of the property and across Bernal Heights Boulevard is approximately 8,600 square-feet of city-owned undeveloped land that is designated as open space. Immediately east of the property, and across the unimproved right-of-way for Carver Street, is a series of three-story single family dwellings. The area south of the property, and across Powhattan Avenue, is developed with single family homes that are predominately two-stories. East of the property, and beyond the unimproved portion of Rosenkranz Street is an additional 344 square feet of city-owned open space, followed by the intersection of Bernal Heights Boulevard, Powhattan Avenue and Nevada Street. Finally, the subject property is also within a quarter-mile of four MUNI bus lines and the neighborhood's primary neighborhood commercial corridor on Cortland Street.

#### **BACKGROUND:**

##### ***2014: Applications for Tentative Map, Development and Environmental Review Filed***

On May 21, 2014, 1360-1364 Stevenson Street, LLC (hereinafter "Project Sponsor") filed four applications for new construction with the Department of Building Inspection (hereinafter "DBI") for development of four single family dwellings on four proposed corresponding vacant lots within a RH-1 Zoning District, the Bernal Heights Special Use District and a 40-X Height and Bulk District. On May 28, 2014, the Project

Sponsor submitted the corresponding Application for Parcel Map/Final Map Subdivision to DPW. This application was then referred to the Planning Department for review on June 10, 2014. The proposed map subdivided an existing lot of approximately 7,612 square feet into four smaller parcels ranging from 1,755 square feet to 2,073 square feet in size. On December 22, 2014, the Project Sponsor filed an Environmental Evaluation Application with the Planning Department for evaluation of the subdivision and new construction proposals.

***January to March 2015 – Rescinding of the initial Tentative Map Approval***

On January 12, 2015, the Planning Department recommended approval of the proposed Tentative Map. Subsequently DPW publicly noticed the pending tentative approval on January 15, 2015. Upon recognition that proper CEQA review was inadvertently not conducted for the proposed map, the Planning Department rescinded the recommendation for approval on March 13, 2015. The referral was then placed on hold until the environmental evaluation under Case 2014-002982ENV was complete.

***Planning Department Completes CEQA Review, DPW Approves Tentative Parcel Map Application***

On August 17, 2015, the Project was determined to be exempt from the California Environmental Quality Act (“CEQA”) as a Class 32 Categorical Exemption under CEQA as described in the determination contained in the Planning Department files for this Project (Case 2014-002982ENV). No appeal of the categorical exemption has been filed as of the writing of this report. Upon completion of CEQA review, the Planning Department re-issued its recommendation of approval on August 17, 2015, and DPW resumed the approval process and granted a Tentative Map approval on August 24, 2015. An Appeal Letter to the Board was then filed on September 3, 2015, by Betsy Brown and Chris Witteman on behalf of 14 named individuals referred to as the “Bernal/Powhattan Neighbors.” To date, none of the active Building Permit Applications have completed Planning Department review nor has staff commenced the Planning Code Section 311 Neighborhood Notification process. Further, as currently proposed the new construction proposal does not require any exceptions from the Planning Code or specific authorizations from the Planning Commission.

**APPELLANT ISSUES AND PLANNING DEPARTMENT RESPONSES:**

In the appellant's materials describing the basis for the appeal, the Appellant raises issues relative to the density and scale of the project as follows:

1. **The density of the proposed project.** The proposed subdivision reduces a single lot of approximately 7,612 square feet into four properties ranging in size from 1,755 square feet to 2,073 square feet. Planning Code Section 121 requires that any newly created lot has a minimum frontage of 16 feet and a minimum lot width of 25 feet. Additionally, for properties that are entirely within 125 feet of the intersection of two streets that intersect at an angle of not more than 135 degrees, the minimum lot area is 1,750 square feet. All four lots exceed these minimum requirements. Further, only one dwelling unit is proposed per lot, which is consistent with the density controls of the RH-1 Zoning District.

**In regards to the Housing Element of the General Plan the subdivision is consistent with the following objectives and policies:**

OBJECTIVE 1: Identify and make available for development adequate sites to meet the City's housing needs, especially permanently affordable housing.

POLICY 1.1 Plan for the full range of housing needs in the City and County of San Francisco, especially affordable housing.

POLICY 1.10 Support new housing projects, especially affordable housing, where households can easily rely on public transportation, walking and bicycling for the majority of daily trips.

OBJECTIVE 4: Foster a housing stock that meets the needs of all residents across lifecycles.

POLICY 4.1 Develop new housing, and encourage the remodeling of existing housing, for families with children.

OBJECTIVE 11: Recognize the Diverse and Distinct Character of San Francisco's Neighborhoods.

POLICY 11.1 Promote the construction and rehabilitation of well-designed housing that emphasizes beauty, flexibility, and innovative design, and respects existing neighborhood character.

POLICY 11.3 Ensure growth is accommodated without substantially and adversely impacting existing residential neighborhood character.

POLICY 11.5 Ensure densities in established residential areas promote compatibility with prevailing neighborhood character.

OBJECTIVE 12: Balance housing growth with adequate infrastructure that serves the City's growing population.

POLICY 12.1 Encourage new housing that relies on transit use and environmentally sustainable patterns of movement.

POLICY 12.2 Consider the proximity of quality of life elements, such as open space, child care, and neighborhood services, when developing new housing units.

POLICY 12.3 Ensure new housing is sustainably supported by the City's public infrastructure systems.

OBJECTIVE 13: Prioritize sustainable development in planning for and constructing new housing.

POLICY 13.1 Support “smart” regional growth that locates new housing close to jobs and transit.

POLICY 13.3 Promote sustainable land use patterns that integrate housing with transportation in order to increase transit, pedestrian, and bicycle mode share.

The proposed lot size, width, dedicated frontages, and density are compliant with the requirements of the Planning Code, as well as the General Plan. The subdivision also enables the construction of four single family dwellings near existing neighborhood services, public transit and open space. Additionally, while the lot size and boundaries do determine the maximum building envelope for future development, approval of the new lots does not restrict the Department from further sculpting the allowable mass per the East Slope Design Guidelines and the Residential Design Guidelines.

2. **The scale of the proposed building and consistency with neighborhood character.** The scale of the proposed development is currently under review by the Planning Department. In general, the surrounding neighborhood can be characterized by lots ranging in size from approximately 1,480 square feet to 2,900 square feet and developed with two- to three-story single family homes. This irregularity of lot sizes is characteristic of Bernal Heights and is a reflection of the topographic conditions. The neighborhood is also characterized by pockets of open space. However, while the subject property is vacant, it is zoned for development and under private ownership. Further, as previously noted, directly north and east of the property is city-owned undeveloped land that is designated as open space.

**At present, the proposed new construction complies with the requirements of the Planning Code and does not require any exceptions or authorizations from the Zoning Administrator or Planning Commission.** Further, both the proposed subdivision and new construction proposals are generally consistent with the neighborhood character as noted above. The proposed lots fall within the range of the existing context, and the corresponding single family dwellings are either two stories (40 Bernal Heights Boulevard) or three stories (965, 985, and 1025 Powhattan Avenue) at the street front.

Beyond review for consistency with the general requirements of the Code, the Planning Department will also consider the new construction’s compliance with both the East Slope Design Guidelines and the Residential Design Guidelines and the General Plan. Once the new construction projects are found to be in compliance, the proposals will then undergo Planning Code Section 311 Neighborhood Notification. This process alerts neighboring building owners and occupants to the Planning Department’s intent to approve the new construction projects. Those challenging the Department’s review of the proposal can then seek Discretionary Review request, bringing the Project approval before the Planning Commission.

The appellant is challenging the subdivision approval as a means to control scale, suggesting in their appeal letter that only three parcels should be created instead of four. While this would reduce the overall density of the subject property (enabling only three dwelling units instead of four dwelling units) it may have an inverse impact to massing. This is because there are no side setbacks or maximum floor areas applicable to this site. Regardless of whether the property is divided into three parcels or four, similar height, front setback, and rear yard requirements would apply. Therefore, this in turn would encourage larger single family homes and result in one less unit.

**CONCLUSION:**

The proposed subdivision reflects adequately sized lots which enable a density that is compliant with the Planning Code and consistent with the General Plan. As noted above, the proposed subdivision was also found to be exempt from CEQA. In regards to the scale of the corresponding new construction projects, the Department recommends that the appellant proceed through the standard Discretionary Review process, whereby the Planning Commission can review the proposed designs in detail; contribute to the discourse on massing; and provide specific direction relative to the applicable design guidelines. Accordingly, the Planning Department recommends that the Board uphold the Department of Public Work's decision in approving the Tentative Parcel Map for 40 Bernal Heights Boulevard and deny the Appellant's request for appeal.



# SAN FRANCISCO PLANNING DEPARTMENT

## Certificate of Determination Exemption from Environmental Review

Case No.: 2014-002982ENV  
 Project Title: 40 Bernal Heights Boulevard/965-1025 Powhattan Avenue  
 Zoning: RH-1 (Residential – House, One-Family) District  
 Bernal Heights Special Use District  
 40-X Height and Bulk District  
 Block/Lot: 5640/010  
 Lot Size: 7,612 square feet  
 Project Sponsor: Amir Afifi, SIA Consulting Corporation  
 (415) 922-0200 ext. 104  
 Staff Contact: Jenny Delumo – (415) 575-9146  
 Jenny.Delumo@sfgov.org

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
 Information:  
**415.558.6377**

### PROJECT DESCRIPTION:

The project site is located on an undeveloped, approximately 7,612-square-foot (sq. ft.) upslope lot in the Bernal Heights neighborhood. The roughly triangular-shaped project site is bounded to the south by Powhattan Avenue, to the north by Bernal Heights Boulevard, to the west by an undeveloped portion of Rosenkranz Street, and to the east by an undeveloped portion of Carver Street. The proposed project would include subdivision of the project site to create four new, separate lots, and construction of one single-family home on each new lot. Three of the new lots would front Powhattan Avenue and the fourth lot would front Bernal Heights Boulevard.

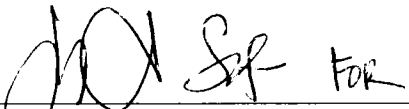
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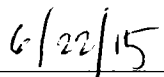
### EXEMPTION CLASS:

Categorical Exemption, Class 32 (California Environmental Quality Act (CEQA) Guidelines Section 15332). See page 306.

### DETERMINATION:

I do hereby certify that the above determination has been made pursuant to State and local requirements.

  
 Sarah B. Jones  
 Environmental Review Officer

  
 Date

cc: Amir Afifi, Project Sponsor  
 Max Putra, Current Planner  
 Supervisor David Campos, District 9 (via Clerk of the Board)

Distribution List  
 Virna Byrd, M.D.F.

**PROJECT DESCRIPTION (continued):**

Specifically, the proposed project would result in the construction of:

- (1) *965 Powhattan Avenue*: An approximately 2,756-gross-square-foot (gsf), 30-foot-tall, three-bedroom home with a two-vehicle garage, on an approximately 2,073 sq. ft. lot.
- (2) *985 Powhattan Avenue*: An approximately 3,426-gsf, 30-foot-tall, three-bedroom home with a three-vehicle garage, on an approximately 1,997 sq. ft. lot.
- (3) *1025 Powhattan Avenue*: An approximately 3,033-gsf, 30-foot-tall, four-bedroom home with a three-vehicle stacked parking garage, on an approximately 1,755 sq. ft. lot.
- (4) *40 Bernal Heights Boulevard*: An approximately 2,843-gsf, 30-foot-tall, four-bedroom home with a two-vehicle garage, on an approximately 1,787 sq. ft. lot.

Collectively, the four proposed buildings would result in an approximately 12,058 gsf residential development with ten off-street parking spaces. Excavation, to a maximum depth of approximately 22 feet below grade, is proposed in order to accommodate the basement levels. Eight new street trees would be planted as part of the project.

**Project Approvals**

The proposed project is subject to notification under Section 311 of the City and County of San Francisco (the City) *Planning Code* and would require the following approvals:

- **Subdivision Authorization:** The proposed project would require authorization by San Francisco Public Works (Public Works) to subdivide the existing lot pursuant to provisions of the California Subdivision Map Act and the City's *Subdivision Code* and Subdivision Regulations.
- **Site Permit:** The proposed project would require the issuance of a site permit by the Department of Building Inspection (DBI).

**Approval Action:** The granting of the subdivision by Public Works is the Approval Action for the project. The Approval Action date establishes the start of the 30-day appeal period for this CEQA exemption determination pursuant to Section 31.04(h) of the San Francisco *Administrative Code*.

**EXEMPTION CLASS (continued):**

CEQA Guidelines Section 15332, or Class 32, provides an exemption from environmental review for in-fill development projects that meet the following conditions. As discussed below, the proposed project satisfies the terms of the Class 32 exemption.

- a) *The project is consistent with applicable general plan designations and policies as well as with applicable zoning designations.*



The San Francisco General Plan articulates the objectives and policies that guide the City's decision making as it pertains to, among other issues, environmental protection, air quality, urban design, transportation, housing, and land use. Permits to construct, alter or demolish buildings, or subdivide lots may not be issued unless the project conforms to the *Planning Code*, or an exemption is granted pursuant to provisions of the *Planning Code*. The project site is comprised of an undeveloped lot in a RH-1 (Residential House, One-Family), 40-X Height and Bulk District. The project site is also located within the Bernal Heights Special Use District (the "Bernal Heights SUD"), a zoning district established in Section 242 of the *Planning Code* to enable consistent and contextually appropriate development within the Bernal Heights neighborhood. For projects within the Bernal Heights SUD, all RH-1 zoning controls apply unless otherwise provided for in Section 242. The proposed project would include subdivision of the project site into four separate lots and construction of a two-story-over-basement home on each of the new lots. The use (residential) and height (30 feet tall) of the proposed buildings would conform to the use and height restrictions in RH-1 Districts and the Bernal Heights SUD. In addition, the proposed buildings would conform to the rear yard depth, building mass, and parking controls prescribed for RH-1 zoned lots within the Bernal Heights SUD.

The subdivision process is overseen by Public Works and implemented pursuant to provisions of the California Subdivision Map Act, and the City's *Subdivision Code* and Subdivision Regulations. However, prior to Public Works approval, the proposed project must be reviewed by other applicable City agencies, including the Planning Department. Planning Department review ensures the subdivision proposal is consistent with the General Plan, Proposition M (*Planning Code* Section 101.1), and other provisions of the *Planning Code*. The proposed subdivision of the existing lot, which is being reviewed under Public Works Project ID No. 8257, would result in the following new lots:

- (1) 965 Powhattan Avenue: An approximately 2,073 sq. ft. lot with a roughly 60 foot frontage.
- (2) 985 Powhattan Avenue: An approximately 1,997 sq. ft. lot with a roughly 35 foot frontage.
- (3) 1025 Powhattan Avenue: An approximately 1,755 sq. ft. lot with a roughly 45 foot frontage.
- (4) 40 Bernal Heights Boulevard: An approximately 1,787 sq. ft. lot with a roughly 36 foot frontage.

As proposed, the subdivided lots would meet the minimum width (25 feet) and minimum area (1,750 sq. ft.<sup>1</sup>) requirements for lots in an RH-1 District, pursuant to *Planning Code* Section 121. The proposed subdivision would also increase the allowable dwelling unit density on the

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<sup>1</sup>Per *Planning Code* Section 121(e)(2), in RH-1 Districts the minimum lot area is 2,500 sq. ft., except for lots with their street frontage entirely within 125 feet of the intersection between two streets that intersect at an angle of 135 degrees or less, then the minimum lot area is 1,750 sq. ft. The proposed lots are located within the first 125 feet of an intersection where the two streets meet at an angle of 135 degrees or less.

project site. Per *Planning Code* Section 209.1, in RH-1 Districts residential density is principally permitted at a ratio of one dwelling unit per lot and conditionally permitted at a ratio of one dwelling unit per 3,000 square feet of lot area, up to a maximum of three dwelling units per lot. The existing lot is approximately 7,612 sq. ft. Therefore, the project sponsor would be permitted to construct one dwelling unit on the project site or seek Conditional Use Authorization to construct up to three dwelling units on the project site.<sup>2</sup> Should the proposed project be approved, the subdivision would result in four lots, enabling the project sponsor to construct four dwelling units on the project site. While the proposed project would result in greater density on the project site, the subdivision would not conflict with applicable *Planning Code* provisions.

Overall, the proposed project is consistent with applicable General Plan objectives and policies as well as applicable zoning designations.

For informational purposes, on January 9, 2015, the Planning Department approved the Tentative Map Decision referral letter for the proposed subdivision.<sup>3</sup> The letter was signed in error as the Planning Department must issue a CEQA determination for the proposed subdivision prior to the approval of a Tentative Map. Therefore, the Planning Department submitted a Revocation Request to Public Works on March 13, 2015 requesting that Public Works rescind the subdivision map approval and return the map to the Planning Department for further review.<sup>4</sup> The City's Surveyor rescinded the approval on March 16, 2015.<sup>5</sup> Once this Certificate of Determination (the "Certificate") is published, the Planning Department may determine whether to approve, conditionally approve, or disapprove the Tentative Map. Should the Planning Department approve or conditionally approve the Tentative Map, Public Works would be required to re-notice property owners within a 300-foot-radius of the subject parcel, and undergo a 10-day appeal period prior to approving a Final Map.

- b) *The development occurs within city limits on a site of less than five acres surrounded by urban uses.*

The project site is an approximately .17 acre (7,612 sq. ft.) undeveloped lot located within a fully developed area of San Francisco. The project site is zoned residential and the lots in the project site vicinity are fully developed and serve residential uses. Therefore, the proposed project would be appropriately characterized as in-fill development of fewer than five acres, surrounded by urban uses.

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<sup>2</sup> Per the rules for calculating dwelling unit density under *Planning Code* Section 207, any "remaining fraction of one-half or more of the minimum of lot area per Dwelling Unit shall be adjusted upward to the next higher whole number of Dwelling Units".

<sup>3</sup> San Francisco Public Works. *Tentative Map Decision: Tentative Map Referral to the Department of City Planning, Project ID 8257*. June, 10, 2014. This document, and all other documents referred to herein, are available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400 as part of Case File No. 2014-002982ENV.

<sup>4</sup> San Francisco Planning Department. *Revocation Request. Case No. 2014.1023S*. March 13, 2015.

<sup>5</sup> San Francisco Public Works Subdivision Project Tracking system. *Project ID 8257*. <http://bsm.sfdpw.org/subdivision/tracking/> Accessed May 13, 2015.

- c) *The project site has no habitat for endangered, rare or threatened species.*

The project site is located in the Bernal Heights neighborhood on an undeveloped lot, which is adjacent to an undeveloped portion of Rosenkranz Street (west of the lot) and an undeveloped portion of Carver Street (east of the lot). As they are undeveloped, Carver and Rosenkranz Streets feature the same mix of plants and ground cover that occupy the subject lot and give the subject block the impression of one continuous open space. While the project site is currently undeveloped, it is located within an urban area with established development patterns.

The Bernal Heights neighborhood was once under evaluation by the U.S. Fish and Wildlife Service (the "USFWS") for its potential to serve as a critical habitat unit for Franciscan Manzanita,<sup>6</sup> an evergreen shrub once believed to be extinct. Bernal Heights was initially placed on the list of potential Critical Habitat Units on September 5, 2012 when the USFWS published a proposed rule for designating critical habitat for Franciscan Manzanita, "Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Franciscan Manzanita",<sup>7</sup> which identified eleven potential Critical Habitat Units. Bernal Heights was removed from the Critical Habitat Unit list when the USFWS's final rule was published on December 20, 2013,<sup>8</sup> as the USFWS determined that the area is "highly degraded" and does not feature the biological or physical characteristics required for the conservation of the Franciscan Manzanita, and therefore does not meet the USFWS's criteria for designation as a critical habitat.<sup>9</sup> Consequently, the Bernal Heights Unit is considered non-essential for the conservation of Franciscan Manzanita and was not included in the final list of Critical Habitat Units.

The project site is located in a developed urban area and does not contain any known rare or endangered plant or animal species, or habitat for such species. Therefore, the project site has no value as a habitat for endangered, rare, or threatened species.

- d) *Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.*

### Traffic

In order to determine whether the proposed project would result in an adverse environmental impact on traffic conditions within the vicinity of the project site, the Planning Department used the *Transportation Impact Analysis Guidelines for Environmental Review* (the Transportation Guidelines) to evaluate traffic conditions during the weekday PM peak period (4:00 PM – 6:00

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<sup>6</sup> "Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Franciscan Manzanita; Proposed Rule," 77 *Federal Register* No. 172 (September 5, 2012), pp. 54517-54548.

<sup>7</sup> *Ibid.*

<sup>8</sup> "Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Arctostaphylos franciscana* (Franciscan Manzanita); Final Rule," 78 *Federal Register* No. 245(December 20, 2013), pp. 77290-.

<sup>9</sup> *Ibid.*

PM). Weekday PM peak hours generally represent the time when the transportation system is most heavily used and is more likely to reach maximum capacity.

Based on the residential trip generation rates in the Transportation Guidelines, the proposed project is estimated to add 40 daily person trips. This includes 14 daily vehicle trips, three of which would occur during PM peak hour. The additional vehicle trips are not anticipated to significantly increase traffic in the project site vicinity or result in an adverse impact on the level of service. Based on this analysis, the proposed project would not substantially increase traffic relative to the existing capacity of the surrounding area's street system.

Construction-related impacts, generally, would not be considered significant due to their temporary and limited duration. While construction workers who drive to the project site would temporarily increase traffic volume and demand for street parking, the additional trips would not substantially affect traffic conditions. Therefore, the proposed project would not result in a significant impact on traffic.

### Noise

Residential uses are considered noise sensitive uses because residential occupants are considered sensitive receptors. The Planning Department requires a detailed noise analysis for projects that propose to locate new residential development in areas where ambient noise is greater than 75 decibels (dBA<sup>10</sup>). The proposed four single-family residences would not be located in an area where environmental noise exceeds this threshold. As such, an Environmental Noise Study was not required for the proposed project. However, proposed projects must comply with noise insulation requirements prescribed by Title 24, Part II of the California Code of Regulations (Title 24). Through the building permit process, DBI would ensure that Title 24 requirements would be met.

Operations-related noise primarily comes from two sources: (1) increased vehicular traffic generated by project residents and employees, and by service and delivery trucks requiring access to the project site; and (2) mechanical building noise. Typically, traffic volume would have to double to produce an increase in ambient noise levels noticeable to most people. As previously discussed, the proposed project is estimated to add forty daily vehicle trips. Potential residents and visitors would increase the number of trips taken within the project area, but it would not result in a doubling of traffic. While one of the proposed buildings would include a mechanical parking stacker, building mechanical noise is regulated by the San Francisco Noise Ordinance (Article 29 of the *Police Code*). Therefore, the proposed project would not result in a substantial increase in operational noise within the vicinity of the project site.

Construction activities, another potential source of noise, are also regulated by the San Francisco Noise Ordinance. The ordinance stipulates when it is permissible to engage in construction activities (7:00 AM - 8:00 PM), the type of equipment that can be used, and the conditions under which that equipment may be utilized. Construction-related noise would be temporary and

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<sup>10</sup> A-weighted sound levels (dBA) is the method for measuring environmental noise to reflect that human hearing is less sensitive to low sound frequencies.

intermittent, and the proposed project would be required to comply with the City's Noise Ordinance. Based on mandatory compliance with all applicable state and municipal codes, the proposed project would not result in a significant impact with respect to noise.

### Air Quality

In accordance with the state and federal Clean Air Acts, air pollutant standards are identified for the following six criteria air pollutants: ozone, carbon monoxide (CO), particulate matter (PM), nitrogen dioxide (NO<sub>2</sub>), sulfur dioxide (SO<sub>2</sub>) and lead. These air pollutants are termed criteria air pollutants because they are regulated by developing specific public health- and welfare-based criteria as the basis for setting permissible levels. The Bay Area Air Quality Management District (BAAQMD), in their CEQA Air Quality Guidelines (May 2011), has developed screening criteria to determine if projects would violate an air quality standard, contribute substantially to an air quality violation, or result in a cumulatively considerable net increase in criteria air pollutants within the San Francisco Bay Area Air Basin. The proposed project meets the screening criteria, and therefore would not result in significant criteria air pollutant impacts.<sup>11</sup>

In addition to criteria air pollutants, individual projects may emit toxic air contaminants (TACs). TACs collectively refer to a diverse group of air pollutants that are capable of causing chronic (i.e., of long-duration) and acute (i.e., severe but of short-term) adverse effects to human health, including carcinogenic effects. In an effort to identify areas of San Francisco most adversely affected by sources of TACs, San Francisco partnered with the BAAQMD to inventory and assess air pollution and exposures from mobile, stationary, and area sources within San Francisco. Areas with poor air quality, termed the "Air Pollutant Exposure Zone," were identified based on health-protective criteria. Land use projects within the Air Pollutant Exposure Zone require special consideration to determine whether the project's activities would expose sensitive receptors to substantial air pollutant concentrations. The project site is not located within an Air Pollutant Exposure Zone. Nor would the proposed project include the operation of stationary sources of air pollution. Therefore, the proposed project would not result in a significant impact with respect to exposure of sensitive receptors to substantial levels of air pollution.

Though the proposed project would require construction activities for the approximate eight-month construction phase, construction emissions would be temporary and variable in nature and would not be expected to expose sensitive receptors to substantial air pollutants. The proposed project would also be subject to, and comply with, California regulations limiting idling to no more than five minutes,<sup>12</sup> which would further reduce nearby sensitive receptors' exposure to temporary and variable TAC emissions. Therefore, construction-period TAC emissions would not result in a significant impact with respect to exposing sensitive receptors to substantial levels of air pollution. Overall, the proposed project would not result in significant air quality impacts.

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<sup>11</sup> Bay Area Air Quality Management District, *CEQA Air Quality Guidelines*, Updated May 2011. Table 3-1.

<sup>12</sup> *California Code of Regulations*, Title 13, Division 3, § 2485.

### Water Quality

The project site is an undeveloped lot covered with porous surfaces. While the proposed project would increase the impervious surface area on the project site, the proportion of impervious to porous surface cover would be similar to that found on other residential-development lots in the neighborhood. Any wastewater and storm water discharge resulting from the proposed project would flow into the City's combined sewer system and be treated to the standards of the City's National Pollutant Discharge Elimination System Permit prior to discharge to a receiving water body.

In addition, the City's Stormwater Management Ordinance requires any project that involves ground disturbance of 5,000 sq. ft. or greater to prepare a Stormwater Control Plan. The proposed project would exceed this threshold and is therefore subject to the ordinance. The project sponsor must prepare a Stormwater Control Plan demonstrating how the project will adhere to the performance measures outlined in the November 2009 Stormwater Design Guidelines (the "Guidelines") including reduction in total volume and peak flow rate of stormwater for areas in combined sewer systems. The San Francisco Public Utilities (SFPUC) Wastewater Enterprise, Urban Watershed Management Program is responsible for review and approval of the Stormwater Control Plan. Without SFPUC approval of a Stormwater Control Plan, no site or building permits can be issued. The Guidelines also require a signed maintenance agreement to ensure proper care of the necessary stormwater controls. Compliance with the ordinance requires the project to maintain or reduce the existing volume and rate of stormwater runoff at the subject property by retaining runoff onsite, promoting stormwater reuse, and limiting site discharge entering the combined sewer system. Therefore, the proposed project would not substantially alter existing groundwater quality or surface flow conditions and would not result in significant water quality impacts.

- e) *The site can be adequately served by all required utilities and public services.*

The project site is located in a dense urban area where all public services and utilities are currently available, and the proposed building would be able to connect to the City's water, wastewater, and electricity services. While the proposed project would minimally increase demand on public services and utilities, that demand would not exceed the capacity provided for this area. In addition, the project would minimize potable water usage in the proposed buildings, and subsequently the volume of wastewater discharged, through compliance with the City's Residential Water Conservation Ordinance (*Building Code Chapter 12A*) and the residential requirements for increasing indoor water efficiency, pursuant to *Green Building Code Chapter 4*. Therefore, the proposed project would be adequately served by all required utilities and public services.

## DISCUSSION OF OTHER ENVIRONMENTAL ISSUES

CEQA Guidelines Section 15300.2 establishes exceptions to the application of a categorical exemption for a project. None of the established exceptions applies to the proposed project. Guidelines Section 15300.2,

subdivision (c), provides that 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. As discussed above, the proposed project would not have a significant effect on traffic, noise, air quality and water quality. In addition, the proposed project would not have a significant effect on the environment due to unusual circumstances for other environmental topics, including those discussed below.

**Geology and Soils.** According to Planning Department records, the project site has a slope of equal to or greater than 20 percent. Therefore, a geotechnical investigation was conducted on the site and the subsequent findings are summarized in this section.<sup>13</sup>

The geotechnical investigation involved project site reconnaissance, review of a 1993-94 investigation of and construction on a lot directly northeast of the subject property, review of engineering studies and observations made at properties in the project site vicinity, a review of pertinent geotechnical data, and geotechnical analysis of all findings. The project site features a northward uphill slope of approximately 20 to 25 percent. Two exploratory borings were drilled for a subsurface investigation at 81 Carver Street, just northwest of the project site, to a depth of approximately 10 feet below grade. The investigation revealed a soil mantel consisting of very loose silty clayey sand and firm sandy clay mixed with rock and glass fragments approximately five to eight feet deep. The fill is underlain by a layer of stiff to very stiff sandy silty clay approximately four feet deep, which grades into Greenstone bedrock to the maximum depth explored (15 feet below grade); though in some instances the Greenstone bedrock grades into chert bedrock. The area in which the project site is located typically features a subsurface of hard, brittle Franciscan formed chert intermixed with weathered, firm shale. This material was also observed at nearby properties at depths and with sampling resistance that indicate the presence of minimally weathered bedrock. No free ground water was detected on the site. According to Planning Department records, the project site is not in a Seismic Landslide Hazard Zone, nor did the geotechnical consultant observe signs of instability. Based on the stability of the of the hard bedrock below the soil mantel and low risk of landslides or liquefaction, the geotechnical report concludes that the site is suitable for construction of the proposed structures, provided their recommendations are incorporated into the design and implementation of the project.

The report recommends that (1) prior to the commencement of any work on the project site, survey points should be placed around the site and monitored while the foundation is installed; (2) due to the proposed depth of excavation, temporary shoring will be required during construction, particularly along Bernal Heights Avenue; (3) the foundation system should include steel-reinforced spread footings, and be constructed in a grid formation where isolated or perimeter footings are tied into the grid system; (4) a sub-drain system should be installed beneath garage slabs and lower level residential spaces. Additional recommendations regarding specialty contractors, site preparation, excavation, slab-on-grade placement, retaining walls, drainage, and other foundation engineering specifications are included in the report. Due to the variation in slope across the project site proposed excavation would range from approximately nine

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<sup>13</sup>Harold Lewis & Associates Geotechnical Consultants, *Foundation Investigation, Four Proposed Residential Buildings, 965, 985, 1025 Powhattan Avenue and 40 Bernal Heights Boulevard, San Francisco, California, September 21, 2014.*

to 15 feet below grade, with a potential maximum depth of approximately 22 feet below grade depending on site conditions during construction activities.

The proposed project would be required to conform to the San Francisco *Building Code*, which ensures the safety of all new construction in the City. Decisions about appropriate foundation and structural design are considered as part of the DBI permit review process. DBI would review background information including geotechnical and structural engineering reports to ensure that the security and stability of adjoining properties and the subject property is maintained during and following construction. Therefore, potential damage to structures from geologic hazards on the project site would be addressed through the DBI requirement for a geotechnical report and review of the building permit application pursuant to its implementation of the *Building Code*. In light of the above, the proposed project would not result in a significant effect related to seismic and geologic hazards.

**Neighborhood Concerns.** A "Notification of Project Receiving Environmental Review" was mailed on February 17, 2015 to community organizations, tenants of affected property and properties adjacent to the project site, and those persons who own property within a 300 foot radius of the project site. Overall concerns raised by the public in response to the notice were taken into consideration and incorporated into this Certificate, as appropriate for CEQA analysis.

The Planning Department received approximately 127 comments from 115 people. Concerns related to physical environmental effects were raised about increased traffic, loss of open space, the potential presence of wildlife habitat on the project site, air quality, scope of excavation activities, and the potential noise and air quality impacts resulting from construction activities. These concerns are addressed in the *Remarks* section of this Certificate. Additional comments regarding the physical environmental effects of the proposed project include: (1) Off-street parking constraints cause by increased density; (2) shadow obstructing light to adjacent properties; (3) an exposed water blow valve on the project site; (4) removal of Significant Trees; (5) public access to the existing bus stop on Bernal Heights Boulevard; (6) public safety along Bernal Heights Boulevard. These concerns are addressed below:

- (1) Section 242(e)(4) of the *Planning Code* prescribes the minimum number of off-street parking spaces for new construction projects located in the Bernal Heights SUD. Based on the amount of usable floor area the project proposes to construct (ranging approximately 2,043-2,244 sq. ft.), a minimum of two parking spaces must be provided for each of the four dwelling units. Therefore, a total of eight parking spaces are required. The project would include construction of a two-vehicle garage for two of the proposed homes and a three-vehicle garage for the other two homes. This would result in a total of ten parking spaces, thereby satisfying the off-street parking requirement for projects in the Bernal Heights SUD and the projected parking space demand for the project. Potential residents and visitors to the project site would also have access to alternative means of transportation. The project site is served by Muni bus routes 9, 9R, 23, 24, 67 and 292, which have stops within .5 miles of the project site.<sup>14</sup> In addition, pursuant to *Planning Code* Section 155.2.10, the project must include at least one bicycle parking space per residential

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<sup>14</sup> 511 SF Bay. <http://511.org/> Accessed January 22, 2015



dwelling unit, for a total of four spaces. Therefore, the proposed project would facilitate adequate public transportation, biking, and vehicle access to the project site

- (2) Proposed projects are typically evaluated for their potential to cast new shadow on parks and open space if the proposed project may potentially cast new shadow in a manner that substantially affects the use and enjoyment of outdoor recreational facility or other public areas. The proposed buildings would potentially shade two Public Works-owned properties (Assessor's Block and Lot 5640/019 & 5641/011) just north of the project site. The lots are passive open spaces held by Public Works in order to protect slope stability. The spaces are not actively used for recreational enjoyment, nor are they conducive to such activity due to their steep slopes. In addition, while the proposed buildings would add new shade to portions of the project site and surrounding properties, the new shadow would be typical of that found in urban areas for in-fill development projects. Therefore, for the purposes of CEQA analysis, a shadow analysis is not required for the proposed project.
- (3) The project site currently features a San Francisco Public Utilities Commission (SFPUC) water blow valve, located at approximately the middle of the Powhattan Avenue frontage on the public right-of-way. DBI would consult with SFPUC during the building permit review process to determine the most appropriate location of the pipe, should relocation be required. Thus the location of the infrastructure would not substantially impact the safe provision of utilities and public services to properties in the project site vicinity.
- (4) The proposed project is subject to the City's Green Landscaping Ordinance (*Planning Code* Section 138.1) and Urban Forestry Ordinance (*Public Works Code* Article 16). The Green Landscaping Ordinance outlines a provision for adding street trees when undertaking new construction. The Urban Forestry Ordinance outlines provisions for the protection and/or removal of existing trees. To comply with these measures, the project sponsor submitted a Tree Planting and Protection Checklist form for each of the proposed subdivided lots.<sup>15</sup> The Checklist discloses the number of existing Protected Trees<sup>16</sup> on the proposed project site, the proposed project's potential impact to Protected Trees, the estimated number of required new Street Trees, and new Street Tree planting requirements based on the applicable Tree Schedule.<sup>17</sup> The Checklist is reviewed by the Planning Department as well as Public Works, as the latter department must approve the removal and/or planting of any Protected Trees on the project site prior to issuance of a building permit. Based on the Checklists submitted for the proposed project, the project site contains four Significant Trees and no Landmark or Street Trees. The project sponsor must receive approval from Public works

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<sup>15</sup> SIA Consulting Corp., Authorized Agent, *Required Checklist for Tree Planting and Protection*, 965, 985, and 1025 Powhattan Ave. and 40 Bernal Heights Blvd., May 20, 2014.

<sup>16</sup> Protected Trees collectively refers to Significant Trees, Landmark Trees, and Street Trees located on or over a development. More information about these designations can be found in Public Works Director's Bulletin No. 2006-01: Tree Disclosure and Protection Requirements.

<sup>17</sup> Based on the characteristics of the proposed project, new Street Tree requirements may fall under one of three Planning Department Tree Schedules. Please refer to the Tree Planting and Protection Checklist, located on the Planning Department website at <http://www.sf-planning.org/modules/showdocument.aspx?documentid=8321>, for a full description of the Tree Schedules.

for the proposed removal of the Significant Trees and for planting new Street Trees. Though the proposed project would include the removal of four Significant Trees on the project site, the Tree Protection and Planting Checklist reflects the City's standardized policy for addressing the routine protection, removal and/or planting of Protected Trees as prescribed by the Green Landscaping and Urban Forestry Ordinances. Therefore, any potential impact to Significant Trees would be addressed through the requirement that the sponsor obtain a permit from Public Works in order to remove or plant Protected Trees.

- (5) A Muni bus stop, which serves route 67, is located on Bernal Height Boulevard near the northwest corner of the project site where the subject property's western lot line meets Rosenkranz Street. It is not unusual for an in-fill development project in an urban area to be located near a public transit stop. In instances where a proposed project would impact access to a public transit stop, or in some way require the relocation of the transit stop, the project sponsor would coordinate with the Planning Department, any public agencies with jurisdiction over the transit stop, and Public Works to ensure the proposed work does not substantially impact the provision of public transportation services. As the proposed scope of work does not include any changes to the portion of the sidewalk where the bus stop is located, access to the bus stop would not be impacted by the proposed project.
- (6) The project would construct the proposed buildings so that two of the homes, 965 and 985 Powhattan Avenue, would have backyard patios facing Bernal Heights Boulevard. The proposed backyard for 985 Powhattan Avenue would provide a two-tiered, stepped patio where the portion of the patio closest to the sidewalk would be approximately one foot and eight inches in depth and the lower patio would be approximately four feet and eight inches in depth. This would result in a back yard with a total depth of approximately six feet and four inches below Bernal Height Boulevard's sidewalk grade. The proposed single-tiered patio for 965 Powhattan Avenue would be approximately four feet and four inches below grade. As the proposed recessed patios would be located along a public sidewalk, a neighborhood resident expressed concern that the depth of the patios would result in a public safety hazard.

Evaluation of public safety on sidewalks and streets is considered as part of the DBI permit review process. Project plans are routed to the Public Works, as appropriate, for a Plan Check to ensure compliance with the *Public Works Code*. Public Works Plan Checks include review of proposed activities that could affect public safety on the public-right-of-way. Therefore, ensuring public safety from potential sidewalk hazards in the project site vicinity would be addressed through the requirement for a Public Works review of the building permit application pursuant to its implementation.

Other comments about the merits of the proposed project were shared, however, comments that do not pertain to physical environmental issues and comments on the merits of the proposed project will be considered in the context of project approval or disapproval, independent of the environmental review process. While local concerns or other planning considerations may be grounds for modifying or denying the proposed project, in the independent judgment of the Planning Department, there is no substantial evidence that the proposed project would have a significant effect on the environment.

## CONCLUSION

The proposed project satisfies the criteria for exemption under the above-cited classification. In addition, none of the CEQA Guidelines Section 15300.2 exceptions to the use of a categorical exemption applies to the proposed project. For the above reasons, the proposed project is appropriately exempt from environmental review.