



# CATEGORICAL EXEMPTION APPEAL

## 2142 22nd Street

Date: March 11, 2025  
To: Angela Calvillo, Clerk of the Board of Supervisors  
From: Lisa Gibson, Environmental Review Officer – 628.652.7571  
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RE: Board File No. 250134  
Planning Record No. 2024-005274ENV  
Appeal of Categorical Exemption for 2142 22<sup>nd</sup> Street Project

Hearing Date: March 18, 2025

Project Sponsors: Dane Bunton and Nastaran Mousavi, Studio BANAA, 510.612.7758  
Appellant: James Purchase, on behalf of 2132-2136 22nd Street HOA

## Introduction

This memorandum responds to the January 29, 2025 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 2142 22<sup>nd</sup> Street project.

The department, pursuant to Article 19 of the CEQA Guidelines, issued a categorical exemption for the proposed project on December 18, 2024, finding that the proposed project is exempt from CEQA as a Class 1 and 3 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 2,495-square-foot parcel located on the north side of 22nd Street between Kansas and Rhode Island streets in the Potrero Hill neighborhood. The project site is occupied by an existing two-story, single-family residence (constructed in 1910) that is approximately 1,214 square feet in size at the rear of the lot. Immediately east (uphill) of the project site is a six-story, approximately 3,344-square-foot, two-unit residential building (2132-2136 22<sup>nd</sup> Street) which was constructed in 1990. Immediately west (downhill) of

the project site is a utility right-of-way that runs along Kansas Street with no structures. The subject block of 22nd Street consists predominantly of two- to three-story residential buildings.

## Project Description

The proposed project would demolish the existing single-family residence at the rear of the lot and construct a new 40-foot-tall, six-story over basement, 9,195-gross-square-foot, residential building with five dwelling units. The project would provide 5 off-street parking spaces housed within stackers. The unit mix would be comprised of 1 one-bedroom unit and 4 three-bedroom units. The proposed building would be supported on spread footings with a mat slab embedded into the underlying bedrock. The project proposes retaining walls and landscaping along the western and northern property lines. Additionally, a gravel path is proposed from the rear yard as a second means of egress connecting to the existing Kansas Street steps. The project would require approximately 1,050 cubic yards of excavation with a maximum depth of approximately 30.5 feet below ground surface. Construction is expected to last approximately 12 months.

## Background

The following bullet points provide a chronological summary of the various actions documented in the record related to the proposed project:

- On June 8, 2024, Dane Bunton and Nastaran Mousavi (the property owners and project architects) filed a project application with the department.
- On December 18, 2024, the department determined that the project was categorically exempt under CEQA Class 1 – Existing Facilities and Class 3 – New Construction or Conversion of Small Structures, and that no further environmental review was required.
- On January 2, 2025, the department approved the project with the issuance of the planning approval letter
- On January 30, 2025, James Purchase, on behalf of 2132-2136 22nd Street HOA, filed an appeal of the categorial exemption determination.
- On February 4, 2025, 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.

Guidelines section 15301, or Class 1, applies to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. Class 1 also includes demolition and removal of individual small structures listed in section 15301(l), such as one single-family residence.

CEQA Guidelines section 15303 (New Construction or Conversion of Small Structures), or Class 3, applies to construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The structures described in this section include apartments, duplexes and similar structures in urbanized areas designed for up to six dwelling units.

As discussed below in Response #2, a categorical exemption may not be used when an exception listed in CEQA Guidelines section 15300.2 applies. Among these exceptions are 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 both a Class 1 and Class 3 exemption pursuant to CEQA Guidelines sections 15301 and 15303 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.

### Categorically Exempt from Environmental Review

**Response 1:** For informational purposes, the proposed project qualifies for a Class 1 and Class 3 categorical exemption.

CEQA Guidelines section 15301(l)(1), or Class 1, provides an exemption from environmental review for the demolition of a single-family residence. The project involves the demolition of a single-family residence and thus the demolition is exempt under Class 1. CEQA Guidelines section 15303(b), or Class 3, allows for the construction of up to six dwelling units in an urbanized area. The project involves the construction of a residential building with five units and thus the new construction is also exempt under Class 3.

When a lead agency determines that a project fits within a class of exemption, that determination will be upheld if it is supported by substantial evidence. CEQA Guidelines define substantial evidence as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” The department’s determination is supported by substantial evidence as set forth above.

### No Exceptions

**Response 2:** None of the exceptions for categorical exemptions apply to the proposed project.

The Appellant states that the project is not exempt under CEQA because the following exceptions apply: location, significant effects, scenic heights, and historical resources. However, the Appellant fails to provide any supporting evidence for these claims. As outlined below, and supported by substantial evidence, there are no exceptions that would preclude the project from qualifying for a categorical exemption.

CEQA Guidelines section 15300.2 identifies exceptions to the applicability of categorical exemptions. When any of the exceptions apply, a project that otherwise fits within a categorical exemption must undergo a higher level of environmental review. As outlined below, none of the exceptions to the categorical exemptions apply to the proposed project.

### *Location*

Certain classes of exemptions, including a Class 3, may not be applied “where the project may impact an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.” The project site does not contain an environmental resource of hazardous or critical concern.

### *Cumulative Impacts*

An exemption may not be applied “when the cumulative impact of successive projects of the same type in the same place, over time is significant.” This exception applies when a project, in combination with “closely related past, present and reasonably foreseeable probable future projects” in the same place over time, could create significant environmental impacts. The proposed project does not present the possibility of cumulative impacts.

### *Significant Effect Due to Unusual Circumstances*

Pursuant to CEQA, the department applies a two-part analysis to determine whether there is a reasonable possibility of having a significant effect on the environment due to unusual circumstances. The following describes the two-parts, or questions, and their applicability to the project.

Part 1 Question: Do unusual circumstances exist?

Part 1 Answer: There are no unusual circumstances surrounding the project.

The lead agency must determine if unusual circumstances are present. If a lead agency determines that a project does not present unusual circumstances, that determination will be upheld if it is supported by substantial evidence, as defined above.

The circumstances surrounding the project and the project site are not unusual. It is not unusual for a residential development to occur in a residential area on a steeply sloped lot in San Francisco.

The department’s determination that unusual circumstances are not present is supported by substantial evidence; the Appellant has not demonstrated otherwise.

Part 2 Question: Would the project result in significant effects due to unusual circumstances?

Part 2 Answer: This question is not applicable, given that no unusual circumstances are present.

If the lead agency determines that a project presents unusual circumstances, then the lead agency must determine if a fair argument has been made supported by substantial evidence in the record that the project may result in significant effects.

As stated above, there are no unusual circumstances surrounding the project, so the answer to this question is moot.

### *Scenic Highways*

Categorical exemptions may not be applied to projects that “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.” The project site is not located near a designated state scenic highway.

#### *Hazardous Waste*

A project that is located on a site that is listed as a hazardous waste site pursuant to Section 65962.5 of the California Government Code may not be categorically exempt. The project site is not listed as a hazardous waste site by the state.

#### *Historical Resources*

A categorical exemption cannot be applied to a project that “may cause a substantial adverse change in the significance of a historical resource.” On November 30, 2023, the department determined that there are no historical resources present at the 2142 22<sup>nd</sup> Street property and the project site is not located within the boundaries of an existing historic district, nor are there any known historic districts nearby.<sup>1</sup>

The 2142 22<sup>nd</sup> Street building was constructed in 1910 and has undergone extensive façade alterations, including the permastone cladding which was installed in 1948. The property is not amongst the oldest in the nearby vicinity, and thus not likely tied to early neighborhood development. Research did not uncover any other associated historic events to merit listing on Criterion 1 (Event). Research furthermore did not identify any notable past residents, and therefore the property is not individually significant under Criterion 2 (Persons). The subject property is not an exceptional example of any architectural style and therefore not eligible for listing under Criterion 3 (Architecture). The subject building is not significant under Criterion 4 (Information Potential), since this criterion typically applies to rare construction types when involving the built environment.<sup>2</sup>

Based on the above substantial evidence, the proposed project would not cause a substantial adverse change in the significance of a historical resource. Therefore, the historical resources exception does not apply to the proposed project. The Appellant provides no evidence on how the project would result in a substantial adverse change in the significance of a historical resource.

#### *Conclusion regarding Exceptions to Categorical Exemption*

Considering the above, the proposed project clearly fits within the Class 1 and 3 categorical exemptions and none of the exceptions are triggered. As such, the project is not required to undergo further environmental review. The Appellant has not demonstrated that the department’s CEQA determination for the proposed project is not supported by substantial evidence in the record.

## **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

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<sup>1</sup> San Francisco Planning Department, Historic Resource Review, 2142 22<sup>nd</sup> Street, Record No. 2023-009735HRR, November 11, 2023. The memorandum can be located here: [HRR - 2142 22nd St. signed.pdf](#), accessed February 11, 2025.

<sup>2</sup> The proposed project is not immediately adjacent to a known historical resource.

documented above, the Class 1 and Class 3 categorical exemption was appropriately issued because the proposed project would demolish a single-family residence and construct a new residential building with five dwelling units. In addition, 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 1 and Class 3 categorical exemption. The department therefore respectfully recommends that the board uphold the CEQA categorical exemption determination and deny the appeal of the CEQA determination.