



SAN FRANCISCO PLANNING DEPARTMENT

MEMO

Categorical Exemption Appeal 302 Greenwich Street/ 1531 Montgomery Street

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

DATE: September 5, 2017
TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Lisa Gibson, Environmental Review Officer – (415) 575-9032
Laura Lynch – (415) 575-9045
RE: Planning Case No. **2016-001273CUA**
Appeal of Categorical Exemption for 302 Greenwich St/ 1531 Montgomery St
HEARING DATE: 9/12/2017

PROJECT SPONSOR: Paul Scott, Julius’ Castle, 415-981-1212
APPELLANT: Francis Gordon, La Colline HOA; Norman Laboe; Dan Lorimer

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”) for the proposed 302 Greenwich Street/ 1531 Montgomery Street (the “project”).

The Department, pursuant to Title 14 of the CEQA Guidelines, issued a categorical exemption for the project on June 28, 2017 finding that the proposed project is exempt from CEQA, as a Class 3 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.

SITE DESCRIPTION & EXISTING USE

The project is located on the north side of Greenwich Street at the end of Montgomery Street, Block 0079, Lots 004 and 005 in the Telegraph Hill/North Beach neighborhood. The property, Julius' Castle, occupies two lots that combined are approximately 3,906 square feet in area. The project site is located within RH-3 (Residential, House – Three Family) District, Telegraph Hill – North Beach Residential SUD, and 40-X Height and Bulk District. The project site is a corner lot, with approximately 63 feet of frontage along Greenwich Street. Approximately 87% of the site is covered by the irregularly shaped on-site building, which is Julius’ Castle, City Landmark No. 121. Julius’ Castle was built in 1923 and per Ordinance 414-80, was designated as a landmark status building, and the significance of the building lies in its architectural

design and its role as a restaurant that serves as “a living slice from the history of the local Italian and restaurant communities.” The property operated as a restaurant from 1923 until 2007, and has been vacant since 2007.

PROJECT DESCRIPTION

The project would involve the change of use of the vacant, approximately 4,892 square foot building, into a restaurant use. This change of use would reinstate the last authorized and only previous use of the project site. The proposed restaurant would have a maximum occupancy of 152 people, 115 guests and approximately 30-35 employees. The proposed restaurant intends to primarily operate from 5:00pm to 10:00pm, daily, and may provide brunch service from 11:00a.m to 2:00p.m.

Pursuant to Planning Code Section 186.3, any use permitted as a principal or conditional use on the ground floor of the NC-1 Zoning District is allowed in a structure on a landmark site with a Conditional Use Authorization provided that the use 1) conforms to the provisions of Section 303 (Conditional Uses) and 2) is essential to the feasibility of retaining and preserving the landmark. Restaurant uses are permitted on the ground floor of the NC-1 Zoning District. Therefore, although the property is located within the RH-3 zoning district, the Landmark status of the building allows for a restaurant use to be conditionally permitted at the property. The project was approved, with Conditions of Approval, pursuant to Planning Commission Motion 19958, on July 06, 2017, allowing for a restaurant use to be established at the subject site.

The project sponsor would be required to apply for appropriate building permits to complete the interior tenant improvements and obtain appropriate approval from the Department of Building Inspection, San Francisco Fire Department and Department of Public Health, in order to change the occupancy of building and for a restaurant to operate.

There is no onsite parking and none is proposed; additionally, there are no changes to the public right of way proposed as part of the project. Pursuant to Condition of Approval 11, the property owner is required to submit an operations plan to the Planning Department, prior to the approval of the first site or building permit, which includes details of the restaurant operations including customer access to the restaurant and any proposed valet parking or employee parking.

ENVIRONMENTAL REVIEW PROCESS

On February 23, 2017, Paul Scott (hereinafter "Project Sponsor") filed an application with the Planning Department for Conditional Use Authorization under Planning Code Sections 186.3, 303, and 710.44 to allow a restaurant (d.b.a. Julius' Castle) use within the RH-3 (Residential, House - Three Family) Zoning District, Telegraph Hill - North Beach Residential Special Use District (SUD), and a 40-X Height and Bulk District.

On June 28, 2017, the Department determined that the project was categorically exempt under CEQA Class 3 - New Construction/ Conversion of Small Structures. This was issued in consultation with Environmental Planning staff. No further environmental review was required.

On July 06, 2017, the San Francisco Planning Commission conducted a duly noticed public hearing and authorized the Conditional Use Application No. 2016-001273CUA. The Planning Commission authorized the Conditional Use Authorization, with Conditions of Approval. This approval is considered the approval action for the project under Chapter 31 of the Administrative Code.

On August 04, 2017, an appeal of the categorical exemption determination was filed by Francis Gordon-La Colline HOA, Norman Laboe and Dan Lorimer.

On August 14, 2017, in a letter to the Clerk of the Board, the Environmental Review Officer determined that the appeal of the categorical exemption determination was timely.

CEQA GUIDELINES

Categorical Exemptions

Section 21084 of the California Public Resources Code requires that the CEQA Guidelines identify a list of classes of projects that have been determined not to have a significant effect on the environment and are exempt from further environmental review.

In response to that mandate, the State Secretary of Resources found that certain classes of projects, which are listed in CEQA Guidelines Sections 15301 through 15333, do not have a significant impact on the environment, and therefore are categorically exempt from the requirement of preparation of further environmental review.

CEQA State Guidelines Section 15303 (c), New Construction or Conversion of Small Structures, or Class 3, provides an exemption from further environmental review for projects that consist of the conversion of existing small structures from one use to another where only minor exterior changes are made. Specifically, Section 15303(c) exempts from further environmental review a change in use in an urbanized area involving up to four commercial buildings not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive. The project includes the change of use of an approximately 4,892 square foot building from a vacant building to a restaurant. The Planning Department determined that the proposed project satisfied the criteria of this class of exemption and found that there were no unusual circumstances located at the subject property, or with the proposed project, and the project was determined to be exempt from environmental review.

In determining the significance of environmental effects caused by a project, CEQA State 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 State Guidelines 15604(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.”

APPELLANT ISSUES AND PLANNING DEPARTMENT RESPONSES

The concerns raised in the August 4, 2017 Appeal Letter are cited below and are followed by the Department’s responses.

Concern 1: An Environmental Impact Report (EIR) should have been prepared for the project.

Response 1: The proposed project qualified for a categorical exemption under Class 3, New Construction and Conversion of Small Structures. An EIR is not required. The Appellant has not provided any substantial evidence to refute the conclusions of the Department.

The determination of whether a project is eligible for a categorical exemption is based on a two-step analysis:

- 1) Determining whether the project meets the requirements of the categorical exemption; and
- 2) Determining whether any of the exceptions listed under CEQA Guidelines section 15300.2, such as unusual circumstances, apply to the project.

As described in the proposed project’s exemption determination, the project meets the requirements of a categorical exemption under Class 3, new construction and conversion of small structures. The Appellant has not provided any substantial evidence supported by facts that the exemption determination does not qualify for a categorical exemption under Class 3. Class 3 categorical exemptions allow for changes of use of 10,000 square feet within urban areas. The proposed project in this case involves the change the use of an existing on-site 4,892 square-foot vacant building to a restaurant use, within the dense urban context of San Francisco.

Additionally CEQA Guidelines Section 15300.2(c) states 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.” In CEQA, a two-part test is established to determine whether there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances, as follows:

- 1) The lead agency needs to determine whether 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. 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.”

- 2) If the lead agency determines that a project does present unusual circumstances, then the lead agency must determine whether a fair argument has been made supported by substantial evidence in the record that the project may result in significant effects. CEQA Guidelines states that whether “a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.”

Procedurally, the CEQA Guidelines do not require a written determination to be provided to confirm that a project is exempt from CEQA review. However, Chapter 31 of the San Francisco Administrative Code establishes local procedures and requirements necessary to implement CEQA analysis for its projects; this includes procedures and requirements for the preparation of categorical exemptions. Per Section 31.08(1)(a) of the Administrative Code, the categorical exemption determination document for a project that is found to be exempt from CEQA must include the following information:

- (1) Project description in sufficient detail to convey the location, size, nature and other pertinent aspects of the scope of the proposed project as necessary to explain the applicability of the exemption;
- (2) Type or class of exemption determination applicable to the project;
- (3) Other information, if any, supporting the exemption determination;
- (4) Approval Action for the project, as defined in Section 31.04(h); and
- (5) Date of the exemption.

In compliance with Section 31.08(1)(a) of the Administrative Code, the proposed project’s categorical exemption determination document provides the required information confirming that the project is exempt from CEQA review and eligible for a categorical exemption under Class 3, new construction and conversion of small structures. Specifically, the exemption determination document contains the:

- 1) Project description for determining that the project is exempt from CEQA;
- 2) Class of categorical exemption applicable (“Class 3: New Construction and Conversion of Small Structures”);
- 3) Applicable information to support the categorical exemption determination;
- 4) Approval action for the project (i.e., approval of a Conditional Use Authorization by the Planning Commission); and
- 5) Date of the categorical exemption (June 28, 2017).

Overall, The Department found that the proposed project is consistent with a Categorical Exemption under Class 3, new construction and conversion of small structures. Additionally, the proposed project and its location do not involve any unusual circumstances that would require further environmental review, as described further in other responses; thus, the project qualifies for a Class 3 categorical exemption. The Appellant has not provided any substantial evidence to refute the Department’s

determination and demonstrate that the project would result in a significant impact on the environment due to unusual circumstances necessitating the preparation of an EIR.

Concern 2: The Appellant is concerned that the project site is not accessible via public transportation.

Response 2: The project site does not present unusual circumstances as it relates to transit. In any case, the Appellant appears to be questioning information provided within the project's Conditional Use Application Case Report and not the categorical exemption determination document.

The Appellant appears to be questioning specific information provided within the project's Conditional Use Application Case Report and not the categorical exemption determination document. Although that specific information does not relate to CEQA, as documented below, it should also be noted that the project site does not present unusual circumstances as it relates to transit for the purposes of CEQA.

Transit accessibility and service in San Francisco, in general, exceeds that of the region. Almost the entire city is within a "transit priority area," including the project site. A transit priority area is an area within one-half mile of a major transit stop that is existing or planned, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program adopted pursuant to Section 450.216 or 450.322 of Title 23 of the Code of Federal Regulations.

A major transit stop is defined in CEQA Section 21064.3 as a rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods. The morning commute period (a.m. peak period) is from 7 a.m. to 9 a.m., and the afternoon peak period (p.m. peak period) is from 4 p.m. to 6 p.m. The project site is located within ½ mile walking distance of eight Muni lines with service that meets that definition: historic F Market & Wharves, 8/8AX/8BX Bayshore, 10 Townsend, 12 Folsom-Pacific, 30 Stockton, and 45 Union-Stockton, and 82X Levi Express. Except for the 82X, these transit lines all operate on weekends and after 10 PM, although with less frequent service than during the weekday peak hours. Additionally, the 39 Coit, which stops approximately 250 feet from the project site, operates at 20-minute frequencies between approximately 9 AM a.m. and 7 PM p.m. on weekdays and weekends.

The topography in the project area is noteworthy. To access the project site from transit stops within the project vicinity or vice versa, a person would have to walk up or down stairs or hills from any direction. However, this circumstance is not unusual in the context of San Francisco. San Francisco is a city with several hills. Furthermore, it is not unusual for persons to walk up and down hills to access retail/restaurants and transit stops in San Francisco (e.g., Bush Street restaurants in Nob Hill, restaurants in the Presidio). Overall, the project site is located within a transit priority area, it is accessible by transit, and there are no unusual circumstances related to transit accessibility.

Concern 3: The appellant is concerned about the vehicle trips that would be generated by the proposed restaurant use, particularly if a valet service is provided, and indicates this should have been studied in the project's environmental analysis.

Response 3: The project is appropriately categorically exempt and there would be no unusual circumstances related to the project's vehicle trips. Valet service is not proposed as part of the project.

As explained in Response 1, the project is appropriately categorically exempt under Class 3, new construction and conversion of small structures. According to California Supreme Court's March 2015 Berkeley Hillside Preservation v. City of Berkeley decision (and quoting the previous 1972 Friends of Mammoth v. Board of Supervisors court decision), "[C]ommon sense tells us that the majority of private projects [requiring government approval]... are minor in scope – e.g., relating only to the construction, improvement, or operation of an individual dwelling or small business – and hence, in the absence of unusual circumstances, have little or no effect on the public environment." Accordingly, projects of limited scale, such as the proposed project, that fit within a class of a categorical exemption have little or no environmental effects, including for the topic of transportation. As explained in Response No. 2, transit also adequately serves the project site. The following discussion substantiates that the project's vehicle trips does not result in unusual circumstances.

In response to Senate Bill 743, in January 2016, the California Office of Planning and Research (OPR) published for public review and comment a Revised Proposal on Updates to the CEQA Guidelines on Evaluating Transportation Impacts in CEQA recommending that transportation impacts for projects be measured using a vehicle miles traveled (VMT) metric. On March 3, 2016, in anticipation of the future certification of the revised CEQA Guidelines, the San Francisco Planning Commission adopted Resolution 19579. The resolution removed automobile delay as a threshold of significance in CEQA and implemented OPR's recommendation to use the VMT metric. As a result, impacts related to traffic congestion are outside the scope of CEQA, and are not evaluated for the proposed project.

The Planning Department has identified screening criteria to identify types, characteristics, or locations of projects and a list of transportation project types that would not result in significant transportation impacts under the VMT metric. These screening criteria are consistent with CEQA Section 21099 and the screening criteria recommended by OPR. If a project would generate VMT, but meets the screening criteria, then a detailed VMT analysis is not required for a project. Based on the Eligibility Checklist: CEQA 21099 – Modernization of Transportation Analysis prepared for 302 Greenwich Street/1531 Montgomery Street, the project qualifies as an infill development project under Senate Bill 743 (SB 743) and a detailed VMT analysis is not required for this project.

The Appellants have also expressed concern about the proposed restaurant use's valet operations, including vehicle trips resulting from the valet operations and cars entering and exiting the neighborhood. The project's proposed restaurant use does not include valet service; accordingly, any impact analysis of the project's future valet operations would be speculative.

The proposed project that was approved by the Planning Commission, which is the same as the project analyzed in the categorical exemption determination, is for a change of use from a vacant property to a restaurant use. If valet service for the project's restaurant use were proposed in the future, it would require review and approval by the San Francisco Municipal Transportation Agency (SFMTA) to acquire a white curb at the property and the San Francisco Police Department (SFPD) to operate a valet service.

Specifically, the project sponsor and future on-site restaurant operator would be required to adhere to the standards outlined by the SFMTA and SFPD, and obtain the appropriate permits and approval from them. The relevant SFMTA and SFPD staff were contacted recently regarding this project and they concur with this information.

Furthermore, the project sponsor and future on-site restaurant operator would also be required to adhere to the Conditions of Approval #11 - Traffic and Parking imposed by the Planning Commission through the Conditional Use Authorization. Conditions of Approval #11 state: "the owner and owner's lessee shall be required to submit an operations plan to the Planning Department prior to the Department's approval of the first Site Permit or Building Permit. Said plan shall include details on the following operational aspects of the Restaurant: 1) valet parking; 2) employee parking; and 3) customer access to the restaurant (vehicular, public transit, etc.)." This would include providing details regarding employee and customer access to the restaurant and any future proposed valet or employee parking. The operations plan would indicate things such as where project-related off-site parking would occur, and how employees and customers would access the site. If the Project Sponsor proposes to apply for valet parking in the future as part of an operations plan, valet parking would be subject to subsequent review and approval from both the SFMTA and SFPD. A potential approval process for zones associated with valet parking is described further below.

Passenger Loading Zone. If future approval of a white zone for passenger loading along the project site's frontage or elsewhere is sought, this approval would be subject to the SFMTA's Color Curb program. The process is initiated by submitting an application to the SFMTA. White zones are for passenger loading/unloading only, not exceeding 5 minutes. Effective times for white zones vary and are indicated by signs and/or stencils on the curb. In a white zone, the driver must remain with the vehicle at all times. Typical establishments that may qualify for a white zone include restaurants with 100 or more seats or valet parking.

Once the application is received, SFMTA staff review the description of the project's operations and conduct a field survey to determine the appropriate length of the colored curb. The length of the colored curb is calculated based on knowledge of the project's operations, in this case, the number of seats in the restaurant, and the hours of operation. A site survey is completed by SFMTA staff within 30 days of receipt of the application. Once the site survey has been completed, staff will issue a recommendation for approval of the request specifying the length of the colored curb, or will recommend denial. The application goes to a public hearing before the Color Curb Program Manager and a public hearing officer. Persons in support of and opposed to the recommendation should be present at the hearing. The purpose of the public hearing is to collect information, and make any adjustments to the recommendation, if necessary. Following the public hearing, the application and recommendation are forwarded to the City Traffic Engineer. The City Traffic Engineer may approve the application, deny the application, or request changes. If approved, the owner will be invoiced for the installation fee. White zones are required to be renewed every two years.

Concern 4: The Appellant asserts that the proposed project would result in inadequate emergency access to the project site and result in significant impacts related to this.

Response 4: The proposed project would not substantially increase demand for emergency services, result in a physical change to the public right-of-way, or result in unusual circumstances.

As explained in Response 1, the project is appropriately categorically exempt under Class 3, new construction and conversion of small structures. According to California Supreme Court's March 2015 Berkeley Hillside Preservation v. City of Berkeley decision (and quoting the previous 1972 Friends of Mammoth v. Board of Supervisors court decision), "[C]ommon sense tells us that the majority of private projects [requiring government approval]... are minor in scope – e.g., relating only to the construction, improvement, or operation of an individual dwelling or small business – and hence, in the absence of unusual circumstances, have little or no effect on the public environment." Accordingly, projects of limited scale, such as the proposed project, that fit within a class of a categorical exemption have little or no environmental effects, including for the topic of transportation.

As the Appellant accurately describes, Montgomery Street between Union and Greenwich, is divided into "upper" (southbound) Montgomery, and "lower" (northbound) Montgomery, due to a grade separation of several feet and the presence of a vegetated area in between. Each segment of Montgomery Street is one-way, with one mixed-flow travel lane, and one lane of on-street parallel parking interspersed with curb cuts for private driveways. The parking lane is the outside lane, furthest from the median. Each segment of Montgomery Street is about 18 feet wide from curb to curb. In San Francisco, on-street parking is prevalent, a parking lane (for parallel parking) is typically 8 feet wide, and a standard driving lane is around 10 to 12 feet wide, so these segments of Montgomery Street are not unusual in their configuration or widths.

The Appellant claims that the project site is unique because of the width and configurations of Montgomery and Greenwich streets, and the fact that each segment of upper and lower Montgomery Street is one-way, and that the two segments join in a "dead-end" at Greenwich Street. The Appellant asserts, that "there is already significant issues with ingress and egress in the neighborhood because Montgomery Street between Union and Greenwich is a one-lane street in each direction," and therefore the project could result in emergency vehicles being unable to access the project site. The Appellant further states that an EIR is necessary for the project, because the SFFD was not consulted and emergency vehicles would not have access to or from the site.

This is incorrect as explained below:

Restaurants without on-site parking along streets that have on-street parking are ubiquitous in San Francisco. One-way streets and streets that "dead-end," coupled with steep slopes, are also not unusual in San Francisco, which is a city with several hills. Accordingly, the necessity for emergency vehicles to travel on steep slopes with winding one travel-lane streets (such as in the project area) is not an unusual circumstance in the context of the project area (i.e., Telegraph Hill) or in San Francisco. This is an existing condition of the project area, and it is not a result of the proposed project. Therefore, no further analysis is necessary. However, the following discussion is provided for informational purposes.

The project involves the reopening of Julius' Castle restaurant, which has been in operation as a restaurant continuously since 1923, with the exception of the last 10 years (2007-2017). The proposed 4,892 square-foot restaurant use is of limited scale and would not substantially increase demand for emergency services. The project does not propose any changes to the adjacent public right-of-way that would affect emergency access. The street and on-site building configuration at the project site are baseline (i.e., existing) conditions for the purposes of environmental review. CEQA only requires analysis of the environmental impacts resulting from the project's *change* to baseline conditions. Prior to 2006, a restaurant operated for 84 years on the project site and adequate emergency access to this site under similar site conditions in those years was not an issue. Therefore, it is reasonable to conclude that the proposed restaurant use of a very similar size under future conditions would also receive adequate emergency services.

Regarding the Appellant's claim that the SFFD was not consulted regarding emergency access and thus an EIR is required. A determination of whether an EIR is required is based upon the exceptions for categorical exemptions listed above. Although consultation with City agencies can be a helpful step in making that determination, the lack of consultation does not automatically result in the need for an EIR.

For this appeal response, Planning contacted the SFFD staff regarding the proposed project and SFFD concurred that similar to existing conditions (and similar to conditions in the past in 2006 when there was a restaurant on the project site), SFFD expects to be able to adequately access the project site with its proposed restaurant use in the future, in the event of an emergency. For new development, in locations with access from only one right-of-way, the SFFD requires an unobstructed radius of (ideally) 96 feet, at minimum 80 feet, to turn the rig around. The area in front of Julius' Castle where Montgomery Street dead-ends into Greenwich Street currently measures slightly less than 80 feet, which means that it was likely designed at a time when the Fire Department's rigs were smaller. This is common in San Francisco, particularly in areas that were developed in the earlier part of the last century where streets tend to be narrower than streets that were developed more recently, even Telegraph Hill Boulevard, which provides access to Coit Tower. This does not mean that the SFFD could not access the site, it just means that a 3-, 4-, or 5-point-turn may be required to turn the rig around.⁵

Depending upon the circumstances of a project, the Planning Department or the project sponsor may require consultation with the SFFD during a project's approval process. The SFFD may be consulted at various stages of the planning and permitting process, including:

- Interdepartmental project review meetings,
- Transportation Advisory Staff Committee (TASC) meetings,
- Pre-occupancy building inspections, and
- Building permit review

SFFD approval, review and in some instances, building inspections would be required for the proposed project during the future building permit process for interior tenant improvements and to change the occupancy of the building. Additionally, the onsite building on the project site has previously operated as

⁵ Personal communication with San Francisco Fire Department staff, August 30, 2017.

a restaurant, and the SFFD has reviewed previous building permits and conducted inspections for this type of use on the project site in the past.

As stated above, the Department concludes that no unusual circumstances exist related to emergency access for the project site.

Concern 6: The Appellant states that the Condition of Approval from the Conditional Use Authorization should be clarified to stipulate that the restaurant is to close no later than 10 p.m.

Response 6: The Appellant is requesting a change to the Conditions of Approval that were issued as part of Conditional Use Authorization. This request and concern are outside the scope of CEQA.

The Appellant asserts that the Conditions of Approval from the Conditional Use Authorization (CUA) for the proposed project should be clarified to state that the restaurant is to close no later than 10 p.m. The Conditional Use Authorization for the project is not before the Board, and thus the conditions imposed on the project as part of that process cannot be altered through this environmental review appeal. The decision before the Board is whether to uphold or overturn the Department's decision to issue a Class 3 categorical exemption. The Appellant has provided no evidence that clarifying the hours of operation would make the Department's determination that the project qualifies for a categorical exemption invalid.

Environmental analysis under CEQA is required to focus on the direct and indirect physical changes to the environment that could reasonably result from a proposed project. Economic or social effects of a project, such as hours of operation of a restaurant, are not considered significant environmental impacts, unless they lead to physical changes in the environment (CEQA Guidelines 15131). Therefore, these comments do not raise any specific environmental issues. However, to the extent that these comments may be based on concerns about impacts related to an increase in ambient noise levels associated with operations of the restaurant, the Appellant has raised no concerns that would warrant preparation of further environmental review. The project site is located within a dense urban environment with a diverse number and type of uses within the area. An adverse effect to ambient noise levels would occur if a new use were placed next to an incompatible existing use, such that the basic function of either the existing use or the new use would be impaired. The operational noises associated with a restaurant use are typical of this dense urban environment. Therefore, the proposed project would not result in a substantial increase in ambient noise levels, and the project would not impair either another use such that their basic function could not continue.

The principally permitted hours of operation in the NC-1 District, which is the zoning district regulations that the project site is subject to, are 6 a.m. - 11 p.m. However, the Conditions of Approval for the project further limit the roof terrace to close at 9:00 p.m. Additionally, no amplified live entertainment would be permitted at the project site. Noise is regulated by the San Francisco Noise Ordinance (Noise Ordinance), which is codified in Article 29 of the San Francisco Police Code. Article 29 prohibits "any machine or device, music or entertainment or any combination of same" located on commercial (including restaurant) property from emitting noise eight dBA above the local ambient noise at any point outside the

property plane. Any violations to the San Francisco Noise Ordinance are subject to enforcement by the San Francisco Department of Public Health or the San Francisco Police Department. Any violations to the Conditions of Approval with regards to use of the roof terrace and amplified live entertainment would be subject to enforcement from the Department pursuant to Planning Code Section 174, potentially subjecting the property to daily fines and penalties.

CONCLUSION

Furthermore, there are no unusual circumstances for the proposed project and 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 Department has found that the proposed project is consistent with Class 3 Categorical Exemption. The Appellant has not provided any substantial evidence to refute the conclusions of the Department.

For the reasons stated above and in the June 28, 2017 CEQA Categorical Exemption Determination, the project's exemption determination complies with the requirements of CEQA and the project is appropriately exempt from environmental review pursuant to the cited exemption. The Department therefore recommends that the Board uphold the CEQA Categorical Exemption Determination and deny the appeal of the project's exemption determination.