



EXEMPTION APPEAL

Slow Streets, Phase 3 Project

Date: **September 21, 2020**
To: **Angela Calvillo, Clerk of the Board of Supervisors**
From: **Lisa Gibson, Environmental Review Officer – (628) 652-7571**
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RE: **Planning Record No. 2020-006251APL; Board of Supervisors File No. 201024**
Appeal of Statutory Exemption and Categorical Exemption for the Slow Streets, Phase 3 Project

Hearing Date: **September 22, 2020 (may be continued)**

Project Sponsor: **Shannon Hake, SFMTA – Shannon.Hake@sfmta.com – (415) 646-2238**
Appellant(s): **Mary Miles, Coalition for Adequate Review**

Planning Department's Recommendation

Uphold the California Environmental Quality Act (CEQA) statutory and categorical exemption determination and deny the appeal of the CEQA determination.

Introduction

This memorandum is a response to the letter of appeal to the board of supervisors (the board) regarding the planning department's (the department) issuance of a statutory exemption and categorical exemption determination under CEQA for the proposed San Francisco Municipal Transportation Agency's (SFMTA) Slow Streets, Phase 3 project (the project).

The department, pursuant to Article 19 of the CEQA Guidelines, issued a statutory exemption and categorical exemption for the project on July 1, 2020 finding that the proposed project is exempt from CEQA under two independent bases: as a statutory exemption per CEQA section 21080(b)(4) and CEQA Guidelines section 15269(c), and also as a Class 1 categorical exemption per CEQA Guidelines section 15301(c). In addition to the exemption, the department reviewed a SFMTA memorandum (dated July 1, 2020) to support the exemption.

The decision before the board is whether to uphold the department's decision that the project is exempt from environmental review under the statutory exemption for emergency projects and/or as a Class 1 categorical exemption and deny the appeal, or to overturn the department's decision that the project is exempt from environmental review, and return the project to the department staff for additional environmental review.

Site Description and Existing Use

The project site consists of segments of 14 existing streets throughout San Francisco. Table 1, Slow Streets, Phase 3 Street Segments, provides a complete list of the street segments proposed¹. No Muni service routes operate on the proposed street segments.

Table 1: Slow Streets, Phase 3 Street Segments

Street	From	To
20th Street	San Bruno Avenue	Pennsylvania Avenue
Arkansas Street	23rd Street	17th Street
Arlington Street	Roanoke Street	Randall Street
Cabrillo Street	45th Avenue	23rd avenue
Cayuga Avenue	Naglee Avenue	Rousseau Street
Clay Street	Arguello Boulevard	Steiner Street
Duncan Street	Diamond Height Boulevard	Tiffany Avenue
Holly Park Circle	N/A	N/A
Mariposa Street	Texas Street	Mississippi Street
Minnesota Street	Mariposa Street	22nd Street
Noe Street	23rd Street	Duboce Avenue
Pacific Avenue	Steiner Street	Gough Street
Pierce Street	Hayes Street	Duboce Park
Tompkins Avenue	Andover Street	Peralta Avenue

Project Description

On February 25, 2020, Mayor London Breed of San Francisco, issued a local health emergency under California Government Code sections 8550 et seq., San Francisco Charter Section 3.100(14), and Chapter 7 of the San Francisco Administrative Code to address the spread of COVID-19 (coronavirus) pandemic (public health emergency) within the city. On March 6, 2020, San Francisco Health Officer Tomas Aragon declared a health emergency due to the COVID-19 public health emergency and subsequently enacted Health Orders to protect the public health. Health Order No. C19-07 (Stay Safer at Home) was originally issued March 16, 2020 as Shelter in Place, and has been amended several times as conditions change and additional information and recommendations become available.² Health Orders are enforceable laws and are usually accompanied by one or more Directives which provide legally binding instructions for how to comply with the Health Order.

In response to the COVID-19 public health emergency, SFMTA implemented the Transportation Recovery Plan. The Slow Streets Program is a component of the Transportation Recovery plan that is designed to allow designated roadways to be safely used as a shared space for foot and bicycle traffic, while also providing

¹ The July 1, 2020 statutory and categorical exemption analyzed a project description with 19 street segments. The SFMTA Board of Supervisors approved 16 of those street segments on July 21, 2020. The SFMTA is proposing to implement changes only to the 14 street segments listed in Table 1, Slow Streets, Phase 3 Street Segments. The following lists the five street segments that were analyzed in the exemption determination but are no longer proposed under this project: Broderick Street from O'Farrell Street to Page Street; Capitol Avenue from Ocean Avenue to Alemany Boulevard; Farallones Street from Orizaba Avenue to San Jose Avenue; Hearst Avenue from Ridgewood Avenue to Baden Street; and Lakeview/Shields Street from Beverly Street to Brighton Avenue.

² San Francisco Department of Public Health. 2020. Orders issued by the San Francisco Health Officer Relevant to Coronavirus (COVID-19). Available online at <https://www.sfdph.org/dph/alerts/coronavirus-healthorders.asp>. Accessed September 9, 2020.

adequate space for people walking, running, and bicycling to maintain the six feet of separation required by Health Order C19-07.

SFMTA would expand the program to the street segments listed in table 1 under the Slow Streets, Phase 3 project. The proposed street segments were identified through a public participation process that included suggestions from San Francisco residents, District Supervisor offices, and other city agencies. SFMTA staff screened the suggested street segments for access conflicts, unsafe conditions, land use conflicts, intersection and street geometry/visibility conflicts, multiple signalized intersections, and other criteria. The resulting street segments after the screening process became the streets proposed under Slow Streets, Phase 3.

The project would discourage through vehicular traffic on project street segments. There would be no change to how local traffic and emergency vehicles access these streets. The project would not legally change the designation of the proposed streets. People are authorized to walk, run or bicycle in the street as permitted under the California Vehicle Code, but do not have the right-of-way over motor vehicles. People in the street would be required to yield to vehicular traffic.

Implementation of the project would not require changes to the existing number of travel lanes, facilities for people walking or bicycling, commercial or passenger loading facilities, or on-street parking spaces. Construction of the project would entail placing temporary, moveable materials such as cones, A-frames, and plastic traffic diverters and delineators to slow and discourage vehicular through traffic on project street segments. No excavation is proposed.

Background

On February 25, 2020, Mayor London Breed of San Francisco, issued a local health emergency under California Government Code sections 8550 et seq., San Francisco Charter Section 3.100(14), and Chapter 7 of the San Francisco Administrative Code to address the spread of COVID-19 within the city.

On March 6, 2020, San Francisco Health Officer Tomas Aragon declared a health emergency due to the COVID-19 (coronavirus) pandemic.

On March 31, 2020, Public Health order C19-07 was issued, requiring individuals to maintain six feet of social (physical) distance from individuals not in their household.

On July 1, 2020, the department determined that the project was statutorily exempt under CEQA section 21080(b)(4) and CEQA guidelines section 15269(c) and categorically exempt under CEQA Class 1 – Existing Facilities and issued a determination that no further environmental review was required for the Slow Streets, Phase 3 project.

On July 21, 2020, the SFMTA Board of Directors approved the project at a noticed public hearing. This approval marks the start of the appeal period for the statutory exemption and categorical exemption.

On August 20, 2020, an appeal of the statutory exemption and categorical exemption determination was filed by Mary Miles on behalf of Coalition for Adequate Review (the appellant).

CEQA Guidelines

Statutory Exemptions

In accordance with Article 18 Statutory Exemptions, CEQA Guidelines sections 15260 through 15385 list exemptions from CEQA granted by the California State Legislature.

CEQA Guidelines section 15269(c) states that specific actions necessary to prevent or mitigate an emergency are exempt from the requirements of CEQA. This section reflects the mandate in CEQA Section 21080(b)(4), that CEQA “does not apply to (...) specific actions to prevent or mitigate an emergency.” An “emergency,” in turn, is “a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate attention to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.” (CEQA Section 21060.3; CEQA Guidelines Section 15359).

Categorical Exemptions

In accordance with CEQA section 21084, CEQA Guidelines sections 15301 through 15333 list classes of projects that have been determined not to have a significant effect on the environment and are exempt from further environmental review, absent specific exceptions (CEQA Guidelines section 15300.2).

CEQA Guidelines section 15301, or Class 1, consists of 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 existing or former use. Subsection c provides for projects that “include, but are not limited to, existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety), and other alterations such as the addition of bicycle facilities, including but not limited to bicycle parking, bicycle-share facilities and bicycle lanes, transit improvements such as bus lanes, pedestrian crossings, street trees, and other similar alterations that do not create additional automobile lanes.”

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

An appeal of the statutory exemption and categorical exemption determination for the project was timely filed. The concerns raised in the appeal letter are addressed below.

Response 1: The project meets the definition of CEQA section 21080(b)(4) and CEQA Guidelines section 15269(c) Emergency Projects statutory exemption.

COVID-19 is an emergency pursuant to CEQA section 21080(b)(4) and CEQA Guidelines section 15269(c)

On February 25, 2020, Mayor London Breed of San Francisco, issued a local health emergency under California Government Code sections 8550 et seq., San Francisco Charter Section 3.100(14), and Chapter 7 of the San Francisco Administrative Code to address the spread of COVID-19 within the city. On March 4, 2020, Gavin

Newsom, Governor of California, issued the Proclamation of a State of Emergency under section 8625 of the California Government Code and the California Emergency Services Act, establishing the existence of a state of emergency throughout California due to COVID-19. As stated above, on March 6, 2020 San Francisco Health Officer Tomas Aragon declared a health emergency for the City and County of San Francisco. Health Orders were enacted to protect the public health and provide guidance and provisions to reduce the spread of COVID 19. Health Order No. C19-07 is the main order that states what activities are allowed and prohibited during the COVID-19 Emergency. It has been amended several times since it was first issued on March 16, 2020.

The appellant claims the proposed Slow Streets, Phase 3 project “does not qualify for an emergency exemption under CEQA” as it does not meet the definition of an emergency as defined in Public Resources Code section 21060.3 ["Emergency"]. This implies the COVID-19 public health emergency, which was the impetus for the SFMTA’s decision to implement the Slow Streets, Phase 3 project, does not meet the definition of an emergency under the definition in the Public Resources Code. While a pandemic is not explicitly listed in the Public Resources Code section, a sudden and unexpected event such as the COVID-19 pandemic falls within the category of events that would be considered an emergency under the code and meets the intent of that code.

COVID-19 is a sudden and unexpected occurrence. Within the span of a few days the whole world, the United States, California, and the Bay Area went from a handful of confirmed cases to many reported cases.³ As a result, leading international, state, and local officials to declare a state of emergency. COVID-19 involves a clear and imminent danger and can cause damage to life and health. According to the Centers for Disease Control and Prevention, in the United States alone, as of September 9, 2020 approximately 6.3 million people have had confirmed COVID-19 cases and approximately 189,000 of these cases have resulted in death.⁴ Thus, COVID-19 is an emergency pursuant to CEQA section 21080(b)(4) and CEQA Guidelines section 15269

The Slow Streets, Phase 3 project is responding to the COVID-19 public health emergency

Since April 8, 2020, the SFMTA has operated a COVID-19 Muni Core Service Plan. This has severely reduced Muni service, and San Francisco residents that might have otherwise take transit have to walk or take other modes, such as bicycles, to make essential trips. Public Health Order No. C19-07 requires individuals to maintain social distancing of at least six feet from any other person not in their household when they are outside their residence. However, individuals cannot always maintain the required six feet of social distance on City sidewalks, park paths, and bikeways, especially if they are passing queues that may exist outside grocery stores and other essential services, and elect to walk in the street.

The Slow Streets program was designed to enable people to maintain six feet of separation by closing select street segments to through vehicular traffic (i.e., non-local and non-emergency vehicles) so that people walking and bicycling for essential trips or engaging in recreational activities have more space to maneuver around others without an increased risk of a collision with vehicles as they walk in the street. Slow Streets, Phase 1, was approved on April 20, 2020 and Phase 2 was approved on May 15, 2020. Phase 3 corridors were identified through a public process and were evaluated for connections to essential services as part of the

³ San Francisco Department of Public Health. 2020. COVID-19 Cases and Deaths. Available online at <https://data.sfgov.org/stories/s/dak2-gvuj>. Accessed September 9, 2020.

⁴ Centers for Disease Control and Prevention. 2020. Coronavirus Disease 2019 – Cases in the U.S. Available online at <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>. Accessed September 9, 2020.

screening process. Examples of Slow Street Phase 3 project corridors and their connections to essential services include:

- 20th Street: provides east-west access to COVID-19 testing and essential jobs and services at Zuckerberg General Hospital
- Arlington Street: provides access to transit via the Glen Park Bay Area Rapid Transit station and various pharmacies
- Cabrillo Street: provides access to a grocery store and pharmacy
- Clay Street: provides access to COVID-19 testing and essential jobs and services at the California Pacific Medical Center and pharmacies
- Minnesota Street: provides north-south access to COVID-19 testing and essential jobs and services at the University of California San Francisco medical complex
- Noe Street: provides north-south access to COVID-19 testing and essential jobs and services at two urgent care centers
- Pacific Avenue: provides access to several grocery stores and pharmacies

The appellant states there is no evidence that people are choosing to walk in the street to maintain the required social distancing or that the trips being made are essential trips. First, the exact number of essential trips is not relevant. The project is designed to facilitate the public making safe trips in light of COVID-19, whether those trips are to access essential jobs, go to the grocery store, or engage in outdoor activities, as allowed under Health Order C19-07. Second, the sidewalks in the proposed street segments for this project are approximately 8 feet to 12 feet wide, and some have street trees and other physical obstructions that further restrict the amount of space people have to safely pass others while walking. These physical limitations indicate that people may have to walk in the street to maintain six feet of distance from others while travelling between their origins and destinations. For example, on an 8-foot-wide sidewalk it is possible for two people to maintain six feet of separation, but inadequate should there be more than two people or a queue on the sidewalk. This could occur on almost any street in San Francisco, including those included in Phase 3 of the project, and leads people to walk in the street, putting them at a higher risk of being in a collision with a vehicle in the roadway on those streets.

As discussed above, Slow Streets Phase 1 and Phase 2 demonstrated that the program can facilitate adequate social distancing for people walking and bicycling and in a way that is safer than existing conditions along these streets. The proposed Slow Streets, Phase 3 project would extend the program to the proposed street segments. For these reasons, the project is responding to the COVID-19 public health emergency and qualifies as an emergency projects statutory exemption. Thus, the project was properly exempt from CEQA.

None of the exclusions of CEQA Guidelines section 15269(c) apply

CEQA Guidelines section 15269(c) states that the statutory exemption for projects necessary to prevent or mitigate an emergency does not apply to “long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term.” This exclusion does not apply to the proposed Slow Streets, Phase 3 project because the project directly addresses an ongoing public health emergency in which it is necessary to maintain 6 feet of social distancing in order to mitigate the emergency.

The emergency the project would respond to is ongoing. The February 25, 2020 proclamation of a local health emergency, March 4, 2020 Proclamation of a State of Emergency, and Health Order No. C19-07 (as amended) are still in effect. The SFMTA is responding to the ongoing nature of the emergency by learning from earlier

phases of the Slow Streets program and acting quickly to mitigate the emergency on other streets. Furthermore, there is no anticipated date for the City to fully reopen and “remove all social distancing limits and other restrictions related to the COVID-19 response.”⁵ Therefore, the COVID-19 public health emergency has a high probability of occurring in the short-term.

Second, the project does not include construction of permanent infrastructure and the proposed changes can be adjusted or removed quickly. Implementation of the project would include nonpermanent, moveable barriers such as cones, A-frames, and plastic traffic diverters and delineators; excavation is not proposed. Furthermore, the changes would expire within 120 days of the repeal of the City’s February 25, 2020 proclamation of a local health emergency due to COVID-19. Thus, contrary to the appellant’s claims, the proposed project would be temporary with an identified end point.

As shown above, the project meets the requirements of an emergency project statutory exemption and none of the above-noted exclusions stated in CEQA Guidelines section 15269(c) apply. The City’s decision that the project fits within the definition of statutory exemption 15269(c) emergency projects is supported by substantial evidence in the record. Statutory exemptions are projects specifically excluded from CEQA consideration as defined by the State Legislature. These exemptions are delineated in Public Resources Code Section 21080 et seq and discussed in CEQA Guidelines Sections 15260-15285. A statutory exemption applies to any given project that falls under its definition, regardless of the project’s potential impacts to the environment. As described in response 2 below, the project also meets the definition of categorical exemption.

Response 2: The project was appropriately issued a categorical exemption under CEQA Guidelines section 15301.

The project meets the definition of a CEQA Guidelines Section 15301, or Class 1, categorical exemption

Class 1 allows for the categorical exemption of projects that consists of 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 existing or former use. Examples include, but are not limited to, existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety), and other alterations such as the addition of bicycle facilities, including but not limited to bicycle parking, bicycle-share facilities and bicycle lanes, transit improvements such as bus lanes, pedestrian crossings, street trees, and other similar alterations that do not create additional automobile lanes.

The proposed Slow Streets, Phase 3 project would make alterations to existing transportation network facilities by placing temporary moveable barriers such as cones, A-frames, and plastic traffic diverters and delineators on existing streets. The project would not change the existing number of travel lanes and represent a minor alteration to existing streets as the barriers would restrict through vehicular traffic but allow local vehicular access to residences and business in the same travel lanes as under existing conditions, contrary to the appellants claims. These alterations meet the definition of CEQA Guidelines section 15301, or Class 1 Existing Facilities. Thus, the appellant’s claim that the project does not qualify for a Class 1 exemption is incorrect.

⁵ City and County of San Francisco. Step by Step Reopening San Francisco. Available online at <https://sf.gov/step-by-step/reopening-san-francisco>. Accessed September 9, 2020.

None of the categorical exemption exceptions apply

CEQA Guidelines section 15300.2 establishes exceptions to the application of a categorical exemption for a project. None of the exceptions apply to the proposed Slow Streets, Phase 3 project, as discussed below. Thus, the appellants claim that exceptions apply are incorrect.

15300.2(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

Project Analysis: the categorical exemption for this project is not one of these classes; this exception does not apply.

15300.2 (b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time, is significant.

Project Analysis: The project would not result in significant cumulative impacts.

The project site consists of the 14 street segments listed in Table 1. Thus, the cumulative context for the project is the projects in the vicinity of the street segments. Cumulative projects would implement changes to the transportation network and land use changes, but the proposed project would not combine with them to result in significant cumulative impacts, as described below.

No Muni routes, including pre-COVID-19 and COVID-19 Core Service routes, operate on the proposed street segments. While through vehicular traffic that typically uses the proposed street segments would be diverted to adjacent streets, the volume of redirected traffic would be low and is not expected to substantially delay transit on those streets. This is because, as part of the Slow Streets, Phase 3 street segment selection process, SFMTA screened out street segments with multiple signalized intersections, which indicates a higher volume of vehicular traffic. Thus, the proposed project would not contribute to significant cumulative transit delay impacts.

The project would not relocate commercial and passenger loading zones. Thus, the project would not contribute to significant cumulative loading impacts.

The project would place temporary, moveable barriers, would not alter facilities for people walking or bicycling, and would allow for emergency vehicle access. Thus, the project would not contribute to significant cumulative potentially hazardous conditions, accessibility, or emergency access impacts.

The project would not substantially increase vehicle miles traveled; moreover, automobile delay (e.g., congestion) is not considered a significant effect on the environment pursuant to CEQA. The project meets the definition of an “active transportation...and transit project” and “minor transportation project”, as defined in the department’s Transportation Impact Analysis Guidelines (2019). The department substantiates that these projects would not lead to substantial increases in vehicle miles traveled based on a literature review provided in the 2019 guidelines, Appendix L: Vehicle Miles Traveled/Induced Automobile Travel, Attachment C: Combined Vehicle Miles Traveled Annotated Bibliography. Furthermore, CEQA Guidelines section 15064.3(b)(2) states that transportation projects that reduce, or have no impact on, vehicle miles traveled

should be presumed to have less than a significant transportation impact. Thus, the project's transportation-related impacts would be less than significant.

Because the project would not result in increased vehicle miles travelled, it would also not result in substantial increase in criteria air pollutant or greenhouse gas emissions, which by their nature, are cumulative impacts.

Lastly, given the temporary nature of the proposed project and the limited construction scope (e.g., no excavation and movable barriers), other significant cumulative construction or operational impacts would not occur.

15300.2 (c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

Project Analysis: Pursuant to CEQA, the department used a two-part analysis to determine that there was no reasonable possibility that the proposed project would have a significant effect on the environment due to unusual circumstances. The following describes the two-parts, or questions, and their applicability to the project.

Question 1: Unusual Circumstances. There are no unusual circumstances surrounding this project.

Project Analysis: 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. 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 appellant claims an emergency under CEQA is an unusual circumstance. The department considers unusual circumstances in relation to the physical characteristics of the project site and surrounding areas and the project itself.

The circumstances surrounding the project (absent COVID-19) and the project site are not unusual. The project site is 14 existing street segments located throughout San Francisco, surrounded by neighboring land uses and streets that serve a mix of transit, bicycles, pedestrians and cars. There is nothing particularly sensitive or unique about the project site and the surrounding streets that would result in an unusual circumstance in accordance with CEQA. Further, the project elements are not unusual. Circulation changes to these streets are routine in nature and within San Francisco. The City already prohibits private vehicular traffic on a portion of Market Street.

Question 2: Significant Effects due to Unusual Circumstances: The project would not result in significant effects due to unusual circumstances.

Project Analysis: 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 this project, so the lead agency is not required to respond to this question.

The department notes, for informational purposes, that the proposed Slow Streets, Phase 3 project would not result in significant effects as demonstrated in the exemption determination and described below.

The project would place temporary, moveable barriers on the proposed street segments to limit vehicular traffic to those accessing local residences and business and emergency services vehicles. There are no Muni routes on the proposed street segments. The volume of redirected through vehicular traffic would be low and is not expected to substantially delay transit on adjacent streets. The project would not relocate existing commercial and passenger loading zones or alter facilities for people walking or bicycling. As previously discussed above, the project would not substantially increase vehicle miles traveled and meets the definition of an “active transportation...and transit project” and “minor transportation project”. Consequently, the project would also not result in substantial increase in criteria air pollutant or greenhouse gas emissions and impacts to those environmental topics would not be significant. For these reasons, the proposed project would not result in significant substantial transit delay, accessibility, potentially hazardous conditions, loading, or vehicle miles traveled impacts. Furthermore, as discussed above, the project meets the definition of a transportation project pursuant to CEQA Guidelines section 15064.3(b)(2) and thus is presumed to result in less than significant transportation-related impacts.

In summary, the project would not result in significant construction or operational impacts due to the temporary nature of the project and its limited construction scope, which would not include excavation and would be implemented in a manner that changes could be removed within 120 days of the repeal of the February 25, 2020 proclamation of a local health emergency.

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

Project Analysis: The project site is not within a highway officially designated as a state scenic highway; this exception is not applicable.⁶

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

Project Analysis: the project is not located on such a site; this exception does not apply.

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

Project Analysis: The project would not have a significant effect on a historic resource because the project would not alter or demolish a historical resource. The proposed project would place temporary barriers such as cones, A-frames, and plastic traffic diverters and delineators on streets; no other changes are proposed.

⁶ California Department of Transportation, Scenic Highways. Available online at: <https://dot.ca.gov/programs/design/lap-landscape-architecture-and-community-livability/lap-liv-i-scenic-highways>. Accessed September 14, 2020.

Response 3: The department and SFMTA met procedural requirements for exemption appeals provided in Chapter 31 of the Administrative Code.

The appellant inaccurately claims that the proposed project was implemented without opportunity for review by the board of supervisors. The SFMTA Board of Directors approved the project on July 21, 2020 and the project was appealed to the board on August 20, 2020. The SFMTA has not implemented any portions of the project to date. See the SFMTA response for details regarding their public participation efforts on the Slow Streets program.

Conclusion

The department has determined that the proposed project is statutorily exempt and categorically exempt from environmental review under CEQA on the basis that: (1) the project meets the definition of an emergency project statutory exemption (2) none of the exceptions specified in CEQA Guidelines section 15269 prohibiting the use of a statutory exemption are applicable to the project, (3) the project meets the definition of one of the classes of projects that the Secretary of Resources has found do not have a significant effect on the environment, and (4) none of the exceptions specified in CEQA Guidelines section 15300.2 prohibiting the use of a categorical exemption are applicable to the project. The appellants have not demonstrated that the department's determination is not supported by substantial evidence in the record.

For the reasons stated above and in the July 1, 2020 CEQA statutory and categorical exemption determination and accompanying memo from SFMTA, the CEQA determination for this project complies with the requirements of CEQA and the project is appropriately exempt from environmental review pursuant to the cited exemptions. The department therefore respectfully requests that the board uphold the CEQA statutory and categorical exemption determination and deny the appeal of the CEQA determination.