

15269(c)); and whether either (or both) of the exceptions to an exemption (cumulative impacts or unusual circumstances) apply to the Project. I intend to more fully brief these issues and perhaps others on or before September 18, 2020, understanding that the last day for me to withdraw this appeal and avoid a hearing would be September 14, 2020, all based on a possible hearing date of September 29, 2020.

The arrogance and secrecy that the Planning Department and MTA continue to show are indeed awesome. They make a Cloak of Invisibility in Dungeons and Dragons seem easily penetrable by comparison. Rather than providing more information right now, and the opportunity for meaningful public comment and involvement in decisionmaking, both agencies seem to be doing just the opposite, leading me to contest CEQA exemption determinations buried deep in complicated databases and websites with very little guidance or help.

I recognize that these are most unusual times we are living in, but I am unwilling to allow unelected and unnamed bureaucrats to assume more power without any public scrutiny or sufficient control. There is no provision here for even posting proposed changes with engineering drawings and narrative explanation, allowing public comment thereon, posting specific approval actions, or evaluating changes based on actual experience. Nothing. Not even the basic public comment at MTA Friday morning Traffic Engineering hearings. The proposed program is rude and contemptuous of public involvement in decisionmaking, so I must reject it.

Very briefly on the law, I understand that statutory exemptions are construed narrowly, so a project must fit within the statutory language in order to qualify. Here, CEQA itself (Public Resources Code Section 21080 (b)) states: "This division does not apply to any of the following activities: ... (4) Specific actions necessary to prevent or mitigate an emergency." CEQA Guidelines Section 15269 states: "The following emergency projects are exempt from the requirements of CEQA. ... (c) Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term, but this exclusion does not apply (i) if the anticipated period of time to conduct an environmental review of such a long-term project would create a risk to public health, safety or welfare, or (ii) if activities (such as fire or catastrophic risk mitigation or modifications to improve facility integrity) are proposed for existing facilities in response to an emergency at a similar existing facility."

Nearly six months since the Mayor's February 25, 2020 Proclamation Declaring the Existence of a Local Emergency, I believe it is arguable whether the local health emergency is also an emergency under CEQA. Both CEQA itself (Public Resources Code Section 21060.3) and CEQA Guidelines Section 15359 state, identically: "'Emergency' means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. 'Emergency' includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage." I believe the current circumstances are not a "sudden, unexpected occurrence" but instead a "new normal" of ongoing, albeit extremely difficult, existing conditions. Further, the proposed actions, nearly six months in, are not an "immediate" response in any real sense. The language cited above includes the word "necessary." In my view, the proposed actions are not "necessary" but merely convenient.

Finally, even if all the other tests are met, MTA has still made no showing as to how, exactly, the proposed actions would "prevent or mitigate an emergency," nor is it clear whether the burden is on MTA, Planning, the County Health Officer, the Department of Public Health, the Department of Emergency Management, some other actor, or some combination thereof, to verify that the proposed actions are indeed "necessary to prevent or mitigate an emergency."

In any event, both MTA and Planning have the burden of showing, with substantial evidence in the record before an exemption is issued (not after), that the project fits the statutory exemption claimed, and I believe that they have failed to meet their burden. The only document available to the public on this project is the two-page exemption document itself. Nothing else. The public has no access at this time to the Planning Department case file on the Project, which constitutes the administrative record here, and I suspect it contains very little if anything else.

I am always open to resolving my underlying concerns and withdrawing this appeal if an acceptable solution can be reached with Planning and MTA. I also reserve the right to amend this appeal if new information becomes available. Please contact me if you need anything else.

Sincerely,

/s/
David Pilpel

Attachment:
DCP 2020-006458ENV MTA DOC COVID-19 Emergency Temporary Street Changes Program
StatEx 7-15-20 (2 pages)

cc: Lisa Gibson, Environmental Review Officer, Planning Department

This temporary program is necessary to prevent and mitigate a public health emergency. The proposed program and changes are temporary in nature and will expire, at the latest, 120 days after the retraction of the City's COVID-19 Local Emergency Declaration (dated February 25, 2020).

Approval Action:

Director of Transportation Approval

Statutorily Exempt pursuant to CEQA Guidelines Section 15269(c) Emergency Projects

Melinda Hue 7/15/20

Melinda Hue Date
San Francisco Municipal Transportation Agency

Laura C. Lynch 7/15/20

Laura Lynch Date
San Francisco Planning Department

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From: [DiSanto, Thomas \(CPC\)](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [Ko, Yvonne \(CPC\)](#)
Subject: CEQA Appeal Fee Waiver
Date: Thursday, August 20, 2020 1:10:08 PM

The Planning Department has reviewed and approved a fee waiver under Admin Code Section 31.22 for the CEQA Appeal being filed by David Pilpel with the BOS Clerk's Office regarding the MTA DOC COVID-19 Emergency Temporary Street Changes Program.

Please let me know if you have any questions or need additional information.

Thank you.

Thomas DiSanto
Director, Administration

San Francisco Planning Department

PLEASE NOTE MY NEW ADDRESS AND PHONE NUMBER AS OF AUGUST 17:

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Direct: 628.652.7575

www.sfplanning.org

[San Francisco Property Information Map](#)

Due to COVID-19, San Francisco Planning is not providing any in-person services, but we are operating remotely. Our staff are available by e-mail, and the Planning and Historic Preservation Commissions are convening remotely. The public is encouraged to participate. Find more information on our services here.
