



CATEGORICAL EXEMPTION APPEAL

Supplemental Appeal Response

2142 22nd Street

Date: April 11, 2025
To: Angela Calvillo, Clerk of the Board of Supervisors
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RE: Board File No. 250134
Planning Record No. 2024-005274ENV
Appeal of Categorical Exemption for 2142 22nd Street Project (Supplemental Appeal Response)

Hearing Date: April 15, 2025

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

The responses below address additional environmental concerns raised by the Appellant in their April 4, 2025 supplemental appeal letter and further substantiate the proposed project's eligibility for a categorical exemption. The numbering of the responses continues the numbering from the department's March 11, 2025 appeal response.

Supplemental Responses

Geology and Soils

Response 3: Construction on steep slopes is common in San Francisco, and therefore construction of the project on this site is not an unusual circumstance. Even if such construction presented unusual circumstances, DBI's building permit review process, which includes provisions for construction on hillsides, would ensure the project's structural integrity during construction and operations, and there would be no impacts related to geology and soils.

As discussed in the initial appeal response, the project meets the criteria for two categorical exemptions. As explained in the department's initial appeal response, the project qualifies for a Class 1 categorical exemption for existing facilities and for a Class 3 categorical exemption for new construction. There are no unusual circumstances that would prevent the department's reliance on these categorical exemptions. The location of the project on a steep slope is not an unusual circumstance in San Francisco given the prevalence of construction on slopes throughout the city. San Francisco ("a city of 49 hills") has steep

slopes which dominate much of the city's landscape. By department estimates, approximately 12.8 percent of San Francisco is on slopes of 25 percent or greater (which works out to be approximately 38.6 percent of parcels where at least a portion includes a slope of 25 percent or more).¹ Additionally, portions of San Francisco are steep slopes designated as landslide hazard zones, such as the project site, but the location of a project in a seismic hazard zone is not an unusual circumstance in San Francisco. The project site is not within a designated liquefaction hazard zone.² The nearest liquefaction zone is approximately 1,970 feet (0.37 mile) away from the project site. The proposed project would be consistent with the density, height, and bulk limitations for its designated RH-3 (Residential, House, Three Family) zoning district and its size and construction type would be within the range of structures in the neighborhood, including the immediately adjacent building.³

In general, if the scope of a proposed project requires a preliminary geotechnical report for environmental review purposes, the planning department reviews this report to understand geotechnical issues and recommendations. A geotechnical report prepared for the proposed project.⁴ The report confirmed that the project site is at or near a landslide potential zone in the southern portion. No indication of any landslide at the project site was observed. Additionally, the project site is adjacent to a landslide hazard zone that extends west of the subject area (undeveloped Kansas Street sloping area). Taking these site characteristics into consideration, the geotechnical report made recommendations regarding foundations that could be supported on the site and recommendations pertaining to retaining walls, temporary slopes and excavation, surface draining, and various other geotechnical issues.

Even if the project's location were unusual, applicable laws and regulations would ensure that construction of the project at that location would be safe and not result in any impacts related to geology and soils. To ensure that the potential for adverse effects related to geology and soils are adequately addressed, San Francisco relies on the state and local regulatory process for review and approval of building permits pursuant to the California Building Code and the San Francisco Building Code, which is the state building code plus local amendments that supplement the state code, including the building department's administrative bulletins. During the building department's review of the building permit, the building department would review the construction plans for conformance with recommendations in the project-specific geotechnical report. The building permit would be reviewed pursuant to the building department's implementation of the building code, including administrative bulletins, local implementing procedures such as the building department information sheets, and state laws, regulations, and guidelines would ensure that the proposed project would have no significant impacts related to soils, seismic, or other geological hazards.

Through its building permit review process, DBI requires the sponsor to incorporate such recommendations into the project. For environmental review purposes, department staff confirm that the preliminary geotechnical report finds that the proposed project is feasible either as proposed, or with additional construction requirements recommended by the report preparer. During environmental review, department staff confirm that the project sponsor would incorporate foundation design recommendations (and/or other recommendations) into the project design, upon approval. DBI, during its review of site and

¹ Mike Wynne, San Francisco Planning Department, personal communication to Tania Sheyner, Planning Department, June 15, 2023

² The liquefaction zone GIS layer can be found in the Environmental Information tab here: <https://sfplanninggis.org/pim/>.

³ Pursuant to the provisions of Planning Code Section 206.5 or 206.6, the project, which is located on a corner lot, is entitled to a density exception of up to six units: <file:///C:/Users/14152/Downloads/2142%2022nd%20Street%20-%20PAL.pdf>, accessed April 5, 2025.

⁴ Adept Construction Solutions, Inc., Geotechnical Investigation, 2142 22nd Street, San Francisco, California, December 20, 2023.

building permits (after CEQA review is completed/project approvals are issued), reviews construction documents for conformance with the preliminary and, ultimately, the final geotechnical report.

Whether or not the project is subject to the Slope and Seismic Hazard Zone Protection Act⁵ (San Francisco Building Code section 106A.4.1.4) would be determined by the San Francisco Department of Building Inspection (DBI) as part of their building permit review process. Per DBI's Information Sheet S-19: Projects Subject to the Slope and Seismic Hazard Zone Protection Act (SSPA) Ordinance, the proposed project may be subject to the Slope and Seismic Hazard Zone Protection Act (SSPA) Ordinance which would require the project sponsor to submit a geotechnical investigation in accordance with SFBC Section 1803.2 and submit a report prepared and signed by both a California licensed geotechnical engineer and a California certified engineering geologist or California licensed geologist in accordance with SFBC Section 1803.6.⁶ The project will require additional geotechnical and structural review and may include a third-party peer review and/or assignment to a Structural Advisory Committee, as determined by the building department. The three-member Structural Advisory Committee will advise the building department on matters pertaining to the building's design and construction.⁷

Although there are certain geotechnical complexities associated with the project site, including the steep slope, landslide hazard zone, underlying soils and bedrock, and potential for seismic activity, none of them comprise unusual circumstances in San Francisco or the San Francisco Bay Area. As with all projects, the San Francisco Building Code and the California Building Code appropriately address geotechnical considerations and compliance with the building codes is ensured through DBI's building permit review process.

Furthermore, it is routine in the development process to rely on these and other regulatory requirements when reviewing a project's impacts under CEQA, and courts have upheld this approach. In addition, ignoring regulatory requirements and requiring higher levels of environmental review than required by CEQA would be contrary to the City's adopted Housing Element, which calls for the City to practice CEQA in an efficient manner to reduce constraints to housing production. Please see the project sponsor's response for further discussion.

Serpentine Bedrock

Response 4: Construction on serpentinite bedrock is common in San Francisco, and therefore construction of the project on this site is not an unusual circumstance. Even if such construction presented unusual circumstances, the California Air Resources Board's Asbestos Airborne Toxic Control Measure (ATCM) and the City's Construction Dust Control Ordinance would ensure that construction of the project would not result in a significant hazard to the public or the environment involving the release of hazardous materials into the environment.

As stated above, there are no unusual circumstances that would prevent the department's reliance on the categorical exemption. The location of the project on serpentinite bedrock is not an unusual circumstance in San Francisco given the prevalence of serpentinite bedrock throughout the city. Project construction

⁵ Enacted by Ordinance No. 12118, effective June 23, 2018.

⁶ Department of Building Inspection Information Sheet No. S-19, Properties Subject to the Slope and Seismic Hazard Zone Protection Act (SSPA) Ordinance, July 23, 2024. Available at <https://www.sf.gov/file/s-19>, accessed April 5, 2025.

⁷ San Francisco Building Code Section 105A.6 establishes and defines the process and requirements for identifying the members of the Structural Advisory Committee. The three committee members must be selected from a list of qualified engineers submitted by the Structural Engineers Association of Northern California and approved by the building department.

would disturb the underlying serpentinite bedrock. Excavation of serpentine bedrock is common in Potrero Hill as most parcels are situated on serpentinite bedrock.⁸ Serpentinite commonly contains naturally occurring chrysotile asbestos (NOA) or tremolite-actinolite, a fibrous mineral that can be hazardous to human health if airborne emissions are inhaled. In the absence of proper controls, NOA could become airborne during excavation and handling of excavated materials. On-site workers and the public could be exposed to airborne asbestos unless appropriate control measures are implemented. Although the California Air Resources Board (ARB) has not identified a safe exposure level for asbestos in residential areas, exposure to low levels of asbestos for short periods of time poses minimal risk. To address health concerns from exposure to NOA, ARB enacted an Asbestos Airborne Toxic Control Measure (ATCM) for Construction, Grading, Quarrying, and Surface Mining Operations in July 2001. The requirements established by the Asbestos ATCM are contained in California Code of Regulations (CCR) Title 17, section 93105 and are enforced by the BAAQMD.

The Asbestos ATCM requires construction activities in areas where NOA is likely to be found to employ best available dust control measures. Additionally, the San Francisco Board of Supervisors approved the Construction Dust Control Ordinance in 2008 to reduce fugitive dust generated during construction activities. The requirements for dust control in the Construction Dust Control Ordinance are equivalent to the dust control measures identified in the Asbestos ATCM. Thus, the measures required in compliance with the Construction Dust Control Ordinance would protect the workers themselves as well as the public from fugitive dust that may also contain asbestos. The project sponsor would be required to comply with the Construction Dust Control Ordinance, which would ensure that significant exposure to NOA would not occur.

Per San Francisco Building Code Section 106A.3.2.6.3, General Dust Control Requirements, the following measures would be required: regularly water active construction zones to prevent dust emissions; apply sufficient water to control dust without causing runoff during land clearing, excavation, and other dust-generating tasks; at the end of each workday, wet sweep or vacuum streets, sidewalks, and intersections affected by excavation and dirt-moving operations; and for stockpiles inactive for over seven days and exceeding 10 cubic yards or 500 square feet, cover them with a 10 mil polyethylene plastic tarp or use equivalent stabilization methods.⁹ These measures would prevent visible dust, including NOA, from leaving construction sites, ensuring compliance with local regulations and minimizing environmental and health impacts. Therefore, the proposed project would not result in a hazard to the public or environment from exposure to NOA.

Considering the above, the proposed project would not result in unusual circumstances or a significant hazard to the public or the environment involving the release of hazardous materials into the environment. Project mitigation would not be required. Please see the project sponsor's response for further discussion.

Scenic Resources

Response 5: The scenic resources exception does not apply to the proposed project.

As discussed in response 2 of the initial appeal response, categorical exemptions may not be applied to projects that "may result in damage to scenic resources, including but not limited to, trees, historic

⁸ The serpentinite rocks map GIS layer can be found in the Environmental Information tab here: <https://sfplanninggis.org/pim/>.

⁹ This building code section is part of the Construction Dust Ordinance.

buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway.” The project site is not near or within a designated scenic highway corridor. The project site is also not in an area with significant visual resources, such as parks or scenic vistas. The removal of the Hollyleaf Cherry tree on the project site would not affect the visual character of a scenic area as the project is not in or near sensitive scenic or visual areas.

Views of the Hollyleaf Cherry tree are limited in the vicinity of the project. Partial views of the tree can be located along the bottom of 22nd Street near Kansas Street. From a view corridor at 22nd Street and Rhode Island, the tree is primarily blocked by the massing of the appellant’s building at 2132-2136 22nd Street and there are more noticeable trees nearby and in the distance.

Since the subject tree is not part of a visual corridor or a scenic viewshed, the removal of the tree would not have the potential to affect the visual character of the area. In addition, the removal of trees from a private property is not an unusual circumstance in San Francisco. In light of the above, the scenic resources exception does not apply to the proposed project. Please see the project sponsor’s response for further discussion.

Conclusion

For the reasons stated above, and in the December 18, 2024 CEQA categorical exemption determination and the March 11, 2025 appeal response, the CEQA determination complies with the requirements of CEQA, and the project is appropriately exempt from environmental review pursuant to the cited exemption. Therefore, the department respectfully recommends that the board uphold the categorical exemption determination and deny the appeal of the CEQA determination.