



SAN FRANCISCO PLANNING DEPARTMENT

MEMO

DATE: November 30, 2018
TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Lisa Gibson, Environmental Review Officer
RE: CEQA Appeal Timeliness Determination – 1531-1581 Howard Street/ 118-134 Kissling Street, Planning Department Case Nos. 2015-000332ENV & 2016-012474ENV

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On November 26, 2018, Stephen Williams of the Law Offices of Stephen M. Williams, on behalf of William Hedden, filed an appeal with the Office of the Clerk of the Board of Supervisors of the categorical exemption determination for the 1531-1581 Howard Street/118-134 Kissling Street project (planning department case no. 2015-000332ENV) and the subsequent determination of no substantial modification for the proposed project (planning department case no. 2016-012474ENV).

This appeal concerns a project for which the planning department issued a categorical exemption in March 2015. The project sponsor subsequently modified the project and the planning department determined that the modified project did not require further environmental review. Thus, the department issued a determination of no substantial modification in March 2018.

For the reasons set forth below, the department determines that the appeal of the categorical exemption is untimely and that the no substantial modification determination is not appealable to the Board of Supervisors. Further, the appeal of the no substantial modification determination would not have been timely even if it had been properly filed as a request to the Environmental Review Officer.

Timeliness Determination for Appeal of Categorical Exemption

Date of Approval Action	30 Days after Approval Action/Appeal Deadline	First Business Day after Appeal Deadline	Date of Appeal Filing	Timely?
March 10, 2016	April 9, 2016	April 11, 2016	November 26, 2018	No

Approval Action: On March 2, 2016, the planning department issued a categorical exemption determination for the 1531-1581 Howard Street/118-134 Kissling Street project. The project proposed to convert existing surface vehicle storage to four-level parking stackers; construct an accessory car wash; install metals screens on the Kissling Street and Howard Street frontages; and alter existing curb cuts on Howard Street and

Kissling Street. The approval action for the project was a conditional use authorization, which was approved by the San Francisco Planning Commission on March 10, 2016.

Appeal Deadline: Sections 31.16(a) and (e) of the San Francisco Administrative Code state that any person or entity may appeal an exemption determination to the Board of Supervisors during the time period beginning with the date of the categorical exemption determination and ending 30 days after the date of the approval action. The approval action for this project occurred on March 10, 2016. Thirty days from the approval action was Saturday, April 9, 2016. The next day when the Office of the Clerk of the Board of Supervisors would have been open was Monday, April 11, 2016. Thus, April 11, 2016 was the appeal deadline for the categorical exemption for this project.

Appeal Filing and Timeliness: The appellant did not file the appeal of the categorical exemption determination prior to the appeal deadline. Therefore, the appeal is not timely.

Timeliness Determination for Appeal of No Substantial Modification

On March 1, 2018, the planning department determined that a proposed modification to the originally approved project does not constitute a substantial modification that requires reevaluation. The proposed modification was to install metal screens along portions of the project site's Kissling Street frontage that are taller than what was proposed under the project approved on March 10, 2016. The proposed project requires rezoning of Assessor's block 3516 and lot numbers 039, 040, 041, and 042 from residential enclave (RED) to residential enclave-mixed (RED-MX). Because the proposed modification does not constitute a substantial modification requiring reevaluation under the California Environmental Quality Act (CEQA), the categorical exemption issued for the project on March 16, 2016 is the CEQA decision document for the project, and the approval action for the modified project was a conditional use authorization, which was approved on October 25, 2018.

Section 31.08(j) of the San Francisco Administrative Code states that any person or entity may request that the Environmental Review Officer reverse the determination that a change to a project is not a substantial modification and render a new CEQA decision for the project. Such a request must be made during the time period beginning with the date of the posting of the determination of no substantial modification and ending 10 days after the date of the posting. The appellant filed the appeal of the determination of no substantial modification to the Office of the Clerk of the Board of Supervisors. Thus, the appellant did not file a request for reversal of the determination of no substantial modification with the correct decision-making body.

Even if the appellant had submitted the appeal as a request to the Environmental Review Officer, as required by Chapter 31 the San Francisco Administrative Code, the request would not have been timely filed. The determination of no substantial

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modification for the project occurred on March 1, 2018. Ten days from the posting date was Sunday, March 11, 2018. The next day when the planning department would have been open is Monday, March 12, 2018. Thus, March 12, 2018 was the deadline for filing of a request for reversal of a determination that a change to a project is not a substantial modification.