



SAN FRANCISCO PLANNING DEPARTMENT

MEMO

Notice of Electronic Transmittal

Planning Department Response to the Appeal of Community Plan Evaluation for 1052-1060 Folsom Street and 190-194 Russ Street

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DATE: February 4, 2019

TO: Angela Calvillo, Clerk of the Board of Supervisors

FROM: Lisa Gibson, Environmental Review Officer – (415) 575-9032
Tania Sheyner, Principal Environmental Planner – (415) 575-9127
Christopher Espiritu, Senior Environmental Planner – (415) 575-9022

RE: BOS File No. 190093 [Planning Case No. 2016-004905ENV]
Appeal of Community Plan Evaluation for 1052-1060 Folsom Street and
190-194 Russ Street

HEARING DATE: February 12, 2019

In compliance with San Francisco's Administrative Code Section 8.12.5 "Electronic Distribution of Multi-Page Documents," the Planning Department has submitted a multi-page response to the Appeal of Community Plan Evaluation for 1052-1060 Folsom Street and 190-194 Russ [BF 190093] in digital format. Hard copies of this response have been provided to the Clerk of the Board for distribution to the appellants and project sponsor by the Clerk of the Board. A hard copy of this response is available from the Clerk of the Board. Additional hard copies may be requested by contacting Christopher Espiritu of the Planning Department at 415-575-9022 or Christopher.Espiritu@sfgov.org.



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Community Plan Evaluation Appeal

1052-1060 Folsom Street and 190-194 Russ Street

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TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Lisa Gibson, Environmental Review Officer – (415) 575-9032
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RE: Planning Case No. 2016-004905ENV
Board of Supervisors File No. 190093
Appeal of Community Plan Evaluation for 1052-1060 Folsom Street and
190-194 Russ Street
HEARING DATE: February 12, 2019
ATTACHMENT(S): A – 1052 Folsom Street Refined Shadow Fan

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PROJECT SPONSOR: Paul Iantorno, Golden Properties LLC, (415) 440-0201
APPELLANT(S): Sue Hestor, Attorney for South of Market Community Action Network

INTRODUCTION

This memorandum and the attached documents are a response to the appeal letter (received on January 22, 2019) from the appellant to the board of supervisors ("the board") regarding the Planning Department's ("the department") issuance of a community plan evaluation ("CPE") under the *Eastern Neighborhoods Rezoning and Area Plan Final Environmental Impact Report* in compliance with the California Environmental Quality Act ("CEQA determination") for the proposed 1052-1060 Folsom Street and 190-194 Russ Street project ("the project").

As described below, the appellant has not demonstrated nor provided substantial evidence to support a claim that the CPE fails to conform to the requirements of CEQA for a CPE pursuant to CEQA section 21083.3 and CEQA Guidelines section 15183. Accordingly, the planning department recommends that the board uphold the department's determination for the CPE and reject the appellant's appeal.

The department, pursuant to CEQA, the CEQA Guidelines, 14 Cal. Code of Reg. sections 15000 et seq., and Chapter 31 of the San Francisco Administrative Code, determined that the project is consistent with the development density established by zoning, community plan, and general plan policies in the Eastern Neighborhoods Rezoning and Area Plan for the project site, for which a programmatic EIR ("PEIR") was certified, and issued the CPE for the project on December 11, 2018. Where the city has issued a CPE, CEQA limits the city's review of a project to consideration of the following factors:

1. Whether there are effects peculiar to the project or its parcel not examined in the PEIR;
2. Whether the effects were already analyzed as significant effects in the PEIR;

3. Whether the effects constitute potentially significant off-site or cumulative impacts that were not discussed in the PEIR; and
4. Whether there is substantial new information that was not known at the time the Eastern Neighborhoods Rezoning and Area Plan PEIR was certified, which indicates that a previously identified significant impact would have a more severe adverse impact than was discussed in the PEIR.

If an impact is not peculiar to the project, has been addressed as a significant impact in the PEIR, or can be substantially mitigated by imposition of uniformly applied development policies or standards, then CEQA provides that an additional EIR need not be prepared for the project.

The department determined that the project at 1052-1060 Folsom Street and 190-194 Russ Street would not result in new significant environmental effects, or effects of greater severity than were already analyzed and disclosed in the PEIR, and that the project is therefore exempt from further environmental review beyond what was conducted in the CPE initial study and the Eastern Neighborhoods Rezoning and Area Plan PEIR in accordance with CEQA section 21083.3 and CEQA Guidelines section 15183.

The decision before the board is whether to uphold the planning department's determination that the project is not subject to further environmental review (beyond that conducted in the CPE initial study and the PEIR) pursuant to CEQA section 21083.3 and CEQA Guidelines section 15183 and deny the appeal, or to overturn the department's CPE determination for the project and return the CPE to the department for additional environmental review. The board's decision must be based on substantial evidence in the record. (See CEQA Guidelines sections 15183(b) and (c).)

SITE DESCRIPTION AND EXISTING USES

The project site is located on the northwest corner of the intersection of Folsom Street and Russ Street, on a block that sits between two mid-block alleys—Russ Street to the northeast and Moss Street to the southwest—in the South of Market neighborhood of San Francisco. It has frontages along two streets – approximately 75 feet along Folsom Street and 140 feet along Russ Street. The site consists of three adjacent lots totaling 11,500 square feet and contains five existing buildings. Lot 87 (190 Russ Street) contains a one-story commercial building constructed in 1938 and an existing surface parking lot. Lot 21 contains three buildings: 1052-1058 Folsom Street, which was constructed in 1916 and is occupied by an existing two-story residential building with a ground-floor retail space; 192-194 Russ Street, which was also constructed in 1916, and is occupied by an existing three-story building with residential flats on the upper floors and storage on the ground-floor; and 200 Russ Street (formerly 196 Russ Street), which was also constructed in 1916, and is occupied by a one-story commercial building. Lot 23 (1060 Folsom Street) is occupied by an existing two-story commercial building constructed in 1924.

PROJECT DESCRIPTION

The project would demolish the existing buildings on the project site, merge the three lots into a single lot, and construct a new seven-story, approximately 59,000-gross-square-foot mixed-use building with 63 dwelling units and approximately 2,800 square feet of ground floor retail use. The proposed unit mix for the 63 dwelling units consists of three studio units, 23 one-bedroom units, and 37 two-bedroom units.

Four units would be designated as replacement units for the four existing rent-controlled units (in the 1052-1060 Folsom Street and 192 Russ Street buildings), 15 units would be designated as below market rate units, and the remaining 44 dwelling units would be market rate. The proposed building would be approximately 64 feet, 6 inches tall per the San Francisco Planning Code, with an additional 15 feet to the top of the rooftop elevator and stair penthouses and mechanical equipment. The project would provide approximately 6,800 square feet of common open space within the second floor deck and a rooftop deck, and a combined total of approximately 2,100 square feet of private open space for units on the first through seventh floors. The project would also include an at-grade garage for 17 vehicles and 63 class I bicycle parking spaces and 10 class II bicycle parking spaces would be installed on the sidewalks along the Folsom Street and Russ Street frontages of the project site.¹

The ground floor of the project would include about 2,800 square feet for three retail spaces fronting Folsom Street, three ground-floor residential units fronting on Russ Street, and about 800 square feet for 63 class I bicycle parking spaces. The ground floor would also include approximately 4,500 square feet for building services and an at-grade garage with 17 off-street vehicle parking spaces in stackers (including one handicapped-accessible parking space and one car share parking space) that would be accessible via Russ Street. The project would construct a new 10-foot-wide curb cut on Russ Street and a driveway into the aforementioned at-grade garage, restore sidewalk to standard heights where curb cuts are removed, and install street trees along the Folsom Street and Russ Street frontages. The existing approximately 13-foot-wide sidewalk along Folsom Street and the approximately 15-foot-wide sidewalk along Russ Street would remain. The proposed ground-floor dwelling units would be accessed through individual entrances/exits along the Russ Street frontage of the project site. All other dwelling units would be accessed through a residential lobby also located on the ground floor with an entrance/exit on Russ Street. Access to the proposed ground-floor retail units would be through individual entrances/exits located along the Folsom Street frontage of the site, and an additional entrance/exit would be located on Russ Street for one corner retail unit.

BACKGROUND

On August 7, 2017, Paolo Iantorno of Golden Properties LLC (hereinafter “project sponsor”) filed an environmental evaluation application with the department for the project described above.

On December 11, 2018, the department issued a CPE certificate and initial study, based on the following determinations:

1. The proposed project is consistent with the development density established for the project site in the Eastern Neighborhoods Rezoning and Area Plans;

¹ Class I bicycle parking spaces are long-term bicycle parking for residents and/or employees that are typically located within designated off-street spaces such as bicycle lockers or bicycle storage rooms. Class II bicycle parking spaces are short-term parking for visitors that are typically located in commonly-accessible areas, such as bicycle racks on sidewalks fronting the project site.

2. The proposed project would not result in effects on the environment that are peculiar to the project or the project site that were not identified as significant effects in the Eastern Neighborhoods PEIR;
3. The proposed project would not result in potentially significant off-site or cumulative impacts that were not identified in the Eastern Neighborhoods PEIR;
4. The proposed project would not result in significant effects, which, as a result of substantial new information that was not known at the time the Eastern Neighborhoods PEIR was certified, would be more severe than were already analyzed and disclosed in the PEIR; and
5. The project sponsor will undertake feasible mitigation measures specified in the Eastern Neighborhoods PEIR to mitigate project-related significant impacts.

The planning commission considered the project on December 20, 2018. On that date, the planning commission adopted the CPE and approved the Conditional Use Authorization and a Large Project Authorization for the project (planning commission resolutions No. 20361 and No. 20360). The planning commission also adopted the findings of the shadow analysis for the project (planning commission resolution No. 20362). The approval of the Conditional Use Authorization and Large Project Authorization constituted the approval action under Chapter 31 of the Administrative Code.

Section 31.16(a) and (e) of the San Francisco Administrative Code states 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 exemption determination and ending 30 days after the Date of the Approval Action. Thus, the 30th day after the Date of the Approval Action was Saturday, January 19, 2019. However, it has been the longstanding practice of the Clerk of the Board, when an appeal deadline falls on a weekend day, to accept appeals until the close of business on the following workday. That date was Tuesday, January 22, 2019 (Appeal Deadline).

On January 22, 2019, an appeal of the CPE determination was filed by Sue Hestor, attorney for the South of Market Community Action Network.

On January 25, 2019, the department found that the CPE appeal was timely filed.

CEQA GUIDELINES

Community Plan Evaluations

As discussed in the Introduction above, CEQA section 21083.3 and CEQA Guidelines section 15183 **mandate** that projects that are consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified, **shall not** require additional environmental review unless there are project-specific effects that are peculiar to the project or its site and that were not disclosed as significant effects in the prior EIR.

Significant Environmental Effects

CEQA Guidelines section 15064(f) provides that the determination of 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 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.”

SAN FRANCISCO ADMINISTRATIVE CODE

Section 31.16(e)(3) of the Administrative Code states: “The grounds for appeal of an exemption determination shall be limited to whether the project conforms to the requirements of CEQA for an exemption.”

San Francisco Administrative Code section 31.16(b)(6) provides that, in reviewing an appeal of a CEQA decision, the Board of Supervisors “shall conduct its own independent review of whether the CEQA decision adequately complies with the requirements of CEQA. The Board shall consider anew all facts, evidence and issues related to the adequacy, accuracy and objectiveness of the CEQA decision, including, but not limited to, the sufficiency of the CEQA decision and the correctness of its conclusions.”

PLANNING DEPARTMENT RESPONSES

The concerns raised in the appeal letter are addressed in the responses below. It should be noted that the appeal letter is very brief, consisting of just a few sentences addressing the adequacy of the CPE. The letter makes two main unsubstantiated assertions, which are addressed fully below.

Response 1: The department appropriately analyzed the project using the project description submitted by the project sponsor.

The appellant contends that the department’s analysis of the project was questionable due to inaccurate information about the project. Specifically, the appellant asserts that the project plans used for review do not conform to the planning code requirements imposed on a residential building of this scale.

As the CPE Certificate notes on page 3 (in the project description), the proposed project would require a Conditional Use Authorization (“CUA”) and a Large Project Authorization (“LPA”). These authorizations are mechanisms by which the planning commission is able to grant specific exemptions to planning code provisions that otherwise could not be granted. These mechanisms are part of the planning code, are fairly routine for projects in the Eastern Neighborhoods Plan area, and are triggered by either the project site’s or project’s size or other features. Thus, the project plans that were used for the purposes of environmental review accurately reflect the project that is proposed. The department appropriately analyzed the project as proposed by the sponsor, with the explicit acknowledgement that these approvals would be necessary in order for the project to be approved. The specific reasons for why these approvals were required are discussed below.

The project's size and proposed uses required the sponsor's application to allow for the granting of a CUA and an LPA by the planning commission, this necessitated several types of review to assess the project's compliance with applicable codes, in addition to the review of environmental impacts. Specifically, in order for the project to proceed, the commission had to grant a CUA pursuant to Planning Code sections 121.1, 121.7, 303 and 317 for development on a lot greater than 10,000 square feet, for the merger of lots resulting in a street frontage greater than 50 feet in the RED Zoning District, and for the demolition of four existing dwelling units, respectively. The commission had to also grant a LPA pursuant to Planning Code section 329 for new construction over 25,000 square feet in the RED Zoning District. Under the LPA, the commission must grant modifications to the planning code requirements for rear yard (Planning Code section 134) and dwelling unit exposure (Planning Code section 140). Lastly, the commission also had to adopt a motion that found that the additional shadow cast by the project on Victoria Manalo Draves Park would not be adverse to the use of the park, pursuant to Planning Code Section 295.

Separately, because the project includes 44 dwelling units that are located in the SoMa NCT Zoning District, and because the project does not provide a code-complying rear yard, and eight units do not meet the dwelling unit exposure requirements, it also required approval of a variance from the Zoning Administrator, who considered and approved this request immediately following the hearing for this CUA.

As described above, CEQA Guidelines section 15183 mandates that projects that are consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified, shall not require additional environmental review unless there are project-specific effects that are peculiar to the project or its site and that were not disclosed as significant effects in the prior EIR. The department conducted environmental analysis of the project that was submitted by the project sponsor, which would have required approvals of a CUA, LPA, Planning Code section 295 and variance, since they are part of the Planning Code. The project's environmental analysis determined that the project would not result in any new project-specific impacts and a CPE was determined to be the appropriate level of environmental review.

The appellant has not demonstrated that the department's review of the project is not adequate and their claims are not supported by substantial evidence in the record.

Response 2: The department's analysis of project-related shadow impacts was appropriately conducted, and was consistent (and built upon) the shadow impact analysis in the Eastern Neighborhoods PEIR.

The appellant contends that the Eastern Neighborhoods PEIR did not analyze impacts of shadows that are governed by Planning Code section 295 and fall on Victoria Manalo Draves Park. The appellant offers no justification for this assertion.

The appellant is incorrect, as the Eastern Neighborhoods PEIR included analysis of shadow for Victoria Manalo Draves Park under all build-out scenarios (rezoning options A, B, and C) and the No Project Alternative. As described in the PEIR on page 397, the shadow analysis conducted for the PEIR noted that under existing (at that time) height limits, up to 95 percent of the park could be shaded at the last

Proposition K minute in winter (7:35 p.m.) and up to 75 percent of the park could be shaded at the first Proposition K minute in summer (6:48 a.m.) with full buildout in accordance with existing height limits. The PEIR stated that potential impacts from future proposed development would be evaluated on a project-specific basis, and shadow effects could be limited through design of individual projects that takes into consideration shading effects on nearby parks. The PEIR continued that all future development in East SoMa would be subject to the Section 295 (Proposition K) review process and the potential shadow impacts would be evaluated based on the guidelines of that code section. Future development in the area surrounding Victoria Manalo Draves Park would also be subject to Section 147 review and site-specific environmental analysis.

At the time of preparation, the Eastern Neighborhoods PEIR could not conclude if the rezoning and community plans would result in less-than-significant shadow impacts because the feasibility of complete mitigation for potential new shadow impacts of unknown proposals could not be determined at that time. Therefore, the PEIR determined shadow impacts to be significant and unavoidable. No mitigation measures were identified in the PEIR.

Thus, as explained above, the PEIR did in fact analyze the impacts of shadows on Victoria Manalo Draves Park, contrary to the appellant's assertion. Although the appellant does not explicitly discuss this in the appeal, it is noted that the CPE did include a project-specific shadow study, which found that project shadow would not be significant. San Francisco Recreation and Park Commission concurred with this conclusion on December 20, 2018, when it adopted a resolution recommending to the Planning Commission that the new shadow cast by the project at 1052-1060 Folsom and 190-194 Russ Street would not have a significant adverse impact on the use of Victoria Manalo Draves Park, pursuant to Planning Code section 295. While the Planning Department acknowledged in the CPE that there would be some minor increase in shadows on this park, a detailed shadow analysis, which is summarized below, reflects that this increase would not have an impact on the enjoyment of the park by its users.

The shadow study prepared for the CPE included quantitative and qualitative analysis of the project's potential shadow impacts to Victoria Manalo Draves Park, including analysis of the shadow of existing surrounding buildings and cumulative projects. The study presented analysis for three representative days of the year.² As noted in the shadow study, the proposed project would cast new shadow on Victoria Manalo Draves Park throughout the year, generally entering the park late afternoon between approximately 5:15 p.m. and 6 p.m. and would be present through the remainder of the afternoon and evening (see Attachment A of this appeal response). The areas most affected by new shadow would be the park entry, the basketball court, the northern children's play area, lawn areas, and seven fixed benches, features located largely in the northeastern quarter of the park. However, site visits to the park (which were conducted by the shadow consultant) indicate that project-related shadow would occur during lower levels of weekday and weekend use and would be of short duration in any given area. Users in the affected areas could be affected by the presence of new shadow; however, no clear pattern of diminished use of shaded features (vs. unshaded features) was observed under current conditions over the course of the park observation visits. Therefore, the CPE concluded that the project would result in less-than-significant shadow impacts on Victoria Manalo Draves Park. Although shadows would increase

² The representative days are the summer solstice (June 21), when the midday sun is at its highest and shadows are shortest; the autumnal/vernal equinoxes (September 20/March 22), when shadows are midway through a period of lengthening; and the winter solstice (December 20), when the midday sun is at its lowest and shadows are longest.

in the late afternoon/early evening, no single location within the park would be in continuous new shadow for longer than 15 minutes.

The appellant has not provided any substantial evidence to support the claim that inadequate analysis of shadow was conducted.

CONCLUSION

The appellant has not demonstrated nor provided substantial evidence to support a claim that the CPE fails to conform to the requirements of CEQA for a CPE pursuant to CEQA section 21083.3 and CEQA Guidelines section 15183. The planning department conducted necessary studies and analyses and provided the planning commission with the information and documents necessary to make an informed decision, based on substantial evidence in the record, at a noticed public hearing in accordance with the planning department's CPE initial study and standard procedures, and pursuant to CEQA and the CEQA Guidelines. Therefore, the planning department respectfully recommends that the board of supervisors uphold the department's determination for the CPE and reject the appellant's appeal.

Attachment A

1052 Folsom Street Refined Shadow Fan

Attachment A

Refined Shadow Fan (Full Year, New and Existing Shadow)



AGGREGATE NEW SHADOW AREAS OF IMPACT REFINED SHADOW FAN

FULL YEAR

Proposed Project
Refined Shadow Fan
of Proposed Project

occasional shadow frequent shadow

Cumulative Projects

- ① 363 6th Street
- ② 345 6th Street
- ③ 999 Folsom St.
- ④ 40 Cleveland St.
- ⑤ 1075 Folsom St.

RPD Parks

- ① Victoria Manalo Draves Park
- ② Gene Friend Rec Center

Note: Shadows from 280 7th St., 980 Folsom St., 988 Harrison St. and 850 Bryant St. (Hall of Justice) are considered as part of the cumulative analysis but these buildings fall outside the graphical view of this diagram.

Source: Prevision Design, 2018

1052-1060 Folsom Street and 190-194 Russ Street