



FINAL MITIGATED NEGATIVE DECLARATION APPEAL

2417 GREEN STREET

Date: October 13, 2020
To: Angela Calvillo, Clerk of the Board of Supervisors
From: Lisa Gibson, Environmental Review Officer, lisa.gibson@sfgov.org
Tania Sheyner, Principal Environmental Planner, tania.sheyner@sfgov.org

Re: **Board File No. 200137, Planning Record No. 2017-002545ENV**

Hearing Date: October 20, 2020
Attachments: None

Project Sponsor: Chris Durkin of 2417 Green Street, LLC, chris@durkinincorporated.com
Appellant: Richard Drury of Lozeau Drury, LLP, on behalf of Philip Kaufman

Introduction

This memorandum and the attached documents are a response to the letter of appeal to the Board of Supervisors (the Board) regarding the issuance of a final mitigated negative declaration (FMND) under the California Environmental Quality Act (CEQA) for 2417 Green Street (proposed project). The San Francisco Planning Commission (planning commission or commission) adopted the FMND on January 9, 2020 and approved the proposed project at a discretionary review hearing that was held on July 16, 2020.

The appeal challenging the FMND was filed to the Board was filed on August 7, 2020 by Richard Drury of Lozeau Drury LLP (appellant), on behalf of Philip Kaufman.¹ The FMND and appeal letter are part of Board File No. 200137 and can be accessed here: <https://sfgov.legistar.com/Legislation.aspx>.

The decision before the Board is whether to uphold the adoption of the FMND by the commission and deny the appeal, or to overturn the commission's decision to adopt the FMND and return the project to the planning department (department) for additional review.

Site Description and Existing Use

The project site is located on the south side of Green Street on the block bound by Green, Pierce, Scott, and Vallejo streets in the Pacific Heights neighborhood. The 2,500-square-foot project site contains a four-story

¹ The appellant also filed an earlier appeal on February 5, 2020; however, because that filing preceded any approval action for the proposed project, the appeal was not ripe for review. The February 5, 2020 appeal letter and attachments were largely duplicated in the August 7, 2020 appeal and thus, responses provided in this document effectively respond to both appeals.

single-family residential building constructed circa 1905. The residence, which is currently vacant, encompasses the front (northern) two thirds of the lot. The property at its Green Street frontage slopes with an elevation of approximately 150 feet along the western (upslope) side to 145 feet along eastern (downslope) side. The project site is within the RH-1 (Residential-House, One Family) use district, and is within a 40-X height and bulk district.

Project Description

Chris Durkin of 2417 Green Street, LLC (hereinafter project sponsor) would construct one- and three-story horizontal rear additions and construct third- and fourth-floor vertical additions above a portion of the existing building. The total floor area would increase by about 719 gross square feet, from approximately 4,455 gross square feet to approximately 5,174 gross square feet. A one-bedroom accessory dwelling unit measuring approximately 900 square feet would be added on the first floor (this is included in the gross square footage). The project also proposes a partial excavation of the rear yard for a sunken terrace, façade alterations, interior modifications, an approximately 361-square-foot roof deck, and expansion of the existing basement level garage by 406 square feet to accommodate one additional vehicle, for a total of two vehicle parking spaces. As discussed more in Background and Response 2, below, the approved project is overall incrementally smaller than what was analyzed in the FMND.

Background

The following bullet points provide a chronological summary of the various actions documented in the record related to the proposed project that have occurred since February 2017, when the project sponsor filed for a building permit associated with the proposed project. Text provided within quotes is verbatim as it appears in official documents and City records (building permit applications, complaints, and Board-issued California Environmental Quality Act [CEQA] findings).

- The project sponsor filed an environmental application (2017-002545ENV) for an earlier iteration of the proposed project at 2417 Green Street with the planning department on February 13, 2017, which was accepted by the planning department on March 9, 2017, to expand an existing four-story, approximately 4,118-square-foot single-family residence. The Department of Building Inspection (DBI or building department) accepted an application for this project on April 28, 2017.
- The planning department published a categorical exemption for the project on May 16, 2017, which was appealed to the Board of Supervisors on January 9, 2018 by Richard Drury of Lozeau Drury LLP, on behalf of Philip Kaufman of 2421 Green Street (the “Coxhead House,” as referenced in the FMND and below).
- The Board upheld the appeal, and on February 6, 2018 adopted Motion No. M18- 12, which stated, “[T]he Board finds that there is substantial evidence in the record before the Board that the Project proposed at 2417 Green Street presents unusual circumstances relating to historic resources and hazardous materials and it appears as a result of those circumstances the project may have a significant effect on the environment and, based on the facts presented to the Board of Supervisors at the hearing on January 9, 2018, the Project is therefore not Categorically Exempt from CEQA review.”

- In accordance with the above direction from the Board, the planning department conducted further analysis of the proposed project. The planning department found that new information submitted to the Board at the appeal hearing was inaccurate and misleading. In June 2018, the department issued another categorical exemption – a more detailed certificate instead of a checklist – for the project, which was revised to add an accessory dwelling unit. The same appellant, Mr. Drury on behalf of Mr. Kaufman, filed an appeal of the June 2018 categorical exemption, which the planning department determined was not timely because the approval action – the discretionary review hearing before the San Francisco Planning Commission – had not yet occurred.
- In January 2019, the Environmental Review Officer rescinded the June 2018 categorical exemption and directed staff to prepare an initial study to evaluate in greater detail the potential impacts of the 2417 Green Street project.
- On June 26, 2019, the department published a preliminary mitigated negative declaration (PMND) with an initial study, analyzing the potential environmental impacts of the project.
- On July 15, 2019, the appellant filed a letter appealing the PMND to the planning commission. The appellant’s concerns were addressed in the department’s response to that appeal.
- At the January 9, 2020 public hearing, the planning commission passed Motion No. 20620 upholding the PMND (and thereby adopting the FMND, supported by an amended FMND initial study, which was also published on January 9, 2020, amending the June 26, 2019 PMND and PMND initial study). The PMND and the adopted FMND included a site-specific mitigation measure to ensure that any potential adverse impacts that excavation associated with the project might have on the adjacent historic resource at 2421 Green Street would be reduced to a less-than-significant level.² After hearing and closing public comment, the commission continued the requests for discretionary review (DR) and directed Planning staff to mediate between the project sponsor and the DR requestors in an attempt to negotiate a mutually satisfactory modification to the project.
- On June 15, 2020 and July 10, 2020, planning department staff hosted two virtual mediation meetings with the project sponsor and the DR requestors, in accordance with the commission’s direction.
- On July 12, 2020, the project sponsor submitted revised plans resulting in a reduction in the depth of the horizontal rear addition at all four floors totaling approximately 718 square feet and a reduction in the amount of excavation totaling approximately 194 cubic yards. The revised project includes a first-floor ADU measuring approximately 900 square feet, a second parking space in the basement level, but does not include the lowering of any of the existing floor plates as originally proposed.
- On July 16, 2020, the planning commission conducted a duly noticed public DR hearing at a regularly scheduled meeting on Discretionary Review Application 2017- 002545DRP-03, reaffirming their January 9, 2020 upholding of the MND, taking discretionary review requested in Record No. 2017-

² This mitigation measure – M-GE-1, Ongoing Monitoring By and Coordination with the Planning Department and the Department of Building Inspection Prior to and During Construction – was revised in the FMND to better reflect accuracy of the plan check review procedures and to provide additional details regarding this process. These revisions were minor, do not change the intent of this mitigation measure and were based on additional and ongoing coordination with DBI staff.

002545DRP-03 and approving Building Permit Application 2017.0428.5244, as revised in the plans dated July 12, 2020.

- On August 7, 2020, Richard Drury of Lozeau Drury LLP on behalf of Philip Kaufman of 2421 Green Street filed an appeal of the FMND. The appeal letter and FMND are included in Board File No. 200137.

Planning Department Responses

The concerns raised in the appeal letter are addressed in the responses below.

Inaccurate and Misleading Appeal Letter

Response 1: By quoting selective text and omitting critical information from the FMND, the appellant misrepresents the FMND's conclusions and perpetuates falsehoods that the project would result in unmitigable significant impacts and pose serious risks to the public. In fact, the FMND concludes that the proposed project would not result in *any* impacts that cannot be mitigated to a less-than-significant level, including those related to the adjacent building's (2421 Green Street) structural integrity or historic resource status.

CEQA Guidelines do not require the preparation of an EIR if a project's potential significant impacts would be reduced to a less-than-significant level through mitigation measures. The planning department determined that the project would not result in any impacts that could not be mitigated to a less-than-significant level. The planning commission concurred with this determination by denying the appeal of the PMND and adopting the FMND.

CEQA Guidelines section 15369.5 defines a mitigated negative declaration as follows:

“Mitigated negative declaration“ means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

CEQA Guidelines section 15071(e) further states that mitigation measures may be included to avoid potentially significant effects, and CEQA Guidelines section 15074(d) states that when adopting a mitigated negative declaration, the agency shall also adopt a program for reporting on or monitoring a condition of approval to mitigate or avoid significant environmental impacts. The FMND initial study found that the proposed project would result in potentially significant impacts to historic resources and geology and soils, but that both of these impacts would be reduced to a less-than-significant level through implementation of Mitigation Measure M-GE-1, Ongoing Monitoring by and Coordination with the Planning Department and the Department of Building Inspection Prior to and During Construction. This mitigation measure, presented on page 64 of the FMND initial study, obligates the project sponsor to maintain ongoing coordination with the

building and the planning departments, pursuant to a required milestone schedule, prior to and over the course of project construction for the specific purposes of ensuring the security and stability of the project site and adjacent historic resources. Because the project sponsor has agreed to implement this mitigation measure, the FMND accurately and appropriately concluded that the project would not result in an adverse effect on the environment, and no EIR is required. The FMND does not state or suggest that the proposed project would have any risk of death related to any environmental impacts.

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. If the lead agency determines there is no substantial evidence that the project may have a significant effect on the environment, the lead agency shall prepare a negative declaration (which, in this case, is a mitigated negative declaration). CEQA Guidelines section 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." Although the Board found substantial evidence that the project may result in potentially substantial adverse changes not addressed by the original categorical exemption, the FMND ensures that there would be no significant impacts due to the required mitigation, as well as the City's extensive generally applicable regulatory requirements.

The appellant has not provided substantial evidence supporting a fair argument that a significant environmental effect may occur as a result of the project, whether due to structural integrity, permit violations, or any other project features. Instead, he repeatedly quotes excerpts from the analysis that discuss potential impacts that *could* occur without acknowledging that the FMND also explains how regulatory oversight and a mandatory mitigation measure would lessen such impacts to a less-than-significant level. By not acknowledging the City's existing extensive plan check procedures or the requirement for the project sponsor to implement Mitigation Measure M-GE-1, the appellant fails to recognize that these factors, in combination, would reduce any risks to public health to a less-than-significant level. In so doing, the appellant fails to understand a standard approach to environmental impact analysis, which is to first describe potentially significant environmental impacts that would occur without mitigation, and then to propose mitigation measures that would lessen those impacts. A final step is to state the level of significant of the impact with mitigation. The appellant's approach is to cherry pick the impact analysis while ignoring the mitigation and the conclusion that the impact would be reduced to a less-than-significant level with mitigation.

As noted in the FMND initial study and in the FMND cover sheet, with implementation of existing City plan check procedures and protocols and implementation of Mitigation Measure M-GE-1, the project would result in no reasonable possibility of a significant effect on the environment. Hence, no significant and unavoidable impact would occur as a result of the project. The appellant has not provided any substantial evidence supporting a fair argument to the contrary.

Revised Project Description

Response 2: The scope of the proposed project was revised after the FMND was adopted.

Environmental impacts of the revised project would be either the same or less than those discussed in the FMND and no additional CEQA analysis is required.

The appellant misstates the characteristics of the most recent project revisions, which are summarized below in Table 1. Compared to the project that was analyzed in the FMND, the revised project would result in a reduction in the depth of the horizontal rear addition at all four floors. The total gross floor area of the project would now increase by approximately 719 square feet, as compared to an increase of 1,659 square feet for the project analyzed in the FMND. The current project would reduce the amount of excavation by approximately 194 cubic yards compared to the project analyzed in the FMND. The revised project includes a second parking space on the basement level (as analyzed in the FMND) but does not propose to lower any of the existing floor plates as was originally proposed. The proposed increase in the size of the deck is minor and is immaterial to any impact conclusions reached in the FMND. Therefore, while these project revisions were made after the adoption of the FMND (as routinely happens), they would be incremental, would slightly reduce the overall scope of the project, would not result in a greater impact than was already studied in the FMND. Therefore, the proposed revisions do not require additional CEQA analysis.

Table 1: Summary of Existing, Analyzed in FMND, and Currently Proposed Building Characteristics

	Existing	Analyzed in FMND	Currently Proposed
Total Habitable Area (total area exclusive of garage)	4,118 square feet	5,115 square feet	4,431 square feet
Size of Garage	337 square feet	999 square feet	743 square feet
Total Gross Area (total area inclusive of garage)	4,455 square feet	6,114 square feet	5,174 square feet
Number of stories	4	4	4
Approximate Height	45 feet	45 feet	45 feet
Dwelling units	1	2	2
Off-street vehicle parking spaces	1	2	2

To provide additional context, the latest project revisions were made primarily in response to the following actions: planning commission comments made during the PMND appeal hearing and the first discretionary review hearing, and the subsequent mediation sessions between the project sponsor and appellant. The latest project iteration is not “significantly different” than the project that was analyzed in the FMND, as suggested by the appellant. As noted above, the new set of changes are minor, in terms of environmental impacts, and would not result in new or greater environmental impacts than were analyzed in the FMND.

In addition, it is noted that the rear yard on the project site is not a “shared rear-yard open space,” as appellant contends, but is and would continue to be owned and accessed only by, and available for the exclusive use of, the residents and owners of 2417 Green Street.

Board of Supervisor’s Direction at Prior CEQA Appeal

Response 3: The Board of Supervisors, in their motion upholding the original categorical exemption appeal, did not direct the planning department to prepare an EIR, but rather to conduct additional environmental review.

The Board of Supervisors, in its CEQA findings on the categorical exemption appeal, stated, “based on the facts presented to the Board of Supervisors on the hearing on January 9, 2018, the Project is therefore not

Categorically Exempt from CEQA review.” The Board did not direct the planning department to prepare an EIR or in any way conclude that the proposed project would have an unavoidable significant impact. In accordance with the Board findings and pursuant to the environmental review process set forth by CEQA, the planning department then conducted additional environmental review, in the form of an initial study, to analyze the project’s impacts, with special focus on historical resources, geology and soils, and hazardous materials.

As detailed in the FMND initial study, the department concluded that, with incorporation of Mitigation Measure M-GE-1, Ongoing Monitoring By and Coordination with the Planning Department and the Department of Building Inspection Prior to and During Construction, no significant and unavoidable impacts would occur. Therefore, there is no reasonable possibility that the project may have a significant effect on the environment and an EIR is not required.

Permit Violations

Response 4: The FMND initial study includes an accurate description of the proposed project and permit violations. A history of permit violations does not necessitate an environmental impact report when all environmental impacts can be mitigated to a less-than-significant level.

The FMND initial study summarizes the project history, including permit violations, on pages 3–6.

While a history of permit violations is relevant to the planning and building departments’ permit review process, building permit violations in and of themselves do not indicate a significant impact on the environment. The appellant has not demonstrated that a history of permit violations necessitates the preparation of an environmental impact report where all potential environmental impacts can be mitigated to a less-than-significant level. The FMND initial study provides a chronological accounting of the project’s history, including permit violations; evaluates the proposed project’s potential impacts on the environment; and recommends a specific, binding, and enforceable mitigation measure that would reduce any potential project impacts to a less-than-significant level by requiring close oversight, monitoring and approval of the project sponsor’s construction work as it proceeds. Given that the proposed project would not result in any significant unavoidable impacts (including significant unavoidable impacts related to permit violations), the department properly concluded that the appropriate document for the proposed project is an MND.

The *Laurel Heights* case, cited by the appellant, discusses a project sponsor’s prior history of violations in handling radioactive materials, and concluded that such a history might be relevant in determining whether mitigations related to handling of radioactive materials in the EIR were sufficient. There is no record of environmental violations at the project site, either related to hazardous materials or otherwise; thus the *Laurel Heights* case is not relevant to the proposed project.

The FMND initial study determined that, given the history of building code violations associated with this project, combined with the concerns raised by the Board of Supervisors at the January 9, 2018 categorical exemption appeal hearing, future code violations during project construction could compromise the structural integrity of the adjacent Coxhead House foundation, and the proposed project may thereby cause a potentially significant effect on the environment with respect to geology and soils as well as to adjacent historic resources. Based on this assessment, the FMND included Mitigation Measure M-GE-1, Ongoing Monitoring by and Coordination with the Planning Department and the Department of Building Inspection

Prior to and During Construction, the implementation of which would reduce any such potential impacts to a less-than-significant level.

Geotechnical Impacts

Response 5: The project site is not subject to the Slope Protection Act. The FMND did not “reverse the department’s opinion” regarding this matter, as asserted by the appellant, but rather corrected a map interpretation error that was made in the PMND. Furthermore, the FMND correctly concludes that the proposed project would have no impacts on the Coxhead House’s structural integrity.

The FMND concludes that the project’s compliance with all applicable ordinances, in combination with implementation of Mitigation Measure M-GE-1, would ensure that it would be constructed safely and without any effects on the adjacent historic Coxhead House foundation. Although the PMND states that the project would be subject to additional requirements set forth by the Slope Protection Act, this was an error that was corrected in the FMND, as discussed below, and was not a reversal of opinion as suggested by the appellant. The correction of this error, as well as coordination between the planning department and DBI (both regarding permit review for this project and general procedures), and the applicability of the Slope Protection Act, are discussed in more detail below.

Plan Review Process Overview

To provide additional context and explain why a more extensive structural review by DBI cannot be conducted at this time, this section discusses the standard plan review process between the two departments – the planning department and DBI – followed by a discussion of how it was applied to the proposed project.

In general, if the scope of a proposed project requires a preliminary geotechnical report for environmental review purposes,³ the planning department reviews this report to understand geotechnical issues and recommendations, and in the environmental document confirms that the sponsor would incorporate such recommendations into the project. Planning 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 and confirm that the sponsor would incorporate such recommendations into the project. DBI, during its review of site and building permits (after CEQA review is completed), reviews construction documents for conformance with the preliminary and, ultimately, the final geotechnical report.

DBI also ensures protection of adjoining properties through compliance with Sections 3307 and 3307.1 of the San Francisco Building Code. Section 3307 of the San Francisco Building Code, Protection of Adjoining Property, specifies requirements for safeguards at work sites to ensure the protection of adjacent properties. Compliance with the State and local building codes avoids the potential for significant impacts related to structural damage.

Section 3307.1 states, “Adjoining public and private property shall be protected from damage during construction, remodeling and demolition work. Protection must be provided for footings, foundations, party

³ Conditions that trigger the need for a preliminary geotechnical report for environmental review purposes are specified in the department’s categorical exemption checklist and consider various factors, including whether the project site is located on a slope of specific percentages, whether it is located in areas subject to potential substantial adverse effects related to seismic activity, and the proposed amount of horizontal and vertical additions and excavation, among other factors. Therefore, the need for such reports is made on a individual project basis.

walls, chimneys, skylights, and roofs. Provisions shall be made to control water runoff and erosion during construction or demolition activities. The person making or causing an excavation to be made shall provide written notice to the owners of adjoining buildings advising them that the excavation is to be made and that the adjoining buildings should be protected. Said notification shall be delivered not less than 10 days prior to the scheduled starting date of the excavation.” Section 832 of the Building Code provides other requirements for protection of adjacent property, including giving reasonable notice to adjacent owners, using reasonable precautions to protect adjacent structures, and protecting adjoining buildings from any damage excavation.

Furthermore, building code section 106A.3.4.2 states that a site permit must be issued prior to the submittal of the first addendum, which will include structural plans. Thus, the building department cannot review structural plans until after the site permit is issued (and the planning department’s environmental review and plan check review are completed). This code requirement allows permit applicants to avoid expending money unnecessarily on preparing structural plans that could become moot or obsolete if the site permit is disapproved or if the project is modified substantially during the site permitting process.

Excavation and development on steep slopes is common in San Francisco, and such projects are routinely reviewed in accordance with applicable City and State regulations. While the DBI inspection process ensures that construction milestones meet specific building code requirements (for example, with respect to foundation, roof, electrical, and similar requirements), the project’s engineer of record is typically afforded some flexibility in the “means and methods” used to achieve those requirements, which are based on the specific geological conditions of the site, the scope of the project, and their professional judgement.

Additional Coordination with DBI for 2417 Green Street

The typical permit review process is for the building department to review structural plans, and any associated geotechnical reports, after the site permit is issued. Due to concerns raised in the Board of Supervisors CEQA findings of the categorical exemption appeal, however, the planning department coordinated with the building department during the preparation of the PMND to have the building department staff review a 2017 preliminary geotechnical report submitted for the project. The purpose this coordination was to ensure that the project could be generally constructed as proposed, although this review did not constitute and was not intended to be a full structural review of the project by the building department. The building department made recommendations that were reflected in a revised geotechnical report⁴ and the final FMND. The report made specific recommendations for temporary slopes, shoring, underpinning, construction monitoring, permanent slopes, surface drainage, foundations, permanent retaining walls, concrete slab-on-grade floors, and seismic design and concluded that the project can be generally constructed as proposed.

Thus, the FMND initial study (as well as the original initial study that supported the PMND) summarized the geotechnical report’s conclusion that the proposed project can be generally constructed as proposed (e.g., no geological or geotechnical hazards exist on the project site that would otherwise prevent the project from being implemented), and that specific construction details would be worked out between the sponsor’s design and construction team and the building department after the structural plans are submitted to the building department, pursuant to the building code and the building department’s standard practices. Furthermore, given the Board of Supervisors’ concerns during the appeal of the first categorical exemption

⁴ Divis Consulting, Inc., Geotechnical Report and Geologic Hazard Study, 2417 Green Street, San Francisco, California, April 25, 2019.

for the proposed project and the fact that the project sponsor has in the past directed work on the project site beyond what was permitted by the building department, the planning department, through coordination with DBI, developed Mitigation Measure M-GE-1, Ongoing Monitoring by and Coordination with the Planning Department and the Department of Building Inspection Prior to and During Construction. The full text of this mitigation measure can be found on pages 65-66 of the FMND initial study. This mitigation measure, which was revised slightly from the PMND initial study version to improve accuracy and provide additional details, would require close coordination between the project sponsor, the planning department, and the building department while the building department conducts its review of structural plans, and a comprehensive monitoring program throughout construction to ensure that the project sponsor would comply with all building and planning code requirements.

Consistent with the standard building department review and approval process described above, the project sponsor's engineer of record would have flexibility to determine the most safe and appropriate "means and methods" of constructing the project to meet all requirements. However, pursuant to Mitigation Measure M-GE-1, building department staff would establish specific milestones at which they would review the work of and coordinate with the sponsor's design and construction team (as well as with the planning department) to ensure structural stability and overall project safety.

The site plans show that the proposed project would not touch the Coxhead House foundation. During the building department's review of the final geotechnical report and structural plans, the building department may opt to conduct a full independent and physical analysis of the Coxhead House's foundation; however, the final determination regarding this matter would be made by the building department during its review of the structural plans.

In summary, the building department's review of structural plans, in combination with implementation of Mitigation Measure M-GE-1 (which will be required as one of the conditions of project approval), would ensure that all building code requirements are met, and that any potential technical issues, including but not limited to requirements for geotechnical investigations, topographical surveys, and underpinning, shoring and excavation requirements, are fully addressed before any potential impact on the Coxhead House could occur.

The appellant has not demonstrated how the project site's topography and project excavation would result in significant effects on the environment. Therefore, the MND properly relied on the qualified geotechnical consultant's report, compliance with City and State regulations, and Mitigation Measure M-GE-1 to conclude that no further analysis is necessary.

Slope Protection Act

With respect to the Slope Protection Act, the project is subject to building code requirements that were in place at the time that the building expansion permit was filed. As stated in San Francisco Building Code section 101A.4.1:

Only those standards approved by the California Building Standards Commission and code amendments, additions or deletions adopted by the City and County of San Francisco that are effective at the time an application for building permit is deemed acceptable for building plan review

by the Department of Building Inspection shall apply to the plans and specifications for, and to the construction performed under, that permit.

The building expansion project that is the subject of this environmental review is described in Building Permit Application No. 201704285244 and is subject to the building code as it existed on April 28, 2017 – the date the complete permit application was accepted by the building department.⁵ As noted above, the planning department consulted with the building department throughout the preparation of both the PMND and FMND initial studies and building department staff determined during the preparation of the FMND that, contrary to what is stated in the PMND, the project is not subject to the Slope Protection Act. The error stemmed from building department staff misinterpreting “Areas of potential landslide hazard” as shown on the 1974 Blume map (within which the project site is located) as being subject to the Slope Protection Act. After the building department staff conducted further review, it determined that only areas designated as being within “Outlines of slide area” are subject to the Slope Protection Act. As demonstrated in footnotes 83 and 84 on page 60 in the amended FMND initial study, the project site is not located in an area with such designation. Accordingly, the FMND initial study was amended on page 60 to accurately describe the requirements of the building code to which the project is subject.

Nevertheless, as discussed on page 60 of the FMND initial study, the building department, during its review of the project’s structural plans, may request assistance of a structural design reviewer to provide additional and specialized expertise to supplement its plan review. The structural design reviewer would meet with the project sponsor’s engineer of record and with building department staff as the need arises throughout the design process. The FMND that was adopted by the planning commission accurately identifies the site as not being subject to the Slope Projection Act by correcting an error made in the PMND (not by reversing any impact conclusions or opinions, as suggested by the appellant).

In addition, although the project is not subject to the Slope Protection Act, as noted above, Mitigation Measure M-GE-1, would subject the project sponsor to ongoing monitoring and coordination with DBI and the planning department, pursuant to a required milestone schedule, prior to and over the course of project construction, to ensure the security and stability of the project site and adjacent historic resources.

Historical Resources Impacts

Response 6: The FMND initial study accurately and adequately evaluated impacts on the adjacent historic resource, 2421 Green Street (Coxhead House), and appropriately found that the proposed project would not cause significant impacts on this resource.

CEQA Standards Concerning Historical Resources Review

As discussed in the FMND initial study, potential impacts to historical resources that meet the definitions in section 21084.1 of CEQA section 15064.5 of CEQA Guidelines are addressed in section 15064.5(b) of the CEQA Guidelines, which states, “A project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.” CEQA defines a “substantial adverse change” to a historical resource as the physical demolition, destruction,

⁵ Despite the appellant’s comment that Building Permit Application No. 201704285244 is no longer valid, this is the building permit that corresponds to the proposed project that is the subject of this CEQA appeal as it is the permit that was subject to the discretionary review hearing before the planning commission that constituted approval action establishing the appeal period of the FMND (as noted in Discretionary Review Action DRA-708).

relocation, or alteration of the historical resource or its immediate surroundings such that the significance of the historical resource would be materially impaired.⁶ CEQA goes on to define “materially impaired” as work that “materially alters, in an adverse manner, those physical characteristics that convey the historical resource’s historical significance and justify its inclusion in or eligibility for inclusion in the California Register of Historical Resources or in a local register of historical resources.”⁷

Historic Status of the Subject Property at 2417 Green Street

The planning department’s CEQA review of unlisted, age-eligible properties begins with a determination as to whether (1) the property is individually eligible for listing on a local, state or national register, and (2) whether the property is located within an eligible historic district. Staff duly conducted this analysis for 2417 Green Street (the subject property) and found that the subject property is not historically significant in its own right, in concurrence with findings of preservation consultant Tim Kelley, nor is it located within an area eligible for listing as a district on the state or national registers.^{8,9} Therefore, the subject property is not a historic resource for the purposes of CEQA review by the planning department.

Historic Resource Impacts on 2421 Green Street (Coxhead House)

Under Impact CR-1, the FMND initial study acknowledges that the Coxhead House is a historic resource.¹⁰ The Department agrees with the appellant on this matter and, hence, the historic resource status of 2421 Green Street is not in dispute.

The appellant argues that the proposed project would materially impair the significance of 2421 Green Street, an assessment with which the department disagrees based on extensive analysis discussed in the FMND initial study, starting on page 15. First, there is no active project at the Coxhead House that is the subject of this environmental review, and thus the FMND initial study does not need to include an extensive discussion or description of its historic significance nor identify its character-defining features. However, for this project, planning staff prepared a historic resource evaluation response that confirms and further establishes the Coxhead House’s significance associated with the life and work of Ernest Coxhead and as an outstanding example of the First Bay Tradition architectural style.¹¹ In preparing the FMND initial study, staff also reviewed the National Register of Historic Places nomination form prepared by Carol L. Karp that was submitted by the appellant to better understand the building’s significance and any potential physical features associated with this significance.

As discussed on page 16 of the FMND initial study, the building’s architectural significance is generally illustrated through its three-story, wood-frame structure, rectangular plan, red cedar shingle cladding, steeply pitched roofs, articulated dormers, and ribbons of windows facing the San Francisco Bay and neighborhood rear yards. Staff determined that, with the implementation of existing City plan check procedures and implementation of Mitigation Measure M-GE-1 (see Responses 1 and 5, above), the project’s

⁶ CEQA Guidelines, section 15064.5(b)(1).

⁷ CEQA Guidelines, section 15064.5(b)(2).

⁸ Tim Kelley Consulting, LLC, Historical Resource Evaluation Part 1, 2417 Green Street, San Francisco, California, April 2017.

⁹ San Francisco Planning Department, Preservation Team Review Form, 2417 Green Street, May 10, 2017; and San Francisco Planning Department, Historic Resource Evaluation Response, 2417 Green Street, May 31, 2018.

¹⁰ The 2421 Green Street building is considered a Category A.1 structure (known historic resource) based upon its inclusion in Here Today: San Francisco’s Architectural Heritage, by Roger R. Olmsted and Tom H. Watkins (page 270). It is also included in the planning department’s 1976 Survey with a rating of “4” and is eligible for listing in the California Register of Historical Resources.

¹¹ Ibid.

excavation and foundation work would be required to comply with all applicable Building Code requirements, which are managed by DBI. Staff appropriately relied on the preliminary engineering reports addressing the stability of the surrounding properties, in combination with plan check procedures and Mitigation Measure M-GE-1, to conclude that the project would not have the potential to materially impair the adjacent historic resource at 2421 Green Street as it would not compromise the structural integrity of its historic foundation.

Furthermore, the proposed project would not significantly alter the integrity of the adjacent historic resource at 2421 Green Street. Integrity of a historic resource is defined in the Secretary of the Interior's Standards for the Treatment of Historic Properties through seven aspects: location, design, setting, materials, workmanship, feeling, and association. As discussed in the FMND initial study, staff analyzed the proposed project's potential impact(s) to the setting of the Coxhead House. The national register nomination form states that the original design intent of the residence was to take advantage of the view(s) from the eastern, western, and northern elevations and to include a rear yard that creates a "park-like" setting. However, the overall setting surrounding the property has changed since the initial construction of the Coxhead House: large residences have been constructed on adjacent lots with a pattern of open space that is based on historical development patterns and on rear yard requirements, thereby modifying the surrounding setting of the historic resource. Staff determined that, while the proposed project may alter the amount of direct sunlight on the rear garden of the Coxhead House, it would not diminish or alter the "park-like" setting at the rear such that there would be an indirect impact to the historic resource. The FMND initial study appropriately evaluated the proposed project at 2417 Green Street and concluded that it would not change the Coxhead House's historic significance.

The FMND initial study on page 16 cites CEQA Guidelines 15064.5(b)(2), which states that the significance of a historic resource is "materially impaired" when a project "materially alters, in an adverse manner, those physical characteristics that convey the historical resource's historical significance..." The initial study appropriately identifies the Coxhead House as a private residence and notes that that, regardless of its historic status, the alteration of private views from this property does not constitute a significant impact under CEQA.

The FMND initial study, under "Potential Indirect Impacts to Adjacent Historic Resources," evaluates the project's impacts on its immediate surroundings and concludes that, while the proposed project's rear expansion would be visible from adjacent historic resources (including the project site), it would not physically or materially impact either resource such that they would no longer be able to convey their architectural significance. It is a fact and not an opinion that changes in views from a private residence and views of the portion of the historic resource that are not visible from the publicly accessible locations are not subject to CEQA because they are not considered to be impacts on the physical environment.

As discussed in the FMND initial study on pages 19–21, the proposed project would not demolish or physically alter the Coxhead House, and would not otherwise impact the Coxhead House such that it would no longer be able to convey its significance as understood from the public right-of-way. Additionally, for the same reason, the proposed project would not impact the eligibility of the Coxhead House for inclusion in any local, state, or national register.

Based on the above, the FMND initial study appropriately analyzed direct and indirect impacts on the adjacent historic resource. The appellant has not provided substantial evidence supporting a fair argument that a significant environmental effect related to indirect impacts on the adjacent historic resource may occur as a result of the project.

In conclusion, the project would not have a significant effect on any historic resources, including the adjacent historic resource at 2421 Green Street, and no further analysis is required. The appellant has not provided substantial evidence supporting a fair argument that the proposed project would have a significant impact on historical resources.

Hazardous Materials Impacts

Response 7: The project complies with DPH regulations concerning hazardous materials and would present no unusual circumstances related to the release of hazardous materials. Thus, the project would not present potentially significant impacts concerning hazardous materials.

As discussed under Impact HZ-2 on FMND initial study pages 70–73, the project complies with San Francisco Health Code Chapter 22A (the Maher ordinance). The project site is on the Maher map because it is within 100 feet of a former underground storage tank. The project was reviewed by the health department and determined eligible for a waiver from Maher ordinance requirements. The health department waived Maher ordinance requirements because the property has been continuously zoned as residential since 1921, has been in residential use since that time, and no evidence has been presented to create a reasonable belief that the soil and/or groundwater may contain hazardous substances.¹² Nevertheless, in response to the Board of Supervisors' CEQA findings on the categorical exemption appeal and because the health department employee used a potentially confusing stamp on the back of a building permit when they issued the Maher waiver (as discussed on pages 72–73 of the FMND initial study), the health department, in an abundance of caution, requested soil and/or groundwater sampling and testing at the project site.¹³

As discussed on page 74 of the FMND initial study, the health department issued a letter on March 13, 2019, confirming that the soil testing locations are appropriate and that none of the constituents in the soil exceed hazardous waste levels or water quality environmental screening levels, except arsenic, which was found to be within background levels commonly present in Bay Area soil.¹⁴ The appellant has provided no substantial evidence in support of a fair argument that the project is underlain by contaminated soil or groundwater. Thus, the FMND initial study appropriately concluded that impacts related to subsurface hazardous materials would be less than significant.

The appellant asserts that the planning department routinely exempts projects underlain by hazardous materials from proper CEQA review. Purported evidence cited by the appellant includes a misleading and inaccurate article published in the San Francisco Chronicle. First, the Chronicle article focused on project sites located on a state list of contaminated sites known as the Cortese List. The project site is not on such a site and, as noted above, is subject to the Maher Program, a local program overseen by DPH that utilizes more health-

¹² San Francisco Department of Public Health, Waiver from San Francisco Health Code Article 22A (Maher Ordinance), 2417 Green Street, March 28, 2017.

¹³ San Francisco Department of Public Health, Environmental Health, SFHC Article 22A, 2417 Green Street Residence, EHB-SAM Case Number: 1534, February 11, 2018.

¹⁴ Stephanie Cushing, Department of Public Health memo to Jeanie Poling, Planning Department regarding 2417 Green Street, March 13, 2019.

protective remediation standards than are used for sites on the Cortese List. The project sponsor has fully complied with all of the applicable requirements of the Maher Program.

Furthermore, all of the projects cited in the Chronicle article were appropriately referred to DPH for investigation and, when needed, remediation, so at no time did any of those projects posed a risk to public health or future residents on those sites.¹⁵

Design Guidelines

Response 8: Compliance with the Cow Hollow Neighborhood Design Guidelines is an aesthetic issue not subject to CEQA for this project.

Per CEQA Section 21099(d)(1), “Aesthetic and parking impacts of a residential, mixed-use residential, or employment center project on an infill site within a transit priority area shall not be considered significant impacts on the environment.” The proposed project meets the criteria as a residential project in an urban area with nearby transit and, therefore, aesthetics shall not to be considered as a significant impact for the proposed project. Consistency with the Cow Hollow Design Guidelines is addressed during the planning department’s review process and was considered during the discretionary review process.

Conclusion

For all of the reasons provided in this appeal response, department staff respectfully recommends that the Board uphold the commission’s adoption of the FMND and deny the appeal. The appellant has not provided substantial evidence supporting a fair argument that the proposed project would have significant impacts on the environment with implementation of the feasible mitigation measure identified in the FMND; an EIR is not required.

¹⁵ The Department acknowledges that its practice for analyzing closed sites on the Cortese list has changed in light of information that we received from the state within the past several months. Previously we understood that Cortese sites with a “closed” status are eligible for categorical exemptions. This was based on information included on the California Environmental Protection Agency (CalEPA) website and correspondence with State Water Resources Control Board. In July 2020, the Department has sought and received clear guidance from the state water board that categorical exemptions should not be prepared for closed Cortese sites, although the state noted in their correspondence that the issuance of a common sense exemption for those projects may be appropriate.