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**Subject:** Appeal of CEQA Exemption Determination - Proposed 1801 Mission Street Project - Appeal Hearing June 8, 2021  
**Date:** Friday, May 28, 2021 12:55:31 PM  
**Attachments:** [image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[2021-05-28 real party"s opposition to appeal 1801 Mission\(14137625.1\).pdf](#)

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Ms. Wong, please find attached Real Party in Interest's brief in opposition to the appeal of the CEQA categorical exemption for 1801 Mission Street. I understand that you will forward copies to all other interested parties. Thank you.

**Steven L. Vettel**

He/Him/His

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May 28, 2021

Hon. Shamann Walton, President  
Board of Supervisors  
City and County of San Francisco  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
E-Mail: *Board.of.Supervisors@sfgov.org*

Re: Board File 210486  
1801 Mission Street: Appeal of Class 1 CEQA exemption  
Hearing Date: June 8, 2021

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Dear President Walton and Supervisors:

I am writing on behalf of Quest Blue LLC, the owner of 1801 Mission Street, a recently completed mixed use residential building at the corner of Mission and 14<sup>th</sup> Street, and Ivor Bradley of the Creamery coffee shop, who has signed a lease for the 1,765 square foot vacant ground floor retail space in the building. We oppose the appeal filed by Ben Terrall of the Cultural Action Network of the existing facilities Class 1 CEQA exemption issued by the Planning Department prior to the Planning Commission's unanimous approval of the Creamery's tenant improvements building permit.

Factual background. 1801 Mission Street is a 6-story building with 17 dwelling units and one ground floor retail space constructed pursuant to a building permit issued in 2016. The building and its residential and retail uses are principally permitted in the Urban Mixed Use (UMU) zoning district and 68-X height and bulk district, and no Planning Commission hearing or authorization was required for issuance of the building permit. No party sought discretionary review of the building permit or timely appealed its issuance to the Board of Appeals.

The Planning Department on March 19, 2015, issued the project a CEQA Community Plan Exemption (CPE), tiering off of the Eastern Neighborhoods EIR, finding the building was consistent with the development densities approved by the Eastern neighborhoods rezoning, was not inconsistent with the Mission Area Plan, complied with the UMU zoning, and no peculiar circumstances existed that would require further environmental review. A copy of the 2015 CPE is attached to Appellant's supplemental brief as Exhibit A-3. No party appealed the 2015 CPE to the Board of Supervisors within the 30-day appeal permit after issuance of the 2016 building permit.

Following completion of the 1801 Mission Street building in September 2020, the owner marketed the ground floor retail space and has signed a lease with Ivor Bradley to relocate the Creamery coffee shop into the space. The building will not support a destination restaurant use (it has no commercial kitchen or venting), but rather the Creamery will operate as a coffee shop with limited moderately priced food menu items, such as pastries and sandwiches. The coffee shop is defined in the Planning Code as a Retail Sales and Services "limited restaurant,"<sup>1</sup> a principally permitted use in the UMU zoning district and fully consistent with the retail use of the ground floor analyzed in the 2015 CPE. The premises has not been occupied since the building was completed, such that no existing business is being displaced by the Creamery lease. On November 18, 2020 the Planning Department issued a routine Class 1 CEQA "existing facilities" exemption, stating that no physical impacts on the environment could occur by the retail sales and services use of a small existing retail space with no expansion of the premises.

The Creamery operated for over 12 years at the corner of Townsend and 4<sup>th</sup> Streets but was itself displaced in 2020 because the building at that site will soon be demolished to make way for a large residential project. Mr. Bradley, who is himself an immigrant, intends to rehire as many of his former employees from the displaced business as possible for his relocated business, many of whom are residents of the Mission. Mr. Bradley has also pledged to incorporate neighborhood appropriate elements into the business, including multilingual menus, interior art appropriate for the location in the Mission District and American Indian Cultural District, and to seek any new hires from the neighborhood, as directed by the Planning Commission.

The Appellant earlier filed a discretionary review request of Mr. Bradley's tenant improvements building permit. At the conclusion of the March 25 hearing, the Planning Commission unanimously approved the permit, subject to the following conditions:

- The project sponsor shall provide a multilingual menu.
- The project sponsor shall incorporate appropriate cultural art within the interior of the commercial space.
- The commission encourages the project sponsor to conduct additional community outreach with surrounding neighbors, nearby businesses, and the American Indian Cultural District.
- The commission encourages the project sponsor to hire new employees locally and acknowledges that previous employees will have the first right of refusal regarding

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<sup>1</sup> ***Restaurant, Limited.*** A Retail Sales and Service Use that serves ready-to-eat foods and/or drinks to customers for consumption on or off the premises, that may or may not have seating. . . It includes, but is not limited to, foods provided by sandwich shops, *coffee houses*, pizzerias, ice cream shops, bakeries, delicatessens, and confectioneries meeting the above characteristics, but is distinct from a Specialty Grocery, Restaurant, and Bar. *S.F. Planning Code Section 102.*

employment. The commission encourages outreach with the City and County of San Francisco's Office of Economic and Workforce Development.

Mr. Bradley has publicly committed to implement the Planning Commission's conditions of approval and plans to welcome all neighbors and community members to the Creamery.

Mr. Terrall's appeal of the Class 1 exemption should be denied for the following reason, in addition to those set forth in the Planning Department's response.

1. Appellant alleges no physical impacts on the environment associated with the operation of a small coffee shop in an existing retail space, nor provides any substantial evidence of any physical impacts.

Review of projects under the California Environmental Quality Act (CEQA) is limited to the analysis of potential physical impacts on the environment. "A significant effect on the environment is defined as a substantial adverse change in the physical conditions which exist in the area affected by the proposed project." CEQA Guidelines Section 15002(f). "Economic and social changes resulting from a project shall not be treated as significant effects on the environment." *Id.* Section 15064(e).

In his appeal, Mr. Terrall presents no substantial evidence that the use of the existing retail space at 1801 Mission Street for a Retail Sales and Services limited restaurant use, with no expansion of the premises, will cause any adverse change in the physical environmental conditions that exist in the neighborhood. For that reason alone, his appeal should be denied.

In the supplemental brief Mr. Terrall filed earlier today, he now alleges, with no evidentiary support, that operation of this small limited restaurant will displace numerous other businesses and cause the entire North Mission neighborhood to fall into urban decay, thus leading to a physical environmental impact. The sole authority he cites for this argument is *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184. That case concerned two new shopping centers totaling 1.1 million square feet of retail space, including two Wal-Mart Superstores. Based on substantial evidence in the record, the court in that case ordered the city to evaluate whether those centers could cause urban decay in downtown Bakersfield, leading to physical environmental impacts. The scale of this matter (a single 1,765 square foot storefront) compared to the 1.1 million square feet in *Bakersfield Citizens*, plus the lack of any substantial evidence that the Creamery will lead to urban decay in the North Mission, makes Appellant's reliance on that case unpersuasive.

2. Appellant can point to no General Plan, Mission Area Plan or American Indian Cultural District policy with which this small business conflicts.

The appeal is limited to allegations that Mr. Bradley's small coffee shop will have a gentrifying effect in the Mission and is therefore inconsistent with the General Plan, the Mission Area Plan, and the American Indian Cultural District. Even if these allegations were true, they are not evidence of a potential adverse physical change in the environment.

Mr. Terrall claims that establishment of a small limited restaurant at 1801 Mission Street is in conflict with Mission Area Plan Policy 7.3.3, which states: "Protect and support Latino and other culturally significant local business, structures, property and institutions in the Mission." That policy does not state that protection of existing Latino businesses means excluding all other small businesses in the neighborhood. Appellant merely speculates that other nearby establishments serving coffee, most of which are not Latinx owned or operated businesses, will be adversely affected.

The American Indian Cultural District boundaries were established in April 2020 when Board directed MOHCD to prepare a Cultural, History, Housing, and Economic Sustainability Strategy Report ("CHHESS Report") for consideration of further actions. The district does not establish any land use controls beyond the underlying zoning and General Plan policies and contains no policies that could be deemed in conflict with a limited restaurant at 1801 Mission Street.

3. The Creamery's occupancy of an existing storefront qualifies it for a Class 1 CEQA existing facilities exemption.

CEQA recognizes several classes of projects that have no possibility of creating adverse physical impacts on the environment and are therefore exempt from CEQA review. The most common is the Class 1 existing facilities exemption associated with the occupancy of space in existing buildings by new users, provided the space is not substantially expanded. As set forth in Section 15301 of the CEQA Guidelines:

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. . . . The key consideration is whether the project involves negligible or no expansion of use. Examples include but are not limited to: (a) Interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances.

The leasing of the existing ground floor retail space at 1801 Mission Street to Mr. Bradley to operate a retail coffee shop fits precisely within the Class 1 exemption. 1801 Mission Street is an "existing facility" being leased to a tenant who will perform interior alterations including plumbing and electrical work and operate a small retail business. There is no possibility that this minor interior work in an existing building could cause significant adverse impacts on the physical environment. Nor has Mr. Terrall identified any unusual circumstances causing environmental impacts that would disqualify occupancy of the retail space from the Class 1 exemption.

Rather than discuss the applicable Class 1 exemption, Mr. Terrall's appeal argues that the approved use does not qualify for a Section 15183 community plan exemption because he alleges it is not consistent with the Mission Area Plan. However, that argument is five years too late. The 1801 Mission building, including the ground floor retail space, was granted such a Section

15183 CPE in 2014, and the time to appeal that CPE ran 30 days after the building permit was issued in 2016. The Board has no jurisdiction to overturn the CPE now.

Mr. Terrall also argues that the City has burden of proof to provide evidence that no physical environmental impacts would occur. That may be the standard of review when a local agency determines there are potential significant impacts on the environment and decides whether an EIR or a negative declaration is appropriate. But it is not the standard of review for categorical exemptions.

Rather, once an agency determines that a project falls within a categorical exemption, the burden shifts to the objecting party to produce evidence of a significant physical impact on the environment such that one of the exceptions to the categorical exemptions applies. *Berkeley Hillside Preservation v City of Berkeley* (2015) 60 Cal.4th 1086, 1105. Mr. Terrall has produced no evidence of potential physical environmental impacts and thus has failed to meet his burden of proof.

4. An action by the Board overturning this Class 1 CEQA exemption for an ordinary retail business opening in an existing retail space would set an unintended precedent, providing another appeal opportunity available to even one individual opposing any new retail sales and services use.

The San Francisco electorate passed Proposition H in November 2020, establishing the public policy in favor of reducing delays and limiting appeals for new small retail businesses. Such small businesses locating into existing buildings are routinely issued Class 1 CEQA exemptions, often with a mere Planning Department stamp on the building permit application.

We fear that, should the Board overturn this Class 1 exemption with no evidence of physical environmental impacts and no unusual circumstances disqualifying the Creamery from the Class 1 exemption, a precedent would be set that others could cite to file equally meritless appeals. Any opponent of any small retail business, including competitors, can already file for discretionary review of the business's building permit, creating delay and the need for a Planning Commission hearing prior to issuance of the building permit. An opponent can also appeal issuance of the building permit to the Board of Appeals, causing further delays and another hearing. An appeal of a routine Class 1 exemption to the Board of Supervisors would add a third appeal right for principally permitted small retail businesses, causing another delay awaiting Board action on the appeal. Such an outcome would directly conflict with the voters' message when it passed Proposition H and is not a precedent we believe this Board wishes to set.

Hon. Shamann Walton, President  
May 28, 2021  
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For all of the above reasons, in addition to those set forth by the Planning Department response, we request that the Board deny this appeal and uphold the Class 1 exemption.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'S. Vettel', is written over a faint, larger version of the same signature.

Steven L. Vettel

cc: Ben Terrall, appellant  
San Francisco Planning Department  
Ivor Bradley  
Stephen Antonaros, architect

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