

From: [Callagy, Alana \(CPC\)](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [JENSEN, KRISTEN \(CAT\)](#); [Kern, Chris \(CPC\)](#); [Gibson, Lisa \(CPC\)](#); [Jain, Devyani \(CPC\)](#); [Vanderslice, Allison \(CPC\)](#)
Subject: 530 Sansom Street CEQA FMND Appeal - Planning Department Response
Date: Monday, September 27, 2021 10:14:40 AM
Attachments: [Appeal - Response Memo - 530 Sansome Street FMND_2021 Sept 27.pdf](#)

Good morning,

Please see the attached planning department response to the appeal of the CEQA Final Mitigated Negative Declaration for the 530 Sansome Street Project - Appeal Hearing October 5, 2021.

Kind regards,
Alana

Alana Callagy, Senior Environmental Planner

Environmental Planning

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FINAL MITIGATED NEGATIVE DECLARATION APPEAL

530 SANSOME STREET

Date: September 27, 2021
To: Angela Calvillo, Clerk of the Board of Supervisors
From: Lisa Gibson, Environmental Review Officer – (628) 652-7571
Alana Callagy, alana.callagy@sfgov.org, (828) 652-7540

RE: **Planning Case No. 2019-017481ENV**
Appeal of the Final Mitigated Negative Declaration for 530 Sansome Street

Hearing Date: October 5, 2021
Attachment(s): Exhibit A – PMND Appeal Response, June 24, 2021
Exhibit B – Motion No. 20953, July 29, 2021

Project Sponsor: James Abrams, J. Abrams Law on behalf of EQX Jackson SQ Holdco LLC (415) 999-4402
Josh Keene, San Francisco Bureau of Real Estate (41) 554-9859
Assistant Deputy Chief Dawn DeWitt, San Francisco Fire Department (415) 674-5066

Appellant: Ryan Patterson on behalf of 447 Partners, LLC

Introduction

This memorandum and the attached documents are provided in 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 530 Sansome Street (the proposed project). The planning commission (the commission) heard an appeal of the department's decision to issue the FMND and upheld the department's decision to issue the FMND on July 29, 2021. On August 30, 2021 Ryan Patterson filed an appeal of the planning commission's action on the FMND to the board on behalf of 447 Partners, LLC.

The FMND was provided to the clerk of the board on September 15, 2021.

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 upholding the department's adoption of the FMND and return the project to the planning department (department) for additional review.

Site Description and Existing Use

The 17,733-square-foot project site is located at the southeast corner of Sansome and Washington streets. The project site, located within the Financial District neighborhood, is developed with three buildings: a vacant three-story office building at 425 Washington Street, a vacant two-story commercial building at 439–445 Washington Street, and the two-story-with-mezzanine San Francisco Fire Station 13 building at 530 Sansome Street. The project site is in a C3O (Downtown Office) use district and a 200-S height and bulk district.

Project Description

The project would demolish the existing buildings and construct a 218-foot-tall (236 feet total, including rooftop mechanical equipment) building and a four-story replacement fire station, with three below-grade levels under both buildings.

The 530 Sansome Street project identified two different potential programs of use (one primarily hotel and the other primarily residential), either of which would be within the future tower and would have the same building envelope.

Under the proposed project with hotel program, a 19-story tower would provide approximately 6,470 square feet of retail/restaurant space on the first and second floors; approximately 40,490 square feet of office space on the first, second, and sixth through eighth floors; approximately 35,230 square feet of fitness center space on the first through fifth floors; and approximately 146,065 square feet of hotel space that would accommodate 200 guest rooms. At the fourth floor, the 19-story building would cantilever over the third floor of the replacement fire station. The 19-story building would include outdoor terrace space on the east and west ends of the 19th floor. On the eastern portion of the project site the four story, approximately 44-foot-tall (53 feet total, including rooftop mechanical equipment) replacement fire station would include approximately 20,240 square feet of space. The three below-grade levels would provide 48 vehicle parking spaces, one loading space, two vehicle service spaces, 22 class 1 bicycle parking spaces, lockers and showers, and utility rooms for the fire station, hotel, and retail/restaurant uses. The proposed project would convert the western portion of Merchant Street in front of the project site into a shared street/living alley with approximately 4,810 square feet of privately owned public open space (POPOS). An additional 26 class 2 bicycle parking spaces would be located on streets adjacent to the project site, subject to San Francisco Municipal Transportation Agency (SFMTA) and San Francisco Public Works approval.

The sponsors also propose a residential variant to the proposed project, which would construct 256 residential units instead of the hotel, office, fitness center, and retail/restaurant uses in the approximately 218-foot-tall building. Under the residential variant, 6,384 square feet of common open space would be located on the 21st floor of the building in the form of a solarium. The three additional stories for the residential variant is due to the reduced floor-to-floor heights; the total height and massing of the tower would be the same as under the proposed project. At the fourth floor, the 21-story building would cantilever over the third floor of the replacement fire station. The four-story replacement fire station building would remain the same for the residential variant. The three below-grade levels for the residential variant would provide 82 vehicle parking spaces, one loading space, two vehicle service

spaces, 143 class 1 bicycle parking spaces, and utility rooms for the fire station. An additional 19 class 2 bicycle parking spaces would be located on streets adjacent to the project site, subject to SFMTA and San Francisco Public Works approval. Consistent with the proposed project, the residential variant would convert Merchant Street into a shared street/living alley.

Background:

On December 20, 2019, EQX Jackson SQ Holdco LLC, the San Francisco Bureau of Real Estate, and the San Francisco Fire Department (hereinafter project sponsor) filed an application for the proposed project with the planning department (hereinafter department) to demolish three existing buildings at 425 Washington, 439–445 Washington, and 530 Sansome streets and construct a four-story replacement fire station for San Francisco Fire Department Station 13 and an approximately 218-foot tall tower, with three below-grade levels under both buildings. In September 2020, the sponsors proposed the study of a residential variant of the proposed project, which would replace the fire station consistent with the project but would build approximately 256 residential units in a 21-story building (at the same height) instead of hotel, office, fitness center, and retail/restaurant uses.

On April 28, 2021, the department published a preliminary mitigated negative declaration (PMND) with an initial study, analyzing the potential environmental impacts of the project. The PMND addressed both the hotel use and the residential variant. On May 18, 2021, Ryan Patterson on behalf of 447 Partners, LLC (the appellant), filed a letter appealing the PMND. The appeal concerns were addressed in the department's June 24, 2021 response to appeal, attached as **Exhibit A**. On July 29, 2021, the commission held a public hearing on the merits of the appeal and adopted Motion No. 20953 affirming the department's decision to adopt a mitigated negative declaration, attached as **Exhibit B**.

The FMND was published on July 29, 2021. Ryan Patterson on behalf of 447 Partners, LLC filed an appeal of the FMND on August 30, 2021. The appeal letter and attached FMND are included in Board File No. 210923. The approval action for this project occurred on July 29, 2021.

Planning Department Responses

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

Response 1: The Department complied with San Francisco Administrative Code and CEQA Guidelines to provide legally adequate notice.

The appellant contends that the department did not provide legally adequate notice to the property owners of 447 Battery Street. The appellant claims that it received the mailed Notice of Availability and Intent to Adopt a Mitigated Negative Declaration on May 17, 2021, and therefore was not provided a 20-day review period.

Contrary to appellant's claims, the department provided public notice as required under all applicable law. Both San Francisco Administrative Code section 31.11 and CEQA Guidelines section 15105(b) require that the department provide a public review period of no less than 20 days. The department provided this review period and met and exceeded the notice requirements by providing multiple types of notice for

the 530 Sansome Street Preliminary Mitigated Negative Declaration (PMND) from April 28, to May 18, 2021.

CEQA Guidelines section 15072(b) requires that a notice of intent to adopt a mitigated negative declaration be given to any organization or individual who has requested such notice and shall also be given by at least one of the following: publication in a newspaper of general circulation; posting on and off the project site; or direct mailing to owners and occupants of property of contiguous properties. San Francisco Administrative Code section 31.11 further requires that the notice be provided to the board(s), commission(s), or department(s) that will carry out or approve the project; posted in the planning department office; and mailed to owners, and to the extent practicable, residential occupants within 300 feet of the project boundaries.

The department complied with the above requirements by mailing notices, posting notices on all three street frontages of the project site, and publishing notice in a newspaper of general circulation. The department mailed the notice on Wednesday, April 28, 2021, to the appellant and owners and occupants within 300 feet of the project boundary, as evidenced by Exhibit C (the Affidavit of Mailing of the notice). As shown in Exhibit C, the property listed at 447 Battery Street is an addressee of the notice.

Regarding the posted notices on the project site, the Department ensured that multiple weather-protected 11-by-17-inch notices were posted in prominent locations along the project site's buildings for the duration of the 20-day noticing period. The project site is adjacent to the appellant's property. Three such notices were posted on each of the project site's Washington Street and Merchant Street frontages, and two were posted on the Sansome Street frontage. As required by the Department guidelines, the posted notices were inspected during the 20-day review period to ensure that they remained in place and remained legible. Photographs of the posted notices taken on April 28, 2021, and May 17, 2021, are on file with the department.

A newspaper notice was also published in the San Francisco Examiner on April 28, 2021, and the notice was also posted at the San Francisco Office of the County Clerk for the 20-day review period. The Declaration of Posting of notices at and adjacent to the site, newspaper notice, and county clerk-stamped notice are included in Exhibit C to the PMND appeal response (which is contained in Exhibit A of this FMND Appeal Response). Accordingly, even if the appellant did not physically receive or otherwise retrieve its mail until May 17, 2021, the appellant would likely have been apprised of the Notice of Availability when visiting its property at 447 Battery Street.

As such, there is no merit to appellant's contention that the department did not provide legally adequate notice of the availability of the PMND.

Response 2: The FMND adequately and accurately analyzes the 530 Sansome Street project and complies with CEQA, the CEQA Guidelines, and San Francisco Administrative Code chapter 31.

The appellant mistakenly contends that the proposed project and residential variant are two different projects with distinctly different environmental impacts. The appellant argues that there are two project descriptions, that this precludes informed decision making regarding the project, and that the FMND project description is not stable or finite as required by CEQA. The appellant further states that the FMND

is inconsistent with Administrative Code 31.20 and that the department must reissue the FMND with a revised project description or issue separate PMNDs for the proposed project and the residential variant.

The appellant mischaracterizes CEQA's requirements. CEQA requires that a project description be stable and finite and should not be vague or inconsistent throughout the CEQA document. But a CEQA document may describe and analyze one project with multiple options or variants for allocation of use, as the FMND does here.

As described in more detail in Section A of the FMND, the project description consists of the following components:

1. Demolition of an existing two-story San Francisco Fire Department Station 13 on the western portion of the project site, which would be rebuilt as a four-story building on the eastern portion of the project site;
2. Demolition of two buildings at 425 Washington Street and 439–445 Washington Street and construction of an approximately 218-foot-tall (236 feet total, including rooftop mechanical equipment) tower;
3. Construction of three below grade basement levels under the project site; and
4. Conversion of a portion of Merchant Street from Sansome Street to the eastern edge of the project site into a shared street/living alley.
5. Construction of an approximately 218-foot-tall tower containing either (i) approximately 200 hotel rooms, retail/restaurant, office, and fitness center uses, or, (ii) under the proposed residential variant, approximately 256 residential units instead of the hotel, retail/restaurant, office, and fitness center uses. Under either the proposed project or the residential variant, height and general massing of the newly constructed tower would be similar and the number of vehicle parking spaces and class 1 or 2 bike spaces would vary in accordance with the planning code.

The appellant does not contend the FMND omits any of CEQA's technical requirements for a project description, and the level of detail provided in the project description arguably exceeds the requirements of CEQA Guidelines section 15071(a), which provides that a negative declaration must include "[a] brief description of the project, including a commonly used name for the project, if any." Rather than provide a "brief description" of the project, the FMND devotes more than 35 pages to describing the proposed project and residential variant and includes, for both schemes, site plans, building elevations, floor plans, building and use square footage calculations in text and table format, and descriptions of the approvals required for both the proposed project and the residential variant. The FMND also evaluates the environmental impacts of each of the proposed project and the residential variant independently.

The appellant also mischaracterizes the requirements of the San Francisco Administrative Code. The appellant's claim that a single FMND for the 530 Sansome Street project is inconsistent with San Francisco Administrative Code section 31.20 is incorrect. The appellant's invocation of section 31.20 is overly narrow

and overlooks clear language in section 31.20(a), which states “[t]he concept of a project is broadly defined by CEQA so that multiple actions of the same or of different kinds may often constitute a single project. This concept of a project permits all the ramifications of a public action to be considered together, and avoids duplication of review.”

The FMND analyzes a single project: the construction of a fire station and a 218-foot-tall tower with two different potential programs of use (one primarily hotel, and another primarily residential), both within the future tower, and thereby avoids duplicative environmental review. The administrative code permits a single negative declaration to analyze more than one project when the environmental effects of the projects are essentially the same. Here, the FMND concludes that the proposed project or the residential variant would have essentially the same significant environmental impacts, and the same mitigation measures identified in the FMND apply to both schemes. For example, both the proposed project and residential variant would have identical significant impacts to historic resources, tribal cultural resources, and archeological resources, all resulting from the demolition of the existing fire station. Accordingly, identical mitigation measures for each such significant impact applies to both the proposed project and the residential variant.

In instances where the two schemes would have the same impact conclusion, but the impacts would be characteristically different, the FMND independently analyzes each scheme and discloses such differences. For example, freight and passenger loading demand would be different between the proposed project and residential variant due to the respective uses. Impact TR-6 on pages 82 to 84 analyzes and discloses impacts for each and concludes that loading impacts would be less than significant under either the proposed project or residential variant. Likewise, as additional examples, differences between the proposed project and residential variant are discussed in Section C, Compatibility with Existing Zoning and Plans (pages 39 to 43), Impact PH-1 for population and housing (pages 48 to 50), Impact AQ-3 for operational air quality emissions (pages 119 to 120), Impact PS-1 and PS-2 for public services (pages 150 to 152), and Impact RE-1 for recreation (pages 140 to 141).

As such, the department complied with San Francisco Administrative Code section 31.20 in preparing a single mitigated negative declaration for the 530 Sansome Street project.

Response 3: The 530 Sansome Street Project would not have an unavoidable significant effect on historic resources that would warrant preparation of an environmental impact report.

The appellant contends that the proposed project or residential variant’s potential impacts on historic resources warrants the preparation of an environmental impact report (EIR) because there is a “fair argument” that the 530 Sansome Street project may have adverse environmental impacts on the potential historic resource at 447 Battery Street. The appellant argues that the FMND does not discuss the potential landmark status of 447 Battery Street and alleges the project will cause impacts to the immediate surroundings of 447 Battery Street.

In determining if a project may cause a substantial adverse change in the significance of a historic resource, CEQA Guidelines section 15064.5(b) clarifies that 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.” The department’s historic preservation review of a project involves two steps, consistent with CEQA requirements. The first step is to determine whether a historic resource is

present that could be impacted by the project and, if so, to identify its character-defining features that convey the significance of the historic resource. The second step is to determine whether the project would materially alter any of the character-defining features of the identified historic resource.

A substantial adverse change is defined as: “physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of a historic resource would be materially impaired” (CEQA Guidelines Section 15064.5(b)(1)). The significance of a historical resource is materially impaired when a project “demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in” a local register of historical resources pursuant to a local ordinance or resolution. Thus, a project may cause a change in a historic resource, but still may not have a significant adverse effect on the environment as defined by CEQA, as long as the impact of the change on the historic resource is determined to be less than significant.

The FMND concludes that the proposed project or residential variant would have a significant impact to an historic resource, the sculpture *Untitled* affixed to the existing fire station at 530 Sansome Street, and thereby requires the project sponsors to comply with a mitigation measure to relocate the sculpture.¹ Implementation of the identified mitigation measure would reduce the impact to a less-than-significant level. The FMND also identifies the building at 447 Battery Street as a historic resource, consistent with the conclusions of the 447 Battery Street project Draft Environmental Impact Report (DEIR) published on October 21, 2020, and the HRE and HRER Parts I and II for the project proposed at 447 Battery Street.² The 447 Battery Street project proposes to construct a new 18-story, 200-foot-tall hotel with a ground-floor lobby and restaurant while retaining portions of the 447 Battery Street building. The FMND identifies the 447 Battery Street building as the closest historic structure to the project site and concludes that vibration generated by heavy equipment used for the construction of the proposed project or residential variant could result in structural damage to the historic structure, and thereby requires the project sponsors to comply with a mitigation measure to reduce vibration impacts to a less-than-significant level. The 447 Battery Street building was first identified as an historic resource by the department in the 1968 Here Today survey, and this determination was confirmed in the HRER Parts I and II prepared by planning department preservation staff for the 447 Battery Street project. The historic resource is the Jones-Thierbach Coffee Company Building, and it was determined to be eligible for listing in the California Register of Historical Resources based on it retaining sufficient integrity to convey its significance under Criteria 1 (Events) and 3 (Design/Construction). The Jones-Thierbach Coffee Company Building is eligible under Criterion 1 as an uncommon vestige of the post-1906 reconstruction period,

¹ The department determined based on substantial evidence in the record that there are historic resources on the project site. Based on the HRE and HRER Part I, the historic resources for the 530 Sansome Street project are (1) the sculpture *Untitled*, individually eligible for listing in the California Register under Criterion 3 as an object that is an important site specific work by master artist Henri Marie-Rose with a period of significance of 1976 and (2) the building at 530 Sansome Street and the sculpture *Untitled* as contributors to the California Register-eligible Embarcadero Center Historic District, eligible for listing in the California Register under Criterion 3 as a distinguishable complex designed by master architect John C. Portman, Jr. in the Brutalist style with a period of significance ranging from 1971 to 1982. The department determined that the 425 and 439-445 Washington Street properties were not individually eligible for listing in the California Register nor do they contribute to any historic district and, therefore, are not considered historical resources under CEQA. The department determined that the reinstallation of the sculpture as proposed along with the implementation of Mitigation Measure M-CR-1, Interpretation and Relocation Plan, would result in a less than significant impact. With respect to the sculpture and the 530 Sansome Street building as contributors to the California Register-eligible historic district, the department determined that demolition of the building and relocation of the sculpture would not cause an adverse impact resulting in material impairment to the eligible Embarcadero Center Historic District and, therefore, would result in a less-than-significant impact on the eligible Embarcadero Center Historic District.

² San Francisco Planning Department, *447 Battery Street Project Draft Environmental Impact Report*, October 2020.

and has significance related to San Francisco's coffee industry as the only building that was used historically for coffee roasting and warehousing that is known to remain in the industry's initial hub north of Market Street.³ The building is eligible under Criterion 3 as a rare remaining example of a brick commercial building and warehouse in the present-day Financial District. The building's period of significance is 1907–1967 and reflects the distinctive characteristics of the turn-of-the-20th-century warehouse type, including brick masonry construction, heavy timber framing, and regularly spaced window openings.⁴ The building does not retain integrity of setting or materials because of extensive redevelopment in the surrounding area of the Financial District since its period of significance. Therefore, the significance of the 447 Battery Street historic resource is not tied to surrounding development patterns or relationship with nearby properties.

The appellant claims that additional review of 447 Battery is required because 447 Battery Street is proposed for Article 10 landmarking. The landmarking process is separate from the CEQA review process. The 447 Battery Street building was identified as an individually significant historic resource for the purpose of CEQA review and the landmarking of 447 Battery Street does not change this determination. The landmark designation may identify different character-defining features than those identified through the CEQA process, although the department aims for consistency. In this case, the landmarking process relies on the character-defining features previously determined by the department. The appellant has not provided any substantial evidence that the building has character-defining features beyond those already identified by the department.

The FMND discusses potential impacts to the building at 447 Battery Street on pages 56 to 57. The impact on the historic resource at 447 Battery Street from groundborne vibration would be less than significant with the implementation of Mitigation Measure M-NO-3, Protection of Adjacent Buildings/Structures and Vibration Monitoring during Construction. As described in Response 4 below, Mitigation Measure M-NO-3 specifies the components of the monitoring plan, timing, guidelines, approval process, and responsible professionals who may determine corrective measures based on construction activity. In addition, the mitigation measure imposes a maximum groundborne-vibration level (such as the Caltrans criterion of 0.25 peak particle velocity (PPV) for historic structures), which shall not be exceeded, to protect nearby buildings. No other impact to the adjacent historic resource at 447 Battery Street was identified.

The appellant claims that because the buildings at 447 Battery Street and 425 and 439-445 Washington Street share similar features, all three buildings should be evaluated as "potentially landmark eligible" and that the FMND failed to analyze the 425 Washington Street and 439-455 Washington Street buildings in the same historic context as the 447 Battery Street building.

The appellant's claim that the buildings at 425 and 439-445 Washington Street were not evaluated in the same context as the 447 Battery Street building is mistaken. The HRE prepared for the 425 and 439-445 Washington Street properties and the analysis undertaken by planning department preservation staff did evaluate these properties within the same historic context as 447 Battery Street. However, as stated in the HRE prepared for 425 and 439-445 Washington Street, included as an appendix to the FMND, the 425

³Ibid.

⁴Ibid.

Washington Street building lacks integrity for the period before 1967, and the building at 439-445 Washington Street has “very low integrity for the period before 1967.” Because these two buildings were found to lack or have low integrity, they are not considered potentially eligible for either the California Register of Historical Resources or Article 10 landmark status. Additionally, both the HRE and the analysis undertaken by planning department preservation staff for the 425 and 439-445 Washington Street properties, as well as the historic resource analysis undertaken for the 447 Battery Street DEIR, fully analyzed the relationship of these three buildings and the surrounding area and determined that none of these properties were significantly associated nor did they contribute to any historic district.

The substantial evidence test applies to the lead agency’s determinations of whether a historic resource exists. The appellant has not demonstrated that the department’s determination in this regard is not supported by substantial evidence.

The appellant claims that an EIR should be prepared because there is a “fair argument” that the 530 Sansome Street project may have adverse 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. CEQA Guidelines section 15064(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.”

The appellant does not provide any substantial evidence supporting a fair argument to refute the department’s determination that the proposed project or residential variant would not cause a substantial adverse change in the significance of a historic resource after implementation of identified mitigation measures. As noted above, the significance of 447 Battery Street is not tied to its association with adjacent buildings or development patterns that would be impacted by the proposed project or residential variant. The appellant also has not provided any substantial evidence to support the claim that the proposed project or residential variant at 530 Sansome Street would result in any alteration to the significance of 447 Battery Street. Therefore, the appellant has not presented substantial evidence in support of a fair argument that the 530 Sansome Street project may have a significant impact on historic resources beyond those already identified in the FMND.

The appellant also claims, under the topic of historic resources, that the geotechnical investigation prepared for the 530 Sansome Street project assumed that the existing 447 Battery Street building would be demolished. The geotechnical investigation makes recommendations for the 530 Sansome Street project. For example, one recommendation states that the 530 Sansome Street project should “avoid surcharging basement walls and shoring for the proposed 447 Battery Street development, if 447 Battery Street is constructed first.” (Emphasis added) This does not assume that 447 Battery Street would be demolished before 530 Sansome Street is constructed but simply provides recommendations if that was the case.

In accordance with CEQA Guidelines section 15070(a), the initial study shows that the proposed project or residential variant could have a significant effect on the environment; however, impacts would be mitigated to a less-than-significant level and a mitigated negative declaration, not an EIR, is the legally

appropriate document for environmental review. The department's analysis is supported by substantial evidence in the record, as discussed in this response.

Response 4: The 530 Sansome Street Project would not have a significant effect on traffic, circulation, or pedestrian safety.

The appellant has not provided any substantial evidence that the project may result in a significant transportation or circulation impact under CEQA, as discussed below. Contrary to the appellant's assertion, the transportation study analyzes a scenario where the 447 Battery Street project is not constructed, as discussed below. For project-level analysis, the transportation study evaluated the proposed project's potential transportation and circulation impacts against existing conditions, including continued existing operations at 447 Battery Street. For cumulative analysis, the report evaluated the most impactful scenarios where the proposed 447 Battery Street project would be constructed. This approach is consistent with CEQA, which requires the lead agency to evaluate impacts of the project on the existing environment and also on cumulative conditions (i.e., reasonably foreseeable future conditions). Therefore, the conclusions in the transportation study or transportation and circulation impact analysis in the FMND would not change even if the 447 Battery Street project is not constructed.

The appellant quotes Footnote 3 of the transportation study, pointing out a potential need for additional environmental review that would be required if a building design change is proposed. However, the appellant does not explain how the project as currently proposed would result in a significant impact under CEQA. The footnote to the report is used to clarify the assumptions used in the analysis and give transparency for the environmental review process (i.e., additional environmental review would be required should a POPOS on Merchant Street become infeasible). As noted in Footnote 4, the study clarifies that the portion of the 447 Battery Street project's frontage along Merchant Street may not be constructed prior to development of 530 Sansome Street. This information is included so as not to preclude the opportunity for the 530 Sansome Street project sponsor to develop the full length of Merchant Street should the 447 Battery Street project not improve its frontage on Merchant Street.

Contrary to the appellant's statement, members of the Street Design Advisory Team (SDAT) reviewed the current proposal, which was approved by the planning commission on July 29, 2021. The project design was updated reflecting SDAT's comments in the several months leading up to the planning commission hearing. SDAT is an advisory body that provides a regular forum for city agencies to review and comment on proposed changes to the public right-of-way. This forum helps city agencies provide clear guidance to project sponsors who have a requirement to improve the public right of-way under the better streets plan and planning code section 138.1.⁵ While the environmental planning division coordinates with SDAT in reviewing projects, the environmental planning division analyzes a project's environmental impacts under CEQA and the San Francisco transportation impact analysis guidelines and makes independent impact determinations.

The appellant erroneously contends that the department erred by not analyzing the impacts of the proposed removal of existing metered vehicular parking spaces on the south side of Washington Street. As explained on page 56 of the transportation study, because the department has determined under CEQA section 21099(d) that the proposed project is a mixed-use project on an infill site located within a

⁵ San Francisco Planning Department, Street Design Advisory Team (SDAT); <https://sfplanning.org/project/street-design-advisory-team>, accessed September 13, 2021.

transit priority area, CEQA prohibits the department from considering the reduction in parking, by itself, as an environmental impact.

Further, contrary to the appellant's assertion, the removal of metered parking spaces on the south side of Washington Street would not cause or exacerbate a shortage of loading spaces in the project site vicinity. As discussed under Impact TR-6 on pages 82 to 84 of the FMND, the 530 Sansome Street project analysis found that the project would adequately serve proposed freight and passenger loading demand without creating potentially hazardous conditions for other roadway users, including people walking, bicycling, and driving. Based on this, the department concluded that the project would result in less-than-significant impacts with respect to freight and passenger loading. Additionally, as discussed under Impact TR-6 on PMND page 82, the implementation of a driveway loading and operations plan would help further ensure that freight loading activities generated by the project do not introduce potentially hazardous conditions for other roadway users.

The appellant speculates that the removal of all parking on the south side of Washington Street may cause people to park their trucks or cars in the emergency lane proposed on Washington Street as part of the proposed project, thereby interfering with emergency access and causing safety concerns. Should someone choose to illegally park a vehicle in the emergency lane, the city will initiate code enforcement action to maintain emergency access for the fire department. Further, as explained under Impact TR-3 on pages 79 to 82, the 530 Sansome Street project would not interfere with accessibility for emergency services. Specifically, as shown in truck turning templates in Appendix G to the 530 Sansome Street transportation study, freight truck movements could be accommodated within Washington Street and would not interfere with fire department vehicles exiting the fire station on Washington Street. Thus, the project would result in a less-than-significant impact with respect to emergency access.

The department has adequately analyzed and identified the proposed project and residential variant's impacts on traffic and circulation, including pedestrian safety, and found that the 530 Sansome Street project would have less-than-significant impacts on traffic and circulation.

Response 4: The PMND identifies feasible mitigation measures with performance standards that satisfy CEQA requirements.

The appellant claims that the FMND inappropriately defers mitigation of potential impacts to historic resources, geologic resources, and hazardous materials by relying on future reports and recommendations from those reports without specifying performance standards. The appellant's statements are not consistent with the analysis or mitigation measures contained in the FMND.

The FMND does not, as appellant claims, defer "formulation of mitigation measures." All the mitigation measures contained in the FMND contain detailed performance standards that ensure their effectiveness and specify the timing of any required actions. Furthermore, CEQA Guidelines section 15126.4(a)(1)(B) permits the department to further refine the details of mitigation measures after the project's approval if the department (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure. The mitigation measures cited by the appellant meet these requirements.

For example, Mitigation Measure M-NO-3, Protection of Adjacent Buildings/Structures and Vibration Monitoring during Construction, requires the project sponsors to avoid or reduce project-related construction vibration damage to adjacent buildings and/or structures and to ensure that any such damage is documented and repaired. The mitigation measure specifies the components for a monitoring plan, timing, guidelines, approval process, and responsible professionals who may determine corrective measures based on construction activity and the character of adjacent buildings (FMND pages 104 to 107). The vibration management and monitoring plan establishes quantified maximum vibration levels based on professional standards, with common standards incorporated into the mitigation measure. The mitigation measure specifies that the pre-construction survey and vibration management and monitoring plan shall be prepared and approved by the Environmental Review Officer (ERO) or the ERO's designee prior to issuance of any demolition or building permit. In order to comply with the specified maximum vibration levels, the vibration management and monitoring plan is required to identify all vibration-generating equipment to be used during construction, when to implement alternative construction techniques, steps and protocol for vibration monitoring during construction, inspection intervals, provisions to be followed should damage to any building and/or structure occur due to construction-related vibration, and preparation of a vibration monitoring results report.

Regarding the relocation of the *Untitled* sculpture, the appellant's claim of deferred mitigation is based on an incomplete, partial reading of the HRER II and fails to consider the mitigation measures and the statement in the HRER II that "[t]he final mitigation measures will be included in the Mitigated Negative Declaration. Planning staff believes that implementation of these mitigation measures would reduce the project's impact to historic resources to a less than significant level" (page 4 of the 530 Sansome Street Historic Resource Evaluation Response Part II, p. 4). Those measures are included in the FMND as Mitigation Measure M-CR-1: Interpretation and Relocation Plan.

The components of Mitigation Measure M-CR-1 include: (1) preparation of the Historic Resources Public Interpretive Plan (interpretive plan), and (2) a relocation plan that includes an initial reinstallation, maintenance plan for the sculpture, and schedule for reviewing and finalizing those plans. The mitigation measure specifies that department preservation staff must approve the interpretive plan prior to issuance of the demolition permit or the site permit. As described in the mitigation measure, the "primary goal of the [interpretive] program is to educate the public about the sculpture, the work of artist Henri Marie-Rose, and the historical association of the sculpture with the Embarcadero Center and Fire Station 13."

The mitigation measure further specifies the goals, components, approval processes, and timing considerations for relocation of the *Untitled* sculpture (pages 55 to 56). The mitigation measure additionally specifies suitable locations for the sculpture on the new building and states, "The sculpture shall be relocated to the exterior of the new fire station portion of the project, either along its north (Washington Street) or south (Merchant Street) façades; or, if approved by planning department preservation staff, to another prominent publicly accessible location on the project site." Department preservation staff must approve detailed content, media, and other characteristics of the interpretive program and the relocation plan prior to the issuance of a temporary certificate of occupancy.

Contrary to the appellant's assertion, neither the transportation study nor the impact analysis in the FMND relies on future final designs in concluding that the project would result in less-than-significant impacts with respect to potentially hazardous conditions. The department analyzed the project's impact

based on the plans in the FMND. As discussed on page 52 of the traffic study, “the proposed project’s POPOS programming on Merchant Street, including discouraging access for through vehicles, would not result in potentially hazardous conditions due to the low roadway volumes during the mid-day period (when POPOS use would occur) and the design of the street that would require slow vehicles travel while entering and existing the project’s parking garage.” For the purposes of CEQA, potentially hazardous conditions refer to engineering aspects of a project (e.g., speed, turning movements, complex designs, substantial distance between street crossings, sight lines) that may cause a greater risk of collisions that result in serious or fatal physical injury than a typical project. The department found that the project would not create any potentially hazardous conditions and as a result concluded that the project would result in less-than-significant impacts with respect to potentially hazardous conditions.

The appellant’s statement regarding hazardous materials and the necessity for further investigation to demonstrate a less-than-significant impact is incorrect. A phase I environmental site assessment was prepared for the project site and is summarized in FMND pages 170 to 175. As stated on page 175 of the FMND, “[b]ased on mandatory compliance with existing regulatory requirements, the proposed project or residential variant would not result in a significant hazard to the public or environment from contaminated soil and/or groundwater.”

The appellant does not provide any evidence to support its assertion that the other mitigation measures identified in the FMND for historic resources and geologic resources inappropriately defer mitigation or do not specify performance standards or implementation timing requirements. The appellant also does not provide evidence to support its assertion that additional geotechnical analysis is necessary to support the CEQA findings.

The department has properly analyzed and identified the proposed project and residential variant’s impacts and identified feasible mitigation measures with performance standards. The mitigation measures would be enforced through a mitigation monitoring and reporting program (MMRP). Consistent with CEQA Guidelines section 15074(d), when adopting an MND, the lead agency shall also adopt a program as a condition of approval to mitigate or avoid significant environmental effects.

Conclusion

For 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 environmental with implementation of feasible mitigation measures identified in the FMND that would warrant preparation of an EIR.