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Cc: [Ryan Patterson](#); [Brian O'Neill](#); [Lew, Lisa \(BOS\)](#); [Wong, Jocelyn \(BOS\)](#); [Calvillo, Angela \(BOS\)](#)
Subject: 35 Ventura (Case No. 2016-013505ENV) Appellant's Response Brief
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Good afternoon,

Please find attached Appellant's Response Brief for Case No. 2016-013505ENV (35 Ventura). Kindly confirm receipt of this submission.

Kind regards,

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September 30, 2021

VIA E-MAIL

President Shamann Walton and Supervisors
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, Ca. 94102-4689

Re: Appellant's Response Brief
35 Ventura Avenue (Case No. 2016-013505ENV)
California Environmental Quality Act (CEQA) Categorical Exemption Appeal

Dear President Walton and Supervisors:

Our office represents Tom and Kari Rocca, fourth generation San Francisco natives and 15-year residents of the California Register-Eligible Forest Hill Historic District. We submit this letter in response to the project sponsor's brief in the Categorical Exemption (CatEx) appeal for the proposed project at 35 Ventura Avenue (Case No. 2016-013505ENV).

The project sponsor erroneously asserts that there is no supporting evidence to suggest the subject property is a historical resource and therefore no CEQA review is necessary. To the contrary, the Planning Department previously identified the property as a "Category A" historical resource, and the project sponsor's own preservation expert concluded that "as a contributor to the Forest Hill Historic District, 35 Ventura Avenue is by definition a 'historical resource' under Section 15064.5(a) of CEQA." (HRE, p. 34.) The property was also recently reviewed by preservationist architect Michael Garavaglia, who concurs with the project sponsor's own preservationist that 35 Ventura is a contributor and therefore a historical resource governed by CEQA. (Exhibit A, p. 1.)

The Department, however, failed to identify the subject property as a historical resource and, because of this fundamental flaw, did not evaluate the project's impacts to a historical resource as required by law. The Department also failed to analyze the cumulative impact of past unpermitted development that occurred at the property. The Appellants therefore respectfully

request that the Board of Supervisors revoke the CatEx and require further environmental review.

1. There is Substantial Evidence Demonstrating the Property is a Historical Resource.

The project sponsor argues that the subject property is not a historical resource subject to CEQA review and therefore a CatEx cannot be revoked based on potential impacts to historical resources.¹ To the contrary, all evidence available to the Department confirms that the property is a historical resource, and section 1500.2 of the CEQA Guidelines states that that a CatEx “shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.”

The Department previously identified the property as a “Category A” Historic Resource, and Preservation Bulletin 16 states that Category A properties *shall be presumed* to be a historical resource unless there is a preponderance of evidence demonstrating otherwise. All available evidence, including the property’s location within the core of the California Register-eligible Forest Hill Historic District, the structure’s construction during the District’s period of significance, and the HRE that was completed for the project, establish the presumption that the project site is a historical resource. The project sponsor incorrectly states that the HRE was “equivocal” in whether the subject property is a contributor to the Forest Hill Historic District. The HRE repeatedly confirms the property is a contributor² and specifically states that “35

¹ The project sponsor appears to suggest that contributors are not historical resources within the meaning of CEQA. Section 15064.5(a) of the CEQA Guidelines defines a historical resource to include resources listed in, or determined to be eligible for listing in, the California Register of Historical Resources. With respect to contributors, the protected historical resource is the Historic District, and all contributors within a Historic District are analyzed under CEQA as part of the Historic District resource. (See Preservation Bulletin No. 16.) In this case, the historical resource is the California Register-eligible Forest Hill Historic District, and all contributors to the district, including 35 Ventura, must be evaluated pursuant to CEQA.

² The HRE states the following: “35 Ventura Avenue appears ineligible for individual listing in the California Register in part because it has been so heavily altered. On the other hand, the alterations are generally in keeping with the cottage’s original Mediterranean styling and the character of Forest Hill, meaning that it is still a contributor.” (HRE, p. 1); “35 Ventura Avenue is not a City Landmark but it is a contributor to the California Register-eligible Forest Hill Historic District.” (HRE, p. 3); “According to the Planning Department, 35 Ventura Avenue is a Category A “Known Historic Resource” as a contributor to the California Register-eligible

Ventura Avenue is by definition a “historical resource” under Section 15064.5(a) of CEQA.” (HRE, p. 34.) Preservationist architect Michael Garavaglia concurs with the project sponsor’s preservationist that 35 Ventura is a contributor and therefore a historical resource governed by CEQA. (Exhibit A, p. 1.) In sum, all available evidence confirms that the property is a historical resource.

2. The Planning Department Lacked Any Evidence to Determine the Property is Not Historical Resource

Despite all available evidence demonstrating that the property is a contributor and therefore a historical resource, the Planning Department reached the opposite conclusion, without corroborating evidence. Mr. Garavaglia confirmed that the Department’s conclusions lacked proper analysis and that “it is difficult to determine how City Planning reached its determination that the HRE was incorrect.” (Exhibit A, p. 1.) The Department’s conclusions were based on the past alterations, but “[n]o further analysis regarding the nature or scope of the alterations, and their relation to the character-defining features, was provided in the HRER to support City Planning’s conclusions.” (*Id.*)

Both the project sponsor’s preservation expert and Mr. Garavaglia confirm that the past alterations retain the home’s original Mediterranean styling, reflect the character of Forest Hill, and therefore maintained the property’s contributor status. (HRE, p. 1; Exhibit A, p. 1.) Mr. Garavaglia further explains that the past permitted alterations were located at the rear low-impact area of the property, are not noticeable from the street, and the home still presents a one-story dwelling that reflects the range of representational types of the Forest Hill Historic District. (Exhibit A, p. 2.) Thus, even if the Department had thoroughly explained its analysis, the Department’s conclusion is not supported by the evidence.

Forest Hill Historic District. The analysis in this HRE upholds these findings but does not find the property individually eligible for the California Register” (HRE, p. 34); “Nonetheless, as a contributor to the Forest Hill Historic District, 35 Ventura Avenue is by definition a “historical resource” under Section 15064.5(a) of CEQA” (HRE, p. 34).

3. The Department Did Not Evaluate the Project’s Impacts to Historical Resources and Constitutes a Failure to Proceed in the Manner Required by Law.

Courts are clear that the failure to adequately discuss potential impacts is a procedural error, and the “omission of required information constitutes a failure to proceed in the manner required by law.” (See *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502.) Preservation Bulletin No. 16 states that there are two steps in the CEQA review process regarding potential historical resources. Step 1 is to determine whether the property is a historical resource, and Step 2 is to determine whether the project will have a substantial adverse change to the resource.

Here, the Department did not evaluate or discuss the potential impacts to historical resources because the Department failed to recognize the presence of a historical resource at all, despite all available evidence confirming the property is in fact a historical resource. The Department’s fundamental flaw in Step 1 of the CEQA process led to a failure to complete Step 2. The Department provided no discussion regarding the impact of the project to the Forest Hill Historic District. Mr. Garavaglia concluded the analysis was lacking, “leaving many questions about how a development project influences areas of the resource as a district.” (Exhibit A, p. 4.) The project doubles the massing and size of the existing dwelling within a historically working-class district where a “range of Middle-class homes must exist . . . to fully represent the wealth and design range of the District” and therefore “the loss of one of the more modest dwellings should be noted in the analysis.” (*Id.*)

The project sponsor incorrectly asserts that the Department did evaluate the potential impacts to the project because the Department concluded the project would not have an impact on the Forest Hill Historic District. But the reason the Department reached this conclusion is that it determined, without evidence, that the property is not a historical resource. The Department’s two-page analysis in the HRER focuses exclusively on Step 1 of the CEQA process (determining whether the property is a historical resource), and erroneously concludes that the property is not a historical resource. Therefore, the Department never reached Step 2 in the CEQA review process and failed to provide any analysis of the project’s potential impacts.

The Department failed to discuss or analyze the potential impacts of the project on historical resources, despite substantial evidence that the property is a historical resource, which

constitutes a failure to proceed in the manner required by law. Therefore, the CatEx must be revoked.

4. The Planning Department Failed to Analyze the Cumulative Impact of Past Unpermitted Alterations.

The past façade alterations that convey the historicity of the structure and are visible to the public were all completed without permits, including the application of flagstones to the original stucco chimney, construction of a portico at the front entrance, removal of decorative window grilles, replacement of original windows, and replacement of a wood casement window with French doors. The project sponsors admit that they completed these significant unpermitted alterations “over time, in a manner consistent with the needs of a growing family.” (Response Brief, p. 5.) However, they argue that these unpermitted alterations to a historical resource should be ignored because the project sponsors, Jennifer Wong and general contractor Michael E. Miranda (Owner of MEMGC Construction Solutions, License #919055), did not perform the unpermitted alterations to “ ‘flip’ the home for profit.” (*Id.*)

Regardless of their motivations, Mr. Garavaglia confirms that, in his decades of experience, unpermitted work to historical resources are typically not ignored but “scrutinized by Planning and Building for the disposition of the work - whether it should remain or be removed.” (Exhibit A, p. 3.) In this case, he concludes that the unpermitted alterations should have received more scrutiny, and their removal should have been considered because the work is “easily reversible” and adversely impacted the original front porch that was a “premier character defining features of this home.” (*Id.*)

At a minimum, the Department was required to review the cumulative impacts of the unpermitted work, in addition to the proposed project. Section 15300.2(b) states that a CatEx is “inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.” Section 15355 of the CEQA Guidelines defines a cumulative impact as “the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects.”

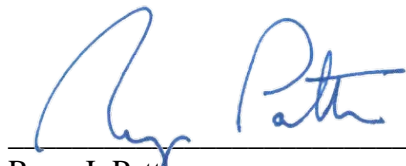
The impacts of the past unpermitted work at 35 Ventura were never evaluated pursuant to CEQA. Rather than evaluate the incremental impact of this past unpermitted work in conjunction with the current project as legally required, the Department instead concluded that the project was not a historical resource based on past unpermitted alterations. The Department's acceptance of these past unpermitted alterations and failure to analyze the cumulative impact constitutes a failure to proceed in the manner required by law. Therefore, the CatEx must be revoked.

Conclusion

For unknown reasons and without supporting evidence, the existing cottage was not identified as a contributor to the Forest Hill Historic District – despite the HRE identifying it as a contributor. Therefore, the Department never completed Step 2 in the CEQA review process, and the project's adverse impacts to historical resources were not identified or evaluated. Additionally, the Department failed to analyze the cumulative impacts of past unpermitted alterations that adversely impacted one of the premier character-defining features of this historical resource. The Department's lack of analysis constitutes a failure to proceed in the manner required by law, and the CatEx must be revoked.

Respectfully Submitted,

ZACKS, FREEDMAN & PATTERSON, PC



Ryan J. Patterson