CARLSON & NICHOLAS, LLP
Attorneys at Law

301 E. Colorado Blvd, Suite 320
Pasadena, California 91101
(626) 356-4801

www.carlsonnicholas.com

Scott W. Carlson, Partner
Francisco J. Nicholas, Partner
Richard A. McDonald, Of Counsel

Scott@carlsonnicholas.com
Frank@carlsonnicholas.com
RMcDonald@carlsonnicholas.com

April 30, 2021

Mayor Victor Gordo
Vice-Mayor Andy Wilson &
Honorable Members of the City Council Tyron Hampton, John J. Kennedy,
Steve Madison, Gene Masuda, Jessica Rivas, and Felicia Williams
Pasadena City Hall
100 North Garfield Avenue
Pasadena, CA 91101

Re: 801 S. San Rafael Avenue Appeal (Hillside Development Permit #6837)

Dear Mayor, Vice-Mayor, and Honorable Members of the City Council:

We represent the applicants/appellants in the appeal of the Board of Zoning Appeals' March 18, 2021 decision to overturn the Hearing Officer's decision and disapprove Hillside Development Permit #6837, which we understand is on your May 3, 2021 Agenda.

As you may know, the applicants are a longstanding interracial family with deep roots in Pasadena. Rodney Ross and Deborah Rachlin Ross ("Ross Family") bought the home located at 801 S. San Rafael Avenue (the "Property") with the desire to fix it up and to enjoy living there in peace and quiet. This was their first purchase in one of the oldest estate districts in Pasadena, and initially they limited their work to simple, over the counter projects that required no discretionary review: pool remodeling, spa addition, new windows, and other small upkeep and maintenance projects. No exterior work was done. The Ross Family agreed that no work would be done to the front façade of the house and obtained a certificate of appropriateness for the new windows.

When the time came to move forward with the addition of two accessory structures in the rear yard, like any good neighbor, they reached out to the adjacent property owners to let them know what they planned to do. In particular, in April and May 2020, before they began work, they contacted the neighbor on each side of them (*i.e.*, Roxanne Christ and Barbara Bice) to

show them their plans, working drawings, and construction schedule, and provide all of their contact information in the event they had any concerns or problems. *See* Exhibit "A."

Little did they know, however, that some of their neighbors did not like their presence in the neighborhood and/or would launch a non-stop series of complaints aimed at contesting literally everything they have done regardless of the City's codes, rules, processes, or procedures. In fact, the sheer volume of complaints to the City and other governmental agencies has been nothing short of abusive and intentional harassment.

Worse, as part of their campaign to deprive the Ross Family of their property rights, the neighbors have raised several objections, all of which are without merit and simply red herrings.

For example, they asserted that the improvements to the Property were not "properly" considered by the City and are being done in a "piecemeal" fashion to avoid attention despite the fact that the applicants have complied with every applicable City requirement for their ministerial project approvals, *i.e.*, for the construction of a garage, an addition of less than 500 feet, and a remodel of the interior residence. The ministerial projects were approved over the counter as provided under the Municipal Code and as is routinely done for other applicants. Under California statutory and case law, ministerial approvals are not subject to California Environmental Quality Act ("CEQA") review.

Nonetheless, the neighbor(s) complained to the City about each and every permit, insisted on stop work orders so that City staff could investigate, and continually objected. As City staff concluded, not one complaint was valid.

Further, they asserted that the Property should be designated as a landmark because former Attorney General John van de Kamp lived there. The City's Design & Historic Preservation staff already has determined that the Property does not qualify under local, state, or federal standards. An independent report by Sapphos Environmental substantiating that conclusion is being submitted with this letter.

One must ask, however, why is the question of landmarking the Property coming up only now, after the Ross Family moved in? Specifically, John Van de Kamp purchased the Property in 1987, and lived there for only a short time while he served as Attorney General of California. After his time as Attorney General ended in 1991, he retired from politics. That was 30 years ago. Not once in that time was there any suggestion the Property was a landmark.

Moreover, Mr. Van de Kamp passed away in March 2017, over four years ago. In his honor, the City renamed the La Loma Bridge. Again, nothing was mentioned about landmarking the Property.

Only now, more than 4 years after his death and after the La Loma Bridge was renamed in his honor in 2017, is anyone concerned about the purportedly historic nature of his residence. Not while he was alive, not after he retired, and not when he died. Only now. Why?

In sum, this needs to stop. There are only two issues before the City Council:

(1) whether the findings can be made for a Hillside Development Permit ("HDP"); and,
(2) whether the project is categorically exempt from environmental review under CEQA.

As explained below, as both the Hearing Officer and the Board of Zoning Appeals ("BZA") agreed, the findings can be made for approval of the HDP.

Further, the proposed project is exempt from environmental review pursuant to Categorical Exemptions 1 and 3 of the CEQA Guidelines. There are no unusual circumstances that create a reasonable possibility that the project may result in a significant environmental impact, which means that the objections previously raised by the neighbors who appealed the Hearing Officer's January 6, 2021 decision to approve the HDP and by Pasadena Heritage are without merit.

I. Project Background

As explained in the Staff Report provided in your Agenda Packet, the proposed project involves the addition of two new 600 square-foot detached accessory structures (for a home office and gym/open storage room) and the conversion of a playroom that is currently attached to the main house by a breezeway into a 262 square-foot, detached accessory structure (for a partially open cabana). The Property is currently developed with a two-story, 4,706 square-foot dwelling with a detached 600 square-foot garage in the RS-4 HD (Single-Family Residential, Hillside Overlay District) zoning district.

Under the City's Municipal Code, a HDP is required for the construction of more than one accessory structure, and may be approved after making eight findings pursuant to Zoning Code Section 17.61.050 (Conditional Use Permits and Master Plans) and 17.29.080 (Hillside Development Permit).

A. The Hearing Officer's Decision to Approve the HDP and Finding that the Project Is Exempt from Environmental Review

In its January 6, 2021 Staff Report ("Jan. 6 Report"), the Planning & Community Development Department ("Planning Department") recommended approval of the HDP, subject to findings and recommended conditions of approval. Jan. 6 Report at 11. The staff expressly noted that on April 16, 2020, the City issued building permit number BLD2019-01654 to allow the construction of a 466 square-foot addition to the main residence and the addition of the 600 square-foot garage; these were to be "considered as built and part of the existing improvements." *Id.* at 4. The staff further acknowledged that "[a]ll three accessory structures are also located behind the rear plane of the existing primary structure." *Id.* at 5. The project was found to be exempt from environmental review pursuant to CEQA Guidelines. *Id.* at 10.

In his January 11, 2021 letter ("HO Decision"), the Hearing Officer approved the HDP, with conditions, to allow the construction of the accessory structures and made the requisite

findings to support the approval. HO Decision, at 1. He also found the project to be exempt from environmental review pursuant to CEQA Categorical Exemption 3, as "there are no features that distinguish this project from others in the exempt class; therefore, there are no unusual circumstances." *Id.* at 2.

B. Neighbor's Appeal to the BZA and the Planning Department's Rejection of the Grounds for Appeal

On January 19, 2021, Roxanne Christ, owner of 815 S. San Rafael Avenue (adjacent to the applicants' Property), filed an appeal of the HO Decision. Counsel for Ms. Christ had previously submitted a lengthy letter dated January 6, 2021 objecting to the project, on the grounds that the City has not "properly considered": (1) the "full scope of the work" at the Property as it "has been rolled out piece-by-piece"; or (2) the "historic status of the Project site." As explained below, neither argument has merit. The primary focus of the appeal revolves around the "world-class model train" collection located in Ms. Christ's home.

In its March 18, 2021 Staff Report ("Mar. 18 Report"), the Planning Department recommended that: (1) the BZA adopt the environmental determination that the project was exempt from environmental review under both Categorical Exemption 1 ***and*** Categorical Exemption 3; and (2) the BZA uphold the Hearing Officer's decision to approve the HDP. Mar. 18 Report, at 1. The Mar. 18 Report again expressly stated that "the ***permitted*** 466 square-foot to the main residence and a detached three-car, 600 square-foot garage . . are considered as existing and ***are not part of the subject Hillside Development Permit review.***" *Id.* at 3 (emphasis added).

The Mar. 18 Report also noted that the Hearing Officer acknowledged and discussed the eight public comments in opposition of the project (*id.* at 3-4), and that the Planning Department provided public comment letters in support of the project to the BZA (*id.* at 11). The Planning Department staff also refuted the 11 reasons cited for Ms. Christ's appeal. *Id.* at 11-19.

The chief ground for appeal was the alleged damage to the train room, display cases, and collection ("Train Collection") in Ms. Christ's home arising from the work on applicants' accessory structures. *Id.* at 11-12. The Planning Department addressed this concern:

> ***Requiring the specific requests for construction methods*** to minimize the damage to the "Collection" beyond what is required for any other Hillside Development Permit ***is precedent setting and inconsistent with the purposes of the Hillside Overlay.*** As the project site and the appellant's property lie within a single-family neighborhood, it is expected that residents should be able to exercise the quiet enjoyment of reasonable uses in their homes and accessory structures. ***The existing home on the subject property, and the proposed expansion thereof, is a reasonable exercise of the applicant's right to the quiet enjoyment of their property.***

Id. at 12 (emphasis added). The Hearing Officer also noted:

> ***Granting the appeal would establish the notion that an individual landowner cannot reasonably develop or expand his or her existing home if a neighbor chooses to use his or her property for a use more appropriately located in a non-residential zone.*** . . . To reiterate, ***to grant the appeal would set a precedent.*** To grant the appeal would ***put the City of Pasadena on a slippery slope***, one in which individual property-owners could simply house a unique and sensitive collection within their home ***to prevent neighbors from*** the reasonable development of a new single-family home, or ***the reasonable expansion of an existing single-family home***, all in neighborhoods which the General Plan and zoning designate for residential use.

Id. (citing to the Hearing Officer's Addendum) (emphasis added).

Furthermore, the Hearing Officer rejected Ms. Christ's contention that the proposed project is not compatible with existing and anticipated future developing on adjacent lots:

> Although [Ms. Christ] is certainly entitled to the quiet enjoyment of a room which houses trains, displays, and related items in [her] home, ***the existence of the train room does not prevent neighbors from the quiet enjoyment of reasonable uses in their homes and ancillary structures***. . . [Ms. Christ] has created what is, in essence, a "train museum" in [their] single-family dwelling, and [their] appeal suggests that neighboring property-owners should maintain the activities, decorum, and behavior one might expect in a museum. A museum is an institutional use, if not a commercial use. ***This use is more appropriately located on a property which enjoys commercial, institutional, or public/semi-public General Plan and zoning designations.***

Id. at 15 (citing to the Hearing Officer's Addendum) (emphasis added).

With regard to the CEQA review analysis, the Planning Department staff concluded that the "full scope of the work done at the subject property was considered and determined to meet the standards and exceptions to the Class 3 Categorical Exemption. In addition, it was determined that the modification to the existing residence would meet the standards and exceptions to the Class 1 Categorical Exemption." *Id.* at 17.[1]

With respect to the previously permitted "ministerial projects" (the garage, addition to the rear of the existing residence, and exterior and interior remodel of existing residence), [e]ach of these projects, individually and cumulatively, did not require a discretionary submittal of a Hillside Development Permit." *Id.* In fact, these ministerial projects are "typical improvements that are commonly approved and constructed for single-family residences." *Id.* at 17-18. The "cumulative" impact of the ministerial and discretionary projects was considered and it was

---

[1] "There are no features that distinguish this project from others in the exempt class; therefore, there are no unusual circumstances. Section 15303 specifically exempts the construction of accessory structures, a single-family residence and multi-family residential structures totaling no more than four or six dwelling units. Section 15301 exempts the minor alteration of existing public or private structures, involving negligible or no expansion of existing or former use." *Id.*

determined that the totality would be exempt from environmental review pursuant to the Class 1 and 3 Categorical Exemptions. *Id.* at 17.

In addition, as it had done previously (Jan. 6 Report, at 11), the City staff concluded that the "proposed design, materials, and color palette are consistent with the applicable design criteria (architectural features) for the Hillside Overlay district." Mar. 18 Report, at 9. The project has been designed with the use of wood siding and earth tones, which are design elements compatible with the surrounding environment. *Id.* at 15. The scale and massing of the proposed detached accessory structures "are in keeping with the scale and setting of the surrounding residences." *Id.* The placement of the proposed accessory structures "would not impede protected views of any adjoining property." *Id.*

C. BZA's Decision to Disapprove the Project

In its March 23, 2021 letter ("BZA Decision"), the Zoning Administrator notified the applicants that the BZA had granted the appeal, overturned the Hearing Officer's decision, and disapproved the HDP by a 3-1 vote on March 18, 2021. BZA Decision, at 1. Specifically, the BAZ found that the project was not exempt from environmental review and "determined that the scope of the entire project, including all of its phases, and the historical status of the residence, were not fully evaluated." *Id.*

As explained below, the BZA erred as a matter of law.

II. Findings Support the Approval of Hillside Development Permit #6837

For the reasons set forth in the Planning Department's Jan. 6 Report and the Mar. 18 Report, the requisite findings for a HDP have been made and neither the Hearing Officer nor the BZA disputed these findings. As a result, the City Council should also adopt these findings, as required by City of Pasadena Municipal Code §§ 17.61.050.H and 17.29.080.F, in support of the approval of a HDP.

III. The Project Is Categorically Exempt Under CEQA Guidelines

A. CEQA Categorical Exemptions from Environmental Review

CEQA applies only to activities that meet the definition of a "project"[2] under the statute and its implementing administrative regulations. *May v. City of Milpitas*, 217 Cal. App. 4th

[2] CEQA defines "project" to mean: "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following: (a) An activity directly undertaken by any public agency. (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies. (c) An activity that involves the issuance to a person of a lease, permit, license,

1307, 1319-20 (2013). Under CEQA, a project is any activity undertaken, assisted, or authorized by a public agency that may have a significant effect on the environment. *May*, 217 Cal. App. 4th at 1320. "Significant effect on the environment" means "a substantial, or potentially substantial, adverse change in the environment." Cal. Pub. Res. Code § 21068.

The first step in CEQA analysis is a determination whether the activity in question amounts to a "project." *May*, 217 Cal. App. 4th at 1320. Once a lead agency determines that an activity falls within the statutory definition of a "project," it must then determine whether the project is nevertheless exempt from CEQA. *Id.* CEQA authorizes the adoption of regulatory exemptions for classes of projects. *Id.* at 1321. The CEQA Guidelines refer to them as categorical exemptions and they are set forth in the CEQA Guidelines. *Id.* (citing to CEQA Guidelines, § 15300 et seq.). There are 2 categorical exemptions applicable to the applicants' proposed project: Categorical Exemption 3 pursuant to Cal. Code Regs. tit. 14, § 15303 (for new construction or conversion of small structures)[3] and Categorical Exemption 1 pursuant to Cal. Code Regs. tit. 14, § 15301 (for existing facilities).[4]

"An agency's determination that a project falls within a categorical exemption includes an implied finding that none of the exceptions identified in the Guidelines is applicable. The burden then shifts to the challenging party to produce evidence showing that one of the exceptions applies to take the project out of the exempt category." *San Francisco Beautiful v. City and Cnty. of San Francisco*, 226 Cal. App. 4th 1012, 1022-23 (2014). The CEQA Guidelines specify six exceptions to the categorical exemptions. Cal. Code Regs. tit. 14,

---

certificate, or other entitlement for use by one or more public agencies." Cal. Pub. Res. Code § 21065.

[3] "Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include, but are not limited to:

. . . .

(e) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

Cal. Code Regs. tit. 14, § 15303.

[4] "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 types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of use."

Cal. Code Regs. tit. 14, § 15301.

§ 15300.2. The neighbors and Pasadena Heritage appear to be asserting three potential exceptions apply: (1) exemptions are inapplicable where the "cumulative impact of successive projects of the same type in the same place, over time is significant"; (2) categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a "significant effect on the environment due to unusual circumstances," and (3) categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource." Cal. Code Regs. tit. 14, § 15300.2, subsections (b), (c) & (f). For the reasons explained in the attached April 22, 2021 Expert Memorandum by Ultra Systems, and below, neither the neighbors, nor Pasadena Heritage has or even can make the requisite showing.

B. <u>There Is No Cumulative Impact</u>

As explained in more detail below in Section IV.A, the Planning Department staff has already considered and rejected the notion that there is any cumulative impact of the previously approved improvements and the proposed project on the Property. The ministerially approved first floor addition and detached garage, along with the requested accessory structures through the discretionary process of obtaining approval for a HDP, are typical improvements that are commonly approved and constructed for single-family residences. Mar. 18 Report, at 21 (emphasis added). As the City staff expressly recognized, "These types of improvements do not result in cumulative impacts that are significant" (*id.*), and the exception for "cumulative impact" therefore does not apply. Last, these are ministerial permits and not even a project under CEQA. *May*, 217 Cal. App. 4th at 1320; Cal. Pub. Res. Code § 21068.

C. <u>There Are No Unusual Circumstances</u>

Specifically, one of the exceptions to the categorical exemptions arises "where there is a reasonable possibility the activity will have a significant environmental effect 'due to unusual circumstances.' (Guidelines, § 15300.2, subd. (c).)" *San Francisco Beautiful*, 226 Cal. App. 4th at 1023. The CEQA Guidelines do not define the term "unusual circumstances," nor what is required to prove it. *See, e.g., id.* In *Berkeley Hillside*, therefore, the California Supreme Court first clarified that a party must show an unusual circumstance by demonstrating that the project has some characteristic or feature that distinguishes it from others in the exempt class. *Berkeley Hillside Preservation v. City of Berkeley*, 60 Cal.4th 1086, 1105 (2015).[5]

---

5. In *Berkeley Hillside*, the applicant sought a hillside permit for a 6,478-square-foot house with an attached 3,394-square-foot 10-car garage, covering 16% of a steeply sloped (about 50% grade) lot in a heavily wooded area on Rose Street in Berkeley. *Berkeley* Hillside, 60 Cal. 4th at 1093. The trial court denied the petition for a writ of mandate by the neighborhood group holding there were not unusual circumstances to the project, but the Court of Appeal reversed and granted it. *Id.* at 1096. The Supreme Court then took up the issue of how the unusual circumstances exception to categorical exemptions should be analyzed and applied by lead agencies such as the City. *Id.* at 1097.

In so doing, the Supreme Court held that the "unusual circumstances" exception can ***only*** be used to preclude the use of a categorical exemption if an "unusual circumstance" differentiates the project ***from the general class of similarly situated projects***, and, if so, when that unusual circumstance creates a "reasonable possibility" that the project may result in a "significant environmental impact." *Id.* at 1105 (emphasis added). The Supreme Court expressly rejected the appellate court's interpretation of the "unusual circumstances" test, finding that "the Court of Appeal erred by holding that a potentially significant environmental effect itself constitutes unusual circumstances." *Id.* at 1104.

Following the Supreme Court's decision, the First District Court of Appeal filed its opinion affirming the trial court's judgment, and later ordered its opinion to be published. *Berkeley Hillside Preservation v. City of Berkeley*, 241 Cal. App. 4th 943 (2015).[6] The later Court of Appeal opinion states that a party challenging a categorical exemption decision by seeking to establish the unusual circumstances exception cannot prevail merely by providing substantial evidence that the project may have a significant environmental effect. *Id.* at 952. Rather, such a party must first establish an unusual circumstance by distinguishing the project from others in the exempt class. *Id.*[7]

Indeed, "a challenger must prove ***both*** unusual circumstances ***and*** a significant environmental effect ***that is due to those circumstances***. In this method of proof, the unusual circumstances relate to some feature of the project that distinguishes the project from other features in the exempt class." *Citizens for Envtl. Responsibility v. State ex rel. 14th Dist. Agric. Ass'n.*, 242 Cal. App. 4th 555, 574 (2015) (*citing to Berkeley Hillside*, 60 Cal. 4th at 1105) (emphasis added). "Once an unusual circumstance is proved under this method, then the 'party need only show a ***reasonable possibility*** of a significant effect ***due to that*** unusual circumstance.' " *Id.* (emphasis added). Anyone who claims the proposed project is not entitled to a categorical exemption, therefore, must prove both parts of this two-pronged test and cannot prevail simply by claiming that the project may have a significant environmental effect.

Whether a project presents unusual circumstances is thus a factual inquiry subject to the traditional substantial evidence standard of review. *Berkeley Hillside*, 60 Cal. 4th at 1114. Under CEQA, "[s]ubstantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. [Citations]. ***It does not*** include '[a]rgument, speculation, unsubstantiated opinion or narrative, [or] evidence which is clearly inaccurate or erroneous. . . .' [Citations.]" *Joshua Tree Downtown Bus. All. v Cnty. of San Bernardino*, 1 Cal. App. 5th 677, 690 (2016) (emphasis added). "Complaints, fears, and suspicions about a project's potential environmental impact likewise do not constitute substantial evidence." *Id.* "Members of the public may . . . provide opinion evidence where special expertise is not required. . . . However, "[i]nterpretation of technical or scientific information requires an expert evaluation.

---

6. On February 3, 2016, the California Supreme Court denied further review of the case, thus letting the Court of Appeal's decision stand, *i.e.*, there were no unusual circumstances that precluded the use of the categorical exemption for the proposed residence in *Berkeley Hillside*.

7. Hence the reason the HO stated that there were no features of the proposed project that distinguished it from others in the exempt class. He simply and properly applied the law.

Testimony by members of the public on such issues does not qualify as substantial evidence. . . ."[I]n the absence of a specific factual foundation in the record, dire predictions by nonexperts regarding the consequences of a project do not constitute substantial evidence." *Id.* at 690-91 (citations omitted).

To preclude the use of the categorical exemptions, any opponent of the project must show that the "unusual circumstances exception" to the exemption somehow applies, which they cannot do under California law. As the record reflects, there is no evidence, let alone substantial evidence, of any unusual circumstance. *See* Jan. 6 Report at 10 ("There are no features that distinguish this project from others in the exempt class; therefore, there are no usual circumstances."); Mar. 18 Report at 20 (same). The Property is located in a residential neighborhood, the size of the accessory structures are well within the limits imposed by the City, and the project complies with all of the City's zoning requirements as stated in the Planning Department reports and the HO Decision. HO Decision, at 3; Jan. 6 Report, at 11; Mar. 18 Report, at 10, 16.

Furthermore, applicants have retained an independent environmental consultant to evaluate and address concerns raised by Ms. Christ in the BZA appeal. As explained in the April 22, 2021 letter from Ultra Systems ("Ultra Systems Letter") being provided with this letter, the proposed accessory structures fall within the Class 1 and 3 Categorical Exemptions of the CEQA Guidelines. Ultra Systems Letter, at 2. Furthermore, none of the six exceptions to categorical exemptions set forth in CEQA Guidelines Section 15300.2 apply.[8] *Id.* at 3-7.

In particular, the Ultra Systems Letter addressed in detail the reasons why the Property is not a historical resource. *Id.* at 4-7. Its conclusions are supported by the Sapphos Environmental Report being provided with this letter as well.

The Ultra Systems Letter also directly refutes the arguments presented in the January 6, 2021 letter from Robert P. Silverstein in support of Ms. Christ's appeal of the HO Decision. As such, there is no evidence of any unusual circumstance based on the features of the project, let alone substantial evidence, the City Council does need not to address the second prong of the test, *i.e.*, whether there is a reasonable possibility of a significant environmental impact as a result of unusual circumstances. *Citizens*, 242 Cal. App. 4th at 588, n.24. ("A negative answer as to the question of whether there are unusual circumstances means the exception does not apply" and the use of the categorical exemption is affirmed).

Even if you were to address it, there is no significant environmental effect that is due to unusual circumstances. "A significant effect on the environment" is "a ***substantial*** adverse change in the physical conditions which exist in the area affected by the proposed project." Cal.

---

[8] "An agency's determination that a project falls within a categorical exemption includes an implied finding that none of the exceptions identified in the Guidelines is applicable. The burden then shifts to the challenging party to produce evidence showing that one of the exceptions applies to take the project out of the exempt category." *San Francisco Beautiful*, 226 Cal. App. 4th at 1022-23 (citation omitted).

Code Regs. tit. 14, § 15002(g) (emphasis added). Here, none exist as explained in the Planning Department Jan. 6 and Mar. 18 reports. The Planning Department specifically found:

> The project does not include features that would preclude the project from qualifying for a categorical exemption under CEQA. . . [the Design and Historic Preservation Section] staff has determined that the property did not meet the criteria for designation as a landmark. . . Furthermore, even if the residence did meet the criteria for landmark designation, the proposed project (detached accessory structures at the rear of the site) would not cause a substantial adverse change in the significance of a historical resource."[9]

Mar. 18 Report, at 20-21.

In short, the construction of the proposed accessory structures does not involve any unusual circumstances precluding the use of the normal categorical exemption for the construction of new construction/small structures and for existing facilities, and there is no significant environmental effect that is due to those circumstances.

D. The Project Does Not Cause a Substantial Adverse Change in the Significance of a Historical Resource

As explained in the attached April 21, 2021 Expert memorandum by Sapphos Environmental, and in more detail below in Section IV.B, the Property is not a historical resource. As a result, the exception for historical resources does not apply.

IV. The Other Arguments Previously Raised by Appellant in BZA Appeal Are Without Merit

A. The Previously Permitted Work at the Property Was Properly Approved as Ministerial Approvals and Is Not Part of the Project Under Consideration on Appeal

It is well established that CEQA applies to discretionary actions but does not apply to ministerial actions. *Health First v. March Joint Powers Auth.*, 174 Cal. App. 4th 1135, 1142 (2009). CEQA expressly applies to discretionary projects proposed to be approved by public agencies. Cal. Pub. Res. Code § 21080(a). It does not apply to ministerial projects proposed to be approved by public agencies. Cal. Pub. Res. Code § 21080(b)(1); Cal. Cal. Code Regs. tit. 14, § 15268(a) ("Ministerial projects are exempt from the requirements of CEQA."). "A ministerial action involves the application of fixed standards or objective measurements." *Health First*, 174 Cal. App. 4th at 1143. "Ministerial" describes "a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project.

---

[9] Furthermore, new construction of accessory structures at the rear of a primary residence does not qualify as a "major project" under the City's revised Historic Preservation Ordinance (Ordinance No. 7372 adopted by the City Council in March 2021).

The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision." *Id.*

The argument raised by Ms. Christ in the BZA appeal that approvals for the various improvements to the Property were sought in a piecemeal fashion without the City's full knowledge and consideration is thus without merit. As noted in the Mar. 18 Report to the BZA, the previously permitted projects are exempt from the HDP.

> ***Each project is considered singularly and not cumulatively when evaluating the requirement of a Hillside Development Permit. The work under construction***, the 466 square-foot addition to the ground floor, the construction of a 600 square-foot detached garage and the interior and exterior remodel, ***is exempt from a Hillside Development Permit*** . . .

Mar. 18 Report, at 16 (emphasis added). In fact, the Planning Department staff rejected Ms. Christ's argument:

> In addition, the "cumulative" impact of the ministerial and discretionary projects was considered and it was determined that the totality would be exempt from environmental review pursuant to the Class 1 and 3 Categorical Exemptions. The ***ministerially approved***[10] first floor addition and detached garage, along with the requested accessory structures through this discretionary process, ***are typical improvements that are commonly approved and constructed*** for single-family residences. These types of improvements do not result in cumulative impacts that are significant.

Mar. 18 Report, at 21 (emphasis added).

In light of the City's acknowledgment that applicants properly obtained permits for the work already under construction, that these permits were ministerially approved (as opposed to requiring discretionary approval), and that consideration of the previously permitted improvements is not to be considered in connection with the application for a HDP, any argument that applicants improperly sought approval from the City in a "piecemeal" manner should be rejected out of hand. Under California law, the ministerially approved permits are not subject to environmental review and cannot be evaluated by the City Council as part of its consideration of the discretionary approval required for the approval of a HDP.

---

[10] To date, all of the work at the Property for which a permit was required has been permitted. The applicants have also worked with the City to voluntarily take steps to erect scaffolding and a 2-story dust barrier to address neighbors' complaints about dust. Despite the applicants' good faith efforts, the neighbors continued their campaign to harass the applicants and bombard the City with complaints.

B. The Property Is Not A Landmark and It Does Not Matter Anyway

A determination of what is, or is not, historic must be "supported by substantial evidence in light of the whole record." *Friends of the Willow Glen Trestle v. City of San Jose*, 2 Cal. App. 5th 457, 459 (2016).

On or around July 6, 2020, Pasadena Heritage submitted a local landmark nomination for the Property without owner consent. On November 30, 2020, the City's Design & Historic Preservation Section of the Planning Division notified Pasadena Heritage that the Property does not meet the criteria for designation as a landmark. The Design & Historic Preservation Section reached this conclusion after applying the guidelines of the National Register of Historic Places and the criteria in the Pasadena Municipal Code. Pasadena Heritage did not appeal that decision, but now claims that it did not receive the City's determination until after the appeal deadline.

In its January 6, 2021 letter, Pasadena Heritage objected to the HDP on the grounds that the residence is "an eligible historic resource" after its members "became alarmed." Ignoring the November 30, 2020 decision by the City's Design & Historic Preservation Section of the Planning Division, Pasadena Heritage asserted that its "landmark nomination remains on hold for the time being." This is a false statement. The City has made a decision of ineligibility, and Pasadena Heritage did not appeal it.

Nevertheless, in its January 16, 2021 letter, Pasadena Heritage asked that its landmark application be reconsidered.[11] Again, in its March 16, 2021 letter, Pasadena Heritage asked the BZA "to approve the eligibility of this resource as a landmark," which is way beyond the jurisdiction of the BZA.

Why? Why now? Why not when John Van de Kamp was alive, retired, or right after he died? Why are they alarmed that a family moved in and fixed the house up? Why are they even asking for this when the proposed accessory structures are way back in the rear of the property?

The arguments raised by the Pasadena Heritage also have been proven to be without merit. As noted by the Planning Department staff in the Mar. 18 Report to the BZA:

> In addition, the staff of the Design & Historic Preservation Section of the Planning Division reviewed an application for the landmark designation of the property at 801 S. San Rafael Ave. On November 30, 2020, after reviewing the information submitted with

[11] Without any basis for doing so, Pasadena Heritage also accused the applicants of intending to use the accessory structures as dwelling units, thereby misrepresenting the intended use of the accessory structures. This unsubstantiated and speculative accusation ignores the conditions of approval set forth by the Hearing Officer, one of which requires compliance with the requirement that the accessory structures cannot be used for sleeping quarters or converted to residential use. HO Decision, at 6 (Condition of Approval No. 7). Pasadena Heritage also falsely described the intended home office as involving a "full bathroom." It actually calls for a ¾ bath with no bathtub.

> the application, including extensive photographs of the building, and researching information about the building, its builder and its former occupants, staff has determined that the property did not meet the criteria for designation as a landmark (Attachment F). In reaching this conclusion, the staff applied the methodology for evaluating the significance of historic properties in guidelines of the National Register of Historic Places, published by the National Park Service, and the criteria in the Pasadena Municipal Code. . . As no appeal was filed for this determination, the decision on the landmark status of the subject property become effective on December 11, 2020."

Mar. 18 Report, at 18.

In addition, the independent Historical Resource Evaluation dated April 21, 2021 by Sapphos Environmental, Inc. ("Historical Resource Evaluation") determined that the Property "is not eligible for designation as a City Historic Landmark as it does not meet the City's designation criteria for listing as such. The property was also evaluated for listing in the National Register of Historic Places and the California Register of Historical Resources and was found ineligible for listing in either register." Historical Resource Evaluation, at 2, 25-29. As a result, the Property "does not constitute . . . a historical resource as defined in Section 15064.5(a) of the CEQA Guidelines." *Id.* at 2. The "review was based on a site investigation of the property; literature review and online research; and an application of federal, state, and local register eligibility criteria." *Id.* at 2, 5-8. It concluded with the finding that the "proposed project would not result in a substantial adverse change to a historical resource pursuant to Section 15064.5(b) of the CEQA Guidelines." *Id.* at 29.

As a result, there is no substantial evidence to support the assertion that the Property is a historic resource. Neither the objecting neighbors nor Pasadena Heritage can establish otherwise and the City Council should not even consider it.[12]

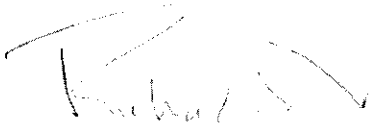
In conclusion, the construction of accessory structures does not involve any unusual circumstances precluding the application of the CEQA Guidelines categorical exemptions. *See, e.g., Berkeley Hillside*, 60 Cal. 4th at 1105; *Berkeley Hillside*, 241 Cal. App. 4th at 952. For the reasons set forth in the Planning Department reports in the record, all of the findings required for a HDP can and should be made, and the CEQA categorical exemptions apply factually and as a matter of law.

---

[12] As mentioned above, even if the residence were a landmark, the accessory structures would have no impact on that designation because they are located in the back of the Property. The issue is thus a red herring designed to delay the applicants' work, and cause unnecessary expense and hardship. Why?

We, therefore, request that you reverse the BZA's decision, approve the HDP and CEQA Exemptions, and bring this very sad chapter in Pasadena's history to a close. The Ross Family has the same property rights as everyone else. Thank you.

Sincerely,



Richard A. McDonald, Esq.

Separate Attachments:
April 21, 2021 Historical Evaluation from Sapphos Environmental, Inc.
April 22, 2021 letter from Ultra Systems to Michael Rachlin

UltraSystems
environmental•management•planning

April 22, 2021
Project No.: 7082

Michael Rachlin, Partner
Rachlin Partners
8640 National Boulevard
Culver City, CA 90232

VIA EMAIL

RE: CEQA Requirements for Categorical Exemption
Construction of Accessory Structures at 801 South San Rafael Avenue in Pasadena

Dear Mr. Rachlin,

Regarding the appeal of approval of a Hillside Development Permit (HDP) for construction of two accessory structures and a modification to the existing main residence ("project") at 801 South San Rafael Street in the City of Pasadena, this letter addresses several assertions made by the appellants regarding the applicability of two categorical exemptions to the California Environmental Quality Act (CEQA) invoked by the City of Pasadena for the project.

Background

The project applicant, the owner of a single-family residence at 801 South San Rafael Street in the City of Pasadena, submitted an application for a Hillside Development Permit (HDP) for construction of two accessory structures, 600 square feet each, in the rear (west) end of the property, one as a home office with ¾ bathroom, and the other for home gym/open storage use; and modification of an existing 930-square foot playroom attached to the main residence to form a 262-square-foot detached partially open cabana. The property is currently developed with a 4,706-square-foot, two-story single-family residence and a detached, 600-square-foot garage. The City determined that the project is exempt from CEQA under Class 1 (Existing Facilities) categorical exemption (CE) for modification of the existing playroom and a Class 3 (New Construction or Conversion of Small Structures) CE for construction of the two proposed accessory structures.

The Hearing Officer approved the HDP on January 6, 2021. A neighbor appealed approval of the HDP permit. The neighbor's objections are set forth in a letter from the Silverstein Law Firm to Paul Novak and Jennifer Driver regarding Objections to Hillside Development Permit #6837 dated January 6, 2021 (henceforth referred to as the Silverstein Letter). Among the neighbor's claims is that the hearing officer erred in determining that the project is categorically exempt from environmental review under CEQA.

The City of Pasadena Planning and Development Department issued a Staff Report on March 18, 2021 (henceforth referred to as Staff Report) recommending that the Board of Zoning Appeals adopt the environmental determination that the project (subject to HDP #6837) is exempt from CEQA under Class 1 and Class 3 CEs; and uphold the Hearing Officer's decision and approve Hillside Development Permit #6837.

Corporate Office – Orange County
16431 Scientific Way
Irvine, CA 92618-4355

Telephone: 949.788.4900
Facsimile: 949.788.4901
Website: www.ultrasystems.com

This letter addresses several assertions in the Silverstein Letter based on our understanding of the CEQA categorical exemptions.

Applicability of Class 3 Categorical Exemption (CE) (New Construction or Conversion of Small Structures)

Accessory Structures

CEQA Guidelines Section 15303(e) states that Section 15303 applies to accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences. The two accessory structures proposed in the back yard of the subject property, and the garage, are covered under Section 15303.

Scale of Projects Eligible for Class 3 CE

The Silverstein Letter states (p. 10) that the Class 3 CE applies to "limited", "small", and "minor" projects only, and thus does not apply to the subject project due to the scale of the project. That conflicts with the text of CEQA Guidelines Section 15303, which permits construction of up to six dwelling units (in urban areas), or up to four commercial buildings not exceeding 10,000 square feet total (also in urban areas). Outside of urban areas Section 15303 permits construction of one single-family residence or a second dwelling; up to four multi-family units; or one commercial building up to 2,500 square feet in floor area. The proposed project site is in an urban area; thus, the scale limits set forth in Section 15303 for projects in urban areas apply to the proposed project. The proposed construction of two accessory structures totaling 1,200 square feet clearly is **eligible** for the Class 3 CE.

Demolition

The Silverstein Letter (pgs. 10-11) asserts that the Class 3 CE does not apply to the proposed demolition of approximately 580 square feet of the playroom addition to the main residence (referred to as *Guest House* in the Silverstein Letter); the Staff Report identifies the building area of the proposed demolition as 668 square feet.[1] The applicant invoked both Class I (Existing Facilities) and Class 3 (New Construction) exemptions. Class I includes minor alterations, and thus demolition inherent in minor alterations. The building area of the main residence is identified in the Staff Report as 4,706 square feet. The proposed demolition (668 square feet) is approximately 14 percent of the building area of the main residence.

In light of the scale of projects permitted under the Class I CE (additions to existing structures provided that the addition will not result in an increase of more than: (1) 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less; or (2) 10,000 square feet [if the project is in an area where all public services and facilities are available..., and which is not environmentally sensitive]), the proposed demolition clearly is of a scale permitted under a Class I CE.

[1] 930 square feet existing playroom less 262 square feet to remain.

Exceptions to Categorical Exemptions

CEQA Guidelines Section 15300.2 sets forth six exceptions to categorical exemptions, shown below italicized; an analysis of each exception relative to the proposed project follows in plain text.

Section 15300.2(a): Location: *Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located- a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.*

The project site is in a suburban neighborhood typical of many such neighborhoods in southern California. No environmental resources of hazardous or critical concern are present on or next to the site. The location exception does not apply to the proposed project.

Section 15300.2(b): Cumulative Impact. *All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.*

The Applicant has applied for two permits from the City of Pasadena: one for construction of a 466-square-foot first-floor addition to the main residence and a 600-square-foot garage in front of the main residence; and the current HDP application. The Silverstein Letter (pp. 8-9) asserts that the work subject to both permits should be considered part of the proposed project; that consideration of only part of that work respecting CEQA is piecemealing (that is, dividing one project into multiple pieces); and that the project could thus cause cumulative impacts that would not be identified by consideration of the HDP application separately.

The work subject to both permits combined consists of construction totaling 2,266 square feet (two accessory structures totaling 1,200 square feet; a 600-square-foot garage; and a 466-square-foot addition to the main house); demolition of 668 square feet of the playroom; and modification of the remaining 262 square feet of the playroom into a partially open cabana.

Even considering the work subject to both permits in combination, the scale of the work is **well below** the maximums permitted under the Class 1 and Class 3 CE's, which were considered separately. The cumulative impact exception does not apply to the proposed project.

Section 15300.2(c): Significant Effect. *A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.*

The Silverstein Letter claims that the significant effect exception applies to the proposed project due to the presence of the DeWitt model railway collection next door and asserts that the collection would be damaged by dust and vibration from the proposed collection.

Regarding potential impacts to the DeWitt model railway collection, based on our understanding of the CEQA Guidelines, **we concur** with the determination of the zoning administrator. Construction and renovation are permitted and common activities in residential zones.

Placing the conditions on the applicant requested in the Silverstein Letter for protection of the model railways would transfer part of the burden of maintaining the collection onto the owner of the neighboring property, and set a precedent that any homeowner could block or complicate ordinary and permitted activities on a nearby property in a residential zone simply by amassing a collection of very fragile items.

We concur with the zoning administrator's determination; and thus the significant effect exception does not apply to the proposed project.

Section 15300.2(d): Scenic Highways. *A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.*

The nearest designated state scenic highway to the proposed project site is State Route 2 (SR-2), the Angeles Crest Highway, approximately six miles north of the project site (Caltrans, 2021). Project development would have no impact on scenic resources in SR-2, and the scenic highways exception does not apply to the proposed project.

Section 15300.2(e): Hazardous Waste Sites. *A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.*

On April 14, 2021, the GeoTracker regulatory database maintained by the State Water Resources Control Board was searched for hazardous waste sites on or within 0.25 mile of the project site; and the Los Angeles County Fire Department Health Hazardous Materials Division's Active and Inactive Facilities lists were searched using the street name *San Rafael* (SWRCB, 2021; LACoFD, 2021). No hazardous waste sites were identified on or within 0.25 mile of the project site in either database. The hazardous waste sites exception does not apply to the proposed project.

Section 15300.2(f): Historical Resources. *A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.*

Impacts to Main Residence Onsite

The Silverstein Letter states (pp. 11-12) that the Class 3 Exemption does not apply because the project would impact the primary residence onsite ("Van de Kamp residence"), which was nominated for landmark designation by Pasadena Heritage. The Silverstein Letter states "The fact the residence is not currently registered as a historic resource is <u>not</u> determinative for CEQA purposes".

Project Impacts on Historical Significance of Main Residence

The Staff Report (pp. 18 and 21) states:

> Furthermore, even if the [main] residence did meet the criteria for landmark designation, the proposed project (detached accessory structures at the rear of the site) would not cause a substantial adverse change in the significance of a historical resource." As no appeal was filed for this determination, the decision on the landmark status of the subject property became effective on December 11, 2020. Therefore, the project qualifies for the specified CEQA categorical exemptions and does not meet the eligibility requirements for the exception clause [CEQA Guidelines Section 15300.2(f)] as the project would not cause a substantial adverse change in the significance of a historic resource.

Substantial Evidence Required Supporting Appeal of Determination of Ineligibility

In Friends of the Willow Glen Trestle v. City of San Jose (2016) 2 Cal.App.5th 457, the Court held that a City's determination of what is, or is not, a historical resource must be "supported by substantial evidence in light of the whole record." As such, under California law, the burden is on the Appellant to produce "substantial evidence" to rebut Staff's and Sapphos' conclusions, not simply assert the legally inapplicable fair argument standard.

Further, the personal opinion of the appellant and others is not substantial evidence under CEQA. See, e.g., *Joshua Tree Downtown Business Alliance v County of San Bernardino*, 1 Cal.App.5th 677 (2016) ("Under CEQA, ... Substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. [Citations.] It does not include 'argument, speculation, unsubstantiated opinion or narrative, [or] evidence which is clearly inaccurate or erroneous....' [Citations.]" (North Coast Rivers Alliance v. Kawamura (2015) 243 Cal.App.4th 647, 196 Cal.Rptr.3d 559.) "Complaints, fears, and suspicions about a project's potential environmental impact likewise do not constitute substantial evidence. [Citations.]" (1 Kostka & Zischke, *supra*, § 6.42, pp. 6–47–6–48.) "Members of the public may ... provide opinion evidence where special expertise is not required. [Citations.]" (1 Kostka & Zischke, *supra*, § 6.42, p. 6–46.2.) However, "interpretation of technical or scientific information requires an expert evaluation. Testimony by members of the public on such issues does not qualify as substantial evidence. [Citations.]" (*Id.* at p. 6–47.)").

The Silverstein Letter does not present substantial evidence rebutting the City's determination that the main residence is ineligible for designation as a City landmark.

The Silverstein letter (p. 11) states:

> In light of CEQA's primary goal to provide the fullest protection to the environment, the list of historical resources was broadened to include those that have been listed as historic and those that have not been listed, **those that have been even denied listing, and yet are eligible as a historic resource**. Public Resources Code §21084.1; Guidelines §15064.5. (emphasis added)

California Public Resources Code Section 21084.1 states, in part:

> The fact that a resource is not listed in, or determined to be eligible for listing in, the California Register of Historical Resources, not included in a local register of historical resources, **or not deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1** shall not preclude a lead agency from determining whether the resource may be an historical resource for purposes of this section. (emphasis added)

California Public Resources Code Section 5024.1 sets forth the four criteria for eligibility for listing in the California Register of Historic Resources (CRHR); and sets conditions for nomination of a property to the CRHR.

Therefore, the statutory authority the Silverstein letter cites, Public Resources Code §21084.1, states that the fact that a resource is not deemed significant *respecting the CRHR* shall not preclude a lead agency from determining whether the resource may be an historical resource.

CEQA Guidelines Section 15064.5(a)(4) states: The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources (pursuant to section 5020.1(k) of the Public Resources Code), or identified in an historical resources survey (meeting the criteria in section 5024.1(g) of the Public Resources Code) does not preclude a lead agency from determining that the resource may be an historical resource as defined in Public Resources Code sections 5020.1(j) or 5024.1.

The statutory and regulatory authorities cited by the Silverstein Letter do not state that a resource denied listing as a local landmark is an historical resource under CEQA. In addition, the City has determined that the main residence is ineligible for landmark listing.

Lead Agency's Role in Determining Historical Significance

CEQA Guidelines Section 15064.5 and Public Resources Code Section 21084.1 both specify that the lead agency determines which resources are historic resources.

CEQA Guidelines Section 15064.5(a)(3) states in part: "Generally, a resource shall be considered **by the lead agency** to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources..." (emphasis added).

CEQA Guidelines Section 15064.5(a)(4) states in part:

> The fact that a resource is not listed in or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources (pursuant to section 5020.1(k) of the Public Resources Code) or identified in a historical resources survey (meeting the criteria in section 5024.1(g) of the Public Resources Code) **does not preclude a lead agency from determining** that the resource may be an historical resource... (emphasis added).

Public Resources Code Section 21084.1 states in part:

> The fact that a resource is not listed in, or determined to be eligible for listing in, the California Register of Historical Resources, not included in a local register of historical resources, or not deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1 **shall not preclude a lead agency from determining** whether the resource may be an historical resource for purposes of this section (emphasis added).

The lead agency (the City of Pasadena) has assessed the main residence onsite for historical significance and determined that it is ineligible for landmark status. The grounds for the determination of ineligibility are set forth in detail in the Notice of Ineligibility from the City of Pasadena Planning Division Design & Historic Preservation Section dated November 30, 2020 (Attachment F to the Staff Report), included as Appendix A to this Letter.
The Silverstein Letter states in a footnote on p. 11:

> The Staff Report states, without explanation, that the Design and Historic Preservation Division determined the home does not meet the criteria for landmark designation. We are unaware of any such determination. In any event, it [is] not determinative for CEQA purposes.

The grounds for the determination of ineligibility are explained in the Notice of Ineligibility dated November 30, 2020 and attached to the Staff Report; and, as explained above, the lead agency has determined that the residence onsite is ineligible for landmark designation.

The historical resources exception does not apply to the proposed project because the two proposed accessory structures in the back yard of the subject property would not substantially affect the historical significance of the main house; and because the City of Pasadena has evaluated the main house and determined it to be ineligible for landmark designation.

Burden of Proof

The burden of proof that the proposed project is ineligible for the Class I and Class 3 categorical exemptions is on the nominating party, Pasadena Heritage; and not on either the project applicant or the City of Pasadena. The California Supreme Court, in *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, established a two-part test for review of the Significant Effect exception to categorical exemptions (CEQA Guidelines Section 15300.2[c]). First, a court reviews an agency's finding regarding whether unusual circumstances exist under the substantial evidence standard of review. Second, the court reviews whether the agency has, as a matter of law, appropriately determined that there was not a fair argument that the project would have a significant effect on the environment (Nossaman 2015).

The appellant has not presented substantial evidence showing that the proposed project is ineligible for the Class 1 and Class 3 categorical exemptions.

References

California Department of Transportation (Caltrans), 2021. California State Scenic Highway System Map. Accessed online at:

https://caltrans.maps.arcgis.com/apps/webappviewer/index.html?id=2e921695c43643b1aaf7000dfcc19983, on March 26, 2021.

Los Angeles County Fire Department (LACoFD). 2021. Los Angeles County CUPA Active Program Records List. Accessed online at: https://www.fire.lacounty.gov/wp-content/uploads/2018/07/Facility-Inventory-Active-Sites-July-2018.pdf, on April 14, 2021.

Nossaman, LLP. 2015. Insights: California Supreme Court Establishes the Standard of Review for the Unusual Circumstances Exception to CEQA Categorical Exemptions. Accessed online at: https://www.nossaman.com/newsroom-insights-CEQAUnusualCircumstancesException, on April 19, 2021.

State Water Resources Control Board (SWRCB). 2021. GeoTracker. Accessed online at: http://geotracker.waterboards.ca.gov/, on April 14, 2021.

Sincerely,

ULTRASYSTEMS ENVIRONMENTAL INC.

Betsy Lindsay
President/CEO

Sapphos
environmental inc.

April 21, 2021
Job Number: 2607-001
Historical Evaluation for
801 S. San Rafael Avenue, Pasadena, California 91105

MEMORANDUM FOR THE RECORD
2607-001 M01

TO: Ms. Deborah Rachlin
801 S. San Rafael Road
Pasadena, CA 91105

FROM: Sapphos Environmental, Inc.
(Ms. Kasey Conley)

SUBJECT: Historical Evaluation for 801 S. San Rafael Avenue, Pasadena, California 91105

ATTACHMENTS:
A. Resume of Key Personnel
B. DPR 523 Series Forms

Corporate Office:
430 North Halstead Street
Pasadena, CA 91107
TEL 626.683.3547
FAX 626.628.1745

Billing Address:
P.O. Box 655
Sierra Madre, CA 91025
Web site:
www.sapphosenvironmental.com

EXECUTIVE SUMMARY

This Memorandum for the Record is undertaken on behalf of the owner of the property located at 801 S. San Rafael Avenue, City of Pasadena (city), California (APN 5717-021-023). The property contains one residential building, a detached ancillary building at the rear, and a detached garage at the front of the property. The owner wishes to improve the property, an act that requires clearance from the City of Pasadena (City) under the California Environmental Quality Act (CEQA). Sapphos Environmental, Inc. understands that the subject property is greater than 50 years of age as it was constructed in 1946. Additionally, it is understood that Pasadena Heritage submitted a City Historic Landmark nomination package for the property that was subsequently denied by the City. The property owner is seeking an independent evaluation of the property to determine whether the property meets the definition of a "Historical Resource" Pursuant to Section 15064.5(a) of the CEQA Guidelines. Sapphos Environmental, Inc. (Ms. Kasey Conley) determined the property is not eligible for designation as a City Historic Landmark as it does not meet the City's designation criteria for listing as such. The property was also evaluated for listing in the National Register of Historic Places and the California Register of Historical Resources and was found ineligible for listing in either register. Therefore, the property does not constitute as a historical resource as defined in Section 15064.5(a) of the CEQA Guidelines. This review was based on a site investigation of the property; literature review and online research; and an application of federal, state, and local register eligibility criteria.

INTRODUCTION

This Memorandum for the Record (MFR) documents the historical evaluation undertaken by Sapphos Environmental, Inc. (Ms. Kasey Conley) for the property located at 801 S. San Rafael Avenue, City of Pasadena (city), California (APN 5717-021-023). The property contains one 3,310-square-foot Monterey Revival-style residential building, a 280-square-foot detached ancillary building off the southeast corner (rear) of the residential building, and a detached garage at the northwest corner (front) of the property. The rear ancillary building is a simple vernacular building with a side-facing gabled roof and stucco cladding. The detached garage at the front of the parcel is a vernacular building clad in stucco with a flat roof.

The subject property is located in the southwest corner of the city west of the Arroyo Seco Trail. This area of the city is characterized by large parcels on winding streets and a hilly terrain (Figure 1, *Sketch Map, 801 S. San Rafael Avenue*). The subject property is not part of an existing City of Pasadena (City) -designated Landmark District. The subject property was not identified in the City Planning's Citywide Historic Resources Survey of Pasadena completed in 1993, the Period Revival Architectural Context completed in 2004, or the Cultural Resources of the Recent Past Context completed in 2007. In November 2020, the City denied a Historic Landmark application for the property citing that the property "does not meet the criteria for designation as a landmark."[1]

[1] City of Pasadena Planning and Community Development Department. November 2020. "Notice of Ineligibility." Document provided by property owner.

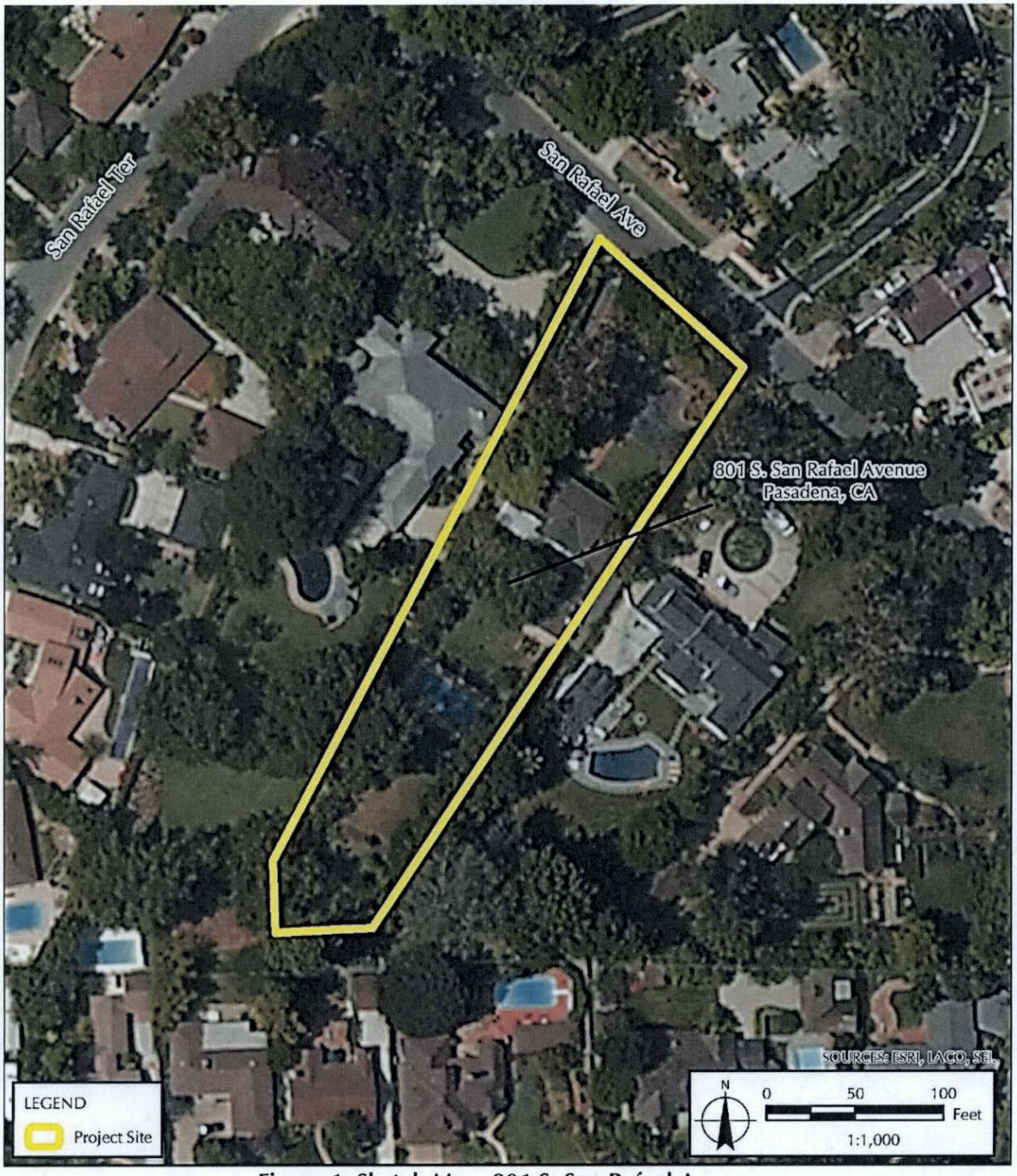


Figure 1. Sketch Map, 801 S. San Rafael Avenue
SOURCE: *Sapphos Environmental, Inc., 2021*

This historical evaluation was prepared for the property owner to determine whether the subject property is considered a "Historical Resource" as defined in Section 15064.5(a) of the California Environmental Quality Act (CEQA) Guidelines. Sapphos Environmental, Inc. conducted a site visit to document the buildings and conducted research for the purposes of evaluating whether the property meets the criteria for inclusion in the National Register of Historic Places (National Register), the California Register of Historical Resources (California Register), or for designation as a City of Pasadena Historic Landmark (City Landmark).

This MFR includes a summary of the property's setting; the findings of the field survey; and an assessment of the property's eligibility for listing in federal, state, and/or local registers. Sapphos Environmental, Inc. finds that the buildings located at 801 S. San Rafael Avenue does not meet the criteria for listing in the National Register, the California Register, or for listing as a City Landmark.

ELIGIBILITY CRITERIA

Federal

The National Historic Preservation Act of 1966, as amended, defines the criteria to be considered eligible for listing in the National Register:

> *The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and*
>
> *A. that are associated with events that have made a significant contribution to the broad patterns of our history; or*
>
> *B. that are associated with the lives of persons significant in our past; or*
>
> *C. that embody distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or*
>
> *D. that have yielded, or may be likely to yield, information important in prehistory or history* (36 Code of Federal Regulations [CFR] Section part 63).

State of California

Section 5024.1(c), Title 14 CCR, Section 4852 of the California Public Resources Code defines the criteria to be considered eligible for listing in the California Register:

> *A resource may be listed as an historical resource in the California Register if it meets any of the following* [National Register] *criteria:*
>
> *1. Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage; or*
>
> *2. Is associated with the lives of persons important in our past; or*

3. *Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or*

4. *Has yielded, or may be likely to yield, information important in prehistory or history.*

Section 15064.5(b) of the CEQA Guidelines identifies the following criteria which may result in a substantial adverse change to a historical resource:

b) 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.

(1) Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.

(2) The significance of an historical resource is materially impaired when a project:

(A) 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 the California Register of Historical Resources; or

(B) Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or

(C) Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA.

(3) Generally, a project that follows the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1995), Weeks and Grimmer, shall be considered as mitigated to a level of less than a significant impact on the historical resource.

City of Pasadena

Pasadena's Zoning Code section 17.62.040, Criteria for Designation of Historic Resources, outlines the city's local evaluation criteria (Ord. 7163 § 7-8, 2009; Ord. 7099 § 46, 2007; Ord. 7009 § 27, 2005) as follows:

Historic Monuments

1. *A historic monument shall include all historic resources previously designated as historic treasures before adoption of this Chapter, historic resources that are listed in the National Register at the State-wide or Federal level of significance (including National Historic Landmarks) and any historic resource that is significant at a regional, State, or Federal level, and is an exemplary representation of a particular type of historic resource and meets one or more of the following criteria:*

    a. *It is associated with events that have made a significant contribution to the broad patterns of the history of the region, State, or nation.*
    b. *It is associated with the lives of persons who are significant in the history of the region, State, or nation.*
    c. *It is exceptional in the embodiment of the distinctive characteristics of a historic resource property type, period, architectural style, or method of construction, or that is an exceptional representation of the work of an architect, designer, engineer, or builder whose work is significant to the region, State, or nation, or that possesses high artistic values that are of regional, State-wide or national significance.*
    d. *It has yielded, or may be likely to yield, information important in prehistory or history of the region, State, or nation.*

2. *A historic monument designation may include significant public or semi-public interior spaces and features.*

Landmarks

1. *A landmark shall include all properties previously designated a landmark before adoption of this Chapter and any historic resource that is of a local level of significance and meets one or more of the criteria listed in Subparagraph 2., below.*

2. *A landmark may be the best representation in the City of a type of historic resource or it may be one of several historic resources in the City that have common architectural attributes that represent a particular type of historic resource. A landmark shall meet one or more of the following criteria:*

    a. *It is associated with events that have made a significant contribution to the broad patterns of the history of the City, region, or State.*

    b. *It is associated with the lives of persons who are significant in the history of the City, region, or State.*

c. *It embodies the distinctive characteristics of a type, architectural style, period, or method of construction, or represents the work of an architect, designer, engineer, or builder whose work is of significance to the City or, to the region or possesses artistic values of significance to the City or to the region.*

d. *It has yielded, or may be likely to yield, information important locally in prehistory or history.*

HISTORIC CONTEXT

Because the building was constructed in 1946, it is considered to have been built during the postwar period. The following historic background was provided by the City's *Cultural Resources of the Recent Past Historic Context Statement* from 2007:

THEME: *Architect-Designed Single Family Residential Development*:[2]

> *The term "architect-designed" is used here to distinguish high-style, site-specific single-family residences from the simpler tract houses that proliferated primarily in large-scale residential developments during this period. There is little single-family residential development during the Depression and World War II, so the primary focus of this section is on the postwar period. The major defining architect-designed residential architecture in postwar Pasadena include those residences inspired by the tenets of the Case Study House Program; the post-and-beam architecture practiced by the teachers and graduates of the University of Southern California* [USC] *School of Architecture; and the Modernist variation of the ranch house.*
>
> *There are also concentrations of architect-designed residential properties from the period, which occur primarily along the Pasadena's western and southern edges. These areas, composed largely of single-family residences, occupy hilly terrain that had not been previously developed; this resulted in site-specific designs that responded to the unique circumstances of hillside development and were made possible by new technologies developed during and after the War. An example of this is the stilt or "Bridge Houses" built along previously unbuildable lots on Laguna Road and designed by Joseph Putnam and real estate broker John Carr.*[3] *New technology allowed these houses to be suspended over the Arroyo and a small stream running below. They are of post-and-beam construction, supported by steel piers set in concrete.*

---

[2] City of Pasadena. October 2007. "Cultural Resources of the Recent Past Historic Context Statement," 39–40. Prepared by: Historic Resources Group, Pasadena, CA and Pasadena Heritage, Pasadena, CA. Available at: https://www.laconservancy.org/sites/default/files/community_documents/Recent%20Past%20context%20statement%2C%202007.pdf

[3] Highland Park Heritage Trust. 2001. "Modern Arroyo." Tour booklet.

The area west of the 210 and 710 Freeways on both sides of the Arroyo also contain substantial numbers of houses from the period, particularly in the southwest corner of the city. Many of these are infill properties in previously developed neighborhoods. In some cases, these lots were created by subdividing large estates, for example in the Hillcrest Neighborhood as well as along the Arroyo on lots previously occupied by the Adolphus Busch estate and Busch Gardens.

There are concentrations of high-style family housing, particularly in the westernmost portion of the city. Examples are found in the Linda Vista, San Rafael, Allendale, and Pegfair Estates neighborhoods. Other clusters of residential development from the period occur in the area east of Craig Avenue and north of the 210 Freeway, as well as the area south of Del Mar Boulevard and east of San Gabriel Boulevard.

Pasadena's collection of postwar, single-family residential architecture contains works by known master architects with a wider regional and even national reputation. These include Gregory Ain, A. Quincy Jones, Paul R. Williams, and John Lautner, all of whom share a wider regional importance in the postwar architectural landscape and worked in Pasadena. There are two extant examples of the work of internationally renowned Modernist architect Richard Neutra: the Constance Perkins House (1955), which became the City's first Historic Treasure (now called a Historic Monument); and the John Paul Clark House (1957).[4]

However, the majority of the architects working in Pasadena during this period are not well known outside of the city. Probably the most successful in reaching some level of acclaim were the firms of Buff, Straub & Hensman; Smith & Williams; and Ladd & Kelsey. These were just some of the cadres of innovative Modernist architects who came out of the USC School of Architecture and designed thoughtful and original designs in Pasadena during the postwar period. Pasadena's Mid-century Modern residential architecture, therefore, is characterized not by individual genius, but by the collective excellence of the architects who worked there after the War.

PROPERTY HISTORY

Site History

The subject property was developed as part of the San Rafael Heights No. 5 Tract which was recorded in 1905 for the San Rafael Ranch Company. This tract was part of a larger effort of the residential subdivision of the 2,000 acres of the San Rafael Ranch Estate, purchased by Mr. and Mrs. Alexander Robert Campbell-Johnston in 1883. The land was used as a cattle grazing ranch until the early 20th century when the land was subdivided for residential housing through the 1920s.[5] The subject property was constructed 41 years after the recording of the tract and is not associated with its history or significance.

---

[4] Two other houses by Neutra were built in Pasadena. The residence at 1460 Chamberlain Road, designed in 1947, was altered in the 1950s; a second house was demolished in the 1970s to make way for the Foothill Freeway.

[5] Online Archives of California, San Rafael Ranch Company Records and Addenda, The Huntington Library, San Marino, California. Accessed April 2021.

Based on historic aerial photographs that date back to 1948, the subject property was one of the first constructed on the southwest side of S. San Rafael Avenue with the northeast side of the street and most of the immediate surrounding area was already heavily infilled with residential development. By 1952, the remainder of the lots had been improved and was characterized by single-family residential development as present today. The Sanborn Fire Insurance Maps do not cover this area of the city.

Ownership History

Due to the closure public buildings, research at the Assessor's Office was not completed. Ownership data was compiled from building permits, grant deed documents, previous assessments of the property, and other sources where available (Table 1, *801 S. San Rafael Avenue Ownership Data*).

TABLE 1
801 S. SAN RAFAEL AVENUE
OWNERSHIP DATA

Date	Name
1947	Holmes P. Tuttle
1951	Calvin C. Wheeler
1955	Mrs. E. Lena Cook
1964	James Bowell Griffin II
1987	John Van de Kamp

Holmes P. Tuttle was the original owner of the residence and is also listed as the contractor on the original building permit.[6] Tuttle was a California businessman, longtime republican and friend of President Ronald Reagan, and head of Reagan's unofficial "kitchen cabinet."[7] Calvin C. Wheeler was the vice-president of Allied Builder Inc. located in Los Angeles, a company which appears to be extant today.[8] James Boswell II was the head of the J.G. Boswell Co., a large cotton farm and agriculture business which he inherited from his uncle.[9] John Van de Kamp was a Pasadena native, of the Van de Kamp Bakery family, and served as Los Angeles County District Attorney from 1975 to 1981 and Attorney General of California from 1983 to 1991 when he retired from politics.[10] No information was found on Mrs. E. Lena Cook.

The current owner of the property is Deborah Rachlin.

---

6 City of Pasadena. Issued 25 March 1946. Permit No. Illegible.

7 Hays, Constance L. 17 June 1989. "Holmes Tuttle, 83; In 'Kitchen Cabinet' That Aided Reagan." *The New York Times*. Retrieved July 17, 2008.

8 Ancestry.com. 2011. *U.S. City Directories, 1822–1995*. Provo, UT: Ancestry.com Operations, Inc.

9 Hirsch, Jerry. 6 April 2009. "James G. Boswell II dies at 86; cotton magnate built family farm into agribusiness giant." *Los Angeles Times*. Retrieved April 7, 2009.

10 California Attorney General - 1850 to Present - California Dept. of Justice - Office of the Attorney General. Archived 2008-02-17 at the Way back Machine.

FIELD SURVEY FINDINGS

Sapphos Environmental, Inc. (Ms. Kasey Conley; Attachment A, *Resume of Key Personnel*) conducted an intensive-level field survey of 801 S. San Rafael Avenue and its setting on April 7, 2021. Additional research was conducted in online resources including newspapers, Ancestry.com, historic aerial photographs and topographic maps, and Sanborn Fire Insurance Maps.[11]

Description of 801 S. San Rafael Avenue

The subject property located at 801 S. San Rafael Avenue is located on the southwest side of S. San Rafael Avenue on a large 34,331-square-foot, irregularly shaped lot with the three buildings situated at the center/northeast end of the parcel. The residential building is designed in the Monterey Revival style, generally rectangular in plan, two stories in height (with a one-story addition on the southeast end and rear of the property), and has a side-facing gabled roof. A detached ancillary building is located off the rear southeast corner of the building situated close to the main residence. A detached garage was constructed in 2020 at the northwest corner of the parcel.

Residential Building

The residential building is a Monterey Revival-style building clad in stucco on the first story and vertical wood clapboard on the second story. The building is two stories in height with a side-facing gabled roof with no eave overhang on the side façades. A double basketweave slightly elevated brick walkway runs the entirety of the primary façade. A cantilevered balcony spans the entirety of the second story on the primary façade and is covered by the primary roof. The extension of the roof covering balcony is supported by simple wood posts. A straight-edge balustrade railing supported by thin square balusters runs between the posts. Beams can be seen supporting the cantilevered balcony from below but are covered by a plane fascia board (Figure 2, *801 S. San Rafael* Avenue).

[11] In person research was not conducted due to the current closure of public buildings.