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BY E-MAIL AND US MAIL

June 4, 2024

Director Brandon Phipps  
Community and Economic Development Director and Zoning Administrator  
City of Sausalito  
420 Litho Street  
Sausalito, CA 94965  
bhipps@sausalito.gov

Mayor Ian Patrick Sobieski, Ph.D.  
Vice Mayor Joan Cox  
Councilmembers Melissa Blaustein, Jill James Hoffman, Janelle Kellman  
City of Sausalito  
420 Litho Street  
Sausalito, CA 94965  
cityclerk@sausalito.gov  
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**Re: Proposals to develop 605-613 Bridgeway: HAA Application for 47 units submitted on January 31, 2024, and SB 35 Pre-Application for 59 units submitted on February 20, 2024**

Dear Director Phipps, Mayor Sobieski, and Honorable Members of the City Council:

I write on behalf of Save Our Sausalito ("SOS"), an organization comprised of numerous active residents of the City of Sausalito. SOS and its members are deeply concerned with a proposal to place a massive luxury condominium development in the heart of Sausalito's downtown historic district at 605-613 Bridgeway ("projects"). We provide the information below to assist city staff and governing bodies as they consider these applications.

### **Application for 47 units submitted on January 31, 2024**

Regarding the 47-unit application, I write to respond to the applicant's counsel's May 14, 2024, letter regarding the City's notice of incompleteness and Preservation Architecture's May 11, 2024, report.

Counsel's letter and the Preservation Architecture report attempt to eliminate consideration of the project site's historic significance pursuant to any and all legal regimes that may apply to the project. To do so, both documents fail to define the terms on which their analysis rests and incorrectly assume that these terms have legal significance under applicable law.

The laws that apply here are:

- Housing Accountability Act (Gov. Code § 65889.5) ("HAA")
- Sausalito Municipal Code Chapter, 10.46
- Density Bonus Law
- California Environmental Quality Act (CEQA)
- SB 35

Counsel's letter argues that the city may not require a certificate of appropriateness because the standards for obtaining a certificate are subjective and "the City may only apply 'objective general plan, zoning, and subdivision standards and criteria, including design review standards.'" (page 2, citing the HAA at Gov. Code § 65589.5(j)(1).) This argument misconstrues how the HAA works and puts the cart before the horse.

Subdivision (j) requires that the city make certain findings before denying a housing project, but only where the "proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete."

As discussed in my May 17, 2024, letter to the city, this project does not comply with this threshold condition. Therefore, the city's authority to review this project is not limited by subdivision (d) or (j) of the HAA and the HAA has no bearing on whether the city may require a certificate of appropriateness.

The Municipal Code requires a certificate of appropriateness to alter "(1) a structure/site officially deemed a historical resource under Public Resources Code Section 21084.1 and Title 14, California Code of Regulations, Section 15064.5; (2) a designated local/State/National Historic Register property; or (3) a property within a historic overlay district without first having undergone review for a certificate of appropriateness by the Historic Preservation Commission." (Muni. Code § 10.46.060.B.)

The property satisfies all three of these criteria. The site meets criterion (1) because it is “officially deemed a historical resource under CEQA and the CEQA Guidelines because it is “listed in the California Register of Historical Resources.” (CEQA, § 21084.1.) Therefore, for purposes of CEQA review, it is a “mandatory” historic resource. (*Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039, 1051, citing CEQA 21084.1, first sentence; Guidelines, § 15064.5(a)(1).)

Counsel’s letter and the Preservation Architecture report attempt to throw the site’s listing in the California Register of Historical Resources (“CRHR”) into question by noting that it is listed in the CRHR as a contributing resource to the Sausalito Historic District, which is also listed in the CRHR. Neither counsel’s letter nor the Preservation Architecture report cite any legal authority that being “listed” in the CRHR as a contributing resource to a designated historic district makes a listed property “not listed.” Neither CEQA nor the municipal code recognize any such distinction.

The Preservation Architecture report also suggests that the site is not “individually listed” in the CRHR. The report does not define this term and fails to explain why it might be legally significant. Instead, the report assumes and insinuates that there is a legally recognized category of sites that are listed in the CRHR that are nevertheless deemed “not listed” for purposes of Municipal Code section 10.46.060.B, the HAA, SB 35 or the Density Bonus Law. As noted, the Preservation Architecture report does not cite any legal authority supporting this assumption and neither CEQA nor the municipal code recognize any such distinction.

Moreover, the California State Office of Historic Preservation construes a property coded 2D2 as a CRHR-listed contributing resource as “listed” on the CRHR. As stated in a March 21, 2006, letter from State Historic Preservation Officer Milford Wayne Donaldson to the Mayor and City Council of Sausalito: “when a building is recorded as an individual resource or as a contributor, the whole building is recorded and entered on the DPR 523.” (See March 21, 2006, letter from State Historic Preservation Officer attached as Exhibit 1; see also, May 31, 2024, email from Amy Crain of the California State Office of Historic Preservation to Connor Turnbull attached as Exhibit 2.)

The site meets criterion (2) of Municipal Code section 10.46.060.B due to either the city’s or state’s designation of it as a contributor to a historic district. The site meets criterion (3) because it is “within a historic overlay district.”

Therefore, the project must obtain a certificate of appropriateness before it may be approved.

It is also important to consider the application of CEQA to this project. Even if the project complied with applicable, objective general plan and zoning standards, the city must still conduct CEQA review of the project. (See HAA, Gov. Code § 65589.5(e) [“Neither shall anything in this section be construed to relieve the local agency from

making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act”].)

As noted in my May 17, 2024, letter, the city has already documented that the project will have a specific, significant adverse impacts on real property listed in the CRHR. Therefore, the city must prepare an EIR to evaluate the impact, identify mitigation measures to reduce or avoid significant impacts, and make the findings required by CEQA section 21081 before approving the project. If the evidence does not support these required findings, the city would be required by CEQA to deny the project.

Further, even if a certificate of appropriateness were not required, and even if the site were not a mandatory historic resource under CEQA, the city would still need to determine if it is a so-called “discretionary” historic resource.

CEQA Section 21084.1 and Guidelines, section 15064.5(a), define three categories of historic resources: mandatory, presumptive, and discretionary. (*Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039, 1051.) Mandatory historic resources are those “listed in, or determined to be eligible for listing in, the California Register of Historical Resources.” (*Id.* at 1051, citing 21084.1, first sentence; Guidelines, § 15064.5(a)(1).) Presumptive historical resources are those listed in a local historic register or identified as significant in a qualified historical resource survey. (*Id.* at 1054, citing 21084.1, third sentence; Guidelines, § 15064.5(a)(2).) Discretionary historic resources are those a lead agency has discretion to determine are historic resources even if not listed on a state or local register or identified as significant in a qualified survey. (*Friends of Willow Glen Trestle v. City of San Jose* (2016) 2 Cal.App.5th 457, 467 [“final sentence of section 21084.1 clearly permits a lead agency to make a determination as to whether a resource that is neither deemed nor presumed to be a historical resource is nevertheless a historical resource for CEQA purposes”]; *Valley Advocates, supra* at 1059-1060, citing § 21084.1, final sentence; Guidelines, § 15064.5(a)(3), (a)(4).)

If the city were to determine the site is a “discretionary” historic resource, then it would require the same treatment under CEQA as it would if deemed a “mandatory” historic resource.

### **SB 35 Pre-Application for 59 units submitted on February 20, 2024**

My May 17, 2024, letter also addresses the inapplicability — because the site is listed in the CRHR — of SB 35 to the 109-foot, 59-unit version of this project and the inapplicability of the Density Bonus Law to both pending versions of the project.

The project plans show that the project will demolish a number of the existing listed historic structure’s walls. The California State Office of Historic Preservation

construes demolition of any part of a listed historic structure as demolition of the historic structure. As the State Historic Preservation Officer has explained:

My staff indicated to Mr. Noble that the narrow interpretation of “historic” in relationship to only the facade rather than the building as a whole is inappropriate for the following reasons:

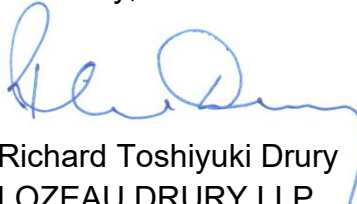
- 1) when a building is recorded as an individual resource or as a contributor, the whole building is recorded and entered on the DPR 523; the building as a whole is the historic resource not any features, whether character defining or not.
- 2) consideration for federal tax credits when given to historical resources are given to the resource - building - as a whole. The Federal Tax Credit program considers the building as a whole, not parts of buildings, such as facades.
- 3) Under design guidelines in general or also as individual project impacts a “façade” usually is considered a historically significant feature; however, the facade is not on the local or national register, it is the building, the structure that is the qualifying “historical resource.”

(See March 21, 2006, letter from State Historic Preservation Officer attached as Exhibit 1.)

Therefore, the 109-foot, 59-unit version of this project is not eligible for ministerial approval under SB 35.

Thank you for your attention to this matter.

Sincerely,



Richard Toshiyuki Drury  
LOZEAU DRURY LLP

# EXHIBIT 1

**OFFICE OF HISTORIC PRESERVATION  
DEPARTMENT OF PARKS AND RECREATION**

P.O. BOX 942896  
SACRAMENTO, CA 94296-0001  
(916) 653-6624 Fax: (916) 653-9824  
calshpo@ohp.parks.ca.gov



March 21, 2006

The Honorable Ronald Albert, Mayor of Sausalito and  
Members of the City Council  
Sausalito  
420 Litho St.  
Sausalito, CA 94965

629 Bridgeway, Sausalito and Sausalito Historic District

Dear Mayor Albert,

In December 2005, Ben Noble, City of Sausalito's Assistant Planner, contacted Michelle C. Messinger of my staff regarding the above building and the application of CEQA in regard to a project that would consist of a substantial demolition of the historic structure. This action would result in only retaining the façade of the building at 629 Bridgeway, which you indicated the City believed to be the only part of the building it considered "historic." Mr. Noble desired some guidance as to how other cities had handled "façade issues" and whether any case law existed that addressed such issues.

Project:

We were contacted by Mr. Dave Hodgson in regard to the above project (e-mail dated 3/14/2006). From Mr. Hodgson we learned that the project intends to demolish all but the façade of the building at 629 Bridgeway that will be modified for three folding doors to create an access to a new pedestrian mall where the 629 building existed and that the project also intends the creation of a courtyard with new retail space under two buildings at 19 & 21 Princess. As further background information we learned that the above project was denied by the Historic Landmarks Board and Planning Commission and that the applicant subsequently had appealed to the City Council which has overturned the denial.

We like to reiterate what had been already addressed during the phone call with Mr. Noble. As you know, the building at 629 Bridgeway is a contributor to the Sausalito Historic District. The building has the California Historic Resources Status Code of 2D2 (a contributor to a district eligible to the National Register of Historic Places); it was evaluated under Section 106 and is listed also on the California Register of Historic Resources.

Definition of Historical Resource:

My staff indicated to Mr. Noble that the narrow interpretation of "historic" in relationship to only the façade rather than the building as a whole is inappropriate for the following reasons:

- 1.)when a building is recorded as an individual resource or as a contributor, the whole building is recorded and entered on the DPR 523; the building as a whole is the historic resource not any features, whether character defining or not.
- 2.)consideration for federal tax credits when given to historical resources are given to the resource – building – as a whole. The Federal Tax Credit program considers the building as a whole, not parts of buildings, such as facades.
- 3.)Under design guidelines in general or also as individual project impacts a "façade" usually is considered a historically significant feature; however, the façade is not on the local or national register, it is the building, the structure that is the qualifying "historical resource."

**Categorical Exemptions:**

Pursuant to CEQA § 15300 Categorical Exemptions are classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of CEQA. CEQA Guidelines § 15300.2 (f) pertains to the exceptions in which case a Categorical Exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource. Even if a project otherwise falls within a categorical exemption it nevertheless does not qualify for the exemption if it is subject to one of the six exceptions to the use of such exemptions.

Per CEQA Guidelines § 15300.2 (f) Exceptions, the proposed demolition of 629 Bridgeport is a significant adverse change in the significance of a historical resource. The definition of a historical resource and of a significant adverse change are found in Pub. Resources Code § 5020.1 subd. (q); CEQA Guidelines § 15064.5. This language has been recognized and reaffirmed by the courts. The above demolition is a significant adverse change because the whole building is the historical resource not just the façade; ergo, a Categorical Exemption cannot be used because the above project falls under the exceptions and an EIR for the project is required.

Moreover, as my staff expressed to Mr. Noble in December, the demolition is not the only action that would require review. The impact of the above project and on the historical district as a whole requires evaluation. It appears that in addition to the demolition of 629 Bridgeport changes to two other buildings, 19 & 21 Princess Street are proposed that appear to be substantial modifications. 19 & 21 Princess Street are also contributors to the Sausalito Historic District, have the California Historic Resources Status Code of 2D2 (a contributor to a district eligible to the National Register of Historic Places), were evaluated under Section 106 and are listed on the California Register of Historic Resources. In addition, there might be a need to evaluate other impacts the proposed project might have on the environment that also require evaluation under the California Environmental Quality Act.

Since this project was denied by the Historic Landmarks Board and the Planning Commission, the grounds on which such project denial occurred, certainly require



Honorable Mayor Ronald Albert  
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scrutiny or a second review. However, the use of a Categorical Exemption is not just inappropriate but as the courts have found “improper”: . . . .’Where there is any reasonable possibility that a project or activity may have a significant effect on the environment, an exemption would be improper.” (*Azusa Land Reclamation Company v. Main San Gabriel Basin Watermaster* (2<sup>nd</sup> Dist. 1997) 52 Cal. App. 4<sup>th</sup> 1165, 1191 [61 Cal. Rptr. 2d 447] (“Azusa”), quoting *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 205-206 [132 Cal. Rptr.377].)

Moreover, exemption categories are not to be expanded or broadened beyond the reasonable scope of their statutory language (*Dehne v. County of Santa Clara* (1<sup>st</sup> Dist. 1981) 115 Cal App. 3d 827, 842 [171 Cal.Rptr.753]). (*Guide to the California Environmental Quality Act (CEQA)*, Remy, Michael, et. al, Solano Press Books, Point Arena, 1999, 99) Therefore, a lead agency should not unreasonably expand the scope of an exemption or interpret a term more broadly than the statutory language of the written exemption intends for. By extending the historicity to merely the façade but not the rest of the building, the City of Sausalito is interpreting the term “historical resource” not within the intentions set forth by the law and against standard preservation practice.

The Legislature who wrote the three classes of projects that cannot be made the subject of categorical exemptions used language codified by the CEQA Statute § 21084. This language has been affirmed in numerous court decisions. A “historical resource” includes, but is not limited to, any object, building, structure, site, area, place, record, or manuscript which is historically or archeologically significant, . . . Pub. Resources code 5020.1(j); the reference to “building” includes a building in its entirety, not parts of a building. Therefore, the demolition represents a significant adverse impact pursuant to CEQA and an EIR is required to evaluate all the impacts this project will have on the resource and the historical district as a whole.

Please understand that our comments herein are specifically related to the environmental review process; we do not take positions in support of or against projects, but rather focus on the environmental review process itself. If you have any further questions, please contact Michelle C. Messinger, Historian II, Local Government Unit CEQA Coordinator at (916) 653-5099 or at [mmessinger@parks.ca.gov](mailto:mmessinger@parks.ca.gov).

Sincerely,

Milford Wayne Donaldson, FAIA  
State Historic Preservation Officer

Cc: Dave Hodgson  
Ben Noble, Assistant Planner

**Honorable Mayor Ronald Albert**  
**Page 4**

# EXHIBIT 2



Connor Turnbull <connor@turnbullpreservation.com>

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## Clarification - CLG District Contributors and the CA Register

6 messages

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**Connor Turnbull** <connor@turnbullpreservation.com>  
To: amy.crain@parks.ca.gov

Fri, May 31, 2024 at 12:33 PM

Hi Amy,

I am hoping that you can clarify a question. Can you please tell me whether CLG Sausalito Historic District contributors are considered listed on the CA Register? I'm afraid this is an obtuse question but I'm hearing it both ways and would like to hear it from you if I can.

Sausalito's district was certified in 1981. The contributor is listed as 2D2.

Thank you very much,  
Connor

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Connor Ishiguro Turnbull

**Connor Turnbull, Preservation Consulting**

<https://turnbullpreservation.com/>

c. 415.497.1971

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**Crain, Amy@Parks** <Amy.Crain@parks.ca.gov>  
To: Connor Turnbull <connor@turnbullpreservation.com>

Fri, May 31, 2024 at 1:29 PM

Hi Connor,

A property coded 2D2 is listed on the CA Register,

2D2 Contributor to a multi-component resource determined eligible for NR by consensus through Section 106 process. Listed in the CR.

Amy

Amy H. Crain

State Historian II

Registration Unit

California State Office of Historic Preservation

1725 23<sup>rd</sup> Street, Suite 100

Sacramento, CA 95816-7100