

## BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of  
ATHANASSIOS DIACAKIS, \_\_\_\_\_ )  
Appellant(s) )  
vs. )  
SAN FRANCISCO PUBLIC WORKS )  
BUREAU OF URBAN FORESTRY, \_\_\_\_\_ )  
Respondent

Appeal No. **23-002**

### **NOTICE OF APPEAL**

**NOTICE IS HEREBY GIVEN THAT** on January 19, 2023, the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the ISSUANCE on January 4, 2023 to M-J SF Investments LLC, of a Public Works Order (approval to remove one significant tree with replacement with a 24" box tree; the tree was evaluated in good condition with leaning, codominant stems, and poor location placement; the existing tree will conflict with a new building's footprint and bay windows, removal and replacement will allow construction of a group housing building) at 3832 18th Street.

**ORDER NO.: 207502**

**FOR HEARING ON February 22, 2023**

Address of Appellant(s):

Address of Other Parties:

Athanassios Diacakis, Appellant(s)  
3830 18th Street  
San Francisco, CA 94114

M-J SF Investments LLC, Determination Holder(s)  
c/o Ryan Patterson, Attorney for Determination  
Holder(s)  
Zacks Freedman & Patterson, P.C.  
601 Montgomery Street, Suite 400  
San Francisco, CA 94111



Date Filed: January 19, 2023

**CITY & COUNTY OF SAN FRANCISCO  
BOARD OF APPEALS**

**PRELIMINARY STATEMENT FOR APPEAL NO. 23-002**

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I / We, **Athanassios Diacakis**, hereby appeal the following departmental action: **ISSUANCE of Public Works Order No. 207502** by the **San Francisco Public Works Department** which was issued or became effective on: **January 4, 2023**, to: **M-J SF Investments LLC**, for the property located at: **3832 18th Street**.

**BRIEFING SCHEDULE:**

The Appellant may, but is not required to, submit a one page (double-spaced) supplementary statement with this Preliminary Statement of Appeal. No exhibits or other submissions are allowed at this time.

Appellant's Brief is due on or before: 4:30 p.m. on **February 2, 2023, (no later than three Thursdays prior to the hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy shall be emailed to: [boardofappeals@sfgov.org](mailto:boardofappeals@sfgov.org), [julie.rosenberg@sfgov.org](mailto:julie.rosenberg@sfgov.org), [chris.buck@sfdpw.org](mailto:chris.buck@sfdpw.org), [ryan@zfplaw.com](mailto:ryan@zfplaw.com) and [brian@zfplaw.com](mailto:brian@zfplaw.com).

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **February 16, 2023, (no later than one Thursday prior to hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy shall be emailed to: [boardofappeals@sfgov.org](mailto:boardofappeals@sfgov.org), [julie.rosenberg@sfgov.org](mailto:julie.rosenberg@sfgov.org), [chris.buck@sfdpw.org](mailto:chris.buck@sfdpw.org) and [thanos@diacakis.com](mailto:thanos@diacakis.com).

Hard copies of the briefs do NOT need to be submitted to the Board Office or to the other parties.

Hearing Date: **Wednesday, February 22, 2023, 5:00 p.m., Room 416 San Francisco City Hall, 1 Dr. Carlton B. Goodlett Place**. The parties may also attend remotely via Zoom. Information for access to the hearing will be provided before the hearing date.

All parties to this appeal must adhere to the briefing schedule above, however if the hearing date is changed, the briefing schedule MAY also be changed. Written notice will be provided of any changes to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should email all documents of support/opposition no later than one Thursday prior to hearing date by 4:30 p.m. to [boardofappeals@sfgov.org](mailto:boardofappeals@sfgov.org). Please note that names and contact information included in submittals from members of the public will become part of the public record. Submittals from members of the public may be made anonymously.

**Please note** that in addition to the parties' briefs, any materials that the Board receives relevant to this appeal, including letters of support/opposition from members of the public, are distributed to Board members prior to hearing. All such materials are available for inspection on the Board's website at [www.sfgov.org/boa](http://www.sfgov.org/boa). You may also request a hard copy of the hearing materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

**The reasons for this appeal are as follows:**

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Not Submitted.

**Appellant or Agent:**

Signature: Via Email

Print Name: Athanassios Diacakis, appellant



San Francisco Public Works  
General – Director's Office  
49 South Van Ness Ave., Suite 1600  
San Francisco, CA 94103  
(628) 271-3160 [www.SFPublicWorks.org](http://www.SFPublicWorks.org)

### **Public Works Order No: 207502**

The Director of Public Works held a Public Hearing on Wednesday, December 7, 2022, commencing at 10:00AM via teleconference to consider several items related to tree removals. The hearing was held through videoconferencing to allow remote public comment.

The hearing was to consider Order No. 207354 (permit no. 792810), removal of one (1) significant tree with replacement adjacent to 3832 18<sup>th</sup> Street. Staff approved the removal, and the public has protested.

#### **Findings:**

The Bureau's presentation was made by Bryan Ong, Bureau of Urban Forestry. Public Works staff has approved the removal. The tree was evaluated in good condition with leaning, codominant stems, and poor location placement. Significant pruning would not be possible that would adhere to ANSI A300.

The property representative explained that the City is prohibited from holding additional hearings beyond the 5 that's already had in connection to the building permit, prohibited from denying tree removal unless there is a specific adverse impact upon public health or safety, complies with City's tree removal standards and is necessary for the issuance of a building permit.

The public protested the removal, citing detrimental environmental effects of losing a mature tree, integral history/sentimental value, property's current petition to the State to build its proposed 6-story structure as opposed a 5-story structure, uncooperative nature of property developer, and concerns of a monstrous building detracting from the nature of the neighborhood. The public mentioned the existing tree has not been properly maintained or pruned since new ownership of the property.

The development received a Conditional Use Authorization (Planning Case No 2020-001610CUA, Planning Commission Motion No. 21016) from San Francisco Planning. Exhibit B therein Motion No. 21016, the existing tree will conflict with the new building's footprint and bay windows. Removal and replacement will allow construction of a group housing building and ensure proper maintenance of the required tree by both private and public professional management.

#### **Recommendation:**

After consideration of correspondence and testimony provided, the recommendation is to uphold the Bureau's recommendation and approve removal of the one (1) significant tree with replacement of a 24" box tree.

**Appeal:** This Order No. 207354 and permit no. 792810 may be appealed to the Board of Appeals within 15 days of January 4<sup>th</sup>, 2023.

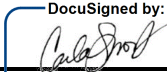
Board of Appeals  
49 South Van Ness Ave. suite 1475 (14<sup>th</sup> Floor)  
San Francisco, CA 94103  
Phone: 628.652.1150 Email: [Boardofappeals@sfgov.org](mailto:Boardofappeals@sfgov.org)

NOTE: Office visits by appointment only.

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X

DocuSigned by:



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Short, Carla 073CF73A4EA6486...

Interim Director of Public Works

## BRIEF SUBMITTED BY THE APPELLANT(S)

February 2, 2023

**Delivered Via E-mail**

Julie Rosenberg, Executive Director  
San Francisco Board of Appeals  
49 South Van Ness, Suite 1475  
San Francisco, CA 94103  
boardofappeals@sfgov.org  
julie.rosenberg@sfgov.org

**Re: Appeal No. 23-002 | 3832 18<sup>th</sup> Street  
Appellant's Brief in Opposition of DPW Order No. 207502  
Hearing Date: February 22, 2023**

Dear President Swig and Commissioners:

On behalf of Appellants Athanassios Diacakis, Cyndi Wong, Giacomo DiGrigoli, Amy Silverstein, Leslie Bahr, Louis Gwerder, Kay Koehneke and Chris Ruedy (collectively, the “Neighbors”), we are hereby appealing Department of Public Works Permit #792810 (the “Permit”) with respect to the removal of the tree located at 3832 18<sup>th</sup> Street, and the subsequent Department of Public Works Order No. 207502 (the “Removal Order”, Exhibit C), and request that the Removal Order be revoked and the Permit be denied. Our appeal is based on the following grounds:

**1. The Department Failed to Provide the Requisite Notices As Required.**

There is no dispute that the tree at issue is a “significant tree” per section 810A(a). *See Removal Order*. Thus, Section 806(b)(3)(B) of the Ordinance also applies.

Section 806(b)(3)(B) of the Ordinance states as follows: “Written notice of the date, time, and place of the hearing shall be posted on the affected Tree and *sent* to the objecting party and

all Interested San Francisco organizations not less than seven days prior thereto.” The Department did not send any such notice to all Interested San Francisco organizations as required. These notice provisions and requirements are mandatory. The Ordinances specifically use the word “shall” and specifically prohibit the Department from removing any tree without sending such notices.

Accordingly, and in light of the Department’s failure to comply with the strict notice provisions of the Ordinances and the Department’s failure to abide by due processes of the Interested San Francisco organizations, the Removal Order should be revoked and the Permit should be denied.

**2. Posting Notices on the Tree and on the Department’s Website Fail to Meet the Notice Requirements.**

The Ordinance’s language is clear. Notices must be sent. The standard definition of “send” is to “arrange for the delivery of”. The Department failed to send out notices to all Interested San Francisco organizations. Posting the Notice on the tree fails to meet the additional notice requirements of sending such notices. Posting it on a website does not meet the sending requirements required by the Ordinance. Again, the strict requirements of the Ordinance and due process must be followed. The Department failed to do so. Thus, Removal Order should be revoked, and the Permit should be denied.

**2. The Department Failed to Comply with Sections 807 and 808.**

Section 807(d) of the Ordinance grants the Department authority over site development plans. Section 807(d)(1) specifically states the following: “Protection of such trees [including

significant trees] during construction shall be required in accordance with Section 808(c) of this Article.” Again, the tree at issue constitutes a significant tree, thus Section 808(c) applies. *See Removal Order.*

Section 808(c) of the Ordinance states as follows:

- (1) It shall be unlawful for any person to engage in any construction work on private or public property without first taking steps to protect Street Trees, Significant Trees, and Landmark Trees from damage, including damage caused by soil compaction or contamination, excavation, or placement of concrete or other pavement or foundation material. If excavation, construction, or Street work is planned within the dripline of a Significant Tree, a Landmark Tree, or a Tree on any Street or other publicly owned property said Tree(s) shall be adequately protected. If any construction work results in the Injury or damage to such Trees, the responsible party(ies) may be subject to the penalties set forth in Section 811 of this Article.
- (2) Prior to Department of Building Inspection issuance of a building permit or site permit, the applicant for a project that may damage one or more Street Trees, Significant Trees, and/or Landmark Trees ***shall submit a Tree protection plan*** to the Director for review and approval.
- ...
- (5) The Tree protection plan referenced above in subsections (c)



*(2)-(4) shall be prepared by a certified arborist and shall contain the certified arborist's estimate of the total replacement cost of all Trees subject to the Tree protection plan.* The Tree protection plan shall include a section for the applicant to acknowledge receipt of the total estimated replacement cost and the applicant's understanding that failure to adhere to the plan shall result in liability for the replacement costs as well as any other fines, penalties, or fees for violating the provisions of this Article 16.

...

(7) An applicant's or permittee's failure to obtain a Director approved Tree protection plan pursuant to Subsections (2) or (3) above, *shall be deemed in violation of the subject permit.*

Here, despite the mandatory requirements of Sections 808(c)(2) and 808(c)(5), no Tree protection plan and certified arborist's report or estimate of replacement cost were included in the Permit. There is no record of any review of such Tree protection plan and certified arborist's report or estimate of replacement cost in the Removal Order. Failure to provide such and certified arborist's report or estimate of replacement cost constitute a violation of the Permit, and a violation of Section 808(c). Based on the foregoing, the Removal Order should be revoked, and the Permit should be denied.

### **3. The Removal Order Should Be Denied Because Work Cannot Be Completed Within Six Months.**

Section 808(b)(1) of the Ordinance states as follows: "All permits for the planting or

removal of street trees issued by the Director for residential properties shall be recorded on the Report of Residential Building Records in accordance with Section 351 of the Housing Code. All work associated with a street tree permit **must be completed within six months of issuance**, unless an extension has been granted by the Department.”

The removal and requisite replanting will not and cannot occur within six months. The Project Sponsor is currently appealing the City’s approval of the five story building. The Project Sponsor has made it clear that the project is “financially infeasible” based on the approval as is. The development of this project shall be litigated, either by the Project Sponsor, the City and/or interested parties. This development will not be resolved so that the removal and replacement can occur within six months as mandated by Section 808(b)(1). There has been no extension sought, and no extension granted by the Department.

Based on the foregoing, at this time, the Removal Order should be revoked, and the Permit should be denied until all parties, including interested parties, resolve the issue regarding the scope of the development.

#### **4. SB330 Does Not Apply**

Contrary to the Project Sponsor’s position, the Removal Order and related permit is not covered under SB330. Indeed, the City’s Attorney has taken such position. See Exhibit A, David Chiu & Austin M. Yang September 21, 2022 letter stating the following: *“We note, however, that neither your client's planning application nor the supplemental SB 330 application indicated that a Street Tree would need to be removed, and the site survey, which shows the existing site conditions, does not show the presence of any Street Tree. Thus, we consider the Street Tree removal to be considered outside the scope of your client's SB 330 project*

*application.”*

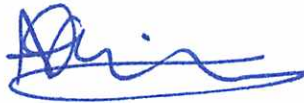
**5. Incorporation Of Prior August 17, 2022 3832 Tree Removal Appeal.**

We hereby incorporate herein by reference as though set in full the arguments and objections set forth in our August 17, 2022 3832 Tree Removal Appeal, a copy of which is enclosed as Exhibit B for easy reference.

**6. Conclusion.**

Based on the foregoing, including the Removal Order and the Project Sponsor's failure to comply with the Ordinance's requirements, among other good cause and grounds, we respectfully request that the Board of Appeal revoke and deny the Removal Order and Removal Permit.

Respectfully submitted,



Athanassios Diacakis & Cyndi Wong, 3826-3830 18th St

Chris Ruedy, 3824 18th St


Giacomo DiGrigoli, 3838 18th St

Amy Silverstein, 3833 18<sup>th</sup> St



Leslie Bahr, 3810-3812 18<sup>th</sup> St

Louis Gwerder, 3827 18<sup>th</sup> St

  
KAY KOEHNEKE

**6. Conclusion.**

Based on the foregoing, including the Removal Order and the Project Sponsor's failure to comply with the Ordinance's requirements, among other good cause and grounds, we respectfully request that the Board of Appeal revoke and deny the Removal Order and Removal Permit.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Cyndi Wong", followed by a horizontal line.

Athanassios Diacakis & Cyndi Wong, 3826-3830 18th St

Chris Ruedy, 3824 18th St

A handwritten signature in black ink, appearing to read "Giacomo DiGrigoli", followed by a horizontal line.

Giacomo DiGrigoli, 3838 18th St

Amy Silverstein, 3833 18<sup>th</sup> St

Leslie Bahr, 3810-3812 18<sup>th</sup> St

Louis Gwerder, 3827 18<sup>th</sup> St

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Chris Ruedy, 3824 18th St

Giacomo DiGrigoli, 3838 18th St

Amy Silverstein, 3833 18<sup>th</sup> St

Leslie Bahr, 3810-3812 18<sup>th</sup> St

Louis Gwerder, 3827 18<sup>th</sup> St

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Chris Ruedy, 3824 18th St

Giacomo DiGrigoli, 3838 18th St



Amy Silverstein, 3833 18<sup>th</sup> St

Leslie Bahr, 3810-3812 18<sup>th</sup> St

Louis Gwerder, 3827 18<sup>th</sup> St

Encl.: Exhibit A: City Attorney's September 21, 2022 letter

Exhibit B: August 17, 2022 3832 Tree Removal Appeal

Exhibit C: Public Works Order 207502



CITY AND COUNTY OF SAN FRANCISCO



DAVID CHIU  
City Attorney

OFFICE OF THE CITY ATTORNEY

AUSTIN M. YANG  
Deputy City Attorney

Direct Dial: (415) 554-6761  
Email: [austin.yang@sfcityattty.org](mailto:austin.yang@sfcityattty.org)

September 21, 2022

Ryan Patterson  
Zacks, Freedman & Patterson  
601 Montgomery Street  
Suite 400  
San Francisco, CA 94111

Re: 3832 18th Street (2020-001610CUA)

Dear Ryan:

We received your letters of August 31, 2022 to the Planning Director and City Attorney, and September 8, 2022 to the Public Works Director. The August 31, 2022 letter describes "the Planning Commission's conditioned approval" of your client's project at 3832 18th Street, references a separate letter from the California Department of Housing and Community Development, and argues that the project was "deemed approved" pursuant to the Permit Streamlining Act. The September 8, 2022 letter asserts that the City is prevented from holding a hearing on your client's application to remove a Street Tree because that hearing would exceed the five-hearing limit to approve a project under Government Code Section 65905.5 ("SB 330").

We agree that the Planning Commission approved your client's 19-unit group housing project, consistent with the alternative design discussed at the October 14, 2021 Planning Commission hearing. That approval waived the 40-foot height limit pursuant to state density bonus law to permit a 50' 4" tall building, and included direction for your client to work with staff to finalize the design. The Board of Supervisors upheld this decision on March 15, 2022. But, we disagree with your assertion that the six-story project as initially submitted was "deemed approved" pursuant to the Permit Streamlining Act. The City cannot "simply recognize that the project has been deemed approved, without the need to take any further discretionary action." Approval of a six-story building would require a decision by the Planning Commission and be subject to appeal to the Board of Supervisors.

In any event, we are pleased to hear that Planning staff has had productive conversations with the project sponsor this summer regarding construction of the approved project. Specifically, staff and the project sponsor have discussed the possibility of additional excavation to accommodate facilities consistent with the Planning Commission's approval of the group housing project. Because the additional excavation would go below the depth proposed in the original plans, we are informed that your client asked whether additional entitlements or environmental review would be required. Our understanding is that the Zoning Administrator has determined that no additional entitlements are required and that Environmental Planning staff have determined that no additional CEQA review is necessary.

The tenor of these conversations is consistent with the fact that your client is pursuing a Street Tree removal application "necessary for the issuance of a building permit for the housing development project at 3832 18th Street." We note, however, that neither your client's planning application nor the supplemental SB 330 application indicated that a Street Tree would need to

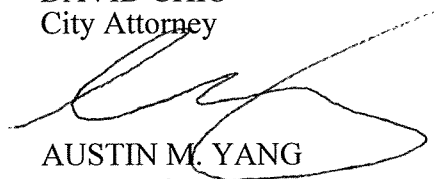
Letter to Ryan Patterson  
Zacks, Freedman & Patterson  
Page 2  
September 21, 2022

be removed, and the site survey, which shows the existing site conditions, does not show the presence of any Street Tree. Thus, we consider the Street Tree removal to be considered outside the scope of your client's SB 330 project application.

We share your client's goal of "resolving this matter as expeditiously as possible" and are happy to set up a meeting with your client, Planning, and Public Works staff to identify a mutually acceptable path forward for your client's project at your earliest convenience.

Very truly yours,

DAVID CHIU  
City Attorney



AUSTIN M. YANG  
Deputy City Attorney

cc: Rich Hillis  
Jeff Horn  
Kate Conner  
Carla Short  
Daniel Hoffman

# 3832 Tree Removal Appeal

We, Athanassios Diacakis, Cyndi Wong, Giacomo DiGrigoli, Chris Ruedy (collectively, the “Neighbors”) are hereby appealing the removal of the tree at 3832 18th St (Permit #792610). Our appeal is based on as follows:

## A. No Intention by Developer to Start Construction.

a) On October 14th, 2021, M-J SF (“Developer”) requested a 6 story building. The SF Planning Committee approved the construction of a 5 story building. Throughout the application and appeal process, and specifically at the SF Board Hearing appealing the SF Planning Committee’s approval, Developer testified on multiple occasions that the 5 story building approved by the Committee is infeasible, and, in essence, the Developer would not proceed based on a 5 story building approval. Based on the Developer’s representations and testimony throughout the application and appeal process and at the SF Board Hearing on this matter, the Neighbors are appealing the removal of the tree on the grounds that the Developer has no intention to proceed with the approved construction.

b) Further evidence that the Developer does not intend to proceed with the approved 5 story building construction is as follows. On or about July 27th 2022, Developer proceeded to make improvements to the property that are inconsistent with starting a demolition and construction of the 5 story building. See attached photos. Tenants are also currently occupying the premises, so they have not even begun the legal process to empty the building to begin their alleged 5 story building construction.



## B. The Tree Is Historical and Significant To the Community.

The avocado tree has been in the neighborhood for decades. The previous occupant, who recently died, was kind and used to share the avocados with the neighbors. The neighbors still enjoy the fruit from parts of that tree that overlap their property. This beautiful, fruit producing tree is unique and irreplaceable.

More importantly, 18th Street – the street on which this historical and significant tree resides, hosts many community protests and marches, including, but not limited to, the annual San Francisco Dyke March, the annual San Francisco Trans March, and the Black Lives Matter movement in 2020. Many protestors and community members rely on the shade of this historical and significant tree to take a break from sunshine that usually grace the Mission and Castro area during said marches. The removal of this historical and significant tree on 18th street will strip the community of a much needed respite during their annual marches and protest.

Removal of this historical and significant tree will impact the direct neighbors and the community at large.

## C. Removal Request is Unsubstantiated

The developer claims that the tree would be in the way of construction, but this does not seem to have been substantiated in any way both in terms of the location or the timing. Also, per additional information below, any information provided by the developer should be closely scrutinized, given their pattern of behavior and intentional misrepresentations.

At a minimum, the Developer should be required to protect the historical and significant community tree by moving and replanting the tree on the sidewalk, or at the same location after construction. This historical and significant community tree should be afforded the necessary protection.

## D. Developer's Unethical Practices.

It is important to note the Developer's unethical practices with respect to this project and their other projects. The developer has intentionally falsified information to the community and our elected representatives from the beginning of the application, and throughout the approval and appeal process. Said falsified information and representations are as follows:

- a) Specifically representing that the 5 story building is not feasible, on the one hand, and now requesting demolition for construction, on the other hand. If they proceed with said construction they were intentionally misrepresenting to the Supervisors during the March 15th meeting as such.
- b) Developer's architect firm on this project has been caught bribing a DBI inspector tasked with inspecting its own projects.



San Francisco Public Works  
General – Director's Office  
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(628) 271-3160 [www.SFPublicWorks.org](http://www.SFPublicWorks.org)

### **Public Works Order No: 207502**

The Director of Public Works held a Public Hearing on Wednesday, December 7, 2022, commencing at 10:00AM via teleconference to consider several items related to tree removals. The hearing was held through videoconferencing to allow remote public comment.

The hearing was to consider Order No. 207354 (permit no. 792810), removal of one (1) significant tree with replacement adjacent to 3832 18<sup>th</sup> Street. Staff approved the removal, and the public has protested.

#### **Findings:**

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The property representative explained that the City is prohibited from holding additional hearings beyond the 5 that's already had in connection to the building permit, prohibited from denying tree removal unless there is a specific adverse impact upon public health or safety, complies with City's tree removal standards and is necessary for the issuance of a building permit.

The public protested the removal, citing detrimental environmental effects of losing a mature tree, integral history/sentimental value, property's current petition to the State to build its proposed 6-story structure as opposed a 5-story structure, uncooperative nature of property developer, and concerns of a monstrous building detracting from the nature of the neighborhood. The public mentioned the existing tree has not been properly maintained or pruned since new ownership of the property.

The development received a Conditional Use Authorization (Planning Case No 2020-001610CUA, Planning Commission Motion No. 21016) from San Francisco Planning. Exhibit B therein Motion No. 21016, the existing tree will conflict with the new building's footprint and bay windows. Removal and replacement will allow construction of a group housing building and ensure proper maintenance of the required tree by both private and public professional management.

#### **Recommendation:**

After consideration of correspondence and testimony provided, the recommendation is to uphold the Bureau's recommendation and approve removal of the one (1) significant tree with replacement of a 24" box tree.

**Appeal:** This Order No. 207354 and permit no. 792810 may be appealed to the Board of Appeals within 15 days of January 4<sup>th</sup>, 2023.

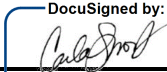
Board of Appeals  
49 South Van Ness Ave. suite 1475 (14<sup>th</sup> Floor)  
San Francisco, CA 94103  
Phone: 628.652.1150 Email: [Boardofappeals@sfgov.org](mailto:Boardofappeals@sfgov.org)

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X

DocuSigned by:



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Short, Carla 073CF73A4EA6486...

Interim Director of Public Works

## **BRIEF SUBMITTED BY THE PERMIT HOLDER(S)**

RYAN J. PATTERSON (SBN 277971)  
BRIAN J. O'NEILL (SBN 298108)  
ZACKS, FREEDMAN & PATTERSON, PC  
601 Montgomery Street, Suite 400  
San Francisco, CA 94111  
Tel: (415) 956-8100  
Fax: (415) 288-9755  
ryan@zfplaw.com  
brian@zfplaw.com

Attorneys for Permit Holder,  
MJ Mission Dolores, LLC

### **SAN FRANCISCO BOARD OF APPEALS**

ATHANASSIOS DIACAKIS,

Appellant,

v.

SAN FRANCISCO DEPARTMENT OF  
PUBLIC WORKS – BUREAU OF URBAN  
FORESTRY

Respondent.

MJ MISSION DOLORES, LLC,

Permit Holder.

Tree Removal Order No.: 207502  
Appeal No. 23-002

### **PERMIT HOLDER'S BRIEF**

Date: February 22, 2023  
Time: 5:00 p.m.

## **I. INTRODUCTION**

Our office represents MJ Mission Dolores, LLC, owner of 3832 18th Street and the Permit Holder in this tree removal appeal. The subject permit is for the removal of an avocado tree, which is necessary for the construction of an approved 19-unit group housing development state density bonus project at 3832 18th Street (Planning Application No. 2020-001610PRJ). Our clients are participating in this hearing under protest, as the City has already held five public hearings in connection with the housing development project and the City is prohibited under state law from holding any additional public hearings pursuant to SB 330.

Moreover, the City is prohibited from disapproving the tree removal application under state law unless the tree removal poses a specific, adverse impact upon the public health or safety. The



1 California Department of Housing and Community Development (“HCD”) has already issued a  
2 Notice of Violation (“NOV”) to the City in connection with its actions regarding this state density  
3 bonus housing development project. (See **Exhibit A**.) We urge the Board of Appeals to comply  
4 with state law and dismiss this frivolous appeal without a public hearing, or at the very least, deny  
5 the appeal.

## 6 **II. ARGUMENT**

### 7 **A. This Hearing Violates the Five Hearing Limit.**

8 Gov. Code § 65905.5 prohibits the City from conducting more than five hearings in  
9 connection with a proposed housing development project, and specifically includes hearings that  
10 have been continued. The law defines “hearing” to include any public hearing, including any  
11 appeal, “whether by the legislative body of the city or county, the planning agency established  
12 pursuant to Section 65100, or any other agency, department, board, commission, or any other  
13 designated hearing officer or body of the city or county, or any committee or subcommittee  
14 thereof.” (Gov. Code § 65905.5(2).)

15 The proposed tree removal hearing clearly falls within the definition of a “hearing” under  
16 Gov. Code § 65905.5, and the tree removal is proposed in connection with the 3832 18th Street  
17 housing development project. However, the City has already held more than five public hearings in  
18 connection with the housing development project, including two Planning Commission hearings  
19 (July 15, 2021 and October 14, 2021) and four Board of Supervisors hearings (December 7, 2021;  
20 January 11, 2021; February 8, 2022; and March 15, 2022). Thus, the City is prohibited from holding  
21 any additional public hearings in connection with the project. The project application that was acted  
22 upon by the City included a site survey that showed the subject tree and clearly showed plans for its  
23 removal, and therefore the tree removal is within the scope of the project application that was acted  
24 upon by the City. (see **Exhibit B**). The DPW’s own findings in the removal order confirm that “the  
25 existing tree will conflict with the new building’s footprint and bay windows” and that “[r]emoval  
26 and replacement will allow construction of a group housing building.”

27 There is no question that the tree removal is necessary for the construction of a housing  
28 development project and that the City has already held more than five hearings in connection with  
this housing development project. The City would violate the five-hearing limitation of Gov. Code

1 § 65905.5 if the City moves forward with the proposed tree removal hearing. We urge the Board to  
2 dismiss this appeal without a public hearing.

3 **B. The Tree Removal Permit Must Be Approved Under State Law.**

4 The Housing Accountability Act (HAA) prohibits the City from disapproving a housing  
5 development project that complies with objective standards unless the City provides substantial  
6 evidence to establish that the proposed project would have a specific, adverse impact upon public  
7 health or safety. (Gov. Code § 65589.5(j)(1); *see also Cal. Renters Legal Advocacy and Educ. Fund*  
8 *v. City of San Mateo* (2021) 68 Cal. App. 5th 820.) The HAA defines “disapprove the housing  
9 development project” to include any instance the City “votes on a proposed housing development  
10 project application and the application is disapproved, *including any required land use approvals*  
11 *or entitlements necessary for the issuance of a building permit.*” Gov. Code § 65589.5(h)(6).)

12 Significant tree removal permits on private property are subject to the removal standards for  
13 street trees contained within Section 806(b) of the Urban Forestry Ordinance of the Public Works  
14 Code. The only standard contained in Section 806(b) that is even arguably objective is that that  
15 Department must require planting of a tree of equivalent replacement value to the one removed. The  
16 tree removal permit includes a replacement requirement and therefore the removal permit complies  
17 with the City’s objective tree removal standards. Removal is necessary for the issuance of a  
18 building permit for the housing development project at 3832 18th Street, and therefore the HAA  
19 prohibits disapproval of the permit unless the City can provide substantial evidence to establish the  
20 removal would have a specific, adverse impact upon public health or safety. No such evidence  
21 exists, and thus the City must approve the proposed tree removal application or the City would be in  
22 violation of state law. HCD has already found the City’s actions in relation to this state density  
23 bonus project violate state law, finding that the City has “violated the [State Density Bonus Law]  
24 pursuant to Government Code section 65915, subdivision (e)(1).” (See **Exhibit A.**) The City should  
25 avoid additional violations.

26 **C. Appellant’s Contentions.**

27 The Appellant argues that DPW did not provide adequate notice prior to its removal hearing  
28 because it did not send physical notices to all interested San Francisco Organizations. The Appellant  
cites to no evidence for this statement at all, nor even identified what San Francisco Organizations

1 were interested in the tree removal hearing. Appellant's bare statements about purported due  
2 process violations, made on behalf of unidentified organizations that were supposedly prejudiced by  
3 the prior hearing, are without merit. Appellant does not represent these organizations, and therefore  
4 does not have standing to assert claims on their behalf.

5 The Appellant also claims that the removal permit does not comply with Section 808 of the  
6 Urban Forestry Ordinance, which prohibits the injury of Significant Trees during construction.  
7 Section 808 clearly states that "[r]emoval of a Tree under City order or Removal in accordance with  
8 a permit issued pursuant to Section 806, 810, or 810A of this Article 16 is exempt from this  
9 prohibition." Appellant's argument that a tree *removal* permit requires a tree *protection* plan is  
10 nonsensical and without merit. Appellant also erroneously claims that the avocado tree has  
11 significant historical value. The tree is not a designated Landmark Tree, nor does the tree qualify as  
12 one.

13 Appellant also attached Exhibit B, which contains various baseless and defamatory remarks  
14 about the Permit Holder. Such statements have no place in public discourse and should be  
15 admonished by this Board. This appeal, the Appellant's *third* appeal regarding this project, is  
16 frivolous.

### 17 III. CONCLUSION

18 The Board of Appeals should comply with state law and dismiss this frivolous appeal  
19 without a public hearing, or at the very least, deny the appeal.

20 Dated: February 16, 2023

Respectfully submitted,



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22 By: Brian O'Neill  
23 ZACKS, FREEDMAN & PATTERSON, PC  
24 Attorneys for Permit Holder,  
25 MJ MISSION DOLORES, LLC  
26  
27  
28

## **EXHIBIT A**

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500  
Sacramento, CA 95833  
(916) 263-2911 / FAX (916) 263-7453  
[www.hcd.ca.gov](http://www.hcd.ca.gov)



December 29, 2022

Kate Conner, LEED AP  
Manager Priority Projects and Process  
Current Planning Division  
City and County of San Francisco  
49 South Van Ness Avenue, Suite 1400  
San Francisco, CA 94103

Dear Kate Conner:

**RE: 3832 18<sup>th</sup> Street Project – Notice of Violation**

This letter serves as a follow-up to the recent communication between the California Department of Housing and Community Development (HCD) and the City/County of San Francisco (City/County) regarding the conditional approval of a 19-unit group housing project located at 3832 18<sup>th</sup> Street (Project).

**Background**

In proposing the Project, the project sponsor invoked State Density Bonus Law (SDBL) to allow additional group housing units above the base density, utilize waivers from specific development standards to facilitate construction of the project, and provide on-site affordable housing as set forth under the SDBL. At a public hearing on October 14, 2021, the Planning Commission approved the Project but included a condition that the project sponsor “shall provide a building design that is consistent with Planning’s recommended alternative design of a project that is five (5) stories in height.”<sup>1</sup> This condition was imposed despite the project sponsor’s legitimate SDBL waiver request to waive the 40-foot height standard and provide a building height of six stories to accommodate the Project’s 19 group housing units. At an appeal hearing on March 15, 2022, the Board of Supervisors upheld the Planning Commission’s project approval as conditioned with the five-story “alternative design.”

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<sup>1</sup> October 14, 2021, San Francisco Planning Commission Motion No. 21016, Condition #13 regarding Project Modifications.

On August 11, 2022, HCD sent a Letter of Inquiry (enclosed) to the City/County identifying HCD's concern that the conditional approval conflicts with the SDBL, specifically Government Code section 65915, subdivision (e)(1), pertaining to waivers from development standards proposed by SDBL project sponsors. In the letter, HCD provided statutory interpretation supported by discussion of relevant, settled case law, and requested that the City/County elaborate on the Planning Commission's decision by providing written findings that reconcile how the required re-design of the project (specifically, the reduction in height) was legally consistent with the above-referenced SDBL provisions.

On October 13, 2022, HCD received a response letter from the City/County, which included a copy of the Planning Commission's approval motion and findings for approval. While HCD appreciates the City/County's response, it failed to address the request to provide findings consistent with the above-described legal justification. Absent a sufficient legal justification, HCD finds that in failing to grant the project sponsor's waiver request, the City/County violated the SDBL provisions set forth under Government Code section 65915, subdivision (e)(1).

### **Failure to Grant the Requested Waiver Violates the State Density Bonus Law**

As detailed in HCD's previous letter, under the SDBL, a local agency is not permitted to apply any development standard that physically precludes the construction of a qualifying density bonus project at its permitted density, and with the granted concessions/incentives, where applicable. (Gov. Code, § 65915, subd. (e).)<sup>2</sup> Once a project qualifies for a density bonus, "the law provides a developer with broad discretion to design projects with additional amenities even if doing so would conflict with local development standards." *Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App 5th 755, 774-75 [289 Cal.Rptr.3d 268, 282]. Similarly, once a project qualifies for a density bonus, the SDBL does not authorize a local agency to deny a proposed waiver, including by way of a required re-design, based on the idea that the project conceivably could be redesigned to accommodate the same number of units without amenities. *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, 1346-47 [122 Cal.Rptr.3d 781, 793].

As previously noted, a local agency may refuse a proposed waiver or reduction of development standards only "if the waiver or reduction would have a specific, adverse impact . . . upon health, safety, or the physical environment," would have "an adverse impact" on an historic resource, or "would be contrary to state or federal law." (Gov. Code, § 65915, subd. (e)(1).) In this context, specific adverse impact "means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete." (Gov. Code, § 65915, subd. (e)(1).)

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<sup>2</sup> See also *Schreiber v. City of Los Angeles* (2021) 69 Cal.App.5th 549, 556 [284 Cal.Rptr.3d 587, 593].

HCD again emphasizes that the manner in which the City/County conditionally approved the Project directly conflicts with this settled SDBL interpretation. Specifically, the Planning Commission imposed a condition of approval requiring the project sponsor to re-design the building to a height of five stories, instead of the proposed six stories, based on the idea that such a re-design could accommodate the same number of units by making modifications elsewhere to the project design (i.e., by significantly reducing and eliminating proposed on-site amenities and relocating sixth floor units to the ground floor). The approval motion did not include the SDBL health and safety findings referenced above, which would have been required to legally substantiate the effective denial of the requested waiver. Accordingly, the City/County violated the SDBL pursuant to Government Code section 65915, subdivision (e)(1).

### **Conclusion and Next Steps**

Under Government Code section 65585, subdivision (i), HCD must give the City/County a reasonable time, no longer than 30 days, to respond to these findings. HCD provides the City/County until January 28, 2023, to provide a written response to these findings. In its response, the City/County should include, at a minimum, a specific plan and timeline for corrective action that allows the Project to move forward with the design and waiver proposed by the project sponsor without further delay or demonstrate that legally sufficient health and safety findings were made pursuant to Government Code section 65915, subdivision (e)(1). Failure to do so may result in further actions.

If you have questions or would like to discuss the contents of this letter, please contact Lisa Frank at [Lisa.Frank@hcd.ca.gov](mailto:Lisa.Frank@hcd.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a long horizontal stroke extending to the right.

David Zisser  
Assistant Deputy Director  
Local Government Relations and Accountability

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500  
Sacramento, CA 95833  
(916) 263-2911 / FAX (916) 263-7453  
[www.hcd.ca.gov](http://www.hcd.ca.gov)



August 11, 2022

Kate Conner, LEED AP  
Manager Priority Projects and Process  
Current Planning Division  
City and County of San Francisco  
49 South Van Ness Avenue, Suite 1400  
San Francisco, CA 94103

Dear Kate Conner:

**RE: City and County of San Francisco – Letter of Inquiry**

The purpose of this letter is to seek information on a housing project which is located at 3832 18<sup>th</sup> Street (Project) and to provide technical assistance to the City and County of San Francisco (City/County) regarding the application of State Density Bonus Law (SDBL). The California Department of Housing and Community Development (HCD) has become aware of the conditional approval of the Project and is concerned that the City/County's actions may run counter to the statutory provisions of SDBL.

**Project Description**

HCD understands the proposed Project is a six-story, 19-unit group housing development including three low-income units to achieve a 35-percent density bonus above the base density of 14 group housing units. The project applicant requested waivers from three development standards: height, rear-yard setback, and dwelling unit exposure. HCD understands the Project was determined to be exempt from California Environmental Quality Act (CEQA) review on May 24, 2021. HCD further understands the Planning Commission had scheduled the Project for hearing on July 15, 2021, but continued the item until October 14, 2021. At the October hearing, the Planning Commission granted a conditional use authorization (CUA) to the Project, which granted up to five stories in height, exceeding the existing 40-foot height limit, but below the 60-foot height requested by the Project sponsor as a waiver under SDBL. Finally, HCD understands the Board of Supervisors upheld the approval of the CUA during an appeal hearing conducted on March 15, 2022.



## Analysis

Development standard waivers (Gov. Code, § 65915, subd. (e)) can be used by an applicant to achieve either the number of units allowed by the base density (i.e., no density bonus requested) or the number of units allowed via a density bonus. The SDBL provides the following:

In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. (Gov. Code, § 65915, subd. (e)(1).)

Under the SDBL, a project is entitled to an unlimited number of waivers from development standards. Specifically, the City/County is not permitted to apply any development standard that physically precludes the construction of the Project at its permitted density and with the granted concessions/incentives. (Gov. Code, § 65915, subd. (e).)<sup>1</sup>

Under SDBL:

- The applicant may propose to have such standards waived or reduced. (Gov. Code, § 65915, subd. (e).)
- The City may require the applicant to provide reasonable documentation to establish eligibility for the waiver. (Gov. Code, § 65915, subd. (a)(2).)
- The City may deny waivers only under limited conditions. (Gov. Code, § 65915, subd. (e)(1).)<sup>2</sup>

Once a project qualifies for a density bonus, “the law provides a developer with broad discretion to design projects with additional amenities even if doing so would conflict with local development standards.” *Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App 5<sup>th</sup> 755, 774-75 [289 Cal.Rptr.3d 268, 282]. A local agency may refuse the waiver or reduction only “if the waiver or reduction would have a specific, adverse impact . . . upon health, safety, or the physical environment,” would have “an adverse impact” on an historic resource, or “would be contrary to state or federal law.” (Gov. Code, § 65915, subd. (e)(1).) In this context, specific adverse impact “means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.” (Gov. Code, §§ 65915, subd. (e)(1), and 65589.5, subd. (d)(2).)

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<sup>1</sup> See also *Schreiber v. City of Los Angeles* (2021) 69 Cal.App.5th 549, 556 [284 Cal.Rptr.3d 587, 593].

<sup>2</sup> Waivers may be denied only if the project has an adverse impact on health and safety that cannot be mitigated or avoided, the project has an adverse impact on a property in the California Register of Historic Properties, or approving the waiver would be contrary to State or Federal law. (Gov. Code, § 65915, subd. (e)(1).)

This provision does not authorize the City/County to condition a project based on the theory that another project with a similar number of units without amenities might conceivably be designed differently and accommodated without waivers. *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, 1346-47 [122 Cal.Rptr.3d 781, 793].<sup>3</sup> The courts have made it clear that if a project qualifies under SDBL, and if waivers are needed to physically allow that project to go forward with the incentives and concessions granted, the waivers must be granted. The City/County may not deny a waiver based on the possibility that the project could be redesigned without amenities.

Thus, qualified SDBL project applicants need not consider various alternatives that might be plausible on the site without waivers. Accordingly, the City/County must waive the development standards requested pursuant to Government Code section 65915, subdivision (e). *Wollmer*, supra, 193 Cal.App.4th at pp. 1346-47 [122 Cal.Rptr.3d 781]. The only exception is where a local jurisdiction can make findings about specific adverse impacts, as noted above.

In conditionally approving the Project, the Planning Commission granted it up to five stories in height. However, the Project applicant requested a waiver of the site's 40-foot height limit and proposed a height of 60 feet to accommodate the Project's six stories. The redesigned Project would remove community amenity spaces and bicycle parking and relocate two units from the sixth floor to the ground floor. HCD is concerned that this action would not grant the Project the requested height restriction waiver to which it is entitled, potentially constituting an effective denial of a waiver under SDBL by conditioning the Project to remove the sixth floor and limiting the overall height to less than 50 feet.

For this reason, HCD requests that the City/County provide the written findings to HCD reconciling the approval of the CUA and SDBL provisions under Government Code Section 65915, subdivision (e), within 30 days (by September 11, 2022), explaining the legal justification and the evidence behind these decisions.

## **Conclusion**

As stated above, HCD is concerned that the Project has been improperly conditioned under SDBL. The State of California is in a housing crisis, and the provision of housing is a priority of the highest order. HCD has enforcement authority over SDBL (Gov. Code, § 65585). HCD encourages the City/County to reevaluate the CUA approved by the Planning Commission, and approve the Project as originally proposed by the Project applicant. In conditionally approving this project, the Planning Commission potentially

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<sup>3</sup> See also *Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App 5<sup>th</sup> 755 [289 Cal.Rptr.3d 268].

failed to make required findings under SDBL to deny a waiver that was originally requested by a project applicant. HCD encourages the City/County to remain mindful of its obligations under the SDBL.

If you have questions or need additional information, please contact Kevin Hefner at [Kevin.Hefner@hcd.ca.gov](mailto:Kevin.Hefner@hcd.ca.gov)

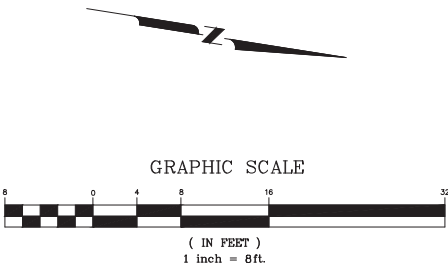
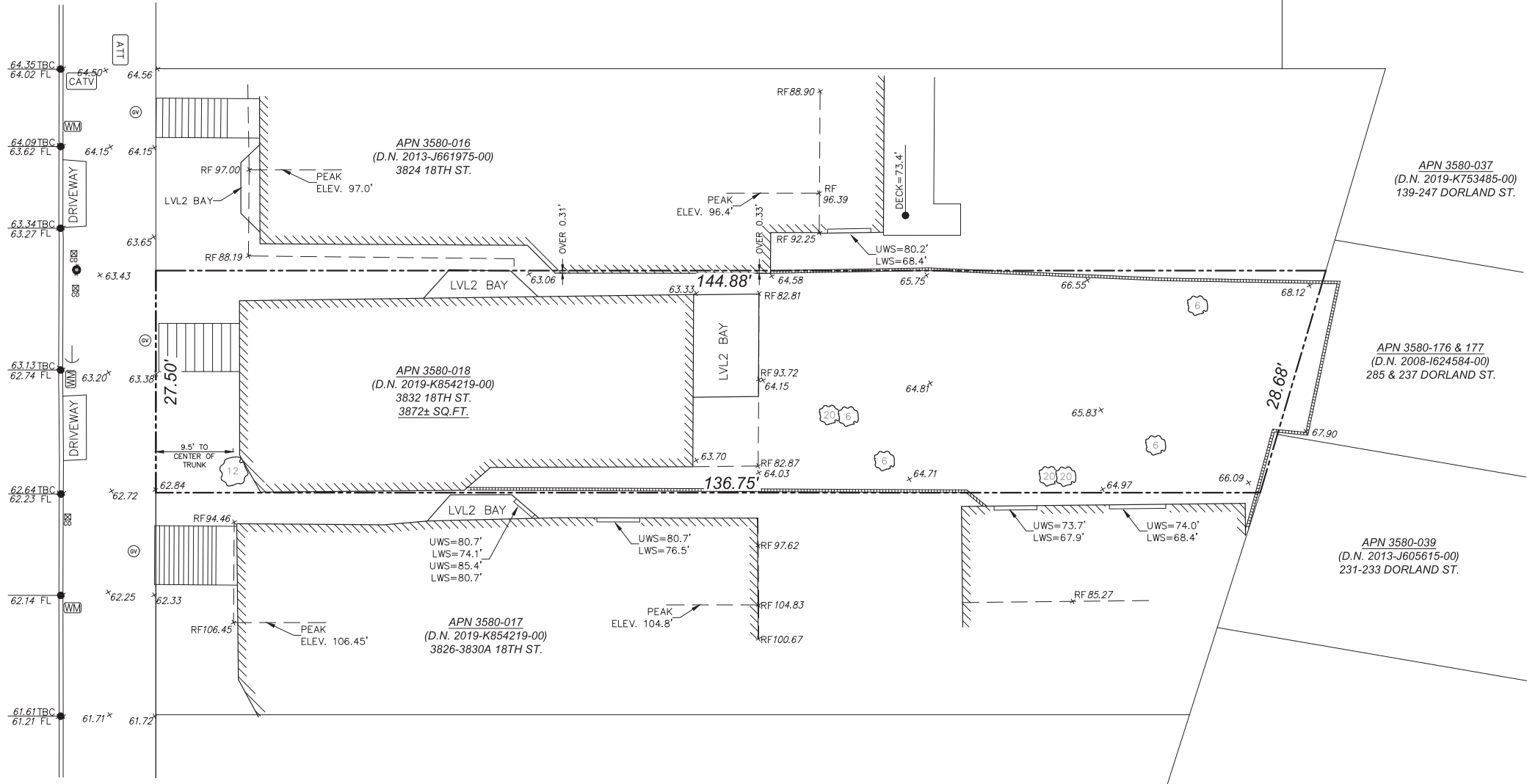
Sincerely,

A handwritten signature in black ink, appearing to read "Shannan West". The signature is fluid and cursive, with the first name "Shannan" written in a larger, more prominent script than the last name "West".

Shannan West  
Housing Accountability Unit Chief

## **EXHIBIT B**

18TH STREET (64' WIDE)



LEGEND

- PROPERTY LINE
- ROOF LINE
- WOOD FENCE
- BUILDING FOOTPRINT
- CONCRETE WALL
- UTILITY POLE
- SANITARY SEWER CLEANOUT
- TREE WITH DIA. IN INCHES
- WATER VALVE
- WATER METER
- ROOF
- TBC
- TOP OF FENCE
- LWS
- LOWER WINDOW SEAL
- UWS
- UPPER WINDOW SEAL
- SPOT ELEVATION
- GAS VALVE
- GUY WIRE
- ATT
- CATV
- AT&T BOX
- CABLE TV BOX

BOUNDARY NOTE:

BOUNDARY INFORMATION SHOWN HEREON IS FOR PLANNING PURPOSES ONLY. PROPERTY AND RIGHT-OF-WAY LINES SHOWN HEREON ARE BASED ON RECORD DATA AND EXISTING IMPROVEMENTS AND ARE NOT INTENDED TO BE A FINAL BOUNDARY SURVEY OF THE PROPERTY WHICH REQUIRES FILING A RECORD OF SURVEY OR SUBDIVISION MAP WITH THE COUNTY RECORDER. NO PROPERTY LINES OR CORNERS WERE SET ON THIS SURVEY.

GENERAL NOTES:

- ALL DISTANCES ARE IN DECIMAL FEET UNLESS OTHERWISE NOTED.
- ALL ANGLES ARE AT 90° UNLESS OTHERWISE NOTED.
- THIS MAP REPRESENTS THE SITE CONDITIONS ON DATE OF FIELD SURVEY. NOVEMBER 26, 2019.
- ELEVATIONS ARE BASED UPON SAN FRANCISCO CITY DATUM (SFVD13). BENCHMARK NO. 11682. ELEVATION 88.636.

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY AT THE REQUEST OF M-J SF INVESTMENTS, LLC IN NOVEMBER 2019.

BY: *Daniel J. Westover*  
DANIEL J. WESTOVER, L.S. 1779

DATE: 6/14/2021

336 CLAREMONT BLVD. STE 1  
SAN FRANCISCO, CA 94127  
(415) 242-5400  
www.westoversurveying.com

WS  
Westover  
Surveying

JOB NO.

19072

COMMENTS

added tree and signs at front,  
utilities on adjoining lot

NO. DATE

1. 6/14/21

DRAWN BY:

CFS

CHECKED BY:

D\_JW

DATE:

12/20/2019

SCALE:

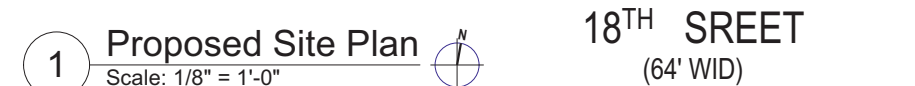
1"=8'

SITE SURVEY

3832 18TH STREET  
LOT 018 OF ASSESSORS BLOCK 3580,  
CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA

SHEET

1  
OF  
1

[illegible]

## **BRIEF(S) SUBMITTED BY RESPONDENT DEPARTMENT(S)**



**Urban Forestry**

urbanforestry@sfdpw.org | T. 628.652.8733 | 49 South Van Ness Ave. Suite 1000, San Francisco, CA 94103

February 15, 2022

**Appeal No. 23-002 (3832 18<sup>th</sup> St.) Department's Brief**

Tree Removal Permit Application No. 792810 (Public Works Order No. 207502)

RE: Removal of one (1) significant tree on private property with replacement

President Swig and Commissioners:

The property owner of 3832 18<sup>th</sup> St. submitted tree removal permit application No. 792810 to remove one (1) significant avocado tree on private property (*Persea americana*), to be replaced with one (1) street tree within the public right-of-way (PROW) planted towards the curb.

Our Bureau approved the removal of the tree and the public protested. The matter was scheduled for a Tree Hearing and Public Works issued Order No. 207502, a resulting decision recommending removal of the tree.

**Response to Appellant's Brief**

The Appellant outlined five (5) key concerns in their brief.

**1. The Department Failed to Provide the Requisite Notices As Required**

In their brief the Appellant asserts that our Department failed to provide proper notice in that "The Department did not send any such notice to all Interested San Francisco organizations as required." Section 802 of our Urban Forestry Ordinance (Article 16 of the



Public Works Code) defines "Interested San Francisco organization" as "*a San Francisco organization or individual that has made a written request to the Department for notification of proposed tree removals in a specified area(s) or neighborhood(s).*" Public Works did comply with this requirement, as there are no standing requests from a San Francisco organization in this area or neighborhood, or from a specific individual, other than those who protested the proposed removal or attended the hearing.

## **2. Posting Notices on the Tree and on the Department's Website Fail to Meet the Notice Requirements**

In their brief the appellant asserts that "notices must be sent" and not just posted on the subject tree, nearby utility poles, and posted on our website. As stated in the previous item no. 1 above, there were no "interested parties" that Public Works was required to "send" the notice to. There was no San Francisco organization or individual that had made a written request to the Department for notification of proposed tree removals in this specified area(s) or neighborhood(s). Therefore, Public Works did comply with this requirement.

The tree removal permit process, including posting the 30-day notice on the tree and nearby utility poles and posting on our website, was adhered to, and generated protests from the public. This required that the matter be considered at a Public Works hearing, and those who emailed or wrote to protest, were notified of the hearing that was scheduled. Likewise, they were also notified of the outcome of the hearing. The process was adhered to, and worked, as we did in fact receive protests, we held a hearing, and the resulting decision was appealed to this commission.

### 3. The Department Failed to Comply with Sections 807 and 808.

The Appellant asserts in their brief that Public Works failed to comply with Sections 807 and 808, because we have not required that a tree protection plan be submitted. The Department does not require that a tree protection plan be submitted when an applicant is actively pursuing the removal of a protected tree. The protected tree in this case is the subject, significant avocado tree. If permission to remove the tree is ultimately denied, at that time, to be consistent with how we handle similar cases, we will then require that a tree protection plan be submitted, and it would be reviewed by staff to determine if it is adequate and complete. The Public Works form, the "Required Checklist for Tree Planting and Protection" is included in Exhibit D. The correct box is checked on page 3: *"The project involves the removal of one or more Protected Trees."* On page 2 of this form, it states in bold red ink that a tree protection plan "MUST" be submitted, but not in cases when removal of the subject tree is being sought. The Department has not failed to comply with Sections 807 and 808 of our Urban Forestry Ordinance.

### 4. The Removal Order Should Be Denied Because Work Cannot Be Completed

#### Within Six Months.

When construction is involved, Public Works routinely extends permits as necessary. Our ordinance states that *"All work associated with a street tree permit must be completed within six months of issuance, **unless an extension has been granted by the Department.**"* We anticipate that the six month permit, if issued to the property owner, may need to be extended multiple times. This is a routine practice, and very common. The permit will therefore remain valid.

## **5. SB330 Does Not Apply**

During the tree removal permitting process, the applicant paused to inquire as to the necessity to be subjected to a Public Works tree hearing, citing SB330. The applicant mailed a letter to the Director of Public Works, and the Office of the City Attorney provided a reply (Exhibit E). After a response was received from the Office of the City Attorney, Public Works held the required tree hearing. Public Works agrees with the appellant that the applicant is required to obtain a tree removal permit for a street tree or significant tree, and the Office of the City Attorney confirmed our jurisdiction. This is no longer in dispute.

### **Summary of response to Appellant's Brief**

In summary, our Department disputes what is asserted in the first four points above, and we are in agreement about point number five.

### **Correction to the Conditions Placed on the Tree Removal Permit**

Our Public Works hearing recommendation approved the removal of the significant tree on the condition that it be replaced with a 24" box street tree. This is what is stated in Order No. 207502. However, during the staff evaluation of the permit application and during our staff presentation at the Public Works hearing (Exhibit B), staff clearly stated that the approval would be on the condition that the tree on private property be replaced with a 36" box street tree. The subject tree has a diameter of 12" and its appraised value was determined to be \$3,000.00 (Exhibit C). Planting a 36" box tree has a minimum value of \$3,100.00 and would satisfy the requirement to at least match the value of the tree removed.

During our review of this Appeal, Public Works has confirmed that the conditions placed on approving the tree for removal, should have been further clarified. To be consistent with how we have handled similar cases, Public Works needs to collect the appraised value of \$3,000.00 due to the permanent loss of the significant tree on private property due to construction. Therefore, Public Works supports granting the appeal for the purposes of modifying the conditions: on the condition that the applicant pay the appraised value of \$3,000.00 due to the removal without replacement of the subject tree. Public Works has confirmed that we cannot allow the replacement street tree to make up for the removal of the significant tree. This was a staff and Departmental error we now wish to correct. This is the information we should have presented to the applicant before our Public Works hearing, and then to the public, at the tree hearing.

We should have issued the approval to remove the subject tree with the following conditions: that the removal be granted on the condition that due to the permanent loss of a significant tree on private property, that the applicant pay the tree's appraised value of \$3,000.00 to the City's Adopt-a-Tree Fund because a replacement tree of equivalent value cannot be replaced on private property due to construction; and that the property owner plant one (1) 24" box size street tree, at the close of construction, as required of new construction. The property owner will be required to water and establish the 24" box size street tree for three years after planting.

### **Wrong Tree, Wrong Place**

In reviewing photos of the avocado tree and site, it is important to remember that the way to properly plan for and manage a tree, is to plant the right tree, in the right

place, and to properly plan for a tree's size at maturity. The subject avocado tree was planted haphazardly too close to the base of the home's foundation and in a very small, narrow planting strip. Looking at photos available on Google Street view (Exhibit F), the tree started very small at first, and was perhaps intended to be a landscaping accent; it was clearly pruned to be kept small at first. The species is programmed genetically to become a large stature tree at maturity. In fact, many avocados still exist in rear yards in the Mission, and they really need an entire yard of space to accommodate their size. The tree vigor is good, the structure is fair, but the placement of the tree up against the base of the house is not sustainable. The proposed project will not be able to be constructed with the tree in place. The best Public Works can do here is require that the loss of the tree be assessed, which we now seek to do.

#### **Support to clarify the conditions for approval**

We ask that the commissioners support the appeal so that Public Works can modify the conditions of the permit, not on the basis outlined by the Appellant, but on the basis that Public Works needs to modify the conditions of approval to require that the appraised value of 3,000.00 be assessed for the loss of the tree. The project will already be required to plant one (1) 24" box size tree due to the construction of a new building. Therefore, Public Works supports the removal of one (1) significant avocado tree on private property, on the condition that \$3,000.00 be paid to the City's adopt-a-tree fund, and that the applicant plant the required 24" box size tree.

Respectfully

*Chris Buck*

Chris Buck

Urban Forester

Enclosures

Exhibit A – Public Works Order No. 207502

Exhibit B – Public Works powerpoint presentation from tree hearing and add'l photos

Exhibit C – Tree appraisal sheet

Exhibit D – Required Checklist for Tree Planting and Protection

Exhibit E – SB330 correspondence

Exhibit F – Images from Google Street View

Exhibit G – Other potential areas to plant trees

# EXHIBIT A



San Francisco Public Works  
General – Director's Office  
49 South Van Ness Ave., Suite 1600  
San Francisco, CA 94103  
(628) 271-3160 [www.SFPublicWorks.org](http://www.SFPublicWorks.org)

### **Public Works Order No: 207502**

The Director of Public Works held a Public Hearing on Wednesday, December 7, 2022, commencing at 10:00AM via teleconference to consider several items related to tree removals. The hearing was held through videoconferencing to allow remote public comment.

The hearing was to consider Order No. 207354 (permit no. 792810), removal of one (1) significant tree with replacement adjacent to 3832 18<sup>th</sup> Street. Staff approved the removal, and the public has protested.

#### **Findings:**

The Bureau's presentation was made by Bryan Ong, Bureau of Urban Forestry. Public Works staff has approved the removal. The tree was evaluated in good condition with leaning, codominant stems, and poor location placement. Significant pruning would not be possible that would adhere to ANSI A300.

The property representative explained that the City is prohibited from holding additional hearings beyond the 5 that's already had in connection to the building permit, prohibited from denying tree removal unless there is a specific adverse impact upon public health or safety, complies with City's tree removal standards and is necessary for the issuance of a building permit.

The public protested the removal, citing detrimental environmental effects of losing a mature tree, integral history/sentimental value, property's current petition to the State to build its proposed 6-story structure as opposed a 5-story structure, uncooperative nature of property developer, and concerns of a monstrous building detracting from the nature of the neighborhood. The public mentioned the existing tree has not been properly maintained or pruned since new ownership of the property.

The development received a Conditional Use Authorization (Planning Case No 2020-001610CUA, Planning Commission Motion No. 21016) from San Francisco Planning. Exhibit B therein Motion No. 21016, the existing tree will conflict with the new building's footprint and bay windows. Removal and replacement will allow construction of a group housing building and ensure proper maintenance of the required tree by both private and public professional management.

#### **Recommendation:**

After consideration of correspondence and testimony provided, the recommendation is to uphold the Bureau's recommendation and approve removal of the one (1) significant tree with replacement of a 24" box tree.

**Appeal:** This Order No. 207354 and permit no. 792810 may be appealed to the Board of Appeals within 15 days of January 4<sup>th</sup>, 2023.

Board of Appeals  
49 South Van Ness Ave. suite 1475 (14<sup>th</sup> Floor)  
San Francisco, CA 94103  
Phone: 628.652.1150 Email: [Boardofappeals@sfgov.org](mailto:Boardofappeals@sfgov.org)

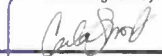


NOTE: Office visits by appointment only.

Due to COVID-19 social distancing measures, more information about how to file an appeal can be obtained by calling 628-652-1150 or by emailing the Board of Appeals at [Boardofappeals@sfgov.org](mailto:Boardofappeals@sfgov.org). For additional information on the San Francisco Board of Appeals and to view the Appeal Process Overview, please visit their website at <http://sfgov.org/bdappeal/>

X

DocuSigned by:



Short, Carla 073CF73A4EA6486

Interim Director of Public Works

# EXHIBIT B

# Public Works Order No: 207354

## 3832 18<sup>th</sup> Street

**Removal of one (1) significant tree with replacement on private  
property at  
3832 18<sup>th</sup> Street**

(Staff approved the removal and the public has protested)

3832 18<sup>th</sup> St  
Avocado Tree / *Persia americana*  
Permit Application: 792610  
TreeID: 268949

#### Overview

- **Tree Height – Approx.. 35'-40'**
- **DBH – 12"**
- **Condition: Good**
- **Deficiencies: Lean, Co-Dominant stems, placement.**
- **Notes: Tree is planted very close to property. Building project scope cannot be achieved without significant pruning, which could not be completed following ANSI A300 Best pruning practices.**

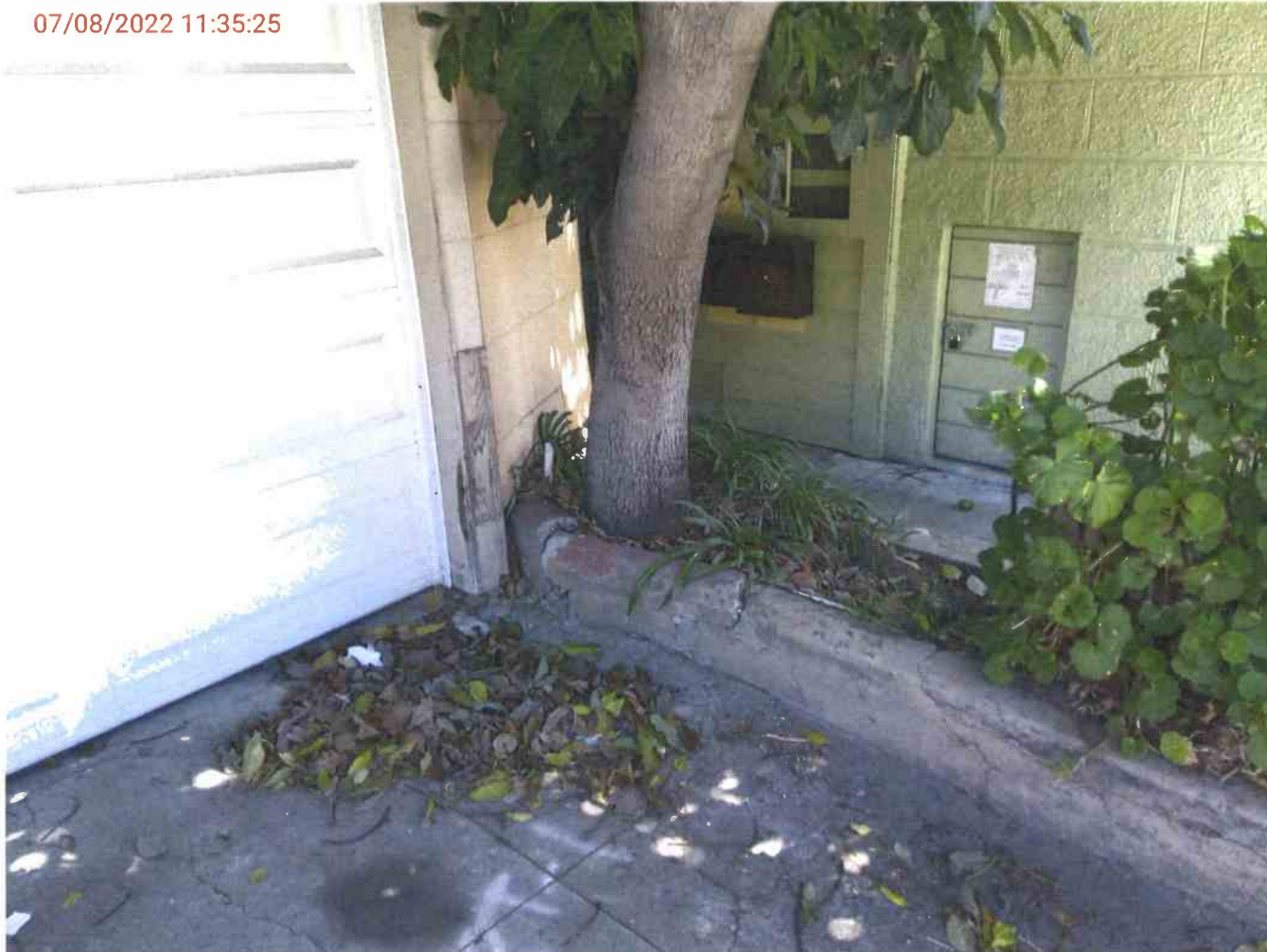


TreeID: 268949

3832 18<sup>th</sup> St  
Avocado Tree / *Persia americana*  
Permit Application: 792610  
TreeID: 268949

TreeID: 268949  
Tree has been planted in a poor location.

07/08/2022 11:35:25





1

Proposed Site Plan

18<sup>TH</sup> STREET  
(64' WID)

CHECK BY  
DESIGN BY  
REVISED DATE  
DATE  
JOB NO.  
SHEET NO.

SAN FRANCISCO  
PUBLIC  
WORKS

Address

- Summary for approval

Tree is in poor location. Any work required to the adjacent property will require significant pruning which would negatively affect the health of the tree. Tree exhibits some conditions that elevate the risk of failure, including lean, and co-dominant stems.

- Four(4) Letters of protest received.

07/08/2022 11:35:05

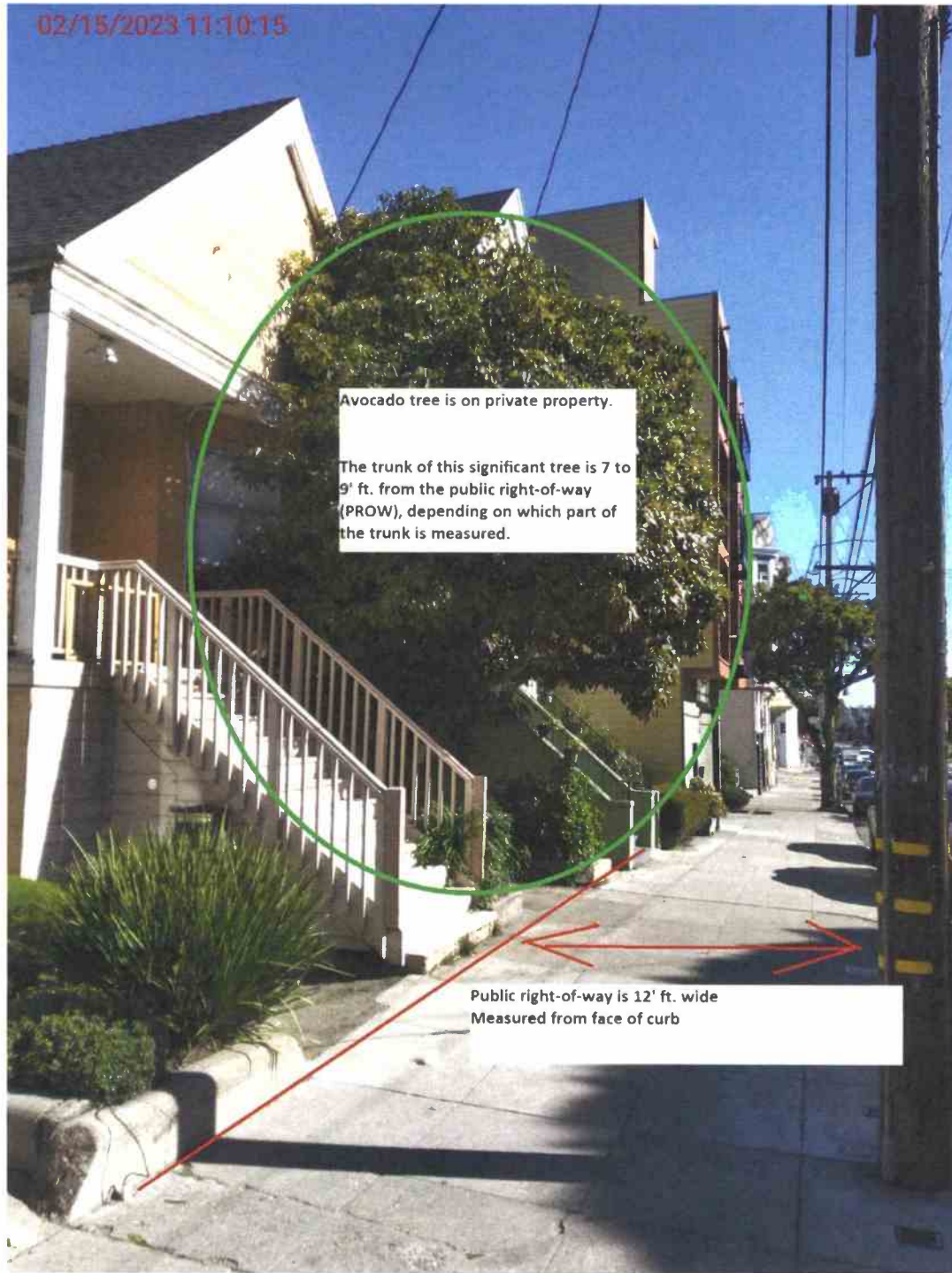


02/15/2023 11:10:15

Avocado tree is on private property.

The trunk of this significant tree is 7 to 9' ft. from the public right-of-way (PROW), depending on which part of the trunk is measured.

Public right-of-way is 12' ft. wide  
Measured from face of curb







02/15/2023 1:16:51











## City Tree Information

Tree ID: 268949

Legal Status: Significant Tree

## Tree Information

## Actions

## Assessments

## Photos

## Tree History

| Action Date  | Request Date                                   | Scheduled Date | Action             |   |
|--|--|----------------|--------------------|---|
| 07/13/2022   | 07/13/2022                                     |                | Permit Inspection  | <input type="button" value="View/Edit Action"/> |
| Close Reason:  | <input type="button" value="Crew"/>            | Permit: 792610 | Letter:            |   |
| Inspected Action:  | <input type="button" value="Inspect Reason:"/> |                |                    |   |
| x1104 No:  | SR ID:   | To CMMS        | Priority           |   |
| Comments 792610  |  |                |                    |   |
| Planting Species: <input type="button" value=""/>  |  |                |                    |   |
| 11/30/2022   | 11/30/2022                                     |                | Posted for Hearing | <input type="button" value="View/Edit Action"/> |
| Close Reason:  | <input type="button" value="Crew DPHN"/>       | Permit:        | Letter:            |   |
| Inspected Action:  | <input type="button" value="Inspect Reason:"/> |                |                    |   |
| x1104 No:  | SR ID:   | To CMMS        | Priority           |   |
| Comments Posted Hearing Announcements  |  |                |                    |   |
| Planting Species: <input type="button" value=""/>  |  |                |                    |   |
| 07/13/2022   | 07/13/2022                                     |                | Posted Tree 30 Day | <input type="button" value="View/Edit Action"/> |
| Close Reason:  | <input type="button" value="Crew DPHN"/>       | Permit:        | Letter:            |   |
| Inspected Action:  | <input type="button" value="Inspect Reason:"/> |                |                    |   |
| x1104 No:  | SR ID:   | To CMMS        | Priority           |   |
| Comments been planted too close to adjacent building. Long term management is not feasible. Replacement is approved with 36" box tree. |  |                |                    |   |
| Planting Species: <input type="button" value=""/>  |  |                |                    |   |
| 07/08/2022   | 07/08/2022                                     |                | Inspect - 6        | <input type="button" value="View/Edit Action"/> |
| Close Reason:  | <input type="button" value="Crew DPHN"/>       | Permit:        | Letter:            |   |
| Inspected Action:  | <input type="button" value="Inspect Reason:"/> |                |                    |   |
| x1104 No:  | SR ID:   | To CMMS        | Priority           |   |
| Comments Inspected for removal permit and determined tree is in good condition. Poor placement reduce value of tree.                   |  |                |                    |   |
| Planting Species: <input type="button" value=""/>  |  |                |                    |   |

Tree Tracking Main Menu

Search for Permits

Permits

Tree Detail

City Tree Information

Tree ID: 268949

Legal Status: Significant Tree

Tree Information

Actions

Assessments

Photos

Tree History

Assessments

Add Assessment

7/8/2022 11:38

Daniel Hoffman

Persea americana :: Avocado

Assessment Date: 7/8/2022

Inspector: Daniel Hoffman

Species: Persea americana :: Avocado

dbh: 12

Height: Large: 30-50

Condition of Wood: Good 80%

Condition of Leaves: Good 80%

Condition: Tree in good condition. Slight lean. Placement is poor as it is very close to the adjacent properties. Constant contact with adjacent property facade. Fruiting.

Plot Size: 3x3

Sq Ft: 9

Sidewalk Damage:

# of Damaged Squares:

ThroughWay Damage:

Enlarge Basin:

Shift Basin:

Clearance

Building:

Street:

Sidewalk:

Sewer (5):

Utility Pole (6):

Signal/Stop Sign (25):

High Voltage (10):

Water (3):

Streetlight (9):

Parking Sign (3):

Low Voltage:

Gas (3):

Hydrant (5):

Fire Escape (10):

Trees (12-15):

Maintenance Recommendation:

Deficiencies:

Recommendations:

Appraised Value: \$3,000.00

Fine Value:

## Permit / Agreement

Permit # 792610

Permit Type Removals

Tree/Action  
Summary

Status: To Hearing

Approved: Pending

[Basic Info](#)
[Processing Info](#)
[Invoices](#)
[Tree/Actions](#)
[Photos/Documents](#)

Admin Notes: recvd application and docs through inbox 06/17/22-CW, d8-Daniel issued hearing announcement 08/25/22-CW. Assessment in Treee record. Issued resulting decision 01/04/23-CW recvd appeal 01/19/23-CW

Inspection Notes: Removal of one avocado. Tree must be appraised to establish value, Invoice sent on 6.29.2022. received protest letter 7/25/22 BO.

Second Contact:

Date Posted

Days Posted

ADU ☐

DBI Permit 202008312955 and 202008 NTR Number

### Connected Hearings

Hearing Type: Tree Hearing

Request Date:

1694

Status: Active

Hearing No:

Hearing Date:

12/7/2022

Hearing Outcome:

Post Hearing Due Date:

Notes:

Hearing Amount:

# EXHIBIT C



# Field Appraisal Sheet

| Tree Number      |     | 1  | 2             | 3             | 4             | 5             |
|------------------|-----|--|---------------|---------------|---------------|---------------|
| Species          |     | <i>Persea americana</i> (Avocado)            |               |               |               |               |
| Basic Tree Cost  | #1  | Trunk Circumference                          | 38 in         |               |               |               |
|                  | #2  | Trunk Diameter (#1 / 3.14)                   | 12 in         | in            | in            | in            |
|                  | #3  | Trunk Area (#2 <sup>2</sup> / 4 x 3.14)      | 113.1 in      | .0 in         | .0 in         | .0 in         |
|                  | #4  | Unit Tree Cost                               | \$100 / sq in | \$100 / sq in | \$100 / sq in | \$100 / sq in |
|                  | #5  | Basic Tree Cost (#5 * #6 + #7)               | \$11,310.00   | \$0.00        | \$0.00        | \$0.00        |
| Condition        | #6  | Health (10-100%)                             | 100%          |               |               |               |
|                  | #7  | Structure (10-100%)                          | 81%           |               |               |               |
|                  | #8  | Form (10-100%)                               | 41%           |               |               |               |
| Limitations      | #9  | Condition Rating (combine #6-#8)             | 74%           | 0%            | 0%            | 0%            |
|                  | #10 | Functional Limitations                       | 40%           |               |               |               |
|                  | #11 | External Limitations                         | 90%           |               |               |               |
|                  | #12 | Depreciated Cost (#5 x #9 x #10 x #11 x #12) | \$3,012.98    | \$0.00        | \$0.00        | \$0.00        |
| Additional Costs | #13 | Additional Costs                             |               |               |               |               |
|                  |     |  |               |               |               |               |
|                  | #14 | Total Cost                                   | \$3,012.98    | \$0.00        | \$0.00        | \$0.00        |
|                  | #15 | Assignment Result (round #14)                | \$3,000.00    | \$0.00        | \$0.00        | \$0.00        |

Table of Values for Functional and External Limitations:

No impact on value 81%-100%

Minor impact 61%-80%

Moderate impact 41%-60%

Severe impact 21%-40%

Extreme impact 0%-20%

Condition Rating: Combination of Health, Structure, and Form ratings. It may be either:

1) The lowest of the three,

2) The mean value of the three; used here

3) A weighted average of the three, or

4) Intuitively chosen by appraiser experience

Spreadsheet Key

<http://www.sammex.com/resources/spreadsheets/fieldapp.html>

condition should not be an avg of health structure and form. A dead tree with perfect structure and form should not be avg of 0, 100, 100. it should be 0

# EXHIBIT D



Urban Forestry

urbanforestry@sfdph.org | 1 San Francisco | 150016 Van Ness Ave | Suite 1000 | San Francisco, CA 94103

## Required Checklist for Tree Planting and Protection

Pursuant to Public Works Code Article 16, many construction projects trigger requirements for the protection of existing trees and/or the planting of new street trees.

This checklist must be completed for all construction-related projects as defined below. You may be required to submit a Tree Protection Plan and Review fee of \$151.00.

### What does this checklist do?

This checklist describes applicable tree-related requirements and will help you design a Code-compliant project. Completion of this checklist is a requirement for projects meeting any of the criteria identified below. No permit will be issued by the City before satisfying all applicable tree-related requirements, including receiving clearance from the San Francisco Public Works to plant required street trees and/or remove any Protected Trees.

### Why are existing trees protected and new trees required?

Trees are a vital component of the City's built and natural environments. They filter and contain storm water, lessen air pollution and greenhouse gases, help save energy, provide wildlife habitat and increase property values. The City is currently home to more than 100,000 street trees.

### Instructions

Requirements for new street trees and tree protection apply to the types of projects identified in the chart below. Please check all boxes which apply to your project. If no boxes are checked, you do not need to complete this form.

### Development Features

- ☐ Addition of a garage
- ☒ Addition of a new dwelling unit *BOOK 2/15/2023*
- ☐ Addition of a curb cut Construction of a new building
- ☒ Net addition to an existing building of 500 gross sq. ft. or more *BOOK 2/15/23*

An applicant for a project which meets any of the criteria identified above must complete this checklist and submit a copy of it to Urban Forestry along with the tree planting, removal and/or protection plan application.

Not all projects meeting the criteria above will be subject to tree protection and/or installation requirements. For example, if at least one street tree already exists for each 20 feet of street frontage, no new street trees will be required. Likewise, only certain trees, such as Street Trees and Significant Trees, must be protected.

### 1. Applicant Information

Contact Name: SIA Consulting Corp  
Address: 4653 Mission St, San Francisco, CA 94112  
E-Mail Address: admin@siaconsult.com Phone #: 415-741-1292

### 2. Site Information

Site Address: 3832 18th St  
Combined Length of all frontages: 27'-6" Building Permit Number: 202008312955 & 202008312952

### 3. Disclosure of Existing Protected Tree(s)

Only the following specific types of trees require protection under the Public Works Code. These trees are collectively known as "Protected Trees." Please indicate the presence or lack thereof of such on, over, or adjacent to the parcel containing the proposed construction. Check all boxes that apply and indicate quantity of each tree type, if appropriate.

**Street Tree** A tree growing within the public right of way (e.g. sidewalk) that is not also a Landmark Tree.

*Back*  
*2/15/23*

|                                     |   |         |          |
|-------------------------------------|---|---------|----------|
| <input type="checkbox"/>            | Street Trees exist adjacent to the subject property.        | AQTY:   | _____    |
| <input checked="" type="checkbox"/> | Street Tree(s) proposed for removal                         | B QTY   | _____    |
| <input checked="" type="checkbox"/> | There are no Street Trees adjacent to the subject property. | C       | <u>0</u> |
|                                     |   | (A + B) | _____    |

**Significant Tree** A tree that is planted on the subject property (i.e. outside of the public right-of-way) with any portion of its trunk within 10 feet of the public right-of-way that has (a) a diameter at breast height (DBH) in excess of twelve inches **OR** (b) a height in excess of twenty feet **OR** (c) a canopy in excess of fifteen feet.

*Back*  
*2/15/23*

|                                     |   |             |            |
|-------------------------------------|---|-------------|------------|
| <input checked="" type="checkbox"/> | Significant Tree(s) exist on the subject property                     | AQTY:       | <u>(1)</u> |
| <input type="checkbox"/>            | Significant Tree(s) exist on any adjacent property                    | AQTY:       | _____      |
| <input checked="" type="checkbox"/> | Significant Tree(s) proposed for removal                              | B QTY       | <u>(1)</u> |
| <input checked="" type="checkbox"/> | There are no Significant Trees on or adjacent to the subject property | C           | _____      |
|                                     |   | (A + A) - B | <u>(1)</u> |

**Landmark Tree** A tree designated as such by the Board of Supervisors owing to particular age, size, shape, species, location, historical association, visual quality, or other contribution to the City's character.

|                                     |   |                 |          |
|-------------------------------------|---|-----------------|----------|
| <input type="checkbox"/>            | Landmark Trees exist on the subject property                        | AQTY:           | _____    |
| <input type="checkbox"/>            | Landmark Trees exist on the adjacent sidewalk                       | AQTY:           | _____    |
| <input type="checkbox"/>            | Landmark Trees exist on the adjacent property                       | AQTY:           | _____    |
| <input type="checkbox"/>            | Landmark Tree(s) proposed for removal                               | B QTY           | _____    |
| <input checked="" type="checkbox"/> | There are no Landmark Trees on or adjacent to the subject property. | C               | <u>0</u> |
|                                     |   | (A + A + A) - B | _____    |

### Total Number of Protected Trees

*Back*  
*2/15/23*

Total : (1)  
Add all C's

If there are one or more protected trees total, you MUST complete submit a Tree Protection Site Plan along with the \$151 processing fee payable to CCSF-DPW-BUF.

See section Five and refer to code at <http://sfdpw.org/protection-trees-and-landscape-material>

Is the required Tree Protection Site Plan enclosed? Yes \_\_\_\_\_

Official Use Only - Tree Protection Plan Required \_\_\_\_\_ Processing Fee Paid \_\_\_\_\_

#### 4. Impact of Project on Existing Protected Sites

If your responses above indicate that any Protected Tree(s) exist on, over or adjacent to the subject property, please check the applicable boxes, below:

BOX 1

☐

**The project may have an impact on one or more Protected Trees which are not proposed for removal, as follows:** Either (1) any construction-related activity, no matter how minor, is planned or is reasonably foreseeable to occur within the dripline of a Significant Tree or a Street Tree or (2) regardless of the location of construction activity the property contains a Landmark Tree

Construction activities would include, but are not limited to the following: (1) Grading or excavation within the dripline of any Significant Tree or Street Tree (2) Construction staging and/or storage of materials and/or equipment within the **dripline** of any Significant Tree or Street Tree (3) Any activity that might necessitate pruning of a Significant Tree or Street Tree (4) Dumping of trash and/or liquids (such as project waste water) within the basin or dripline of any Significant Tree or Street Tree

**If you have checked this box, a Tree Protection Plan must be submitted and approved by San Francisco Public Works Bureau of Urban Forestry prior to the commencement of any construction activity.**

Such plan must meet the following minimum standards and be approved by SF Public Works:

- ✓ The Tree Protection Plan must be developed by an International Society of Arboriculture (ISA) Certified Arborist.

Site plans submitted along with the associated construction project must clearly indicate the street, curb, sidewalk, driveway, structure(s), and the locations of all Protected Trees and non-protected trees. Protected Trees must also be shown to include accurate tree height, accurate canopy dripline and trunk and canopy diameters. The plans must graphically depict implementation of all measures called for in the Tree Protection Plan.

BOX 2

☒

**The project involves the removal of one or more Protected Trees.** A permit from San Francisco Public Works is required in order to remove any Protected Tree. The Planning Department will not approve a building permit for a project which involves the removal of a Protected Tree unless San Francisco Public Works has first reviewed the proposal and found it to be consistent with applicable rules and regulations.

**If you have any existing, remaining trees not proposed for removal a Tree Protection Plan is required and must be approved by San Francisco Public Works Bureau of Urban Forestry prior to the commencement of any construction activity. Refer to minimum standards above.**

BOX 3

☐

**Project will not remove or have any other impact on Protected Trees.**

### 5. Calculation of Number of New Required Street Trees

One street tree is required for each 20 feet of street frontage of the subject property, any additional 10' of frontage will be rounded up, however credit is given for existing street trees. Please complete the table below to determine the number of street trees required for your project. If no street trees are required, please skip to the Applicant's Affidavit at the end of this form and once signed, return it to the Planning Department along with your Building Permit Application or other application.

| Combined Length of All Street Frontages | Divided by Tree Spacing Requirement | Gross Number of Trees Required | Minus Number of Existing Trees | Net Street Tree Requirement |
|---|-------------------------------------|--------------------------------|--------------------------------|-----------------------------|
| 27'-6"                                  | ÷ 20'                               | = 1<br><small>rounded</small>  | - 1                            | = 1 (Replacement)           |

Unless site conditions physically prevent the planting of a street tree, a waiver or modification of street tree requirements is available only under extremely limited circumstances and only outside of Residential Districts (i.e. RH, RM, RTO, RED). Be aware that even when available, an in-kind improvement or in-lieu payment is required for every such waiver.

### 6. Applicant's Affidavit

I hereby attest under penalty of perjury that the information I have entered on this document is true and correct to the best of my knowledge, and that I have read and understood this form and that I am the property owner or authorized agent of the property owner, familiar with the property and able to provide accurate and complete information herein.

The undersigned agrees to the conditions of this form. I understand that knowingly or negligently providing false or misleading information in response to this disclosure requirement may lead to denial or rescission of my permit or other authorization and may constitute a violation of the San Francisco Municipal Code, which can lead to criminal and/or civil legal action and the imposition of administrative fines.

I understand that should my project be subject to a required Tree Protection Plan, that I will have a plan meeting or exceeding the minimum requirements prepared and submit it to San Francisco Public Works prior to the commencement of any construction activities. Such submittal may be made in person, by mail or via e-mail at [urbanforestrypermits@sfdpw.org](mailto:urbanforestrypermits@sfdpw.org)

  
Signature

6/10/2022

Date

SIA Consulting Corp

Print Name

☐ Owner

☒ Authorized Agent

415-741-1292

Phone Number

[admin@siaconsult.com](mailto:admin@siaconsult.com)

E-Mail

Submit this completed checklist to San Francisco Public Works via e-mail to [urbanforestrypermits@sfdpw.org](mailto:urbanforestrypermits@sfdpw.org)

Contact Urban Forestry at 628 652 TREE (8733) with questions!

# EXHIBIT E

# ZACKS, FREEDMAN & PATTERSON

A PROFESSIONAL CORPORATION

601 Montgomery Street, Suite 400  
San Francisco, California 94111  
Telephone (415) 956-8100  
Facsimile (415) 288-9755  
[www.zfplaw.com](http://www.zfplaw.com)

September 8, 2022

## VIA E-MAIL

Daniel Hoffman  
Urban Forestry Inspector  
Bureau of Urban Forestry  
49 South Van Ness Avenue  
San Francisco, CA 94103  
[daniel.hoffman@sfdpw.org](mailto:daniel.hoffman@sfdpw.org)  
[jeffrey.horn@sfgov.org](mailto:jeffrey.horn@sfgov.org)

Re: 3832 18th Street Tree Removal Application

Dear Mr. Hoffman:

Our office represents MJ Mission Dolores, LLC, owner of 3832 18th Street. Our client applied for a tree removal permit for the removal of an avocado tree, which is necessary for the construction of an approved 19-unit group housing development project at 3832 18th Street (Planning Application No. 2020-001610PRJ). Our understanding is that a member of the public has protested the tree removal application, and the City plans to hear the issue at a public hearing. Please be advised that the City has already held five public hearings in connection with the housing development project, and the City is prohibited under state law from holding any additional public hearings. Moreover, the City is prohibited from disapproving the tree removal application under state law unless the proposed tree removal poses a specific, adverse impact upon the public health or safety.

Gov. Code § 65905.5 prohibits the City from conducting more than five hearings in connection with a proposed housing development project, and specifically includes hearings that have been continued. The law defines “hearing” to include *any* public hearing, including any appeal, “whether by the legislative body of the city or county, the planning agency established pursuant to Section 65100, or *any other agency, department, board, commission, or any other designated hearing officer or body of the city or county*, or any committee or subcommittee thereof.” (Gov. Code § 65905.5(2).)

The proposed tree removal hearing clearly falls within the definition of a “hearing” under Gov. Code § 65905.5, and the tree removal is proposed in connection with the 3832 18th Street housing development project. However, the City has *already* held more than five public hearings in connection with the housing development project, including two Planning Commission hearings (July 15, 2021 and October 14, 2021) and four Board of Supervisors hearings (December 7, 2021; January 11, 2021; February 8, 2022; and March 15, 2022). Thus, the City is prohibited from holding any additional public hearings in connection with the project. The City would violate the five-hearing limitation of Gov. Code § 65905.5 if the City moves forward with the proposed tree removal hearing.




Moreover, the Housing Accountability Act (HAA) prohibits the City from disapproving a housing development project that complies with objective standards unless the City provides substantial evidence to establish that the proposed project would have a specific, adverse impact upon public health or safety. (Gov. Code § 65589.5(j)(1); *see also Cal. Renters Legal Advocacy and Educ. Fund v. City of San Mateo* (2021) 68 Cal. App. 5th 820.) The HAA defines “disapprove the housing development project” to include any instance the City “votes on a proposed housing development project application and the application is disapproved, *including any required land use approvals or entitlements necessary for the issuance of a building permit.*” Gov. Code § 65589.5(h)(6).)

The proposed tree removal complies with the City’s objective tree removal standards and is necessary for the issuance of a building permit for the housing development project at 3832 18th Street. Therefore, the HAA prohibits disapproval of the tree removal application unless the City can provide substantial evidence to establish the removal would have a specific, adverse impact upon public health or safety. No such evidence exists, and thus the City must approve the proposed tree removal application.

Our clients look forward to resolving this matter quickly. Please feel free to contact me at (415) 956-8100 or at [ryan@zfplaw.com](mailto:ryan@zfplaw.com) if you would like to discuss further.

Very truly yours,

ZACKS, FREEDMAN & PATTERSON, PC



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Ryan Patterson

cc: Jeff Horn, Senior Planner

CITY AND COUNTY OF SAN FRANCISCO



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September 21, 2022

Ryan Patterson  
Zacks, Freedman & Patterson  
601 Montgomery Street  
Suite 400  
San Francisco, CA 94111

Re: 3832 18th Street (2020-001610CUA)

Dear Ryan:

We received your letters of August 31, 2022 to the Planning Director and City Attorney, and September 8, 2022 to the Public Works Director. The August 31, 2022 letter describes "the Planning Commission's conditioned approval" of your client's project at 3832 18th Street, references a separate letter from the California Department of Housing and Community Development, and argues that the project was "deemed approved" pursuant to the Permit Streamlining Act. The September 8, 2022 letter asserts that the City is prevented from holding a hearing on your client's application to remove a Street Tree because that hearing would exceed the five-hearing limit to approve a project under Government Code Section 65905.5 ("SB 330").

We agree that the Planning Commission approved your client's 19-unit group housing project, consistent with the alternative design discussed at the October 14, 2021 Planning Commission hearing. That approval waived the 40-foot height limit pursuant to state density bonus law to permit a 50' 4" tall building, and included direction for your client to work with staff to finalize the design. The Board of Supervisors upheld this decision on March 15, 2022. But, we disagree with your assertion that the six-story project as initially submitted was "deemed approved" pursuant to the Permit Streamlining Act. The City cannot "simply recognize that the project has been deemed approved, without the need to take any further discretionary action." Approval of a six-story building would require a decision by the Planning Commission and be subject to appeal to the Board of Supervisors.

In any event, we are pleased to hear that Planning staff has had productive conversations with the project sponsor this summer regarding construction of the approved project. Specifically, staff and the project sponsor have discussed the possibility of additional excavation to accommodate facilities consistent with the Planning Commission's approval of the group housing project. Because the additional excavation would go below the depth proposed in the original plans, we are informed that your client asked whether additional entitlements or environmental review would be required. Our understanding is that the Zoning Administrator has determined that no additional entitlements are required and that Environmental Planning staff have determined that no additional CEQA review is necessary.

The tenor of these conversations is consistent with the fact that your client is pursuing a Street Tree removal application "necessary for the issuance of a building permit for the housing development project at 3832 18th Street." We note, however, that neither your client's planning application nor the supplemental SB 330 application indicated that a Street Tree would need to

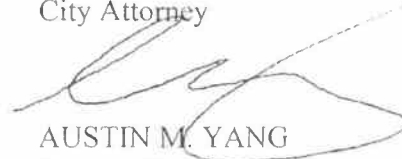
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be removed, and the site survey, which shows the existing site conditions, does not show the presence of any Street Tree. Thus, we consider the Street Tree removal to be considered outside the scope of your client's SB 330 project application.

We share your client's goal of "resolving this matter as expeditiously as possible" and are happy to set up a meeting with your client, Planning, and Public Works staff to identify a mutually acceptable path forward for your client's project at your earliest convenience.

Very truly yours,

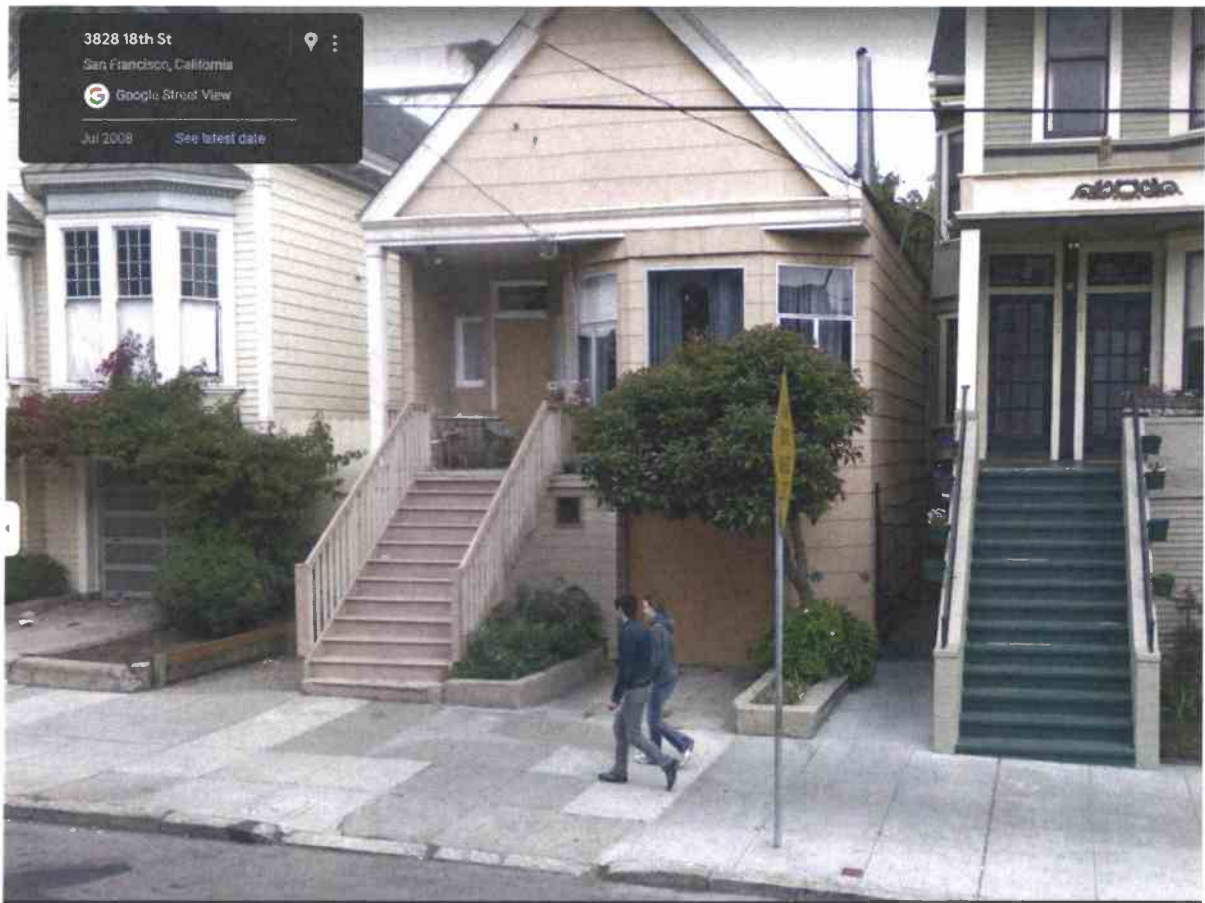
DAVID CHIU  
City Attorney




AUSTIN M. YANG  
Deputy City Attorney

cc: Rich Hillis  
Jeff Horn  
Kate Conner  
Carla Short  
Daniel Hoffman

# EXHIBIT F



3828 18th St  
San Francisco, California

 Google Street View

Feb 2008    [See latest data](#)

**February, 2008**



# EXHIBIT G

