

File No. 110261

Committee Item No. \_\_\_\_\_

Board Item No. 12

# COMMITTEE/BOARD OF SUPERVISORS

## AGENDA PACKET CONTENTS LIST

Board of Supervisors Meeting

Date 4/12/11

### Cmte Board

- |                          |                                     |  |
|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/>            | Motion                                       |
| <input type="checkbox"/> | <input type="checkbox"/>            | Resolution                                   |
| <input type="checkbox"/> | <input type="checkbox"/>            | Ordinance                                    |
| <input type="checkbox"/> | <input type="checkbox"/>            | Legislative Digest                           |
| <input type="checkbox"/> | <input type="checkbox"/>            | Budget Analyst Report                        |
| <input type="checkbox"/> | <input type="checkbox"/>            | Legislative Analyst Report                   |
| <input type="checkbox"/> | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form (for hearings)             |
| <input type="checkbox"/> | <input type="checkbox"/>            | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/>            | MOU  |
| <input type="checkbox"/> | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/> | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/> | <input type="checkbox"/>            | Ethics Form 126                              |
| <input type="checkbox"/> | <input type="checkbox"/>            | Subcontract Budget                           |
| <input type="checkbox"/> | <input type="checkbox"/>            | Contract/Agreement                           |
| <input type="checkbox"/> | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/> | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/> | <input type="checkbox"/>            | Public Correspondence                        |

### OTHER

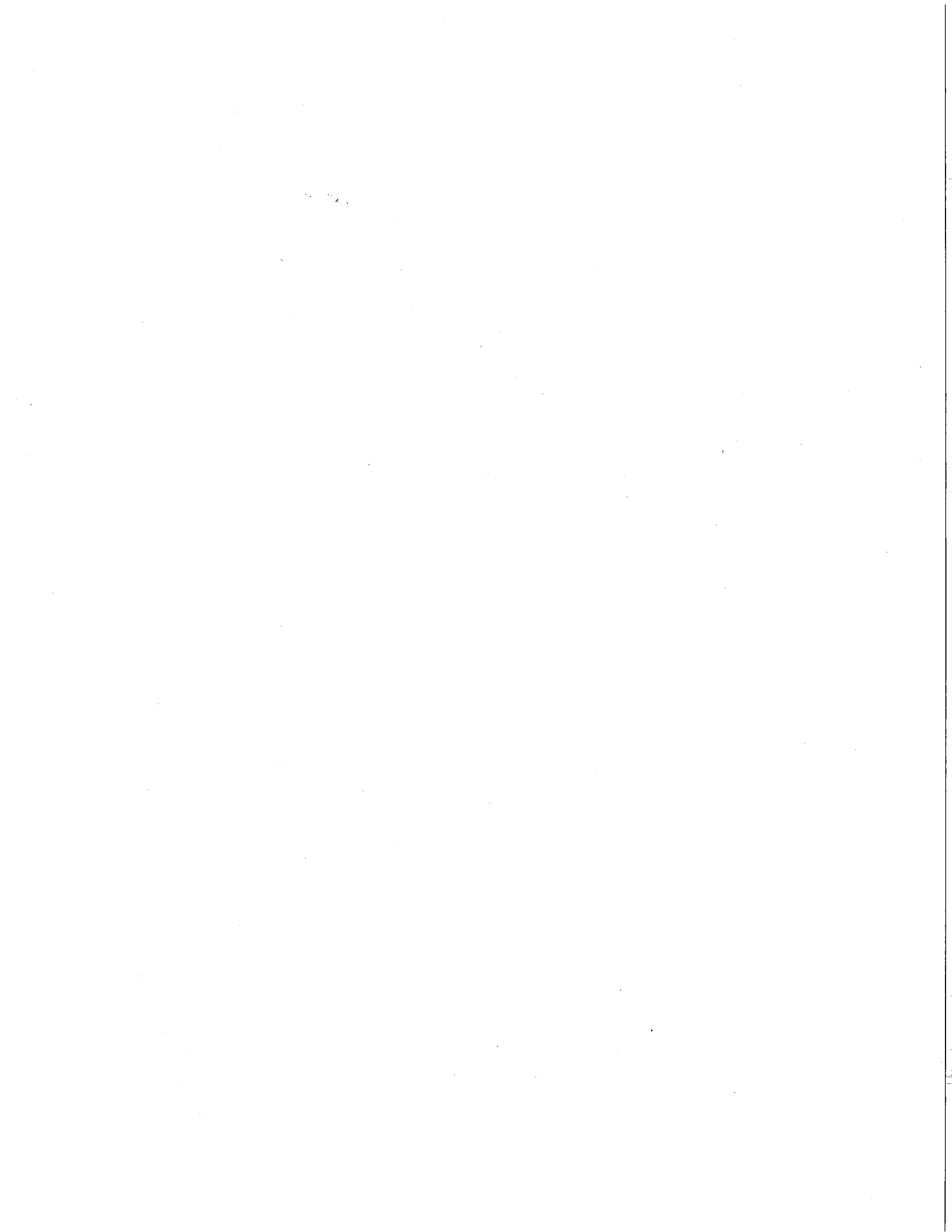
(Use back side if additional space is needed)

- |                          |                                     |   |
|--------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Appellant's appeal packet</u>                        |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Project Sponsor's brief</u>                          |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Appellant's brief</u>                                |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Planning's response to appeal</u>                    |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Planning's comments &amp; responses on draft EIR</u> |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Planning's draft environmental impact report</u>     |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Supplemental response</u>                            |

Completed by: Andrea Ausberry Date 4/12/11

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 25 pages.  
The complete document is in the file.





# SAN FRANCISCO PLANNING DEPARTMENT

MEMO

## Appeal of EIR Certification 350 Mission Street

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

**DATE:** April 4, 2011  
**TO:** Angela Calvillo, Clerk of the Board of Supervisors  
**FROM:** Bill Wycko, Environmental Review Officer – (415) 558-9048  
Brett Bollinger, Planning Department (415) 575-9024  
**RE:** BOS File No. 110261 [Planning Case No. 2006.1524E]  
Supplemental Appeal Letter Response - Appeal of Certification of an  
Environmental Impact Report (“EIR”) for 350 Mission Street  
**HEARING DATE:** April 12, 2011; Continued from March 29, 2011  
**ATTACHMENTS:** Supplemental Letter of Appeal (March 21, 2011)

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

---

**PROJECT SPONSOR:** Dan Frattin, Reuben & Junius LLP, on behalf of GLL US Office, L.P. (“Project Sponsor”)

**APPELLANTS:** Alex DeGood, JMBM LLP (“Appellants”)

---

### INTRODUCTION

This memorandum is a response (“Supplemental Appeal Response”) to a supplemental letter of appeal (“Supplemental Appeal Letter”; Attachment A) submitted on March 21, 2011, by the Appellant to the Board of Supervisors (the “Board”) regarding the Planning Department’s (the “Department”) certification of an Environmental Impact Report (“EIR”) under the California Environmental Quality Act (“CEQA Determination”) for a project at 350 Mission Street (the “Project”). Department staff submitted an appeal response memorandum on March 21, 2011 (“Original Appeal Response”), addressing concerns raised in the original, March 2, 2011, letter of appeal (“Original Appeal Letter”).

The Planning Department (the “Department”), pursuant to CEQA, the CEQA Guidelines, and Chapter 31 of the *San Francisco Administrative Code*, presented a final environmental impact report (“FEIR”) for the project at 350 Mission Street for certification by the Commission. On February 10, 2011, the Commission certified the EIR, finding that the FEIR was adequate, accurate and fulfilled the City’s requirements pursuant to CEQA, the CEQA Guidelines, and Chapter 31 of the *San Francisco Administrative Code*. The Commission also adopted CEQA Findings, including a Statement of Overriding Considerations, prior to approving the project.

The decision before the Board is whether to uphold the Commission’s decision to certify the EIR and deny the appeal, or to overturn the Commission’s decision to certify the EIR, and return the project to the Department for staff to conduct additional environmental review.

Memo

## **SITE DESCRIPTION & PRESENT USE**

Please refer to the Department's Original Appeal Response, dated March 21, 2011, for a description of the Project site and present use.

## **PROJECT DESCRIPTION**

Please refer to the Department's Original Appeal Response, dated March 21, 2011, for a description of the Proposed Project.

## **APPELLANTS' ISSUES AND PLANNING DEPARTMENT RESPONSES**

In general, the Supplemental Appeal Letter does not raise any new primary concerns, but expands upon previously raised concerns in the Original Appeal Letter. This new information is summarized below, followed by the Department's response. The new concerns are numbered beginning with "Issue 4" to reflect the numbering of the issues addressed in the Department's Original Appeal Response, which ended with "Issue 3".

### **Issue 4: Noise from Building Mechanical Element.**

Comment 4: "The Project would include a massive mechanical projection that would extend to within a mere twelve (12) feet of 50 Beale, providing the majority of tenants on the south side of the building with a massive blank wall, which contains the heating, ventilation, and air conditioning ("HVAC") equipment....[T]he exhaust from the equipment could create noxious odors that could permeate 50 Beale, continuously rattle 50 Beale's windows, or otherwise create noise impacts that could significantly affect the tenants, as well as the quality and value of the space in that building."

**Response 4:** The 350 Mission Street project office component (spanning from approximately 55 to 375 feet in height) would have no setbacks from the property line along the west (Fremont Street) and south (Mission Street) façades. The east façade would generally be set back approximately 14 feet from the east property line, except for a 40-foot-wide mechanical element running from levels three through 24 that would extend approximately 7.5 feet into this space, and thus would be set back only approximately 6.5 feet from the east property line. The adjacent building at 50 Beale Street is about 6 feet from the property line, meaning the separation between the two buildings would be about 12.5 feet.

The following information regarding the mechanical element of the building was obtained from the project sponsor team. The mechanical element (ME) intakes outdoor air and relieves excess air, both from the outside and inside of the building. The air intake/release feature is located on the north and south sides of the element and does not directly face the 50 Beale Street building. The ME contains ducts, a low-velocity fan to bring in air for the building's energy-efficient natural ventilation system, as well as electrical/telephone closets. The noise and vibration associated with the fan is considerably less than that of a conventional rooftop unit, because there is no condenser located in the room. The noise and vibration associated with these units are minor, and would not be perceptible to occupants of the 50 Beale Street building. Any noise and vibration from the ME would impact the tenants at 350 Mission more than adjacent buildings. The Project Sponsor indicated that it would impair the marketability of the 350 Mission Street building to install excessively noisy equipment.

**Issue 5: Air Quality Impacts from Building Mechanical Element.**

Comment 5: "These encroachments into the required setback create potential environmental impacts which must be studied. These encroachments are significant intrusions adjacent to 50 Beale, and will create a massive curtain of blank wall only 12.5 feet from 50 Beale, with a proposed 40 foot wide "mechanical element" causing the worst of this unwarranted encroachment. The EIR is unclear as to what degree it studied the air quality impacts from the mechanical system immediately adjacent to 50 Beale."

**Response 5:** Operational air quality impacts were analyzed on page 84 of the Initial Study (Appendix A of the Draft EIR), which concluded that the building operations would not conflict with air quality plans, violate air quality standards, or expose sensitive receptors to substantial pollutant concentrations with respect to regional pollutants, either individually or cumulatively. There is no evidence to support a conclusion that an office building mechanical; system would result in substantial impacts on a neighboring office building.

**Issue 6: The EIR Does Not Analyze a Fully Code-Conforming Building.**

Comment 6(a): "Incredibly, despite the Project's dramatic departure from Code requirements, the EW does not evaluate a fully code-conforming building. This failure defies common sense and is a clear violation of the requirements of the California Environmental Quality Act ("CEQA"). Clearly a code-complying alternative of identical square footage is worthy of analysis. Identifying and analyzing feasible project alternatives is a foundational requirement of the BW process. *Citizens of Goleta Valley v. Board of Supervisors (Goleta 1)*, 197 Cal. App. 3d 1167, 1179 (1988); *Laurel His Improvement Assn v. Regents of the Univ. of California*, 47 Cal.3d 376, 400-401(1988). Accordingly, a lead agency (in this case, the City) must select alternatives that 'could avoid or substantially lessen one or more [significant environmental] effects.' 14 CCR § 15126.6(c). However, the EIR includes only two new-building alternatives, neither of which is completely code-compliant and both of which appear carefully crafted to avoid only one significant environmental impact while ensuring that others remain as severe as or more severe than those created by the Project."

Comment 6(b): "While the EIR does purport to analyze a 'code-complying bulk alternative,' this alternative does not increase the height of the building (despite the fact that the Project is well below allowable height), resulting in an alternative with 13 percent less office space than the Project. Unsurprisingly, this alternative is not preferred by the Project developer, even though it would be environmentally superior, and is an alternative designed to fail. Clearly, the EIR should have analyzed a code-complying bulk alternative that maintained the Project's proposed square footage but met the Planning Code's setback and bulk requirements."

**Response 6:** CEQA requires analysis of the physical environmental effects of a project. The fact that a project might require one or more exceptions as permitted under the *Planning Code* does not in and of itself constitute a physical effect. Conversely, a project that requires no exceptions could still be found to result in one or more significant impacts. Thus, it does not follow logically that exceptions under the *Code* would necessarily result in significant adverse effects on the environment. While compliance with plans

and zoning and required approvals are topics that are discussed in EIRs, the evaluation of their environmental effects focuses on their potential to result in significant environmental effects, per Appendix G of the CEQA Guidelines. The Department considers a project that requires a discretionary approval such as an exception, variance, or Conditional Use permit to be in compliance with the *Planning Code*.

Regarding the granting of exceptions to *Planning Code* requirements under Section 309 for the proposed project, this is a policy decision that is made by the Planning Commission on a case-by-case basis. To the extent that the granting of such exceptions would result in physical impacts, those impacts are analyzed in the EIR. The fact that a project would require one or more exceptions to *Planning Code* requirements does not, in itself, indicate that the project would have a significant physical effect on the environment.

CEQA requires that alternatives be evaluated in an EIR that would "avoid or substantially lessen any of the significant effects of the project," yet "would feasibly attain most of the basic objectives of the project" (CEQA Guidelines Section 15126.6(a)). The range of alternatives evaluated in the EIR is consistent with CEQA requirements and with the Planning Department's typical practice. It is not necessary or required to consider alternatives that eliminate the need for any discretionary approvals, because the aspects of the proposed project requiring exceptions were not found to result in significant impacts.

The EIR identified significant unavoidable effects from the project associated with construction-period transportation and construction-generated air quality emissions. In addition to the No Project alternative required under the CEQA Guidelines, the EIR also analyzed two project alternatives: one that would construct a building that did not require bulk exceptions (Alternative B) and one that excluded the proposed three level parking garage (Alternative C). The EIR analysis of Alternative B, the Code-Complying Bulk Alternative, concluded that this alternative would result in the same significant and unavoidable impacts as the project, as described on DEIR p. 133. The proposed project would have less-than-significant impacts with respect to shadow, wind, and aesthetics, which are associated with building bulk; the EIR finds that the Code-Complying Bulk Alternative would also have less-than-significant impacts for these same environmental topics and that these impacts would not be reduced under this alternative as compared to the proposed project. Because the focus of an EIR's alternatives analysis is intended to be on means of avoiding or reducing significant impacts of the proposed project, further detail in the analysis of these less-than-significant impacts is not required for Alternative B.

#### **Issue 7: The EIR Does Not Evaluate an Off-Site Alternative.**

Comment 7: "In addition to the Project alternative deficiencies identified above, the EIR also fails to provide an off-site alternative, and therefore must explain why off-site alternatives are infeasible. *Laurel Heights, supra*, 47 Cal.3d at 404. In conducting this analysis, the City must consider a variety of factors--Of which zoning represents only one CEQA Guidelines 15126.6(0)(1). At a minimum, the City should have discussed whether the developer owned other property where the Project could be developed or whether there were other properties zoned to accommodate the proposed use that it might be able to acquire. CEQA Guidelines § 15126.6(f)(1); *Citizens of Goleta Valley, supra*, 197 Cal.App.3d at 1178-1180. The EIR fails to provide any of this information and analysis, and therefore provides no substantial evidence upon which the City can rely to draw any conclusion regarding the feasibility of an alternative site. In *Laurel*

*Heights*, the Supreme Court found that the Regents' analysis of alternatives was inadequate because there were no facts in the administrative record demonstrating that alternative sites were infeasible.

**Response 7:** Evaluation of off-site alternatives is an option under CEQA and not a requirement when other sufficient alternatives can be applied to the project. As stated in *CEQA Guidelines* Section 15126.6(a), "An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.

Specifically addressing the Appellants comment on off-site alternative, *CEQA Guidelines* Section 15126.6(f)(2) *Alternative Locations* states, "The key question and first step in analysis is whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location. Only locations that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the EIR." Since the proposed 350 Mission Street project significant impacts are related to construction air quality, an alternative based on relocating the project to another location would not reduce or eliminate the construction air quality significant impacts.

**Issue 8: The EIR Improperly Adopts the Objectives of the Project Developer.**

Comment 8: "Upon examination of the Project Objectives listed in the EIR, it becomes apparent why a code-conforming building with identical square footage was never analyzed. Rather than exercising its independent judgment regarding the Project Objectives, the City merely accepted the objectives presented by the Project developer, which are structured to arrive at one result - the exact project the developer wants to build. CEQA requires that the City undertake a far more critical analysis.

**Response 8:** The Planning Department directed and approved the project EIR scope and final analysis including the objectives and alternatives proposed for the project. Alternatives were evaluated on the basis of avoidance of significant impacts. Since exceptions to bulk and setbacks are allowed under the Planning Code, reducing the bulk and setbacks would not avoid significant impacts related to construction air quality. As stated in *CEQA Guidelines Section 15126.6(a)*, "An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives."

**Issue 9: The EIR Provides No Meaningful Discussion of Compliance with Applicable Plans.**

Comment 9: "The EIR's discussion of the "Accountable Planning Initiative" and the General Plan defers all discussion and findings of consistency with respect to the City's "Priority Policies" to the Planning Commission and/or Planning Department. The EIR provides no analysis of compliance with these clearly applicable plans and policies, but rather vaguely suggests that appropriate findings will be made during consideration of the Project. This directly contravenes the requirement of CEQA that an EIR "shall discuss any inconsistencies" between the proposed project and applicable plans. 14 CCR §§ 15125(d)-(e). The EIR thus completely deprives the public and decision-makers of an opportunity to evaluate the relationship

of the Project to these public planning documents and to consider and comment on the policy trade-offs inherent in considering and approving any major project.”

**Response 9:** As stated in the California Environmental Quality Act (*California Public Resources Code* Section 21002.1(a)), “The purpose of an environmental impact report is to identify the significant effects on the environment of a project,” as well as to identify mitigation measures and alternatives that would avoid or reduce the severity of these impacts. The “effects” analyzed in an EIR must involve physical changes (*CEQA Guidelines Section 15358(b)*). Therefore, an EIR is not intended to evaluate policy aspects of a proposed project, such as consistency with the Priority Policies adopted as part of Proposition M, the Accountable Planning Initiative, which was approved by San Francisco voters in 1986, except insofar as the project’s relationship to the Priority Policies may implicate physical effects on the environment. As stated on EIR p. 35, “Prior to issuing a permit for any project that requires an Initial Study under CEQA, and prior to issuing a permit for any demolition, conversion, or change of use, and prior to taking any action that requires a finding of consistency with the *General Plan*, the City is required to find that the proposed project or legislation is consistent with the Priority Policies. In evaluating *General Plan* consistency of the project and reviewing the building permit application for the proposed project, the Planning Commission and/or Planning Department would make the necessary findings of consistency with the Priority Policies.” These policies are: (1) preservation and enhancement of neighborhood-serving retail uses; (2) protection of neighborhood character (discussed in question 1c of the Initial Study [Appendix A of the Draft EIR]); (3) preservation and enhancement of affordable housing (Question 1b, Population and Housing, in the Initial Study, with regard to housing supply and displacement issues); (4) discouragement of commuter automobiles (Draft EIR Section IV.B, Transportation); (5) protection of industrial and service land uses from commercial office development and enhancement of resident employment and business ownership; (6) maximization of earthquake preparedness (Questions 7a –7d, Geology and Soils, in the Initial Study); (7) landmark and historic building preservation (question 4a, Cultural Resources, in the Initial Study); and (8) protection of open space (Questions 3a and c, Recreation, in the Initial Study, as well as Draft EIR Section IV.E, Wind, and Draft EIR Section IV.F, Shadow).

Consistent with Planning Department and Planning Commission practice, Department staff prepared a separate staff report concerning consistency with the Priority Policies, as well as the *General Plan* and *Planning Code*—including the requested exceptions as provided for under Section 309—for consideration by the Planning Commission as part of the Commission’s deliberation on whether to approve the proposed 350 Mission project.

## **CONCLUSION**

Appellants have not raised any new issues relative to CEQA review that were not previously addressed in the Draft EIR and/or in the Comments and Responses document, nor have appellants provided any substantial evidence to refute the conclusions of the Department with respect to the project’s physical environmental effects under CEQA. The Department conducted an in-depth and thorough analysis of the proposed 350 Mission Street project pursuant to the CEQA Guidelines. The Appellant has not submitted any evidence that the Project would result in individual or cumulative impacts under CEQA. For the reasons stated in the Original Appeal Response and throughout the Project EIR, the Department finds that the Project EIR and Commission’s certification of the EIR complies with the requirements of



CEQA. For the reasons stated above the Commission's certification of the EIR complies with the requirements of CEQA, the CEQA Guidelines and Chapter 31 of the *San Francisco Administrative Code*. The Department, therefore, recommends that the Board uphold the Commission's decision to certify the EIR and deny the appeal.

Alex DeGood  
Direct: (310) 201-3540  
Fax: (310) 712-3348  
AMD@jmbm.com

1900 Avenue of the Stars, 7th Floor  
Los Angeles, California 90067-4308  
(310) 203-8080 (310) 203-0587 Fax

www.jmbm.com  
Ref: 71490001  
2011 MAR -2 PM 2:30  
RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

March 2, 2011

David Chiu, President  
San Francisco Board of Supervisors  
c/o Angela Calvillo  
Clerk of the Board  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, California 94102

Re: 350 Mission Street - Case No. 2006.1524E

Dear President Chiu:

On behalf of the owners of 50 Beale Street, this office is appealing the decision of the San Francisco Planning Commission on February 10, 2011, which certified the Final Environmental Impact Report ("EIR") for the above-referenced project (the "Project").

The Planning Commission's certification of the Project EIR constituted an abuse of discretion. The EIR does not sufficiently address significant environmental impacts on 50 Beale Street related to the Project's tower setback and bulk exceptions. Further, the Project EIR does not properly examine Project alternatives.

We believe the proposed Project may still provide a successful office development, provided that significant Project impacts and alternatives are properly studied.

Absent modification and recirculation, the Project's EIR is legally deficient. We urge you to make the necessary changes to create a legally sustainable document.

Sincerely,



ALEX DEGOOD of  
Jeffer Mangels Butler & Mitchell LLP



# SAN FRANCISCO PLANNING DEPARTMENT

## Planning Commission Motion 18265

HEARING DATE: February 10, 2011

**Case No.:** 2006.1524E  
**Project Title:** 350 Mission Street  
**Zoning:** C-3-O (Downtown Office) District  
550-S Height and Bulk District  
**Block/Lot:** 3710/017  
**Lot Size:** 18,905 square feet  
**Project Sponsor:** GLL US Office, L.P., Owner  
**Lead Agency:** San Francisco Planning Department  
**Staff Contact:** Brett Bollinger – (415) 575-9024  
Brett.Bollinger@sfgov.org

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

**ADOPTING FINDINGS RELATED TO THE CERTIFICATION OF A FINAL ENVIRONMENTAL IMPACT REPORT FOR A PROPOSED MIXED-USE OFFICE PROJECT AT 350 MISSION STREET WITH A 24-STORY, 350-FOOT TALL BUILDING CONTAINING APPROXIMATELY 340,000 SQUARE FEET OF OFFICE USES, 6,500 SQUARE FEET OF RETAIL SPACE, 23,500 SQUARE FEET OF SUBTERRANEAN PARKING AREA, AND 7,000 SQUARE FEET OF PUBLICLY-ACCESSIBLE INTERIOR OPEN SPACE.**

MOVED, that the San Francisco Planning Commission (hereinafter "Commission") hereby CERTIFIES the Final Environmental Impact Report identified as Case No. 2006.1524E, 350 Mission Street (hereinafter "Project"), based upon the following findings:

1. The City and County of San Francisco, acting through the Planning Department (hereinafter "Department") fulfilled all procedural requirements of the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 *et seq.*, hereinafter "CEQA"), the State CEQA Guidelines (Cal. Admin. Code Title 14, Section 15000 *et seq.*, hereinafter "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code (hereinafter "Chapter 31").
  - A. The Department determined that an Environmental Impact Report (hereinafter "EIR") was required and provided public notice of that determination by publication in a newspaper of general circulation on June 2, 2010.
  - B. On September 15, 2010, the Department published the Draft Environmental Impact Report (hereinafter "DEIR") and provided public notice in a newspaper of general circulation of the availability of the DEIR for public review and comment and of the date and time of the Planning Commission public hearing on the DEIR; this notice was mailed to the Department's list of persons requesting such notice.
  - C. Notices of availability of the DEIR and of the date and time of the public hearing were posted near the project site by Department staff on September 15, 2010.

- D. On September 15, 2010, copies of the DEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DEIR, to adjacent property owners, and to government agencies, the latter both directly and through the State Clearinghouse.
- E. Notice of Completion was filed with the State Secretary of Resources via the State Clearinghouse on September 15, 2010.
2. The Commission held a duly advertised public hearing on said DEIR on October 21, 2010 at which opportunity for public comment was given, and public comment was received on the DEIR. The period for acceptance of written comments ended on November 2, 2010.
  3. The Department prepared responses to comments on environmental issues received at the public hearing and in writing during the 45-day public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, and corrected errors in the DEIR. This material was presented in a Draft Comments and Responses document, published on January 27, 2011, distributed to the Commission and all parties who commented on the DEIR, and made available to others upon request at Department offices.
  4. A Final Environmental Impact Report has been prepared by the Department, consisting of the Draft Environmental Impact Report, any consultations and comments received during the review process, any additional information that became available, and the Summary of Comments and Responses all as required by law.
  5. Project Environmental Impact Report files have been made available for review by the Commission and the public. These files are available for public review at the Department offices at 1650 Mission Street, and are part of the record before the Commission.
  6. On February 10, 2011, the Commission reviewed and considered the Final Environmental Impact Report and hereby does find that the contents of said report and the procedures through which the Final Environmental Impact Report was prepared, publicized, and reviewed comply with the provisions of CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code.
  7. The project sponsor has indicated that the presently preferred alternative is Alternative C: No Parking Alternative, described in the Final Environmental Impact Report.
  8. The Planning Commission hereby does find that the Final Environmental Impact Report concerning File No. 2006.1524E, 350 Mission Street reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, and that the Comments and Responses document contains no significant revisions to the DEIR, and hereby does CERTIFY THE COMPLETION of said Final Environmental Impact Report in compliance with CEQA and the CEQA Guidelines.

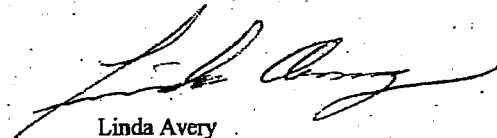
Motion No. 18265  
Hearing Date: February 10, 2011

CASE NO. 2006.1524E  
350 Mission Street

9. The Commission, in certifying the completion of said Final Environmental Impact Report, hereby does find that the project described in the Environmental Impact Report:

- A. Will have a project-specific significant effect on the environment through (Air Quality) construction of the proposed project exposing sensitive receptors to substantial pollutant concentrations; and,
- B. Will have a significant cumulative impact on the environment through (Transportation) disruption of nearby streets, transit services, and pedestrian and bicycle circulation due to construction of the proposed project, Transit Center, and other nearby projects.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting of February 10, 2011.



Linda Avery  
Commission Secretary

AYES: 6  
NOES: 1 (Sugaya)  
ABSENT: 0  
ADOPTED: February 10, 2011



# SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Inclusionary Housing
- Childcare Requirement
- Jobs Housing Linkage Program
- Downtown Park Fee
- Public Art
- Public Open Space
- First Source Hiring (Admin. Code)
- Transit Impact Development Fee
- Other

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
415.558.6378

Fac:  
415.558.6409

Planning  
Information:  
415.558.6377

## Planning Commission Motion 18266 CEQA Findings

HEARING DATE: FEBRUARY 10, 2011

**Date:** January 27, 2011  
**Case No.:** 2006.1524EBKXV  
**Project Address:** 350 MISSION STREET  
**Existing Zoning:** C-3-O(SD) (Downtown Office Special Development)  
 350-S/150-S Height and Bulk District  
**Block/Lot:** 3710/017  
**Project Sponsor:** GLL US Office, LP  
 c/o James Reuben of Reuben & Junius, LLP  
 One Bush Street, Suite 600  
 San Francisco, CA 94104  
**Staff Contact:** Kevin Guy - (415) 558-6163  
[Kevin.Guy@sfgov.org](mailto:Kevin.Guy@sfgov.org)

ADOPTING FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS FOR A PROJECT TO DEMOLISH AN EXISTING FOUR STORY BUILDING CONTAINING OFFICE SPACE AND RETAIL USES, AND CONSTRUCT A NEW 24-STORY, 350-FOOT TALL BUILDING CONTAINING APPROXIMATELY 340,000 SQUARE FEET OF OFFICE USES, APPROXIMATELY 1,000 SQUARE FEET OF RETAIL SPACE, APPROXIMATELY 23,500 SQUARE FEET OF SUBTERRANEAN PARKING AREA, AND APPROXIMATELY 12,700 SQUARE FEET OF PUBLICLY-ACCESSIBLE INTERIOR OPEN SPACE, LOCATED AT 350 MISSION STREET (ASSESSOR'S BLOCK 3710, LOT 017), WITHIN THE C-3-O (DOWNTOWN OFFICE) DISTRICT AND THE 550-S HEIGHT AND BULK DISTRICT

In determining to approve the proposed project located at 350 Mission Street (Assessor's Block 3710, Lot 017; the "Project Site"), the San Francisco Planning Commission ("Planning Commission" or "City") makes and adopts the following findings of fact regarding the Project and mitigation measures based on substantial evidence in the whole record of this proceeding and pursuant to the California Environmental Quality Act, California Public Resources Code Section 21000 et seq. ("CEQA"), particularly Section 21081 and 21081.5, the Guidelines for

Implementation of CEQA, 14 California Code of Regulations Section 15000 et seq. ("CEQA Guidelines"), particularly Section 15091 through 15093, and Chapter 31 of the San Francisco Administrative Code.

This document is organized as follows:

Section I provides a description of the proposed 350 Mission Street Office Development Project ("Project"), the environmental review process for the Project, the Planning Commission actions to be taken, and the location of records.

Section II sets forth findings regarding significant impacts and the disposition of the mitigation measures proposed in the Final EIR. Exhibit A, attached, contains the Mitigation Monitoring and Reporting Program ("MMRP"), which provides a table setting forth each mitigation measure listed in the Draft Environmental Impact Report, including the Initial Study contained in Appendix A of the DEIR, that is required to reduce or avoid a significant adverse impact. Exhibit A also includes improvement measures that will ameliorate less-than-significant Project effects. The MMRP specifies the agency responsible for implementation of each mitigation and improvement measure, establishes monitoring actions and a monitoring schedule. The MMRP is required by CEQA Section 21081.6 and CEQA Guidelines Section 15091.

Section III identifies significant project-specific or cumulative impacts that would not be eliminated or reduced to an insignificant level by the mitigation measures listed in Exhibit A.

Section IV identifies the Project alternatives that were analyzed in the EIR and discusses the reasons for rejecting each.

Section V sets forth the Planning Commission's Statement of Overriding Considerations pursuant to CEQA Guidelines Section 15093.

#### **I. Project Description and Procedural Background**

##### **a. Project Site**

The Project Site is an 18,909 sq. ft., roughly square, parcel located at the northeast corner of Mission and Fremont Streets. The Project Site is within the C-3-O District and the 550-S Height and Bulk District, and is also within the proposed Transit Center District Plan ("TCDP") Area. At present, the Project Site is four-story building containing approximately 95,000 sq. ft. of office and retail/personal services uses. The three upper floors are currently vacant. They were previously occupied by Heald College, which recently moved its San Francisco campus to a new location at 875 Howard Street. The ground-floor is presently occupied by several retail tenants.

##### **b. Surrounding Area**

The Project Site is located in an area characterized by dense urban development. Existing height limits on the subject block range from 450 to 550 feet. There are many high-rise structures containing dwellings, offices and other commercial uses. The Project Site is surrounded by a

number of high-rise buildings. 45 Fremont Street is a 34-story office building located directly to the north. 50 Beale Street is a 23-story office building located to the east. 50 Fremont Street is a 43-story office building across Fremont Street to the west. The Millennium (301 Mission Street) is a residential development consisting of a 60-story residential building and an 11-story tower, located across Mission Street to the south. There are numerous smaller commercial buildings in the area as well. The site of the former Transbay Terminal and proposed Transit Center is located opposite the Project Site at the southwest corner of Mission and Fremont Streets. The future Transit Center is planned to accommodate local, regional, and national bus service, as well as Caltrain and California High Speed Rail service.

c. Project Description

The Project would demolish the existing four-story building at the Project Site and construct a new 24-story, tall office building, reaching a roof height of 350 feet, with a mechanical screen reaching a height of approximately 374 feet. The building would include approximately 340,000 square feet of office space, approximately 1,000 square feet of retail space, approximately 23,500 square feet of subterranean parking area, and approximately 12,700 square feet of publicly-accessible interior open space. The Project is designed to achieve LEED Platinum certification. A single entrance at the northwest corner of the Project Site on Fremont Street would provide access to both parking and loading facilities.

The Project analyzed in the EIR consists of a series of approvals that together define the terms under which the Project will occur. It is composed of the following major permits and approvals, and related and collateral actions:

- A Determination of Compliance by the Planning Commission under Section 309 of the Planning Code, including the granting of exceptions from the building bulk requirements of Planning Code Section 270, from the separation of towers requirement of Planning Code Section 132.1(c), from the ground-level wind current requirements of Planning Code Section 148, and to allow a curb cut a Transit Preferential Street pursuant to Planning Code Section 155;
- Approval by the Planning Commission of an allocation of office space under Sections 321 and 322 of the Planning Code (Office Development Annual Limit);
- Initial determination by the Planning Commission of the net addition of gross floor area of office use under Planning Code Sections 412, 413 and 414.
- Variance from the Zoning Administrator pursuant to Planning Code Section 305 for a variance from the maximum driveway width under Planning Code 155;
- General Plan and Planning Code section 101.1 priority policy consistency determinations;
- Street Space Permit from the Bureau of Street Use and Mapping for use of a public street space during project construction (for a pedestrian walkway);



- Special Traffic Permit from the Department of Parking and Traffic for use of a public street space during project construction (for a pedestrian walkway);
- Bay Area Air Quality Management District approval for Authority to Construct and Permit to Operate a diesel-powered emergency generator;
- Grading, demolition, site and building permits from the Department of Building Inspection.

d. Environmental Review

On June 2, 2010, the Planning Department ("Department") published the Initial Study and provided public notice of the availability of the IS for public review and comment and of a public scoping meeting. Public notice was provided (1) by publication in a newspaper of general circulation, (2) by mail to owners and occupants within 300 feet of the Project Site, as well as to persons and organizations requesting such notice from the Department; and (3) by mail to appropriate state, local, and federal agencies, including Responsible Agencies, Trustee Agencies, and other agencies required by law to receive such notice. On June 3, 2010, copies of the DEIR were delivered to the State Clearinghouse for distribution to state agencies.

The Department held a duly advertised public scoping meeting on June 22, 2010, at which opportunity for public comment was given and received from one member of the public. The period for acceptance of written comments ended on July 2, 2010.

On September 15, 2010, the Department published the Draft Environmental Impact Report (hereinafter "DEIR") and provided public notices of the availability of the DEIR for public review and comment and of the date and time of the Planning Commission public hearing on the DEIR. Public notice was provided (1) by publication in a newspaper of general circulation, (2) by posting Notices of Availability near the Project Site; (3) by mail to owners and occupants within 300 feet of the Project Site, as well as persons and organizations requesting such notice from the Department; and (4) by mail to appropriate state, local, and federal agencies, including Responsible Agencies, Trustee Agencies, and other agencies required by law to receive such notice.

On September 16, 2010, 15 copies of the DEIR were delivered to the State Clearinghouse for distribution to government agencies. On September 15, 2010, copies of the DEIR were mailed or otherwise delivered to a list of persons requesting it and to government agencies.

A Notice of Completion was filed with the State Secretary of Resources via the State Clearinghouse on September 16, 2010.

The Planning Commission held a duly advertised public hearing on the DEIR on October 28, 2010, at which opportunity for public comment was given. The period for acceptance of written comments ended on November 2, 2010.

The Planning Department prepared responses to comments on environmental issues received at the public hearing and in writing during the public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, and corrected errors in the DEIR. This material was presented in the "Comments and Responses" published on January 26, 2011, which was distributed on January 27, 2011, to the Planning Commission and to all parties who commented on the DEIR, and was available to others upon request at Department offices.

A Final EIR has been prepared by the Planning Department, consisting of the DEIR, any consultations and comments received during the review process, and the Comments and Responses all as required by law. Since publication of the DEIR, no new information of significance has become available that would require recirculation of the EIR under CEQA Guidelines Section 15088.5.

e. **Planning Commission Actions**

The Planning Commission is currently considering various actions ("Actions") in furtherance of the Project, which include the following:

- Certification of the Final EIR;
- Adoption of these CEQA Findings, including mitigation measures and the MMRP;
- Determination of Compliance and granting of exceptions under Planning Code Section 309;
- Allocation of office space under Planning Code Sections 321 and 322.
- Initial determination of the net addition of gross floor area of office use under Planning Code Sections 412, 413 and 414.

f. **Content and Location of Record**

The record upon which all findings and determinations related to the Project are based include the following:

- The EIR, and all documents referenced in or relied upon by the EIR;
- All information (including written evidence and testimony) provided by City staff to the Planning Commission relating to the EIR, the proposed approvals and entitlements, the Project, and the alternatives set forth in the EIR;
- All information (including written evidence and testimony) presented to the Planning Commission by the environmental consultant and subconsultants who prepared the EIR, or incorporated into reports presented to the Planning Commission;

- All information (including written evidence and testimony) presented to the City from other public agencies relating to the Project or the EIR;
- All applications, letters, testimony, and presentations presented to the City by the Project Sponsor and its consultants in connection with the Project;
- All information (including written evidence and testimony) presented at any public hearing or public stopping meeting related to the Project and the EIR, or submitted as comments on the DEIR;
- The MMRP; and
- All other documents comprising the record pursuant to Public Resources Code Section 21167.6(e).

The public hearing transcript, a copy of all letters regarding the Final EIR received during the public review period, the administrative record, and background documentation for the Final EIR are located at the Planning Department, 1650 Mission Street, 4<sup>th</sup> Floor, San Francisco. The Planning Commission Secretary, Linda Avery, is the custodian of these documents and materials.

These findings are based upon substantial evidence in the entire record before the Planning Commission. The references set forth in these findings to certain pages or sections of the EIR or responses to comments in the Final EIR are for ease of reference and are not intended to provide an exhaustive list of the evidence relied upon for these findings.

## II. Findings Regarding Mitigation Measures

The Project's FEIR includes a series of mitigation measures that have been identified that would reduce or eliminate potential environmental impacts of the Project. Mitigation measures described in FEIR include measures related to cultural resources, transportation, noise, air quality, and hazardous materials. The full text of the mitigation measures is set forth in the MMRP. The Commission hereby adopts these mitigation measures, as set forth in the attached Exhibit A to this motion, which shall be adopted as conditions of approval of the Project. The Planning Commission is adopting all mitigation measures proposed in the FEIR. The Planning Commission finds that the following mitigation measures are feasible and will mitigate the potential impacts of the Project construction to a less-than-significant level, except as otherwise described in the mitigation measure below. There are two impacts that cannot be reduced to a level of insignificance, even with adoption of the mitigation measures, and those impacts are specifically identified below. All mitigation measures shall be adopted as a condition of Project approval.

### a. Cultural Resources

**Impact CP-2:** The proposed project would result in damage to, or destruction of, as-yet unknown archaeological or human remains, should such remains exist beneath the project site. (Potentially Significant)

**M-CP-2: Archaeological Resources.** According to the Initial Study, contained in Appendix A of the FEIR, it is reasonable to presume that archaeological resources may be present in the soils beneath the Project Site. Any potentially significant adverse effect of below-grade excavation and Project construction on such resources can be mitigated to a less-than-significant level if the Project Sponsor retains the services of a qualified archaeological consultant to, in consultation with City staff, (i) undertake an archaeological testing program to determine whether such resources are present, and, (ii) if necessary, to implement an archaeological monitoring and/or data recovery program to ensure that construction does not significantly and adversely effect such resources.

b. Transportation

**Impact TR-4:** Traffic entering and exiting the proposed project garage on Fremont Street could interfere with, and be delayed by, Golden Gate Transit buses boarding at the Fremont Street curb, potentially obstructing pedestrian traffic on the east sidewalk of Fremont Street and potentially resulting in safety hazards. (Significant but Mitigable)

**Impact TR-5:** The proposed project would not result in substantial overcrowding on public sidewalks, but would create potentially hazardous conditions for pedestrians or otherwise interfere with pedestrian accessibility to the site and adjoining areas. (Significant but Mitigable)

**Impact TR-7:** The proposed project would not result in a loading demand during the peak hour of loading activities that could not be accommodated within proposed on-site loading facilities or within convenient on-street loading zones, but could create potentially hazardous conditions or significant delays affecting traffic, transit, bicycles or pedestrians. (Significant but Mitigable)

**Impact TR-9:** Project construction, along with construction of the planned Transit Center and other nearby projects, would result in disruption of nearby streets, transit service, and pedestrian and bicycle circulation. (Significant and Unavoidable)

**M-TR-4a: Relocation of Golden Gate Transit Bus Stops.** According to the FEIR, traffic entering and exiting the proposed project garage could interfere with, and be delayed by, Golden Gate Bridge, Highway, and Transportation District ("GGT") buses boarding at the Fremont Street curb. This effect would be limited to afternoon hours, when the outbound commuter stops are in use by GGT. The impact would be avoided if the Project Sponsor were to work with the GGT and the San Francisco Municipal Transportation Authority ("MTA") to relocate the bus stop for GGT lines 26, 27, and 44 by 20 feet south of its existing location, and to relocate the bus stop for line 38 by 20 feet north of its existing location. Relocation of the bus stops would allow adequate space for buses to pull into and out of their bus stops without being affected by vehicles entering and exiting the Project garage and loading dock. The relatively small size of the garage (61 spaces) and correspondingly low volumes of vehicles using it would further minimize the potential for conflicts.

**M-TR-4b: Garage Attendant.** According to the FEIR, stopped GGT buses on Fremont Street could partially block sightlines for vehicles leaving the garage. Some drivers could pull onto the sidewalk or into the curb lane to obtain a better view of oncoming traffic, resulting in the potential for safety hazards or obstruction of GGT buses and pedestrians. This impact would be avoided by stationing an attendant at the project driveway to assist drivers departing the garage during p.m. peak hours (3 p.m. to 7:15 p.m.) when GGT buses are present.

**M-TR-5a - M-TR-5c: Garage/Loading Dock Attendant, Pedestrian Warning Devices, Loading Dock Hours.** According to the FEIR, there is a potential for vehicles entering or exiting the garage to conflict with the relatively high volume of pedestrian traffic on Fremont Street and to potentially create an unsafe condition for pedestrians. These effects would be reduced to an insignificant level by (a) stationing a parking garage/loading dock attendant to direct vehicles entering and leaving the Project during peak periods of traffic and pedestrian activity, at a minimum from 7:00 a.m. to 9:00 a.m. and from 3:00 p.m. to 7:15 p.m.; (b) installing audiovisual warning devices to alert pedestrians to outbound vehicles from the parking garage; and (c) prohibiting the use of the loading dock when the adjacent curb lane is in use by GGT buses—currently 3 p.m. to 7:15 p.m.

**M-TR-7: Limitation on Truck Size.** According to the FEIR, trucks longer than 30 feet in length could have difficulty maneuvering into the Project's loading dock without blocking traffic on Fremont Street or obstructing pedestrian traffic on Fremont Street. However, potential impacts would be avoided by prohibiting such trucks from using the loading dock, either by directing them to use available on-street loading or by requiring vendors to make deliveries using shorter trucks. The loading dock attendant would be responsible for enforcing this measure.

**M-TR-9a - M-TR-9b: Construction-Period Golden Gate Transit Bus Stop Relocation and Construction Coordination.** According to the FEIR, several other projects, including the Transit Center, are under construction, approved, or proposed in the area. Cumulatively, construction-related traffic, temporary and/or partial street closures have the potential to disrupt traffic, transit, pedestrians or bicyclists generally. In particular, GGT buses use the eastern curb lane on Fremont Street adjacent to both the Project Site and adjacent to the Transit Center for boarding of several bus lines. Simultaneous construction of both the Project and Transit Center could preclude use of both boarding areas. Mitigation would require the project sponsor and construction manager to coordinate with the sponsors of nearby projects, City agencies, and transit providers to develop construction plans and phasing operations that would minimize impacts. To minimize potential disruption to GGT service, the MTA and GGT have tentatively agreed to relocate GGT boarding facilities to an existing transit island on Fremont Street at Market Street.

The Planning Commission finds that the foregoing mitigation measures are feasible and will mitigate Project-specific impacts on transportation to a less-than-significant level. However, because no formal arrangement has been made respecting temporary relocation of the GGT stops, and because the construction schedules of the projects in the area are subject to change, the cumulative construction impacts on traffic, transit, pedestrians and bicyclists are conservatively

judged to be significant and unavoidable. All of the foregoing measures shall be adopted as a condition of Project approval.

The Planning Commission finds that mitigation measure M-TR-9a and 9b are feasible and will mitigate Project-specific impacts on transportation to a less-than-significant level. The Planning Commission believes that GGT can and should adopt Mitigation Measures M-TR-9a and 9b. However, because no formal arrangement has been made respecting temporary relocation of the GGT stops, and because the construction schedules of the projects in the area are subject to change, the cumulative construction impacts on traffic, transit, pedestrians and bicyclists are conservatively judged to be significant and unavoidable.

c. Noise

**Impact NO-2:** During construction, the proposed project would result in a temporary or periodic increase in ambient noise levels and vibration in the project vicinity above levels existing without the project. (Potentially Significant)

**M-NO-2a: Noise Control Measures for Pile-Driving.** According to the Initial Study, contained in Appendix A of the FEIR, a geotechnical due diligence study recommended a mat foundation for the Project, which would not require pile driving, thereby avoiding the significant noise impacts that come with pile driving. In the event that pile driving is determined to be required, the project sponsor would require that the project contractor pre-drill holes (if feasible based on soils) for piles to the maximum feasible depth to minimize noise and vibration from pile driving. Any pile driving activity that takes place would be limited to times that would result in the least disturbance to neighboring uses.

**M-NO-2b: General Noise Control Measures.** According to the Initial Study, contained in Appendix A of the FEIR, demolition, excavation, and building construction would temporarily increase noise in the Project's vicinity. Construction equipment would generate noise and possibly vibrations that could be considered an annoyance by occupants of nearby properties. To ensure that project noise from construction activities is minimized to the maximum extent feasible, the project sponsor would use noise control techniques for trucks and equipment, locate stationary noise sources as far from adjacent properties as possible and muffle or construct barriers around such stationary noise sources, use hydraulic or electric impact tools when possible and use mufflers on any pneumatic tools, and would take other steps to minimize noise impacts on adjacent properties such as limiting construction hours and strategically selecting haul routes.

**M-NO-2c: Cumulative Construction Noise Control Measures.** According to the Initial Study, contained in Appendix A of the FEIR, to the extent that other construction projects are proposed or undertaken in close enough proximity to the Project Site such that cumulative effects related to construction noise would be anticipated, noise effects would be greater or last longer, or both. In the event that one or more nearby projects were to be undertaken at the same time as the Project, the project sponsor would cooperate with and participate in any City-sponsored construction noise control program for the Transit Center District Plan area or other City-sponsored area wide program developed to reduce potential effects of construction noise in the project vicinity.

d. Hazards and Hazardous Materials

**Impact HZ-2:** Demolition and excavation of the project site could result in handling and accidental release of contaminated soils and hazardous building materials associated with historic uses. (Potentially Significant)

**M-HZ-2a - M-HZ-2b: Work Plan and Site Mitigation Plan for Soil and/or Groundwater Contamination.** According to the Initial Study, contained in Appendix A of the FEIR, the Project Site is located in an area of artificial fill, where contaminants are often found at elevated levels. The Project Site, along with other properties in the vicinity were historically in heavy industrial use and several underground storage tanks, since removed, were located nearby. During excavation for a seismic upgrade of the existing building in 1997, soil testing revealed elevated levels of lead in the soil. Due to these conditions, handling and/or accidental release of contaminated soils, contaminated groundwater, and hazardous building materials associated with historic uses during demolition and excavation for the Project. Potentially significant impacts associated with such materials would be avoided by implementing a Work Plan for the Characterization of Subsurface Soils and Groundwater, subject to approval and monitoring by the Department of Public Health ("DPH"). The Work Plan would include a subsurface investigation, including soil and groundwater sampling to determine whether contaminants are present. If elevated levels of contaminants are detected, additional testing could be required to determine whether they constitute hazardous wastes under federal or state law. If elevated concentrations of petroleum hydrocarbons or heavy metals are detected, a Site Mitigation Plan ("SMP") outlining specific procedures for handling and disposal would be required. The SMP would also specify basic health and safety concerns to be addressed by the site contractor or subcontractor through preparation of detailed health and safety plan. The SMP would be sent to DPH for approval prior to any excavation activities.

**M-HZ-2c: Hazardous Building Materials.** According to the Initial Study, contained in Appendix A of the FEIR, asbestos and lead-based paint were present during the 1997 seismic upgrade of the existing building. Though these materials were largely removed during the seismic upgrade, remnants may be present. Old PCB-containing equipment, such as fluorescent light ballasts, could also be present. All hazardous building materials discovered during demolition would be disposed of according to federal, state, and local laws and regulations.

e. Air Quality

**M-AQ-1: Construction Vehicle Emissions Minimization.** According to the FEIR, construction equipment used during the Project's 22-month construction schedule would temporarily affect local air quality, causing temporary increases in particulate dust and other pollutants. Other construction projects under construction, approved or proposed in the area would result in similar emissions. Exhaust from construction vehicles could expose sensitive receptors in the area to elevated levels of health risk. This determination was based on conservative assumptions regarding maximum exposure levels of sensitive receptors, based on recently adopted guidance promulgated by the Bay Area Air Quality Management District. If all diesel construction equipment were to meet the California Air Resources Board ("CARB") and U.S. Environmental

Protection Agency Interim Tier IV standards for Off-Road Compression Ignition (Diesel) Engines, exhaust emissions would be reduced by approximately 90 percent to a less-than-significant level.

However, Interim Tier IV standards do not yet apply to all new equipment, and in February 2010 the CARB delayed implementation of new emissions standards for existing in-use diesel equipment. Consequently, Tier IV or other reduced-emission equipment may not be readily available for use on all diesel equipment used to construct the Project. Mitigation would require the use of Interim Tier IV equipment, where such equipment is available and feasible, or the use of other late model engines, low-emission diesel products, alternative fuels, retrofitted engines, filters or other options. Construction equipment would be turned off when not in use, and diesel generators would not be used where feasible alternative sources of power are available. These measures could reduce emissions substantially. However, because of uncertainty regarding the availability of Interim Tier IV or similar construction equipment in the near term, this impact is conservatively judged to be significant and unavoidable at both the project-level and cumulatively.

**f. MMRP**

The attached Exhibit A contains the MMRP required by CEQA Section 21081.6 and CEQA Guidelines Section 15091. It provides a table setting forth each mitigation measure listed in the EIR that would reduce or eliminate potentially significant adverse impacts of the Project, as well as improvement measures that would reduce ameliorate less-than-significant impacts. Exhibit A also specifies the party responsible for implementation of each measure, establishes monitoring actions, and a monitoring schedule.

The Planning Commission finds that the MMRP attached hereto as Exhibit A is designed to ensure compliance with, among other things, CEQA, the CEQA Guidelines, and Chapter 31 of the Administrative Code. The Planning Commission further finds that the MMRP presents measures that are appropriate and feasible for adoption, and the MMRP should be adopted and implemented as set forth herein and in Exhibit A.

All of the above measures shall be adopted as conditions of Project approval.

**III. Significant Impacts That Cannot be Avoided or Reduced to a Less-Than-Significant Level**

Based on substantial evidence in the whole record of these proceedings, the City finds that there are significant cumulative impacts that would not be eliminated or reduced to an insignificant level by the mitigation measures listed in Exhibit A.

**a. Cumulative Transportation Impacts**

TR-9: According to the FEIR, several other projects, including the Transit Center, are under construction, approved, or proposed in the area. Cumulatively, construction-related traffic,



temporary and/or partial street closures have the potential to disrupt traffic, transit, pedestrians or bicyclists generally. In particular, GGT buses use the eastern curb lane on Fremont Street adjacent to both the Project Site and adjacent to the Transit Center for boarding of several bus lines. Simultaneous construction of both the Project and Transit Center could preclude use of both boarding areas. Mitigation would require the project sponsor and construction manager to coordinate with the sponsors of nearby projects, City agencies, and transit providers to develop construction plans and phasing operations that would minimize impacts. To minimize potential disruption to GGT service, the MTA and GGT have tentatively agreed to relocate GGT boarding facilities to an existing transit island on Fremont Street at Market Street. However, because no formal arrangement has been made respecting temporary relocation of the GGT stops, and because the construction schedules of the projects in the area are subject to change, the Project's contribution to cumulative construction impacts on traffic, transit, pedestrians and bicyclists are conservatively judged to be significant and unavoidable.

**b. Construction Air Quality Impacts**

AQ-1: According to the FEIR, construction equipment used during the Project's 22-month construction schedule would temporarily affect local air quality, causing temporary increases in particulate dust and other pollutants. Other construction projects under construction, approved or proposed in the area would result in similar emissions. Exhaust from construction vehicles could expose sensitive receptors in the area to elevated levels of health risk. This determination was based on conservative assumptions regarding maximum exposure levels of sensitive receptors, based on recently adopted guidance promulgated by the Bay Area Air Quality Management District. If all diesel construction equipment were to meet the California Air Resources Board ("CARB") and U.S. Environmental Protection Agency Interim Tier IV standards for Off-Road Compression Ignition (Diesel) Engines, exhaust emissions would be reduced by approximately 90 percent to a less-than-significant level.

However, Interim Tier IV standards do not yet apply to all new equipment, and in February 2010 the CARB delayed implementation of new emissions standards for existing in-use diesel equipment. Consequently, Tier IV or other reduced-emission equipment may not be readily available for use on all diesel equipment used to construct the Project. Mitigation would require the use of Interim Tier IV equipment, where such equipment is available and feasible, or the use of other late model engines, low-emission diesel products, alternative fuels, retrofitted engines, filters or other options. Construction equipment would be turned off when not in use, and diesel generators would not be used where feasible alternative sources of power are available. These measures could reduce emissions substantially. However, because of uncertainty regarding the availability of Interim Tier IV or similar construction equipment in the near term, this impact is conservatively judged to be significant and unavoidable at both the project-level and cumulatively.

**IV. Rejection of Project Alternatives**

The California Environmental Quality Act ("CEQA") provides that alternatives analyzed in the FEIRs may be rejected if "specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible . . .

project alternatives identified in the final EIR." (CEQA Guidelines § 15091(a)(3)). The Commission has reviewed each of the alternatives to the Project as described in the FEIR that would reduce or avoid the impacts of the Project and rejects them as infeasible for the reasons set forth below.

a. **Alternatives Analyzed in the FEIR**

The FEIR analyzed three alternatives to the Project: the No Project Alternative, the Code-Complying Bulk Alternative, and the No-Parking Alternative.

1. **The No Project Alternative**

Under the No Project Alternative, the Project Site would remain in its existing condition. The existing building would continue to function as an office building with ground-floor retail for the foreseeable future. Conditions described in detail for each environmental topic in Chapter IV, Environmental Setting, Impacts, and Mitigation Measures, of the Final EIR, would remain and none of the impacts associated with the Project would occur.

The No Project Alternative would be inconsistent with key goals of the Downtown Plan and the proposed Transit Center District Plan; each plan focuses on creation of a more intense mixed-use district with an emphasis on transit-supportive office development. With no net addition of office space and no construction, the No Project Alternative would not create new job opportunities for office or construction workers, expand the City's property and payroll tax base, or generate funding for child-care, affordable housing or transit. This alternative would also fail to serve all of the Project Sponsor's objectives, as described in the EIR, such as: providing a LEED(Platinum), Class A office building that exemplifies sustainable design principles and world-class architecture; constructing a building with the maximum amount of office space allowed under the floor area ratio limit to promote General Plan policies favoring concentrated growth in the downtown core; enhancing the pedestrian environment with active retail spaces and an inviting public open space and the building's ground and mezzanine levels; encouraging the use of alternative transportation through the creation of bicycle parking, car-share spaces and electric-vehicle charging stations; providing an appropriate amount of off-street accessory parking; and providing an adequate return for investors.

For these reasons, the Commission hereby rejects the No Project Alternative as infeasible.

2. **The Code-Complying Bulk Alternative.**

Under the Code-Complying Bulk Alternative, a tower containing office uses above ground- and mezzanine-level open space and retail/personal service uses would be built at same height (approximately 350 feet to the roof, 24 stories) as the Project. However, this alternative would comply with the tower separation requirements of Planning Code Section 132.1(c) and with the bulk requirements of Planning Code Section 270. The lower portion of the tower (between a height of 103 feet and 300 feet) would have 15-foot setbacks from the north and east property lines to meet tower separation requirements. To meet the requirements of Section 270, the topmost four floors would have additional setbacks of 15 feet, also on the north and east sides of the building. The setbacks would reduce the size of this alternative's office component, resulting

in 310,000 square feet of office space (292,000 square feet of gross floor area), about 13 percent less office space than with the proposed project. This alternative is presumed to have the same 50-foot-tall ground-floor atrium, and approximately the same retail and restaurant space and publicly accessible open space as would the Project. Because this alternative would have less gross floor area, it would have a corresponding decrease in the basement space available for parking, because Planning Code Section 151.1 limits parking to 7 percent of the building's gross floor area. Therefore, two basement levels would be provided (one fewer than with the project), and approximately 45 on-site parking spaces would be included in this alternative, approximately 16 fewer than with the project. Like the project, this alternative would include 64 bicycle parking spaces. This alternative would also include the fitness center for use by building tenants, as is proposed with the project. The floor area ratio of this alternative would be approximately 15.4:1, compared to 18:1 with the proposed project.

With 13 percent less office space than the Project, this alternative would generate about 13 percent fewer net new peak-hour vehicle trips. This would incrementally reduce the Project's less-than-significant traffic and transit ridership impacts. This alternative would reduce, but not avoid, the Project's significant impacts related to potential conflicts between GGT buses and pedestrians, and vehicles using the garage/loading dock. As with the Project, these impacts could be reduced to a less-than-significant level by implementing the transportation-related mitigation measures described above. Cumulative construction effects on transportation, notably GGT buses, would be significant and unavoidable, as they would be with the Project. Project-level and cumulative construction air quality impacts would remain significant and unmitigable. Other less-than-significant impacts associated with the Project would continue to be less-than-significant.

The Code-Complying Bulk Alternative would not reduce the Project's significant and unavoidable impacts to a less-than-significant level. However, this alternative would not affirmatively fulfill the key goals of the Downtown Plan and the proposed Transit Center District Plan to the same extent as the project. Specifically, these Plans specify that intense office development should be located near high-level transit services, such as the future Transit Center and the existing transit spine along Market Street. With a smaller addition of office space, the No Project Alternative would create fewer new job opportunities for highly trained office or construction workers, and generate fewer tax and fee revenues for the City. The Project's high-efficiency ventilation system, which is integral to the Project Sponsor's sustainability objectives and attaining LEED(Platinum) certification, requires large mechanical rooms that occupy a large portion of each floorplate. Further reductions in floor-plate size required by the Code-Complying Bulk Alternative would result in office floors that are too small for most tenants and would undermine the economic viability of the Project.

For these reasons, the Commission hereby rejects the No Project Alternative as infeasible.

### 3. The No-Parking Alternative

The No-Parking Alternative would include the same development program as the Project (24-story tower with 356,000 square feet of office space (340,000 sq. ft. of gross floor area), 6,600 square feet of restaurant and retail space, and 6,960 square feet of open space, plus two off-street

loading spaces and two service vehicle spaces), but would include no off-street parking, with the exception of the three electric-vehicle charging stations. Like the Project, this alternative would include 64 bicycle parking spaces. This alternative would also include the fitness center for building tenants' use, as is proposed with the project. Above grade, this alternative would be nearly identical to the Project.

The No Parking Alternative would avoid the Project's significant but mitigable effect related to potential conflicts between pedestrians and Golden Gate Transit buses, and vehicles using the proposed parking garage. However, because off-street loading facilities would be the same, this alternative would result in the same impacts as would the Project with respect to potential conflicts between pedestrians and vehicles using the loading dock via the driveway on Fremont Street. As with the Project, this impact would be mitigated by posting a loading dock attendant and limiting loading dock hours.

With the same office floor area and the same restaurant/retail space, the No-Parking Alternative would have similar impacts related to the intensity of development. Trip generation would be the same as with the Project, though the distribution of trips would be somewhat different. Like the Project, this alternative would not be expected to result in significant traffic impacts, because the redistribution of traffic would not be expected to substantially increase volumes at any of the intersections studied. Cumulative traffic impacts would be essentially the same as those of the Project, i.e. it would not contribute considerably to cumulative significant traffic impacts. Operational air quality impacts, which are based on trip generation, would be the same as those of the proposed project, and would be less than significant, as would greenhouse gas impacts. Cumulative and project-level construction air quality impacts associated with this alternative would remain significant and unmitigable.

Because this alternative would develop the same above-grade building as the proposed project, shadow and wind effects (related to the building massing) would be the same as those of the proposed project, and would be less than significant. Land use impacts would also be the same as those of the project, because the same uses would be developed. Other less-than-significant impacts discussed in the Initial Study and related to the intensity of development, including effects on population and housing, recreation and public space, utilities and service systems, and public services, would be the same under this alternative as with the project, and would be less than significant. Noise impacts would be essentially the same as those of the project, because the redistribution of project traffic in the immediate vicinity of the project site would not be sufficient to alter traffic-generated noise impacts, compared to those of the project; as with the project, these impacts would be less than significant. Effects related to conditions at the project site, including impacts on cultural resources, geology, hydrology, biology, hazards, mineral/energy resources, and agriculture/forest resources, would be essentially the same under this alternative as with the project because the same site would be developed, albeit with less excavation, and would also be less than significant, with the same mitigation, where applicable, as with the Project.

The No-Parking Alternative would not eliminate any significant and unavoidable impact of the Project. By eliminating all off-street parking spaces, it would make the office space within the building less competitive with similar office buildings in the downtown core, making the

building less likely to attract tenants, thereby undermining the economic viability of the development. The No-Parking Alternative is inconsistent with the Project Sponsor's goals to provide an adequate amount of off-street parking and a reasonable return to investors. For these reasons, the Commission hereby rejects the No Project Alternative as infeasible.

V. Statement of Overriding Considerations

Notwithstanding the significant effects noted above, pursuant to CEQA Section 21081(b), the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code, the Commission finds, after considering the FEIR, that specific overriding economic, legal, social and other considerations, as set forth below, outweigh the identified significant effects on the environment. In addition, the Commission finds that those Project Alternatives rejected above are also rejected for the following specific economic, social and other considerations, in and of themselves, in addition to the specific reasons discussed above:

- The Project will provide the significant new office space at this a prominent site, furthering the goals and objectives of both the Downtown Plan and proposed Transit Center District Plan to concentrate office uses downtown. Specifically, these Plans specify that intense office development should be located near high-level transit services, such as the future Transit Center and the existing transit spine along Market Street.
- The Project is located within the C-3-O District, which is intended to facilitate the expansion of downtown office space south of Market, and south of the traditional downtown core.
- The Project will enhance the quality of the pedestrian experience along both Fremont and Mission Streets by providing a high-quality publicly accessible open space within the building a prominent corner. This space will include complementary retail uses open to the public, public artwork, and public seating.
- The Project will construct a LEED Platinum office building, thereby reducing the Project's carbon footprint and maximizing energy efficiency of the building.
- The Project promotes regional green policies by focusing significant new development within San Francisco's existing urban core. Such infill developments make use of existing transportation and other infrastructure while lessening the need for expanding the regional urban boundaries through peripheral suburban development.
- The Project will also pay significant additional one-time development fees to fund a variety of City programs including contributions to the Downtown Park Fund, payment of the Transit Impact Development Fee, contributions to the Jobs, Housing Linkage Program, contributions to child care and public schools. In addition, public artwork will be commissioned as part of the Project.
- The Project will substantially increase the assessed value of the Project Site, resulting in corresponding increases in tax revenue to the City.

Motion 18266  
Hearing Date: February 10, 2011

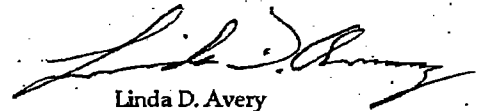
CASE NO. 2006.1524EBKXV  
350 MISSION STREET

- The Project will create temporary construction jobs and permanent jobs in the office and retail sectors. These jobs will provide employment opportunities for San Francisco residents, promote the City's role as a commercial center, and provide additional payroll tax revenues to City.
- The Project promotes a number of the objectives of the Downtown Plan including Objective 1, which recognizes "the need to create jobs, specifically for San Franciscans, and to continue San Francisco's role as an international center of commerce and services. New jobs enhance these City functions, to expand employment opportunities, and to provide added tax resources, to make downtown growth at a reasonable scale and desirable course for the City."
- The Project also promotes and is consistent with Downtown Plan Objective 2, which states that "Almost two-thirds of the City's new permanent jobs in recent years have been located in the Downtown Financial District. This growth, primarily in the finance, insurance, real estate activities, and business services reflects the City's strong competitive advantage in this sector. Since the office sector is the City's major provider of employment opportunities, it is essential that its vitality remain at a high level."
- The Project furthers the City's historic preservation goals by absorbing unused development potential from historic buildings throughout the C-3 Districts with the use of transferable development rights (TDR). The City's TDR Program promotes and facilitates the preservation of existing downtown historic buildings by compensating owners of those buildings who are no longer able to develop the air space above their building.

#### DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby adopts the foregoing CEQA Findings, and adopts the Mitigation Monitoring and Reporting Program as a condition of approval of this Project.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission on Thursday, February 10, 2011.



Linda D. Avery  
Commission Secretary

AYES: Olague, Antoniri, Borden, Fong, Miguel, Moore  
NOES: Sugaya  
ABSENT:

**Motion 18266**  
**Hearing Date: February 10, 2011**

**CASE NO. 2006.1524EBKXV**  
**350 MISSION STREET**

**ADOPTED: February 10, 2011**

**EXHIBIT A:  
 MITIGATION MONITORING AND REPORTING PROGRAM  
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)**

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p><b>1. Cultural Resources—Archeology</b></p> <p><b>M-CP-2: Archeological Research Design and Treatment Plan.</b> Based on a reasonable presumption that archeological resources may be present within the project site, the following measures shall be undertaken to avoid any potentially significant adverse effect from the proposed project on buried or submerged historical resources. The project sponsor shall retain the services of a qualified archeological consultant having expertise in California prehistoric and urban historical archeology. The archeological consultant shall undertake an archeological testing program as specified herein. In addition, the consultant shall be available to conduct an archeological monitoring and/or data recovery program if required pursuant to this measure. The archeological consultant's work shall be conducted in accordance with this measure and with the requirements of the Transit Center District Plan archeological research design and treatment plan (Far Western Anthropological Research Group, Inc., Archeological Research Design and Treatment Plan for the Transit Center District Plan Area, San Francisco, California, February 2010) at the direction of the Environmental Review Officer (ERO). All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment and shall be considered draft reports subject to revision until final approval by the ERO. Archeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of the ERO, the suspension of construction can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less than significant level potential effects on a significant archeological resource as defined in CEQA Guidelines Sections 15064.5 (a) and (c).</p>	<p>Project Sponsor,          Archeologist</p>	<p>Prior to any soil-disturbing activities</p>	<p>See individual components below.</p>	<p>See individual components below.</p>
<p><b>Archeological Testing Program.</b> The archeological consultant shall prepare and submit to the ERO for review and approval an archeological testing plan (ATP). The archeological testing program shall be conducted in accordance with the approved ATP. The ATP shall identify the property types of the expected archeological resource(s) that potentially could be adversely affected by the proposed project, the testing method to be used, and the locations recommended for testing. The purpose of the archeological testing program will be to determine to the extent possible the presence or absence</p>	<p>No action required; see following component.</p>			



**EXHIBIT A:**  
**MITIGATION MONITORING AND REPORTING PROGRAM**  
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p><b>1. Cultural Resources—Archeology (continued)</b></p> <p>of archeological resources and to identify and to evaluate whether any archeological resource encountered on the site constitutes an historical resource under CEQA.</p> <p>At the completion of the archeological testing program, the archeological consultant shall submit a written report of the findings to the ERO. If based on the archeological testing program the archeological consultant finds that significant archeological resources may be present, the ERO in consultation with the archeological consultant shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archeological testing, archeological monitoring, and/or an archeological data recovery program. If the ERO determines that a significant archeological resource is present and that the resource could be adversely affected by the proposed project, at the discretion of the project sponsor either:</p> <p>A) The proposed project shall be re-designed so as to avoid any adverse effect on the significant archeological resource; or</p> <p>B) A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.</p>				
<p><b>Archeological Monitoring Program.</b> If the ERO in consultation with the archeological consultant determines that an archeological monitoring program shall be implemented the archeological monitoring program (AMP) shall minimally include the following provisions:</p> <ul style="list-style-type: none"> <li>The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the AMP reasonably prior to any project-related soils disturbing activities commencing. The ERO in consultation with the archeological consultant shall determine what project activities shall be archeologically monitored. In most cases, any soils-disturbing activities,</li> </ul>	<p>ERO and archeological consultant</p>	<p>Ongoing during all soil-disturbing activities. Construction Manager to be completed prior to start of soil-disturbing activity</p>	<p>ERO and archeological consultant</p>	<p>Considered complete upon end of excavation activities.</p>

**EXHIBIT A:  
 MITIGATION MONITORING AND REPORTING PROGRAM  
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)**

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p><b>1. Cultural Resources—Archeology (continued)</b></p> <p>such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles (foundation, shoring, etc.), site remediation, etc., shall require archeological monitoring because of the risk these activities pose to potential archaeological resources and to their depositional context</p> <ul style="list-style-type: none"> <li>The archeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), of how to identify the evidence of the expected resource(s), and of the appropriate protocol in the event of apparent discovery of an archeological resource;</li> <li>The archeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archeological consultant and the ERO until the ERO has, in consultation with project archeological consultant, determined that project construction activities could have no effects on significant archeological deposits;</li> <li>The archeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis;</li> <li>If an intact archeological deposit is encountered, all soils-disturbing activities in the vicinity of the deposit shall cease. The archeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction activities and equipment until the deposit is evaluated. If in the case of pile driving activity (foundation, shoring, etc.), the archeological monitor has cause to believe that the pile driving activity may affect an archeological resource, the pile driving activity shall be terminated until an appropriate evaluation of the resource has been made in consultation with the ERO. The archeological consultant shall immediately notify the ERO of the encountered archeological deposit. The archeological consultant shall make a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit, and present the findings of this assessment to the ERO.</li> </ul> <p>Whether or not significant archeological resources are encountered, the archeological consultant shall submit a written report of the findings of the monitoring program to the ERO.</p>	<p>Construction manager and archeological consultant and monitor(s)</p>	<p>During excavation and other soil-disturbing activities</p>	<p>Archeological monitor to evaluate any buried cultural material encountered during construction to determine significance, and shall report findings to ERO.</p>	<p>Upon discovery.</p>

**EXHIBIT A:**  
**MITIGATION MONITORING AND REPORTING PROGRAM.**  
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p><b>1. Cultural Resources—Archeology (continued)</b></p> <p><i>Archeological Data Recovery Program.</i> The archeological data recovery program shall be conducted in accord with an archeological data recovery plan (ADRP). The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the ADRP prior to preparation of a draft ADRP. The archeological consultant shall submit a draft ADRP to the ERO. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, should be limited to the portions of the historical property that could be adversely affected by the proposed project. Destructive data recovery methods shall not be applied to portions of the archeological resources if nondestructive methods are practical.</p> <p>The scope of the ADRP shall include the following elements:</p> <ul style="list-style-type: none"> <li>▪ <i>Field Methods and Procedures.</i> Descriptions of proposed field strategies, procedures, and operations.</li> <li>▪ <i>Cataloging and Laboratory Analysis.</i> Description of selected cataloging system and artifact analysis procedures.</li> <li>▪ <i>Discard and Deaccession Policy.</i> Description of and rationale for field and post-field discard and deaccession policies.</li> <li>▪ <i>Interpretive Program.</i> Consideration of an on-site/off-site public interpretive program during the course of the archeological data recovery program.</li> <li>▪ <i>Security Measures.</i> Recommended security measures to protect the archeological resource from vandalism, looting, and non-intentionally damaging activities.</li> <li>▪ <i>Final Report.</i> Description of proposed report format and distribution of results.</li> <li>▪ <i>Curation.</i> Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities.</li> </ul>	<p>Project sponsor and archeological consultant, in consultation with ERO</p>	<p>Upon discovery of significant archeological resources</p>	<p>Data recovery program to be described in Final Archeological Resources Report (see below).</p>	<p>Considered complete upon ERO approval of Draft FARR (see below).</p>

EXHIBIT A:  
 MITIGATION MONITORING AND REPORTING PROGRAM  
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p><b>1. Cultural Resources—Archeology (continued)</b></p> <p><i>Human Remains and Associated or Unassociated Funerary Objects.</i> The treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable State and Federal laws. This shall include immediate notification of the Coroner of the City and County of San Francisco and in the event of the Coroner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC) who shall appoint a Most Likely Descendant (MLD) (Pub. Res. Code Sec. 5097.98). The archeological consultant, project sponsor, and MLD shall make all reasonable efforts to develop an agreement for the treatment of, with appropriate dignity, human remains and associated or unassociated funerary objects (CEQA Guidelines, Sec. 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects.</p>	Project sponsor and archeological consultant, coroner, and Most Likely Descendant if applicable	During archeological field program	Archeological monitor to notify coroner and, if appropriate, NAHC, and shall provide written report of such notification to ERO.	Considered complete upon receipt by ERO of any notification, if applicable.
<p><i>Final Archeological Resources Report.</i> The archeological consultant shall submit a Draft Final Archeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archeological resources and describes the archeological and historical research methods employed in the archeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report.</p>	Project sponsor and archeological consultant	Following completion of any archeological field program	ERO to review Draft FARR.	Considered complete upon ERO approval of Draft FARR.
<p>Once approved by the ERO, copies of the FARR shall be distributed as follows: California Archeological Site Survey Northwest Information Center (NWIC) shall receive one (1) copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Major Environmental Analysis division of the Planning Department shall receive three copies of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high public</p>	Project sponsor	Upon ERO approval of Draft FARR	Project sponsor to provide ERO with copies of transmittals of FARR distribution.	Considered complete upon receipt by ERO of evidence of distribution, and three copies of the FARR.

**EXHIBIT A:  
 MITIGATION MONITORING AND REPORTING PROGRAM  
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)**

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p><b>1. Cultural Resources—Archeology (continued)</b></p> <p>Interest in or the high interpretive value of the resources, the ERO may require a different final report content, format, and distribution than that presented above.</p>				
<p><b>2. Transportation</b></p> <p><b>M-TR-4a—Relocation of Golden Gate Transit Bus Stops:</b> The project sponsor would work with the Golden Gate Bridge, Highway, and Transportation District and the San Francisco Municipal Transportation Authority Sustainable Streets Division to relocate the bus stop for Golden Gate Transit lines 26, 27, and 44 by 20 feet south of its existing location, and to relocate the bus stop for line 38 by 20 feet north of its existing location. The project sponsor would pay any resulting costs, such as for new signage, engineering drawings, and the like.</p>	SFMTA, Sustainable Streets Division; Golden Gate Bridge, Highway, and Transportation District Project sponsor	Prior to issuance of final Certificate of Occupancy, or as determined appropriate by SFMTA	SFMTA, Sustainable Streets Division	Considered complete upon relocation of bus stops.
<p><b>M-TR-4b—Garage Attendant:</b> The project sponsor shall ensure that building management employs an attendant for the parking garage, to be stationed at the project's Fremont Street driveway to direct vehicles entering and exiting the building and avoid any safety-related conflicts with Golden Gate Transit buses and Fremont Street traffic during afternoon periods of Golden Gate Transit use of the site footage—at a minimum, from 3:00 p.m. to 7:15 p.m., or as required based on Golden Gate Transit schedules. (See also Mitigation Measure M-TR-5a, below.)</p>	Project sponsor	To be included as condition of project approval	Planning Department; SFMTA, Sustainable Streets Division (complaint basis only)	Considered complete upon project approval with condition.
<p><b>M-TR-5a—Garage/Loading Dock Attendant:</b> The project sponsor shall ensure that building management employs an attendant for the parking garage and loading dock, to be stationed at the project's Fremont Street driveway to direct vehicles entering and exiting the building and avoid any safety-related conflicts with pedestrians on the sidewalk during the a.m. and p.m. peak periods of traffic and pedestrian activity—at a minimum, from 7:00 a.m. to 9:00 a.m. and from 3:00 p.m. to 7:15 p.m., with extended hours as dictated by traffic and pedestrian conditions and by activity in the project garage and loading dock. (See also Mitigation Measure M-TR-4b, above.)</p>	Project sponsor	To be included as condition of project approval	Planning Department; SFMTA, Sustainable Streets Division (complaint basis only)	Considered complete upon project approval with condition.

**EXHIBIT A:  
 MITIGATION MONITORING AND REPORTING PROGRAM  
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)**

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<b>2. Transportation (continued)</b>				
<b>M-TR-5b—Warning Devices:</b> The project sponsor shall install audible and visible warning devices to alert pedestrians of the outbound vehicles from the parking garage and loading dock.	Project sponsor	Prior to Issuance of Certificate of Occupancy	Department of Building Inspection	Considered complete upon plan check.
<b>M-TR-5c—Limitation on Loading Dock Hours:</b> The project sponsor shall ensure that building management prohibits use of the loading dock during hours when the adjacent curb lane is used by Golden Gate Transit buses (currently, 3:00 p.m. to 7:15 p.m.).	Project sponsor	To be included as condition of project approval	Planning Department, SFMTA, Sustainable Streets Division (complaint basis only)	Considered complete upon project approval with condition.
<b>M-TR-7—Limitation on Truck Size:</b> To ensure that trucks longer than 30 feet in length are not permitted to use the loading dock, the project sponsor would ensure that office and retail tenants in the building are informed of truck size limitations. In the event that trucks larger than 30 feet in length attempt to access the loading dock, the garage/loading dock attendant (see Mitigation Measure M-TR-5a) would direct these trucks to use on-street loading zones (if available) or off-load deliveries to smaller trucks off-site and return to use the loading dock.	Project sponsor	To be included as condition of project approval	Planning Department, SFMTA, Sustainable Streets Division (complaint basis only)	Considered complete upon project approval with condition.
<b>M-TR-8a—Construction-Period Golden Gate Transit Bus Stop Relocation:</b> To minimize potential disruptions to Golden Gate Transit during project construction, Golden Gate Transit buses would use the existing boarding island adjacent to the left lane of Fremont Street during construction of the proposed project, assuming Golden Gate Transit determines that this location is the most feasible choice and the Municipal Transportation Agency concurs with use of the island.	SFMTA, Sustainable Streets Division; Golden Gate Bridge, Highway, and Transportation District Project sponsor	During construction	Golden Gate Transit	Considered complete upon completion of project construction.
<b>M-TR-8b—Construction Coordination:</b> To minimize potential disruptions to Golden Gate Transit (and other transit operators), the project sponsor and/or construction contractor would coordinate with the Municipal Transportation Agency/Sustainable Streets Division, the Transbay Joint Powers Authority, and construction manager(s)/contractor(s) for the Transit Center project and with Golden Gate Transit, as well as Muni, AC Transit, and SamTrans, as applicable, to develop construction phasing and operations plans that would result in the least amount of disruption that is feasible to transit operators, pedestrian and bicycle activity, and vehicular traffic.	Project sponsor; SFMTA; TJA Sustainable Streets Division; All relevant transit operators and other project sponsors	Ongoing during construction of Transit Center	All entities listed under Implementation	Ongoing during construction of Transit Center

**EXHIBIT A:  
 MITIGATION MONITORING AND REPORTING PROGRAM  
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)**

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p><b>3. Noise</b></p> <p><b>M-NO-2a-Noise Control Measures for Pile Driving:</b> Should pile-driving be necessary for the proposed project, the project sponsor would require that the project contractor predrill holes (if feasible based on soils) for piles to the maximum feasible depth to minimize noise and vibration from pile driving.</p> <p>Should pile-driving be necessary for the proposed project, the project sponsor would require that the construction contractor limit pile driving activity to result in least disturbance to neighboring uses. Any nighttime work would require a work permit from the Director of Public Works or the Director of Building Inspection pursuant to San Francisco Noise Ordinance Section 2908.</p>	<p>Project sponsor and construction contractor(s)</p>	<p>In the event pile driving is to be undertaken</p>	<p>Project sponsor and construction contractor(s)</p>	<p>The project sponsor shall submit a report to the ERO documenting measures implemented if pile driving is undertaken.</p>
<p><b>M-NO-2b-General Construction Noise Control Measures:</b> To ensure that project noise from construction activities is minimized to the maximum extent feasible, the project sponsor would undertake the following:</p> <ul style="list-style-type: none"> <li>The project sponsor would require the general contractor ensure that equipment and trucks used for project construction utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible).</li> <li>The project sponsor would require the general contractor to locate stationary noise sources (such as compressors) as far from adjacent or nearby sensitive receptors as possible, to muffle such noise sources, and to construct barriers around such sources and/or the construction site, which could reduce construction noise by as much as five dBA. To further reduce noise, the contractor shall locate stationary equipment in pit areas or excavated areas, if feasible.</li> </ul>	<p>Project sponsor and construction contractor(s)</p>	<p>During project construction</p>	<p>The project sponsor or construction contractor shall make available a contact number for noise complaints during the construction period and shall file a report with the Planning Department at the conclusion of construction as to the number and nature of such complaints received and the means of resolving each such complaint</p>	<p>The project sponsor shall ensure that a report is prepared and provided to the ERO documenting any noise complaints during construction and the remedial measures undertaken by the sponsor and/or contractor(s). Considered complete upon receipt of final monitoring report at completion of construction.</p>

**EXHIBIT A:  
 MITIGATION MONITORING AND REPORTING PROGRAM  
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)**

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p><b>3. Noise (continued)</b></p> <ul style="list-style-type: none"> <li>The project sponsor would require the general contractor to use impact tools (e.g., jack hammers, pavement breakers, and rock drills) that are hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. Where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used, along with external noise jackets on the tools, which could reduce noise levels by as much as 10 dBA.</li> <li>The project sponsor would include noise control requirements in specifications provided to construction contractors. Such requirements could include, but not be limited to, performing all work in a manner that minimizes noise to the extent feasible; use of equipment with effective mufflers; undertaking the most noisy activities during times of least disturbance to surrounding residents and occupants, as feasible; and selecting haul routes that avoid residential buildings inasmuch as such routes are otherwise feasible.</li> <li>Prior to the issuance of each building permit, along with the submission of construction documents, the project sponsor shall submit to the Planning Department and Department of Building Inspection (DBI) a list of measures to respond to and track complaints pertaining to construction noise. These measures shall include (1) a procedure and phone numbers for notifying DBI, the Department of Public Health, and the Police Department (during regular construction hours and off-hours); (2) a sign posted on-site describing noise complaint procedures and a complaint hotline number that shall be answered at all times during construction; (3) designation of an on-site construction complaint and enforcement manager for the project; and (4) notification of neighboring residents and non-residential building managers within 300 feet of the project construction area at least 30 days in advance of extreme noise generating activities (defined as activities generating noise levels of 90 dBA or greater) about the estimated duration of the activity.</li> </ul>				



**EXHIBIT A:**  
**MITIGATION MONITORING AND REPORTING PROGRAM**  
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p><b>3. Noise (continued)</b></p> <p><b>M- NO-2c—Cumulative Construction Noise Control Measures:</b> In addition to implementation of Mitigation Measure NO-2a and Mitigation Measure NO-2b (as applicable), prior to the time that construction of the proposed project sponsor would cooperate with and participate in any City-sponsored construction noise control program for the Transit Center District Plan area or other City-sponsored area wide program developed to reduce potential effects of construction noise in the project vicinity. Elements of such a program could include a community liaison program to inform residents and building occupants of upcoming construction activities and, potentially, noise and/or vibration monitoring during construction activities that are anticipated to be particularly disruptive.</p>	<p>Project sponsor and contractor(s), along with Planning Department, SFMTA, and other applicable City departments</p>	<p>During project construction</p>	<p>Project sponsor and contractor(s)</p>	<p>The project sponsor shall ensure that a report is prepared and provided to the ERO, documenting any noise complaints during construction and the remedial measures undertaken by the sponsor and/or contractor(s). Considered complete upon receipt of final monitoring report at completion of construction.</p>

**EXHIBIT A:  
 MITIGATION MONITORING AND REPORTING PROGRAM  
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)**

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p><b>4. Air Quality</b></p> <p><b>M-AQ-1—Construction Vehicle Emissions Minimization:</b> To reduce the potential health risk resulting from project construction activities, the project sponsor shall include in contract specifications a requirement the following BAAQMD-recommended measures:</p> <ul style="list-style-type: none"> <li>• Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to two minutes (less than the five minutes identified above in Improvement Measure I-AQ-1b);</li> <li>• The project shall develop a plan demonstrating that the off-road equipment (more than 60 horsepower) to be used in the construction project (i.e., owned, leased, and subcontractor vehicles) would achieve a project wide fleet-average 20 percent NOX reduction and 45 percent PM reduction compared to the most recent ARB fleet average. Acceptable options for reducing emissions include, as the primary option, use of interim Tier 4 equipment where such equipment is available and feasible for use, the use of other late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available;</li> <li>• All construction equipment, diesel trucks, and generators shall be equipped with Best Available Control Technology for emission reductions of NOx and PM, including Tier 3 or alternative fuel engines where such equipment is available and feasible for use;</li> <li>• All contractors shall use equipment that meets ARB's most recent certification standard for off-road heavy duty diesel engines; and</li> <li>• The project construction contractor shall not use diesel generators for construction purposes where feasible alternative sources of power are available.</li> </ul>	Project sponsor	Prior to issuance of request for construction bids	Project sponsor and Planning Department (MEA)	The project sponsor shall submit a copy of the relevant portion(s) of the construction bid package to MEA for inclusion in the project file.

EXHIBIT A:  
 MITIGATION MONITORING AND REPORTING PROGRAM  
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p><b>5. Hazards and Hazardous Materials</b></p> <p><b>M-HZ-2a—Work Plan for Soil and Groundwater Contamination:</b> The project sponsor shall cause to have implemented a Work Plan for the Characterization of Subsurface Soils and Groundwater for the project site. The Work Plan as approved by the San Francisco Department of Public Health, Environmental Health Section, Hazardous Waste Unit (DPH) includes the following:</p> <p>Once the existing building has been demolished and debris removed from the site, subsurface investigation of the site will be undertaken. The proposed subsurface investigation will consist of the following:</p> <ul style="list-style-type: none"> <li>• Obtain a soil boring permit from DPH;</li> <li>• Notify Underground Service Alert and a private utility locating service a minimum of 48 hours prior to conducting the field investigation;</li> <li>• Complete a minimum of three soil borings (two to a depth of 10 feet below the existing basement slab and one to the proposed depth of excavation, approximately 50 feet below grade) in the area proposed to be excavated and to the depth of proposed excavation, at locations to be reviewed and accepted by DPH;</li> <li>• Collect soil samples in the two shallow borings at depths of approximately 1.5, 3, 5, 7.5, and 10 feet below the basement slab, and in the deeper boring at depths of 1.5, 3, 5, 7.5, 10, 15, 20, 25, 30, 35, 40, 45, and 50 feet below street grade;</li> <li>• After the deep boring has been advanced to the maximum depth, collect a grab groundwater sample through a slotted, one-inch diameter PVC temporary casing, using a disposable baller and decanted into appropriately preserved containers;</li> <li>• Screen all soil samples in the field for organic vapor and transport all soil and groundwater samples to a laboratory for analysis using chain-of-custody procedures; and</li> <li>• Prepare a report of the findings.</li> </ul>	<p>Project sponsor</p>	<p>Following demolition of existing building and prior to ground-disturbing activities (other than such activities required to implement Work Plan)</p>	<p>Department of Public Health, Environmental Health Section, Hazardous Waste Unit (DPH)</p>	<p>Considered complete upon submittal to DPH (with copy to Planning Department, Major Environmental Analysis division) of report documenting findings.</p>

**EXHIBIT A:**  
**MITIGATION MONITORING AND REPORTING PROGRAM**  
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)

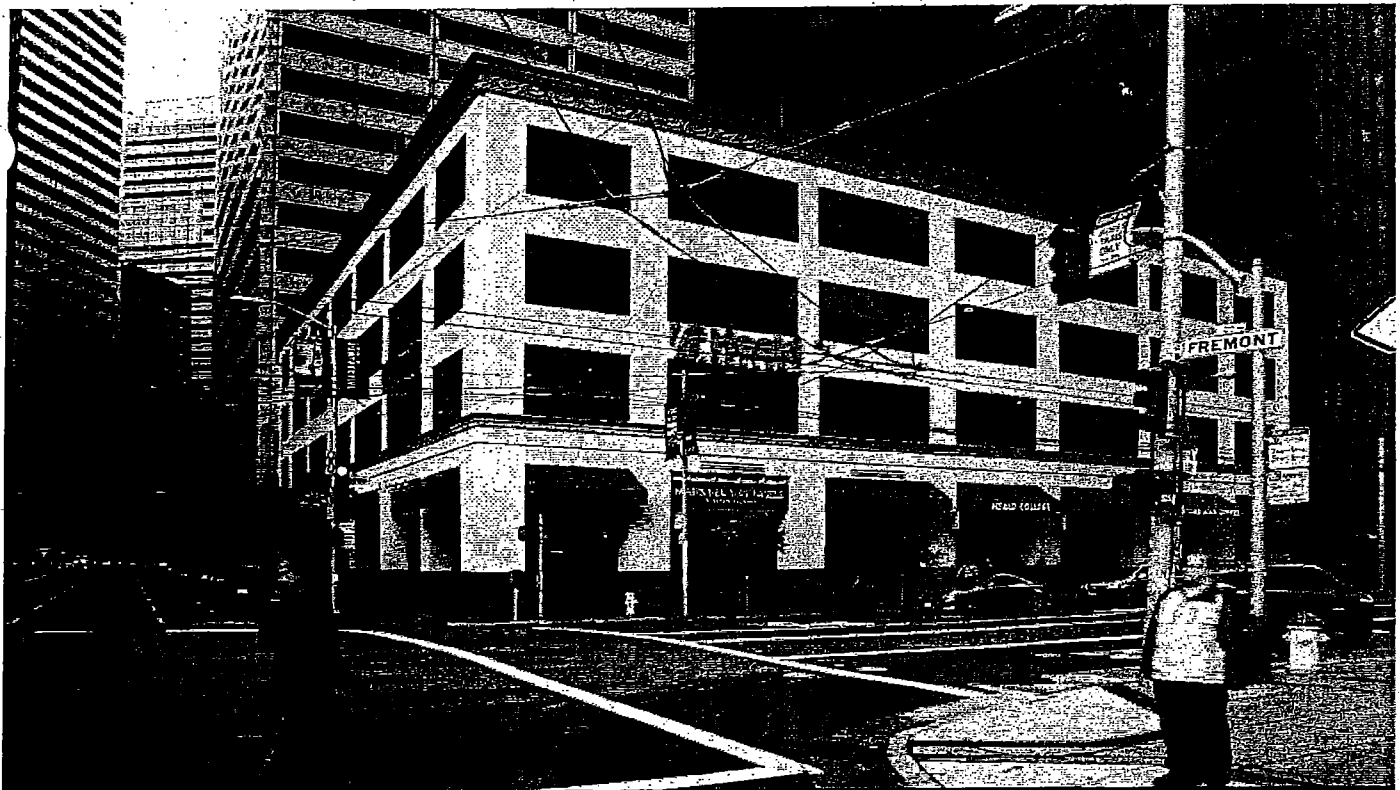
Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Data Completed
<p><b>5. Hazards and Hazardous Materials (continued)</b></p> <p>The soil samples will be analyzed for total recoverable petroleum hydrocarbons (TRPH), total petroleum hydrocarbons (TPH) as gasoline and diesel, volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), polychlorinated biphenyls (PCBs), California assessment manual (CAM) 17 metals, leaking underground fuel tank (LUFT) S metals, total lead, asbestos, pH, cyanide, and sulfides. The groundwater sample will be analyzed for the following San Francisco Public Utilities Commission (SFPUC) discharge permit requirements: pH, dissolved sulfides, hydrocarbon oil and grease, total recoverable oil and grease, VOCs, SVOCs, total suspended solids, chemical oxygen demand, CAM 17 metals, phenols, and cyanide.</p> <p>If the test results indicate elevated total metal concentrations, additional testing for soluble metals, using the California waste extraction test (WET) may be required to assess whether the material is a California hazardous waste. If significant levels of soluble metals are detected, additional analyses using toxicity characteristic leaching procedure (TCLP) may be necessary to determine if the material is a Federal hazardous waste.</p>				
<p><b>M-HZ-2b—Site Mitigation Plan:</b> If elevated concentrations of heavy metals and/or petroleum hydrocarbons are detected at the Site, prepare a site mitigation plan (SMP) that outlines specific soil handling procedures to be followed during construction. The SMP would also specify basic health and safety concerns to be addressed by the site contractor or subcontractor responsible for worker and public health and safety, through the preparation of a detailed health and safety plan by the project contractor. The SMP would be sent to DPH for approval prior to any excavation activities.</p>	Project sponsor	During construction, if applicable based on results of Work Plan Investigation	Department of Public Health, through review of SMP (if applicable)	Considered complete upon submittal of SMP, if applicable.
<p><b>M-HZ-2c—Hazardous Building Materials:</b> The project sponsor shall ensure that PCB-containing equipment such as fluorescent light ballasts are removed and properly disposed of prior to the start of renovation. Old light ballasts that would be removed during renovation would be evaluated for the presence of PCBs. In the case where the presence of PCBs in the light ballast could not be verified, then they would be assumed to contain PCBs and handled and disposed of as such, according to applicable laws and regulations. Any other hazardous materials identified either before or during renovation would be abated according to federal, state, and local laws and regulations.</p>	Project sponsor	Prior to demolition of existing building.	Demolition contractor and (on complaint basis only) Department of Public Health	Considered complete at completion of building demolition.

**EXHIBIT A:**  
**MITIGATION MONITORING AND REPORTING PROGRAM**  
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)

Improvement Measures Identified by Planning Staff	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p><b>Air Quality</b></p> <p><b>I-AQ-1a—Dust Control Plan:</b> To reduce construction-related dust emissions, the project sponsor shall incorporate into construction specifications the requirement for development and implementation of a site-specific Dust Control Plan as set forth in Article 22B of the San Francisco Health Code. The Dust Control Plan shall require the project sponsor to: submit a map to the Director of Public Health showing all sensitive receptors within 1,000 feet of the site; wet down areas of soil at least three times per day; provide an analysis of wind direction and install upwind and downwind particulate dust monitors; record particulate monitoring results; hire an independent, third party to conduct inspections and keep a record of those inspections; establish shut-down conditions based on wind, soil migration, etc.; establish a hotline for surrounding community members who may be potentially affected by project-related dust; limit the area subject to construction activities at any one time; install dust curtains and windbreaks on the property lines, as necessary; limit the amount of soil in hauling trucks to the size of the truck bed and secure soils with a tarpaulin; enforce a 15 mph speed limit for vehicles entering and exiting construction areas; sweep affected streets with water sweepers at the end of the day; install and utilize wheel washers to clean truck tires; terminate construction activities when winds exceed 25 miles per hour; apply soil stabilizers to inactive areas; and sweep adjacent streets to reduce particulate emissions. The project sponsor would be required to designate an individual to monitor compliance with dust control requirements.</p>	<p>Project sponsor</p>	<p>Prior to issuance of request for construction bids</p>	<p>Project sponsor and Planning Department (MEA)</p>	<p>The project sponsor shall submit a copy of the relevant portion(s) of the construction bid package to MEA for inclusion in the project file.</p>

**EXHIBIT A:  
 MITIGATION MONITORING AND REPORTING PROGRAM  
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)**

Improvement Measures Identified by Planning Staff	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p><b>I-AQ-1b—Construction Vehicle Emissions Minimization:</b> To reduce construction vehicle emissions, the project sponsor shall incorporate the following into construction specifications:</p> <ul style="list-style-type: none"> <li>• Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.</li> <li>• All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.</li> </ul>	<p>Project sponsor</p>	<p>Prior to issuance of request for construction bids</p>	<p>Project sponsor and Planning Department (MEA)</p>	<p>The project sponsor shall submit a copy of the relevant portion(s) of the construction bid package to MEA for inclusion in the project file.</p>



## COMMENTS AND RESPONSES ON DRAFT EIR

# 350 Mission Street Office Project

PLANNING DEPARTMENT  
CASE NO. 2006.1524E

STATE CLEARINGHOUSE NO. 2010062013



SAN FRANCISCO  
PLANNING  
DEPARTMENT

Draft EIR Publication Date:	SEPTEMBER 15, 2010
Draft EIR Public Hearing Date:	OCTOBER 21, 2010
Draft EIR Public Comment Period:	SEPTEMBER 15, 2010 - NOVEMBER 2, 2010
Final EIR Certification Date:	FEBRUARY 10, 2011

\* To view full document  
Request file # 110261



# SAN FRANCISCO PLANNING DEPARTMENT

---

January 27, 2010

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

To: Members of the Planning Commission and Interested Parties  
From: Bill Wycko, Environmental Review Officer  
Re: **Attached Comments and Responses on Draft Environmental Impact Report**  
Case No. 2006.1524E: 350 Mission Street Office Project

Attached for your review please find a copy of the Comments and Responses document for the Draft Environmental Impact Report (EIR) for the above-referenced project. This document, along with the Draft EIR, will be before the Planning Commission for Final EIR certification on February 10, 2011. Please note that the public review period ended on November 2, 2010.

The Planning Commission does not conduct a hearing to receive comments on the Comments and Responses document, and no such hearing is required by the California Environmental Quality Act. Interested parties, however, may always write to Commission members or to the President of the Commission at 1650 Mission Street and express an opinion on the Comments and Responses document, or the Commission's decision to certify the completion of the Final EIR for this project.

Please note that if you receive the Comments and Responses document in addition to the Draft EIR, you technically have the Final EIR. If you have any questions concerning the Comments and Responses document or the environmental review process, please contact Brett Bollinger at (415) 575-9024.

Thank you for your interest in this project and your consideration of this matter.



# 350 MISSION STREET OFFICE PROJECT

## Comments and Responses on Draft EIR

Planning Department Case No. 2006.1524E  
State Clearinghouse No. 2010062013

Draft EIR Publication Date: September 15, 2010  
Draft EIR Public Hearing Date: October 28, 2010  
Draft EIR Public Comment Period: September 15, 2010 through November 2, 2010  
Final EIR Certification Date: February 10, 2011

This report is printed on recycled paper.

207037

# **TABLE OF CONTENTS**

---

## **350 Mission Street Project EIR Comments and Responses**

	<u>Page</u>
<b>A. INTRODUCTION</b>	<b>C&amp;R-1</b>
<b>B. LIST OF PERSONS COMMENTING</b>	<b>C&amp;R-3</b>
<b>C. SUMMARY OF COMMENTS AND RESPONSES</b>	<b>C&amp;R-4</b>
General Comments	C&R-4
Plans and Policies	C&R-4
Transportation	C&R-10
Noise	C&R-12
Air Quality	C&R-13
Shadow	C&R-16
Alternatives	C&R-19
Topics Analyzed in the Initial Study	C&R-22
Population and Housing	C&R-22
Recreation and Public Space	C&R-23
Hydrology and Water Quality	C&R-24
<b>D. STAFF-INITIATED TEXT CHANGES</b>	<b>C&amp;R-26</b>
<b>ATTACHMENT 1: Comment Letters</b>	
<b>ATTACHMENT 2: Public Hearing Transcript</b>	

# 350 MISSION STREET OFFICE PROJECT

## Draft Environmental Impact Report

Planning Department Case No. 2006.1524E  
State Clearinghouse No. 2010062013

Draft EIR Publication Date: September 15, 2010  
Draft EIR Public Hearing Date: October 21, 2010  
Draft EIR Public Comment Period: September 15, 2010 through November 1, 2010

This report is printed on recycled paper.

207037

\* To view full document  
Request file # 110261

# TABLE OF CONTENTS

## 350 Mission Street Project Draft Environmental Impact Report

	<u>Page</u>
LIST OF ACRONYMS AND ABBREVIATIONS	v
SUMMARY	S-1
I. INTRODUCTION	1
II. PROJECT DESCRIPTION	5
A. Site Location and Project Characteristics	5
B. Project Setting	17
C. Project Sponsor's Objectives	20
D. Intended Uses of the EIR	20
III. COMPATIBILITY WITH EXISTING ZONING AND PLANS	23
IV. ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION MEASURES	37
A. Land Use	37
B. Transportation	39
C. Air Quality	62
D. Greenhouse Gases	88
E. Wind	104
F. Shadow	113
G. Initial Study Issues	123
V. OTHER CEQA CONSIDERATIONS	
A. Growth Inducement	127
B. Significant Environmental Effects That Cannot Be Avoided If the Proposed Project is Implemented	128
C. Areas of Known Controversy and Issues to be Resolved	129
VI. ALTERNATIVES TO THE PROPOSED PROJECT	130
A. No Project	130
B. Code-Complying Bulk Alternative	131
C. No-Parking Alternative	134
D. Environmentally Superior Alternative	136
VII. APPENDICES	
A. Notice of Preparation and Initial Study	
B. Air Quality	
C. Wind Analysis Technical Memorandum	
VIII. EIR AUTHORS AND CONSULTANTS	

	<u>Page</u>
<b>LIST OF FIGURES</b>	
1. Project Location	7
2. Ground Floor Plan	8
3. Mezzanine (Second Floor) Plan	9
3. Typical Upper Level Plan	10
5. Mission Street (South) Elevation	14
6. Fremont Street (West) Elevation	15
7. Building Bulk and Setback Exceptions	16
8. Project Area Transit Network	41
9. Wind Test Point Locations	106
10. March 21 Shadow Patterns	116
11. June 21 Shadow Patterns	117
12. September 21 Shadow Patterns	118
13. December 21 Shadow Patterns	119
14. East Side POPOS	120
15. West Side POPOS	120
16. Gap Between 50 Beale and Millennium	120
17. Code-Complying Bulk Alternative	132

**LIST OF TABLES**


S-1	Summary of Impacts and Mitigation Measures for the Proposed 350 Mission Street Project	S-4
1.	Project Characteristics and Planning Code Compliance	12
2.	Peak-Hour Intersection Levels of Service (LOS) and Average Stopped Delay in Seconds per Vehicle	47
3.	Summary of San Francisco Air Quality Monitoring Data (2005–2009)	63
4.	State and Federal Ambient Air Quality Standards	71
5.	Project Construction Exhaust Emissions Estimates	79
6.	Estimated Daily Regional Emissions (2013)	84
7.	GHG Reduction Measures in ARB Scoping Plan	92
8.	Total CO <sub>2</sub> -Equivalent Emissions (Metric Tons/Year)	100
9.	City GHG Regulations Applicable to the Proposed Project	101
10.	Wind Test Results	108

# REUBEN & JUNIUS LLP

March 21, 2011

**Delivered by Hand**

Honorable David Chiu, President  
San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94103

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2011 MAR 21 PM 4:53  
BY 

**Re: 350 Mission Street  
Project Sponsor's Brief in Support of EIR  
Hearing Date: March 29, 2011  
Our File No.: 5614.01**

Dear President Chiu and Supervisors:

Our office represents GLL US Office, LP ("Project Sponsor")—an entity with extensive experience building and managing development projects in San Francisco and elsewhere—in connection with its applications to construct an office building at 350 Mission Street ("Project"). We write to address the frivolous appeal ("Appeal") of the Project's Final Environmental Impact Report ("FEIR"), which was filed on behalf of 50 Beale Street, an adjacent commercial office building that will lose views and exposure from a side elevation once the Project is built. We call the Appeal frivolous because:

- The 250+ pages of environmental documentation in the FEIR comprehensively address the impacts of the Project and the concerns raised by the Appellant.
- The Appellant's submittal to the Planning Commission tacitly acknowledges that the FEIR is legally adequate, stating it is "possibly true for CEQA purposes" that the impacts of the Project on 50 Beale Street do "not rise to the level of significant project impacts, and thus required no further analysis" in the FEIR. (See Exhibit A for February 10, 2011, letter from A. DeGood, Appellants' attorney, to Planning Commission.)

In spite of the acknowledged completeness of the FEIR, the Appellant filed the Appeal. Without benefit of any explanation or evidence, the one-page Appeal simply asserts that the EIR does not sufficiently address environmental impacts of the Project or properly analyze

James A. Reuben | Andrew J. Junius | Kevin H. Rose | Tuija I. Cal  
Daniel A. Frattin | Stephen R. Miller | Lindsay Petro

\* To view full document  
Request file # 110261

One Bush Street, Suite 600  
San Francisco, CA 94104

tel: 415-567-9000  
fax: 415-399-9480

www.reubenlaw.com

President David Chiu and Supervisors  
San Francisco Board of Supervisors  
March 21, 2011  
Page 2

alternatives. Based on the following, we respectfully request that you reject the Appeal as groundless and unsubstantiated:

- **The Project is an innovative LEED Platinum infill development.** Environmental values were at the forefront of the Project's design. The Project directly serves the City's goals of centering job growth near the new Transbay Transit Terminal and will be among the first private buildings in the City to achieve a LEED Platinum rating. At 375 feet, the Project is smaller than most of its neighbors and 230 feet shorter than allowed by the Planning Code. Its 50-foot-tall ground-floor atrium will be a unique open space with innovative public art. (See pp. 2-4.)
- **Extensive Public Notice and Opportunity for Public Comment.** As with any large project in San Francisco, there were numerous public notices and opportunity for public comment. (See pp. 6-7.)
- **The Project's design was approved unanimously by the Planning Commission.** The Planning Commission unanimously granted approvals under Planning Code Section 309 (Downtown Permit Review) and Section 321 (Office Development Limitation Program). In approving the Project, the Planning Commission found that it merited limited exceptions from certain Planning Code standards, including upper-tower bulk and tower separation. (Plan. Com. Mo. 18268.)
- **The Appeal is a groundless pretext for design objections.** The Appellant is the owner of an adjacent office building at 50 Beale Street that stands to lose its western exposure when the Project is built. The actual objections—as opposed to the pretextual ones raised against the FEIR—relate to the Project's bulk and separation from Appellant's building. The Board of Appeals, where Appellant has also lodged an appeal of the Project's design approval, is the appropriate venue for airing these objections, not an EIR appeal at the Board of Supervisors. (See pp. 7-8.)
- **The Appellant has not presented any substantial evidence that the EIR is inadequate.** The FEIR provided a legally adequate analysis that was sufficient to guide informed decisions and public participation in the development approval process. Appellant has presented no meaningful evidence that the FEIR failed to disclose significant impacts or is otherwise deficient. (See pp. 10-14.)
- **The Project will create significant economic and public benefits.** The Project will generate millions in fee revenues and property taxes, create hundreds of construction jobs, and provide space for up to 1400 permanent jobs. (See p. 14.)

One Bush Street, Suite 600  
San Francisco, CA 94104

tel: 415-567-9000  
fax: 415-399-9480

REUBEN & JUNIUS, LLP

www.reubenlaw.com

## A. PROJECT DESCRIPTION

The site is located at the northeast corner of Fremont and Mission Streets, across the street from the Transbay Transit Center, now under construction. The site is currently developed with a four-story, mostly vacant office building with ground-floor retail. The upper-floor office space was previously occupied by Heald College, which relocated to a new downtown campus at 875 Howard Street.

The Project is a 24-story, 375-foot-tall tower with 340,000 square feet of office space above a 50-foot-tall ground floor and mezzanine. Most of the ground floor and the mezzanine will function as public interior open space with supporting retail. Parking and loading access is located on Fremont Street and includes 61 below-grade parking spaces (including three disabled spaces, three electrical vehicle charging stations, and a car-share space). Parking for 64 bicycles is also included, along with lockers and showers. The Project includes a total of four freight loading spaces at grade. Plans and renderings are attached as **Exhibit B**.

### 1. Architecture/Design

The Project is a modern glass-clad office tower that will complement the City's investment in transit and open space. The Project's tower will convey a "woven" pattern in which alternating outward tipping panels reflect the brightness of the sky and inward tipping panels are in contrasting shade. This woven pattern culminates at the skyline with feathery luminescent scrims placed behind the glass to capture changing patterns of daylight. The Project's base is focused on the creation of an urban living room, a memorable street-level space that is highly engaged with the City's urban realm.

- **Public Open Space.** The urban living room at the building base is conceived as a socially vibrant urban space, which blurs the boundaries between the public and private realms. The entire office building at the corner of Fremont and Mission is cantilevered thirty feet in two directions to provide a sense of openness to the street. Ninety linear feet of sliding glass panels will literally open the building to the street, weather allowing, along Mission and Fremont Streets. A grand amphitheater stair of wood and metal would provide space for informal lunchtime dining and connect the ground floor to additional mezzanine level open space.
- **Innovative Public Art.** The core and ceiling of the Project's public space would be wrapped in a "digital canvas" that will be visible from the street. The canvas could be programmed for a variety of displays, allowing for rotating exhibitions by local digital artists. The Project Sponsor is exploring opportunities to collaborate with local schools, whose students could produce and curate displays.

One Bush Street, Suite 600  
San Francisco, CA 94104

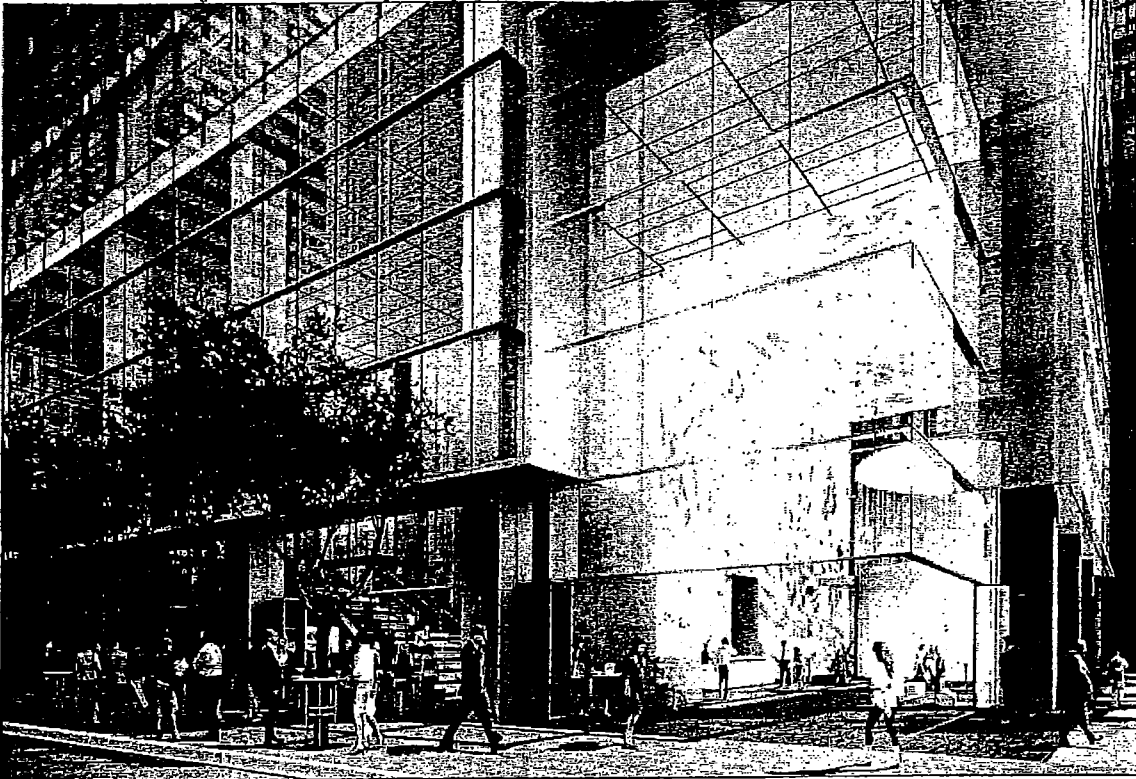
tel: 415-567-9000  
fax: 415-399-9480

REUBEN JUNIUS

www.reubenlaw.com



**View of the Project's Public Open Space**



Source: Skidmore, Owings & Merrill

**2. Sustainable Building Features**

The building is currently targeted for a U.S. Green Building Council LEED Platinum designation. The design addresses energy efficiency through a variety of strategies, which are expected to reduce energy consumption by about one-third. Following are some of the Project's sustainable features:

- **Sustainable Structure.** The Project's structural frame will be environmentally friendly: instead of overseas-sourced steel, the building will be framed in locally manufactured concrete and will use far less structural material than a traditional steel-framed high-rise. Another innovative feature is the Sustainable Form Inclusion System (SFIS) that will be used in the Project's structure. The SFIS uses non-biodegradable post-consumer materials

One Bush Street, Suite 600  
San Francisco, CA 94104

tel: 415-567-9000  
fax: 415-397-9480

REUBEN JUNIUS

www.reubenjunius.com

as a substitute for a large portion of heavy concrete. "Throwaway" materials, such as Styrofoam or plastic bottles, which would normally sit in a landfill for centuries, are productively reused, to both decrease the weight of the building and add additional structural integrity. As a result of this forward-looking approach, the Project will literally have a lighter footprint than many of its neighbors. In terms of weight savings, 350 Mission's structural slab requires about 25 percent less concrete. Engineers estimate that the 5,400 cubic yards of concrete saved by using the system — about 600 truckloads — would be enough to lay 20 miles of concrete sidewalks. Another benefit of the system is that less steel is required. Again, engineers estimate the building will save about 1.2 million pounds of steel, enough to make 8,000 refrigerators or 1,000 cars.

- **Efficient Heating and Cooling.** Radiant under-floor pipes will use an on-site geothermal energy source to deliver heating and cooling to the ground-floor and mezzanine. On the upper floors, the HVAC distribution will also be hidden under the floor to more effectively distribute heating and cooling from the floor up, to only the areas occupied by people. This approach conserves energy when compared to traditional schemes that unnecessarily expend energy to first cool the area between the occupant's head and the ceiling. The engineering team also conceived a unique zoned heating and cooling approach that uses only enough energy to regulate the temperature of spaces used by occupants, and delivers only the amount of air needed for comfort from the occupied floor level. The building will be capable of using 100 percent outside air for cooling. While most modern office buildings, even those in San Francisco's mild climate, are designed to limit the use of natural ventilation, the Project's floor-by-floor ventilation system will bring in outside air at each level, rather than chilling it for distribution on the rooftop.
- **Water Conservation and Reuse.** To conserve water, the Project will be equipped to use graywater and harvested rainwater for cooling, landscaping irrigation, and toilet flushing.
- **Sustainable Transportation.** To further reduce carbon emissions, the Project includes electric vehicle charging stations, a car-share space, and 64 bicycle parking spaces, as well as shower facilities for cyclists.

In addition, the Project will strive to reuse materials from demolition in the new construction, such as lobby seating made of the existing building's piles.

One Bush Street, Suite 600  
San Francisco, CA 94104

tel: 415-567-9000  
fax: 415-399-9480

REUBEN & JUNIUS

www.reubenlaw.com

## **B. PROCEDURAL BACKGROUND**

The Project Sponsor acquired the site in January 2006 and immediately began seeking entitlements. To ensure a complete analysis of all cumulative impacts—including those associated with the Transit Center District Plan (“TCDP”)—the Project was put on hold until early 2010 when needed information from the TCDP studies became available.

- **Initial Study and Public Scoping Meeting.** On June 2, 2010, the Planning Department published a Notice of Preparation (“NOP”) and an Initial Study (“Initial Study”). A public scoping meeting was held on June 22, 2010. The NOP and public scoping meeting were sent to the Appellants and one of their attorneys, Mr. Cincotta. No comments from either the Appellant or Appellant’s attorney were received; only two members of the public attended the meeting.
- **Draft EIR.** The Draft EIR (“DEIR”) was published on September 15, 2010, and the Planning Commission held a hearing to accept public comments. No members of the public attended the DEIR hearing. The Appellant submitted a brief comment letter on the DEIR, alleging that it inadequately analyzed (a) the Project’s compliance with the General Plan and Planning Code, (b) impacts and alternatives related to the Project’s bulk and separation from 50 Beale Street, and (c) construction noise impacts.
- **Final EIR.** The Comments and Responses (“C&R”) on the DEIR was published on January 27, 2011. The C&R responded in detail to each of Appellant’s comment on the DEIR and confirmed that Appellant’s did not identify any significant impacts not discussed in the DEIR. Together the C&R and DEIR constitute the Final EIR for the Project. At a hearing on February 10, 2011, the Planning Commission certified the FEIR as adequate, accurate, and objective by a 6-1 vote. (Plan. Com. Mo. 18266.)
- **Entitlements.** The Project’s entitlements were approved unanimously on February 10, 2011. These included a Section 309 approval, with exceptions for bulk, tower separation, pedestrian-level winds, and for parking/loading access on Fremont Street. The Planning Commission also approved a Section 321 allocation for 340,000 sq. ft. of office space.
- **Appeals.** In addition to appealing the FEIR, the Appellant has also challenged the Project’s Section 309 approval. The Board of Appeals hearing is scheduled for April 20, 2011.

One Bush Street, Suite 600  
San Francisco, CA 94104

tel: 415-567-9000  
fax: 415-399-9480

REUBEN & JUNIUS

www.reubenlaw.com

**C. THE PRETEXTUAL NATURE OF THE APPEAL**

Though the Appeal is phrased in the language of CEQA, Appellant's principal objections are to two design exceptions (the "Exceptions")—for upper-tower bulk and tower separation—approved unanimously by the Planning Commission. The Appellants themselves have acknowledged that their complaints relate primarily to aesthetics, not significant environmental impacts. In their February 10, 2011, letter to the Planning Commission, the Appellants wrote that the Exceptions:

will create a massive curtain of glass and other elements only 12.5 feet from the Adjacent Property....As a result, it appears that the Adjacent Property is to bear the brunt of the Project's "backside", where structurally necessary but architecturally uninspired elements are placed....[T]hese impacts could be avoided by simply constructing a code compliant building. The EIR dismissed this possibility, merely stating that potential impacts on the Adjacent Property did not rise to the level of significant project impacts, and thus required no further analysis. While that is possibly true for CEQA purposes, this Commission's mandate is to shape development..

(Emphasis added. See Exhibit A for a copy of Appellant's February 10, 2011, letter to the Planning Commission.)

In spite of the tacit acknowledgment that compliance with CEQA is not at issue, the Appellant's have chosen to file this Appeal, presumably as part of an effort to leverage post-approval design concessions. While Appellant is entitled to participate in the CEQA process and challenge the EIR where there is a valid reason for doing so, the proper place for design-related challenges is at the Board of Appeals, where Appellant has also filed a challenge to the Project. There is no need to waste the City's resources on an entirely pretextual CEQA appeal.

When one considers the limited extent of the Exceptions, there is no real doubt that it is design—not environmental impacts—that are at issue.

BULK EXCEPTION	Lower Tower (103'-220')		Upper Tower (220'+)	
	Permitted	Actual	Permitted	Actual
Maximum Length	160'	129'	130'	129'
Maximum Diagonal	190'	178'	160'	178'
Maximum Floor Size (Sq. Ft.)	20,000	15,020	17,000	15,020
Maximum Average Floor Size (Sq. Ft.)	17,000	15,020	12,000	15,020

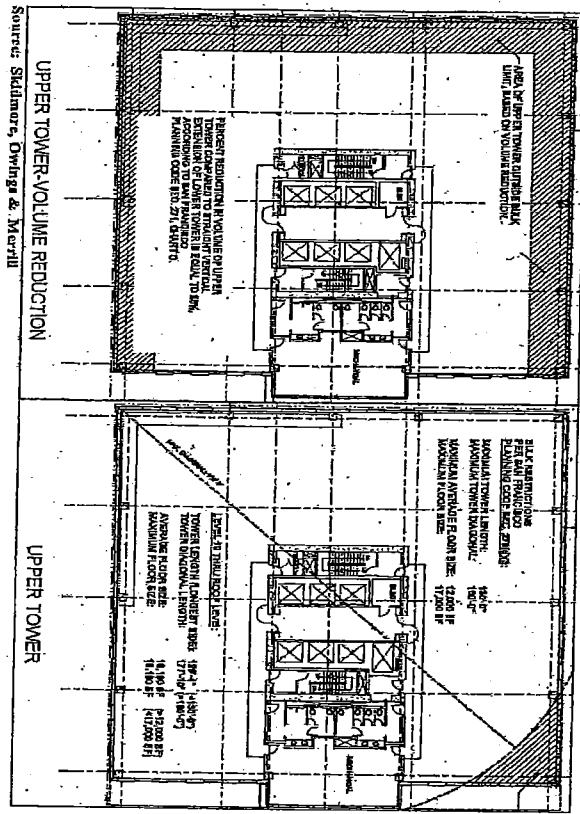
One Bush Street, Suite 600  
 San Francisco, CA 94104

tel: 415-567-9000  
 fax: 415-399-9480

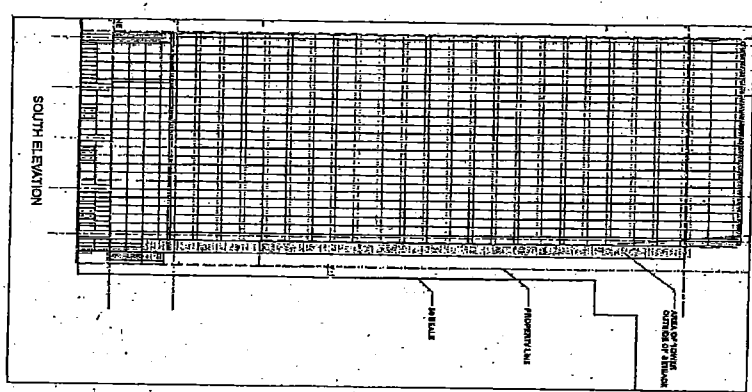
REUBEN JUNIUS

www.reubentlaw.com

**BULK.** The shaded area depicts the bulk exception granted by the Planning Commission. The exception is limited to the upper tower, i.e. portions of the building over 220 feet tall. The lower tower strictly complies with the bulk limits.



**TOWER SEPARATION.** The shaded area shows the maximum extent of the tower separation exception. Typically, a 15-foot setback is required from interior property lines. The Project's main wall is set back 14 feet—one foot less than required—from the property line and is approximately 20 feet from the 50 Beale Street Property. One-third of the wall—a mechanical room to bring in air from each floor—extends further into the setback area to about seven feet from the property line. All setbacks exceed those provided by 50 Beale Street building, which is approximately six feet from the property line.



Source: 350 Market Street Office Project DEIR at P. 16

**RUBEN JUNIUS**

One South Street, Suite 400  
 San Francisco, CA 94104  
 Tel: 415-527-7000  
 Fax: 415-397-7460  
 www.rubenjunius.com

President David Chiu and Supervisors  
San Francisco Board of Supervisors  
March 21, 2011  
Page 9

There just is no credible argument that these minor exceptions will cause significant environmental impacts. The Planning Commission found that the exceptions were consistent with the intent of the Planning Code, complied, on balance, with the policies of the Downtown Plan, and were necessary to facilitate construction on a smaller-than-average site.

#### D. LEGAL STANDARDS FOR CEQA REVIEW

##### 1. Review Of Environmental Effects Under CEQA

CEQA requires that agencies inform themselves about environmental effects of their proposed actions, carefully consider all relevant information before they act, give the public an opportunity to comment on environmental issues, and avoid harm to the environment when feasible. CEQA applies when a project will have a "significant effect on the environment." (CEQA Guidelines § 15061(b)(3).) Impacts from a proposed project, which are not environmental in nature, are irrelevant to the CEQA review process. Public Resources Code section 21060.5 defines "environment" as: "the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance."

Section 15382 of the CEQA Guidelines defines "significant effect on the environment" as a:

substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.

The question CEQA asks is not whether there is *any* effect on the environment, but whether there is a *significant* effect on the environment.

##### 2. Standards for Adequacy of an EIR

Under CEQA, An EIR is legally adequate if it makes a reasonable, good faith effort at full disclosure and reasonable analysis of a project's significant environmental impacts. An EIR

REUBEN JUNIUS LLP

One Bush Street, Suite 600  
San Francisco, CA 94104

tel: 415-567-9000  
fax: 415-397-9480

www.reubenlaw.com

President David Chiu and Supervisors  
San Francisco Board of Supervisors  
March 21, 2011  
Page 10

should focus on a project's significant impacts and omit detailed discussion of insignificant effects. (Pub. Res. Code § 21002.1(e); CEQA Guidelines § 15413.) The significance of an impact is a matter of degree, and a finding of zero effect is not required to treat an impact as less than significant. (*National Parks & Conserv. Assn. v. County of Riverside* (1999) 71 Cal. App. 4th 1341, 1359.) In determining whether an environmental impact is significant, the question is whether a project will affect the environment of persons in general, not whether a project will affect particular persons. (*Eureka Citizens for Responsible Gov't v. City of Eureka* (2007) 147 Cal. App. 4th 357.) For example, impairment of a scenic public view is considered a significant impact, whereas obstruction of a private view is not. (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal. App. 4th 477.)

Determinations under CEQA must be supported by adequate factual foundation, i.e. by substantial evidence in the public record. If comments from the public are not supported by substantial evidence, the agency must disregard the comments. (*Gabrie v. City of Rancho Palo Verdes* (1977) 73 Cal.App. 3rd 183.) Argument, speculation, unsubstantiated opinion or narrative, clearly inaccurate or erroneous evidence, and evidence of social or economic impacts that do not contribute to, and are not caused by, physical impacts on the environment do not constitute substantial evidence. (CEQA Guidelines § 15384.)

#### E. RESPONSE TO THE APPEAL

The crux of the one-page Appeal is that "the EIR does not sufficiently address significant environmental impacts on 50 Beale Street related to the Project's tower setback and bulk exceptions." The Appeal itself does not bother to explain what significant impacts might be caused by a portion of the Project extending seven feet further than the setback line, nor does it elaborate on exactly how the EIR's discussion is "deficient." However, in prior letters to the Planning Commission, the Appellant has made the following claims:

- "The DEIR does not provide sufficient information to demonstrate that there would be no significant effects associated with the Project's tower setback and bulk exceptions."
- "The DEIR provides minimal analysis or discussion with respect to the Project's non-conforming tower setback and bulk exceptions."
- "Increased shadow impacts on the Adjacent Property [50 Beale Street] as a result of setback and bulk exceptions may increase the Adjacent Property's heating costs and related electricity usage, resulting in increased greenhouse gas emissions."

One Bush Street, Suite 600  
San Francisco, CA 94114

tel: 415-547-9000  
fax: 415-379-9480

REUBEN JUNIUS

www.reubenlaw.com

President David Chiu and Supervisors  
San Francisco Board of Supervisors  
March 21, 2011  
Page 11

- "It is difficult to ascertain whether vibration associated with the Project... would result in cosmetic or structural damage to the Adjacent Property, particularly given that Project plans call for only a 6.5 foot setback from the eastern property line."

**I. The Appellant has failed to identify any significant impacts that would be caused by the Project's bulk and tower setback exceptions.**

In determining whether an environmental impact is significant, the question is whether a project will affect the environment of persons in general, not whether a project will affect particular persons. (*Eureka Citizens for Responsible Gov't v. City of Eureka* (2007) 147 Cal. App. 4<sup>th</sup> 357.) While Appellants correctly point out that views from, and ambient conditions within, their commercial office building could be altered by the Project, they have not presented any facts or law establishing that these changes are significant impacts under CEQA.

- **Energy Use.** The Appellant speculates that the shadow cast by the Project could increase heating costs at 50 Beale Street and therefore increase greenhouse gas emissions. This verges on absurdity, but was nonetheless addressed in the FEIR. Even in relatively cool climates like San Francisco, more energy is consumed cooling than heating glass office buildings with sealed windows. To control cooling costs, glass office buildings use special glass to reflect solar radiation and reduce solar heat gain. It is therefore reasonable to expect that any incremental increase in energy use for heating would be offset by reduced energy for cooling. It would not affect the FEIR's conclusion that greenhouse gas emissions from the Project would have a less-than-significant impact on the environment. (See C&R at pp. 19-21).

It should be noted that reducing the size of the mechanical element—the part of the Project closest to Appellant's building—would compromise energy efficiency. The mechanical element is used to bring in cool outside air at each level, rather than from the rooftop. This will allow the Project to rely largely on natural rather than energy intensive mechanical cooling. (See Part A.2 above for more information regarding the Project's energy efficient ventilation system.)

While Appellant may believe more analysis of this subject is warranted, that position finds no support in CEQA. The City is not required to conduct every test or exhaustively research every effect of a Project, however minor it may be. (*Gray v. County of Madera* (2008) 167 Cal. App. 4<sup>th</sup> 1099, 1125). Analysis of impacts that are speculative in nature may be rejected where analysis is not reasonably feasible. (CEQA Guidelines §§ 15144-15145.) An EIR need only contain a statement briefly indicating the reasons the impacts were not deemed significant. (Pub. Res. Code §

REUBEN JUNIUS, LLC

One Bush Street, Suite 600  
San Francisco, CA 94104  
tel: 415-567-9000  
fax: 415-399-9480  
www.reubenlaw.com



21000(c).) The FEIR's 15+ page discussion of greenhouse gas emissions more than satisfies this directive and shows that no significant emissions would occur. Incremental changes in energy use in adjoining buildings would be minor and would not alter the FEIR's conclusions. On these facts, further study is unnecessary.

- **Shadow, Light and Air.** Appellants have raised shadow, light, and air as areas of concern. While the Project will undoubtedly cast shadow on the side elevation of 50 Beale Street, 50 Beale Street is a mechanically ventilated corner building with exposure on Mission Street, Beale Street, over the existing four-story building at 350 Mission Street, and overlooking a wide plaza to its north. Because 50 Beale Street has sealed windows and mechanical ventilation, the Project will not affect air to it. The loss of some light on the side elevation will inevitably occur with any significant development at 350 Mission Street. However, commercial buildings are not shadow protected in San Francisco. Though there will be some loss of natural light on one of the Project's four sides, this is not a significant impact under CEQA.
- **Construction Noise and Vibration.** Appellants expressed concern that construction noise and vibration, particularly that caused by pile-driving, was not adequately analyzed or quantified. However, no pile-driving is actually planned, and the Appellants have presented no evidence to indicate noise or vibration impacts would occur.

As noted above, the City is not required to conduct every test or exhaustively research every effect of a Project, however minor it may be. (*Gray v. County of Madera* (2008) 167 Cal. App. 4th 1099.) California courts have found that construction noise and other temporary effects, absent evidence showing that such effects are in fact significant, do not constitute a significant effect on the environment. (*Benton v. Bd. of Supervisors of Napa County, et al.* (1991) 226 Cal. App. 3d 1467.) Construction in San Francisco typically occurs in close proximity to existing buildings; compliance with the San Francisco Noise Ordinance, San Francisco Building Code, and state and federal worker safety regulations ensure the safety of both the construction site and adjoining buildings, while protecting occupants and workers from excessive noise. In the absence of any evidence to the contrary, the FEIR correctly concludes that noise and vibration impacts will be less than significant.

Finally, it should be noted that the Project Sponsor has agreed to implement several mitigation measures to mitigate noise impacts. (Initial Study at pp. 46-48.) These

REUBEN JUNIUS

One Bush Street, Suite 600  
San Francisco, CA 94104

tel: 415-567-9000  
fax: 415-399-9480

[www.reubenlaw.com](http://www.reubenlaw.com)

include mitigation measures for pile-driving if there is an unanticipated change in construction methods.

- **Plans and Policies.** The Appellant posited that the DEIR was deficient, because it did not address alleged inconsistencies between the Project and Downtown Plan Policy 13.4 calling for separation between towers. In fact, the DEIR included a full page of text explaining the Exceptions. It provided four pages of graphics and tables, which compared the Project's dimensions to Planning Code requirements, graphically illustrated the extent of the tower setback exception as well as the distances between the Project and 50 Beale Street. (See DEIR at pp. 11-17.) The FEIR included additional discussion of Policy 13.4 in particular. (See C&R at pp. 5-6.) Overall, the EIR was included a "sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences." (CEQA Guidelines § 15151.) This satisfies CEQA.

It also should be noted that the Planning Code expressly allows the Planning Commission to make exceptions to the tower separation requirement, provided certain criteria are met. (Plan. Code § 270.) Since the Planning Commission unanimously found the Project merited an exception there is no inconsistency with the Downtown Plan. Finally, even if the Project were such an inconsistency, CEQA does not mandate a finding of significance unless the policy was adopted for the purpose of avoiding or mitigating an environmental effect. (*Lighthouse Field Beach Rescue v. City of Santa Cruz* (6<sup>th</sup> Dist. 2005) 131 Cal. App. 4<sup>th</sup> 1170.) The Downtown Plan policy, in contrast, is directed at aesthetic concerns, not environmental impacts.

- **Views.** Though 50 Beale will lose views from one side elevation, private views are not protected in San Francisco as a matter of policy. Where local policy does not protect private views, an EIR does not need to identify private view obstruction as a significant impact. (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal. App. 4<sup>th</sup> 477.)

REUBEN JUNIUS, LLP

One Bush Street, Suite 600  
San Francisco, CA 94104

tel. 415-567-9000  
fax 415-398-9480

[www.reubenjlaw.com](http://www.reubenjlaw.com)

President David Chiu and Supervisors  
San Francisco Board of Supervisors  
March 21, 2011  
Page 14

**2. The alternatives analysis is sufficient.**

The Appeal claims—again without explanation—that “the Project EIR does not properly examine alternatives.”<sup>4</sup> A comment letter from the Appellant dated November 2, 2010, indicates that the “concern relates to the fact that the DEIR does not sufficiently explain why a code-complying bulk alternative would not be an Environmentally Superior Alternative to the Project.”<sup>51</sup>

These claims have no basis in fact or law. CEQA requires that an EIR “analyze a reasonable range of project alternatives.” (CEQA Guidelines § 15126.5.) The purpose is to identify alternatives that avoid or substantially lessen a project’s significant environmental effects. To be legally adequate, the alternatives analysis must:

- Sufficiently describe each alternative so that decision-makers may compare it to the project;
- Analyze the environmental effects of each alternative; and
- Identify the environmentally superior alternative.

(*Id.*)

The FEIR complied with the substantive mandate of CEQA by considering three alternatives: the No Project Alternative; a Code-Complying Bulk Alternative; and a No-Parking Alternative. The FEIR identified the No Project Alternative as environmentally superior as it would eliminate all impacts associated with the Project.

Where the no project alternative is environmentally superior, CEQA requires a second alternative to be identified as environmentally superior. (CEQA Guidelines § 15126.5(e).) The No Parking Alternative was identified as the second environmentally superior alternative, because it would avoid potentially significant conflicts between the Project’s garage, transit vehicles, and pedestrians. (Mitigation measures, which were formulated by the Planning Department in consultation with Golden Gate Transit and the Municipal Transportation Agency, reduced these conflicts to a less-than-significant level.)

The Bulk Compliant Alternative was analyzed in the EIR with a focus on how its performance would differ with respect to significant impacts. The Bulk Compliant Alternative was not designated environmentally superior, because, unlike the No Parking Alternative, it would not reduce the main significant effects of the Project, which are related to potential transit and pedestrian conflicts, and transportation and construction air quality. Like the rest of the EIR,

<sup>4</sup> November 2, 2010, DEIR comment letter from Alex DeGood to Brett Bollinger

REUBEN & JUNIUS, LLC

One Bush Street, Suite 600  
San Francisco, CA 94104

tel: 415-567-9000  
fax: 415-398-9480

www.reubenlaw.com

the conclusions of the alternatives analysis must be supported by substantial evidence. Unsupported speculation by the Appellants does not undermine the validity of its conclusions.

#### F. ECONOMIC AND PUBLIC BENEFITS

The Project brings significant economic benefits to the City in the form of development fees, new property taxes, and new jobs. The Project is also a sustainable building, and will provide a major on-site public benefit in terms of new open space.

- Fees. The Project will pay significant development fees to fund a variety of City programs including contributions to the Downtown Park Fund, payment of the Transit Impact Development Fee, contributions to the Jobs, Housing Linkage Program, contributions to child care and public schools.
- Construction Jobs. During the recession, unemployment in some construction trades reached nearly 25 percent. The Project will provide needed employment for construction workers. Available entry-level construction jobs would be processed through the FSHP and would benefit economically disadvantaged San Francisco residents.
- Permanent Jobs. Once completed, the Project will provide space for up to 1400 jobs, creating needed space for long term future job growth in the City.
- Tax Revenues. San Francisco's public services are facing cuts due to declining revenues. The Project will generate significant new annual property and payroll tax revenues.
- Open Space and Pedestrian Experience. The Project will maximize the quality of the pedestrian experience along both Mission and Fremont Streets. Currently, the site's ground-floor retail is set back from the street by a dark arcade. The Project will include significant new public open space within the building at this important downtown corner. This space will include food uses open to the public, as well as public artwork, public seating and restrooms.
- Preservation Goals. The existing building on the Project Site was evaluated as part of the Transit Center District Plan Survey, which determined that it was not a historic building. The Project would further the City's historic preservation goals by absorbing unused development potential from historic buildings throughout the C-3 District with the use of transferable development rights (TDR). The City's TDR Program promotes and facilitates the preservation of existing downtown historic buildings by compensating

One Bush Street, Suite 600  
San Francisco, CA 94104

tel: 415-567-9009  
fax: 415-399-9480

REUBEN & JUNIUS, LLP

www.reubenlaw.com

President David Chiu and Supervisors  
San Francisco Board of Supervisors  
March 21, 2011  
Page 16

owners of those buildings who are no longer able to develop the air space above their building.

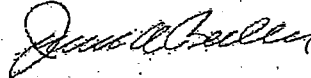
**G. CONCLUSION**

The Project represents a major opportunity for the City to ensure that this prime downtown site is developed with a superior, Class-A office building that achieves LEED Platinum and provides significant public benefits. As the owner and property manager of 199 Fremont Street, the Project Sponsor has a successful track record in San Francisco and 350 Mission Street is sure to be a well-managed and attractive addition to the City's downtown.

Appellant has provided no evidence that would in any way call into question the sufficiency or adequacy of the EIR. We urge you to uphold the Planning Commission's certification of the EIR.

Very truly yours,

REUBEN & JUNIUS, LLP



James A. Reuben

One Bush Street, Suite 600  
San Francisco, CA 94104

tel: 415-567-9001  
fax: 415-397-9488

REUBEN & JUNIUS, LLP

www.reubenlaw.com

President David Chiu and Supervisors  
San Francisco Board of Supervisors  
March 21, 2011  
Page 17

cc: John Rahaim – Planning Director  
Bill Wycko – Environmental Review Officer  
Scott Sanchez – Zoning Administrator  
Sarah Jones - Planning Department  
Brett Bollinger – Planning Department  
Kevin Guy – Planning Department  
David Cincotta – JMBM  
Alex DeGood - JMBM  
David Wall – GLL US Office, LP  
David Dachs – Town Management  
Craig Hartman – SOM  
Steven Sobel – SOM  
Masís Mesropian – SOM

One Bush Street, Suite 600  
San Francisco, CA 94104

tel: 415-567-9000  
fax: 415-399-9480

**REUBEN & JUNIUS**

[www.reubenlaw.com](http://www.reubenlaw.com)

Benjamin M. Reznik  
Direct (310) 201-3572  
Fax (310) 712-8572  
bmr@jmbm.com

1900 Avenue of the Stars, 7th Floor  
Los Angeles, California 90067-4308  
(310) 203-8080 (310) 203-0567 Fax  
www.jmbm.com

Ref: 71498-0001

March 21, 2011

David Chiu, President  
San Francisco Board of Supervisors  
c/o Angela Calvillo  
Clerk of the Board  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, California 94102

File #110261

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2011 MAR 21 PM 2:17  
BY RC

Re: 350 Mission Street - Case No. 2006.1524E

Dear President Chiu:

This office represents 50 Beale Street Property, LLC, the owner of the property located at 50 Beale Street ("50 Beale"). 50 Beale is an architecturally significant 24 story, 662,000 square foot Class A office property located immediately northeast of the proposed redevelopment project at 350 Mission Street (the "Project"). While 50 Beale believes that the redevelopment of 350 Mission Street has the potential to serve as a positive addition to the South of Market area, the Project's EIR is critically deficient and does not properly analyze the significant environmental impacts on 50 Beale and the surrounding community.

The Project would include a massive mechanical projection that would extend to within a mere twelve (12) feet of 50 Beale, providing the majority of tenants on the south side of the building with a massive blank wall, which contains the heating, ventilation, and air conditioning ("HVAC") equipment. Aside from depriving 50 Beale tenants of light and visual relief from neighboring structures, the exhaust from the equipment could create noxious odors that could permeate 50 Beale, continuously rattle 50 Beale's windows, or otherwise create noise impacts that could significantly affect the tenants, as well as the quality and value of the space in that building. Yet City Planning staff have essentially swept these concerns aside, and have replied in the responses to comments that although these impacts could occur, the EIR simply does not need to consider them.

As detailed below, the EIR certification constituted an abuse of discretion by the Planning Commission as the EIR does not adequately and sufficiently study the potential environmental impacts of the proposed project. At the very least, the EIR must be modified to adequately and properly study viable Project alternatives and Project impacts and recirculated for public comment. Absent such a modification and recirculation, the EIR is not legally sustainable.

\* To view full document  
Request file # 110261

## I. PROJECT BACKGROUND

The proposed Project would demolish an existing 95,000 square foot building and replace it with a 24 story, 375 foot, 356,000 thousand square foot office building. The Project would be squeezed onto a 19,000 square foot lot, resulting in a floor area ratio of over 18:1, the maximum allowed by Code.

Most notably, the Project does not conform to Code requirements regarding tower setbacks and bulk density. Rather than conforming to the required setbacks of the Planning Code, on the east property line against 50 Beale the Project will encroach significantly into the required 15 foot setback up to 300 feet in height and the required 21 foot setback from 300 to 375 feet. This would result in a very narrow separation of approximately only 12.5 feet between the Project and 50 Beale, rather than the 21 feet that would result from a code compliant project (and 27 feet above 300 feet in height).

These encroachments into the required setback create potential environmental impacts which must be studied. These encroachments are significant intrusions adjacent to 50 Beale, and will create a massive curtain of blank wall only 12.5 feet from 50 Beale, with a proposed 40 foot wide "mechanical element" causing the worst of this unwarranted encroachment. The EIR is unclear as to what degree it studied the air quality impacts from the mechanical system immediately adjacent to 50 Beale.

## II. THE EIR DOES NOT PROPERLY EVALUATE PROJECT ALTERNATIVES

### A. The EIR Does Not Analyze a Fully Code-Conforming Building

Incredibly, despite the Project's dramatic departure from Code requirements, the EIR does not evaluate a fully code-conforming building. This failure defies common sense and is a clear violation of the requirements of the California Environmental Quality Act ("CEQA"). Clearly a code-complying alternative of identical square footage is worthy of analysis. Identifying and analyzing feasible project alternatives is a foundational requirement of the EIR process. *Citizens of Goleta Valley v. Board of Supervisors (Goleta I)*, 197 Cal.App.3d 1167, 1179 (1988); *Laurel Hts Improvement Ass'n v. Regents of the Univ. of California*, 47 Cal.3d 376, 400-401 (1988). Accordingly, a lead agency (in this case, the City) must select alternatives that "could avoid or substantially lessen one or more [significant environmental] effects." 14 CCR §15126.6(c). However, the EIR includes only two new-building alternatives, neither of which is completely code-compliant and both of which appear carefully crafted to avoid only one significant environmental impact while ensuring that others remain as severe as or more severe than those created by the Project.

While the EIR does purport to analyze a "code-complying bulk alternative," this alternative does not increase the height of the building (despite the fact that the Project is well below allowable height), resulting in an alternative with 13 percent less office space than the Project. Unsurprisingly, this alternative is not preferred by the Project developer, even though it



would be environmentally superior, and is an alternative designed to fail. Clearly, the EIR should have analyzed a code-complying bulk alternative that maintained the Project's proposed square footage but met the Planning Code's setback and bulk requirements.

A mere two Project alternatives, without any showing that more have been considered, cannot constitute a "reasonable range" of alternatives as required by CEQA. See 14 CCR §15126.6(a); *Citizens of Goleta Valley v. Board of Supervisors (Goleta II)*, 52 Cal. 3d 553, 566 (1990); *Save San Francisco Bay Ass'n v. San Francisco Bay Conserv. Etc. Comm'n*, 10 Cal.App. 4th 908, 919 (1992); *In re Bay-Delta Programmatic Env't'l Impact Report Coordinated Proceedings*, 43 Cal. 4th 1143, 1157 (2008). An EIR must provide "enough of a variation to allow informed decisionmaking." *Mann v. Community Redevel. Agency*, 233 Cal. App. 3d 1143, 1151 (1991).

An EIR that, as here, contains an overly narrow range of alternatives is inadequate. See *Watsonville Pilots Ass'n v. City of Watsonville*, 183 Cal. App. 4th 1059, 1087 (2010). Rather, an EIR must discuss "all reasonable alternatives" to the project. See, e.g., *San Bernardino Valley Audubon Soc'y, Inc. v. County of San Bernardino*, 155 Cal. App. 3d 738, 750 (1984); *County of Inyo v. City of Los Angeles*, 71 Cal. App. 3d 185, 203 (1977); *Goleta II, supra*, 52 Cal. 3d at 565. The EIR merely presents two nearly identical alternatives to the Project, which cannot foster informed decisionmaking as to the range of possibilities available. See *Watsonville Pilots Ass'n, supra*; see also 14 CCR §15126.6(a).

It is ludicrous to suggest that a code conforming project, which could provide identical square footage while maintaining the Code's modest setback requirements, is somehow not a reasonable project alternative. Further, because the EIR fails to provide any discussion whatsoever regarding the rationale for the selection of alternatives, the public was deprived of an opportunity to meaningfully comment on the process of evaluation and development of alternatives. At its most basic, an EIR is an "informational document" that must "provide the public in general with detailed information" and "indicate alternatives to a project," a standard unmet by the Project's EIR.<sup>1</sup> *Parchester Village Neighborhood Council v. City of Richmond*, 182 Cal.App.4th 305, 311 (2010).

At a minimum, CEQA allows that a "reasonably foreseeable use," such as compliance with an existing land use plan, may constitute a no-project alternative where a no-build alternative is inappropriate. 14 CCR § 15126.6(e)(3)(A). Here, such an alternative would certainly include a fully code-compliant structure, and the failure of the EIR to evaluate such an alternative deprives the public and decisionmakers of a valid basis for evaluating the trade-offs associated with granting various exceptions (e.g., bulk and setbacks), as opposed to requiring development to comply with publicly debated and adopted zoning codes and land use plans. An EIR's analysis must give decisionmakers a gauge for measuring the environmental advantages

<sup>1</sup> In addition, the City's response to Comment ALT-2 concedes that a code-compliant alternative with no parking, as suggested by the commenter, would be environmentally superior to the Project. See pp. C&R-21-22. The City must therefore revise the EIR to reflect this determination.

and disadvantages of the project and the alternatives to it. *Planning & Conserv. League v Castaic Lake Water Agency*, 180 Cal. App. 4th 210, 247 (2009).

### B. The EIR Does Not Evaluate an Off-Site Alternative

In addition to the Project alternative deficiencies identified above, the EIR also fails to provide an off-site alternative, and therefore must explain why off-site alternatives are infeasible. *Laurel Heights, supra*, 47 Cal.3d at 404. In conducting this analysis, the City must consider a variety of factors, of which zoning represents only one. CEQA Guidelines § 15126.6(f)(1). At a minimum, the City should have discussed whether the developer owned other property where the Project could be developed or whether there were other properties zoned to accommodate the proposed use that it might be able to acquire. CEQA Guidelines § 15126.6(f)(1); *Citizens of Goleta Valley, supra*, 197 Cal.App.3d at 1178-1180. The EIR fails to provide any of this information and analysis, and therefore provides no substantial evidence upon which the City can rely to draw any conclusion regarding the feasibility of an alternative site. In *Laurel Heights*, the Supreme Court found that the Regents' analysis of alternatives was inadequate because there were no facts in the administrative record demonstrating that alternative sites were infeasible. The court stated:

"[T]he EIR's statutory goal of public information regarding a proposed project has not been met; the EIR provides no information to the public to enable it to understand, evaluate, and respond to the bare assertion of nonavailability of alternative space."

*Laurel Hts, supra*, 47 Cal.3d at 404. Here, as in *Laurel Heights*, the EIR provides absolutely no basis for rejecting an off-site alternative or, indeed, any evidence that the City ever considered one. Therefore, as in *Laurel Heights*, this EIR is inadequate and must be revised and recirculated.

### III. THE EIR IMPROPERLY ADOPTS THE OBJECTIVES OF THE PROJECT DEVELOPER

Upon examination of the Project Objectives listed in the EIR, it becomes apparent why a code-conforming building with identical square footage was never analyzed. Rather than exercising its independent judgment regarding the Project Objectives, the City merely accepted the objectives presented by the Project developer, which are structured to arrive at one result – the exact project the developer wants to build. CEQA requires that the City undertake a far more critical analysis.

The City must exercise its independent judgment with respect to project objectives, and must not uncritically accept those of the developer. PRC § 21082.1(c)(1); *Uphold Our Heritage v. Town of Woodside*, 147 Cal. App. 4th 587 (2007); *Preservation Action Council v. City of San Jose*, 141 Cal. App. 4th 1336, 1352 (2006); *Save Round Valley Alliance v.*

David Chiu, President

March 21, 2011

Page 5

*County of Inyo*, 157 Cal. App. 4th 1437, 1460 (2007). Additionally, the use of unduly narrow project objectives violates CEQA. *In Re: Bay Delta Coordinated Environmental Impact Report Proceedings*, supra, 43 Cal. 4th at 1166 ("a lead agency may not give a project's purpose an artificially narrow description"). Despite these requirements, the City has uncritically adopted the developer's objectives and narrowly applied them in a manner that guarantees no viable alternative to the developer's preferred project.

Among the accepted objectives is the assertion that the Project can promote a General Plan land use goal of concentrating growth in the downtown core by developing only the absolute maximum floor area ratio ("FAR") for the Project Site. This assertion is not only baldly self-serving with regard to the developer, but also ignores the fact that competing policy objectives exist to protect property and public health and safety. Simply maximizing FAR at the expense of compliance with Planning Code requirements, for example, setback requirements, results in a project with significant effects that exceed those associated with simply building a project with slightly reduced square footage (or the same square footage in a different configuration).

Further, the last objective listed - the provision of an "adequate return for the building's investors" - is not only self-serving but also the kind of objective that promotes arbitrary and summary dismissal of potential alternatives to a project that could reduce or avoid the Project's significant environmental effects. The EIR makes no effort to quantify what an "adequate return" means, though from the selection of alternatives it apparently means that no code-compliant structure would satisfy investors' expectations, a transparent claim unsupported by any substantial evidence. If the EIR seeks to avoid analyzing or adopting an alternative on this basis, it must define "adequate return" and provide substantial evidence to demonstrate how the two new-building alternatives in the EIR would fail to meet this objective.

However, even assuming that either alternative (or a code compliant alternative with identical square footage) may reduce the profits expected by building investors, "[n]o single factor [such as cost] establishes a fixed limit on the scope of reasonable alternatives." CEQA Guidelines § 15126.6(f)(1), *Goleta II*, supra, 52 Cal. 3d at 566; *Save Our Residential Environment v. City of West Hollywood*, 9 Cal. App. 4th 1745, 1753, n.1. (1992). Further, an alternative is not infeasible simply because it would be more expensive or less profitable to the private applicant. *Goleta I*, supra, 197 Cal.App.3d at 1180-83. CEQA specifically states that the fact that an alternative would cost more to construct or would result in less revenue for the developer does not constitute an adequate basis for rejection of that alternative. 14 CCR § 15126.6(f)(1) (citing *Goleta I*).

Clearly, if an objective of the project is an adequate return to the Project Sponsor then an analysis of what an adequate return may be must be provided within the EIR. The EIR fails to discuss this standard at all and as a result is inadequate, deficient and must be modified.

#### IV. THE EIR PROVIDES NO MEANINGFUL DISCUSSION OF COMPLIANCE WITH APPLICABLE PLANS

The EIR's discussion of the "Accountable Planning Initiative" and the General Plan defers all discussion and findings of consistency with respect to the City's "Priority Policies" to the Planning Commission and/or Planning Department. The EIR provides no analysis of compliance with these clearly applicable plans and policies, but rather vaguely suggests that appropriate findings will be made during consideration of the Project. This directly contravenes the requirement of CEQA that an EIR "shall discuss any inconsistencies" between the proposed project and applicable plans. 14 CCR §§ 15125(d)-(e). The EIR thus completely deprives the public and decisionmakers of an opportunity to evaluate the relationship of the Project to these public planning documents and to consider and comment on the policy trade-offs inherent in considering and approving any major project.

Further, the response to Comment PP2 incorrectly asserts that "an EIR is not intended to evaluate policy aspects of a proposed project." See p. C&R-7. This claim completely misstates the law: as stated above, sections 15125(d)-(e) of the CEQA Guidelines specifically require a discussion of the consistency of a project with a range of applicable plans and policies. In addition, despite the assertion of Comment PP2, the list of the types of plans to which this requirement applies does not necessarily exclude voter-approved measures: an "applicable" plan is a plan that has already been adopted and thus legally applies to a project. See *Chaparral Greens v City of Chula Vista*, 50 Cal.App.4th 1134, 1145 n2 (1996); see also *Sierra Club v City of Orange*, 163 Cal.App. 4th 523, 543 (2008). A project consistent with applicable plans may still have significant environmental effects. *City of Antioch v City Council*, 187 Cal.App. 3d 1325 (1986). Thus if Measure M applies to the Project, the City must evaluate and disclose any inconsistencies with it in the EIR.

According to the response to comment PP2, "Planning Department and Planning Commission practice" places this required analysis in a staff report that remained unavailable to the public or decisionmakers until well after circulation of the Draft and Final EIRs. This directly contravenes the requirements of CEQA, as described above, and deprives decisionmakers and the public of any meaningful opportunity to review and comment on that analysis. Thus, the City must revise the EIR to include the policy analysis and recirculate the EIR for public review and comment on that analysis.

#### V. THE CITY MUST CONSIDER IMPACTS ON 50 BEALE

In its response to Comment ALT-1, the City attempts to argue that environmental effects simply do not include those on "individuals such as tenants in or owners of an adjacent building." Not only is this incorrect but it is totally inconsistent with the entire purpose and objectives of CEQA. CEQA draws no distinction between "private" versus "public" impacts on things such as views: it simply requires an EIR to analyze the significant effects a project might have. Cf. *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas*, 29 Cal.App.4th 1597, 1604 (1994). Put another way, even if CEQA may not require the City to protect private views,

it does require the City to analyze the significant effects a project may have on private views and to mitigate those impacts if feasible. For instance, Appendix G to the CEQA Guidelines states that a project will normally have a significant effect on the environment if it will "have a substantial adverse effect on a scenic vista." CEQA Guidelines, App. G, Section 1 - Aesthetics.

Section 15065(d) of the CEQA Guidelines further supports this conclusion as it makes it clear that the environmental effects to be avoided are those that "will cause substantial adverse effects on human beings, either directly or indirectly." *See also*, Pub. Resources Code § 21000["[I]t is the policy of the state to: . . . [ensure] that the long-term protection of the environment, consistent with the provision of a decent home and suitable living environment for every Californian, shall be the guiding criterion in public decisions."]

The EIR also provided insufficient detail regarding its study of the air quality impacts from the venting of the mechanical systems of 350 Mission Street into the encroachment area allowed by the Planning Commission approval. Table 6 of the EIR merely provides a generic listing of emissions, and makes no effort to differentiate mobile sources (vehicles) from stationary ones (such as HVAC systems).

The City's attempt to introduce a new distinction in CEQA between public and private ownership defies logic. Under the City's view of the law, all of the visual effects or air quality impacts of a project on private property could be ignored. This novel approach could be expanded to include air effects, traffic effects, biological effects, and others. Presumably, if a project were surrounded by private development, there would be no requirement to even prepare an EIR. Fortunately for the private property owners in this state, the City's position is not the law. The City cannot simply ignore potential significant adverse environmental impacts on 50 Beale or other private property in the vicinity of the Project.

## **VI. THE EIR CONTAINS OTHER DEFICIENCIES**

The Project's EIR is not legally sufficient in several other areas, including: (1) traffic impacts (the Conclusions section of the traffic analysis fails to disclose significant unavoidable impacts created by Project construction); (2) aesthetics (there is no discussion of the type or form of exterior lighting, rendering the EIR's conclusion that lighting impacts would be less than significant unsupported, nor is there any discussion regarding the obstruction of natural light by the mechanical projection); (3) air quality - the EIR failed to study the potential noxious odors from the mechanical ventilation system that is immediately adjacent to 50 Beale, fails to address fume exhaust from the proposed restaurant, and rests on an a meaningless and unenforceable requirement to use Tier 4-compliant construction equipment when "feasible," contrary to the request of the Bay Area Air Quality Management District; (4) noise and vibration (the Initial Study does not evaluate the noise associated with the operation of an 800-kw rooftop diesel generator, the noise generated from the mechanical projection located only twelve feet from 50 Beale, the potential noise and vibration effects associated with the exhaust air from the mechanical projection, or the fact that a potential noise impact could occur irrespective of whether the City's noise standards are met, and fails to even attempt to substantiate how a

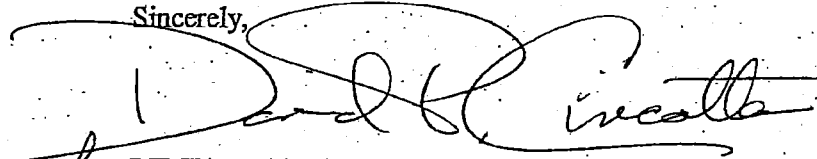
David Chiu, President  
March 21, 2011  
Page 8

mechanical projection a mere twelve feet from a neighboring structure could be adequately shielded for operational noise, where most shielding is designed for roof-top units); (5) the Initial Study does not quantify the vibration or effects of potential construction pile-driving; and (6) open space (the EIR contains no discussion as to whether the Project's proposed indoor open space meets the criteria specified or the City Code).

## VII. CONCLUSION

As demonstrated above, the Project's EIR is legally deficient in several substantial and fundamental ways. The City cannot simply uncritically accept the Project put forth by the developer, and cannot simply assert that certain environmental impacts simply do not matter and need not be studied. Rather, the City must modify the EIR to study a proper range of Project alternatives, adequately disclose and address the Project's adverse environmental impacts on surrounding properties, and recirculate the EIR for public comment. Absent modification and recirculation, the City will have certified a legally unsustainable EIR.

Sincerely,



for

BENJAMIN M. REZNIK  
DAVID P. CINCOTTA  
ALEX DEGOOD of  
Jeffer Mangels Butler & Mitchell LLP

BMR:



# SAN FRANCISCO PLANNING DEPARTMENT

**MEMO**

## Appeal of EIR Certification 350 Mission Street

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

**DATE:** March 21, 2011  
**TO:** Angela Calvillo, Clerk of the Board of Supervisors  
**FROM:** Bill Wycko, Environmental Review Officer – (415) 558-9048  
 Brett Bollinger, Planning Department (415) 575-9024  
**RE:** BOS File No. 110261 [Planning/Building Case No. 2006.1524E]  
 Appeal of Certification of an Environmental Impact Report (“EIR”) for  
 350 Mission Street  
**HEARING DATE:** March 29, 2011  
**ATTACHMENTS:**

- A. Draft Environmental Impact Report (delivered under separate cover)
- B. Comments and Responses Document (delivered under separate cover)
- C. Letters from Appellant Alex DeGood to Planning Commission concerning EIR certification (February 10, 2011) and Appeal letter to Board of Supervisor (March 2, 2011), with Planning Department Major Environmental Analysis Division (MEA) staff responses included.
- D. Planning Commission Motion 18265 (EIR Certification Motion)
- E. Planning Commission Motion 18266 (CEQA Findings)
- F. Planning Commission Motion 18268 (Section 309)

---

**PROJECT SPONSOR:** Dan Frattin, Reuben & Junius LLP, on behalf of GLL US Office, L.P.  
 (“Project Sponsor”)

**APPELLANTS:** Alex DeGood, JMBM LLP (“Appellants”)

---

### INTRODUCTION

This memorandum and the attached documents are a response to the letter of appeal to the Board of Supervisors (the “Board”) of the Planning Commission’s (the “Commission”) certification of an Environmental Impact Report pursuant to the California Environmental Quality Act (“CEQA Determination”) for a project at 350 Mission Street (the “Project”).

The Planning Department (the “Department”), pursuant to CEQA, the CEQA Guidelines, and Chapter 31 of the *San Francisco Administrative Code*, presented a final environmental impact report (“FEIR”) for the project at 350 Mission Street for certification by the Commission. On February 10, 2011, the Commission certified the EIR, finding that the FEIR was adequate, accurate and fulfilled the City’s requirements pursuant to CEQA, the CEQA Guidelines, and Chapter 31 of the *San Francisco Administrative Code*. The Commission also adopted CEQA Findings, including a Statement of Overriding Considerations, prior to approving the project.

Memo

\* To view full document  
 Request file # 110261

The decision before the Board is whether to uphold the Commission's decision to certify the EIR and deny the appeal, or to overturn the Commission's decision to certify the EIR, and return the project to the Department for staff to conduct additional environmental review.

### **SITE DESCRIPTION & PRESENT USE**

The project site, located at 350 Mission Street, on the northeast corner of Mission and Fremont Streets, is on Assessor's Block 3710, Lot 17. The site is within the C-3-O Downtown Office Use District and the 550-S Height and Bulk District (550 foot height limit; setbacks required for floors above building "base").

The C-3-O district is described in *Planning Code* Section 210.3 as consisting primarily of high quality office development focusing on finance, corporate headquarters, and service industries, and serving as an employment center for the region. It permits office uses and retail sales (including restaurant) and personal services uses. The C-3-O District permits a base floor area ratio (FAR) of 9:1. In this district, a maximum FAR of 18:1 is permitted with transfer of development rights (TDR), and the project, as proposed, would have a FAR of 18:1.

The approximately 19,000-square-foot project site is generally flat with an elevation of 3 feet, SFD at the corner of Mission and Fremont Streets. The site is currently fully occupied by a four-story, approximately 60-foot-tall building providing about 95,000 square feet of floor area, including a 13,000-square-foot basement. Approximately 72,000 square feet of office space, previously occupied by Heald College, and 10,000 square feet of retail space occupy the existing building. No off-street parking spaces or loading spaces are currently provided. The building was built in 1923 and is not historically significant. There are nine existing street trees along the Fremont and Mission Street frontages.

Development in the vicinity consists primarily of office space above ground-floor retail stores. The block on which the project site is located contains three high-rise office buildings, in addition to the four-story office and retail building on the project site. There are also office towers to the west. The Transbay Transit Terminal is located diagonally across the intersection of Fremont and Mission Streets from the project site. Immediately south of the site, across Mission Street, is the newly constructed Millennium residential tower.

### **PROJECT DESCRIPTION**

The proposed project would consist of a 24-story, approximately 350-foot-tall office tower (mechanical screen reaching a height of approximately 374 feet) with office uses occupying approximately 356,000 square feet on floors 5 through 24 (the building would have no floor 13, nor floors 3 or 4), plus three levels of parking below grade level. The ground floor would have a height of 50 feet, equaling approximately 3 to 4 stories, and a mezzanine level would be incorporated within this space. Approximately 6,600 square feet of retail and restaurant space would be divided into four spaces on the ground floor and the mezzanine. Pedestrian entrances would be located on the Fremont and Mission Street frontages and would open to a 50-foot-tall lobby, which would include part of the mezzanine floor that would be open to the ground floor. The lobby would function, in part, as an enclosed publicly accessible open space, including internal access to the retail space and a wide stairway to the mezzanine that would double as public amphitheater style seating.



Vehicle and freight loading access would be via an approximately 33-foot-wide two-way driveway on Fremont Street on the northwest corner of the project site. The northern portion of the ground floor would include four off-street freight loading spaces, and building service spaces. Three basement levels would provide 61 parking spaces; 64 bicycle parking spaces; building services and mechanical space; and a fitness center for use by building tenants, along with eight showers and lockers that could also be used by bicyclists. The rooftop mechanical space would contain elevator machinery, building heating and cooling equipment, electrical equipment, and a diesel-powered emergency generator.

The building would contain approximately 340,000 "gross square feet" (square feet of gross floor area), as measured in accordance with the *San Francisco Planning Code*, Section 102.9, consisting almost entirely of office space. To meet the *Planning Code* open space requirement of one square foot per 50 square feet of gross floor area in the C-3 District, a total of 6,800 square feet of publicly accessible open space would be required. For the purposes of this requirement, the enclosed lobby and public seating areas would be considered an "indoor park." The *Planning Code* (Section 138) and Downtown Plan element of the *San Francisco General Plan* consider an enclosed indoor park to be one form of "open space" that may be used for the purposes of satisfying this requirement, assuming applicable guidelines are met.

The proposed project would be constructed atop a mat foundation. Excavation for the basement and foundation would extend to approximately 50 feet below grade, and would require removal of approximately 35,000 cubic yards of soil.

The project's office component (spanning from approximately 55 to 375 feet in height) would have no setbacks from the property line along the west (Fremont Street) and south (Mission Street) facades. The east façade would generally be set back between 6.5 and 14 feet from the east property line (12.5 to 19 feet from the building at 50 Beale Street). The north façade would be set back about 6.5 feet from the north property line (about 45 feet from the building at 45 Fremont Street). These interior setbacks would not comply with the requirements of *Planning Code* Section 132.1(c) for separation of towers which requires a setback of 15 feet beginning at a height of approximately 103 feet. Above 300-feet in height, the setback gradually increases to a maximum of 21 feet at the top of the mechanical screen. The proposed project therefore requires an exception. The proposed project would also require an exception to the *Planning Code* Section 270 requirements for building bulk, for the portion of the building considered the upper tower (above 220 feet), because the tower would exceed both the permitted diagonal plan dimension (approximately 178 feet, compared to 160 feet permitted), as well as the permitted average floor area (about 15,000 square feet, compared to 12,000 square feet permitted). In addition, the proposed project would require an exception from the requirements for ground-level winds (*Planning Code* Section 148) because it would cause one additional exceedance of the pedestrian comfort criterion and would not eliminate all existing exceedances. The proposed project also requires an exception to create a curb cut on Fremont Street, which is identified as a Transit Preferential Street in the General Plan (*Planning Code* Section 155(r)). All exceptions would be permitted under *Planning Code* Section 309, Permit Review in C-3 Districts. The project also requires a variance from *Planning Code* Section 155(s)(5)(A) due to the 33-foot width of the shared parking and loading garage entry, which exceeds the maximum permitted width of 27 feet.

## **BACKGROUND**

The project sponsor filed an application on December 21, 2006, for the environmental evaluation of the proposed 350 Mission Street project. On June 1, 2010, the Planning Department sent a Notice of Preparation (NOP) and Initial Study to governmental agencies and organizations and persons interested in the project requesting comment on environmental issues that should be addressed in the EIR. The Planning Department also conducted a public scoping meeting on July 22, 2010, to receive oral comments on the scope of the EIR.

### **Draft EIR**

On September 15, 2010, the Department published the Draft EIR. Notices of Availability of the Draft EIR and of the date and time of the public hearing were posted near the project site on September 15, 2010, and copies of the Draft EIR were mailed or otherwise delivered to a list of persons requesting it. Notices of Availability were mailed to adjacent property owners and occupants, to the Department's list of persons requesting such notice and to government agencies. (State agencies received copies of the Draft EIR through the State Clearinghouse). A Notice of Completion was filed with the State Secretary of Resources via the State Clearinghouse on September 15, 2010. The period for acceptance of public comments ended on November 2, 2010; this period included a 1-day extension of the original comment period.

On October 28, 2010, the Commission held a duly advertised public hearing to receive public comments on the Draft EIR.

Issues raised regarding the Draft EIR included the following main topics:

1. Planning Code Exceptions;
2. Inadequate analysis of the conflict with Downtown Plan policies concerning pedestrian-level winds, building bulk, and shadow and accompanying exceptions to sections of the *Planning Code* that implement these policies;
3. Visual effects, including loss of privacy of existing residents;
4. Pedestrian safety issues resulting from project traffic;
5. Noise and air quality and impacts;
6. New shadow that would be cast by the project;
7. Adequacy of Alternatives analysis; and
8. Cumulative Construction impacts.

### **Comments and Responses**

The Department prepared responses to comments about the Draft EIR, prepared revisions to the text of the Draft EIR in response to comments or based on additional information that became available during the public review period, and corrected errors in the Draft EIR. This material was presented in a Comments and Responses document, which was published on January 21, 2011, distributed to the Commission and all parties who commented on the Draft EIR, and made available to others upon request at Department offices. The Department fully responded to all comments that had been received as of that date.

On February 10, 2011, the Commission held a hearing to consider certification of the EIR. At the hearing, the Commission found that the Final EIR reflected the independent judgment and analysis of the City and County of San Francisco. The Commission found that the FEIR was adequate, accurate and objective, and that the Comments and Responses document contained no significant revisions to the Draft EIR. The Commission certified the completion of the FEIR in compliance with CEQA, the CEQA Guidelines, and Chapter 31 of the *San Francisco Administrative Code*.

#### **Project Impacts**

The EIR found that the proposed project would result in a significant and unavoidable environmental effect with respect to air quality (potential health risk due to exposure to diesel particulate matter and fine particulates [PM2.5] emitted during construction) and potentially significant cumulative transportation impacts during construction. The EIR also identified mitigation for significant transportation associated with potential conflicts between pedestrians and Golden Gate Transit buses, and vehicles using the proposed parking garage and loading dock via the proposed driveway on Fremont Street, and with respect to oversize trucks using the loading dock. Other impacts were found to be less than significant, either in the EIR or in the Initial Study, including those related to aesthetics, cultural (archeological and historical) resources, shadow, wind, traffic, transit, and parking, operational air quality, energy, noise, and population and housing, in some cases with mitigation measures identified in this EIR.

#### **CEQA Findings and Statement of Overriding Considerations**

As described in *CEQA Guidelines* Section 15093, if a proposed project has significant effects that are identified in the FEIR, but which are not avoided or reduced to a less-than-significant level, the City must indicate that any such unavoidable significant effects are acceptable due to overriding financial, technological, social, or other policy considerations. This is known as a Statement of Overriding Considerations. In preparing such a statement, the City must balance the prescribed types of benefits of the proposed project against its unavoidable environmental risks. If the benefits of a project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered acceptable (*CEQA Guidelines* Section 15093).

Following certification of the EIR on February 10, 2011, the Commission considered and approved CEQA Findings with a Statement of Overriding Considerations when it approved the project (see Attachment E).

#### **APPELLANTS' ISSUES AND PLANNING DEPARTMENT RESPONSES**

Appellants have not raised any substantial new issues. For each point raised in the Appellants' appeal letter and attachments, the Board is directed to the particular pages in the Draft EIR and the Comments and Responses document where the issue was addressed. These documents, Attachments A and B respectively, were provided to the Board of Supervisors under separate cover on March 14, 2011. The issues raised are presented in full below and are followed by the Department's responses.

## RESPONSES TO SPECIFIC ISSUES RAISED ON APPEAL

This section of the appeal response contains the Department's discussion of the points raised in the appeal letter. The appellant's submitted a letter to the Planning Commission prior to EIR certification that was more extensive than the appeal letter, so the points raised in that letter are also included and responded to in this section.

### Issue 1: Setbacks, Bulk, and Encroachment.

Comment 1(a): "The Planning Commission's certification of the Project EIR constituted an abuse of discretion. The EIR does not sufficiently address significant environmental impacts on 50 Beale Street related to the Project's tower setback and bulk exceptions."

(Alex DeGood, JMBM LLP, EIR Appeal Letter, March 4, 2011)

Comment 1(b): "To date, there has been minimal and insufficient analysis, public debate or discussion among the Project developer and affected neighboring property owners as to why the Project's non-conforming tower setback and bulk exceptions to the requirements of Planning Code sections 132.1(c) and 270 are advisable or necessary. As noted in the EIR, the Project will encroach significantly into the required 15 foot setback up to 300 feet and the required 21 foot setback from 300 to 375 feet on the east property line against the Adjacent Property. This would result in a very narrow separation of approximately only 12.5 feet between the Project and the Adjacent Property, rather than the 21 feet that would result from a code compliant project (and 27 feet above 300 feet in height)."

"These encroachments into the required setback are far from insubstantial, and will create a massive curtain of glass and other elements only 12.5 feet from the Adjacent Property. It is notable that the Project's proposed 40 foot wide "mechanical element" will cause the worst of this unwarranted encroachment. As a result, it appears that the Adjacent Property is to bear the brunt of the Project's "backside", where structurally necessary but architecturally uninspired elements are placed. The Project's Planning staff report, while dubiously stating that this encroachment will not impact the "appearance" of tower separation, entirely overlooks the certain impacts to the Adjacent Property."

(Alex DeGood, JMBM LLP, Planning Commission EIR Certification letter, February 10, 2011)

**Response 1:** CEQA requires analysis of the physical environmental effects of a project. The fact that a project might require one or more exceptions as permitted under the *Planning Code* does not in and of itself constitute a physical effect. Conversely, a project that requires no exceptions could still be found to result in one or more significant impacts. Thus, it does not follow logically that exceptions under the *Code* would necessarily be evaluated as significant adverse effects on the environment. While compliance with plans and zoning and required approvals are topics that are discussed in EIRs, the evaluation of their environmental effects focuses on their potential to result in significant environmental effects, per Appendix G of the CEQA Guidelines.

As noted in the appellant's comments, the EIR states that the proposed project would require an exception to the *Planning Code* Section 270 requirements for building bulk, for the portion of the building

considered the upper tower (above 220 feet), because the tower would exceed both the permitted diagonal plan dimension (approximately 178 feet, compared to 160 feet permitted), as well as the permitted average floor area (about 15,000 square feet, compared to 12,000 square feet permitted). The Department considers a project that requires a discretionary approval such as an exception, variance, or Conditional Use permit to be in compliance with the *Planning Code* because such approvals are provided for in the *Planning Code*.

The 350 Mission Street EIR accurately characterizes proposed bulk exceptions throughout the document, including the Project Description (pp. 13, 21, and 22) and Chapter III, Compatibility with Existing Zoning and Plans (pp. 31 – 32). As noted on p. 31 of the EIR, and as shown in Figure 4, p. 10, the project would be set back from its property line above the building base for about 14 feet for most of the length of the project's eastern façade. However, as proposed, a 40-foot-wide mechanical element would extend about 7.5 feet into this setback midway along the length of the building, reducing the property line setback to about 6.5 feet for this 40-foot portion of the project's eastern façade. As stated on EIR p. 13, the *Planning Code* requires a "15-foot setback from the top of the building base to a height of 300 feet, increasing to 21 feet at the 375-foot top of the building crown, or parapet." Because the building at 50 Beale Street is set back about 6 feet from its westerly property line, the actual physical separation of the proposed project from the building at 50 Beale Street would be about 20 feet, except for the portion of the project site within the 40-foot-wide mechanical element, where the physical separation from the 50 Beale Street building would be about 12.5 feet.

The physical effects of the setback and bulk exceptions that are requested for the proposed project are analyzed in relevant sections of the EIR, including Section IV.E, Wind, p. 104, and Section IV.F, Shadow, p. 113, as well as Section E.2, Aesthetics, of the Initial Study, EIR Appendix A, p. 20. In particular, the visual simulations in Figures 9 and 10 of the Initial Study, EIR Appendix A, pp. 26 and 26, show the proximity of the proposed project to the adjacent building at 50 Beale Street. Aesthetic effects analyzed in the EIR, including the Initial Study, are generally those that would be readily apparent to the general public, as opposed to effects on individuals such as tenants in or owners of an adjacent building whose views may be obstructed or exposure to light reduced. It is noted that a number of California appellate courts have held, in the case of aesthetic impacts generally, that relevant considerations include whether the impact would be widely observed, particularly from public viewpoints.

The physical effects of the setback and bulk exceptions that would be required for development of the project are analyzed in relevant sections of the EIR. Wind effects analyzed in EIR found that the project as proposed (including the requested exceptions) would not result in a significant effect on pedestrian-level winds. As described in the EIR, the project would result in relatively minor changes in wind speeds: as stated on EIR p. 110.

Regarding the granting of exceptions to *Planning Code* requirements under Section 309 for the proposed project, this is a policy decision that is made by the Planning Commission on a case-by-case basis. To the extent that the granting of such exceptions would result in physical impacts, those impacts are analyzed in the EIR. The fact that a project would require one or more exceptions to *Planning Code* requirements does not, in itself, indicate that the project would have a significant physical effect on the environment.

**Issue 2: Code Compliant Alternative.**

Comment 2(a): "[The] Project EIR does not properly examine Project alternatives."  
(Alex DeGood, JMBM LLP, EIR Appeal Letter, March 4, 2011)

Comment 2(b): "The Owner again notes, as it did in the DEW letter, that these impacts could be avoided by simply constructing a code compliant building. The EIR dismissed this possibility, merely stating that potential impacts on the Adjacent Property did not rise to the level of significant project impacts, and thus required no further analysis. While that is possibly true for CEQA purposes, this Commission's mandate is to shape development that does not unnecessarily impact major City properties or communities."

"Construction of a code compliant building would not require a reduction in square footage or a radical altering of the basic Project design. It would, however, significantly reduce the Project's impact on the Adjacent Property. At a minimum, the Owner requests that the Commission analyze the pros and cons (if any) of a code compliant building, and work towards a mutually acceptable design not only for the Owner, but neighboring property owners."

(Alex DeGood, JMBM LLP, Planning Commission EIR Certification letter, February 10, 2011)

**Response 2:** CEQA requires that alternatives be evaluated in an EIR that would "avoid or substantially lessen any of the significant effects of the project," yet "would feasibly attain most of the basic objectives of the project" (CEQA Guidelines Section 15126.6(a)). The range of alternatives evaluated in the EIR is consistent with CEQA requirements and with the Planning Department's typical practice. As previously discussed, exceptions and other discretionary approvals are provided for under the Planning Code, aspects of a project that require such approvals are considered code-compliant and it is not necessary or required to consider alternatives that eliminate the need for any discretionary approvals.

The EIR identified significant unavoidable effects from the project associated with construction-period transportation and construction-generated air quality emissions. In addition to the No Project alternative required under the CEQA Guidelines, the EIR also analyzed two project alternatives: one that would construct a building that did not require bulk exceptions (Alternative B) and one that excluded the proposed three level parking garage (Alternative C). The EIR analysis of Alternative B, the Code-Complying Bulk Alternative, concluded that this alternative would result in the same significant and unavoidable impacts as the project, as described on DEIR p. 133. The proposed project would have less-than-significant impacts with respect to shadow, wind, and aesthetics, which are associated with building bulk; the EIR finds that the Code-Complying Bulk Alternative would also have less-than-significant impacts for these same environmental topics. Because the focus of an EIR's alternatives analysis is intended to be on means of avoiding or reducing significant impacts of the proposed project, further detail in the analysis of these less-than-significant impacts is not required for Alternative B.

In making decisions about project approval, the Planning Commission is not required to approve either the proposed project or any of the alternatives presented in the EIR. The EIR must evaluate a range of reasonable alternatives to the project, and the Planning Commission may consider changes to the project

as proposed that are within that range. Therefore, the selection of alternatives in no way prevents or denies the Commission its full approval discretion for the project.

### Issue 3: Open Space.

Comment 3: "The Project's proposed encroachment into the required setback next to the Adjacent Property will significantly degrade pedestrian access to the large plaza to the north of the Adjacent Property, creating a dark and desolate alley through which pedestrians would pass. It is notable that at a time when the City has advocated pedestrian linkages between transit, open space and commercial centers that the Project proposes to degrade the connection between Market Street, the Beale Street Plaza, Mission Street, and the Transbay Terminal."

"Indeed, it appears the commitment to open space and pedestrian linkages has diminished significantly since the construction of the Adjacent Property over 40 years ago, as the Adjacent Property provides publicly accessible space that is truly open (as opposed to being housed in a building lobby) at a level far in excess of that proposed by the Project. Here again, construction of a code compliant building would allow for a much wider, more open pedestrian pathway connecting Mission Street to the Beale Street Plaza."

(Alex DeGood, JMBM LLP, Planning Commission EIR Certification letter, February 10, 2011)

**Response 3:** Under existing conditions, there is a privately owned, publicly accessible open space (POPOS) located along the north side of the project site, between the existing building at 350 Mission Street and the adjacent building to the north at 45 Fremont Street. There is also a pedestrian connection from Mission Street to both the Fremont Street POPOS and the Beale Street Plaza along the west side of the 50 Beale Street building located partially under an overhang of that building. The proposed project would maintain this pedestrian connection and would not substantially degrade pedestrian access to the Beale Street Plaza. No significant impacts associated with the character of the open space proposed as part of the project were identified in the EIR.

### CONCLUSION

Appellants have not raised any new issues relative to CEQA review that were not previously addressed in the Draft EIR and/or in the Comments and Responses document, nor have appellants provided any substantial evidence to refute the conclusions of the Department with respect to the project's physical environmental effects under CEQA.

For the reasons stated above the Commission's certification of the EIR complies with the requirements of CEQA, the CEQA Guidelines and Chapter 31 of the *San Francisco Administrative Code*. The Department, therefore, recommends that the Board uphold the Commission's decision to certify the EIR and deny the appeal.

**Attachment A:**  
**Draft Environmental Impact Report**  
**(delivered under separate cover)**



**Attachment B:  
Comments & Responses Document  
(delivered under separate cover)**

**Attachment C:**  
**Letters from Appellant**

Alex DeGood  
Direct: (310) 201-3540  
Fax: (310) 712-3348  
AMD@jmbm.com

1900 Avenue of the Stars, 7th Floor  
Los Angeles, California 90067-4308  
(310) 203-8080 (310) 203-0567 Fax  
www.jmbm.com

Ref: 71498-0001

February 10, 2011

**VIA EMAIL and HAND DELIVERY**

Christina Olague, President  
Ron Miguel, Vice President  
Michael Antonini, Commissioner  
Gwyneth Borden, Commissioner  
Kathrin Moore, Commissioner  
Hisashi Sugaya, Commissioner  
Rodney Fong, Commissioner  
San Francisco Planning Commission  
1 Dr. Carlton B. Goodlett Place  
Room 400  
San Francisco, CA 94102

Re: 350 Mission Street

Dear President Olague, Vice President Miguel and Members of the Commission:

This office represents 50 Beale Street Property LLC, the owner ("Owner") of the real property located at 50 Beale Street (the "Adjacent Property"). The Adjacent Property is an architecturally significant 24 story, 662,000 square foot Class A office property located immediately northeast of the above-referenced proposed redevelopment project (the "Project"). On November 2, 2010, we submitted comments on the Project's draft environmental impact report ("DEIR"), focusing on concerns related to the Project's bulk, substantial encroachment into a required setback, construction noise and vibration, and design of enclosed public open space (the "DEIR Letter").

As a general matter, the Owner continues to believe that the Project has the potential to serve as a positive redevelopment. However, after reviewing the comments and responses on the DEIR, and the Planning Department's staff report on the Project (which, it should be noted, was only made available online within the last several days), the Owner maintains concerns regarding the Project's impact on the Adjacent Property and the surrounding area, and requests important modifications to mitigate said impacts, which we believe are readily achievable.

## I. BULK AND ENCROACHMENT

To date, there has been minimal and insufficient analysis, public debate or discussion among the Project developer and affected neighboring property owners as to why the Project's non-conforming tower setback and bulk exceptions to the requirements of Planning Code sections 132.1(c) and 270 are advisable or necessary. As noted in the EIR, the Project will encroach significantly into the required 15 foot setback up to 300 feet and the required 21 foot setback from 300 to 375 feet on the east property line against the Adjacent Property. This would result in a very narrow separation of approximately only 12.5 feet between the Project and the Adjacent Property, rather than the 21 feet that would result from a code compliant project (and 27 feet above 300 feet in height).

These encroachments into the required setback are far from insubstantial, and will create a massive curtain of glass and other elements only 12.5 feet from the Adjacent Property. It is notable that the Project's proposed 40 foot wide "mechanical element" will cause the worst of this unwarranted encroachment. As a result, it appears that the Adjacent Property is to bear the brunt of the Project's "backside", where structurally necessary but architecturally uninspired elements are placed. The Project's Planning staff report, while dubiously stating that this encroachment will not impact the "appearance" of tower separation, entirely overlooks the certain impacts to the Adjacent Property.

## II. CODE COMPLIANT ALTERNATIVE

The Owner again notes, as it did in the DEIR letter, that these impacts could be avoided by simply constructing a code compliant building. The EIR dismissed this possibility, merely stating that potential impacts on the Adjacent Property did not rise to the level of significant project impacts, and thus required no further analysis. While that is possibly true for CEQA purposes, this Commission's mandate is to shape development that does not unnecessarily impact major City properties or communities.

Construction of a code compliant building would not require a reduction in square footage or a radical altering of the basic Project design. It would, however, significantly reduce the Project's impact on the Adjacent Property. At a minimum, the Owner requests that the Commission analyze the pros and cons (if any) of a code compliant building, and work towards a mutually acceptable design not only for the Owner, but neighboring property owners.

## III. OPEN SPACE

The Project's proposed encroachment into the required setback next to the Adjacent Property will significantly degrade pedestrian access to the large plaza to the north of the Adjacent Property, creating a dark and desolate alley through which pedestrians would pass. It is notable that at a time when the City has advocated pedestrian linkages between transit, open space and commercial centers that the Project proposes to degrade the connection between Market Street, the Beale Street Plaza, Mission Street, and the Transbay Terminal.

Christina Olague, President  
February 10, 2011  
Page 3

Indeed, it appears the commitment to open space and pedestrian linkages has diminished significantly since the construction of the Adjacent Property over 40 years ago, as the Adjacent Property provides publicly accessible space that is truly open (as opposed to being housed in a building lobby) at a level far in excess of that proposed by the Project. Here again, construction of a code compliant building would allow for a much wider, more open pedestrian pathway connecting Mission Street to the Beale Street Plaza.

#### IV. CONCLUSION

This hearing comes only two weeks after the release of responses and comments on the DEIR, and only days after the release of the Project's staff report (which did not provide enough time to communicate to the Commission the customary eight days before the hearing). Further, at no point has the Project's developer or counsel reached out to the Owner or communicated with the Owner in any way, despite the Owner commenting on the DEIR. This lack of response and/or engagement by the Project's developer is highly atypical given the size and scope of the Project and its potential to negatively impact adjacent properties and the surrounding area.

We submit that the public has clearly not been afforded a meaningful opportunity to digest and respond to relevant Project analysis. As such, we respectfully request a short continuance of the public hearing to allow a full analysis of the Project so that we may engage in a collaborative manner with the Project developer and neighboring property owners to work through design alternatives that mitigate long-term impacts to the Adjacent Property and surrounding area.

Should the Commission reject a continuance and feel compelled to consider the Project in full, unfortunately we must convey our objections to the Project in its current form.

Sincerely,



ALEX DEGOOD of  
Jeffer Mangels Butler & Mitchell LLP

cc: Benjamin Reznik, Esq.  
David Cincotta, Esq.



Jeffer Mangels  
Butler & Mitchell LLP

Alex DeGood  
Direct (310) 201-3540  
Fax (310) 712-3348  
AMD@jmbm.com

1900 Avenue of the Stars, 7th Floor  
Los Angeles, California 90067-4308  
(310) 203-8080 (310) 203-0567 Fax

www.jmbm.com  
Ref: 1714920001

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2011 MAR -2 PM 2:30

March 2, 2011

David Chiu, President  
San Francisco Board of Supervisors  
c/o Angela Calvillo  
Clerk of the Board  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, California 94102

Re: 350 Mission Street - Case No. 2006.1524B

Dear President Chiu:

On behalf of the owners of 50 Beale Street, this office is appealing the decision of the San Francisco Planning Commission on February 10, 2011, which certified the Final Environmental Impact Report ("EIR") for the above-referenced project (the "Project").

The Planning Commission's certification of the Project EIR constituted an abuse of discretion. The EIR does not sufficiently address significant environmental impacts on 50 Beale Street related to the Project's tower setback and bulk exceptions. Further, the Project EIR does not properly examine Project alternatives.

We believe the proposed Project may still provide a successful office development, provided that significant Project impacts and alternatives are properly studied.

Absent modification and recirculation, the Project's EIR is legally deficient. We urge you to make the necessary changes to create a legally sustainable document.

Sincerely,

ALEX DEGOOD of  
Jeffer Mangels Butler & Mitchell LLP

**Attachment D:  
Planning Commission Motion 18265  
(EIR Certification Motion)**



# SAN FRANCISCO PLANNING DEPARTMENT

## Planning Commission Motion 18265

HEARING DATE: February 10, 2011

*Case No.:* 2006.1524E  
*Project Title:* 350 Mission Street  
*Zoning:* C-3-O (Downtown Office) District  
550-S Height and Bulk District  
*Block/Lot:* 3710/017  
*Lot Size:* 18,905 square feet  
*Project Sponsor:* GLL US Office, L.P., Owner  
*Lead Agency:* San Francisco Planning Department  
*Staff Contact:* Brett Bollinger - (415) 575-9024  
Brett.Bollinger@sfgov.org

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

ADOPTING FINDINGS RELATED TO THE CERTIFICATION OF A FINAL ENVIRONMENTAL IMPACT REPORT FOR A PROPOSED MIXED-USE OFFICE PROJECT AT 350 MISSION STREET WITH A 24-STORY, 350-FOOT TALL BUILDING CONTAINING APPROXIMATELY 340,000 SQUARE FEET OF OFFICE USES, 6,500 SQUARE FEET OF RETAIL SPACE, 23,500 SQUARE FEET OF SUBTERRANEAN PARKING AREA, AND 7,000 SQUARE FEET OF PUBLICLY-ACCESSIBLE INTERIOR OPEN SPACE.

MOVED, that the San Francisco Planning Commission (hereinafter "Commission") hereby CERTIFIES the Final Environmental Impact Report identified as Case No. 2006.1524E, 350 Mission Street (hereinafter "Project"), based upon the following findings:

1. The City and County of San Francisco, acting through the Planning Department (hereinafter "Department") fulfilled all procedural requirements of the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 *et seq.*, hereinafter "CEQA"), the State CEQA Guidelines (Cal. Admin. Code Title 14, Section 15000 *et seq.*, hereinafter "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code (hereinafter "Chapter 31").
  - A. The Department determined that an Environmental Impact Report (hereinafter "EIR") was required and provided public notice of that determination by publication in a newspaper of general circulation on June 2, 2010.
  - B. On September 15, 2010, the Department published the Draft Environmental Impact Report (hereinafter "DEIR") and provided public notice in a newspaper of general circulation of the availability of the DEIR for public review and comment and of the date and time of the Planning Commission public hearing on the DEIR; this notice was mailed to the Department's list of persons requesting such notice.
  - C. Notices of availability of the DEIR and of the date and time of the public hearing were posted near the project site by Department staff on September 15, 2010.



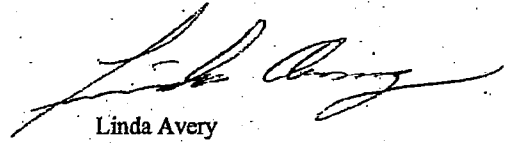
- D. On September 15, 2010, copies of the DEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DEIR, to adjacent property owners, and to government agencies, the latter both directly and through the State Clearinghouse.
- E. Notice of Completion was filed with the State Secretary of Resources via the State Clearinghouse on September 15, 2010.
2. The Commission held a duly advertised public hearing on said DEIR on October 21, 2010 at which opportunity for public comment was given, and public comment was received on the DEIR. The period for acceptance of written comments ended on November 2, 2010.
  3. The Department prepared responses to comments on environmental issues received at the public hearing and in writing during the 45-day public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, and corrected errors in the DEIR. This material was presented in a Draft Comments and Responses document, published on January 27, 2011, distributed to the Commission and all parties who commented on the DEIR, and made available to others upon request at Department offices.
  4. A Final Environmental Impact Report has been prepared by the Department, consisting of the Draft Environmental Impact Report, any consultations and comments received during the review process, any additional information that became available, and the Summary of Comments and Responses all as required by law.
  5. Project Environmental Impact Report files have been made available for review by the Commission and the public. These files are available for public review at the Department offices at 1650 Mission Street, and are part of the record before the Commission.
  6. On February 10, 2011, the Commission reviewed and considered the Final Environmental Impact Report and hereby does find that the contents of said report and the procedures through which the Final Environmental Impact Report was prepared, publicized, and reviewed comply with the provisions of CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code.
  7. The project sponsor has indicated that the presently preferred alternative is Alternative C: No Parking Alternative, described in the Final Environmental Impact Report.
  8. The Planning Commission hereby does find that the Final Environmental Impact Report concerning File No. 2006.1524E, 350 Mission Street reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, and that the Comments and Responses document contains no significant revisions to the DEIR, and hereby does CERTIFY THE COMPLETION of said Final Environmental Impact Report in compliance with CEQA and the CEQA Guidelines.

Motion No. 18265  
Hearing Date: February 10, 2011

CASE NO. 2006.1524E  
350 Mission Street

9. The Commission, in certifying the completion of said Final Environmental Impact Report, hereby does find that the project described in the Environmental Impact Report:
- A. Will have a project-specific significant effect on the environment through (Air Quality) construction of the proposed project exposing sensitive receptors to substantial pollutant concentrations; and,
  - B. Will have a significant cumulative impact on the environment through (Transportation) disruption of nearby streets, transit services, and pedestrian and bicycle circulation due to construction of the proposed project, Transit Center, and other nearby projects.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting of February 10, 2011.



Linda Avery  
Commission Secretary

AYES: 6  
NOES: 1 (Sugaya)  
ABSENT: 0  
ADOPTED: February 10, 2011