



November 10, 2016

Hon. London Breed  
San Francisco Board of Supervisors  
City Hall Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

Re: 1515 South Van Ness Avenue  
File No. 161001 (CEQA Appeal)  
Hearing Date: October 25, 2016

Dear President Breed and Supervisors,

I am writing on behalf of my client, Lennar Multifamily Communities (“LMC”) regarding the appeal of the Community Plan Exemption (“CPE”) issued under the California Environmental Quality Act (“CEQA”) for LMC’s proposed development at 1515 South Van Ness (“Project Site”).

On August 11, 2016, the Planning Commission unanimously (6-0) approved a Conditional Use authorization for the development of 157 residential units, including 39 affordable units (25%) and six below market trade shop units on the Project Site (the “Project”). On September 12, 2016, the Calle 24 Latino Cultural District Community Council (“Appellant”) filed an appeal of the determination to prepare a CPE under CEQA for the Project. Supplemental information in support of the appeal was filed by the Appellant on October 14, 2016.<sup>1</sup> **No appeal of the Conditional Use authorization was filed.**

The Planning Department has prepared a detailed response to, and analysis of, the Appellant’s Claims. Based on the evidence presented and substantial evidence in the record, Planning Department staff is recommending that the Board of Supervisor’s uphold the CPE determination and deny the appeal. For all the reasons stated below, we support staff’s recommendation and respectfully request that you deny the appeal, and uphold the decision of the Planning Commission.

### **PROJECT BACKGROUND**

The Project Site is an irregularly shaped lot along South Van Ness Avenue just north of Cesar Chavez Street. A 31,680 square foot commercial building currently exists on the site and until December 2015 was occupied by McMillan Electric a local San Francisco contractor. McMillan Electric sold the Project Site to LMC and with the sale was not only able to relocate 1.1 miles down the road to a site zoned for production distribution and repair, but also hire 25 new employees with the use of the sale proceeds. A letter from McMillan Electric in support of the Project and outlining its benefits is attached as Exhibit A.

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<sup>1</sup> Collectively this information is referred to herein as “Appellant’s Claims.”

The Project Site is located in the Mission Neighborhood Commercial Transit (NCT) zoning district and the Mission Area Plan, which was part of the 2009 Eastern Neighborhoods rezoning effort. The Project would demolish the existing structure on the Project Site and construct a 180,277 square foot residential code compliant mixed-use development with 157 dwelling units (25% or 39 below-market rate units), seventy-nine (79) parking spaces, 1,074 square feet of retail space located on the corner of South Van Ness Avenue and 26th Street, and six “Trade Shop” spaces that will be rented at below-market rates to local artists and artisans. The Project, which complies with Proposition C and is committed to using 100% union labor during construction, was **unanimously** approved by the Planning Commission on August 11, 2016.

## COMMUNITY PLAN EXEMPTION DETERMINATION

Planning Department staff, based on substantial evidence in the record, issued a CPE for the Project on July 12, 2016. The CPE was issued following review and analysis of various technical studies (including studies by historic resource and transportation experts) prepared under the City’s direction to analyze whether the Project would have a peculiar or new significant or potentially significant environmental impact that was not identified in the 2008 Eastern Neighborhoods Program EIR (the “PEIR”). Based on that analysis and evidence, the Project, which is consistent with the development density established for the Project Site under the Eastern Neighborhoods Rezoning, qualified for a CPE.

The Planning Department in issuing the CPE (and the Planning Commission’s reliance upon it) complied with CEQA, and specifically CEQA Section 21083.3 and CEQA Guidelines Section 15183. These provisions of CEQA mandate the issuance of a CPE for projects that are consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified and specifically provide that the City cannot require further environmental review unless necessary to examine whether there are project-specific impacts peculiar to the project or its site that were not disclosed as significant impacts in the prior Program EIR. Because the Project is consistent with the existing NCT zoning and the Mission Area Plan, and there are no impacts peculiar to the Project or Project site that were not disclosed in the PEIR, the City cannot require any further CEQA review and the Planning Department complied with CEQA in issuing the CPE.

The Appellant Claims that the CPE is inappropriate because the PEIR is out of date and fails to analyze the cumulative impacts of the Project on the Latino Cultural District. The Appellant, however, has provided no **substantial evidence** to support its claims and instead is basing them on unsubstantiated opinion.<sup>2</sup> The Appellant cites a series of cases supporting the assertion that a lay person’s testimony can support a “fair argument” that a project may have a significant impact.

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<sup>2</sup> The courts have made clear that unsubstantiated opinion is not substantial evidence. “Substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. [Citations.] It does not include “[a]rgument, speculation, **unsubstantiated opinion** or narrative, [or] evidence which is clearly inaccurate or erroneous. . . .” [Citations.]” (emphasis added) (*North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647.) Moreover, “[c]omplaints, fears, and suspicions about a project’s potential environmental impact . . . do not constitute substantial evidence. [Citations.]” and “in the absence of a specific factual foundation in the record, dire predictions by nonexperts regarding the consequences of a project [also] do not constitute substantial evidence. [Citations.]” (1 Kostka & Zischke, Practice under the Cal. Environmental Quality Act (2d ed. 2015) § 6.42, pp. 6-47-6-48; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1417.)

These cases, however, **are not on point**. They either involve decisions where the applicable standard of review is the “fair argument test”<sup>3</sup> or cite **only** a portion of the findings of the decision thereby misleading the reader into thinking that the courts relied only a layperson’s opinion as substantial evidence.<sup>4</sup> The Appellant has not presented a factual foundation to establish that the changes occurring in the Mission or the Eastern Neighborhoods are either peculiar to the Project or individually or cumulatively would exacerbate impacts identified by the PEIR.

Established case law makes clear that projects qualify for an exemption under Public Resources Code section 21083.3 and 14 Cal. Code Regs. Chapter 3 (“CEQA Guidelines”), section 15183), where **substantial evidence exists to support the decision that a project is exempt and that evidence exists in the record**.<sup>5</sup> That evidence has been presented by the Planning Department in the preparation of the CPE and in the detailed response to the Appellant’s Claims. In contrast, the Appellant has not presented any technical studies that counter the analysis conducted as part of the CPE or any substantial evidence that creates the necessary link between the Project and any physical environmental impacts<sup>6</sup>

As we fully support and agree with the Planning Department, instead of restating their analysis, we incorporate their responses by reference. The following are a few additional points to consider in evaluating the merits of the Appellants Claims.

#### 1. **The Claims Raised By The Appellant Are Not New**

On September 13, 2016, the Board of Supervisors considered almost the exact same claims raised by the Appellant during a hearing on an appeal of the CPE for the 2000 – 2070 Bryant Street project. At that hearing, **the Board unanimously rejected the claims raised**, finding that the Bryant Street project correctly relied upon the PEIR based on substantial evidence in the record to support a determination to prepare a CPE. Now, two months later, the Appellant once again raises almost identical issues without preparing any specific technical analyses to support their claims. Nothing has changed in the intervening months and the Appellant has not raised any new significant

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<sup>3</sup> *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 CA4th 714, *Pocket Protectors v. City of Sacramento* (2004) 124 CA4th 903, *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 CA3d 151 and *Rominger v. County of Colusa* (2014) 229 CA4th 690 all involved Negative or Mitigated Negative Declarations, which are subject to a standard of review that only requires a “fair argument” that a potential significant environmental impact may occur. This is different than the standard of review for a CPE, which requires that the lead agency’s decision be upheld if there is substantial evidence in the record to support the decision.

<sup>4</sup> In *Banker’s Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139CA4th 249, the court found that “**although** local residents may testify to their *observations* regarding existing traffic conditions, **in the absence of a specific factual foundation in the record, dire predictions by non-experts regarding the consequences of a project do not constitute substantial evidence**’... [and] we conclude that substantial evidence supports a finding that the Project will not have a significant effect on traffic relating to the offset intersection.” (citing *Gentry, supra*, 36 Cal.App.4th at p. 1417, italics added.) The **bolded** language is what was excluded from the quotation cited by the Appellants.

<sup>5</sup> See *Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 CA4th 273, overruled on other grounds in *Hernandez v. City of Hanford* (2007) 41 C4th 279; *Gentry v. City of Murrieta* at 1406 n24; *Citizens for Responsible Equitable Ent’l Dev. V. City of San Diego Redeve. Agency* (2005) 134 CA4th 598, 610.

<sup>6</sup> The technical reports included in the record as evidence note facts related to changing demographics and information regarding the new demographic, but fail to create a causal link between that demographic change and specific physical impacts to the environment.

claims or presented any new substantial evidence. While the Appellant references the Board's concerns regarding the Eastern Neighbors Plan in today's environment, it fails to present the type of evidence that would require any CEQA analysis beyond preparation of a CPE.<sup>7</sup> The Appellant's claims relate to social and economic issues, which are **policy considerations**, not physical impacts on the environment and nothing in the evidence presented creates a causal link between the social and economic issues and a physical impact on the environment as required under *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 CA4th 1184. As a result, the Board's position regarding the validity of the PEIR, we believe, should be steadfast as it continues to be based on substantial evidence in the record as detailed by Planning Department staff in their response.

2. **An Update To The PEIR Is Not Warranted And Will Impact Many Other Project Including 100% Affordable Projects**

The PEIR remains current and legally adequate. None of the conditions that would require an amendment or update to the PEIR have occurred, including, but not limited to, changes to the underlying zoning. The zoning adopted by the Board of Supervisors under the Eastern Neighborhoods Planning effort has not been changed and is not proposed for amendment or revision, which is the key factor that helps determine whether a supplemental analysis is required. The Project itself also complies with the requirements of the Planning Code and applicable zoning and does not seek a Zoning Map or other amendment. For all these reasons alone an update to the PEIR is not warranted.

In addition, as previously detailed in a response prepared by the attorney for the 2000 – 2070 Bryant Street project, by making these claims the Appellant places in jeopardy the very projects they seek to encourage – 100% affordable projects. The following is a list of the **affordable projects** that would be impacted by the Appellants claims:

- 2060 Folsom Street, 136 units of affordable housing proposed by MEDA and CCDC. CPE issued on June 10, 2016 (Case No. 2015-014715ENV)
- 1950 Mission Street, 157 units of affordable housing proposed by Mission Housing Development Corporation and BRIDGE Housing. CPE pending (Case No. 2016001514ENV).
- 1296 Shotwell Street, 96 units of affordable senior housing proposed by MEDA and CCDC. CPE pending (Case No. 2015-018056ENV).
- 490 South Van Ness. CPE relying on Eastern Neighborhoods EIR for previously approved 84-unit market rate project issued in June 24, 2014 (Case No.

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<sup>7</sup> At the September 13, 2016, hearing on the CPE appeal of the 2000-2070 Bryant Street project, reference was made to the type and level of supplemental analysis required to establish a causal link between economic or social impacts and a physical effect on the environment. ([http://sanfrancisco.granicus.com/MeiaPlayer.pho?view\\_id=10&clip\\_id=26119](http://sanfrancisco.granicus.com/MeiaPlayer.pho?view_id=10&clip_id=26119) time 3:10 through 3:26 and beginning at time 4:18). Studies prepared by technical experts linking the Project or its cumulative impacts to specific environmental impacts such as air quality, traffic, noise, etc. are needed and mere reference to studies discussing the topics generally do not amount to substantial evidence.

2010.0043E); CPE for revised affordable project pending (Case No. 2015-010406ENV).

3. **Mission District Interim Controls Considered Displacement Impacts From The Project, But That Impact Is Not Generally A CEQA Issue**

The Appellants have asserted that the Project would cause significant economic and social change, including the displacement of residents and businesses, an issue that as noted in the Planning Department's response is not generally studied or required as part of CEQA analysis, **unless there is substantial evidence of related physical impacts on the environment, as discussed above.** The Appellant has presented no evidence of a physical impact from the economic and social change asserted and therefore, while an important policy consideration, it is not a CEQA issue. That does not mean, however, that these issues were not considered by the Planning Commission in **unanimously approving the Project.**

In January 2016, the Planning Commission adopted Mission District Interim Controls which require all projects in the Mission District to prepare an analysis of the project's potential socio-economic impact on the neighborhood and community. Mission Interim Control findings were prepared by the Project sponsor that provided information on the socio-economic characteristics of the neighborhood and the Project's potential impact on existing and future residents and businesses. A copy of those findings are attached as Exhibit B. The Appellant's claims regarding these issues may be outside the scope of CEQA, but they were analyzed and considered by the Planning Department and the Planning Commission as part of the Project's approval process.

4. **The Latino Cultural District Is Not A CEQA Resource Nor Would The Project Impact It**

As noted by the Planning Department in their response, the Latino Cultural District is not an historic resource under CEQA. The Latino Cultural District is an intangible cultural heritage asset that is not eligible for listing on a state, local or federal registry of historic properties and therefore does not meet the definition of an "historic resource" under CEQA Guidelines Section 15064.5(a). The Latino Cultural District's eligibility as a historic district is not something that has been overlooked as the Planning Department studied the area as part of the 2011 South Mission Historic Resource Survey. That survey did not identify the boundaries of the Latino Cultural District as an historic district, and the Appellant has not presented any evidence as to why the Latino Cultural District should be considered an historic district under CEQA. The Planning Department's survey did identify several other potential historic districts, but none of those districts are near the Project site, and therefore cannot be impacted by the Project. Thus, the Appellants' claims about the impact of the Latino Cultural District on the determination to prepare a CPE are without merit. The building on the Project Site was not even listed as a cultural asset or the use of it as a cultural asset theme to be protected. A review of the Latino Cultural District and the Project also indicates that the Project is not inconsistent with the intent and key components of the district.

Based on numerous discussions with the community facilitated by Planning Director John Rahaim, there are three key components of the Latino Cultural District. They are as follows: (1) protecting commercial spaces; (2) providing high quality jobs; and (3) affordable housing. The Project is consistent with each of these components.

First, the Project does not eliminate the type of commercial space envisioned for protection under the Latino Cultural District. The existing building to be demolished is a large space previously occupied by a San Francisco contractor that provides services throughout San Francisco and the Bay Area. It is not a commercial space that caters to the Mission District or a commercial space occupied by a small, local Latino business. While the existing commercial space does not meet the intent of the Latino Cultural District, the Project is creating that type of space by including six (6) new small trade shop retail spaces to be used and occupied local Mission artists, artisans and retailers. LMC has committed to providing the six (6) trade shop spaces at below market rents and will work with the community to fill them with neighborhood serving uses that fit within the context of the Latino Cultural District.


Second, the Project creates high quality jobs. It is the only development in the Mission that is committed to using 100% UNION labor. Its development also did not cause the loss of any local jobs and indirectly helped create 25 new jobs at McMillan Electric. As explained in the letter from McMillan Exhibit A), LMC's purchase of the site has allowed McMillan to not only relocate to a larger space, in a PDR zone, 1 mile from the site, but also to expand their business and hire 25 new employees.

Finally, the last component, affordable housing, has been met by LMC's commitment to provide 25% of the units on-site as affordable units. This is 10% more than what is required under the Trailing Legislation and makes the Project the ONLY one that meets the current requirements under Proposition C adopted by the voters in June. This combined with the 473 affordable units noted above result in more than 42% of the units to be built in the Mission and in and around the Latino Cultural District being set aside for affordable housing. This high percentage of affordable units meets the intent of the Latino Cultural District.<sup>8</sup>

\* \* \* \* \*

In sum, the claims raised by the Appellant, as detailed in the Planning Department's response are without merit. The CPE issued by the Planning Department and relied upon by the Planning Commission in unanimously approving the Project was legally adequate, is supported by substantial evidence in the record and should be upheld. For all of these reasons, we respectfully request that you reject the appeal and uphold the CPE.

Very truly yours,



Alexis M. Pelosi

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<sup>8</sup> This figure is based on Appellant's Claims that 666 new market-rate units will be constructed in and around the Latino Cultural District and the facts in the record that there are 473 new affordable housing units being proposed in independent housing developments. As this figure of 473 new affordable housing units does not take into consideration on-site inclusionary housing units in many Mission developments, the 42% affordable housing figure is likely below the actual number of affordable housing units to be developed.

# Exhibit A



Electrical Contractor - Data Communications  
Preventative Maintenance - Media Systems  
Energy Efficiency Solutions - Security  
Lic 268179-C10

**Mr. Doug Vu**  
**San Francisco Planning Department**  
**1650 Mission Street, STE 400**  
**San Francisco, CA 94103**

**April 4, 2016**

**Re: 1515 South Van Ness Avenue (Case No. 2014.1020)**

Dear Mr. Vu,

McMillan Bros. Electric Inc. ("McMillan Electric") is a San Francisco based electrical contracting business with over fifty (50) years of history working and operating in San Francisco. In 1965, my Father, Patrick McMillan Sr., founded McMillan Electric and since that time our business has grown from 3 employees to over 285 employees. Today, we employ approximately 55 corporate management, accounting, project management, purchasing, support staff, etc. at our combined office, warehouse, storage and space at 1950 Cesar Chavez. Prior to moving to 1950 Cesar Chavez, McMillan Electric was located at 1515 South Van Ness Avenue, a property purchased by my family in 1981.

In 2014, as part of an overall growth strategy for the company, McMillan Electric decided to place 1515 South Van Ness Avenue on the market. Selling 1515 South Van Ness Avenue was part of our long-term strategic business plan. The sale of the property freed up capital that allowed us to relocate to a larger facility in an area of the City that was not only zoned long-term for commercial, industrial and warehouse uses, but also was more compatible for our operations. In addition to the investment made in the 1950 Cesar Chavez facility, the capital gained from the sale allowed us to further invest in the company, including the hiring 65 new employees. The decision to sell 1515 South Van Ness Avenue was 100% our decision and always a part of our long term vision.

The relocation of the business to 1950 Cesar Chavez in April/May 2015 was made primarily because of its proximity to the 1515 South Van Ness Avenue, which is located approximately 1.1 miles away. Since 1950 Cesar Chavez is located in a PDR-2 zone, we know that our business can continue to grow in the new facility and employees can gain comfort of the viability for our company for years to come. Additionally, the accessibility for our employees and service vehicles is more effective to our operation. We are very happy in our newly improved facility and location. Although 1515 South Van Ness and the Mission District will always hold a special place in the history of McMillan Electric, its location within a growing residential area, we believe, makes it a better residential site than a commercial site. Its size also allows it to be developed with a significant number of residential units, which is great because the Mission needs more housing. The development of properties similar to 1515 South Van Ness helps companies like ours continue to operate in a city that we've called home for over fifty (50) years by providing much needed housing opportunities for our employees.



In closing, we believe that LMC has proposed a wonderful new residential project with a beautiful new design on our former home at 1515 South Van Ness Avenue. We fully support their proposed development, which we believe will truly benefit the community. Without their purchase of our property, we would not be in our new home at 1950 Cesar Chavez and we would not have been able to grow our businesses. Our relocation to 1950 Cesar Chavez was the result of careful planning by us, McMillan Electric, and was not the result of any direct or indirect displacement. Please feel free to come visit our new first class facility. I have joked that this is the first time in my 37 year career that I have worked in a real office, which is not far from the truth.

Best regards,



**Patrick J McMillan**  
**Chief Executive Officer**  
**McMillan Bros. Electric Inc.**  
**McMillan Security Systems**  
**McMillan Data Communications**  
**McMillan Audio Visual**

# Exhibit B

**MISSION 2015 INTERIM CONTROLS ADDITIONAL FINDINGS**  
**(1515 South Van Ness Ave. Case No. 2014.1020)**

**Large Projects:** Any residential or mixed-use project that would include the net addition or new construction of more than 75,000 gross square feet or includes more than 75 dwelling units shall require Conditional Use authorization under Planning Code Section 303(c). An application for conditional use shall include the following information:

- 1. Demographic Changes: Provide information about the socio-economic characteristics of the neighborhood and evaluate how the proposed project would affect existing and future residents, businesses and community-serving providers of the area.**

Demographics: Information regarding demographics of the Mission neighborhood was obtained from the October 27, 2015 City and County of San Francisco, Board of Supervisor’s Budget and Legislative Analyst’s Office Policy Analysis Report, “Displacement in the Mission District” (“Mission District Displacement Report”).

**Table 1** is a summary of the Mission neighborhood demographics.<sup>1</sup>

<b>Table 1</b>	
<b>Demographics of Mission Neighborhood 2009-2013</b>	
Total Population	38,287
Hispanic/Latino	18,372
Hispanic/Latino % Total	48%
# Households	14,454
Average Household Size	2.6
Households w/ Children	3,041
% Total	21%
# Households: Related Individuals	6,263
% Total	43%
# Households: Unrelated Individuals	8,191
% Total	57%
Owner-occupied Units	3,655
% Total	25%
Renter-occupied Units	10,789
% Total	75%

Demographic Trends: The Mission District Displacement Report included a discussion of the demographic and socio-economic and income changes that occurred in the Mission neighborhood from 2000 to 2009-2013. **Table 2<sup>2</sup>** below is a summary of demographic trends and **Table 3<sup>3</sup>** is a summary of income changes during this same time period.

<sup>1</sup> Information in **Table 1** comes from the Mission District Displacement Report Exhibit 2 and Exhibit 9.

<sup>2</sup> Information in **Table 2** comes from Exhibit 2 and Exhibit 9 of the Mission District Displacement Report.

<sup>3</sup> Information in **Table 3** comes from Exhibit 12 of the Mission District Displacement Report.

**MISSION 2015 INTERIM CONTROLS ADDITIONAL FINDINGS**  
**(1515 South Van Ness Ave. Case No. 2014.1020)**

<b>Table 2</b>			
<b>Demographic Trends in Mission Neighborhood</b>			
	<b>2000</b>	<b>2009-2013</b>	<b>% Change</b>
Total Population	42,266	38,281	-9%
Hispanic/Latino	25,180	18,372	-27%
Hispanic/Latino % Total	60%	48%	-12%
# Households	13,071	14,454	+11%
Average Household Size	3.2	2.6	-19%
Households w/ Children	4,088	3,041	-26%
% Total	31%	21%	-10%
# Households: Related Individuals	6,655	6,263	-6%
% Total	51%	43%	-8%
# Households: Unrelated Individuals	6,416	8,191	+28%
% Total	49%	57%	+8%
Owner-occupied Units	2,482	3,655	+48%
% Total	19%	25%	+6%
Renter-occupied Units	10,589	10,789	+2%
% Total	81%	75%	-6%

The Mission Displacement Report also indicates that if current trends continue, the Mission District’s Hispanic/Latino population will decline from 48 percent of the total population to 31 percent by 2025.

<b>Table 3</b>			
<b>Income Trends in Mission Neighborhood</b>			
<b>Annual Household Income</b>	<b>2000</b>	<b>2009-2013</b>	<b>% Change</b>
Less than \$35,000	3,682	4,592	+25%
\$35,000 – 99,999	5,798	5,060	-13%
\$100,000 – 149,999	1,972	2,100	+6%
More than \$150,000	1,633	2,702	+65%

The University of California Berkeley’s Center for Community Innovation’s July 2015 “case studies on Gentrification and Displacement in the San Francisco Bay Area” (“[Berkeley Mission District Case Study](#)”) also included information regarding demographic changes and income trends in the Mission neighborhood. **Table 4**<sup>4</sup> below is a summary of the [Berkeley Mission District Case Study](#) demographic information.

<sup>4</sup> Information in **Table 4** comes from the [Berkeley Mission District Case Study](#) Table 4.1, Figure 4.2, Figure 4.3

**MISSION 2015 INTERIM CONTROLS ADDITIONAL FINDINGS**  
**(1515 South Van Ness Ave. Case No. 2014.1020)**

<b>Table 4</b>			
<b><u>Berkeley Mission District Case Study Demographic Information</u></b>			
	<b>2000</b>	<b>2013</b>	<b>% Change</b>
Total Population	54,428	51,578	-5%
Hispanic/Latino	50%	38%	-12%
Family Households	41%	38%	-3%
Median Income	\$70,199	\$76,762	+8%

**Project Information:** The Project is approximately 175,000 gross square feet. It is comprised of 157 residential units, 1,115 square feet of retail space and 4,696 square feet of Trade Shop/Retail spaces divided into six spaces. It includes 82 parking spaces, three (3) car share spaces and 158 bicycle parking spaces. Approximately 41% of the units are two-bedrooms ranging in size from 783 square feet to 1,254 square feet and 59% of the units are studios, junior one-bedroom or one-bedroom units ranging in size from 396 square feet to 654 square feet. The Project is a multi-family, rental development.

The Project includes nineteen (19) on-site affordable housing units, a rental development, as set forth in Planning Code section 415, the affordable housing units will be affordable to individuals making 55% of Area Mean Income (AMI).

**Discussion of Demographic Changes**

Reviewing the demographic information provided and available, the overall population in the Mission has decreased by 5-9% from 2000 to 2013. The Hispanic/Latino population has decreased by 12-27%, the number of families has decreased 3-10%, the overall number of owner-occupied units has increased 6% and the number of renter-occupied units has decreased by 6% during this same time period.

Socio-economically, the Mission District Displacement Report indicates that from 2000 to 2009-2013, the number of households in the Mission neighborhood making less than \$35,000 increased by 25% and the number of households making more than \$100,000 increased by 71% and the number of households making \$35,000-\$99,999 decreased by 13 percent.

From 2010 to 2014, according to the May 29, 2015 City and County of San Francisco, Board of Supervisor’s Budget and Legislative Analyst’s Office Policy Analysis Report, “Housing Development in the Mission District” (“Housing Development in the Mission Report”), the Mission District gained approximately 627 housing units. Only 498 of those housing units resulted from new construction and the remaining 145 units resulted from alterations of existing units. Approximately 16 housing units were also demolished during this timeframe. Of the 627 new units, 60 units (or 10%) were affordable residential units (40 units for low income and 20 for moderate income). This is consistent with the findings of the Berkeley Mission District Case Study which found that “the Mission District has failed to see significant increases in its housing stock,” identifying only 96 new housing units being built since 2010.<sup>5</sup>

<sup>5</sup> Berkeley Mission District Case Study p. 29, Table 4.2.

**MISSION 2015 INTERIM CONTROLS ADDITIONAL FINDINGS**  
**(1515 South Van Ness Ave. Case No. 2014.1020)**

In September 2015, John Rahaim, the Director of Planning, prepared a summary to the Board of Supervisors of the Housing Balance Report (“Housing Balance Report Summary”). According to that summary, from the 3<sup>rd</sup> quarter 2005 until the 2<sup>nd</sup> quarter 2015, only 1,707 net new housing units were built in the Mission neighborhood with 637 of the units built considered affordable housing units.<sup>6</sup> As a result, 37.3% of the total new housing built in the Mission over the past 10 years has been affordable housing.<sup>7</sup>

According to the September 10, 2015, Office of the Controller – Office of Economic Analysis report entitled “Potential Effects of Limiting Market-Rate Housing in the Mission” (“Controller’s Report”), the amount of housing built or in the pipeline in the Mission under the Eastern Neighborhoods Plan is “only a small fraction of the development capacity [envisioned].”<sup>8</sup> According to the report, the “Eastern Neighborhoods planning process provided for 15,005 new housing units in the Mission, of which approximately 500 are either under construction or have been built since 2008, when the plan was passed.”<sup>9</sup> This means there are another 14,500 remaining units under the plan to be built in the Mission.

The Project is constructing 157 new residential units and 19 on-site affordable units. According to the Housing Development in Mission Report, which looked at new housing construction from 2009 to 2013, the Project would result in a 25% increase in new residential units in the Mission District and a 32% increase in the number of new affordable units. According to the Housing Balance Report Summary, which looked at new housing construction from 2005-2015, the Project would result in a 10% increase in new residential units and a 3% increase in affordable units. The Project would also only represent 1% of the total number of new housing units envisioned under the Eastern Neighborhood Plan. This new housing will help address the housing shortfall and housing pressure in the Mission neighborhood that the Berkeley Mission District Case Study and the Mission District Displacement Report both identified. Unfortunately, this is only a “drop in the bucket” of the total demand for new housing in the City or the Mission.

According to the Mission District Displacement Report, from 1980 to 2010 the City added an average of 2,011 housing units per year. The estimated annual demand during that period was 15,300 new housing units per year. This difference between the number of units demanded and the number of units supplied, resulted in a 13,289 unit per year shortfall and a total shortfall of 398,666 units from 1980 to 2010.<sup>10</sup> The Housing Balance Report Summary found that from the third quarter 2005 to the second quarter of 2015, city-wide 22,605 new housing units were constructed.<sup>11</sup> **If 15,300 new housing units per year were required, the total shortfall in housing build during this period was 130,395 units or only 17% of the total amount of housing needed was built.**

Given the significant shortfall in housing units constructed, constructing any housing will be beneficial to meet housing demand. Whether that new housing will push out, price out or

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<sup>6</sup> Housing Balance Report Summary, Table 2.

<sup>7</sup> Housing Balance Report Summary, Table 2.

<sup>8</sup> Controller’s Report, p. 10.

<sup>9</sup> Controller’s Report, p. 10.

<sup>10</sup> Housing Balance Report As a result of the shortfall, the Legislative Analyst’s Office estimates the City’s housing need was 561% greater than the housing supply produced during that period. Mission District Displacement Report, pgs. 4 and 27.

<sup>11</sup> Housing Balance Report Summary, Table 1.

**MISSION 2015 INTERIM CONTROLS ADDITIONAL FINDINGS**  
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force out existing residents and businesses in the Mission neighborhood was analyzed in the September 10, 2015, Controller's Report.<sup>12</sup> Looking only at the rise in income levels and the limited construction of new market-rate housing, the Controller's Report determined a link between market-rate housing construction and gentrification was unlikely. The data analyzed found no link between market-rate housing construction and “no statistical relationship between housing prices and evictions, in the Mission or in the city as a whole.”<sup>13</sup> Instead, it found that reducing market-rate housing construction does not slow the changes that are occurring in the Mission and would likely only place additional stress on housing affordability by further constraining housing supply.

This finding was further substantiated by a recently published study from the California Legislative Analyst Office dated February 9, 2016 titled “Perspectives on Helping Low Income Californians Afford Housing” (“California LAO Report”) which found that when new construction is abundant in communities around the State, middle-income households looking to upgrade the quality of their housing often move from older, more affordable housing into new housing which in turn frees up the older housing for lower income households. The California LAO Report, looking at both Los Angeles and San Francisco, concluded that the more constrained the supply of new housing is, the greater the probability that an affordable unit will move out of the affordable housing stock to a middle income or even higher income household.

The Controller's Report also looked at population changes and frequency of movement. It found that “[r]ather than the construction of new and demolition of old housing, the population change in the Mission since the 1990s has largely occurred through changes in the occupancy of the existing housing stock.”<sup>14</sup> It found that approximately 5,000 new residents move to the Mission each year.<sup>15</sup> Given that the overall population of the Mission has declined during that period, it indicates people are leaving the Mission as quickly as new residents are entering the Mission, but that the change is not linked to new housing construction. If the Mission has only been adding approximately 193 new housing units per year since 2000, the demand for new housing is significant.

As noted above, the Project includes 1,115 square feet of new Retail space and 4,696 square feet of Trade Shop/Retail uses in six (6) separate spaces. It is located on the former site of a commercial use, which as discussed in the finding below, relocated voluntarily. The non-residential spaces in the Project are specifically designed for local artists and artisans and include roll-up doors, separate entries and creative/flexible spaces similar to what currently exists in the Mission neighborhood. The intent is for these spaces to be occupied by neighborhood serving businesses and local artists or artisans. The estimated 200+ new residents of the Project are likely to shop at or frequent not only the new non-residential spaces in the Project but, the other surrounding local businesses increasing their economic base.

The Project will construct 138 new market-rate housing units and 19 affordable housing units. It will increase the housing supply by 25% over what was constructed from 2009 to 2013. It will also

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<sup>12</sup> Controller's Report, pgs. 22-23.

<sup>13</sup> Controller's Report, pg. 18.

<sup>14</sup> Controller's Report, p. 7.

<sup>15</sup> Controller's Report, p. 7.

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provide non-residential spaces for local artists and artisans. Based on the evidence included in the reports cited above, the Project will not impact the demographic changes occurring in the Mission.

**2. Economic Pressure: Provide information about the additional housing supply provided by the project and evaluate how that may affect affordability of newly vacant units of housing (indirect displacement) and the rate of evictions (direct displacement) within the neighborhood.**

The Project would provide 157 new residential units, including 19 on-site affordable units. Approximately 59% of the total Project units will be studios, junior one-bedroom or one-bedroom units and 41% of the units will be two-bedrooms. As noted in the Mission District Displacement Report, the annual demand for new housing in the City is 15,300 new housing units per year.<sup>16</sup> The Project in constructing 157 new residential units would meet 1% of the City's estimated annual housing demand.

According to the Berkeley Mission District Case Study, the Mission is “host to a sizable stock of subsidized housing: nearly 2,000 units.”<sup>17</sup> The Controller's Report also found that from 2001 to 2013, of the 1,464 units constructed in the Mission, 51% of them were affordable units with 646 units developed in 100% affordable projects and 97 units developed in market-rate projects.<sup>18</sup>

### **Indirect Displacement**

The Controller's Report defines “Indirect Displacement” as housing price inflation caused by the development of new housing nearby. The theory behind “Indirect Displacement” is that the construction of new market-rate housing can increase the overall price of adjacent existing housing. The Controller ran three separate pricing models with one model looking at the impact of proximity to market-rate housing built in the Mission in the previous year on home sale prices and the other two models looking at the impact of proximity of market-rate housing built in the Mission over a two (2) and three (3) year period. The results of the modeling found that new market-rate housing had a **negative** effect on nearby house prices. Specifically, the Controller's Report analyzed a property 250 feet from 75 units of new market-rate housing. The report found that construction of the new market-rate housing would result, at a maximum, in a 5.9% **lower** price for the existing property.<sup>19</sup> As a result, the construction of new housing did not increase surrounding land prices or result in indirect displacement. This is also consistent with the Controller's Report's findings, as noted above, that there is not “statistical relationship between housing prices and evictions.”<sup>20</sup>

The California LAO Report also looked at displacement and found that as market-rate housing construction tends to slow the growth in prices and rents, it can make it easier for low-income households to afford their existing homes. This can help to lessen the displacement of low-income households. The California LAO analysis of low-income neighborhoods in the Bay Area actually

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<sup>16</sup> Mission District Displacement Report, pgs. 4 and 27.

<sup>17</sup> Berkeley Mission District Case Study, p. 31.

<sup>18</sup> Controller's Report, p. 7.

<sup>19</sup> Controller's Report, p. 26.

<sup>20</sup> Controller's Report, p.18.



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suggested a link between increased construction of market-rate housing and reduced displacement.<sup>21</sup>

### **Direct Displacement**

The Controller's Report defines "Direct Displacement" as the no-fault eviction of a household **in order to demolish its housing unit**, so that new market-rate housing may be constructed on the parcel. The Controller's Report found that since 1997, 3,835 eviction notices have been filed in the Mission neighborhood, but that only 2.6% of those notices have been for the demolition of a residential unit, or "Direct Displacement" as that term is defined.

The Rent Control Board maintains a database of evictions within the City. This database does not capture buy-outs and other "non-official" eviction proceedings. The March 23, 2015, Annual Report by the Rent Control Board to the Board of Supervisors found a total of 2,120 eviction notices were filed **in the City** from March 1, 2014 through February 28, 2015. This includes 145 notices for failure to pay rent. A breakdown of notices by neighborhood was not available.

The Berkeley Mission District Case Study found that between 2009 and 2013 there were 71 Ellis Act evictions in the Mission District and from 2008 to 2014 "165 or about 28% of the total share of buyouts."<sup>22</sup> Buyouts are not required to be reported and may therefore be under reported. While Ellis Act evictions, buyout and other "Direct Displacement" is occurring in the Mission neighborhood, because the Project site has been used for commercial purposes for the last approximately 50 years, no "Direct Displacement" of residential units will occur.

### **3. Total Housing Production: Provide information about i) the maximum allowable dwelling unit density the site could accommodate and ii) the density of the proposed project, then iii) evaluate how effectively the proposed project would house future residents – add or change the net supply of housing for all income levels and types of tenure.**

The Project is located in the Mission Neighborhood Commercial Transit District ("NCT") and is in the 55-X and 65-X Height and Bulk District. The Project site is approximately 36,000 square feet. Under the NCT zoning, the maximum allowable density on the Project site is dictated by the physical requirements of the Planning Code such as height, bulk, setback, open space, exposure, unit mix, and other requirements.

The Project site is over ½ of an acre. As a result, it qualifies for a Planned Unit Development ("PUD"). Under a PUD, the Project can seek certain exceptions from the requirements of the Planning Code. Assuming a modification from the setback, open space, exposure and unit mix requirement, the maximum allowable dwelling unit density the Project site could accommodate is 221 new dwelling units. This assumes that the Project is seeking an exception from the rear yard and exposure requirements of the Planning Code as well as the 40% 2-bedroom requirement. Under this maximum buildout scenario, the Project would construct 183 studios, 33 junior 1-bedroom units and 5 1-bedroom units. This figure does not take into consideration livability of the units.

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<sup>21</sup> California LAO Report, p. 9.

<sup>22</sup> Berkeley Mission District Case Study, pgs. 33-34.

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The Project is proposing 157 new dwelling units, which is a reduction of 70 units from the maximum buildout scenario or 30% fewer overall units.

The Project includes 19 permanently affordable units. These housing units will be restricted for individuals and families making 55% of AMI in perpetuity pursuant to Planning Code Section 415.8. These new affordable housing units increase by 32% the number of affordable units in the Mission according to the Housing Development in the Mission Report.

The remaining 138 residential units will provide long-term housing for a mix of individuals and families. The 55 studio units will likely house one (1) person while the 38 junior 1-bedroom and 1-bedroom units may house a combination one (1) person or two (2) people. The 64 2-bedroom units are likely to house families and/or unrelated individuals living together (i.e., roommates). The tenure of residents cannot be determined, but the development is a rental product with regular turnover of units expected.

According to the Controller's Report, based on the 5-year census data collected from 2009 to 2013, "87% of Mission residents lived in the same house one year previously, and 13% moved from another location. More than half of the movers – 8% of the total in the Mission moved from somewhere else in San Francisco into the Mission."<sup>23</sup> This "population churn" is lower than the citywide average of 16 percent. As a result, the housing units being built will likely be occupied by Mission residents for more than one year.

The residential units being developed are affordable by design. They include smaller sized units ranging from 396 to 497 square feet for studios, 440 to 654 square feet for 1-bedrooms and 887 to 1254 square feet for 2-bedrooms. Assuming rents based on a price per square foot, the smaller size of the units combined with the limited building amenities offered creates a market rate rental development that is affordable by design.

**4. Affordable Housing Production: Provide information about whether additional affordable housing could be provided on the site, through the availability of public financing or financial incentives, or through use of the State Density Bonus Law, Government Code Section 65915 or other applicable affordable housing incentive program to provide an economic incentive or financial support for additional affordable units on the site.**

The Project site is located within the Mission Area of the Eastern Neighborhoods Community Plan. Because it is within a recently adopted comprehensive plan area, it is not eligible for the proposed Local Bonus Program. The Project is eligible for the State Density Bonus Law, but its use is feasible or practical.

The Project currently maximizes the physical development opportunities on the Project site. Requesting increased height would require an amendment to the Zoning Map and is not financially practical or a viable alternative.

In August 2015, Seifel Consulting Inc. prepared a "Financial Analysis of San Francisco's Proposed Affordable Housing Bonus Program" ("Seifel Report"). That report analyzed key financial factors

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<sup>23</sup> Controller's Report, p. 7.

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that were likely to influence the inclusion of additional affordable housing on project sites through either the proposed Local Bonus Program or the State Density Bonus Law. In reviewing the cases studied, the Seifel Report found a link between the ability to use of the State Density Bonus Law and land costs, hard construction costs, soft costs, construction financing, revenues and impact fees. Projects were more likely to utilize the State Density Bonus Law where a development benefitted from “economies of scale” or spreading development costs across more units. Unfortunately, simply adding more units to a development does not necessarily achieve “economies of scale” as adding more units increase certain costs while decreasing others. The Seifel Report found that the State Density Bonus Law “made sense” when “project sponsors have owned the property for a long time or developers are able to purchase sites at favorable terms” or in “higher priced areas where the increased number of market rate units at high price levels could more than offset the increased number of BMR units, or where development costs are significantly less than estimated.”<sup>24</sup> Here, the Project sponsor recently purchased the Project site, which means the land costs are market-rate, the types of units being developed are affordable by design which means they are not intended for higher prices or in a higher priced area and construction costs are at all all-time high. For all these reasons, including the site constraints, utilization of the State Density Bous Law is not feasible.

The Project will provide 19 on-site inclusionary housing units. It is, however, a market-rate development. Housing subsidy financing from the State and Federal government is very competitive and a market-rate development with affordable housing would not meet the minimum qualifications for such financial awards. Those subsidies are targeted toward 100% affordable projects. Similarly, the value of City affordable housing dollars is better leverage or maximized by supporting 100% affordable projects. As a result, the Project is highly unlikely to qualify for or receive any financial incentives to construct more affordable housing.

**5. Housing Preservation: Provide information about existing housing on the project site in terms of occupancy types, relative affordability, adaptability rent-control and other tenant-features.**

The Project site does not have any existing housing.

**6. Tenant Displacement: Provide information about whether the Rent Board has recorded a history of evictions or buyouts on the property.**

The Project site has been in commercial use since 1948. The Rent Board confirmed via telephone on January 27, 2016, that there is “[n]o record of any evictions at that address” (i.e., 1515 South Van Ness Avenue).

**Additional Information for Displacement, Demolition or Conversion of Certain Uses: If the project would displace, demolish or convert Assembly, Recreation, Arts & Entertainments, Light Manufacturing, Auto Repair, Trade Shops or Institutional uses in any zoning district in making its Conditional Use Authorization Application the application shall include the following analysis:**

The Project site was occupied by McMillan Electric, a local electrical contractor, until April/May of

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<sup>24</sup> Seifel Report, p. 7.

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2015. McMillan Electric used the property for back-office and warehouse storage.

**(a) Relocation assistance in non-PDR zoning districts: In zoning districts other than PDR districts, provide information about the existing or last known Assembly, Recreation, Entertainment, PDR or Institutional tenants, for the last-known tenant the information required would be limited to uses that have been operating within three years prior to the entitlement date of the project, and disclose whether the tenant has relocated or relocation benefits have been or will be provided.**

The Project site is located in the Mission-NCT zoning district, not a PDR district. McMillan Electric has been located on the Project site since the late 1980s. Prior to McMillan's use, the property was occupied by auto sales and service use and then a tire sales and service use. McMillan Electric is a local San Francisco electrical contracting company. Recognizing the increasing value of property and the need to capture that value to accomplish its expansion goals, McMillan Electric placed its property at 1515 South Van Ness Avenue on the market for sale. Lennar Multifamily Communities entered into a contract to purchase the Project site. Using a portion of the proceeds from the sale of the Project site, in April/May of 2015, McMillan Electric relocated to 1950 Cesar Chavez Street. 1950 Cesar Chavez Street is located approximately 1.1 miles from 1515 South Van Ness Avenue.

1950 Cesar Chavez Street is in the PDR-2 zoning district. McMillan Electric's use of the property is consistent with the PDR-2 zoning and is the type of use envisioned for this zone. McMillan Electric voluntarily relocated as part of its overall business plan and no relocation benefits were or will be provided.

**(b) Businesses and Community Building Uses: If the existing Assembly, Recreation, Entertainment, PDR or Institutional tenants have not been relocated or offered relocation benefits then the applicant shall provide information regarding potential impacts to the community and benefits of the project as described below:**

McMillan Electric is staying within the community. It has located approximately 1.1 miles from its previous location at 1515 South Van Ness Avenue. As a result, its relocation will not impact the community.

The Project will benefit the community by providing much needed housing, including 19 new on-site affordable housing units, and much needed new trade spaces.

**(c) Jobs & Economic Profile: An analysis of the economic and fiscal impact of the proposed project. Towards this end, the application shall include an analysis of the loss of the existing use compared to the benefit of the proposed use, including an estimate, if known, of permanent job creation and/or job retention in the community of the proposed use compared to the existing use and associated wages and benefits for both;**

As noted above, the previous use and employer is remaining in the community. **Its relocation to 1950 Cesar Chavez Street has allowed it to grow its business and hire an additional 25 employees.**

The Project development will employ a significant number of construction workers over the 24-

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month construction period. Once completed, the Project will create approximately three (3) full-time management and approximately three (3) to four (4) maintenance jobs on the Project site. The 1,115 square foot retail space is likely to generate between 3-5 full, and part-time, employees. In addition, the six (6) Trade Shop/Retail spaces along 26<sup>th</sup> Street are likely to result in a minimum of six (6) new local artists or artisans on the Project site.

The Project will result in a net increase in jobs and a positive economic and fiscal impact as it not only helped maintain and expand an existing business (McMillan Electric) in the neighborhood but will create short-term construction jobs and long-term Project management, leasing and maintenance employment opportunities.

**(d) Available Space in the Mission. Discuss whether sufficient vacant space for the use type being demolished or removed exists in the neighborhood; and**

The Project will demolish an existing approximately 31,680 square foot commercial building. Based on a January 28, 2016, search of LoopNet, an online commercial real estate platform that lists and tracks commercial real estate in the United States, there are approximately sixty (60) commercial office, warehouse or industrial properties/buildings between 15,000 and 40,000 square feet within a one (1) mile radius of 1515 South Van Ness Avenue. A table of the properties identified in that search is attached. Reducing the size of the building searched to 30,000 square feet, but still within a mile yielded 52 properties and expanding that same search to a 2-mile radius yielded 241 properties. Finally, looking only at buildings of this size and type within the Mission interim control area, there are approximately 45 such buildings. A table of the buildings of this size and type within the Mission Interim Control area is attached. LoopNet identified only two buildings of a similar type in the Mission Interim Control area that were currently available for lease or sale.<sup>25</sup>

Based on a search of LoopNet the loss of the existing building will not impact the type of space available in the neighborhood.

**(e) Affordability of Community-Building Uses. Provide an assessment of the affordability of community-building uses. Community-building uses shall include but not be limited to arts, nonprofit services and childcare uses. This assessment should discuss the nature of the community-building uses, the affordability of the uses and the amount of space provided for such uses on the existing site compared to similar uses associated with the proposed project, if any.**

The existing building on the Project site is a commercial building. It does not include any space for community-building uses. The Project will include six (6) smaller Trade Shop/Retail uses along 26<sup>th</sup> Street. These smaller Trade Shop/Retail uses are intended for local artist and artisans. It will create new space within the community for these types of uses that does not currently exist.

**(f) Non-Residential Displacement. Discuss existing businesses or non-profit organizations that will not be retained in the proposed project, or offered an opportunity to lease space in the proposed project, in terms of length of lease, number of employees, whether the use is minority owned and a non-restaurant or bar use, and if a business is retail whether that business is formula retail. Discuss whether a commercial tenant has**

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<sup>25</sup> Vacant space may exist and may simply not be captured by the LoopNet database.

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**been displaced through rent increases or lack of lease renewal in the last 12 months.**

As noted above, the existing business on the Project site, McMillan Electric voluntarily relocated to 1950 Cesar Chavez Street a property in the PDR-2 zone. No other tenant has occupied the site. Development of the Project will not result in the displacement of any existing business.