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VIA ELECTRONIC SUBMISSION

President Shamann Walton and Supervisors
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689

Re: Appeal of Mitigated Negative Declaration
530 Sansome Street (Case No. 2019-017481ENV)

Dear President Walton and Supervisors:

This firm represents EQX Jackson SQ Holdco LLC, a sponsor of the 530 Sansome Street Development Project (the “Project”). We write this letter to summarize the reasons the Board of Supervisors (“Board”) should deny the appeal filed by 447 Partners, LLC (“Appellant”) of the Project’s Mitigated Negative Declaration (“MND”) (Planning Case No. 2019-017481ENV).

The Project is of major importance to the City and the public welfare, as it would construct a much-needed replacement Fire Station 13 for the San Francisco Fire Department (“SFFD”), at a site adjacent to the existing fire station.

Appellant and its 447 Battery Street Project

We note at the outset that Appellant is the owner of 447 Battery Street, the property immediately adjacent to the Project, which is improved with a historic building that the San Francisco Planning Department has determined to be individually eligible for listing on the California Register of Historic Places and therefore a historic resource under the California Environmental Quality Act.¹ Within the past year, legislation was introduced to locally landmark the building, which, if enacted, would subject all future alterations to the building to review under Planning Code Article 10.²

In its appeal of the Project to this Board, Appellant by and large puts forward the same meritless arguments raised and already appropriately refuted by Planning Department and the Planning

¹ San Francisco Planning Department, Historic Resource Evaluation Response, 447 Battery Street, December 18, 2017, Case No. 2014.1036E.

² Board of Supervisors File No. 201298.

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Commission, including in Exhibit A to the Planning Commission’s motion denying the appeal (the “Planning Staff Report”).

Notably, many of Appellant’s claims about the Project’s supposed impacts to its historic building are surprising, given that Appellant has proposed since at least 2016 to largely demolish the historic building and redevelop 447 Battery Street with an approximately 200-foot-tall hotel. Appellant’s proposal has been undergoing environmental review pursuant to the California Environmental Quality Act (“CEQA”) since approximately 2016 and is subject to a Draft Environmental Impact Report published on October 21, 2020 (the “447 Battery DEIR”).³

Summary of Arguments

This letter is intended to serve as a supplement to the Planning Staff Report, refuting the few novel (though equally flawed) arguments raised in their appeal to the Board.

Specifically, we wish to respond to Appellant’s misleading arguments regarding:

- Geotechnical Analysis. The geotechnical engineering comment letters commissioned by Appellant largely restate rather than refute the MND’s Geotechnical Evaluation, which provides that the existing 447 Battery building may remain in place during construction of the Project. The MND considers rather than (as suggested by Appellant) ignores “the depth of the proposed excavation and presence of shallow groundwater and soils susceptible to caving”.⁴ Confoundingly, as part of its own project, Appellant proposes to construct a subsurface garage with four subterranean levels, relying on a substantially similar geotechnical analysis prepared by the same geotechnical consultant as the Project.
- Standards for Historic Resource Analysis under CEQA. Appellant misconstrues CEQA’s requirements for the analysis of historic resources. CEQA defines a historic resource as “a resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources” (Cal. Pub. Res. Code Section 21084.1). The MND reflects the conclusion of the 447 Battery DEIR that the 447 Battery building is eligible for the California Register.⁵ The MND analyzes the potential effects of the Project on the historic building, thereby satisfying the requirements of CEQA. That 447 Battery Street is also currently being considered by the Board of Supervisors for local landmarking does not alter CEQA’s requirements or otherwise effect the adequacy of the MND.
- Historic Resource Evaluation of 425 and 439 Washington Street. Contrary to Appellant’s assertions, the MND clearly establishes why the buildings at 425 and 439 Washington Street are not individually significant historic resources, including because the facades of

³ San Francisco Planning Department, 447 Battery Street Project Draft Environmental Impact Report, October 2020, Case No. 2014.1036E. State Clearinghouse No. 2019080137.

⁴ Langan Engineering and Environmental Services, Inc., “Geotechnical Evaluation 530 Sansome Street 425 and 435-445 Washington Street San Francisco, California”, December 20, 2019, p. 16.

⁵ San Francisco Planning Department, Historic Resource Evaluation Response, 447 Battery Street, December 18, 2017, Case No. 2014.1036E.

both buildings were subject to “extensive alterations completed in 1967”⁶ and because “the first 23 feet of the Washington side of [425 Washington Street] was demolished.”⁷

- Merchant Street Improvements. Citing no evidence, Appellant asserts that the Project’s Merchant Street improvements would only be built if the 447 Battery Street project moves forward. This statement is simply false—the MND states that the Project would “convert the western portion of Merchant Street in front of the project site into a shared street/living alley” and that these improvements “would extend from Sansome Street to the eastern edge of the project site” (emphasis added).⁸ The MND does not state in any instance that these improvements are dependent on the 447 Battery Project, nor that the Project would construct street improvements on any portion of Merchant Street in front of 447 Battery Street.
- SDAT Review. Again, citing no relevant evidence, Appellant asserts that the Project’s improvements to Merchant and Washington Street were not thoroughly analyzed by the MND and applicable City agencies through the Street Design Advisory Taskforce (“SDAT”). In fact, due to the critical importance of street access and public safety to a new fire station in a downtown area, the Project was subject to iterative interagency review throughout 2020 and spring of 2021, prior to the Project’s approval in July 2021. Even after the Project received its second formal SDAT review letter on November 25, 2020, members of applicable City agencies (including the SFMTA, Planning, and SFFD) met regularly to review and refine the Project’s proposed street improvements prior to the publication of the MND.⁹ Although the SDAT process is separate from the CEQA process, and the number of times that SDAT or City agencies met to discuss the Project is irrelevant to the MND’s adequacy under CEQA, Appellant’s claims are mistaken and suggest that the City did not carefully consider public safety when designing a critical new fire station.

Background

The Project would demolish three existing buildings at 425 Washington, 439 Washington, and 530 Sansome streets and construct a four-story replacement fire station for SFFD Station 13 and an approximately 218-foot high-rise tower and a three-level basement garage under both buildings. The Project includes two distinct possible land use programs (both described in a highly detailed manner in the MND) for the high-rise tower—one land use program that would provide a new 200-room hotel, approximately 40,000 square feet of office, a large fitness facility and ground floor restaurant space (the “Commercial Variant”) and one that would instead of commercial uses provide 256 rental apartments (the “Residential Variant”). While the Commercial Variant and

⁶ MND, p. 54.

⁷ San Francisco Planning Department, Preservation Team Review Form, 425 and 439-445 Washington Street, February 11, 2018, Case No. 2015-015553ENV.

⁸ MND, p. 2. Similarly, the FMMD states on page 18 that “The proposed project would convert a portion of Merchant Street into a shared street/living alley with approximately 4,810 square feet of POPOS that would extend from Sansome Street to the eastern edge of the project site.”

⁹ For example, the minutes for the Project’s weekly progress meeting on December 8, 2021, show that meeting attendees included, among other members of City staff, Kei Zushi (Planning), Chief Jose Velo (SFFD), Chief Dawn DeWitt (SFFD), Karina Laird (SFFD), Adam Smith (SFMTA), Daniel Sheeter (SFMTA), Paul Kniha (SFMTA).

Residential Variant would institute different land use, the design of the high-rise tower would be largely the same, with only minor deviations detailed and analyzed in the MND. Under both variants, the Project would construct shared-street improvements along the site's Merchant Street frontage.

On April 28, 2021, the Planning Department issued a preliminary MND determining the Project could have a significant impact on the environment. A 20-day public review and appeal period followed after public notice required under CEQA and applicable City law was mailed, included in a newspaper of general circulation and posted on the Project site.

On May 18, 2021, Appellant filed an appeal of the preliminary MND. At a July 29, 2021, public hearing, the Planning Commission denied the appeal, relying in part on the detailed Planning Staff Report, as well as a presentation made by Planning Department staff at the hearing.

On August 30, 2021, Appellant appealed the Planning Commission's decision to uphold the MND to the Board.

Arguments Previously Addressed by the Planning Department

Appellant's brief primarily restates arguments already raised to the Planning Commission and accurately refuted in the Planning Staff Report. In short, these are:

1. That the Planning Department did not complete adequate notice, which the Planning Department thoroughly refuted in Response 1 of the Planning Staff Report.
2. That CEQA does not allow the analysis of two different land use programming scenarios for a project in the same CEQA document, which the Planning Department refuted in Response 2 of the Planning Staff Report. We would note in addition, however, that Appellant continues to ignore recent California Court of Appeals case precedent—regarding a project in San Francisco no less—which dismantles Appellant's argument. See *South of Market Community Action Network v. City and County of San Francisco*, 33, Cal.App.5th 321, 332–36 (Cal. Ct. App. 1st Dist, 2019) (describing as “specious” the plaintiffs' argument that a project description containing two potential development scheme violated CEQA's requirement for a finite description of a single project).
3. That the MND does not adequately analyze the Project's potential impacts on the historic resource at 447 Battery Street, which the Planning Department thoroughly refuted in Response 3 of the Planning Staff Report.
4. That the MND inappropriately defers formulation of mitigation measures, which the Planning Department thoroughly refuted in Response 4 of the Planning Staff Report. Appellant again ignores important case law—again in part pertaining to a project in San Francisco—that address and refute Appellant's claims. A mitigation measure may include a performance standard if it identifies the specific criteria the agency will apply in determining that the impact will be mitigated. *Sierra Club v County of Fresno* (2018) 6

C5th 502, 525; *Citizens for a Sustainable Treasure Island v City & County of San Francisco* (2014) 227 CA4th 1036, 1059; *Friends of Oroville v City of Oroville* (2013) 219 CA4th 832, 838; *North Coast Rivers Alliance v Marin Mun. Water Dist.* (2013) 216 CA4th 614, 630. The mitigation measures contained in the MND meet this requirement.

Response to Arguments Not Addressed in Planning Staff Report

Appellant's appeal to the Board includes certain legal and factual contentions that were not raised in its Planning Commission appeal. We wish to briefly address each contention to further demonstrate that Appellant has not raised any meritorious argument and that its appeal should be denied.

A. Conjectural Geotechnical Engineering Comment Letters Restate MND Analysis

Less than 24 hours before the Planning Commission's hearing on the instant appeal, Appellant submitted a "geotechnical consultation" letter from Mr. Eddy Lau, which Appellant argues somehow supports that the Project would likely have a significant impact on the existing historic building at 447 Battery Street, apparently in part because the Project's geotechnical investigation assumed the existing 447 Battery Street building would be demolished prior to Project construction. In fact, Mr. Lau's letter essentially restates the conclusions of the MND's Geotechnical Evaluation.

A subsequent letter from Mr. Robert Pyke was submitted by Appellants to the Board on September 24th, 2021.¹⁰ Mr. Pyke says, "I essentially concur with Mr. Lau's findings", adds no additional facts, and again restates rather than refutes the substance of the MND's Geotechnical Evaluation.

As an initial matter, it is false that the MND's Geotechnical Evaluation assumed the existing 447 Battery Street building would be demolished prior to Project construction,¹¹ a fact that is set forth in Appellant's very own letter from Mr. Lau. The MND's Geotechnical Evaluation instead makes recommendations addressing both the scenario that the Project will be constructed next to the existing 447 Battery Street building and the scenario that it will be built after the proposed 447 Battery Street Project has been constructed.¹²

Further, far from supporting the potential for a significant impact, the letter from Mr. Lau opaquely states that "an impervious shoring system is required to minimize drawdown of the groundwater level within the 447 Battery Street footprint" and that "if groundwater is lowered, the 447 Battery Street building would be substantially impacted" because "additional building settlement would occur" or, if the 447 Battery Street building is a timber pile supported structure, that dryrot and downdrag loading could occur. Mr. Lau's analysis merely rewords considerations clearly analyzed

¹⁰ Robert Pyke, Consulting Engineer, letter to Zacks Freedman & Patterson PC 600 Montgomery Street, Suite 400 San Francisco CA 94111-260, titled "Re: Potential Impact of the Construction of the 530 Sansome Street Hotel Project to the 447 Battery Street Building, San Francisco CA".

¹¹ Page 15 of the MND's Geotechnical Evaluation states that "The proposed excavation will likely extend deeper than the bottom of the foundations of the adjacent structures, with the exception of the piles supporting the building at 447 Battery Street."

¹² Langan Engineering and Environmental Services, Inc., "Geotechnical Evaluation 530 Sansome Street 425 and 435-445 Washington Street San Francisco, California", December 20, 2019, pp. 12-19.

and addressed in the MND's Geotechnical Evaluation regarding dewatering, excavation shoring, and adjacent building settlement. As an example, the MND's Geotechnical Evaluation provides, among other statements related to ensuring the stability of the adjacent property:

The amount of dewatering required to install a soldier pile and lagging system would likely cause significant groundwater drawdown in the surrounding areas, which could induce excessive settlement of adjacent structures and improvements. In addition, the shoring will need to be designed to prevent base heave and bottom blowout instability. This will require a continuous shoring wall, such as a DSM wall, secant pile wall, or concrete diaphragm wall that extends below the sand layer that is present below the Bay Mud.¹³

The MND's Geotechnical Evaluation further provides:

If a DSM shoring wall is installed, only internal dewatering should be required, and, provided the shoring extends a sufficient depth into Old Bay Clay or bedrock, there should not be significant lowering of the groundwater level outside of the excavation. A performance specification should be provided as part of the shoring and dewatering bid documents requiring these systems be designed such that groundwater not be lowered more than two feet below the pre-construction baseline level outside the excavation.¹⁴

The MND includes express findings under Impact GE-3 and describes how the MND's Geotechnical Evaluation would inform the San Francisco Department of Building Inspection's review of the Project's construction documents.¹⁵

Appellant's complaints regarding the sufficiency of the MND's Geotechnical Evaluation are puzzling, given that the DEIR prepared for Appellant's 447 Battery Project relies on a substantially similar geotechnical evaluation prepared by the same geotechnical consultant as the Project.¹⁶ In fact, the 447 Battery Project DEIR's geotechnical evaluation includes the same sentence verbatim that Appellant cites in its appeal brief as evidencing a violation of CEQA ("Further investigation into the type and depth of foundations as well as the basement configuration of the adjacent buildings should be performed to better understand constraints on the proposed shoring system and permanent basement walls"¹⁷).

As such, without analyzing, much less questioning the adequacy of the MND's Geotechnical Evaluation, Appellant's argument and letters from Mr. Lau and Mr. Pyke do not raise a fair argument challenging the MND's impact conclusions.

¹³ *Id.*, p. 16.

¹⁴ *Id.*, p. 18.

¹⁵ See, e.g., MND, pp. 158-160.

¹⁶ Langan Engineering and Environmental Services, Inc., "Geotechnical Investigation 447 Battery Street, San Francisco, California", April 10, 2018.

¹⁷ *Id.*, p. 13.

B. Appellant Misrepresents Relationship Between Local Landmarking Legislation and CEQA Historic Resource Analysis

Ignoring that the MND analyzes potential impacts to the historic 447 Battery Street building, Appellant puts forward a fundamentally conflating and confusing argument that, because there is pending local landmarking legislation regarding 447 Battery Street, the MND did not adequately analyze the Project's potential impacts on the historic building. This argument shows a clear misunderstanding by Appellant regarding historic resource analysis required by CEQA.

CEQA defines a historic resource as “a resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources”.¹⁸ The MND reflects the conclusion of the DEIR prepared for Appellant's 447 Battery Project that the 447 Battery building is individually eligible for listing in the California Register.¹⁹ The MND analyzes the potential effects of the Project on the historic building, thereby satisfying the requirements of CEQA. Regardless of whether 447 Battery Street ultimately is designated as a local landmark, the fact remains that the Project's MND unequivocally categorizes the existing building at 447 Battery Street as a historic resource and thoroughly analyzes the Project's potential impacts on that historic resource.

As such, the Board should disregard Appellant's assertions that pending local landmarking processes undermine the adequacy of the MND's historic resource analysis.

C. Appellant Mischaracterizes the Historic Resource Evaluation of 425 and 439 Washington Street

Without presenting any evidence, Appellant puts forward an inaccurate summary of the Historic Resource Evaluation for 425 and 439 Washington Street and the Historic Resource Evaluation for 447 Battery Street in an attempt to present the Board with a false choice that the Board must either conclude (i) that each of 447 Battery Street, 425 Washington Street and 439 Washington Street are landmark-eligible buildings under Article 10 of the Planning Code or (ii) that the 447 Battery Street building could not appropriately be considered a local landmark.

This is a false choice that ignores the MND's clear explanation as to why 425 and 439 Washington Street are not individually eligible for the California Register. The MND and its Appendices explain that both buildings are ineligible for listing on the California Register because the facades of both buildings were subject to “extensive alterations completed in 1967”²⁰ and because “the first 23 feet of the Washington side of [425 Washington Street] was demolished.”²¹ The MND

¹⁸ California Public Resources Code Section 21084.1

¹⁹ San Francisco Planning Department, Historic Resource Evaluation Response, 447 Battery Street, December 18, 2017, Case No. 2014.1036E.

²⁰ MND, p. 54.

²¹ San Francisco Planning Department, Preservation Team Review Form, 425 and 439-445 Washington Street, February 11, 2018, Case No. 2015-01553ENV

and its Appendices also conclude that the original facades of the two buildings lacked distinction.²² Appendix A1 of the MND explains:

Both [buildings] have lost integrity of design, materials, workmanship, feeling, association, and setting as a result of the widening of Washington Street and the construction of new facades in 1967. Regarding the rear facades on Merchant Street, only the second story of 425 Washington remains intact, and three windows in that story have been filled in. At 439-445 Washington, the Merchant Street facade also remains partially intact, but its second story window sash has been altered, three of the first story openings have been filled in, and doors in the remaining opening have been altered. The lintels above the second story windows also do not appear to be original. Thus, for each building, the Merchant Street facade, which was a secondary facade to begin with, is not intact enough to overcome the complete remodeling of the Washington Street side and to thus convey the pre-1967 aspects of each building's history.²³

In place of that thorough analysis, Appellant asks the Board to conclude 425 Washington and 439 Washington are historic simply because of the date of their original construction and because they are "brick commercial buildings." Stating an unsupported opinion about the historic merit of 425 and 439 Washington Street is not a fair argument that the MND erred in concluding that 425 Washington and 439 Washington are not historic resources. The Board should therefore conclude that the MND appropriately analyzes the Project's potential historic resource impacts.

D. Appellant Misleadingly States That Merchant Street Improvements Would Only be Built if its 447 Battery Street Project Moves Forward

Appellant attempts to undermine the MND's Transportation Analysis by arguing that it improperly relies on an assumption that the Project's "shared street" improvements to Merchant Street would only be constructed if Appellant's 447 Battery Street Project moves forward. Appellant's assertion is incorrect, as the MND clearly provides that the Project would solely construct shared-street improvements adjacent to the Project's Merchant Street frontage. In no instance does the MND state that the Project would build or otherwise rely on street improvements potentially constructed by Appellant's 447 Battery Project.

That the Project would only construct improvements to Merchant Street along the Project's frontage is explained both by words and figures in the MND and the MND's Transportation Study. The MND states that the Project would "convert the western portion of Merchant Street in front of the project site into a shared street/living alley" and elsewhere that these improvements "would extend from Sansome Street to the eastern edge of the project site" (emphasis added).²⁴ The

²² William Kotsura, "Historical Evaluation of 425 and 439-445 Washington Street, San Francisco, According to California Register Criteria", May 2017, pp. 15-18.

²³ *Id.*, p. 15.

²⁴ MND, p. 2. Similarly, the FMMD states on page 18 that "The proposed project would convert a portion of Merchant Street into a shared street/living alley with approximately 4,810 square feet of POPOS that would extend from Sansome Street to the eastern edge of the project site."

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MND's Transportation Analysis states that the portion of the Merchant Street improvements fronting 447 Battery Street would be constructed only if the Appellant's project is constructed:

The 447 Battery Street project proposed a similar shared street design as is currently being proposed by the proposed project and residential variant, and thus would extending the shared street for the entire block of Merchant Street. If the 447 Battery Street project is approved, it would be responsible for implementing the streetscape changes fronting the 447 Battery Street property on Merchant Street.²⁵ (emphasis added)

The MND Transportation Analysis further provides, regarding the shared street improvements:

[T]he segment along the 447 Battery Street project frontage may not be constructed before the completion of the 530 Sansome Street project, in which case the project sponsor would coordinate with SFMTA and SF Public Works to design a transition zone between the existing street and proposed shared street.²⁶

Both Figures 3 and 4 of the MND's Transportation Analysis show the Merchant Street Improvements terminating at the edge of the Project site, and, along the frontage of 447 Battery Street note "447 Battery frontage proposed for improvement as part of 447 Battery Project."²⁷

Given the clarity of these words and images, Appellants' assertions are both surprising and misleading. Appellant's claims also contradict the conclusions of the DEIR for Appellant's 447 Battery Street Project. Appellant's DEIR assumes that only the portion of Merchant Street fronting 447 Battery Street would be improved, and concludes that:

[T]he proposed sidewalk widening and curbless design at this location would minimize any potential vehicle-pedestrian conflicts at the parking elevator landing area by improving sight lines for motorists, encouraging slower vehicle speeds, and allowing pedestrians to bypass any vehicles that may be stopped in the curb cut as they enter the traffic flow along Merchant Street.²⁸

Appellant's statement that "[the Project's] transportation study fails to analyze the potential impacts of the project if 447 Battery is not redeveloped" are unfounded and unsupported by facts. Taken at face value, Appellant's argument is also surprising because it calls into question the conclusions of the transportation analysis of Appellant's own DEIR.

In summary, we respectfully submit that the MND presents a thorough analysis of the Project and clearly fulfills CEQA's goal of providing decision makers information which enables them to make

²⁵ Fehr and Peers, "530 Sansome Street Transportation Study, San Francisco Planning Department Case No. 2019-017481ENV, Prepared for San Francisco Planning Department", April 2, 2021, p. 68.

²⁶ *Id.*, p. 6.

²⁷ *Id.*, pp. 7-8.

²⁸ AECOM, "447 Battery Street Transportation Impact Study Final Report Prepared for the San Francisco Planning Department Environmental Planning Division Case No. 2014.1036ENV", November 7, 2019, p. 58.

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decisions that intelligently takes account of environmental consequences. We therefore respectfully request that this Board deny this appeal.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal tail extending to the right.

Jim Abrams, Esq.