



Norman Yee, President
San Francisco Board of Supervisors
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San Francisco, CA 94102

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO, CA

2020 JAN 23 PM 4:19
BY: *ow*

January 23, 2020

RE: **Appeal of Categorical Exemption from Environmental Review**
PROJECT: **Project / Zoning Map Amend from Residential to Car Storage**
ADDRESS: **118-134 Kissling Street and 1531/1581 Howard Street**
ZONING: **Western SoMa Area Plan; Residential Enclave District, (RED)
Western SoMa Light Industrial & Residential Historic District**

President Yee and Members of the Board:

INTRODUCTION

On behalf of William Hedden (Appellant) and numerous other neighbors of the proposed Project I am writing to urge this Board to set aside the exclusion from environmental review under the provisions of the second California Environmental Quality Act (CEQA Categorical Exemption “CatEx2”) granted by the Planning Dept to the project proposed at 1531-1581 Howard Street-118-134 Kissling Street (the “Project”). CatEx2 (reissued 12/24/19-Exhibit 1) is a retroactive part of a conditional use authorization and zoning map amendment re-approved October 25, 2018. Appellant owns the fifteen (15) unit, historic, rent-controlled apartment building (below) adjacent to the site at 230 11th Street. Kissling is *exclusively* zoned for housing (24+ units); the Project rezones for car parking.



Kissling Street is in a Historic District and is zoned residential only enclave (RED), the proposal to intensify the non-conforming use for more cars on “stackers” and modern metal screens more than thirty (30’) feet tall is not compatible and lacks CEQA review.

The Project site is in the Eastern Neighborhoods, Western SoMa Area Plan and is part of the South of Market Mixed Use Districts. The Project involves nine different development lots with frontages on three different streets (Kissling, Howard and 12th) and three different zoning designations. Four of the lots of the Project on Kissling to be re-zoned, are currently zoned as *Residential Enclave District* (RED) and are being used as a parking lot by the Sponsor, a nearby automotive dealership. This is a non-conforming use in a RED District...that is supposed to sunset under Planning Code Section 185 & 186. Instead this Project would reinforce and intensify that non-conforming use and provide that it will not “sunset” but will be in place for many more decades to come.

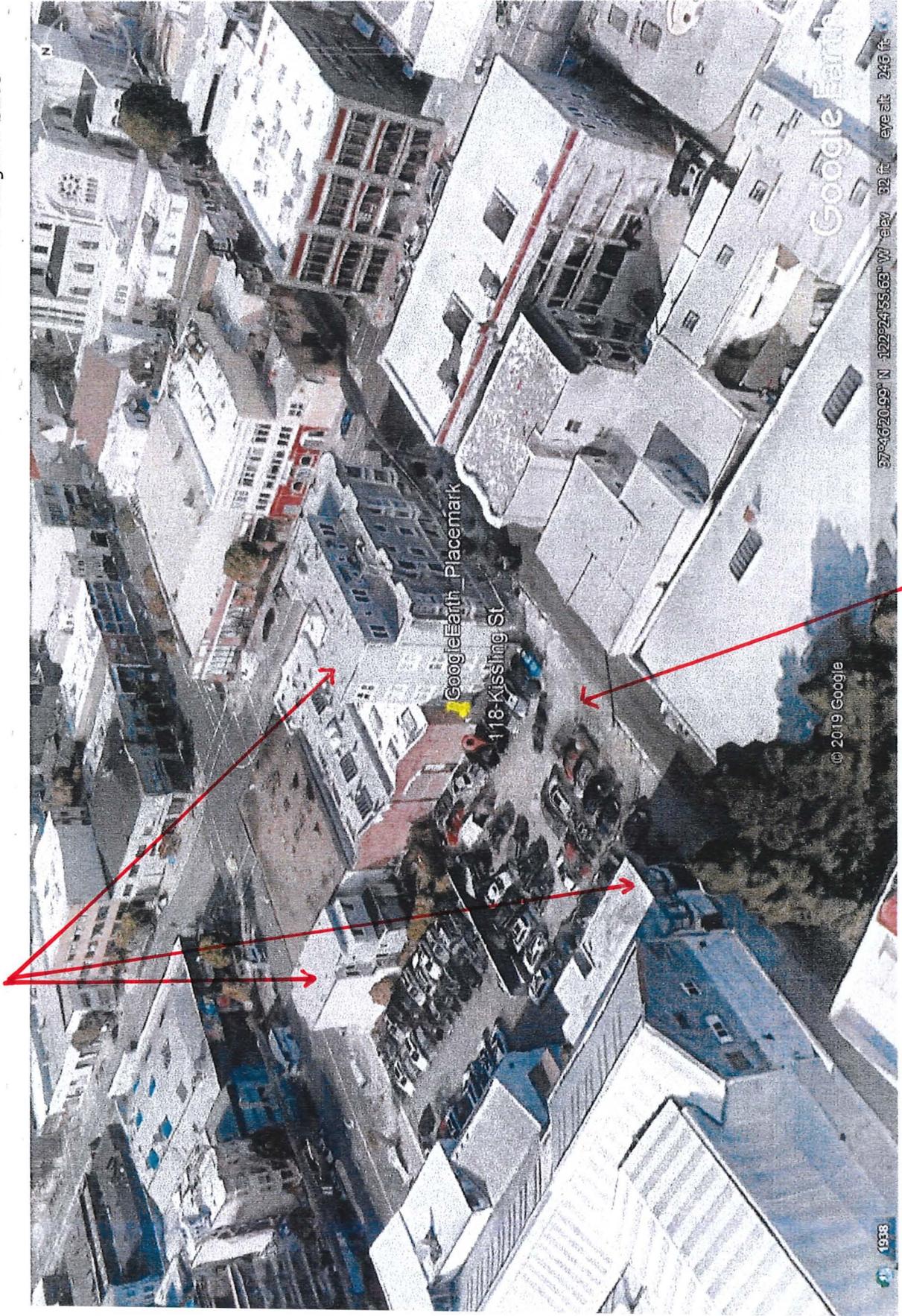
Because of this rezoning, the Project represents a huge loss of housing opportunities. The four RED lots represent the possibility of at least 24 units of housing, (and perhaps as many as 40 units) with a substantial portion devoted to affordable housing. Rezoning these “Residential Enclave” lots in this South of Market neighborhood is a violation of every policy the City has to provide more housing opportunities and to preserve housing opportunities, especially since these lots are in a true “blue-collar neighborhood” and could be developed with very high density. There are no density limits on these lots and Accessory Dwelling Units are permitted as of right. The CatEx fails to analyze any aspect of the zoning change and how replacing housing opportunities with hundreds of cars will impact the environment, the Historic District and the entire neighborhood.

The site is within Western SoMa Light Industrial & Residential Historic District, and oddly, no comprehensive analysis of this fact is included in the environmental review. There is no rational explanation of the negative impacts of the installation of a solid wall of car stackers across numerous residential lots in a Historic District and specifically, placing those stackers between buildings of importance and noted significance in the Historic District. (230 11th Street and 138 Kissling Street). The bald conclusion from 2015 that rezoning the lots to allow placing stackers filled with automobiles and metal screens more than 30’ feet tall adjacent to and between and among historic buildings, in a historic district will have “no significant impact,” is unsupported and simply untrue.

To allow the proposed Project as presently configured, it is mandatory to re-zone these restricted RED lots to allow the lots to be used for vehicle storage in large car stackers, a use which is not a permitted use in the RED Districts. As the name describes, RED zoned areas are enclaves in the South of Market area to be used *exclusively* for current and future residential uses---this is especially important in a Historic District. The Kissling site is surrounded by historic contributing residential buildings on three sides. (next page)

Appellant’s building to the east and the homes to the west and north are all acknowledged historic resource buildings, contributing to the Historic District. The conclusion that rezoning these four residential lots to allow ultra-modern, all metal automobile stackers and metal screens in excess of thirty feet in height to cover four development lots will not have a significant impact on the Historic District or on the historic resources which are adjacent to the Kissling site on three (3) sides is unsupported and anti-intuitive. Such structures will devastate the appearance and “feeling” of the Historic District

Historic Contributing Buildings in a Historic District on All Three Sides of Subject Site

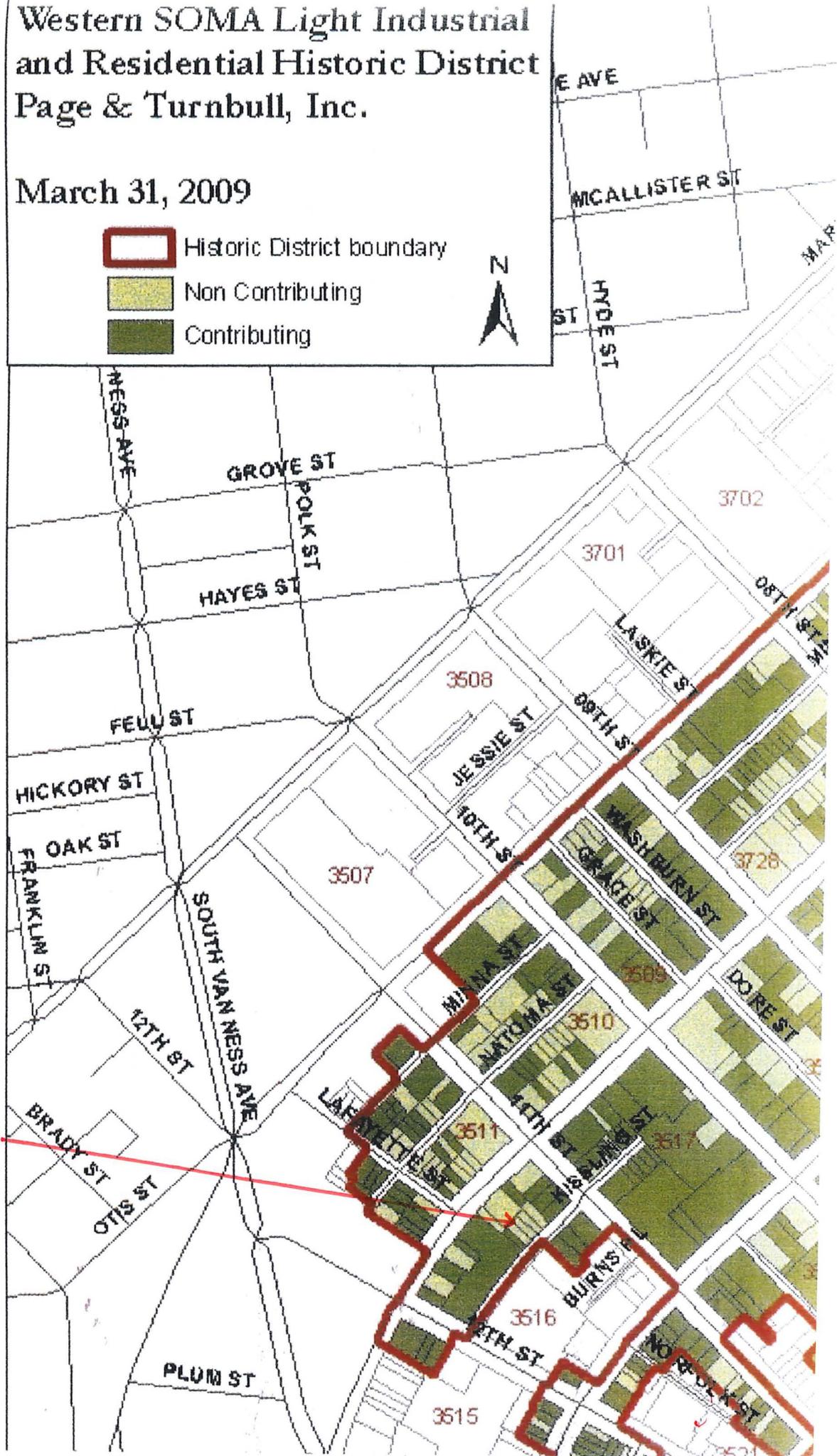


Four Residential Lots to be Rezoned for 32' Car Stackers

Western SOMA Light Industrial and Residential Historic District Page & Turnbull, Inc.

March 31, 2009

-  Historic District boundary
-  Non Contributing
-  Contributing



PR 523L (1/95)

Figure 1. Western SoMa Light Industrial and Residential Historic District map

Four Residential Lots on Kissling to be Rezoned for Parking Cars

Surrounded by Historic Buildings on Three Sides

The Project is opposed by its immediate neighbors because of potential negative impacts to the historic neighborhood and what is supposed to be a specifically preserved historic *residential* character on the narrow alley of Kissling Street. The proposed unbroken façade of metal screens in excess of thirty feet (30') in height will be decidedly out-of-character and out of place on historic Kissling Street.

No prior notice was given of the re-zoning of the subject lots because the Project was previously approved by the Planning Commission in error BEFORE any public notice of the rezoning. The Project has been hopelessly piecemealed by the Sponsor and "approval" (March 2016) was given to the Project Sponsor nearly four years ago in error for a use that is not permitted at the site. Both the Planning Dept and the Sponsor completely failed to note the zoning at the site when proposing and reviewing the proposal and failed to note that the Project proposed at the site is not a permitted use in the RED District and therefore the Project should not be approved without rezoning the site.

After Appellant pointed out this fact two years ago, the Planning Dept. rushed to belatedly and retroactively re-zone the lots from RED to RED-MX to allow car storage. The Dept then refused to review the environmental determination at first claiming the rezoning and increase in height to the Project are not a "substantial modifications." That incorrect determination was also reversed. The Project has been impermissibly "piecemealed" into several approvals over the past five years. Approvals which violate the Planning Code in most instances, and which certainly are an affront to over-arching policies of the Code and General Plan. No mention at all is made in any of the Project review documents of the massive loss of housing opportunities.

1. The New (Second) CatEx Issued for the Project Fails to Address the "Substantial Modifications" of the Project and Was Issued in Error

As set forth in Exhibit 1, (an explanatory Memorandum issued by the Environmental Review Officer on Christmas Eve), because of "substantial modifications" to the original Project over the years, (specifically, a substantial increase in height and retroactive need for rezoning the site) the Department was forced to set aside the original categorical exemption determination ("CatEx1") issued for the project on March 2, 2016. The Dept also rescinded a subsequent termination of "no substantial notification" issued on December 4, 2019. As stated in the Memo:

"Upon further review, the planning department has determined that the modifications to the project could be considered an intensification of the project. Today, the planning department therefore rescinded the categorical exemption issued on March 2, 2016 for the original project, as well as the December 4, 2019 determination of no substantial modification." (Exhibit 1, page 2).

Incredibly, the Department then doubles down on its previous errors by immediately issuing a new categorical exemption determination ("CatEx2") without addressing the

issue of the “substantial modifications” to the project which forced it to rescind the prior CatEx1 and to reverse the finding of no substantial modification. The new CatEx2 issued for the project on December 24, 2019, is actually attached to the Memorandum from the Environmental Review Officer which makes the specific findings of substantial modification and revokes the previous determination of no substantial modification. The new CatEx2 attached to the Memo, then fails to make the required analysis or address the finding of substantial modification stated in the Memo in the newly issued categorical exemption determination.

The Memo written by the Environmental Review Officer, finds “substantial modification” of the Project and then attached to that same Memo is CatEx2 which fails to address the substantial modification as required by CEQA. The last page of the Categorical Exemption Form (“Step 7”) addresses what must be done after modification of a project previously found to be exempt.

TO BE COMPLETED BY PROJECT PLANNER
STEP 7: MODIFICATION OF A CEQA EXEMPT PROJECT

In accordance with Chapter 31 of the San Francisco Administrative Code, when a California Environmental Quality Act (CEQA) exempt project changes after the Approval Action and requires a subsequent approval, the Environmental Review Officer (or his or her designee) must determine whether the proposed change constitutes a substantial modification of that project. This checklist shall be used to determine whether the proposed changes to the approved project would constitute a “substantial modification” and, therefore, be subject to additional environmental review pursuant to CEQA.

Step 7 is not completed and the finding of substantial modification in the Memo is not part of the new CatEx2. The requirement clearly states that the “checklist shall be used” For example, the modified project obviously did: “*Result in expansion of the building envelope, as defined in the Planning Code;*” and the form was not complete to indicate the change. The Memo only states vaguely that the modification “could be considered an intensification of the project.” It does not state whether further public notice is needed under the Planning Code or whether the “intensification” and/or new size of the Project require such notification.

On this ground alone the appeal must be granted, and the categorical exemption determination must be reconsidered and reissued.

2. City Policies for Preserving Housing Must Also be Applied to Preserving Housing Site Opportunities for New and Moderate-Income Housing

Although the project is not typically the type which might have significant environmental impacts, given the circumstances of the housing crisis, and the City’s dire need for housing and affordable or moderately priced housing this Project will have untold negative environmental impacts. The City cannot encourage the construction of housing and affordable housing if it allows commercial project such as this to permanently remove the housing opportunities that exist in our neighborhoods. Especially residential neighborhoods surrounded on all sides by Historic, rent-controlled residential uses.

Rezoning these vacant parcels, parking lots and other properties currently in open storage use which are also currently undeveloped or underdeveloped and are viewed by the present zoning philosophy as opportunity sites for new, moderate-income, in-fill housing--only new residential uses are principally permitted in the RED Districts---is directly contrary to the General Plan, directly contrary to the housing policies of the City and directly contrary to all of the campaign promises made by the Mayor and the Supervisors alike. The loss of the potential 25-50 units of housing (the ONLY thing which can currently be built on these parcels) is a significant environmental impact.

Yet the Department has done nothing to address (or even discuss in the environmental review documents) these all-important issues and there is no mention at all the lost housing opportunity which is being squandered. A completely different standard than that mandated by our General Plan may not be applied to the Project and the multitude of housing preservation polices ignored. The Department did not require any review of the lost housing opportunities in this case. The environmental review process is established such that the Department must conduct the analysis in order to reach a conclusion of no possible impact and to issue a CatEx.

3. The Findings of Overriding Benefits Are Not “Public” Benefits and Are in Direct Conflict with The General Plan Which Mandates Retention of Housing Opportunity Sites and Historic Resources

The City’s General Plan is the “constitution” for land-use development. All land use and development approvals must be consistent with the General Plan---this is one of the mandates of CEQA. To be consistent, a development approval must further objectives and policies of the General Plan. Although the City has significant discretion to determine whether a project is consistent with the General Plan, projects cannot be inconsistent with fundamental, mandatory and specific policies---the proposed Project as it impacts the residential lots on Kissling Street is inconsistent.

The proposed project is directly and bluntly inconsistent with the most fundamental aspects of the mandatory policies of our General Plan. It is acknowledged that the project re-zones what is to be multiple *opportunity sites for new, moderate-income, in-fill housing sites*. These are specifically preserved by the RED zoning as **opportunity sites for new, moderate-income, in-fill housing**. (See, Appendix A—Summary of District Standards --RED). Planning Code Section 813 states as follows:

SEC. 813. RED – RESIDENTIAL ENCLAVE DISTRICT.

*Residential Enclave Districts (RED) encompass many of the clusters of low-scale, medium density, predominantly residential neighborhoods located along the narrow side streets of the South of Market area. Within these predominantly residential enclaves lie a number of vacant parcels, parking lots and other properties in open storage use. These properties are undeveloped or underdeveloped and are viewed as **opportunity sites for new, moderate-income, in-fill housing**.*

*The zoning controls for this district are tailored to the design needs and neighborhood characteristics of **these enclaves and are intended to encourage and facilitate the***

development of attractive, compatible and economically feasible in-fill housing while providing adequate residential amenities to the site and neighborhood.

Dwelling units are permitted as a principal use. Nonresidential uses, except art related activities, are not permitted, except for certain uses in historic buildings. Existing commercial activities in nonresidential structures may continue as nonconforming uses subject to the termination requirements of Sections [185](#) and [186](#). Accessory Dwelling Units are permitted within the district pursuant to subsection [207\(c\)\(4\)](#) of this Code.

The proposed Project violates every aspect of the Code provisions for RED sites. The Project eliminates the multiple opportunities at this site for *new, moderate-income, in-fill housing*. The Project eliminates the possibilities that now exist for *attractive, compatible and economically feasible in-fill housing while providing adequate residential amenities to the site and neighborhood*. Car Stackers and metal screens taller than adjacent housing are NOT compatible, not attractive, provides no additional housing or amenities to the existing housing. Instead, such a project has exactly the opposite impacts. It removes all of the housing opportunities for the site and negatively impacts the existing housing on adjacent parcels.

The City, the Planning Commission and the Planning Department do not have the discretion to set aside these policies in favor of the Project which is acknowledged to eliminate the mandate for housing at the site. The Priority Policies forbid such a result under any but the most unusual circumstances, not present here.

The Residence Element to the City's General Plan states as follows:

"Two policies are to be given priority and are to be the basis upon which inconsistencies in this Element and other parts of the Master Plan are resolved. They are:

- **That the City's supply of affordable housing be preserved and enhanced.**
- **That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods."** (bold type in the original)

The Department fails to acknowledge that this Project, by re-zoning what is currently reserved for housing, violates these fundamental policies. The analysis presented by the Dept then does what the General Plan forbids it to do...it "balances" a litany of lesser policies and priorities against these ultimate priority policies and concludes that the Project meets assorted Urban Design Element-Transportation Element-Recreation and Open Space Element etc. and is sufficient to set aside and violate the priority policies. However, under CEQA, the Dept has the obligation to at least review the issues and not to completely ignore them. There is no mention of these impacts in any of the CEQA review documents.

Although this is not a referendum on Royal Motors (it doesn't matter who the applicant is, these policies may not be violated) the laundry list of "benefits" are all private benefits for a private business which sells luxury cars. Such matters are completely irrelevant to

the issues and policies to be considered by review under the General Plan for the purposes of CEQA. For this reason, the Categorical Exemption Determination is completely inadequate and cannot provide legal justification for violation of the most fundamental and important policies of the City's General Plan. It simply fails to correctly describe the impacts of the Project or to review the policies applicable to the Project.

There is no evidence to support the Dept's conclusion that specific overriding "commercial" or other so-called benefits of the Project outweigh the significant effects on the environment and the obvious violation of the General Plan's most important priority policies. In this instance the Categorical Exemption Determination is incomplete and invalid because it fails to offer a proper basis for approving the Project and simply fails to discuss possible environmental effects. The record simply does not support the Dept's finding that a CatEx may issue under the circumstances in front of the Board.

4. The Categorical Exemption was Improperly Issued; the Project Description Fails to Note the Impacts on the Historic District, the Impacts from the Rezoning for the Project, the Creation of More Than 70 New Parking Spaces, or the Extent of the Substantial Excavation Necessary for the Project

The most crucial aspect for Environmental Review is an accurate and detailed project description. The first Cat Ex issued in this case was issued on February 13, 2015, a full three and one-half (3 ½) years before the rezoning Project was brought before the Planning Commission. There was no mention of the rezoning in the project description nor is the loss of the housing opportunity sites mentioned anywhere in the Project description or the legislative documents supporting the Project. In other words, the Project received all its approvals far ahead of any analysis of what it entails and what the impacts will be. The original approval was granted for a non-permitted use.

Further, the Board should bear in mind that this is the *fourth project description* and the *fourth modification* to the description for this Project, as a matter of fundamental fairness the Dept should renew its CEQA review and reevaluate the Project and provide notice to the surrounding residential neighbors.

A. FIRST PROJECT DESCRIPTION

The below statement is the first Project Description from the December 18, 2014, EE Application:

"Project Description

The project proposes the reconfiguration of an existing motor vehicle repair operation. Currently Royal Automotive Group uses all of the properties above, plus Block 3516, Lot 55, for their motor vehicle services and vehicle storage for their various dealerships in the vicinity. The main motor vehicle repair operations take place within the buildings located at Block 3516, Lots 44 and 55. Vehicle storage (including vehicles to undergo service and new vehicle overflow storage) takes place on the remaining lots. The project proposes to increase the number of vehicle storage spaces from 81 to 236 via the

installation of 4-level stackers on the existing surface vehicle storage lots. The project also proposes to construct a new, 1,283-square-foot car wash building on lot 63, to be used only as part of the motor vehicle repair services (i.e., the carwash would not be open to the public on a retail basis). The project also proposes to reduce an existing curb cut along Howard Street from 42 feet to 29 feet and remove an existing 46.5 foot curb cut along Kissling Street.”

B. SECOND PROJECT DESCRIPTION

The Project Description is part of a CatEx from the Conditional Use Authorization passed by the Planning Commission on March 10, 2016:

“Project Description. The project sponsor proposes to establish 4-level vehicle stacker storage (enclosed vehicle storage use) for 132 spaces on the subject lots [lots 056 (1581 Howard Street) and 064 (1531 Howard Street)], including a new 1-story car wash. Three vehicle stacker screens up to 32'-7" tall are proposed along Howard Street and up to 21'-8" tall are proposed along Kissling Street. The site is occupied by an existing auto repair facility (dba Royal Motors).”

Conditional Use authorization was granted to the Project for a non-permitted use and without further CEQA review in direct violation of the zoning.

C. THIRD PROJECT DESCRIPTION

Below is the project description from the environmental document of August 8, 2017, new portions in red:

*“Reconfigure an existing motor vehicle repair operation by converting approximately 9,691 square feet of existing surface vehicle storage on Lots 56 and 64 to four-level parking stackers, **converting 8,069 square feet of existing surface vehicle storage on Lots 39, 40, 41, and 42 to four-level parking stackers**, and construction of an approximately 1,283-gross-square-foot car wash on Lot 64. Installation of approximately **31'-8"**-tall metal screening on portions of the Kissling Street frontage approximately **32'-7"**-tall metal screens on portions of the Howard Street frontage. The proposed stackers would accommodate approximately **200** net new vehicles. Parking storage and car wash facilities would not be open to the public. Reduction of existing 42-foot-wide curb cut on Howard Street to approximately 29 feet wide and removal a 46.5-foot-wide curb cut on Kissling Street. **The project”***

This project description and modification was incomplete and ended with a two-word sentence that led one to the conclusion that much was omitted. No mention is made in any of the prior project descriptions (including this one) of the need to rezone the site and the change of use from RED to RED-MX to allow the proposed use. Also, no mention is made of the dramatic increase in height on Kissling Street by 10 feet (from 21'8" to 31'8"). Both of these changes to the project are “substantial modifications” that require a new environmental review.

Accordingly, on the Dept's CatEx form, the "change of use" box should have been checked....The CatEx used to modify the existing CatEx does not include any reference to the rezoning and fails to "check the box" for that change of use and also fails to note the increase in height by 10 feet under Section 311.....New public notice of this new project should have been required. The CatEx Form for modifications used by the Dept states at page 7 as follows:

"DETERMINATION IF PROJECT CONSTITUTES SUBSTANTIAL MODIFICATION

Compared to the approved project, would the modified project:

Result in expansion of the building envelope, as defined in the Planning Code;

Result in the change of use that would require public notice under Planning Code Sections 311 or 312; (both of these boxes should have been checked)

Result in demolition as defined under Planning Code Section 317 or 19005(f)?

Is any information being presented that was not known and could not have been known at the time of the original determination, that shows the originally approved project may no longer qualify for the exemption?

If at least one of the above boxes is checked, further environmental review is required"

(bold in the original---further environmental review required because of change of use and expansion of the envelope)

4. FOURTH PROJECT DESCRIPTION

Below is the Project Description from the new modified CatEx issued by Ms. Delumo on December 4, 2019----changes to project description in red:

"The proposed project would reconfigure an existing motor vehicle repair operation by converting approximately 9,691 square feet of existing surface vehicle storage on Lots 56 and 64 to four-level parking stackers, converting 8,069 square feet of existing surface vehicle storage on Lots 39, 40, 41, and 42 to four-level parking stackers, and constructing an approximately 1,283-gross-square-foot car wash on Lot 64. The project would install approximately 32'-7"-tall metal screening on portions of the Kissling Street frontage approximately 32'-7"-tall metal screens on portions of the Howard Street frontage. The proposed stackers would accommodate approximately 200 net new vehicles. The parking storage and car wash facilities would not be open to the public. The project would reduce the existing 42-foot-wide curb cut on the Howard Street frontage to approximately 29 feet wide and remove the existing 46.5-foot-wide curb cut on the Kissling Street frontage. The proposed project would amend the San Francisco zoning map by changing the zoning district for Lots 39, 40, 41 and 42 at the project site from RED (Residential Enclave) to RED-MX (Residential Enclave-Mixed)."

The Dept at first claimed the changes to the Project were not “substantial” but Director Lisa Gibson reversed that destination on December 24, 2019. The third and the fourth modifications to the Project are “substantial” within the specific definitions of the Code. Planning Code Section 311 provides that a rezoning or “change in land category” is specifically defined as a change of use in the Eastern Neighborhoods that requires public notice under Section 311. Section 311 (b) (1) (B) states as follows:

(B) Eastern Neighborhood Districts. In all Eastern Neighborhood Districts a change of use shall be defined as a change in, or addition of, a new land use category. A “land use category” shall mean those categories used to organize the individual land uses that appear in the use tables, immediately preceding a group of individual land uses, including but not limited to the following: Residential Use; Institutional Use; Retail Sales and Service Use; Assembly, Recreation, Arts and Entertainment Use; Office Use; Live/Work Units Use; Motor Vehicle Services Use; Vehicle Parking Use; Industrial Use; Home and Business Service Use; or Other Use.

Rezoning or changing the land use category from RED to RED-MX in the Eastern Neighborhoods is a “new land use category” because the zoning is “those categories used to organize the individual land uses that appear in the use tables.” Accordingly, the change of zoning and permitted use for these lots is specifically defined as a “change of use” under the statute which requires public notification. The Project must be reconsidered now that a new project description has been provided which includes the rezoning. Obviously, the rezoning is the most important and salient part of the new project because without it, no part of the new project could go forward. This is a change in *Motor Vehicle Service Use and Vehicle Parking Use* because none of those uses is permitted in the RED zoned areas---which is strictly residential and protected hence the need to rezone these lots.

Regardless of any historic uses at the site in question, rezoning to legalize a use which is NOT PERMITTED under the Planning Code (as here), is a “change of use” as defined by the Planning Code that requires public notice and a new environmental review. As stated in Section 311, a change in the land use category (not whatever use is in operation at the site) is the “change of use.” The reference to change of use refers to the permitted use at a given site, it does not refer to an illegal or impermissible use that may exist at a site. In this instance, the lots to be rezoned may have been used as parking lots over many years, the zoning does not permit such a use. However, regardless of that fact, the move to rezone those lots and to legalize commercial vehicle storage in four story stackers is a “change of use” under the Planning Code although in the vernacular, or to the common person the use may be the same or similar to what is there now. The Code specifically refers to the change of permitted uses under the Planning Code as a “substantial modification,” regardless of what actual use the site may have been put to.

Further, the changed project modifications require new notification under Section 311 because twice these modifications increased the height of the structures to be built on Kissling Street by ten (10) feet and the newest project description increases the envelope of the structures again by an additional one (1) foot. All told, the envelope of the building

has been increased some 11 feet by the ever-changing project description and modification of the project. As set forth above, this modification is also by definition a substantial modification under Administrative Code Section 31.08(i) (1) (A) because it is, ***“a change that would expand the building envelope”*** and therefore requires public notification under Section 311.

The Project also fails to note that it creates far greater than six more new net parking spaces at the site. The Applicant or the Environmental Planner simply failed to note this mandatory issue under the Transportation Impact. For unknown reasons, the Department mistakenly failed to analyze, under the transportation element, the creation of dozens of new parking spaces from the installation of the stackers and possible increased vehicle trips on narrow, residential Kissling Street. Further, Environmental Review is required given the substantial changes to the Project years later and the omission of crucial information in the Project description and the errors and omissions on the Cat Ex.

5. The Environmental Review for the Project Fails to Note that the Project is Entirely Within a Historic District & Surrounded by Contributing Buildings

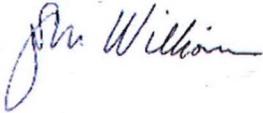
The Project site at 118-134 Kissling Street is located within the eligible Western SoMa Light Industrial & Residential Historic District. One cannot obtain that information from a review of the environmental analysis for the Project as no mention of the Historic District is included in the environmental review---even the fact that the Historic District exists is omitted. Staff failed to note the site was in a Historic District and failed to note that the application was for a non-permitted use.

This important new eligible Historic District was certified and adopted by the Historic Preservation Commission in February 2011. None of the notices for the Project mention this fact and all the environmental review documents are devoid of any information or analysis related to this crucial fact. Further, the Project on Kissling Street is sandwiched between two important contributing and eligible buildings at 230 11th Street and 138 Kissling Street.

CEQA review and notably CEQA review in Historic Districts is about providing information and analysis to determine if the proposal could cause a detrimental impact in the Historic District and any surrounding historic resources. This was clearly not accomplished in this instance. The consultants' reports submitted by the Sponsor and the Dept's environmental paperwork---including the Application, CatEx, Modification of the CatEx, Public Notices and all other staff reports or analysis, completely omit this important fact. A review was made of the project and its impacts on the Historic District in May 2015, nearly five years ago and based on different plans and a mistaken belief that the zoning allowed the project. On this ground alone, the CatEx and Environmental review mandated by CEQA is insufficient. There is also no mention of the specific design guidelines adopted for the RED zoned Districts or even the RED-MX zoned areas. The impacts the resource of the Historic District MUST be included in any adequate CEQA review and analysis.

We request that the Board of Supervisors uphold and grant our appeal and return the CatEx to the Department for further consideration and for findings consistent with the General Plan.

VERY TRULY YOURS,

A handwritten signature in blue ink, appearing to read "Mr. Williams", written in a cursive style.

STEPHEN M. WILLIAMS

APPENDIX A

**SUMMARY OF DISTRICT STANDARDS
RESIDENTIAL ENCLAVE DISTRICT (RED)**

813 -- RED (RESIDENTIAL ENCLAVE) DISTRICT – Residential Enclave Districts (RED) encompass the clusters of low-scale, medium density, predominantly residential neighborhoods located along the narrow side streets of the South of Market SLR district. Within these predominantly residential enclaves lie a number of vacant parcels, parking lots and other properties in open storage use. These properties are undeveloped or underdeveloped and are viewed as opportunity sites for new, moderate-income, in-fill housing.

Art. 8 -- USES – Dwelling units are permitted as a principal use. Social services and institutional uses are permitted as conditional uses. Existing commercial activities in nonresidential structures may continue as nonconforming uses subject to the termination requirements of Sections 185 and 186.

803.4 -- USES NOT PERMITTED – Uses generally not permitted in any South of Market District: Adult entertainment, bookstore or theater; amusement game arcade or similar enterprise; shooting gallery; animal kennel, riding academy or livery stable; automobile, truck, van, recreational vehicle/trailer or camper sales, lease or rental; auto tow of inoperable vehicles; auto wrecking operation; drive-up facility; hotel, motel, hostel, inn, or bed and breakfast establishment; heavy industry subject to Sec 226(e)-(w); junkyard; landing field for aircraft; massage establishment; mortuary; movie theater and sports stadium or arena.

Art. 2.5 -- HEIGHT AND BULK – Generally 40-X (See Height and Bulk Zoning Maps and Standards in Article 2.5 of the City Planning Code.)

124 -- FLOOR AREA RATIO LIMIT - The commercial FAR for the district is 1:1.

813.03 -- DWELLING UNIT DENSITY – One unit per 400 square feet of lot area.

134 -- REAR YARDS – A rear yard of 25% of the lot depth would be required at the first level of residential use and above or may be modified or waived as per Section 134(e).

135 -- OPEN SPACE – Open space would be required for all commercial and industrial uses, at the following ratios: one sq. ft. of open space per 250 gross sq. ft. of general commercial, which includes retail, eating or drinking establishments, personal service, wholesale, home and business service, arts activities, institutional and like uses (1:250); 1:120 for manufacturing and light industrial, storage without distribution facilities, and like uses; and 1:90 for office use. Residences would require 60 sq. ft. of open space.

151 -- PARKING - Parking spaces for dwelling units require one space for each dwelling unit; workspace for architects and engineers would require one parking space per 1,000 sq. ft. of floor area (1:1000); artist and artisan production and performance spaces would have a 1:2000 requirement

EXHIBIT 1



SAN FRANCISCO PLANNING DEPARTMENT

RECEIVED
OFFICE OF SUPERVISORS
SAN FRANCISCO
2020 JAN 23 PM 4:19

MEMO

DATE: December 24, 2019
TO: Interested Parties
FROM: Lisa Gibson, Environmental Review Officer
RE: New Categorical Exemption Determination for 1531-1581 Howard Street/118-134 Kissling Street Project, Planning Department Case No. 2016-012474ENV

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Information:
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Today the planning department rescinded the California Environmental Quality Act (CEQA) categorical exemption determination issued for the 1531-1581 Howard Street/118-134 Kissling Street project (planning department case no. 2015-000332ENV) on March 2, 2016, as well as the subsequent determination of no substantial modification issued on December 4, 2019. In addition, today we issued a new categorical exemption determination for the modified project. This memorandum further explains these actions.

Issuance of Original Categorical Exemption Determination

On March 2, 2016, the planning department issued a Class 11 categorical exemption determination for the 1531-1581 Howard Street/118-134 Kissling Street project (planning department case no. 2015-000332ENV), pursuant to CEQA Guidelines section 15311. The project description in the categorical exemption for the original project states:

Reconfigure an existing motor vehicle repair operation by converting approximately 9,691 square feet of existing surface vehicle storage on Lots 56 and 64 to four-level parking stackers and construction of an approximately 1,283-gross-square-foot (gsf) car wash on Lot 64. Installation of approximately 21'-8"-tall metal screening on portions of the Kissling Street frontage approximately 32'-7"-tall metal screens on portions of the Howard Street frontage. Parking stackers would provide space for approximately 158 cars. Parking storage and car wash facilities would not be open to the public. Reduction of existing 42-foot-wide curb cut on Howard Street to approximately 29 feet wide and removal a 46.5-foot-wide curb cut on Kissling Street.

Determination of No Substantial Modification

On December 4, 2019, the planning department issued a determination of no substantial modification for a modification of the exempt project (planning department case no. 2016-012474ENV).¹ The modified project description is as follows, with redlining added here to show the difference between the original and modified project descriptions.

¹ On March 1, 2018, the planning department issued an initial determination of no substantial modification that the department later discovered contained a substantive typo in the modified project description. The department subsequently rescinded that determination on December 4, 2019.

December 24, 2019

New Categorical Exemption Determination for 1531-1581 Howard Street/118-134 Kissling Street Project, Planning Department Case No. 2016-012474ENV

Page 2

Unrevised text is in plain font; additions are in *single-underline italics*; and deletions are in ~~single-strikethrough~~:

The proposed project would reconfigure an existing motor vehicle repair operation by converting approximately 9,691 square feet of existing surface vehicle storage on Lots 56 and 64 to four-level parking stackers, converting 8,069 square feet of existing surface vehicle storage on Lots 39, 40, 41, and 42 to four-level parking stackers, and constructing an approximately 1,283-gross-square-foot car wash on Lot 64. ~~The project would install~~ Installation of approximately 21'-8" 32'-7"-tall metal screening on portions of the Kissling Street frontage approximately 32'-7"-tall metal screens on portions of the Howard Street frontage. Parking stackers would provide space for approximately 158 cars. The proposed stackers would accommodate approximately 200 net new vehicles. The parking storage and car wash facilities would not be open to the public. ~~Reduction of existing 42-foot wide curb cut on Howard Street to approximately 29 feet wide and removal a 46.5 foot wide curb cut on Kissling Street.~~ The project would reduce the existing 42-foot-wide curb cut on the Howard Street frontage to approximately 29 feet wide and remove the existing 46.5-foot-wide curb cut on the Kissling Street frontage. The proposed project would amend the San Francisco zoning map by changing the zoning district for Lots 39, 40, 41 and 42 at the project site from RED (Residential Enclave) to RED-MX (Residential Enclave-Mixed).

Rescission of Original Categorical Exemption and Determination of No Substantial Modification

Upon further review, the planning department has determined that the modifications to the project could be considered an intensification of the project. Today, the planning department therefore rescinded the categorical exemption issued on March 2, 2016 for the original project, as well as the December 4, 2019 determination of no substantial modification.

Issuance of New Categorical Exemption Determination

Today the planning department also determined that the modified project, like the original project, is categorically exempt from environmental review under Class 11, pursuant to CEQA Guidelines section 15311. We have therefore issued a new categorical exemption determination for the modified project, which is attached.

Attachment: Categorical Exemption Determination for 1531-1581 Howard Street/118-134 Kissling Street Project, Planning Department Case No. 2016-012474ENV, December 24, 2019.



SAN FRANCISCO PLANNING DEPARTMENT

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CEQA Categorical Exemption Determination

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PROPERTY INFORMATION/PROJECT DESCRIPTION

Project Address		Block/Lot(s)
1531-1581 Howard Street/118-134 Kissling Street		3516039, 3516040, 3516041, 3516042, 3516056, 3516064
Case No.		Permit No.
2016-012474ENV		
<input checked="" type="checkbox"/> Addition/ Alteration	<input type="checkbox"/> Demolition (requires HRE for Category B Building)	<input type="checkbox"/> New Construction
<p>Project description for Planning Department approval. The proposed project would reconfigure an existing motor vehicle repair operation by converting approximately 9,691 square feet of existing surface vehicle storage on Lots 56 and 64 to four-level parking stackers, converting approximately 8,069 square feet of existing surface vehicle storage on Lots 39, 40, 41, and 42 to four-level parking stackers, and constructing an approximately 1,283-gross-square-foot car wash on Lot 64. The project would install approximately 32'-7"-tall metal screening on portions of the Kissling Street frontage and approximately 32'-7"-tall metal screens on portions of the Howard Street frontage. The proposed stackers would accommodate approximately 200 net new vehicles. The vehicle storage and car wash facilities would not be open to the public. The project would reduce the existing 42-foot-wide curb cut on the Howard Street frontage to approximately 29 feet wide and remove the existing 46.5-foot-wide curb cut on the Kissling Street frontage. The proposed project would amend the San Francisco zoning map by changing the zoning district for Lots 39, 40, 41 and 42 at the project site from RED (Residential Enclave) to RED-MX (Residential Enclave-Mixed).</p>		

STEP 1: EXEMPTION CLASS

<p>The project has been determined to be categorically exempt under the California Environmental Quality Act (CEQA).</p>	
<input type="checkbox"/>	<p>Class 1 - Existing Facilities. Interior and exterior alterations; additions under 10,000 sq. ft.</p>
<input type="checkbox"/>	<p>Class 3 - New Construction. Up to three new single-family residences or six dwelling units in one building; commercial/office structures; utility extensions; change of use under 10,000 sq. ft. if principally permitted or with a CU.</p>
<input type="checkbox"/>	<p>Class 32 - In-Fill Development. New Construction of seven or more units or additions greater than 10,000 sq. ft. and meets the conditions described below: (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations. (b) The proposed development occurs within city limits on a project site of no more than 5 acres substantially surrounded by urban uses. (c) The project site has no value as habitat for endangered rare or threatened species. (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. (e) The site can be adequately served by all required utilities and public services.</p> <p>FOR ENVIRONMENTAL PLANNING USE ONLY</p>
<input checked="" type="checkbox"/>	<p>Class _____ Categorical exemption class 11 (CEQA Guidelines section 15311)</p>

STEP 2: CEQA IMPACTS

TO BE COMPLETED BY PROJECT PLANNER

<input type="checkbox"/>	<p>Air Quality: Would the project add new sensitive receptors (specifically, schools, day care facilities, hospitals, residential dwellings, and senior-care facilities within an Air Pollution Exposure Zone? Does the project have the potential to emit substantial pollutant concentrations (e.g., backup diesel generators, heavy industry, diesel trucks, etc.)? (refer to EP_ArcMap > CEQA Catex Determination Layers > Air Pollution Exposure Zone)</p>
<input checked="" type="checkbox"/>	<p>Hazardous Materials: If the project site is located on the Maher map or is suspected of containing hazardous materials (based on a previous use such as gas station, auto repair, dry cleaners, or heavy manufacturing, or a site with underground storage tanks): Would the project involve 50 cubic yards or more of soil disturbance - or a change of use from industrial to residential?</p> <p><i>if the applicant presents documentation of enrollment in the San Francisco Department of Public Health (DPH) Maher program, a DPH waiver from the Maher program, or other documentation from Environmental Planning staff that hazardous material effects would be less than significant (refer to EP_ArcMap > Maher layer).</i></p>
<input type="checkbox"/>	<p>Transportation: Does the project involve a child care facility or school with 30 or more students, or a location 1,500 sq. ft. or greater? Does the project have the potential to adversely affect transit, pedestrian and/or bicycle safety (hazards) or the adequacy of nearby transit, pedestrian and/or bicycle facilities?</p>
<input checked="" type="checkbox"/>	<p>Archeological Resources: Would the project result in soil disturbance/modification greater than two (2) feet below grade in an archeological sensitive area or eight (8) feet in a non -archeological sensitive area? If yes, archeo review is required (refer to EP_ArcMap > CEQA Catex Determination Layers > Archeological Sensitive Area)</p>
<input type="checkbox"/>	<p>Subdivision/Lot Line Adjustment: Does the project site involve a subdivision or lot line adjustment on a lot with a slope average of 20% or more? (refer to EP_ArcMap > CEQA Catex Determination Layers > Topography). If yes, Environmental Planning must issue the exemption.</p>
<input type="checkbox"/>	<p>Slope = or > 25%: Does the project involve any of the following: (1) square footage expansion greater than 500 sq. ft. outside of the existing building footprint, (2) excavation of 50 cubic yards or more of soil, (3) new construction? (refer to EP_ArcMap > CEQA Catex Determination Layers > Topography) If box is checked, a geotechnical report is required and Environmental Planning must issue the exemption.</p>
<input type="checkbox"/>	<p>Seismic: Landslide Zone: Does the project involve any of the following: (1) square footage expansion greater than 500 sq. ft. outside of the existing building footprint, (2) excavation of 50 cubic yards or more of soil, (3) new construction? (refer to EP_ArcMap > CEQA Catex Determination Layers > Seismic Hazard Zones) If box is checked, a geotechnical report is required and Environmental Planning must issue the exemption.</p>
<input checked="" type="checkbox"/>	<p>Seismic: Liquefaction Zone: Does the project involve any of the following: (1) square footage expansion greater than 500 sq. ft. outside of the existing building footprint, (2) excavation of 50 cubic yards or more of soil, (3) new construction? (refer to EP_ArcMap > CEQA Catex Determination Layers > Seismic Hazard Zones) If box is checked, a geotechnical report will likely be required and Environmental Planning must issue the exemption.</p>
<p>Comments and Planner Signature (optional): Jenny Delumo</p> <p>PLEASE SEE ATTACHED</p>	

STEP 3: PROPERTY STATUS - HISTORIC RESOURCE

TO BE COMPLETED BY PROJECT PLANNER

PROPERTY IS ONE OF THE FOLLOWING: (refer to Property Information Map)	
<input checked="" type="checkbox"/>	Category A: Known Historical Resource. GO TO STEP 5.
<input type="checkbox"/>	Category B: Potential Historical Resource (over 45 years of age). GO TO STEP 4.
<input type="checkbox"/>	Category C: Not a Historical Resource or Not Age Eligible (under 45 years of age). GO TO STEP 6.

STEP 4: PROPOSED WORK CHECKLIST

TO BE COMPLETED BY PROJECT PLANNER

Check all that apply to the project.	
<input type="checkbox"/>	1. Change of use and new construction. Tenant improvements not included.
<input type="checkbox"/>	2. Regular maintenance or repair to correct or repair deterioration, decay, or damage to building.
<input type="checkbox"/>	3. Window replacement that meets the Department's <i>Window Replacement Standards</i> . Does not include storefront window alterations.
<input type="checkbox"/>	4. Garage work. A new opening that meets the <i>Guidelines for Adding Garages and Curb Cuts</i> , and/or replacement of a garage door in an existing opening that meets the Residential Design Guidelines.
<input type="checkbox"/>	5. Deck, terrace construction, or fences not visible from any immediately adjacent public right-of-way.
<input type="checkbox"/>	6. Mechanical equipment installation that is not visible from any immediately adjacent public right-of-way.
<input type="checkbox"/>	7. Dormer installation that meets the requirements for exemption from public notification under <i>Zoning Administrator Bulletin No. 3: Dormer Windows</i> .
<input type="checkbox"/>	8. Addition(s) that are not visible from any immediately adjacent public right-of-way for 150 feet in each direction; does not extend vertically beyond the floor level of the top story of the structure or is only a single story in height; does not have a footprint that is more than 50% larger than that of the original building; and does not cause the removal of architectural significant roofing features.
Note: Project Planner must check box below before proceeding.	
<input type="checkbox"/>	Project is not listed. GO TO STEP 5.
<input checked="" type="checkbox"/>	Project does not conform to the scopes of work. GO TO STEP 5.
<input type="checkbox"/>	Project involves four or more work descriptions. GO TO STEP 5.
<input type="checkbox"/>	Project involves less than four work descriptions. GO TO STEP 6.

STEP 5: CEQA IMPACTS - ADVANCED HISTORICAL REVIEW

TO BE COMPLETED BY PROJECT PLANNER

Check all that apply to the project.	
<input type="checkbox"/>	1. Project involves a known historical resource (CEQA Category A) as determined by Step 3 and conforms entirely to proposed work checklist in Step 4.
<input type="checkbox"/>	2. Interior alterations to publicly accessible spaces.
<input type="checkbox"/>	3. Window replacement of original/historic windows that are not "in-kind" but are consistent with existing historic character.
<input type="checkbox"/>	4. Façade/storefront alterations that do not remove, alter, or obscure character-defining features.
<input type="checkbox"/>	5. Raising the building in a manner that does not remove, alter, or obscure character-defining features.
<input type="checkbox"/>	6. Restoration based upon documented evidence of a building's historic condition, such as historic photographs, plans, physical evidence, or similar buildings.

<input type="checkbox"/>	7. Addition(s) , including mechanical equipment that are minimally visible from a public right-of-way and meet the <i>Secretary of the Interior's Standards for Rehabilitation</i> .
<input type="checkbox"/>	8. Other work consistent with the <i>Secretary of the Interior Standards for the Treatment of Historic Properties</i> (specify or add comments):
<input checked="" type="checkbox"/>	9. Other work that would not materially impair a historic district (specify or add comments): See PTR Form for 2016-000332ENV. Project is largely consistent with what was previously analyzed. No impact on eligible Western SoMa Light Industrial and Residential Historic District. New construction does not materially impair the surrounding eligible historic district. <i>(Requires approval by Senior Preservation Planner/Preservation Coordinator)</i>
<input type="checkbox"/>	10. Reclassification of property status. <i>(Requires approval by Senior Preservation Planner/Preservation</i> <input type="checkbox"/> Reclassify to Category A a. Per HRER or PTR dated b. Other (specify): <input type="checkbox"/> Reclassify to Category C <i>(attach HRÉR or PTR)</i>
Note: If ANY box in STEP 5 above is checked, a Preservation Planner MUST sign below.	
<input checked="" type="checkbox"/>	Project can proceed with categorical exemption review. The project has been reviewed by the Preservation Planner and can proceed with categorical exemption review. GO TO STEP 6.
Comments (optional):	
Preservation Planner Signature: Richard Sucre	

STEP 6: CATEGORICAL EXEMPTION DETERMINATION
TO BE COMPLETED BY PROJECT PLANNER

<input checked="" type="checkbox"/>	No further environmental review is required. The project is categorically exempt under CEQA. There are no unusual circumstances that would result in a reasonable possibility of a significant effect.	
	Project Approval Action: This determination may be appealed either 30 days from the date of issuance or 30 days from the date of approval of a new conditional use authorization by the Planning Commission, if required - whichever is later	Signature: Jenny Delumo 12/24/2019
Once signed or stamped and dated, this document constitutes a categorical exemption pursuant to CEQA Guidelines and Chapter 31 of the Administrative Code. In accordance with Chapter 31 of the San Francisco Administrative Code, an appeal of an exemption determination can only be filed within 30 days of the project receiving the approval action. Please note that other approval actions may be required for the project. Please contact the assigned planner for these approvals.		

CEQA Impacts

The project sponsor enrolled in the Maher Program with the Department of Public Health on 2/5/2015 and submitted an environmental property assessment report. The project sponsor submitted a noise report on 3/2/2016 confirming that the proposed project would be able to achieve compliance with San Francisco Noise Ordinance. Portions of the project site are in the Air Pollutant Exposure Zone, but the project would not introduce new sensitive receptors to the project site and does not have the potential to emit substantial pollutant concentrations. A portion of the northeast corner of lot 039 is located in the seismic liquefaction zone; the project sponsor has submitted a geotechnical report for the project site. The Planning Department determined that the proposed project would not have the potential to adversely affect transit pedestrian and/or bicycle safety (hazards) or the adequacy of nearby transit pedestrian and/or bicycle facilities and does not require a transportation study. The Planning Department conducted a preliminary archaeological review and made a determination of no effect on archaeological resources.

STEP 7: MODIFICATION OF A CEQA EXEMPT PROJECT

TO BE COMPLETED BY PROJECT PLANNER

In accordance with Chapter 31 of the San Francisco Administrative Code, when a California Environmental Quality Act (CEQA) exempt project changes after the Approval Action and requires a subsequent approval, the Environmental Review Officer (or his or her designee) must determine whether the proposed change constitutes a substantial modification of that project. This checklist shall be used to determine whether the proposed changes to the approved project would constitute a "substantial modification" and, therefore, be subject to additional environmental review pursuant to CEQA.

PROPERTY INFORMATION/PROJECT DESCRIPTION

Project Address (If different than front page)		Block/Lot(s) (If different than front page)
Case No.	Previous Building Permit No.	New Building Permit No.
Plans Dated	Previous Approval Action	New Approval Action
Modified Project Description:		

DETERMINATION IF PROJECT CONSTITUTES SUBSTANTIAL MODIFICATION

Compared to the approved project, would the modified project:	
<input type="checkbox"/>	Result in expansion of the building envelope, as defined in the Planning Code;
<input type="checkbox"/>	Result in the change of use that would require public notice under Planning Code Sections 311 or 312;
<input type="checkbox"/>	Result in demolition as defined under Planning Code Section 317 or 19005(f)?
<input type="checkbox"/>	Is any information being presented that was not known and could not have been known at the time of the original determination, that shows the originally approved project may no longer qualify for the exemption?
If at least one of the above boxes is checked, further environmental review is required.	

DETERMINATION OF NO SUBSTANTIAL MODIFICATION

<input type="checkbox"/>	The proposed modification would not result in any of the above changes.
If this box is checked, the proposed modifications are categorically exempt under CEQA, in accordance with prior project approval and no additional environmental review is required. This determination shall be posted on the Planning Department website and office and mailed to the applicant, City approving entities, and anyone requesting written notice. In accordance with Chapter 31, Sec 31.08j of the San Francisco Administrative Code, an appeal of this determination can be filed within 10 days of posting of this determination.	
Planner Name:	Date:

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STEPHEN M WILLIAMS
MARGIE LAO-WILLIAMS

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