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October 10, 2025

Via Hand Delivery

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2025 OCT 10 AM 11:22 *mw*

San Francisco Board of Supervisors
Attn: Angela Calvillo, Clerk of the Board
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

**Re: Appeal of Mitigated Negative Declaration
570 Market Street Project (2019-017622ENV)
MND Approval Date: May 1, 2025
Project Approval Date: September 11, 2025**

To the San Francisco Board of Supervisors and Clerk Calvillo:

This letter is submitted on behalf of BCal 44 Montgomery Property LLC ("44 Montgomery") to APPEAL the Planning Commission's decision on May 1, 2025, to adopt a Mitigated Negative Declaration ("MND") for the 570 Market Street Project (Record No. 2019-017622ENV) ("Project"). An agency letter authorizing Lozeau Drury LLP to file this appeal on behalf of 44 Montgomery is attached hereto as **Exhibit A**.

On November 20, 2024, 44 Montgomery filed a timely appeal of the Preliminary MND ("PMND") to the Planning Commission. On May 1, 2025, the Planning Commission adopted Motion No. 21730, denying the appeals of 44 Montgomery and Chelsea Pacific Group, LLC, and affirming the Planning Department's decision to issue the MND. A copy of the Planning Commission's Motion No. 21730 is attached hereto as **Exhibit B**. On September 11, 2025, the Planning Commission approved the Project's Conditional Use Authorization and Downtown Use Authorization, which served as the Approval Action triggering a 30-day appeal of the MND to the Board of Supervisors. This appeal is being filed within the 30-day appeal period.

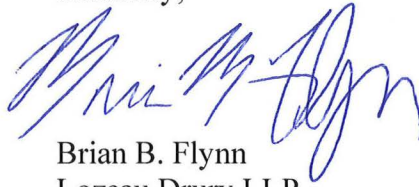
The specific grounds for the appeal are that the Planning Commission's decision to adopt the MND for the Project is in violation of the California Environmental Quality Act ("CEQA") because there is a fair argument that the Project may result in significant environmental impacts and, furthermore, the MND fails to provide substantial evidence that the Project will not result in significant environmental impacts. As a result, the City should have prepared an environmental impact report ("EIR") instead of an MND. (*Communities for a Better Env't v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319-20 ["If no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the

project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.”].)

44 Montgomery submitted correspondence to the Planning Commission on March 19, 2025 (“March 19 Correspondence”) detailing the MND’s shortcomings and the need to prepare an EIR. 44 Montgomery’s March 19 Correspondence is attached hereto as **Exhibit C** and incorporated herein by reference. 44 Montgomery’s March 19 Correspondence included reviews of the MND by experts on noise and historical resources. As discussed in 44 Montgomery’s March 19 Correspondence, the MND is improper under CEQA due to potentially significant impacts related to vibration (Ex. C, pp. 5-7), noise (*id.* at pp. 7-10), historical resources (*id.* at pp. 11-14), geotechnical risks (*id.* at pp. 14-16), air quality (*id.* at pp. 17-18), and shadows (*id.* at pp. 18-19).

For the reasons discussed in 44 Montgomery’s March 19 Correspondence and any further reasons presented to the Board of Supervisors before and at the hearing on this appeal, 44 Montgomery respectfully requests that the Board of Supervisors overturn the Planning Commission’s approval of the MND and direct the Planning Department to prepare an EIR for the 570 Market Street Project.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brian B. Flynn".

Brian B. Flynn
Lozeau Drury LLP

cc: Lisa Gibson, Environmental Review Officer, lisa.gibson@sfgov.org

EXHIBIT A

BCal 44 Montgomery Property LLC
c/o Beacon Capital Partners, LLC
200 State Street 5th floor
Boston, MA 02019

October 9, 2025

Board of Supervisors
City and County of San Francisco
49 S. Van Ness Ave., Suite 1475 (14th floor)
San Francisco, CA 94103

**Re: Agency Letter
Appeal of Mitigated Negative Declaration
570 Market Street Project (2019-017622ENV)**

To the San Francisco Board of Supervisors:

I, Catherine Mossman, hereby grant written authorization to the law firm of Lozeau Drury LLP to file an appeal on behalf of BCal 44 Montgomery Property LLC of the Planning Commission's decision on May 1, 2025 to adopt the Mitigated Negative Declaration for the 570 Market Street Project (Record No. 2019-017622ENV).

Sincerely,
BCal 44 Montgomery Property LLC

DocuSigned by:

By: DCDE7FCDF073459...
Catherine Mossman
Senior Managing Director

EXHIBIT B



PLANNING COMMISSION MOTION NO. 21730

HEARING DATE: May 1, 2025

Case No.: 2019-017622ENV
Project Title: **570 Market Street**
Zoning: C-3-O – Downtown Office
300-S Height and Bulk District
Block/Lot: 0291/013
Lot Size: 7,059 square feet
Project Sponsor: Melinda Sarjapur, msarjapur@reubenlaw.com, (415) 567-9000
Staff Contact: Ryan Shum, ryan.shum@sfgov.org, (628) 652-7542

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ADOPTING FINDINGS RELATED TO THE APPEAL OF THE PRELIMINARY MITIGATED NEGATIVE DECLARATION, FILE NUMBER 2019-017622ENV, FOR THE PROPOSED DEVELOPMENT (“PROJECT”) AT 570 MARKET STREET.

MOVED, that the San Francisco Planning Commission (hereinafter “Commission”) hereby AFFIRMS the decision to issue a mitigated negative declaration, based on the following findings:

1. On October 1, 2019, pursuant to the provisions of the California Environmental Quality Act (“CEQA”), the State CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code, the Planning Department (“Department”) received an environmental evaluation application for the project, in order that it might conduct an initial evaluation to determine whether the project might have a significant impact on the environment.
2. On October 30, 2024, the Department determined that the project, as proposed, could not have a significant effect on the environment.
3. On October 30, 2024, a notice of availability that a mitigated negative declaration would be issued for the project was duly published in a newspaper of general circulation in the City, and the preliminary mitigated negative declaration posted in the Department offices and distributed all in accordance with law.
4. On November 20, 2024, two appeals of the decision to issue a mitigated negative declaration were timely filed by Brian Flynn, on behalf of BCal 44 Montgomery Property LLC, and Edward Shaffer, on behalf of Chelsea Pacific Group, LLC (appellants).
5. A staff memorandum, dated April 18, 2025, addresses and responds to all points raised by the appellants in the appeal letter. That memorandum is attached as Exhibit A and staff’s findings as to those points are incorporated by reference herein as the Commission’s own findings. Copies of that memorandum have been delivered to the Planning Commission, and a copy of that memorandum is

on file and available for public review at the San Francisco Planning Department, 49 South Van Ness, Suite 1400.

6. On May 1, 2025 the Commission held a duly noticed and advertised public hearing on the appeal of the preliminary mitigated negative declaration, at which testimony on the merits of the appeal, both in favor of and in opposition to, was received.
7. All points raised in the appeal of the preliminary mitigated negative declaration at the May 1, 2025 Planning Commission hearing have been responded to either in the memorandum or orally at the public hearing.
8. After consideration of the points raised by the appellants, both in writing and at the May 1, 2025 hearing, the San Francisco Planning Department reaffirms its conclusion that the proposed project could not have a significant effect upon the environment.
9. In reviewing the preliminary mitigated negative declaration issued for the project, the Planning Commission has had available for its review and consideration all information pertaining to the project in the Planning Department's case file.
10. The Planning Commission finds that the Planning Department determination on the mitigated negative declaration reflects the Department's independent judgement and analysis.

The San Francisco Planning Commission HEREBY DOES FIND that the project could not have a significant effect on the environment, as shown in the analysis of the mitigated negative declaration, and HEREBY DOES AFFIRM the decision to issue a mitigated negative declaration, as prepared by the San Francisco Planning Department.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission on May 1, 2025.



Jonas P. Ionin
Commission Secretary

AYES:	Campbell, McGarry, Williams, Braun, So
NAYS:	Imperial, Moore
ABSENT:	None
ADOPTED:	May 1, 2025

EXHIBIT A

PLANNING DEPARTMENT RESPONSE TO THE PMND APPEALS



EXHIBIT A TO DRAFT MOTION PLANNING DEPARTMENT RESPONSE TO APPEAL OF PRELIMINARY MITIGATED NEGATIVE DECLARATION

570 MARKET STREET

Date: April 18, 2025
To: San Francisco Planning Commission
From: Ryan Shum, Senior Planner – ryan.shum@sfgov.org, (628) 652-7542

RE: Appeal of Preliminary Mitigated Negative Declaration of 570 Market Street
Planning Case No. 2019-017622ENV and 2019-017622APL

Hearing Date: May 1, 2025 (Continued from the December 12, 2024 hearing)

Project Sponsor: Melinda Sarjapur, msarjapur@reubenlaw.com, (415) 567-9000
Appellants: Brian Flynn, Lozeau Drury LLP on behalf of BCal 44 Montgomery Property LLC and
Edward L. Shaffer, Burke, Williams & Sorensen, LLP on behalf of Chelsea Pacific Group, LLC

Attachments: Attachment A – Health Risk Assessment
Attachment B – Updated Construction Noise Tables

Introduction

This memorandum is in response to two letters of appeal to the board of supervisors (the board) filed on November 20, 2024 regarding the planning department's (the department) issuance of a preliminary mitigated negative declaration (PMND) under the California Environmental Quality Act (CEQA) for the proposed 570 Market Street project. This memorandum also responds to supplemental letters of appeal filed by the same appellants, as further described below. Copies of all the appeal letters are included with this appeal response packet as Exhibit B.

The department, pursuant to section 21064.5 of the CEQA Statute, issued a mitigated negative declaration for the proposed project on October 30, 2024, finding that the project would not result in a significant effect on the environment.

The decision before the board is whether to uphold the department's decision to issue a PMND and deny the appeal, or to overturn the department's decision to issue a PMND and return the project to department staff for additional environmental review.

Site Description and Existing Use

The 7,045-square-foot project site is located on the north side of Market Street within the triangular block bound by Market Street to the southeast, Sutter Street to the north, and Montgomery Street to the west, in the Financial District neighborhood. The project site is currently occupied by two separate two-story commercial buildings over a shared one-story basement level of approximately 16,195-gross-square feet. The project site does not contain any off-street vehicle or bicycle parking. The project site is relatively flat and does not have any curb cuts. There are currently two sidewalk trees on the project's Market Street frontage. The project site is in a C-3-O (Downtown Office) use district and a 300-S height and bulk district.

Project Description

The proposed project would demolish the two existing two-story-over-basement buildings and construct a 29-story, approximately 300-foot-tall building containing hotel uses. The new building, which would extend over the entire parcel, would provide approximately 3,400 gross square feet of retail space on the ground floor and mezzanine levels fronting Market Street and an approximately 123,000-square-foot hotel space that would accommodate about 211 guest rooms. The project would provide approximately 4,200 gross square feet of privately owned public open space (POPOS), which would include a 2,300-square-foot outdoor terrace and 1,900 square feet of indoor support space for the dedicated public entrance and elevator lobby to the POPOS. The project would be supported on a hybrid foundation that would consist of a four-foot mat slab supporting the approximate southern half of the building. The remaining building portion would be supported by a 6- to 10-foot foundation bearing on 6-foot-diameter piles that would be drilled approximately 40 feet into bedrock, for a total length of around 160 feet under the mat slab.

Project construction is anticipated to last approximately 24 months and would require excavation of the total site footprint (7,045 square feet) to approximately 7 to 13 feet below ground surface (bgs). Overall, excavation of the basement levels would require removal of approximately 3,900 cubic yards of soil.

The project would require the following approvals from the Planning Commission:

- A conditional use authorization from the planning commission under Planning Code section 303 to permit hotel uses.
- A Downtown Project Authorization under Planning Code section 309 for projects within a C-3 zoning district greater than 50,000 square feet in area or 75 feet in height and for granting exceptions to the requirements of certain sections of the Planning Code.

Background

The following bullet points provide a chronological summary of the various actions documented in the record related to the proposed project that have occurred since October 2019, when the project sponsor filed for an application for the proposed project:

On October 1, 2019, the project sponsor filed a project application with the department for the project.

On October 30, 2024, the department issued a PMND for the project determining that the proposed project could not have a significant impact on the environment.

On November 20, 2024, Brian Flynn, on behalf of BCal 44 Montgomery Property LLC, and Edward Shaffer, on behalf of Chelsea Pacific Group, LLC, owner of the adjacent 564 Market Street (also known as the Chancery Building) (appellants), filed separate appeals of the PMND.

On November 20, 2024, the 20-day appeal period ended. However, at the time of PMND publication, two technical appendices were inadvertently not available for public review on the department website. As a result, the comment period was extended by an additional 20 days to December 12, 2024, once the appendices became available.

On December 11, 2024, Mr. Shaffer filed a supplemental appeal letter.

On December 12, 2024, the appeal hearing was continued to February 27, 2025.

On February 27, 2025, the appeal hearing was continued to April 3, 2025.

On March 19, 2025, Mr. Flynn filed another supplemental appeal letter and Mr. Shaffer filed two additional supplemental letters. The subject of one of the Shaffer letters, "Re: Objections to Approval," contains concerns regarding the project's code compliance, with none of the stated concerns being related to environmental effects. Therefore, this appeal response does not address any of the concerns brought up in this particular letter as they are not related to CEQA. This appeal response addresses concerns noted in all other appeal letters filed.

On April 3, 2025, the appeal hearing was continued to May 1, 2025.

Planning Department Responses

The Planning Department's responses to concerns raised in the appeal letters are provided below, organized by topic. The appellants have not met the legal burden of proof of providing substantial evidence supporting a fair argument that the project may have a significant environmental impact in order to support their argument that an environmental impact report is required for the project.

Response 1 (Geology and Soils): The PMND appropriately analyzes the potential environmental effects of the proposed project related to geology and soils, providing substantial evidence that the project would not have a significant impact on surrounding structures.

The appellants contend that the PMND fails to evaluate the geotechnical impacts of project construction on surrounding buildings, including impacts related to soil settlement, dewatering, and liquefaction. This contention is incorrect. The PMND analysis correctly accounts for the city's entire review process, with environmental review being one of the initial steps of that process. During the environmental review process, the department considers whether the construction of a proposed project could have substantial adverse effects on soils or geologic features on the project site, and whether a project could be feasibly constructed and supported by the underlying site conditions. This information is typically summarized in a preliminary geotechnical report. The function of a geotechnical report is to provide recommendations by a licensed geotechnical professional to a project's engineer of record, who must then incorporate those recommendations into building permit-level drawings and construction documents, to ensure that the proposed structure can be supported on the proposed foundation system.

Subsequent to the environmental review process, the building department undertakes structural review to ensure that a building can be safely constructed in accordance with all applicable state and local codes. At this stage, the building department reviews more detailed structural plans, which are typically not available, nor required, during the environmental review phase. Instead, environmental review for a project is generally based on a project's architectural plans.

In compliance with these building requirements, the project sponsor submitted a geotechnical report prepared by a licensed geotechnical engineer to the planning and building departments. This report investigated site, soil, geologic, and groundwater conditions of the subject property, and made geotechnical recommendations pertaining to the project's construction.¹ These recommendations address site preparation and grading, seismic design, foundation types, shoring and protection of adjacent buildings, and more. The California Building Code also includes specific provisions, including Protection of Adjoining Properties (section 3307), which must be addressed in the project's structural plans.²

The preliminary geotechnical report concluded that the proposed development is feasible from a geotechnical standpoint, but also acknowledged the need for a design-level geotechnical investigation once more detailed permit-level project drawings are available. As such, the department addressed the limited

¹ Langan. *Preliminary Geotechnical Evaluation: 570 Market St.* August 27, 2019.

² *Ibid.*

question before it, and correctly concluded that the project could feasibly be constructed on the project site and would not result in any significant impacts related to geology or soils.

Administrative Bulletin 082 and Impacts to Adjacent Structures

Additionally, building department Administrative Bulletin 082 (AB 082), Guidelines and Procedures for Structural Design Review, applies to the proposed project under the San Francisco Building Code and specifies the guidelines and procedures for independent structural and geotechnical design review during the application review process for a building permit. The scope of services for geotechnical engineering review required under AB 082 includes assessment of the project's proposed foundation system and its appropriateness for the structure and ground conditions on the site, the potential effects of construction activities, the predicted foundation settlement, and the project's potential long-term interaction with foundations of existing adjacent and nearby structures.

AB 082 also outlines how the director of the building department would resolve any disputes between the structural design reviewer and the project's structural and geotechnical engineers of record. The building department would review the final building plans (construction plans) for conformance with recommendations of the site-specific, design-level geotechnical evaluation to ensure compliance with state and local building codes, including AB 082. This building permit application review process would occur prior to the issuance of construction permits and would ensure that the proposed project would not result in significant geology and soils impacts, including significant adverse impacts to existing nearby structures.

In summary, the project is required to comply with the city's project review process, which would entail detailed, design-level geotechnical and structural review by the building department. Compliance with all mandatory provisions of the California Building Code and San Francisco Building code would ensure that the project would not result in significant geology or soils impacts. Therefore, no mitigation measures are required. During the environmental review stage, the department addresses the limited question of whether a project can feasibly be constructed on the project site based on the site's underlying soil conditions and site context. Based on the project's preliminary geotechnical report, the department has correctly determined that the project is feasible and would not result in any significant impacts to geology or soils. The appellants have not provided evidence to support a fair argument that the project would result in significant geology and soils impacts.

Response 2 (Air Quality): Substantial evidence provided in the PMND and additional health risk analysis conducted since then, establishes that the proposed project would not result in any significant impacts related to air quality.

The appellants contend that demolition and construction activities will expose the public to significant adverse levels of air pollution, including from asbestos and lead-based paints and construction dust. Additionally, the appellants contend that construction activities could increase cancer risks for people living and working in the area, and that nearby office workers should be treated as sensitive receptors.

Construction Dust

With regards to construction dust impacts, studies have shown that the application of best management practices at construction sites significantly control fugitive dust and reduce fugitive dust by up to 98 percent, as described on page 50 of the PMND.^{3,4} As such, they are an effective strategy for controlling construction-related fugitive dust. As described on pages 54 and 55 of the PMND, the project would be required to comply with the city's Construction Dust Control Ordinance and implement best management practices to reduce control construction dust. Such measures include wetting down areas around soil improvement operations, placement of upwind and downwind particulate dust monitors, limiting areas subject to excavation, grading, and other demolition or construction activities at any given time, and the like. These measures would be required as a matter of law already applicable to the proposed project. Accordingly, this impact was determined to be less than significant and no mitigation measure is required.

Construction and Operational Air Quality Impacts

The project's construction and operational air pollution impacts are discussed under Impact AQ-4, starting on page 57 of the PMND. The PMND evaluated the air quality health risk impact of the project to sensitive receptors near the project site, with the closest analyzed receptor located approximately 395 feet away from the project site. Following the publication of the PMND, a more detailed health risk assessment was prepared to evaluate construction and operational health risk impacts to receptors in the immediate vicinity of the project site, including worker receptors directly adjacent to the project site (see PMND text revisions – Exhibit C).⁵ Thus, the revised PMND addresses worker receptors as sensitive receptors and presents results of toxic air pollutants on workers located in office buildings located adjacent to the project site. The health risk assessment modeled project-specific emissions based on the proposed land uses, construction schedule, construction equipment list and construction trip information, as provided by project sponsor.

The health risk assessment determined that, with the implementation of mitigation measure M-AQ-4a: Clean Off-Road Construction Equipment, which would be required as condition of project approval, the construction of the proposed project would not exceed the air district's or city's health risk thresholds for chronic hazard index, cancer risk, or PM_{2.5}. As described in the PMND, the use of clean construction equipment can reduce construction emissions by 93 to 96 percent as compared to fleet average. Therefore, as concluded in the PMND and substantiated through additional health risk emissions modeling, the proposed project would result in a less-than-significant impact to nearby sensitive receptors related to construction toxic air contaminants, including the adjacent office building abutting the project site.

The project-specific health risk assessment also determined that operation of the project would result in a less-than-significant impact to residential or worker receptors with the implementation of mitigation

³ Western Regional Air Partnership. 2006. *WRAP Fugitive Dust Handbook*. September 7, 2006. This document is available online at https://www.env.nm.gov/wp-content/uploads/sites/2/2017/02/WRAP_FDHandbook_Rev_06.pdf, accessed January 15, 2025.

⁴ San Francisco Planning Department. *Air Quality and Greenhouse Gas Analysis Guidelines*. February 2025.

⁵ Ramboll. *Air Quality Health Risk Assessment Methodology and Results Memo: 570 Market Street, San Francisco, CA*. January 2025.

measure M-AQ-4b: Clean Diesel Generators for Building Operations, including to receptors adjacent to the project site.

The internal air circulation system of nearby buildings, which one of the appellants brings up in their letter, is not within the purview of the proposed project. The project site is located in the existing air pollutant exposure zone and sensitive receptors within the zone already experience elevated levels of air emissions. However, as described in the PMND and reiterated above, implementation of air quality mitigation measures and best management practices to reduce construction dust would ensure that the proposed project would not make a considerable contribution to existing significant cumulative health risk impacts in the area.

Lead and Asbestos

With respect to lead and asbestos, these impacts are described in the hazards and hazardous materials section of the PMND on pages 96 through 98. Lead and asbestos handling and removal are regulated in accordance with local and state regulations, as well as air district, California Department of Toxic Substances Control, Cal/OSHA, and California Department of Health Services requirements. Specifically, California Health and Safety Code section 19827.5, adopted January 1, 1991, requires that local agencies not issue demolition or alteration permits until a project sponsor has demonstrated compliance with the notification requirements under applicable federal regulations regarding hazardous air pollutants, including lead and asbestos.

The California Legislature vests the local air district, in this case the Bay Area Air District, with the authority to regulate airborne pollutants, including asbestos-containing material, through both inspection and law enforcement. The air district is to be notified 10 days in advance of any proposed demolition or abatement work. Any disturbance of asbestos-containing material at the project site would be subject to the requirements of air district Regulation 11, Rule 2, Hazardous Materials—Asbestos Demolition, Renovation, and Manufacturing. The local office of Cal/OSHA must also be notified of asbestos abatement. Asbestos abatement contractors must follow state regulations contained in California Code of Regulations title 8, section 1529 and sections 341.6 through 341.14, when their work involves 100 gross square feet or more of asbestos-containing material. Pursuant to California law, the building department would not issue the required permit until the project sponsors have complied with the requirements described above.

Work that could result in any disturbance of lead-based paint must comply with San Francisco Building Code section 3423, Work Practices for Lead-Based Paint on Pre-1979 Buildings and Steel Structures. Section 3423 identifies prohibited practices that may not be used when removing lead-based paint, as well as notification requirements. Where work would disturb or remove lead-based paint on the exterior of a building, or the interior of occupied buildings built prior to or on December 31, 1978 – such as the existing structure at 570 Market Street – section 3407 requires specific notification and work standards and identifies prohibited work methods and penalties. The demolition would also be subject to the Cal/OSHA lead in construction standard (California Code of Regulations title 8, section 1532.1). This standard requires development and implementation of a lead compliance plan when materials containing lead are disturbed during construction. The plan must describe activities that could emit lead, methods that would be used to comply with the standard, safe work practices, and a plan to protect workers from exposure to lead during construction.

Cal/OSHA would require 24-hour notification if more than 100 square feet of lead-containing material would be disturbed.

Based on mandatory compliance with existing regulatory requirements, as concluded on page 98 of the PMND, the proposed project would not result in a significant hazard to the public or environment from hazardous materials such as asbestos and lead-based paint and the proposed project would result in a less-than-significant impact related to these substances.

In summary, the appellants have not provided a fair argument supported by substantial evidence that the proposed project would result in significant air quality impacts. The PMND's analysis of air quality impacts, as supplemented by the additional health risk assessment conducted to support the department's appeal response, are accurate and sufficient. No further analysis is required.

Response 3 (Noise and Vibration): Based on substantial evidence provided in the PMND and additional analysis conducted for informational purposes, the proposed project would not result in significant impacts related to noise and vibration.

The appellants contend that project construction would have significant noise impacts on nearby office workers and would result in significant vibration impacts on nearby historic structures. Their arguments, however, do not meet the legal standard of providing substantial evidence in support of a fair argument that such a significant impact would occur, for the reasons described below.

Construction Noise

The project's noise impacts during construction are discussed in the PMND beginning on page 37. Consistent with the *Governor's Office of Planning and Research's General Plan Guidelines 2017*, noise sensitive receptors are defined as: residences, hospitals, convalescent homes, schools, churches and sensitive wildlife habitat (e.g., nesting birds, marine mammals, protected fish species). The planning department also considers hotels and motels as noise sensitive receptors, and commercial and industrial uses are considered noise sensitive uses if they are exposed to noise levels of 100 dBA or higher.

Construction noise is regulated by the San Francisco Police Code, article 29, section 2907. Police Code section 2907 requires that noise levels from individual pieces of construction equipment, other than impact tools, not exceed 80 dBA at 100 feet from the source. Impact tools are not subject to the equipment noise limit provided that impact tools and equipment would have intake and exhaust mufflers recommended by the manufacturers and are approved by the Director of Public Works or the Director of Building Inspection as best accomplishing maximum noise attenuation. Table 7 on page 38 of the PMND describes the typical noise levels of construction equipment anticipated to be used at the site. As dictated by the city's noise ordinance, a default reference distance of 100 feet between the construction equipment and noise receptor was used. The planning department also analyzes the construction noise using guidance provided in the Construction Noise Assessment of the Federal Transit Administration Transit Noise and Vibration Assessment Manual (FTA manual). Specifically, the planning department uses the general assessment daytime residential noise limit of 90 dBA at residential receptors or 100 dBA at commercial or industrial receptors as developed by the Federal Transit Administration. This assessment results in a reasonable worst-case scenario because it is based on the

assumption that the two noisiest pieces of equipment would operate simultaneously. If any of the above criteria are exceeded (10 dB increase in ambient noise levels, 90 dBA at noise-sensitive receptors or 100 dBA at commercial and industrial receptors), the planning department would evaluate the temporal frequency, duration, and intensity of the exceedance when determining whether construction noise could result in a substantial temporary increase in ambient noise levels.

For informational purposes and to ascertain potential noise levels on the adjacent office uses (as raised in one of the appeal letters), Table 7 was updated since the publication of the PMND to include typical noise levels of construction equipment at a shorter distance of 20 feet between the equipment and the noise receptor to better simulate the distance between project construction equipment and nearby receptors in adjacent structures (see PMND text revisions – Exhibit C).⁶

At a reference distance of 20 feet, no construction equipment would exceed 100 dBA (see Attachment B to this appeal response, Updated Construction Noise Tables). This calculation takes into account the simultaneous operation of the two noisiest pieces of equipment during a given phase consistent with the FTA manual. As a result, construction noise impacts to commercial uses in the area would be considered less than significant, which is consistent with the findings in the PMND.

Additionally, as discussed in the PMND on page 42, construction noise is generally the most substantial during the initial phases of the project, which include demolition, site preparation, and grading, and generally decreases in the latter phases. Construction equipment noise is also intermittent and would occur in limited intervals at a time. Furthermore, the analysis provided in the PMND and above is conservative because it assumes that no acoustic shielding or attenuation from building walls, windows, or other measures would occur.

In the supplemental appeal letter submitted by Mr. Flynn dated March 19, 2025, the appellant contends that the construction noise analysis is inaccurate because it improperly applied the general assessment methodology provided by the FTA Manual. The appellant contends that the analysis should have employed an equipment usage factor⁷ of 1 (i.e., 100 percent), instead of a range between 16 to 50 percent as the PMND did, and a noise attenuation factor of 3 dB per doubling of distance, instead of 6 dB per doubling of distance. The appellant contends that by calculating construction noise levels with those assumptions, there could be potentially significant construction noise impacts at the nearest residential and commercial receptors.

However, the appellant's analysis is inaccurate and misleading because it conflates two different methodologies. While the FTA Manual general assessment methodology does recommend a usage factor of 1, the general assessment guidelines state that a noise attenuation factor equating to a 6 dB reduction per doubling of distance should be used, not 3 dB as the appellant claims. Thus, the appellant's construction noise calculations are misleading.

⁶ Salter, Alex. "Re: 570 Market Tables." Received by Ryan Shum. 24 January 2025.

⁷ The usage factor is the percent of time a piece of construction equipment is used throughout the day.

Typically, construction noise analysis is a multi-step process that first entails a more conservative analysis with broad assumptions and subsequently a more refined methodology if the initial analysis finds that a project could result in significant impacts. The FTA Manual general assessment methodology also allows for an adjustment of the usage factor based on the amount of time that construction equipment would be used during the day, and based on more refined analysis and project. The usage factor is based on Federal Transit Administration methodology and reflects the fact that most construction equipment is generally used intermittently and is not used throughout the day, thereby reducing its noise levels over the course of a workday.⁸ Consequently, the PMND noise analysis used a more refined usage factor of 16 to 50 percent per guidance by the Federal Highway Administration (FHA) to better reflect the frequency of use of the construction equipment.⁹ This more refined methodology determined that project construction would not result in significant noise impacts to nearby residential and commercial receptors, as described above.

For informational purposes, supplemental noise analysis was conducted in accordance with the FTA Manual general assessment methodology (i.e., with an equipment usage factor of 1 and a noise attenuation factor equating to a 6 dB reduction per doubling of distance).¹⁰ This supplemental analysis conservatively evaluated if construction equipment would be operating with 100 percent usage factor. As shown in Table 1 below, construction noise levels still would not exceed construction noise thresholds at the nearest residential and commercial receivers when using recommended assumptions of the FTA general assessment methodology.

Table 1: Calculated Noise Levels at Nearest Off-Site Sensitive Use from Daytime Construction

Phase	Loudest Two Noise Sources	Estimated Construction Noise Level (dBA) at Nearest Residential Receiver (450 feet)	Exceeds 90 dBA Residential Standard?	Estimated Construction Noise Level (dBA) at Nearest Commercial Receiver (20 feet)	Exceeds 100 dBA Commercial Standard?
1	CSM Rig, Jackhammer	68	No	95	No
2	Concrete Saws, Jackhammer	72	No	99	No
3	Concrete Pump, Excavator	65	No	92	No
4	Drill Rig, Cranes	67	No	94	No
5	Pressure Washer, Cranes	67	No	94	No

⁸ Ibid., p. 12-3.

⁹ Based on the US EPA document, "Noise from Construction Equipment and Operations, Building Equipment and Home Appliances" 1971, noise data from Federal Highway Administration (FHWA) Roadway Construction Noise Model User's Guide, 2006, and data from other Salter Projects.

¹⁰ Salter, Inc. 570 Market Street Acoustical Response to Appeal of Preliminary MND. April 4, 2025.

In summary, the PMND noise analysis employed a multi-step process and properly calculated the project's construction noise impacts to the nearest sensitive receptor (i.e., residences at 333 Bush Street approximately 450 feet away) and properly evaluated ambient noise levels at nearby commercial receptors. The supplemental analysis evaluated construction noise levels against the FTA criteria of 100 dBA for commercial and industrial receptors and confirmed that projects construction noise would not exceed those levels. The appellant's contention that the PMND noise analysis is inaccurate because it should have used the more generalized FTA guidance is misleading, and the appellant's noise calculation is also misleading because it does not use a 6 dB per doubling of distance noise attenuation factor as provided by the FTA general assessment methodology. Supplemental noise analysis using the more conservative FTA general assessment methodology, shown in Table 1 above, further supports the PMND conclusion that the project would not result in significant construction noise impacts.

Construction Vibration

The project's vibration impacts during construction are discussed in the PMND beginning on page 44. With regards to construction vibration impacts, the PMND identified that the 566 Market Street, 576 Market Street, and 44 Montgomery Street buildings could be susceptible to ground-borne vibration from demolition and construction activities of the proposed project. Therefore, the PMND determined that Mitigation Measure M-NO-2 will be required before and during construction. The project sponsors have agreed to implement this measure.

The primary purpose of the mitigation measure is to prevent damage to nearby structures and requires that all feasible means to avoid damage to potentially affected buildings be identified in the project's Vibration Management and Monitoring Plan (Monitoring Plan) and employed. Examples of avoidance measures that could be employed include using alternative pieces of construction equipment or techniques and adjusting the buffer zones of equipment. The Monitoring Plan would also include procedures to actively monitor vibration levels at the construction site to ensure that they do not exceed the established standards identified in the plan. As described in the mitigation measure, the project would be required to retain a qualified structural engineer and historic preservation professional to conduct periodic inspections of adjacent buildings for signs of vibration-induced damage during vibration-generating construction activities, and to immediately notify the planning department if any damage is visible and incorporate alternative construction techniques to reduce further effects. At the time that the Monitoring Plan is prepared, the structural engineer and planning department would also have the discretion to reclassify nearby buildings to meet stricter vibration standards based on additional information on structural conditions of the building, as appropriate; for example, 44 Montgomery Street may be reclassified from "modern industrial/commercial buildings" to "historic and some older buildings," as appropriate.¹¹

It is important to note that the Caltrans vibration standards are guidelines for assessing potential vibration damage and not brightline thresholds as the appellant contends. The Caltrans standards are guidelines because all buildings are constructed in slightly different ways using different construction techniques and materials, and with different underlying soil conditions and surroundings. As a result, construction-induced

¹¹ This classification is for the purposes of construction vibration monitoring only, and how a building is classified is independent of a building's actual historic status.

vibration interacts with buildings in varying degrees and there is no brightline threshold upon which vibration impacts are certain to occur. The Caltrans standards are a reflection of this and offer guidance of when vibration impacts *may* start to occur, and an exceedance does not guarantee that an adverse impact would occur, nor does it automatically constitute a significant impact. Therefore, the appellant's contention is incorrect.

As a final protective measure, in the event that all feasible avoidance measures are employed and damage does occur, the damage would be detected early due to active monitoring requirements per the Monitoring Plan. Furthermore, the project sponsor would be required to implement additional measures to minimize vibration impacts and repair any damage to its preconstruction state. Any damage to a historic building would require the remediation to be overseen by a qualified preservation professional and planning department preservation staff.

Mitigation measure M-NO-2 outlines clear steps and performance measures for the monitoring and potential repair of any vibration-induced damage. Construction-level details are often not determined yet at the time of environmental and architectural review, and minor changes often occur at the time of structural building permit review and once construction starts; the vibration monitoring plan and mitigation measures are adaptable to the conditions of the project site at the time of construction. The project would be required to implement the measures described in mitigation measure M-NO-2. The PMND, therefore, is not deferring any mitigation or analysis of vibration impacts. With implementation of this mitigation measure, the PMND determined that the impacts from construction vibration would reduce any potential damage to adjacent structures from construction to a less-than-significant level.

The appellants have not offered any evidence to support their contention that construction vibration could result in significant adverse impacts to historic buildings.

Response 4 (Historic Resources): Based on substantial evidence provided in the PMND, the proposed project would not result in a significant impact to historic resources.

The appellants contend that the project could have potentially significant impacts on nearby historic buildings due to the mass and scale of the proposed building, vibration from demolition and construction, ground settlement from dewatering and increased soil stresses, and increased lateral loads. The appellants also contend that the project block should be evaluated as a historic district. The appellants have not offered any evidence to support these assertions. By contrast, the PMND provides substantial evidence to support the conclusion that significant impacts of this nature would not occur. As discussed on pages 15 through 17 of the PMND, the project site is not within a designated historic district and construction of the proposed project would not affect the historic significance of nearby historic buildings: (44 Montgomery Street, Chancery Building located at 562-566 Market Street, Finance Building at 576-580 Market Street, Hobart Building at 582-590 Market Street, Flatiron Building at 540-548 Market Street, Crocker Bank Building; three commercial buildings at 550, 554 and 560 Market Street which are located on the subject block (Block 0291); and Crocker Bank Building located at 1 Sansome Street located at the north confronting block (Block 0289). As described in the department-prepared Historic Resources Evaluation Report (HRER) for the project, "the subject property does not appear to be part of a significant concentration of historically or architecturally unified buildings such

that it would rise to the level of an eligible historic district.” As such, the potential of the project block to be designated as a historic district and the subject property to be included in said district was already evaluated in the project HRER. The architectural cohesion of Market Street is not relevant in the context of the project’s historic resource evaluation because the subject property is not part of a historic district. Likewise, new shadows caused by the project would not affect historic character defining features of nearby properties.

Additionally, the appellant is incorrect in their assertion that 44 Montgomery Street was not classified as a historic resource and evaluated accordingly in the PMND. Contrary to the appellant’s contentions, 44 Montgomery Street was evaluated as a historic resource in the project’s cultural resource analysis as evidenced by its inclusion in the list of adjacent historic resources in the HRER. The proposed project would not affect the physical features that convey the historical significance of nearby historic resources, including 44 Montgomery Street.

The project’s geology and soils and vibration impacts are discussed thoroughly in the PMND and are summarized in the responses 1 and 3 above. Furthermore, the project sponsor has committed to implementing mitigation measure M-NO-2, Protection of Adjacent Buildings/Structures and Vibration Monitoring During Construction, which aims to avoid potential vibration impacts, and would be required to implement the recommendations from the design-level geotechnical investigation process as outlined above, which would ensure that there are no impacts to nearby properties related to ground settlement, dewatering, or lateral loads.

Response 5 (Freight Loading): As discussed in the PMND, the proposed project would not result in any significant impacts related to transportation, including secondary impacts resulting from insufficient loading facilities.

The appellants contend that the project’s freight loading impacts were not properly evaluated and that the project may have adverse secondary impacts resulting from insufficient loading facilities. The PMND mistakenly included a description of an off-site loading space on page 3 of the PMND based on an earlier iteration of the proposed project (see PMND text revisions – Exhibit C). However, the loading analysis did not assume the project would include an off-street loading space, and is therefore accurate.

As discussed on page 30 of the PMND, the project relies entirely on on-street loading facilities and the loading analysis does not reference any off-street loading spaces. The project is anticipated to average 12 daily freight loading occurrences spread throughout the day, and average approximately two loading occurrences during the peak hour of loading activity. Freight deliveries would primarily be comprised of smaller vehicles such as light trucks and panel vans. Given the length of the existing on-street loading zones, there would be sufficient loading space to accommodate the project’s peak hour loading demand of two trucks. Therefore, no secondary transportation impacts resulting from inadequate loading supply are expected. The appellants have not offered any evidence to support their contention that the project could result in significant transportation impacts resulting from inadequate freight loading supply and, no additional analysis is required.

Response 6 (Shadow): As discussed in the PMND, the proposed project would not result in any significant impacts related to shadow.

The appellants contend that the project would have adverse shadow impacts on privately owned public open space (POPOS) in the area, but do not offer any substantial evidence supporting a fair argument of how the project would result in significant shadow impacts. As discussed on page 67 of the PMND, the project would cast some new shadow on POPOS in the area, including the One Sansome Street courtyard, One Bush Plaza, the plaza at 333 Market Street, and the plazas at 425 and 525 Market Street. However, these shadows would be intermittent, and the net new shadow would not substantially affect the use and enjoyment of these POPOS. Furthermore, POPOS are not protected open spaces under Planning Code section 295, and the appellants have provided no evidence that the proposed project would increase shadow to any open space protected under Planning Code section 295. The shadow impact analysis on nearby POPOS provided in the PMND is provided for informational purposes only, and is not a requirement to be analyzed under CEQA or the Planning Code. Therefore, no additional analysis is required.

Response 7 (Wind): As discussed in the PMND, the proposed project would not result in any significant impacts related to wind.

The appellants contend that the project would have adverse wind impacts. However, the appellants do not specify what wind impacts would occur that were not already disclosed and analyzed in the PMND, and offer no substantial evidence to support their assertion. As discussed on page 66 of the PMND, the project would generally improve wind conditions compared to existing conditions with respect to the applicable wind hazard criterion. The PMND provided adequate and accurate analysis of wind impacts, and no additional analysis is required.

Response 8 (Feasible Mitigation Measures): The PMND identifies feasible mitigation measures with performance standards that satisfy CEQA requirements.

The appellant claims that the PMND inappropriately defers mitigation of potential impacts to historic resources, geology and soils, and hazardous materials by relying on future reports and recommendations from those reports without specifying performance standards. However, the appellants' statements are not consistent with the analysis or mitigation measures contained in the PMND, or CEQA's requirements.

CEQA Guidelines section 15126.4(a)(1)(B) permits the department to further refine the details of mitigation measures after the project's approval if the environmental document (1) commits the project sponsor to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure. The mitigation measures cited by the appellant meet all of these requirements and are, therefore, legally adequate in the context of CEQA review.

The PMND does not, as appellant claims, defer "formulation of mitigation measures." All of the mitigation measures contained in the PMND contain detailed performance standards that ensure their effectiveness and specify the timing of any required actions. For example, mitigation measure M-NO-2 requires the project sponsor to avoid or reduce project-related construction vibration damage to adjacent buildings and/or

structures and to ensure that any damage is documented and repaired. The mitigation measure also establishes quantified maximum vibration levels that may not be exceeded and for which the project site will be monitored. Thus, the mitigation measure specifies the components for a monitoring plan, timing, guidelines, approval process, and responsible professionals who may determine corrective measures based on construction activity and the character of adjacent buildings.

Similarly, mitigation measure M-AQ-4a requires the project to use clean off-road construction equipment and provides specific details related to engine eligibility requirements, the use of waivers, and detailed requirements for the preparation of a construction emission minimization plan. Specifically, this mitigation measure states that “[A]ll off-road equipment greater than 25 horsepower (hp) and operating for more than 20 total hours over the entire duration of construction activities shall have engines that meet or exceed U.S. Environmental Protection Agency (EPA) Tier 4 Interim or Tier 4 Final off-road emission standards.” Similarly, requirements regarding the construction emission minimization plan state that “[the] plan shall include estimates of the construction timeline by phase, with a description of each piece of off-road equipment required for every construction phase. As reasonably available, the description may include, but is not limited to: equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (Tier rating), horsepower, engine serial number, and expected fuel use and hours of operation. For off-road equipment using alternative fuels, the description shall also specify the type of alternative fuel being used.” These specific requirements ensure that this mitigation measure would be implementable, measurable, and would reduce impacts to a less-than-significant level as concluded in the PMND on page 58.

The project sponsor has committed to implementing the mitigation measures outlined in the project’s Mitigation Monitoring and Reporting Program (MMRP), and the MMRP would be made a condition of approval of the project by the Planning Commission.

With regards to the PMND analysis of geology and soils and hazardous materials, as discussed in Response 1, above, the department relies on compliance with state and local regulations that are uniformly applied to all projects and with which the project sponsor would be required to comply. Compliance with state and local regulations would require the project to meet standards that would ensure that the project would not result in a significant impact. For these types of impacts – where existing regulations ensure that no significant impacts would result - no additional mitigation measures are required.

The appellants have not provided any substantial evidence to support their assertion that the mitigation measures inappropriately defer mitigation or do not specify performance standards or implementation timing requirements.

Response 9 (Cumulative Projects): The cumulative project list is accurate, and the cumulative analysis was properly conducted.

The appellants contend that the cumulative project list is outdated and that, as a result, the cumulative analysis is flawed. A project’s cumulative project list is typically developed at the beginning of the analysis period, which in this case was 2019. For longer periods of environmental review, the cumulative project list may be reviewed again to ensure that it is still accurate. The original cumulative project list was reviewed

when analysis resumed following the COVID-19 pandemic, but no new cumulative projects were identified at that time. For informational purposes, the department reviewed the list again in January 2025 and identified only minor projects and permits in the vicinity of the project site that would generally not be added onto cumulative project lists due to their minor nature and likelihood that they would not interact with the proposed project to generate cumulative impacts. Examples of such minor projects include antennae and sign installations, minor building modifications and repairs, and repainting, as well as minor utility projects such as sewer replacements or utility pole replacements due to the limited construction duration and scope. For these reasons, the cumulative project list remains the same as the list that was originally prepared and is considered to be accurate and adequate for purposes of CEQA review. The appellants do not offer any evidence to support their contention that the cumulative analysis is flawed, and thus there is no fair argument presented that the department has failed to identify a significant cumulative impact to which the proposed project would have a cumulatively considerable contribution. No further analysis is required.

Response 10 (Public Notice): The department complied with state and local notice requirements for publication of the PMND and appropriately remedied administrative errors.

The appellants contend that the department did not provide adequate notice of the publication of the PMND because, although the notice was properly sent to the owner of 564 Market Street, their legal representative claims to not have received notice of the PMND publication. The appellants also note that at least two technical studies were not made publicly available at the time of the publication of the PMND.

The department issued the PMND for the project on October 30, 2024, and sent a Notice of Availability of Intent to Adopt a Mitigated Negative Declaration (Notice of Availability) to interested parties and property owners and tenants within a 300-foot radius of the project site, including to the property owners of 564 Market Street (The Chancery Building) and 44 Montgomery Street. The department provided a 20-day appeal period that ended on November 20, 2024. During the public review period, the department determined that some of the technical background documents were inadvertently not made publicly available for review on the department website at the start of the initial 20-day appeal period. At the request of an individual who had not received the Notice of Availability, and to afford adequate time for the public to review all technical documents, the department extended the PMND comment period by 20 days to December 12, 2024.

In accordance with state and local laws, physical posters of the Notice of Availability were also publicly posted at the project site between October 30, 2024 and November 20, 2024, in accordance with Administrative Code section 31.11(4). The department verified that multiple weather-protected 11-by-17-inch notices were posted in prominent locations at the project site for the duration of the appeal noticing period. Photographs of the posted notices were taken on November 21, 2024, and are on file with the department.

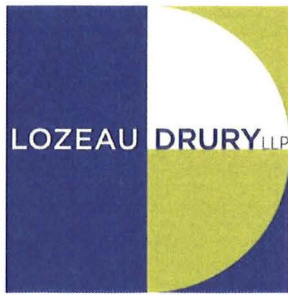
Additionally, a newspaper notice was published in the San Francisco Examiner on October 30, 2024, and the Notice of Availability was also posted at the San Francisco Office of the County Clerk for the 20-day review period on the day of PMND publication.

In conclusion, the department provided sufficient notice and opportunity for review of the PMND in accordance with state and local laws.

Conclusion

For the reasons provided in this appeal response, the department has determined, based on substantial evidence in the record, that the proposed project would not have significant impacts with implementation of the feasible mitigation measure identified in the PMND; an environmental impact report is not required. The department also complied with state and local noticing requirements for the PMND and extended the initial notice period by 20 days in order to ensure that all members of the public received adequate time to submit their comments. The appellants have not provided substantial evidence supporting a fair argument that the proposed project would have significant impacts on the environment, nor have they demonstrated that the department failed to provide adequate notice of the PMND or access to records. The department therefore respectfully recommends that the Commission uphold the PMND and deny the appeals.

EXHIBIT C



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**Re: Appeal of 570 Market Street Preliminary MND
Case No. 2019-017622-ENV**

To the San Francisco Planning Commission:

This correspondence is submitted on behalf of Appellant BCal 44 Montgomery Property LLC (“44 Montgomery”), the owner of 44 Montgomery Street, which directly abuts the project site on the western side, regarding their appeal of the preliminary mitigated negative declaration (“PMND”) prepared for the proposed project at 570 Market Street (Case No. 2019-017622-ENV) (“Project”). The appeal is scheduled for the Planning Commission’s April 3, 2025 meeting.

Pursuant to the California Environmental Quality Act (“CEQA”), a mitigated negative declaration (“MND”) is improper—and an environmental impact report (“EIR”) is required—if there is a fair argument that a project may have a significant environmental impact or if the MND’s conclusions are not supported by substantial evidence. Here, based

on 44 Montgomery's review of the PMND with assistance from noise experts from the environmental consulting firm Wilson Ihrig and historical resource expert Katherine Petrin,¹ CEQA requires EIR for this Project, not an MND, due to a fair argument that the Project may have significant impacts related to construction-related vibration, construction-related noise, and historical resources. The PMND is further deficient because it fails to provide substantial evidence to support its conclusions that the Project's impacts related to vibration, noise, historical resources, building settlement, traffic and circulation, air quality, and shadows will be less than significant.

For those reasons, 44 Montgomery respectfully requests that the Planning Commission grant their appeal and direct the Planning Department to prepare an EIR prior to taking any further action on the Project.

PROJECT DESCRIPTION

The Project proposes the construction and operation of a 29-story, approximately 300-foot-tall building for use as an approximately 211-room hotel with 3,400 square feet of retail space on the ground floor. The 7,045-square-foot Project site, which is a through lot with frontages on both Market Street and Sutter Street, is located on the north side of Market Street within the triangular block bound by Market Street to the southeast, Sutter Street to the north, and Montgomery Street to the west. The site is currently developed with a two-story commercial building, which would be demolished as part of the Project. The Project site is adjacent to three historical resources: (1) the Chancery Building at 562-566 Market Street; (2) the Hobart Building at 582-590 Market Street; (3) and 44 Montgomery Street.

Construction of the Project is expected to last approximately 2 years. Demolition would take approximately 10 weeks. Excavation and shoring would last approximately eight weeks. Foundation and below-grade construction would last about 10 weeks. The base building (ground floor to Level 14) would last approximately nine weeks. The remaining core construction of the building would last for approximately 30 weeks.

The proposed building would have a hybrid foundation that would consist of a four-foot mat slab supporting the southern half of the building with the remaining building portion supported on a 6- to 10-foot foundation bearing on 6-foot-diameter piles that would be drilled approximately 40 feet into bedrock. Construction of the basement and mat slab would require excavation of the total site footprint, removing approximately 3,900 cubic yards of soil.

In addition to its CEQA clearance, the Project will also require discretionary approvals for a Conditional Use Authorization ("CUA") from the Planning Commission to permit hotel uses under SF Planning Code section 303 and a Downtown Project Authorization ("DPA") under SF Planning Code section 309. The CUA will require the

¹ Wilson Ihrig's report on the Project's noise impacts and CV are attached as **Exhibit A**. Katherine Petrin's report on the Project's impacts to historical resources and CV are attached hereto as **Exhibit B**.

Commission to find that the Project is “necessary or desirable for, and compatible with, the neighborhood or the community” and to consider “[t]he market demand for a hotel or motel of the type proposed.” (SF Planning Code § 301(c)(1), (g)(3).) Given the recent defaults and foreclosures of hotels in San Francisco,² it is unlikely that a *new* hotel is “necessary” or that there is sufficient market demand for a new hotel. Although the Planning Commission will consider the CUA and DPA at a later date, the Project’s lack of necessity and demand weighs heavily in favor of ensuring that the Project’s environmental impacts are adequately disclosed, analyzed and mitigated to the extent feasible.

LEGAL STANDARD FOR NEGATIVE DECLARATIONS

As the California Supreme Court held, “[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.” (*Communities for a Better Env’t v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319-20.) “Significant environmental effect” is defined very broadly as “a substantial or potentially substantial adverse change in the environment.” (Pub. Res. Code [“PRC”] § 21068; see also 14 CCR § 15382.) An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.” (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83.) “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Communities for a Better Env’t v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 109.)

The EIR is the very heart of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214 (*Bakersfield Citizens*); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927.) The EIR is an “environmental ‘alarm bell’ whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return.” (*Bakersfield Citizens, supra*, 124 Cal.App.4th at 1220.) The EIR also functions as a “document of accountability,” intended to “demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” (*Laurel Heights Improvements Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392.) The EIR process “protects not only the environment but also informed self-government.” (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927.)

² See, e.g., *Value of San Francisco's largest hotel complex drops by \$1 billion*, SAN FRANCISCO BUSINESS TIMES (July 1, 2024), <https://www.bizjournals.com/sanfrancisco/news/2024/07/01/hilton-sf-union-square-parc-55-valuation-eastdil.html>; *This stylish hotel perched atop S.F.'s Nob Hill is facing a foreclosure lawsuit*, SAN FRANCISCO CHRONICLE (January 16, 2025), <https://www.sfchronicle.com/realestate/article/sf-stanford-court-hotel-closure-20038830.php>; *San Francisco Hotels Collapsing, Record Vacancy*, NEWSMAX.COM (August 13, 2024), <https://www.newsmax.com/newsfront/san-francisco-tourism-hotels/2024/08/13/id/1176297>.

An EIR is required if “there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.” (PRC § 21080(d); see also *Pocket Protectors*, *supra*, 124 Cal.App.4th at 927.) An MND instead of an EIR is proper only if project revisions would avoid or mitigate the potentially significant effects identified in the initial study “to a point where clearly no significant effect on the environment would occur, and . . . there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” (*Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331 [quoting PRC §§ 21064.5, 21080(c)(2)].) In that context, “may” means a reasonable possibility of a significant effect on the environment. (PRC §§ 21082.2(a), 21100, 21151(a); *Pocket Protectors*, *supra*, 124 Cal.App.4th at 927; *League for Protection of Oakland's etc. Historic Res. v. City of Oakland* (1997) 52 Cal.App.4th 896, 904-05.)

An EIR must be prepared rather than an MND “whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact.” (*No Oil, Inc. v City of Los Angeles* (1974) 13 Cal.3d 68, 75.) Under this “fair argument” standard, an EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency’s decision. (14 CCR § 15064(f)(1); *Pocket Protectors*, *supra*, 124 Cal.App.4th at 931; *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-51; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.) The “fair argument” standard creates a “low threshold” favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. (*Pocket Protectors*, *supra*, 124 Cal.App.4th at 928.)

The “fair argument” standard is virtually the opposite of the typical deferential standard accorded to agencies. As a leading CEQA treatise explains:

This ‘fair argument’ standard is very different from the standard normally followed by public agencies in making administrative determinations. Ordinarily, public agencies weigh the evidence in the record before them and reach a decision based on a preponderance of the evidence. [Citations]. The fair argument standard, by contrast, prevents the lead agency from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact. The lead agency’s decision is thus largely legal rather than factual; it does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the prescribed fair argument.

(Kostka & Zishcke, *Practice Under CEQA*, § 6.29.) The courts have explained that “it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency’s determination. Review is de novo, with a preference for resolving doubts in favor of environmental review.” (*Pocket Protectors*, *supra*, 124 Cal.App.4th at 928.)

DISCUSSION

I. An EIR Is Required Because the Project May Result in Significant Construction-Related Vibration Impacts on the Chancery Building, Finance Building, and 44 Montgomery Street.

The PMND found that, without mitigation, construction-related vibration impacts from jackhammers and excavators would result in significant impacts to the Chancery Building at 562-566 Market Street (1 foot away), Finance Building at 576-580 Market Street (1 foot away), and 44 Montgomery Street (1 foot away). (PMND, pp. 45-46.) As explained in the PMND,

Jackhammering and excavation could occur up to 1 foot from the property lines at 566 Market Street, 576 Market Street, and 44 Montgomery Street. Drilling and compaction activities could occur as close as 6 feet from the adjacent buildings. . . . [T]emporary groundborne vibration levels from the caisson drill could reach a peak particle velocity (PPV) as high as approximately 0.428 in/sec (inch per second) if drilling occurs within 6 feet of the adjacent buildings. Temporary groundborne vibration from jackhammering could reach as high as approximately 1.207 in/sec PPV if these activities were to occur within one foot of the adjacent buildings.

(PMND, p. 46.)

As a preliminary matter, although the PMND found significant impacts to all three buildings, it applied different significance thresholds to the Chancery Building and Finance Building (which it classifies as historical resources) than to 44 Montgomery Street (which it classifies as a “modern industrial/commercial building”). (PMND, p. 46.) However, the Planning Department’s own procedures classify 44 Montgomery as a Category A historical resource, which means it must be considered a historic resource for the purposes of CEQA analysis. (Ex. A, pp. 8-9.) The PMND should be revised to ensure that 44 Montgomery is evaluated as a historic resource with the proper significance thresholds.

The PMND claims that implementation of Mitigation Measure M-NO-2 (Protection of Adjacent Buildings/Structures and Vibration Monitoring During Construction) will reduce vibration impacts to less-than-significant levels. (PMND, p. 46.) However, while M-NO-2 might *reduce* vibration impacts, by its own terms it does not ensure that the impacts would be less than significant. Because the vibration impacts to the Chancery Building, Finance Building, and 44 Montgomery Street remain possibly significant, CEQA requires the preparation of an EIR, not an MND.

M-NO-2 consists of three components (pre-construction surveys, a Vibration Management and Monitoring Plan, and a Vibration Monitoring Results Report), none of which ensure that vibration impacts to the Chancery Building, Finance Building, and 44 Montgomery will be less than significant. (MMRP, pp. 10-13.) M-NO-2 fails to classify 44

Montgomery Street as a historical resource and applies different mitigation standards to 44 Montgomery than to the Chancery Building and Finance Building. To the extent that M-NO-2 fails to treat 44 Montgomery as a historical resource, M-NO-2 cannot be relied upon to ensure that vibration impacts to 44 Montgomery are less than significant.

Putting aside whether the PMND failed to properly classify 44 Montgomery as a historical resource, M-NO-2 still fails to ensure that vibration impacts will be less than significant. The pre-construction surveys required by M-NO-2 do nothing to prevent vibration damage to the adjacent buildings. For 44 Montgomery, M-NO-2 merely requires that “a structural engineer or other professional with similar qualifications shall document and photograph the existing conditions *of the potentially affected building.*” (MMRP, p. 10 [emph. added].) For the Chancery Building and Finance Building, M-NO-2 requires a survey by a historic preservation professional and a structural engineer that “include[s] descriptions and photographs of all identified historic buildings including all façades, roofs, and details of the character-defining features that *could be damaged during construction.*” (*Id.* [emph. added].) While the surveys may be helpful to document future damage to the buildings, they will have no impact on reducing the impacts in the first instance.

M-NO-2’s requirement for the preparation of a Vibration Management and Monitoring Plan (“Management Plan”) similarly fails to ensure that vibration impacts will be less than significant. M-NO-2 requires that the Management Plan establish maximum vibration levels, which mirror the CalTrans significance thresholds: (1) 0.5 in/sec PPV for 44 Montgomery Street and (2) 0.25 in/sec PPV for the Chancery Building and Finance Building. (MMRP, p. 11.) However, aside from identifying “all vibration generating equipment to be used during construction” and implementing buffer distances “to avoid damage *to the extent possible,*” the Management Plan is not required to contain any measures to ensure that impacts are less than significant. (MMRP, pp. 11-13.)

Instead of implementing measures that ensure compliance with the significance thresholds, the Management Plan will consist of measures to be taken *after* a threshold exceedance has occurred (i.e. *after* a significant impact has occurred), including:

- “Identify[ing] potential alternative equipment and techniques” but only “*if construction vibration levels are observed in excess of the established standard.*”
- Implementing alternative equipment and techniques “[s]hould *construction vibration levels be observed in excess of the standards established in the plan.*”
- Requiring inspection by a historic preservation professional and structural engineer for “each affected building and/or structure (as allowed by property owners) *in the event the construction activities exceed the vibration levels identified in the plan.*”

- Requiring monthly reports to “*identify and summarize any vibration level exceedances.*”
- Requiring preparation of a damage report “*if vibration has damaged nearby buildings and/or structures.*”
- Requiring repair “*should damage to any of the three adjacent buildings occur due to construction related vibration.*”

(MMRP, pp. 11-13 [emph. added].) Similarly, M-NO-2’s requirement for a Vibration Monitoring Results Report (“Results Report”) only addresses impacts after they occur by requiring the Report to include “descriptions of all instances of vibration level exceedance, identification of damage incurred due to vibration, and corrective actions taken to restore damaged buildings and structures.” (MMRP, p. 13.)

To be clear, the significance thresholds adopted in the PMND and incorporated into M-NO-2 are the CalTrans brightline thresholds of 0.5 in/sec PPV for 44 Montgomery Street and 0.25 in/sec PPV for the Chancery Building and Finance Building. (PMND, pp. 44-46; MMRP, p. 11.) Any exceedance of those thresholds constitutes a significant impact. (PMND, p. 46.) M-NO-2’s requirements for the Management Plan and Report Plan listed above confirm that the PMND assumes that exceedances of the thresholds (i.e. significant impacts) *may* occur and, in fact, plans for such exceedances to occur. This alone establishes a fair argument that this Project may have significant vibration impacts on the Chancery Building, Finance Building, and 44 Montgomery, which, in turn, requires an EIR. If vibration levels cannot be reduced beneath the applicable thresholds, CEQA requires that the City identify vibration impacts as significant and unavoidable in an EIR (not a MND), and then adopt a statement of overriding considerations.

II. An EIR Is Required Because the Project May Result in Significant Noise Impacts.

The PMND and its associated Noise and Vibration Technical Analysis (Appendix A of the PMND) (“Noise Analysis”) conclude that construction-related noise impacts from demolition, site preparation, grading, building construction, and architectural coating would be less than significant and would not require mitigation. (PMND, pp. 39-40.) Specifically, the PMND concludes that construction-related noise would not result in a 10 dB increase over current ambient noise levels, which the PMND adopts as the relevant significance threshold for noise, at the nearest sensitive receptor (the residential building at 333 Bush Street approximately 450 feet away). (PMND, pp. 35, 39-40.)

The expert noise and acoustical firm Wilson Ihrig reviewed the PMND and Noise Analysis. Wilson Ihrig’s review of the Project, which is attached hereto as **Exhibit A**, found that the PMND failed to accurately calculate construction-related noise levels and failed to evaluate noise impacts on neighboring commercial buildings. (Ex. A, pp. 1-3.) As discussed below, after correcting for the PMND’s inaccuracies, Wilson Ihrig found that construction-related noise would result in significant impacts to 333 Bush Street, 580 Market Street, and

44 Montgomery Street. Because Wilson Ihrig expert opinion establishes a fair argument that the Project may result in significant noise impacts, CEQA requires that the City prepare an EIR for this Project instead of an MND.

A. The Project may result in significant construction-related noise impacts at the nearest residential receptor at 333 Bush Street.

To calculate the Project's construction-related noise levels, the PMND's Noise Analysis relied on the general assessment criteria from the Federal Transit Administration Transit Noise and Vibration Assessment Manual ("FTA Manual"). (PMND, p. 38; Noise Analysis, p. 5.) Wilson Ihrig's review found that the Noise Analysis failed to properly apply the FTA Manual's criteria, thereby underestimating the Project's construction noise impacts and failing to identify and disclose the Project's significant noise impacts. (Ex. A, pp. 1-2.)

First, Wilson Ihrig found that the Noise Analysis failed to apply the proper "usage factor" for construction equipment, which is "[t]he percent of time a piece of equipment typically operates." (Ex. A, pp. 1-2.) Under the FTA Manual's criteria, a proper noise assessment assumes simultaneous, full-power operation (i.e. a usage factor of 100 percent) of the two loudest pieces of construction equipment for each construction phase. (FTA Manual, pp. 177-78, available at https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/research-innovation/118131/transit-noise-and-vibration-impact-assessment-manual-fta-report-no-0123_0.pdf; Ex. A, p. 2.) However, instead of applying a 100 percent usage factor, the PMND's Noise Analysis applied usage factors of 16 to 50 percent (Noise Analysis, Table 4, pp. 7-8), which "underestimates and, therefore, misrepresents expected construction noise levels." (Ex. A, p. 2.)

Second, Wilson Ihrig found that the Noise Analysis's assumptions for how construction noise would attenuate over distance do not accurately reflect the conditions surrounding the Project site. (Ex. A, p. 2.) The Noise Analysis assumed that construction noise would attenuate at 6 dB per doubling of distance. (Ex. A, p. 2.) However, as Wilson Ihrig explains, sound would attenuate at a far lesser rate due to conditions in the Financial District:

An adjustment of 6 dB per doubling of distance is only appropriate for calculations in the "free field." As described by Egan, "free-field conditions occur when sound waves are free from the influence of reflective surfaces (e.g., open areas outdoors, anechoic rooms)." The project site is located within the Financial District of San Francisco and is surrounded by six- to 43-story tall buildings. The facades of these buildings are all acoustically reflective, thereby making use of a "free field" calculation erroneous. On the contrary, the "canyons" of built-up downtowns can act as waveguides for noise, by reflecting and constraining sound to travel along them. This will lead to higher noise levels at receivers than would be calculated using free field conditions. At a minimum, a more conservative approach to attenuation over distance,

such as 3 dBA per doubling of distance, should be used account for the reverberant nature of the Financial District.

(Ex. A, p. 2 [citation omitted].) By relying on an overestimation of sound attenuation around the Project site, the Noise Analysis again underestimates the construction-related noise impacts of the Project.

Correcting for the two errors discussed above, Wilson Ihrig calculated the Project's noise levels using a 100 percent usage factor and an attenuation factor of 3dBA. (Ex. A, pp. 2-3.) The table below shows a comparison between the noise levels reported in the PMND's Noise Analysis and Wilson Ihrig's updated calculations with proper usage and attenuation factors:

Construction Phase	Appendix A			FTA General Assessment with 3 dB per doubling of distance attenuation		
	Reported Calculated Level*	Resultant Noise at 450 ft	Increase Over Existing Level	Calculated Level**	Resultant Noise at 450 ft	Increase Over Existing Level
Demolition	61	67	2	74	74	9
Site Preparation	65	68	3	79	79	14
Grading	60	66	1	71	72	7
Building Construction	59	66	1	73	74	9
*Usage factors of 16% - 50%, 6 dB attenuation per doubling of distance						
** Usage factors of 100%, 3 dB attenuation per doubling of distance						

(Ex. A, p. 3.) As shown above, with proper usage and attenuation factors, the noise levels at 333 Bush Street (450 feet away) during site preparation would increase by 14 dBA over the existing ambient level, which exceeds the 10 dB significance threshold and represents a significant impact requiring an EIR. (*Id.*) Because Wilson Ihrig has established a fair argument that the Project may result in a significant construction-related noise impact to 333 Bush Street, the Planning Commission should grant the appeal and direct the Planning Department to prepare an EIR.

B. The Project may result in significant construction-related noise impacts at the nearest commercial receptors at 580 Market Street and 44 Montgomery Street.

Although the PMND addresses noise impacts at the nearest residential receptor at 333 Bush Street (450 feet away), the PMND makes no attempt to address noise impacts on the commercial uses at nearby buildings, including the Chancery Building, Finance Building, and 44 Montgomery Street. The omission of impacts on these nearby commercial buildings

from the PMND’s noise analysis is improper. As stated in the PMND, the standard for evaluating noise impacts is whether “[t]he proposed project could generate a substantial temporary or permanent increase in ambient noise levels *in the project vicinity* in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies.” (PMND, p. 37 [emph. added.]; see CEQA Guidelines, Appx. G.) The standard to evaluate noise impacts “in the project vicinity” does not differentiate between residential and commercial uses or otherwise limit a proper CEQA noise analysis to impacts on residential receptors.

To calculate the Project’s construction noise impacts to the surrounding buildings, Wilson Ihrig applied the FTA Manual criteria for a distance of 20 feet, as shown in the table below. (Ex. A, pp. 3-4.)

Phase	Existing noise at 570 Market St*	Estimated construction noise level at 20 ft	Exceed 100 dBA FTA criteria?	Resultant Noise level at nearest sensitive use	Increase over existing noise level	Exceed ambient + 10 dB Standard?
Demolition	71 dBA	94 dBA	No	94 dBA	23 dBA	Yes
Site Preparation	71 dBA	99 dBA	No	99 dBA	28 dBA	Yes
Grading	71 dBA	92 dBA	No	92 dBA	21 dBA	Yes
Building Construction	71 dBA	94 dBA	No	94 dBA	23 dBA	Yes
* Highest minimum hourly Leq noise level from Appendix A.						

(Ex. A, p. 4.)

As shown above, noise levels during all phases of project construction would increase by 21-28 dBA over existing ambient levels. Therefore, even if a much more lenient significance threshold of 20 dBA were applied to commercial uses rather than the 10 dBA residential threshold, the Project will still result in significant noise impacts to the Chancery Building, Finance Building, and 44 Montgomery Street. Because Wilson Ihrig has established a fair argument that the Project may result in significant construction-related noise impacts to the Chancery Building, Finance Building, and 44 Montgomery Street, the Planning Commission should grant the appeal and direct the Planning Department to prepare an EIR.

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III. An EIR Is Required Because the Project May Result in Significant Impacts to Historical Resources.

As noted in the PMND, the standard for evaluating impacts to historical resources is whether the Project would “[c]ause a substantial adverse change in the significance of a historical resource pursuant to [CEQA Guidelines] §15064.5.” (PMND, p. 14.) The CEQA Guidelines define “substantial adverse change in the significance of an historical resource” as the “physical demolition, destruction, relocation, or alteration of the resource *or its immediate surroundings* such that the significance of an historical resource would be materially impaired.” (14 CCR § 15064.5(b)(1) [emph. added].) The Guidelines further define “materially impaired” as:

- (A) Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources; or
- (B) Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or
- (C) Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA.

(14 CCR § 15064.5(b)(2).)

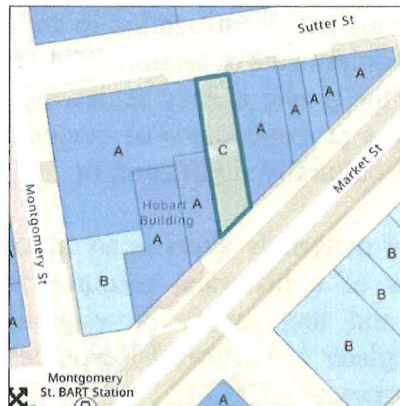
Although the current two-story commercial building on the Project site is not a historical resource, the area immediately surrounding the Project site is abundant with historical resources. Therefore, the question is whether development of the Project would alter the immediate surroundings of the nearby/adjacent historical resources such that resources would be materially impaired. As discussed below, review of the Project by historical expert Katherine Petrin found that the PMND fails to account for all the historical resources in the vicinity of the Project and failed to identify potentially significant impacts to those resources. As a result, the PMND fails to support its conclusion of less-than-significant impacts with substantial evidence. Furthermore, Ms. Petrin’s expert findings that the Project may have significant impacts on surrounding historical resources establishes a fair argument that the City must prepare an EIR, not an MND.

A. The PMND fails to account for all historical resources in the vicinity of the Project site.

According to the PMND's analysis of historical resources, which is based in part on a Historical Resources Evaluation Report prepared by Brewster Historic Preservation ("HRE"), there are eight (8) historical resources on the same block as the Project site, including:

- Chancery Building at 562-566 Market Street
- Finance Building at 576-580 Market Street
- Hobart Building at 582-590 Market Street
- Flatiron Building at 540-548 Market Street
- Three commercial buildings at 550, 554, and 560 Market Street
- Crocker Bank Building at 1 Sansome Street

(PMND, p. 16.) The Project site's block, which is bounded by Market, Sutter, and Montgomery Streets, consists entirely of historic resources, except for the current commercial building on the Project site and the building at 2-8 Montgomery Street, as shown below:



(Ex. B, pp. 8-9.)

Despite its concentration of historical resources, Ms. Petrin explains that “this block has never been evaluated as a potential historic district, though the area shares characteristics with both the nearby Article 11 New Montgomery-Mission-Second Street Conservation District and the Article 11 Pine-Sansome Conservation District. Both districts are in close proximity of the subject block and share many of the same characteristics as the Sutter Street side of the triangular block bounded by Market, Montgomery, and Sutter: composition and massing, scale, materials, and detailing and ornamentation.” (Ex. B, p. 9.) In other words, the block contains all the necessary elements such that it could be designated as a conservation district. (Ex. B, p. 13.)

Notably, the PMND and HRE fail to classify 44 Montgomery Street as a historic resource, even though the Planning Department has classified 44 Montgomery as a Category A historical resource, which means it must be considered a historic resource under CEQA and be analyzed for impacts in the PMND. (Ex. B, pp. 8-9; San Francisco Property Information Map, <https://sfplanninggis.org/pim/>; San Francisco Preservation Bulletin No. 16 City and County of San Francisco Planning Department: CEQA Review Procedures for Historic Resources, pp. 7-8, *available at* https://sfplanning.org/sites/default/files/documents/preserv/bulletins/HistPres_Bulletin_16.PDF.)

Because the PMND omits 44 Montgomery from consideration of the Project's impacts to historical resources, the PMND does not provide the required substantial evidence to conclude that historical impacts will be less than significant. Indeed, as explained by Ms. Petrin, "[w]ithout adequate evaluation and identification of all nearby and adjacent CEQA historical resources, the City cannot assess when proposed alterations to a historical resource cross the threshold into substantial adverse change." (Ex. B, p. 13.) At the very least, the PMND should be revised to include *all* historical resources in the vicinity of the Project, including 44 Montgomery Street, to ensure that the Project's potential impacts are fully disclosed and analyzed.

B. Expert review of the Project establishes a fair argument that the Project may have significant impacts to historical resources

Ms. Petrin, with over 25 years of experience as a historical preservation expert in San Francisco, found that "[t]he HRE and PMND inadequately assess the impacts of the proposed project on the character-defining features of CEQA-recognized historical resources." (Ex. B, p. 15.)

First, as discussed above in Section II.A, the PMND fails to consider the potential for designating the block bounded by Market, Montgomery, and Sutter Streets as a historic district despite its concentration of historical resources and similarities to the nearby New Montgomery-Mission-Second Street Conservation District and the Pine-Sansome Conservation District. (Ex. B, pp. 11, 15.)

Second, Ms. Petrin found that the Project, at a height of 320 feet in comparison to the 2-story structure currently on the site, "risks causing substantial adverse changes to the significance of adjacent and nearby CEQA historical resources." (Ex. B, p. 15.) Ms. Petrin lists the following as potentially significant impacts that require the preparation of an EIR:

- Visual and contextual alterations: The scale, massing, and height of the proposed tower disrupt the architectural cohesion of the Market Street side of the subject block.

- Shadows and spatial relationships: The project's height introduces shadow impacts that may diminish the public perception and historical setting of neighboring properties.
- Structural and vibrational risks: Demolition and construction activities adjacent to fragile historic structures raise concerns about physical impacts on foundational integrity.

(Ex. B, pp. 15-16.)

Based on the above impacts, Ms. Petrin concludes that “the project as currently proposed does not comply with CEQA’s requirements for historical resource protection. An EIR is necessary to: Fully evaluate visual, contextual, and structural impacts on adjacent and nearby historical resources; Consider the potential historic district significance of the block; Identify mitigation strategies and project alternatives that adhere to the Secretary of the Interior’s Standards.” (Ex. B, p. 16.) As an eminently qualified expert, Ms. Petrin’s conclusion that the Project may result in significant impacts to adjacent and nearby by historical resources establishes the requisite fair argument to require the preparation of an EIR for this Project. Therefore, the Planning Commission should grant the appeal and direct the Planning Department to prepare an EIR prior to any further consideration of the Project.

IV. The PMND Fails to Ensure that Geotechnical Risks to Adjacent Buildings Will Be Less Than Significant.

The Project’s basement and foundation will require extensive excavation (~15 feet) and deep, 6-foot diameter piles (160 feet). (PMND, pp. 83-84.) As described in the PMND,

The proposed building would include a basement beneath the entire site. The basement would be supported on a hybrid foundation that would consist of a 4-foot mat slab supporting the approximate southern half of the building. Ground improvement would extend at or below 15.5 feet and below the BART ZOI of 18.5 feet, as needed. The northern half of the building which would include the tower core would be supported on a 6- to 10-foot mat slab bearing on 6-foot-diameter piles that would be socketed approximately 40 feet into bedrock, for a total length of around 160 feet under the mat slab.

(*Id.*) The PMND then concedes that “*[s]ettlement* from the new building loads would occur beyond the perimeter of the site, and *could affect adjacent structures*, including the adjacent streets and the existing buildings east and west of the site.” (*Id.*, p. 87.) However, rather than discuss the potential impacts to adjacent structures, including 44 Montgomery Street, and the ways to mitigate those impacts, the PMND relies on measures that *might* be taken or that *might* be required at a later time. (*Id.*) As a result, the PMND fails to disclose the extent of the possible impacts to adjacent structures and fails to ensure that impacts are less than significant.

For example, the PMND claims that the Chancery Building and Finance Building “would be retained with a stiff shoring system designed to limit the shoring deflections,” but in the same paragraph states that “[a]lternatively, the neighboring buildings can be underpinned prior to site excavation,” which would involve “extending the depth and breadth of the foundation.” (PMND, p. 87.) If stiff shoring is inadequate to protect 564 and 580 Market Street, the PMND should require underpinning as a binding mitigation measure and also fully disclose the extent of the foundation expansion required for underpinning.

The PMND is similarly vague about impacts to 44 Montgomery Street, claiming, “To avoid surcharging adjacent basement of the 44 Montgomery Street building, the top two feet of the drilled shafts *may need* to be constructed with a permanent gap.” (PMND, p. 87.) If there are possible impacts to 44 Montgomery that can be mitigated or avoided by requiring a gap on drilled shafts, the PMND should require the permanent gap as a binding mitigation measure prior to concluding that the impact will be less than significant.

The PMND makes a generalized reference to a geotechnical report prepared for the Project, stating, “the geotechnical report includes recommendations for the following aspects of construction: demolition and site preparation; grading; excavation; foundation; and shoring.” (PMND, p. 87.) The PMND references and relies upon a document titled “Geotechnical Investigations” prepared by Langan dated September 2, 2021. (PMND, pp. 82-83.) No document attached to the PMND is titled “Geotechnical Investigations.” The only publicly available geotechnical report is a report titled “Preliminary Geotechnical Evaluation” prepared by Langan dated August 27, 2019. To the extent that the PMND relies on a report prepared in 2021, that report should be made available for public review prior to further consideration of the PMND. Regardless, the recommendations of a geotechnical report are not binding on the Project and cannot be relied upon to conclude that impacts will be less than significant. If the recommendations of the geotechnical report are necessary to mitigate impacts to the Chancery Building, Finance Building, and 44 Montgomery Street, the PMND must adopt the recommendations as binding mitigation prior to concluding that the impacts will be less than significant.

To the extent that the PMND is relying on the 2019 Langan Preliminary Geotechnical Evaluation (“2019 Evaluation”), that Evaluation fails to provide substantial evidence of the Project’s impacts. The 2019 Evaluation identified numerous potential issues for the Project including: strong ground shaking and seismic hazards; underground elements of the existing basement and foundations; presence of shallow groundwater; BART ZOI; appropriate foundation system for the proposed structure; and shoring of basement and foundation excavation and support for adjacent improvements. (2019 Evaluation, p. 3.) However, rather than fully investigate and mitigate any potential impacts, the 2019 Evaluation merely recommends further studies, concluding:

A design level geotechnical investigation should be performed to address geotechnical aspects of the proposed development and develop geotechnical parameters for foundation design. Seismic studies including development of

site specific response spectra and time histories will also be required and included in the design level report. The design level investigation should address feasible foundation options for the proposed structure, and within the BART ZOI. The design level report should provide shoring pressures for feasible shoring system(s) and underpinning. To address BART issues, BART drawings should be obtained for the Montgomery Street station adjacent to the site. Basement depths and foundation types and layout of the adjacent buildings should also be determined by others so they can be addressed in the design level geotechnical investigation report.

(2019 Evaluation, pp. 5-6.) To the extent that the PMND and 2019 Evaluation defer evaluation of the Project's impacts and formation of mitigation measures to later studies, the PMND is inadequate under CEQA and must be revised. (See *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275.)

The PMND also claims that compliance with the California Building Code, San Francisco Building Code, and BART permitting process (for the portions of the foundation work that extend into BART's zone of influence) "would further ensure" that impacts would be less than significant. (PMND, p. 87.) However, relying on regulatory compliance is insufficient if the PMND does not analyze and disclose the potential impacts and demonstrate *how* regulatory compliance will ensure that impacts are less than significant. (See *Save Our Capitol! v. Dept. of Gen. Servs.* (2023) 87 Cal.App.5th 655, 696.) The PMND makes no attempt to disclose the full extent of possible impacts to adjacent buildings, makes no attempt to adopt a standard of significance for those possible impacts, and fails to show how regulatory compliance would ensure that the Project does not exceed that standard.

At the very least, the PMND should be revised as described above to further elaborate on the potential impacts to adjacent buildings and to require binding mitigation measures to reduce those impacts to the extent feasible. If potential impacts still remain after imposing all feasible mitigation measures, CEQA requires an EIR, not an MND.

V. The PMND Relies on Non-Existent Off-Street Parking for Freight and Delivery Loading.

According to the PMND, "[t]he daily service vehicle activity associated with the proposed project would include small vehicles such as light trucks and panel vans that *could be accommodated within the off-street parking space.*" (PMND, p. 3 [emph. added].) However, the PMND and available Project plans do not show any off-street parking for loading. In fact, the Project is specifically seeking an exception from the City's off-street freight loading space requirements as a part of its Downtown Large Project Authorization (DNX) entitlement. (DNX Application, 570 Market Street, Attachment B, p. 2.) The Project's DNX Application explicitly states,

With 126,824 sf proposed hotel use, [City Code] requires one (1) off-street freight loading space. The Project requires an exception from this standard to instead provide *one on-street loading space* along Sutter.

(DNX Application, 570 Market Street, Attachment B, p. 7.)

In addition to not providing any off-street loading spaces, the Project would “replace approximately 22 feet of the existing 40-foot commercial loading zone fronting the project site along Sutter Street with a 22-foot passenger loading zone.” (PMND, p. 29.) The PMND then claims that the loss of a commercial loading zone on Sutter Street would simply be “accommodated within other nearby on-street commercial loading spaces” without any discussion of the resulting impacts on traffic or the impacts on those that rely on the Sutter Street commercial loading zone. (*Id.*)

The PMND should be revised to accurately reflect that the Project will not provide any off-street loading spaces and to accurately disclose the impacts on traffic, circulation, and pedestrian safety resulting from the loss of the Sutter Street commercial loading zone and the Project’s failure to provide the off-street parking required by City Code.

VI. The PMND Fails to Demonstrate that the Cancer Risks from Construction Emissions Will Be Less than Significant .

The PMND concedes that, without mitigation, construction-related emissions of carcinogenic toxic air contaminants, including diesel particulate matter (“DPM”), would result in a significant increased cancer risk for the closest sensitive receptors. As the PMND explains,

The California Air Resources Board (air board) identified DPM as a toxic air contaminant in 1998, primarily based on evidence demonstrating cancer effects in humans.⁶⁷ The estimated cancer risk from exposure to diesel exhaust is much higher than the risk associated with any other TAC routinely measured in the region.

...

The proposed project would require construction activities over an approximate 24-month construction period. Project construction activities would result in short-term emissions of diesel particulate matter and other toxic air contaminants. *The project site is located in an area that already experiences poor air quality and project construction activities would generate additional air pollution, affecting nearby sensitive receptors and resulting in a significant impact.*

(PMND, pp. 51, 58 [epmh. added].)

The PMND then claims that the significant cancer risk will be mitigated to less than significant with the incorporation of Mitigation Measure M-AQ-4, which requires the

Project's heavy-duty construction equipment to meet the EPA's Tier 4 emissions standards. (*Id.*) However, even if Tier 4 equipment might reduce or fully mitigate the impact of DPM emissions, the PMND fails to analyze or describe the extent of the impact before or after mitigation is applied. (See *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 901 [proposed mitigation must contain sufficient information to enable the public to discern the analytic route traveled from evidence to action].) In other words, while the PMND discloses that the cancer risk may be significant impacts, it does not disclose *how* significant the impact will be. As a result, the public cannot understand and evaluate the extent of the impacts or the effectiveness of the proposed mitigation.

Notably, the PMND does not include a health risk assessment ("HRA"), which is the standard procedure for quantifying the increased cancer risk of a Project and comparing the risk to established significance thresholds. Although the PMND concedes that "[a] health risk assessment is an analysis in which human health exposure to toxic substances is estimated and considered together with information regarding the toxic potency of the substances, to provide quantitative estimates of health risks," the PMND makes no attempt to quantify the impact. (PMND, pp. 51, 57-58.) Further, the PMND does not discuss any numerical significance threshold for the increased cancer risks from DPM, such as the 10 in one million threshold established by the Bay Area Air Quality Management District.

The PMND should be revised to clearly establish significance thresholds for the increased cancer risk from DPM emissions. The revised PMND should include an HRA to quantify the increased cancer risk and compare that risk to the significance threshold before and after application of Tier 4 equipment. Without the above revisions, the PMND fails to disclose the extent of the impact of DPM emissions and fails to provide substantial evidence that the increased cancer risk resulting from the Project's construction will be less than significant.

VII. The PMND Fails to Demonstrate that Shadow Impacts on Privately-Owned Public Open Spaces Will Be Less than Significant.

The PMND concedes that the Project will cast shadows on numerous privately-owned public open spaces ("POPOS"), including the One Sansome Street courtyard, One Bush Plaza, the plaza at 333 Market Street, and the plazas at 425 and 525 Market Street. (PMND, p. 67.) Notably, at One Bush Plaza, the Project would cast a shadow for a full hour between 2pm and 3pm during the fall, winter and spring. (*Id.*) At 333 Market Street and the 425 Market Street plaza, the Project would cast a shadow for a full hour before sunset during winter. (*Id.*)

The PMND does not provide a significance threshold for these impacts but instead claims that the impacts are less than significant because only "passive users of these parks may notice additional shadow" and the shadows would occur "after the midday hours." (PMND, p. 67.) First, it is entirely unclear what the PMND means by "passive users." While sitting on a bench and enjoying being outside may appear "passive," it is certainly an active use of an open space that the PMND should not so easily dismiss. Second, the fact that the

shadow impacts occur after the midday hours does not necessarily mean that the shadows will not significantly impact the use and enjoyment of the POPOSs.

The PMND should be revised to adopt a clear significance threshold for shadow impacts on POPOSs. The PMND should then compare the specific impacts to the POPOSs to the adopted significance threshold. Such revisions are necessary to ensure that the public and decisionmakers are informed of the extent of the Project's shadow impacts and to ensure that the PMND's conclusion is supported by substantial evidence.

CONCLUSION

Due to a fair argument that the Project may have significant impacts as well as the PMND's failure to provide substantial evidence to support its conclusions that impacts will be less than significant, 44 Montgomery respectfully requests that the Planning Commission grant the appeal to ensure that the Project complies with CEQA. 44 Montgomery requests that the Commission direct the Planning Department to prepare an EIR for the Project that addresses the concerns and deficiencies raised in this letter.

Any correspondence or questions regarding this appeal can be directed to Brian Flynn of Lozeau Drury LLP by email at brian@lozeaudrury.com or by phone at (510) 836-4200.

Sincerely,



Brian Flynn
Lozeau Drury LLP

EXHIBIT A



WI #23-002.25

December 20, 2024

Brian B. Flynn
Lozeau | Drury LLP
1939 Harrison Street, Suite 150
Oakland, California 94612

SUBJECT: Comments on 570 Market St MND Noise Analysis

Dear Mr. Flynn,

Per your request, I have reviewed the noise analysis in the Preliminary Mitigated Negative Declaration (PMND) for the proposed development project at 570 Market Street in the City of San Francisco, California. The following document was reviewed:

*570 Market Street Project, Environmental Case: 2019-017622ENV
Preliminary Mitigated Negative Declaration
October 30, 2024*

Both noise sections - Section 6 and Appendix A - were reviewed, with an emphasis on Section 6.

The proposed project involves the demolition of two commercial buildings and the construction of a new commercial building. The proposed development would include retail space on the ground floor and mezzanine levels, and a hotel space that would accommodate about 211 guest rooms. The PMND only considers receivers in the vicinity that include sleeping quarters, the nearest two being a hotel at 2 New Montgomery St, 395 ft from the project, and a residential building at 333 Bush St, 450 ft from the project. Other buildings in the area house offices, a courthouse, and retail stores adjacent to the project. Several of the nearby buildings are classified as historical. The buildings in closest proximity to the project site are the Finance Building at 576-580 Market St, the Hobart Building at 582-590 Market St, the Chancery Building at 562-566 Market St, and 44 Montgomery St. The façades of the Finance Building and the Chancery Building both abut the project property line. Tenants of the buildings surrounding the project include psychotherapists and physiotherapists; there are other office uses, as well. Other neighbors of note are the San Francisco Immigration Court, the US Securities and Exchange Commission, the Consulate General of the Republic of Singapore, and the Royal Norwegian Consulate General.

Construction Noise Levels Calculated Incorrectly

Appendix A claims that the methodology used to calculate construction noise levels is the FTA General Assessment methodology. This simplified methodology estimates noise levels considering only the loudest two pieces of equipment per phase but assuming that they are both operating 100%

of the time.¹ The percent of time a piece of equipment typically operates is called its *usage factor*; it typically ranges from 20% to 50%. The FTA Manual clearly states that a usage factor of 100% is required for General Assessment calculations. However, the values of calculated construction noise levels in PMND Appendix A indicate that usage factors of 16% to 50% were used to adjust equipment noise levels. Inclusion of usage factors below 100% when using the General Assessment method underestimates and, therefore, misrepresents expected construction noise levels. The misapplication of the FTA method results in construction noise levels presented in Table 5 of Appendix A being 5 to 8 dBA lower than they should be.

Additionally, the noise calculations use an attenuation-with-distance factor of 6 dB per doubling of distance. This is a typical adjustment factor for many construction sites, but it is inappropriate for use here. An adjustment of 6 dB per doubling of distance is only appropriate for calculations in the “free field.” As described by Egan, “free-field conditions occur when sound waves are free from the influence of reflective surfaces (e.g., open areas outdoors, anechoic rooms).”² The project site is located within the Financial District of San Francisco and is surrounded by six- to 43-story tall buildings. The facades of these buildings are all acoustically reflective, thereby making use of a “free field” calculation erroneous. On the contrary, the “canyons” of built-up downtowns can act as waveguides for noise, by reflecting and constraining sound to travel along them. This will lead to higher noise levels at receivers than would be calculated using free field conditions. At a minimum, a more conservative approach to attenuation over distance, such as 3 dBA per doubling of distance, should be used account for the reverberant nature of the Financial District. Better still, a sophisticated computer program such as SoundPLAN could be used for highly accurate modeling of the sound radiation away from the project site.

Table 1 compares the results of the noise calculations provided in PMND Appendix A with the same calculations made with 100% usage factor and only 3 dB per doubling of distance attenuation. The Appendix A estimates are 11 to 14 dBA lower than those made using the FTA General Assessment correctly and the more realistic rate of attenuation. Importantly, the revised calculations indicate that noise from the Site Preparation phase will exceed the baseline ambient noise level by more than 10 dBA which, according to the PMND thresholds of significance, would constitute a significant impact.

¹ Federal Transit Administration (FTA), *Transit Noise and Vibration Impact Assessment Manual*, FTA Report No. 0123, September 2018, pp. 177-178.

² M. David Egan, *Architectural Acoustics*, 2007, p 39.

Table 1: Comparison of Appendix A Calculations to FTA General Assessment Calculations (450 ft)

Construction Phase	Appendix A			FTA General Assessment with 3 dB per doubling of distance attenuation		
	Reported Calculated Level*	Resultant Noise at 450 ft	Increase Over Existing Level	Calculated Level**	Resultant Noise at 450 ft	Increase Over Existing Level
Demolition	61	67	2	74	74	9
Site Preparation	65	68	3	79	79	14
Grading	60	66	1	71	72	7
Building Construction	59	66	1	73	74	9
*Usage factors of 16% - 50%, 6 dB attenuation per doubling of distance						
** Usage factors of 100%, 3 dB attenuation per doubling of distance						

Neighboring Commercial Buildings are Not Evaluated for Impacts

While commercial and retail buildings are not typically treated as noise-sensitive receivers because they lack sleep quarters, excess noise at these uses can cause severe disruption and provoke adverse reactions. The CEQA checklist asks if the project would result in “Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies.” This does not immediately limit analysis to “residential” receivers.

For Appendix A, Table 1, the PMND adopts the FTA general assessment criteria for commercial receivers but does not evaluate noise at this receiver type. However, the FTA Manual states that their “guidelines can be considered reasonable criteria for assessment. If these criteria are exceeded, there may be adverse community reaction.”³ This is an understatement because the daytime criterion for commercial areas is 100 dBA, a full 15 dB over the level at which OSHA and NIOSH require worker hearing protection.^{4,5} The FTA Detailed Analysis criteria include the much more sensible 85 dBA for daytime construction in a commercial district.

The noise study also adopted an increase-over-ambient limit of 10 dBA for sensitive receivers. If one were to apply a similar increase-over-ambient limit of 10 dBA or even 20 dBA at adjacent commercial receivers, calculated noise levels would indicate impacts at these receivers for most phases of construction.

The following calculations use the FTA general assessment methodology and FHWA RCNM equipment reference noise level. The distance from the center of the site to the property line and nearest commercial receivers is approximately 20 ft, and the usage factor is 1. The highest reported existing minimum hourly Leq noise level from Appendix A has been chosen for illustrative purposes.

³ Federal Transit Administration, *Transit Noise and Vibration Impact Assessment Manual*, Sep. 2018, p 179.

⁴ <https://www.osha.gov/noise>

⁵ <https://www.cdc.gov/niosh/noise/about/noise.html>

Estimated construction noise levels exceed the highest reported local ambient by more than 20 dBA in the four construction phases summarized in Table 2. Under any reasonable consideration, a 20+ dBA increase in noise levels in a professional office (such as those at 580 Market St and 44 Montgomery St that overlook the project site), should be identified as a significant environmental noise impact.

Table 2: Calculated noise levels at nearest off-site commercial use from daytime construction.

Phase	Existing noise at 570 Market St*	Estimated construction noise level at 20 ft	Exceed 100 dBA FTA criteria?	Resultant Noise level at nearest sensitive use	Increase over existing noise level	Exceed ambient + 10 dB Standard?
Demolition	71 dBA	94 dBA	No	94 dBA	23 dBA	Yes
Site Preparation	71 dBA	99 dBA	No	99 dBA	28 dBA	Yes
Grading	71 dBA	92 dBA	No	92 dBA	21 dBA	Yes
Building Construction	71 dBA	94 dBA	No	94 dBA	23 dBA	Yes
* Highest minimum hourly Leq noise level from Appendix A.						

Please feel free to contact me with any questions regarding this information.

Very truly yours,

WILSON IHRIG



Katie Krainc,
Associate
wilson ihrig_570 market street mnd



KATIE R. KRAINC

Associate

A member of Wilson Ihrig's Seattle office, Katie works primarily on projects involving transit noise and vibration. She has experience with noise and vibration field measurements, data analysis, modal analysis, and report preparation. She has a deep understanding of waves in fluids and solids, as well as architectural acoustics, sound-structure interaction, and transducers.

Education

- MS Acoustics, The Pennsylvania State University, State College, PA
- BA, Physics and Music, Grinnell College, Grinnell, IA

Membership

- Acoustical Society of America, Associate
- INCE-USA Associate

Project Experience

EBMUD Quarry Site, San Leandro CA

Modeled potential project noise scenarios in a large area using CadnaA and GIS to determine compliance with local ordinance. Contributed to noise section of EIR report.

Houston Metro Next Program Management On-Call, Houston, TX

Conducted environmental noise and vibration assessment for a new 25-mile BRT project. Provided the client with a technical report outlining the assessment and recommended noise and vibration control measures.

Port of Grays Harbor Terminal 4 Expansion, Grays Harbor, WA

Provided analysis of potential noise and vibration impacts from construction activity. Contributed to noise section of EIR report.

Mercer Island Interceptor Vibration Monitoring, Seattle, WA

For more than two years created weekly vibration reports of construction activity for 3 vibration monitors placed near residences near construction.

Metropolitan Atlanta Rapid Transit Authority (MARTA) On-Call Task, Atlanta, GA

Analyzed noise and vibration measurements in residences near underground sections of track.

Downtown Redmond Link Extension Ballast Mat, Redmond, WA

Provided daily construction quality inspections during the installation of a high-performance ballast mat system. Quality issues identified during construction were resolved with the contractor and the completed installation was approved by the ballast mat manufacturer and Sound Transit. Conducted follow-up measurements to verify ballast mat performance.

MicroSurgical Technology, Redmond, WA

Analyzed data from a noise survey in a surgical instrument production facility. Developed a report assessing the workers daily noise exposure and provided noise control recommendations.

Sound Transit Northgate Link Vibration Support, Seattle, WA

Conducted quarterly analysis of vibration at 31 monitors in Sound Transit tunnels under University of Washington.

Sound Transit Wheel-Rail Noise Study, Seattle, WA

Provided noise and vibration measurements for validation of wheel-rail noise models. Performed extensive wheel roughness and rail roughness measurements. Also performed track decay rate testing.

***MS Thesis: Vibrational Assessment of Ash and Composite Hurleys,
The Pennsylvania State University****

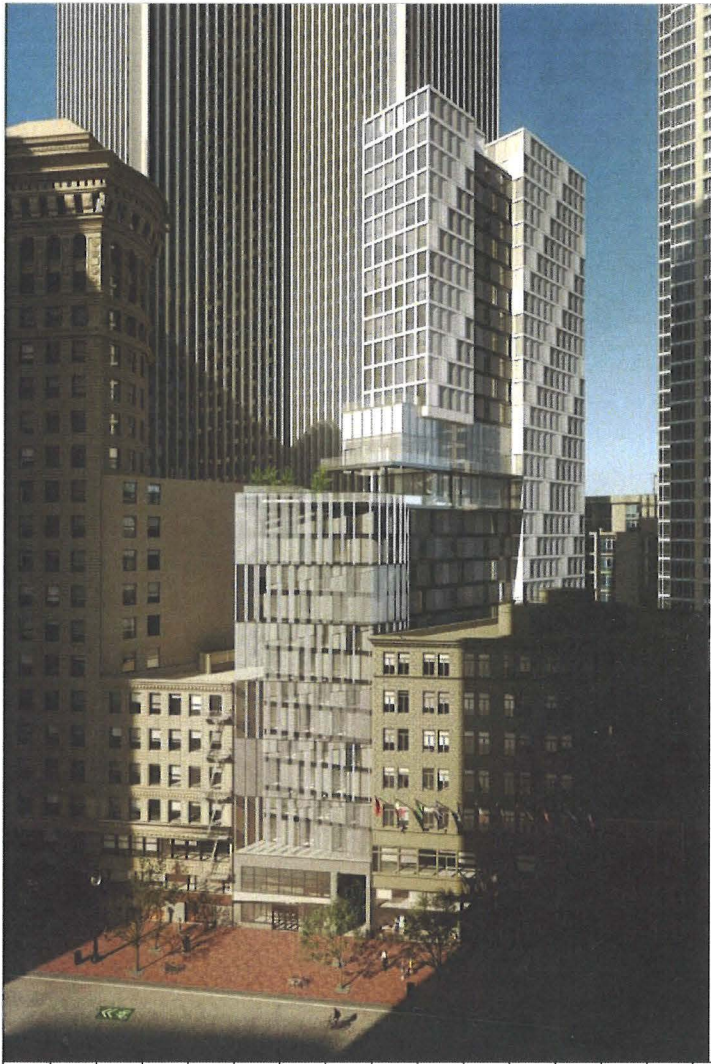
Conducted experimental modal analysis of sports equipment and compared vibration and damping behavior based on material properties. (*done prior to joining Wilson Ihrig)

VTA's BART Silicon Valley Extension Phase II (BSVII) (2020+)

Provided noise analysis of planned emergency ventilation system. Contributed to treatment and design recommendations.

EXHIBIT B

CEQA COMPLIANCE ANALYSIS
570 MARKET STREET, SAN FRANCISCO, CA



Prepared for:
Lozeau Drury LLP
Oakland, CA

Prepared by:
Katherine Petrin Consulting
San Francisco, CA

January 2025

Table of Contents

Executive Summary	1
Introduction	2
Proposed Project Description	2
CEQA Historical Resource Analysis	5
Updated Adjacent & Nearby CEQA Historical Resources	9
Potential for Historic District Designation	13
City's Project Review & Approval	14
Conclusion & Recommendations	15
Appendices	17
Relevant Article 11 Conservation District Summaries	17
Summary of Planning Department Comments & Responses on Proposed Project Design	21
Existing Conditions Photographs of Subject Block	25
Historic Photographs of Subject Property	45

Executive Summary

This report evaluates the potential environmental impacts of the proposed 570 Market Street Project on nearby historical resources, focusing on compliance with the California Environmental Quality Act (CEQA). The project is located at 570 Market Street in San Francisco's Financial District, adjacent to properties identified with historical significance. On October 30, 2024, the City of San Francisco issued a Preliminary Mitigated Negative Declaration (PMND) for the project, concluding that the proposed development would not result in significant impacts on historical resources. However, a comprehensive review of the Historic Resource Evaluation (HRE) prepared by Brewster Associates and the City's PMND has identified critical gaps and deficiencies.

Key Findings

- **Historic Resource Evaluation (HRE):** The Brewster HRE overlooks significant historical and architectural characteristics of nearby properties. It fails to adequately assess the project's potential to cause substantial adverse changes to the significance of adjacent and nearby resources as defined under CEQA.
- **Inadequate Analysis in the PMND:** The City's PMND does not adequately address cumulative impacts on the historical context of the surrounding area. It also neglects to evaluate the possibility of an emerging or potential historic district encompassing the project site.
- **Significance of Nearby Resources:** A concentration of properties (8 of 10 parcels on the subject property block) are adjacent to or within close proximity to the project site and are recognized as historical resources under CEQA.

Recommendations

- **Preparation of an Environmental Impact Report (EIR):** Given the potential for significant impacts on CEQA historical resources, an EIR is warranted. A thorough, updated historic resource analysis must be conducted, including a comprehensive evaluation of cumulative impacts and district eligibility.
- **Additional Research and Contextual Analysis:** Further investigation into the historical significance of the block is necessary to inform the project's impact assessment. Consideration of eligibility for historic district designation should be undertaken..

Introduction

This Project Approval Analysis was prepared at the request of Lozeau Drury LLP by Katherine Petrin, principal of Katherine Petrin Consulting. With a master's degree in Historic Preservation of Architecture and over 25 years of experience in architectural and historical research and preservation planning, Ms. Petrin meets the Secretary of the Interior's Professional Qualification Standards for History and Architectural History. This analysis evaluates the proposed 570 Market Street Project (Case No. 2019-017622ENV), prepared by 229 Ellis Holdings, LLC, focusing on compliance with the California Environmental Quality Act (CEQA) and potential impacts on historical resources.

The project proposes demolishing two historic, two-story commercial buildings at 570-574 Market Street and 55-57 Sutter Street, originally designed in 1922 by prominent architects Willis Polk and James R. Miller. While these Classical Revival-style structures were extensively altered in 1972, their historical and architectural significance within San Francisco's early 20th-century commercial development merits careful review under CEQA and local preservation guidelines.

This report provides a comprehensive analysis of the project's design, environmental impact, and regulatory compliance. It begins with a detailed description of the proposed development, followed by an assessment of the historic significance of the existing buildings. The analysis then evaluates the project's conformance with CEQA standards, highlighting areas of compliance and non-conformance.

Proposed Project Description

The 7,045-square-foot project site is located on the north side of Market Street within the triangular block bound by Market Street to the southeast, Sutter Street to the north, and Montgomery Street to the west, in the Financial District. The project site is a through lot that has frontages on both Market and Sutter streets. It is located within the C-3-O Downtown-Office district. The project site is currently occupied by two separate two-story commercial buildings over a shared one-story basement level of approximately 16,195-gross-square feet.¹

Existing buildings on the subject property are 570-574 Market Street, a two-story Classical Revival style commercial building designed by Willis Polk, completed in 1922; and 55-57 Sutter Street, a two-story commercial building designed by James R. Miller, completed in 1922.² The pair of buildings were joined in 1952 and now share a basement. In 1972, both Market and

¹ Historic Sanborn maps show that the two buildings were originally disconnected.

² San Francisco Planning Department, Historic Resource Evaluation Response for 570 Market Street (Record No.: 2019-017622ENV) (September 1, 2020), 2-3.

Sutter Street facades were altered in a renovation project that removed all traces of the original buildings and introduced the nearly identical late Modern-style facades that exist today.

On July 11, 2019, project sponsor Frontier Group, LLC / 229 Ellis Holdings, LLC (Project Sponsor) presented preliminary plans for a proposed project at 570 Market Street (see 2019-006704PPA).³ The proposed project would include the demolition of both historic buildings and construction of a 29-story, approximately 320-foot-tall building fronting both Market and Sutter Streets. The plans were completed by architect Danny Forster & Architecture of New York, NY.

The following proposed project description was prepared by the applicant in October 2024 and is available in the City of San Francisco's Property Information Map database⁴:

Date: October 30, 2024

Project Title: 570 Market Street Project

Case No.: 2019-017622ENV

Project Sponsor: 229 Ellis Holdings, LLC

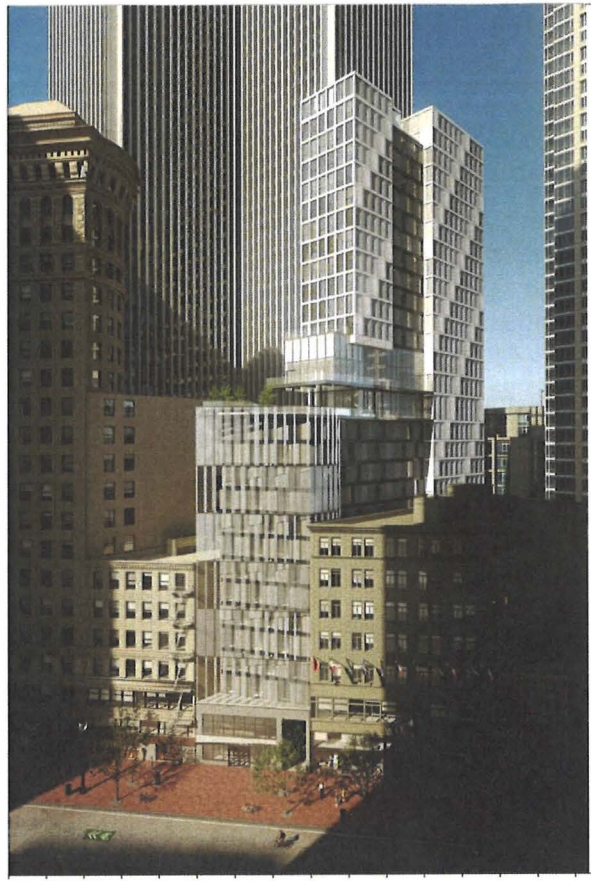
The proposed project would include the demolition of both two-story-over-basement buildings and construction of a 29-story, approximately 300-foot-tall building (320 feet total, including rooftop mechanical equipment and screening). The new building, which would extend over the entire parcel, would provide approximately 3,400 gross square feet of retail space on the ground floor and mezzanine levels fronting Market Street and an approximately 123,000-square-foot, 211 room hotel fronting Sutter Street. The proposed project would provide eight class I bicycle parking spaces on the third floor of the new building and eight class II bicycle parking spaces on Market Street near the project site. The proposed project would provide approximately 4,211 gross square feet of privately owned public open space (POPOS), which would include a 2,343-square-foot outdoor terrace and 1,868 square feet of indoor support space for the dedicated POPOS entrance and elevator lobby. The POPOS outdoor terrace would be located on the 15th floor on the south (Market Street) side.

³ "Project Description - 570 Market Street Project." Prepared for City of San Francisco by 229 Ellis Holdings, LLC, October 1, 2024. Accessible at <https://sfplanninggis.org/PIM/>

⁴ "Project Description - 570 Market Street Project." Prepared for City of San Francisco by 229 Ellis Holdings, LLC, October 30, 2024. Accessible at <https://sfplanninggis.org/PIM/>



570 Market Street Project Rendering (2020)



570 Market Street Project Rendering (2024)

CEQA Historical Resource Analysis

Under CEQA, the first step in the environmental review process is to prepare a Historic Resource Evaluation (HRE) to allow a lead agency to make a determination about a property's historical significance.⁵ Lead agencies have a responsibility to evaluate potential historical resources for eligibility under California Register of Historical Resources (California Register) significance criteria before making a finding as to a proposed project's impacts on historical resources (PRC § 21084.1, 14 CCR § 15064.5(3)).⁶ Following CEQA guidelines, it is necessary to establish the significance of a historical resource in an HRE in order to prepare a Project Impacts Analysis (PIA) that assesses when proposed alterations to a historical resource cross the threshold into substantial adverse change.⁷

Historic Resource Evaluation Findings (October 2019)

Brewster Historic Preservation Planning prepared a Historic Resource Evaluation of the subject property in October 2019. The HRE determines that there is *no historical resource present* for the purposes of CEQA.⁸ The following analysis is excerpted from the Planning Department's Historic Resource Evaluation Response (HRER) Part I:

Analysis:

According to the HRE prepared by Brewster Historic Preservation, (dated October 2019) and information in the Planning Department files, the subject property does not appear historically or architecturally significant such that it would rise to a level of individual eligibility. No historic events (Criterion 1) are associated with the property. 55-57 Sutter Street, originally a separate building and property, was associated with prominent real estate developers John Bricknell between 1921-1922, then Louis R. Lurie between 1922-1923. In 1923, Lurie sold the building to Colbert Coldwell, Bruce Cornwall, and B.A. Banker of the Coldwell, Cornwall & Banker Company (now Coldwell Banker).

However, the property is not significantly associated with their professional careers. The real estate developers only briefly owned portions of the subject property. Similarly,

⁵ State of California, California Code of Regulations. "Section 15064.5 - Determining the Significance of Impacts to Archaeological and Historical Resources." Current through Register 2024 Notice Reg. No. 21, May 24, 2024. Accessible at <https://casetext.com/regulation/california-code-of-regulations/title-14-natural-resources/division-6-resources-agency/chapter-3-guidelines-for-implementation-of-the-california-environmental-quality-act/article-5-preliminary-review-of-projects-and-conduct-of-initial-study/section-150645-determining-the-significance-of-impacts-to-archaeological-and-historical-resources>.

⁶ State of California, Office of Historic Preservation. "California Office of Historic Preservation Technical Assistance Series #1: California Environmental Quality Act (CEQA) and Historical Resources." No date. Accessible at <https://ohp.parks.ca.gov/pages/1054/files/ts01ca.pdf>.

⁷ State of California, "Technical Assistance Series #1."

⁸ San Francisco Planning Department, Historic Resource Evaluation Response for 570 Market Street (Record No.: 2019-017622ENV) (September 1, 2020), 1.

Coldwell, Cornwall & Banker was founded at another property where it operated for two decades before relocating to 55-57 Sutter Street. Therefore, the property is ineligible for associations with a significant person (Criterion 2).

The subject property was originally two separate parcels. Willis Polk designed the south two-story building (570-574 Market Street) in the Classical Revival style in 1922 and James R. Miller designed the north two-story building (55-57 Sutter Street), presumably in a same architectural style, also in 1922.

The buildings were physically connected in 1952. Although Polk and Miller are considered master architects, the 1972 remodel by unknown architect and/or builder removed all traces of the original buildings and created nearly identical modern facades at Market and Sutter Streets.

The wider Market Street frontage contains two aluminum-framed storefronts while the narrower Sutter Street frontage contains one. Similarly, there are seven windows facing Market Street and four windows facing Sutter Street. Each façade is predominantly clad in uniform granite with a portion of the second story clad with brick veneer. The second stories contain a center grouping of segmental arch windows flanked by individual windows, all framed with molded concrete.

Both buildings are capped by standing-seam metal parapets. The remodel is not a great example of any particular style nor is it known to be the work of a master architect. Therefore, the property is ineligible under Criterion 3.

Based upon a review of information in the Departments records, the subject property is not significant under Criterion 4 since this significance criterion typically applies to rare construction types when involving the built environment. The subject property is not an example of a rare construction type.

Archeological assessment is outside the scope of this review.

Additionally, the subject property does not appear to be part of a significant concentration of historically or architecturally unified buildings such that it would rise to the level of an eligible historic district.

The HRE notes the existence of **three** Adjacent or Nearby Historic Resources:

- 562-566 Market Street: Chancery Building was constructed in 1923 and designed by Willis Polk. The property is Article 11 (Category I) designated and National Register-eligible.

- 576-580 Market Street: Finance Building was constructed in 1923 and designed by John H. Powers and John H. Ahnden. The property is Article 11 (Category I) designated and National Register-eligible.
- 44 Montgomery Street: 43-story commercial tower constructed in 1966 and three-story commercial office building constructed in 1967. Both buildings were designed by John Graham & Co. in the Miesian International/Corporate Modern style.

City's Historic Resource Evaluation Response (September 1, 2020)

The City of San Francisco published a Historic Resource Evaluation Response (HRER) (Record No.: 2019-017622ENV) in which Planning Department Staff concur with the determination in the HRE that the subject property is ineligible for inclusion in the California Register of Historical Resources (CRHR) as an individual resource or as a contributor to a CRHR historic district and therefore not a CEQA historical resource.⁹ The San Francisco Planning Department assigned the subject property a historical resource status of "C," defined as "No Historical Resource Present."¹⁰

Peer Review of HRE and HRER

Regarding historical resource eligibility as defined by CEQA, we concur with certain findings of the Draft Historic Resources Evaluation Report for 570 Market Street (2019) prepared by Brewster Historic Preservation. The subject property at 570 Market Street does not appear to be individually eligible for listing in the CRHR.

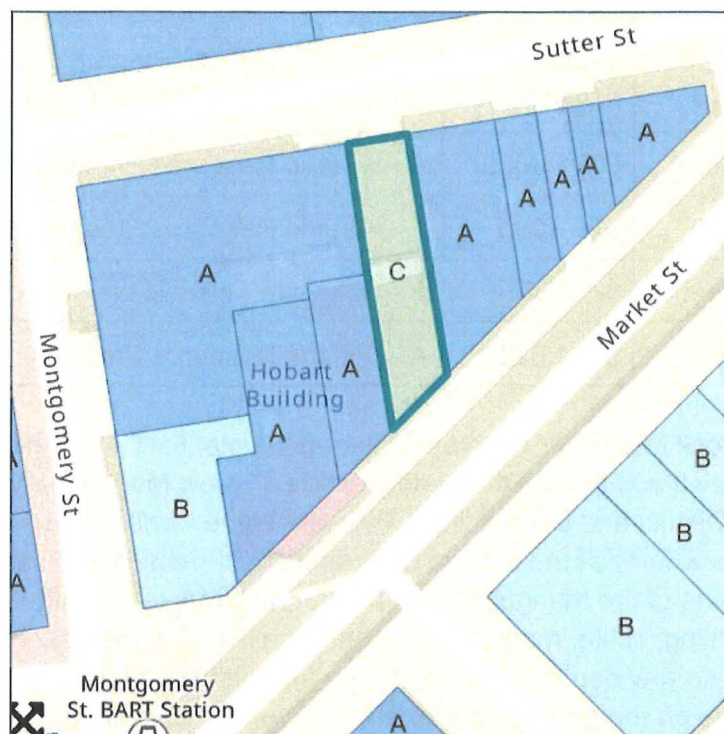
However, there are certain other findings and lack of analysis in both the PMND and the Brewster evaluation. The PMND and HRE fail to mention all adjacent/nearby historical resources potentially impacted by this project. On page 17 of the PMND, it states that the project site is not within a historic district and construction of the proposed project would not affect the historical significance of the "above adjacent historical resources or the buildings within the nearby conservation district." The City and the HRE fail to define, analyze, or determine potential impacts on character-defining features of the adjacent/nearby historical resources including the surrounding Article 11 Conservation Districts.

As is stated in the PMND, numerous buildings on the same block as the project site have been previously identified as historical resources. The 10 buildings that comprise the triangular block bounded by Market, Montgomery and Sutter Streets have been evaluated individually over time. Of the 10 properties, 8 are A-rated historical resources, 1 is a B-rated historical resource, and 1, the subject property, is a C-rated historical resource. Every property on the block, with the exception of the subject property and one other, are A-rated resources.

⁹ San Francisco Planning Department, Historic Resource Evaluation Response for 570 Market Street (Record No.: 2019-017622ENV) (September 1, 2020), 1.

¹⁰ San Francisco Planning Department, Historic Resource Evaluation Response for 570 Market Street (Record No.: 2019-017622ENV) (September 1, 2020), 3.

The figure and table below show the current Planning Department Historic Resource Status of each building on the subject block. A majority of the properties on the subject block have been identified with the status code "A," which means a historical resource is present. However, this block has not been evaluated for significance as a potential historic district.¹¹



Address	APN	Current S.F. Planning Department Historic Resource Status
540-548 Market Street 1-17 Sutter Street	0291/001	A - Historic Resource Present
550 Market Street 19-21 Sutter Street	0291/002	A - Historic Resource Present

¹¹ San Francisco Planning Department, "San Francisco Preservation Bulletin No. 16 City and County of San Francisco Planning Department CEQA Review Procedures for Historic Resources." Accessible at <https://archives.sfplanning.org/documents/5340-PresBulletin16CEQA.pdf>. In summary, The City of San Francisco uses a system to rate buildings' status for purposes of CEQA. Category A is the highest rating. If a building is rated as a Category A Building, it must be considered a historic resource under CEQA. A building rated as Category B requires further consultation and evaluation to determine its status as a historic resource. Status unknown at present. A building rated as a Category C has been evaluated and has been found not to be a historic resource.

554 Market Street 25-27 Sutter Street	0291/003	A - Historic Resource Present
560 Market Street 33 Sutter Street	0291/004	A - Historic Resource Present
562-566 Market Street 39-43 Sutter Street	0291/005	A - Historic Resource Present
570-574 Market Street	0291/013	C - No Historic Resource Present
576A-580 Market Street	0291/005B	A - Historic Resource Present
582-590 Market Street	0291/006	A - Historic Resource Present
2-8 Montgomery Street	0291/007	B - Unknown, age eligible
44 Montgomery Street	0291/012	A - Historic Resource Present

It appears that this block has never been evaluated as a potential historic district, though the area shares characteristics with both the nearby Article 11 New Montgomery-Mission-Second Street Conservation District and the Article 11 Pine-Sansome Conservation District. Both districts are in close proximity of the subject block and share many of the same characteristics as the Sutter Street side of the triangular block bounded by Market, Montgomery, and Sutter: composition and massing, scale, materials, and detailing and ornamentation. Due to the triangular shape and narrow depth of the parcels on the east end of the block, a unique through-block passage on the ground floor exists in several buildings.

The concentration of A-rated buildings that comprise the subject block, especially on the Sutter Street side, appear to retain a high level of integrity. As such, there is sufficient reason to determine whether a potential historic district or conservation district exists and further evaluation is necessary.

Updated Adjacent & Nearby CEQA Historical Resources

In addition to the historical resources shown in the table above, the subject property is adjacent to or within view of other CEQA historical resources, including properties listed individually in the National Register of Historic Places and designated City of San Francisco Article 11 Conservation Districts. A summary of nearby and/or adjacent historical resources follows. Properties listed in or determined eligible for the National Register are noted with an asterisk (*).

Article 10 San Francisco Landmarks

Flatiron Building*

540-548 Market Street / 1-17 Sutter Street (APN 0291/001)

San Francisco Landmark #155 (Article 10)

Hobart Building*

582-590 Market Street / 4 Montgomery Street (APN 0291/006)

San Francisco Landmark #162 (Article 10)

Crocker Bank Building

1-25 Montgomery Street (APN 0292/002 & 0292/001A)

San Francisco Landmark #297 (Article 10)

Article 11 Individual Buildings

Chancery Building*

562-566 Market Street / 39-43 Sutter Street (APN 0291/005)

Article 11, Category I: Significant Building

Finance Building*

576A-580 Market Street (APN 0291/005B)

Article 11, Individual Property

Hunter-Dulin Building*

41-45 Montgomery Street (APN 0292/001)

Article 11, Category I - Significant Building, No Alterations

San Francisco Planning Department Category A Properties

Wells Fargo Building

2-8 & 44 Montgomery Street (APN 0291/012 & 0291/007)

Eligible under Crit. 3 (architecture) in HRE (February 1, 2018, Case 2018-011742ENV)

Unnamed building

120-124 Montgomery Street (APN 0289/005)

Determined eligible in HRE (December 5, 2006, Case 2007.0327E)

Holbrook Building

58 Sutter Street (APN 0289/004)

Historical Resource Present (individual and district); See Planning App. No.: 2006.0659E (2/22/2007)

Bank of California*

1 Sansome Street (APN 0289/003)

Historical Resource Present (individual and district); See Planning App. No.: 2019-000446ENV (10/6/2010)

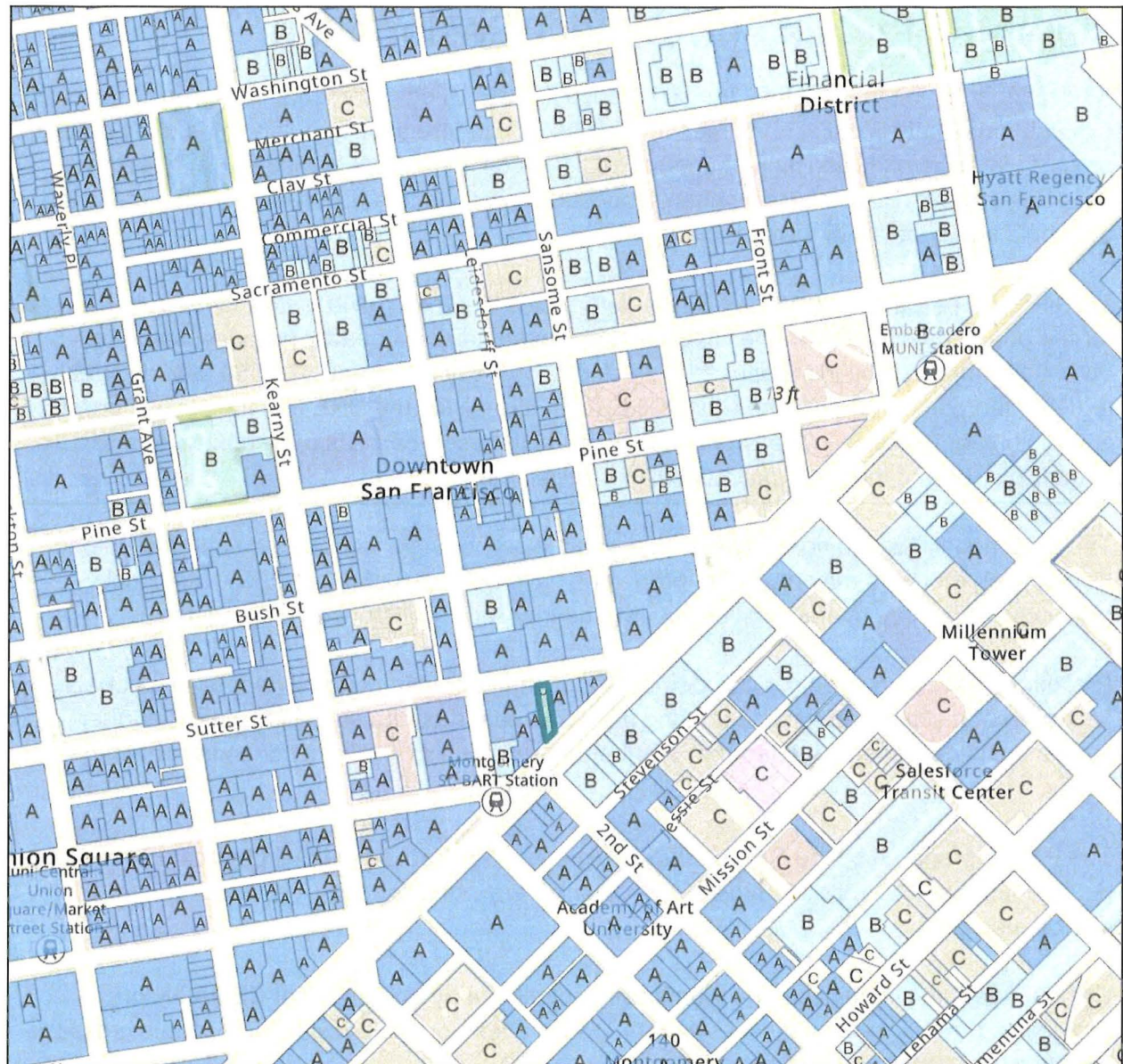
Article 11 Conservation Districts

The subject property is adjacent to or within blocks of two City of San Francisco Article 11 Conservation Districts:

- New Montgomery-Mission-Second Street:
 - The New Montgomery-Mission-Second Street Conservation District in San Francisco is an architecturally and historically significant area established under Article 11 of the City Planning Code. The district encompasses a portion of the C-3 District, generally bounded by Market Street to the north, Howard Street to the south, Second Street to the east, and Annie Street to the west. It was created to preserve and maintain the architectural integrity, scale, and character of its unique building stock while allowing for thoughtful, compatible development.
- Pine-Sansome:
 - The Pine-Sansome Conservation District in downtown San Francisco is an architecturally and historically significant area established under Article 11 of the City Planning Code. The district is located within the C-3 District, bounded by Pine Street to the south, Sansome Street to the east, Leidesdorff Street to the west, and sections of Montgomery Street to the north. It was created to preserve the architectural integrity, scale, and character of its unique collection of early twentieth-century office and financial buildings while allowing for compatible, thoughtful development.

For further information on these conservation districts, including guidelines for new construction, please see the Appendix.

The map that follows shows the subject property highlighted in green and the current San Francisco Planning Department Historic Resource Status of all surrounding properties within a several block radius.



(Source: San Francisco Property Information Map, January 2025)

Potential for Historic District Designation

As described in the Introduction, the first step in the CEQA environmental review process is to evaluate potential historical resources for significance before making a finding as to a proposed project's impacts on historical resources (PRC § 21084.1, 14 CCR § 15064.5(3)).¹² A Project Impacts Analysis (PIA) assesses when proposed alterations to a historical resource cross the threshold into substantial adverse change.¹³

The HRE prepared for 570 Market Street determines that there is *no historical resource present* for the purposes of CEQA.¹⁴ The HRE mentions three adjacent/nearby historical resources potentially impacted by the proposed project: 562-566 Market Street, 576-580 Market Street, and 44 Montgomery Street. The City's HRER concurred with the HRE that the subject property is ineligible for inclusion in the CRHR as an individual resource or as a contributor to a CRHR historic district and therefore *not* a CEQA historical resource.¹⁵

The HRE and HRER *do not* evaluate the subject block for significance as a potential historic district even though a majority of the properties have been identified as CEQA historical resources and share characteristics with two nearby Article 11 Conservation Districts.

Preliminary research for this report demonstrates that there is enough evidence of a cohesive collection of buildings constructed during the same period on the subject block that further evaluation is necessary to determine whether a potential historic district or conservation district exists.

The PMND prepared by the City to study the proposed project's potential physical impacts determined that the proposed project *could not* have a significant adverse effect on the environment.

Without adequate evaluation and identification of all nearby and adjacent CEQA historical resources, the City cannot assess when proposed alterations to a historical resource cross the threshold into substantial adverse change.

¹² State of California, Office of Historic Preservation. "California Office of Historic Preservation Technical Assistance Series #1: California Environmental Quality Act (CEQA) and Historical Resources." No date. Accessible at <https://ohp.parks.ca.gov/pages/1054/files/ts01ca.pdf>.

¹³ State of California, "Technical Assistance Series #1."

¹⁴ San Francisco Planning Department, Historic Resource Evaluation Response for 570 Market Street (Record No.: 2019-017622ENV) (September 1, 2020), 1.

¹⁵ San Francisco Planning Department, Historic Resource Evaluation Response for 570 Market Street (Record No.: 2019-017622ENV) (September 1, 2020), 1.

City's Project Review & Approval

Design Review

On September 30, 2019, the Project Sponsor submitted drawings to the Planning Department for review.¹⁶ On April 8, 2020, the Planning Department hosted a meeting to discuss the drawings and design review.

According to the San Francisco Planning Department, the proposed project demonstrates conformance with many elements of the City of San Francisco's design guidelines. (See Appendix for a summary of the comments and responses between S.F. Planning and the project architect related to the proposed project drawings.) Key areas of compliance include site design strategies that recognize urban patterns (S1), harmonize relationships between buildings and streets (S2), and organize uses to enhance the public realm (S6). The architectural design adheres to guidelines emphasizing vertical and horizontal modulation (A2), active building fronts (A8), and sustainable practices (A9).

The San Francisco Planning Department identified areas of non-conformance that required further refinement. The ground-floor frontage along Market and Sutter Streets (S5) aligns with the property line as recommended, but the recessed POPOS entry may still need additional justification to fully meet guidelines for a defined and active streetwall.

Architectural adjustments addressed concerns about clarity (A1), contextually appropriate materials (A3), and facade depth (A6). The Planning Department recommended the shift to a volumetric design. The revised facade now features angled patterns to enhance texture and shadow, aligning with adjacent terracotta buildings but potentially needing further depth refinement. Additional storefront revisions on Market Street enhance verticality and balance, and future detailing of the screen element is anticipated to improve its depth and layering.

Preliminary Mitigated Negative Declaration

The subject property was the subject of a Preliminary Mitigated Negative Declaration (PMND) prepared by San Francisco Planning as required under the California Environmental Quality Act (CEQA) to study the proposed project's potential physical environmental effects. The determination of the PMND is that the proposed project could not have a significant adverse effect on the environment.

On October 24, 2024, the Planning Department published an "Agreement to Implement Mitigation Monitoring and Reporting Program" for the 570 Market Street project.

¹⁶ San Francisco Planning Department, Plan Check Letter for 570 Market Street, Planning Record Number: 2019-017622PRJ (April 22, 2020).

Conclusion & Recommendations

Based on the analysis of the proposed 570 Market Street Project and its proximity to significant historical resources, it is recommended that an Environmental Impact Report (EIR) be prepared instead of relying on the PMND. This recommendation is driven by the need for a thorough evaluation of the project's potential impacts on the surrounding historic environment, in compliance with CEQA.

CEQA Appendix G establishes that a project has a significant environmental effect if it: "Would cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5." Section 15064.5 defines "substantial adverse change" as: "Physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired."

Material impairment occurs when:

- (A) The demolition or material alteration of physical characteristics convey the historical significance of a resource and justify its eligibility for the California Register of Historical Resources;
- (B) Alterations materially impair characteristics of resources included in local registers or historic surveys unless contrary evidence demonstrates a lack of significance;
- (C) Changes materially impair characteristics that justify eligibility for the California Register as determined by a lead agency.

Additionally, projects following the Secretary of the Interior's Standards for the Treatment of Historic Properties generally mitigate impacts to a less-than-significant level.

The HRE and PMND inadequately assess the impacts of the proposed project on the character-defining features of CEQA-recognized historical resources. These documents fail to analyze the broader potential for the block bounded by Market, Montgomery, and Sutter Streets to qualify as a historic district, despite nearly all other properties on the block being rated as historical resources. This oversight is significant given the district-like cohesiveness and similarities to nearby Article 11 Conservation Districts.

The proposed 29-story, 320-foot-tall project, as designed, risks causing substantial adverse changes to the significance of adjacent and nearby CEQA historical resources. Potential impacts may include:

- Visual and contextual alterations: The scale, massing, and height of the proposed tower disrupt the architectural cohesion of the Market Street side of the subject block.
- Shadows and spatial relationships: The project's height introduces shadow impacts that may diminish the public perception and historical setting of neighboring properties.

- Structural and vibrational risks: Demolition and construction activities adjacent to fragile historic structures raise concerns about physical impacts on foundational integrity.

Without an EIR, these direct, indirect, and cumulative impacts cannot be adequately analyzed, disclosed, or mitigated.

Based on my professional assessment, the project as currently proposed does not comply with CEQA's requirements for historical resource protection. An EIR is necessary to:

- Fully evaluate visual, contextual, and structural impacts on adjacent and nearby historical resources.
- Consider the potential historic district significance of the block.
- Identify mitigation strategies and project alternatives that adhere to the Secretary of the Interior's Standards.

Preparation of an EIR will ensure a comprehensive and legally compliant review process, protecting San Francisco's irreplaceable architectural and cultural heritage.

Appendix

Relevant Article 11 Conservation District Summaries

New Montgomery-Second Street Conservation District

Historical Overview

The district's core was largely developed during the post-1906 earthquake reconstruction era, between 1906 and 1933, as a cohesive collection of masonry commercial loft buildings. These structures exhibit consistent architectural features such as tripartite facades, fenestration patterns, and classical ornamentation. New Montgomery Street, originally intended as a southern extension of the Financial District, became a showcase for monumental buildings, including the Palace Hotel and the Pacific Telephone and Telegraph Building, despite barriers that hindered its full extension to the Bay.

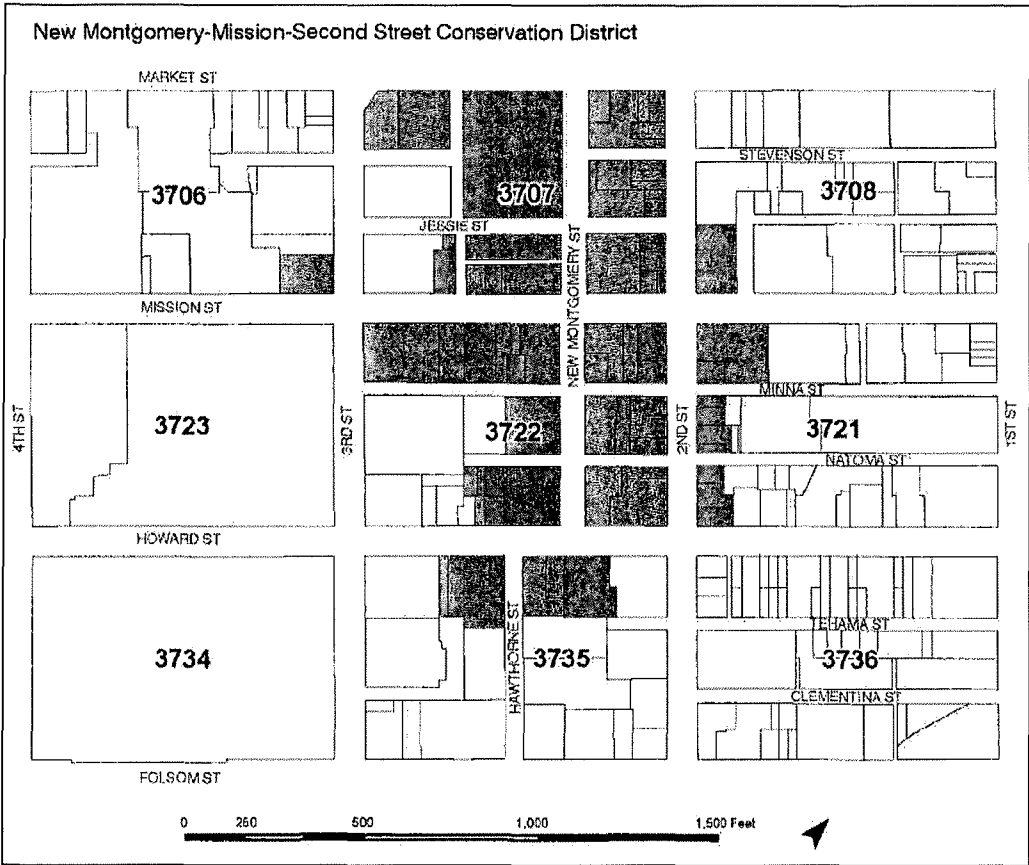
In contrast, Second Street evolved primarily as a warehousing and support service corridor. Its development was shaped by logistical challenges, such as the Second Street Cut, which limited its integration into the retail and office expansions north of Market Street. Together with Mission and Howard Streets, this area developed a mixture of industrial, commercial, and smaller-scale office buildings that supported downtown growth.

Architectural Character & Features

The district's architecture reflects American Commercial Style influences, marked by Renaissance-Baroque, Gothic Revival, and Art Deco elements. Buildings typically range from two to eight stories, constructed from earth-tone masonry materials like brick, terra cotta, and stone. Large structures along New Montgomery Street exhibit horizontal massing, while Second Street features smaller buildings with vertical orientations. Common compositional elements include two- and three-part facades, rhythmic bays, rusticated bases, and elaborate cornices. The district's materials palette consists of light and medium earth tones, with details often rendered in stucco, terra cotta, or glazed brick. Architectural details emphasize depth and weight through textured surfaces, creating a human-scaled environment. Significant structures include the Pacific Telephone Building and the Veronica Building, which illustrate the range of commercial architecture present in the area.

Guidelines for New Construction & Alterations

The New Montgomery-Mission-Second Street Conservation District aims to safeguard its architectural heritage while promoting vibrant, compatible development. Standards for new construction and alterations emphasize maintaining existing building rhythms, scale, and detailing. New structures must complement, but not replicate, historical styles, ensuring continuity with the district's character. Guidelines address setbacks, materials, fenestration, and ornamentation to harmonize modern interventions with historic fabric.



(Source: San Francisco Planning Department)

Pine-Sansome Conservation District

Historical Overview

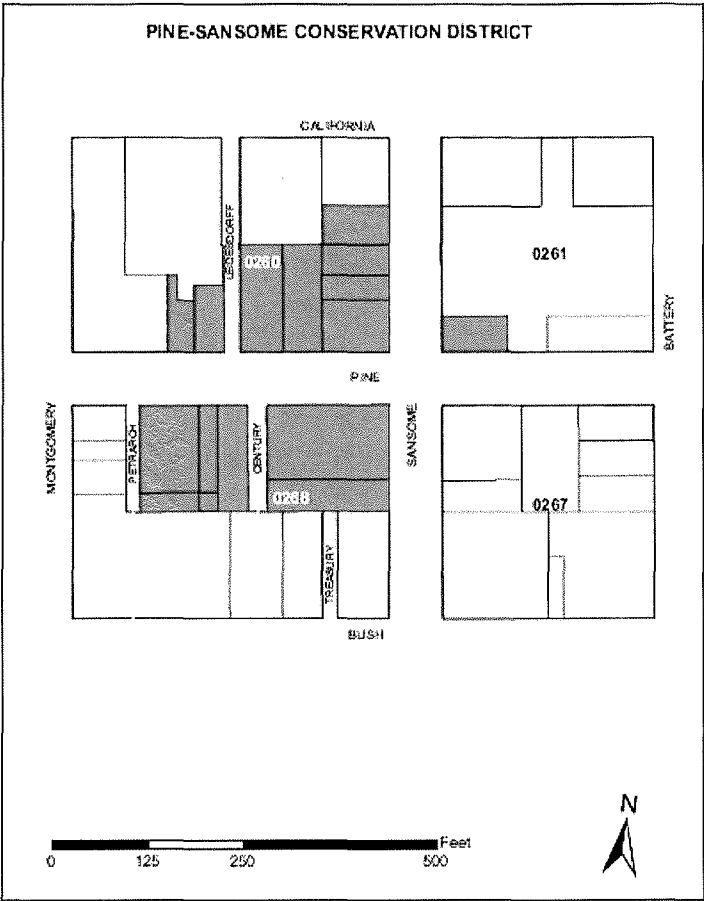
Originally flat, land-filled terrain east of Montgomery Street, the area became a center for household furnishings on Pine Street and hotels on Sansome Street during the mid-nineteenth century. By 1875, financial institutions from Montgomery Street expanded into the area, forming a stock exchange subdistrict that included the Stock and Exchange Board, Pacific Exchange, and California Stock Exchange. Though the 1906 Earthquake and Fire disrupted the district, it regained prominence in the 1920s as banks and insurance companies clustered around Pine and Sansome Streets. A major transformation occurred with the construction of a 12-story addition to the U.S. Subtreasury Building, later replaced by the Pacific Coast Stock Exchange in the 1930s, solidifying the district's identity as a key financial hub. Today, the district remains vital to the city's financial life.

Architectural Characters & Features

The Pine-Sansome Conservation District is characterized by a dynamic street and alley network that creates a human-scaled streetscape with intimate open spaces, exemplified by the Pacific Coast Stock Exchange's forecourt. The district features a rich architectural mix of early 20th-century styles, including Classical Moderne, Skyscraper Gothic, and Georgian Revival, with high-quality masonry and detailed ornamentation enhancing its visual character. Consistent building heights, interconnected alleys, and harmonious material palettes of masonry, terra cotta, and brick contribute to its unified aesthetic. Buildings typically display vertically stacked compositions with narrow bays and articulated façades that reflect historic rhythms. The district balances historic preservation with vibrant commercial use, integrating pre-1930 office structures with contemporary functionality while maintaining architectural integrity and scale.

Guidelines for New Construction & Alterations

New buildings and major alterations must adhere to standards set forth in Sections 1110–1113 of the Planning Code, emphasizing compatibility with the district's character. Design elements should align with prevailing composition, massing, and scale. Contemporary designs are encouraged, provided they harmonize with historic structures through thoughtful use of materials, colors, and proportions. Large glass areas must be divided by mullions to maintain appropriate scale, and lot consolidation should be minimized to preserve the traditional lot pattern. Architectural details from surrounding buildings may inspire new interpretations, ensuring continuity between old and new.



(Source: San Francisco Planning Department)

Summary of Planning Department Comments & Responses on Proposed Project Design

On April 22, 2020, the San Francisco Planning Department responded to the Project Application with a Plan Check Letter indicating the following:

- (1) any information required to proceed with environmental analysis,
- (2) any missing information or modifications that must be provided to demonstrate compliance with the Planning Code and proceed with environmental analysis, and
- (3) any other modifications the Department is seeking in order to support the project.

The Design Review Comment letter (Appendix B) identifies additional recommended modifications to project design to achieve conformity with all applicable design guidelines. In order to advance the review process, the Project Sponsor was instructed to provide a written response to this letter indicating how the items marked as non-conforming would be remedied.

Aspects of the Proposed Project Determined Not-Applicable to Design Guidelines

- Site Design S3: Recognize and Enhance Unique Conditions
- Site Design S4: Create, Protect, and Support View Corridors
- Site Design S8: Respect and Exhibit Natural Systems and Features

Aspects of Proposed Project *Conforming* with City Design Guidelines

- Site Design S1: Recognize and Respond to Urban Patterns
- Site Design S2: Harmonize Relationships between Buildings, Streets, and Open Spaces
- Site Design S6: Organize Uses to Complement the Public Environment
- Architecture A2: Modulate Buildings Vertically and Horizontally
- Architecture A4: Design Buildings from Multiple Vantage Points
- Architecture A5: Shape the Roofs of Buildings
- Architecture A7: Coordinate Building Elements
- Architecture A8: Design Active Building Fronts

Aspects of Proposed Project *Non-Conforming* with City Design Guidelines

- Site Design S5: Create a Defined and Active Streetwall
 - Planning comment: *Shift ground-floor frontage to property-line along Market and Sutter Streets; recess entries only.*¹⁷
 - Architect response: *Sutter Street ground floor frontage aligned with property line, vestibule provided at the interior of hotel lobby. Market Street retail storefront aligned with property line, vestibule provided at the interior. POPOS entry*

¹⁷ San Francisco Planning Department, Plan Check Letter for 570 Market Street, Planning Record Number: 2019-017622PRJ (April 22, 2020), Appendix B.

recessed 8'-0" with a double height space in order to invite pedestrians into the promenade up to the POPOS on the 15th Floor. See dimension of POPOS entry recess on Floor Plan, detail 01 on A-101¹⁸

- Site Design S7: Integrate Common Open Space and Landscape with Architecture
 - Planning comment: *If a POPOS is proposed above the ground level, it should be open to the sky, and be landscaped / programmed for comfort and to invite active use.*
 - Architect response: *The POPOS has been designed with rich native foliage lining programmed zones. See sheet A-907 for a rendered POPOS plan, and the detailed perspectives and POV renderings from A-908 through A-916. Upon exiting the dedicated POPOS elevator, a visitor may chose to acquire a beverage from the bar and rest in the seated zone with pavers underfoot, where conversation among friends abounds. If a more active experience is desired, the user may stroll up the wooden platform gradually ramping up to an overlook at the edge of the terrace. The overlook will also incorporate a structural glass floor, allow views down within the screen wall, or out east to Embarcadero.*

Furthermore, there are three different relationships to the sky a visitor may chose from. Of the 2,365 SF of exterior POPOS area, 37% of it is fully open to the sky, 42% partially open to the sky with the 16th floor terrace above, and 21% is covered by the building above. The floor of the 16th floor terrace will be constructed of steel bar grating, allowing a significant portion of light and air to move down to the POPOS below. Additionally, the floor to floor of the 15th and 16th floor is 15'-0", which will provided the covered area with a generous head height

- Architecture A1: Express a Clear Organizing Architectural Idea
 - Planning comment: *Make architectural concepts clear, compelling, and compatible with the context. Provide a cohesive expression or composition, internally consistent to the architectural parti and compatible with character-defining neighborhood components.*
 - Architect response: *Architectural parti has been reconsidered from the largely 'surface' approach of the initial submission that treated the Sutter and Market facades as flat planes of glazing and the sidewalls as flat planes of opaque wall. Our intention is to take a 'volumetric' approach, where the patterns of the glazed zones turn the corner and continue onto the opaque walls. The building's internal*

¹⁸ Danny Forster & Architecture, "570 Market Street - Plan Check Letter Response Log," prepared for San Francisco Planning Department (October 30, 2020).

logic now remains consistent regardless of the vantage it is viewed from. See exterior renderings on A-900 through A-904

- Architecture A3: Harmonize Building Designs with Neighboring Scale and Materials
 - Planning comment: *Reinterpret historic forms and elements, and/or integrate contextual materials using contemporary techniques. The adjacent buildings at 562 Market and 580 Market are instructive precedents for scale, vertical and horizontal modulation, articulation of depth, texture, materiality, and tonality.*
 - Architect response: *Our historical neighbors, the Hobart, Finance and Chancery buildings are hugely inspirational projects and it is our intention to respect them with our contemporary intervention. The primary facade material employed across the project is Equitone, a panelized fiber cement product providing a stone-like appearance more economically than traditional stone. See A-200 through A-201 for building elevations, and A-401, A-403, A-405 for enlarged elevations with material specifications*
- Architecture A6: Render Building Facades with Texture and Depth
 - Planning comment: *Integrate a rhythm of horizontal and vertical elements that provide deep relief in scale with adjacent facade systems. Metal Panel and butt-glazed curtainwall systems provide insufficient depth and texture*
 - Architect response: *We integrated subtle angling within our facade design, which gradually increases across the length of the facade. The pattern developed in combination with fiber cement facade provides depth, shadow and texture comparable to the terracotta masterpieces on our block. See facade renderings on A-900 through A-904*
- Architecture A9: Employ Sustainable Principles and Practices in Building Design
 - Planning comment: *Provide documentation demonstrating integration of Sustainable Principles and Practices in Building Design.*
 - Architect response: *The planting strategy at the ground floor and POPOS level developed in conjunction with the landscape architect dwg. employs native foliage throughout. Furthermore, by employing modular construction, as opposed to conventional construction, we are able to track, quantify and limit the amount of material waste throughout the construction process*

On October 27, 2020, the Planning Department released a second set of comments to which Danny Forster responded on October 30, 2020:

- Planning comment: *The storefront composition along Market Street requires further development. The attempt to align horizontal elements with the adjacent buildings is appreciated, but as executed, results in an awkward, roughly equal division between the first and second levels. A taller ground floor, with transom, and more-typical height mezzanine level is recommended. See Urban Design Guidelines pages 48-49 for examples of traditional storefront elements which may be reinterpreted in a contemporary architectural language.*
- Architect response: *The retail storefront has been revised, eliminating the alignment with the adjacent buildings, and emphasizing the verticality of the retail entry in a few different ways: the bulkhead has been increased from 18" to 24" tall; entry doors have been heightened from 8'-0" to 9'-0" tall; the marquee has been raised to its maximum allowable height, 16'-0" above adjacent grade; three vertical mullions were added to solidify the glazing rhythm. The net result creates a much more balanced retail facade, see A-402 for enlarged elevation and A-900 & A-901 for renderings including the updated facade*
- Planning comment: *The detailing of the Screen Element should feature greater depth. Consider layering of surfaces, structure, attachments, and lighting to increase perceptible depth and shadow lines in both light and dark conditions.*
- Architect response: *The comment regarding the screen wall will be addressed with an addendum issued to the Planning Commission at a later date. The current screen wall design is at a SD level of development, and will be tuned and calibrated to a greater level of detail as documentation progresses. We acknowledge and agree with the request for additional depth and will deliver greater sense of it as the engineering of the screen develops and things like attachments, lighting, and fully developed structure become more technically integrated into the design*

Existing Conditions Photographs of Subject Block



Subject property (570 Market Street) at center left (December 2024)



Subject block of Market Street with subject property (570 Market Street) at center (December 2024)



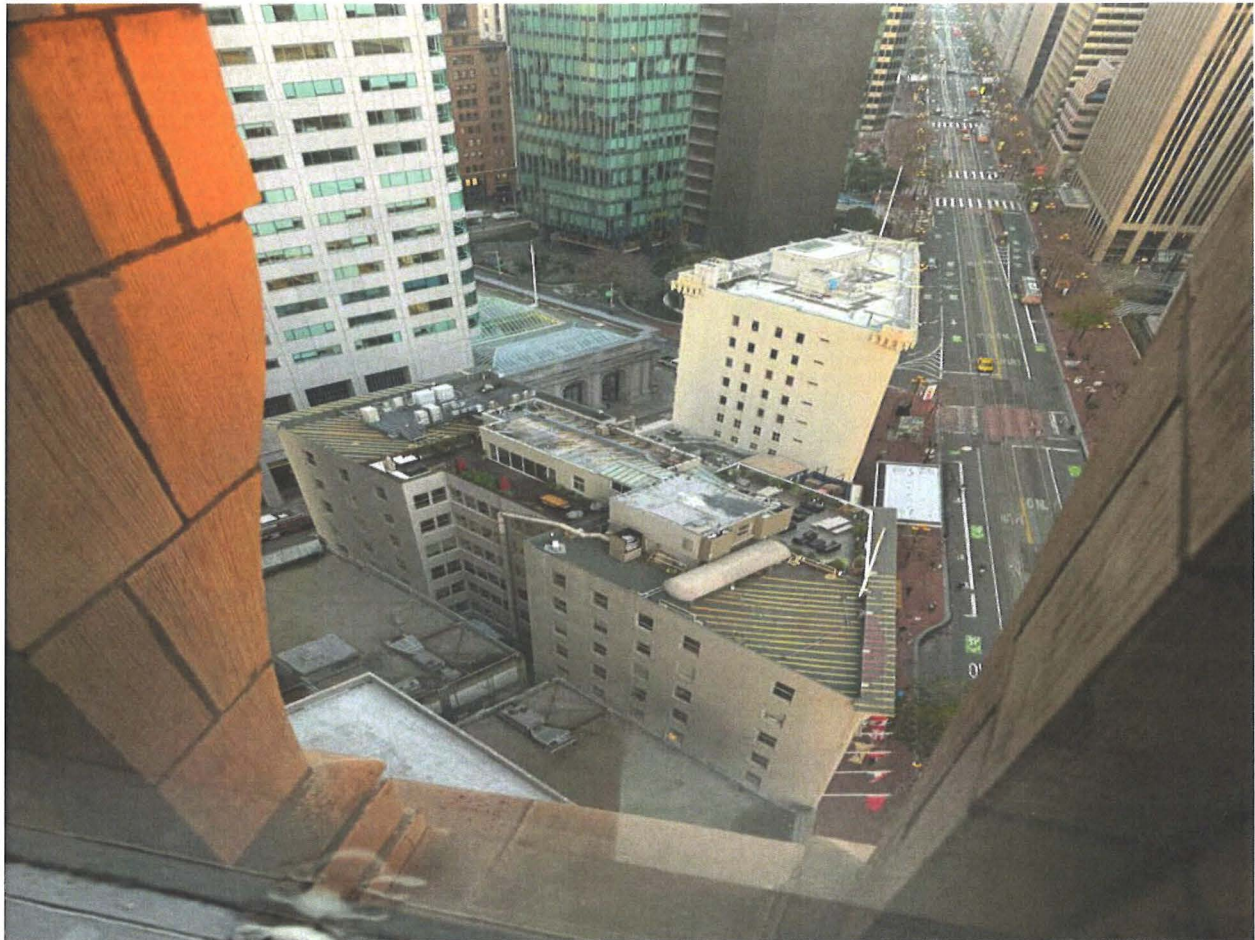
Subject block of Market Street with subject property (570 Market Street) at center (December 2024)



Subject property (Sutter Street side) (Source: Google, April 2023)



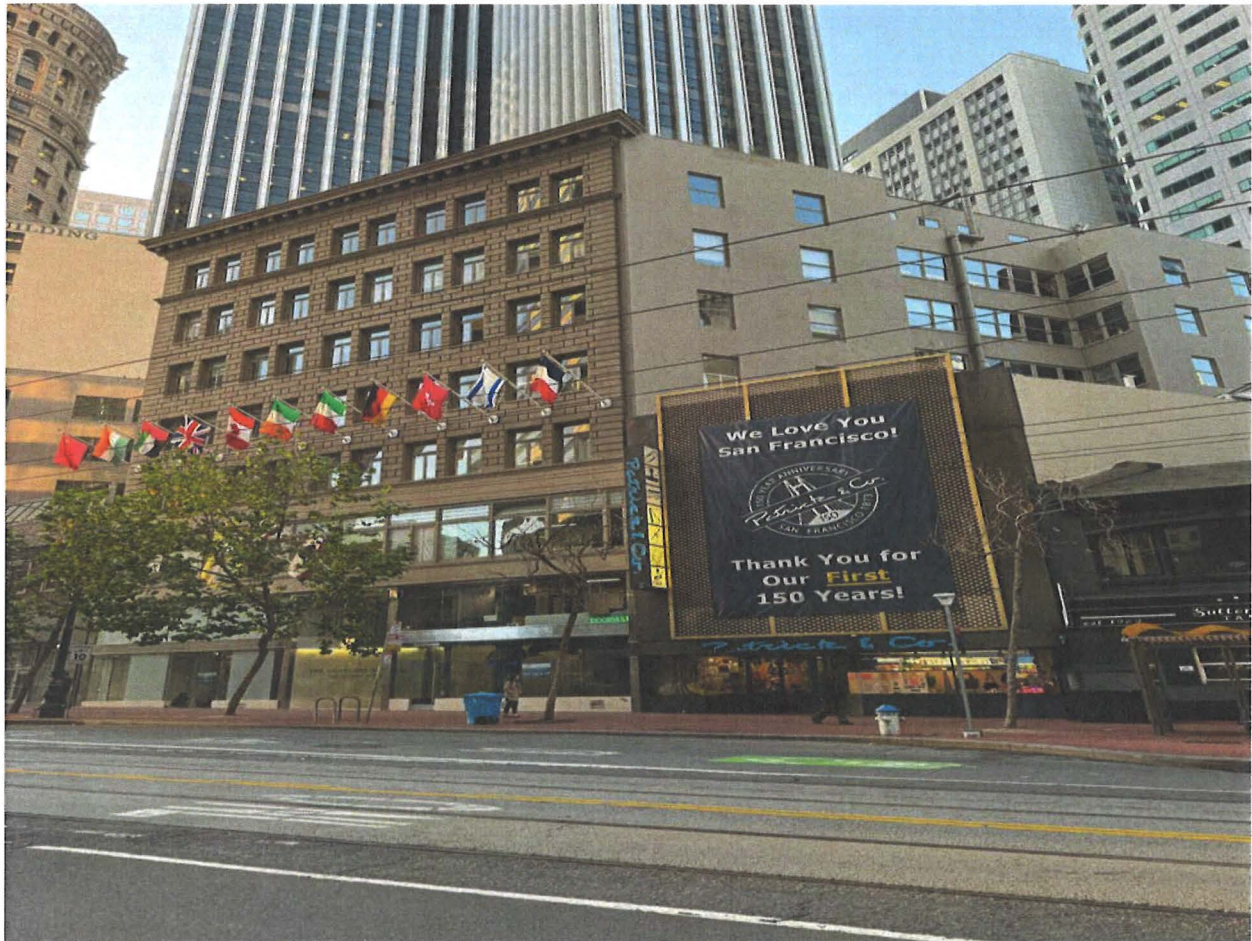
Aerial view of subject property (570 Market Street) at center (December 2024)



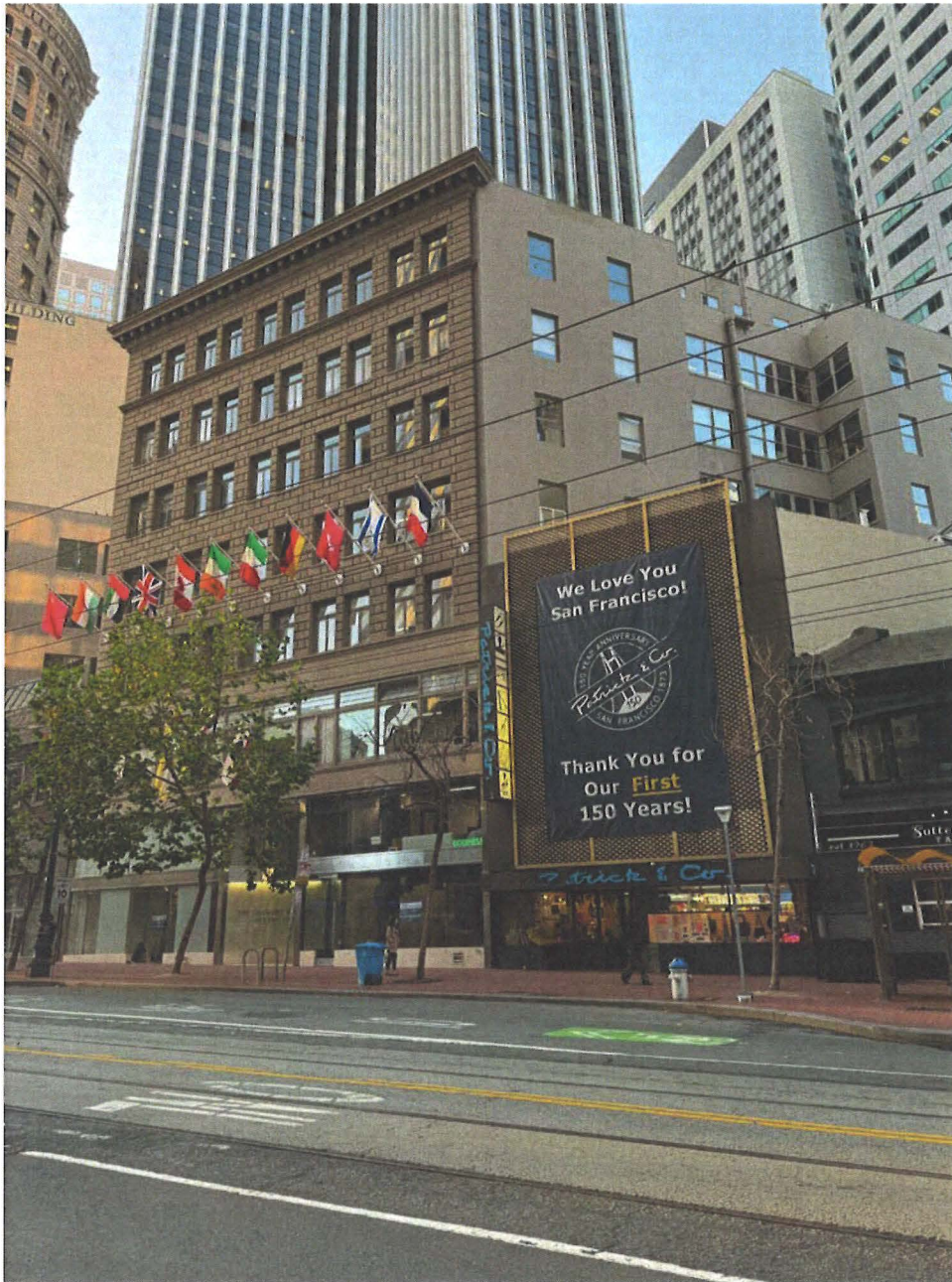
Aerial view of subject property (570 Market Street) at center (December 2024)



Subject block of Market Street (December 2024)



Subject block of Market Street (December 2024)



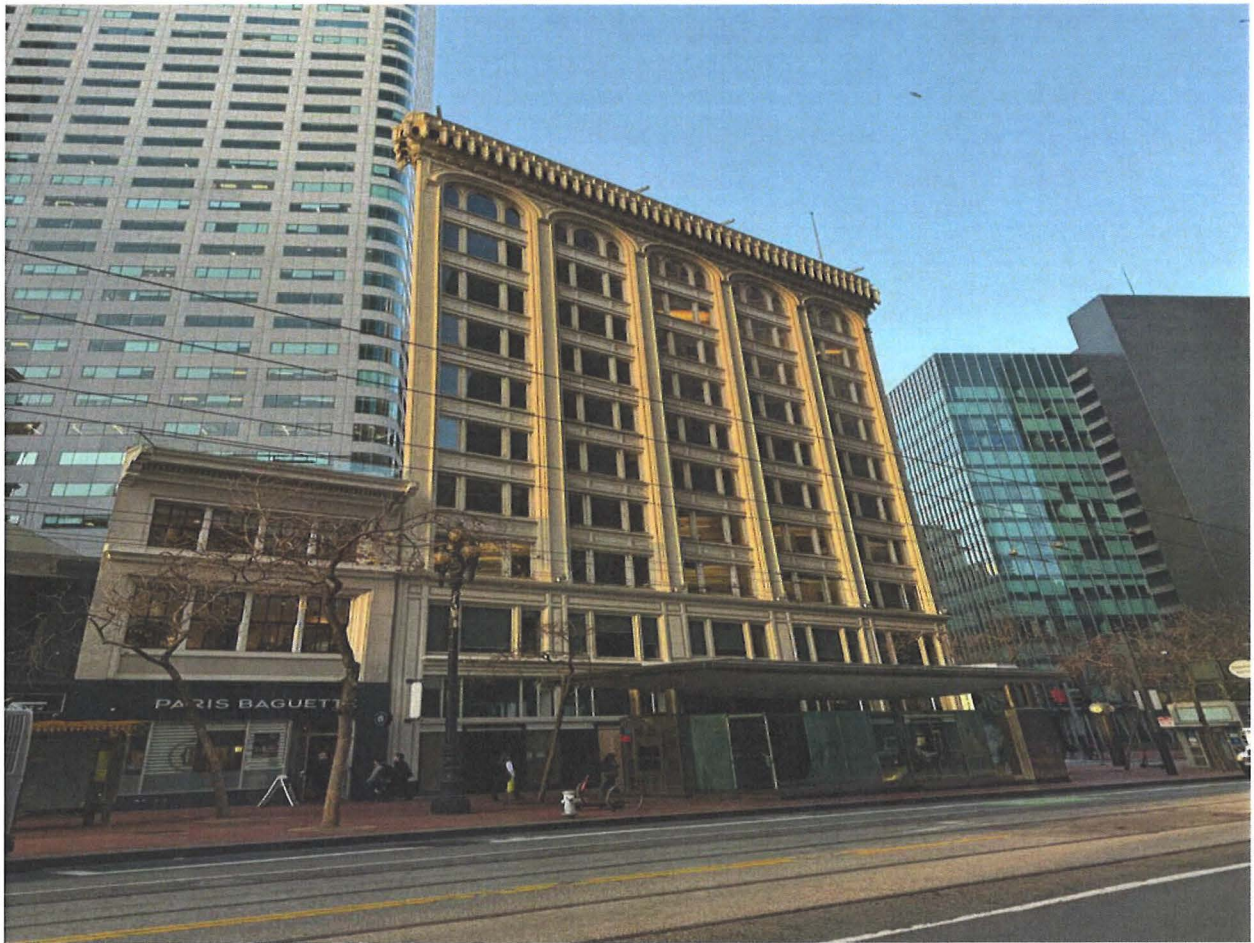
Subject block of Market Street (December 2024)



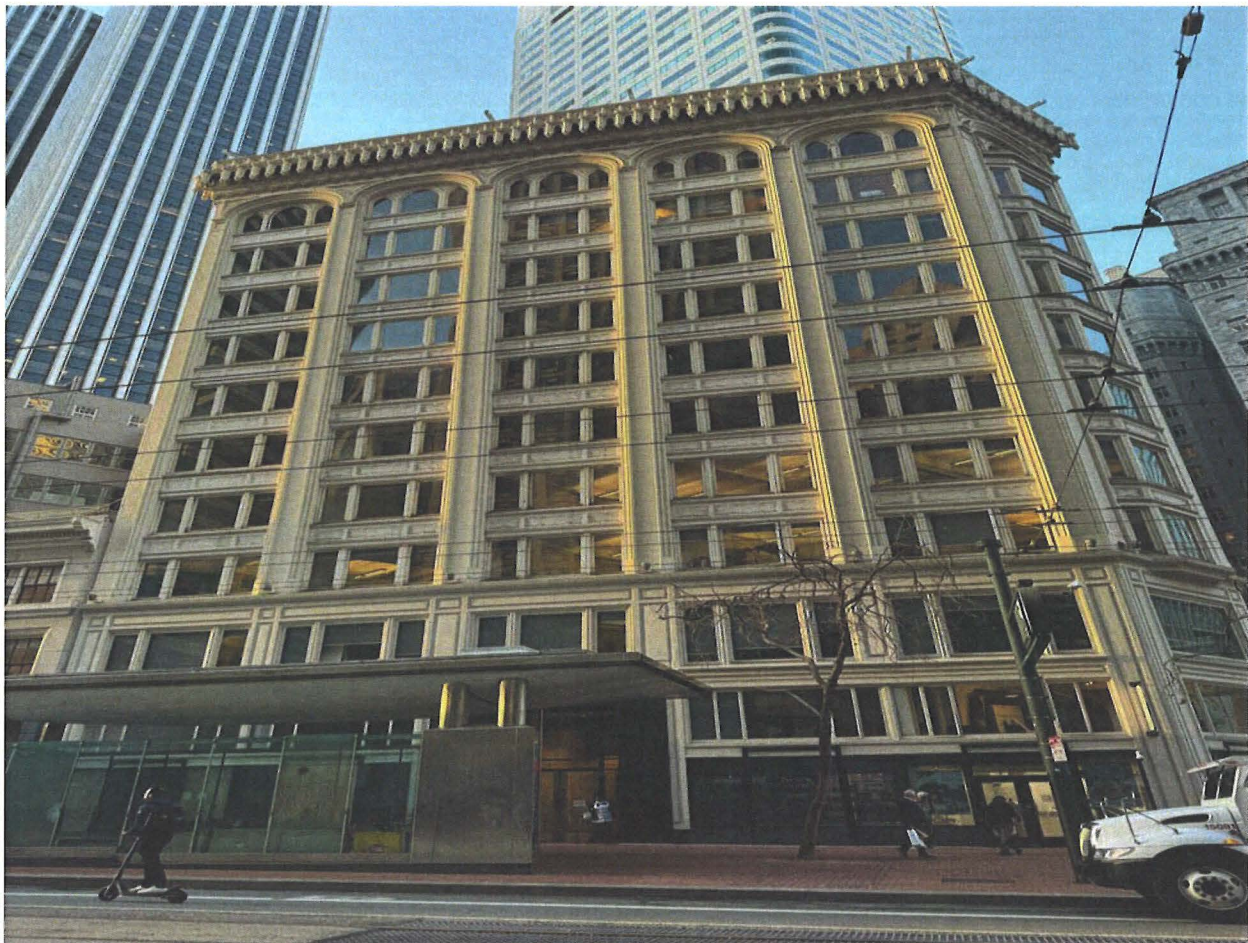
Subject block of Market Street (December 2024)



Subject block of Market Street (December 2024)



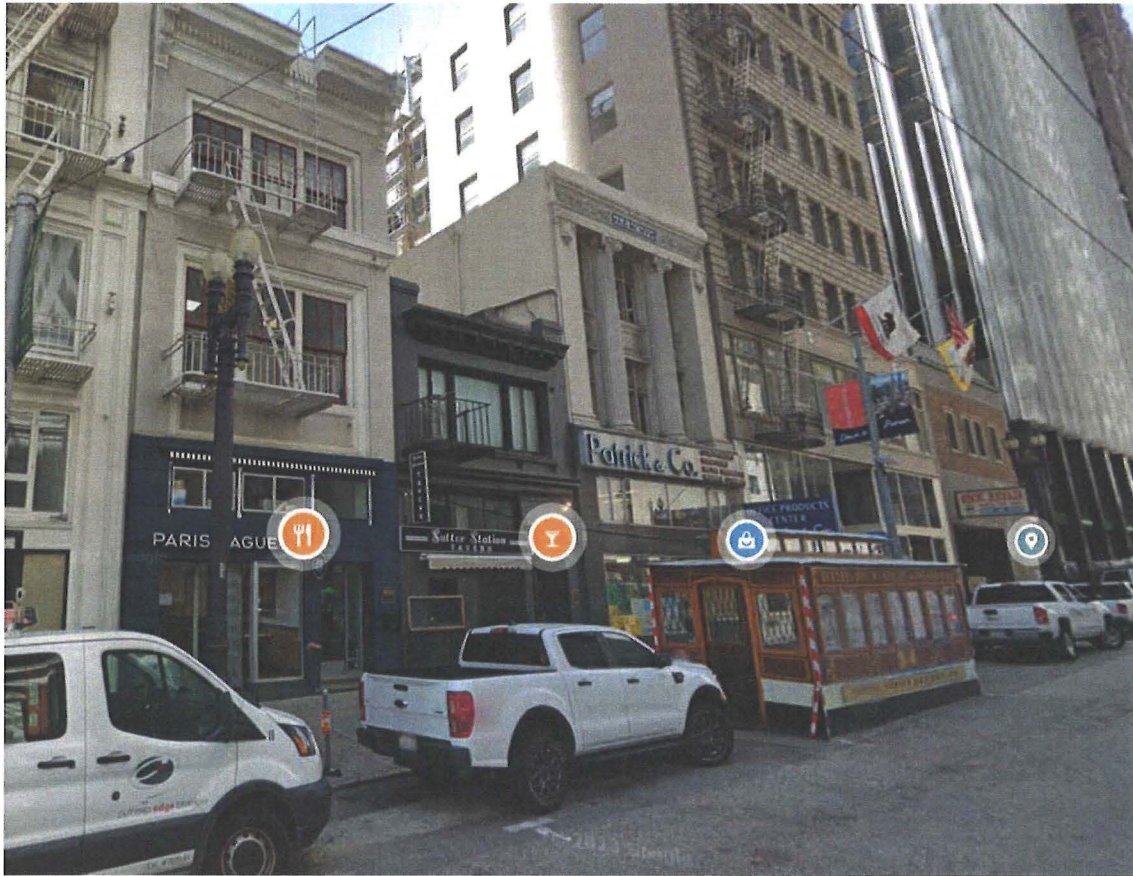
Subject block of Market Street (December 2024)



Subject block of Market Street (December 2024)



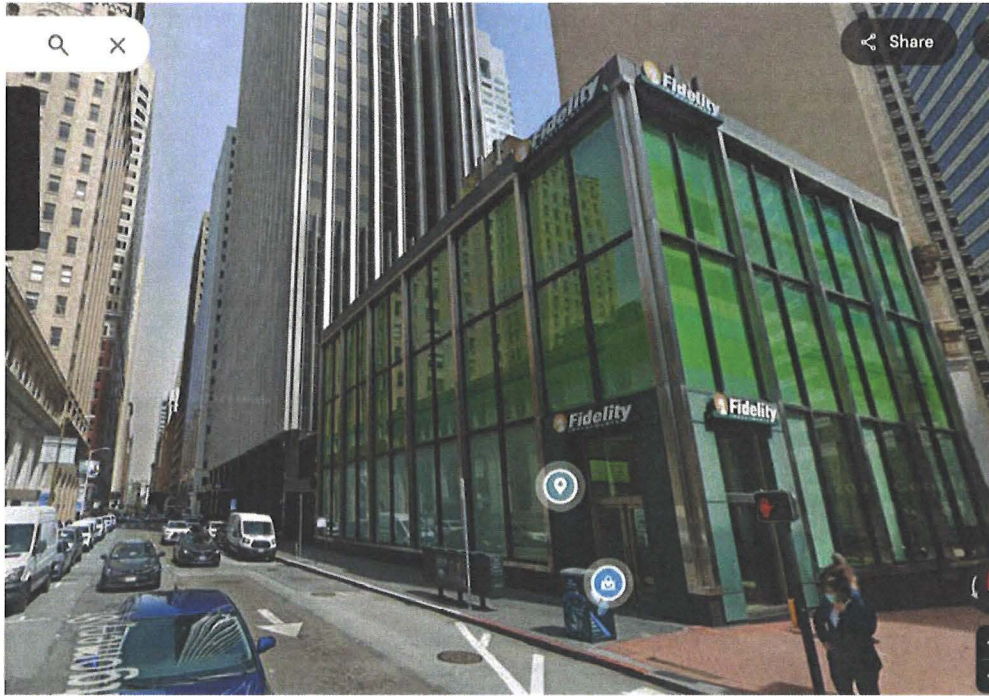
Subject block of Market Street (Source: Google, April 2023)



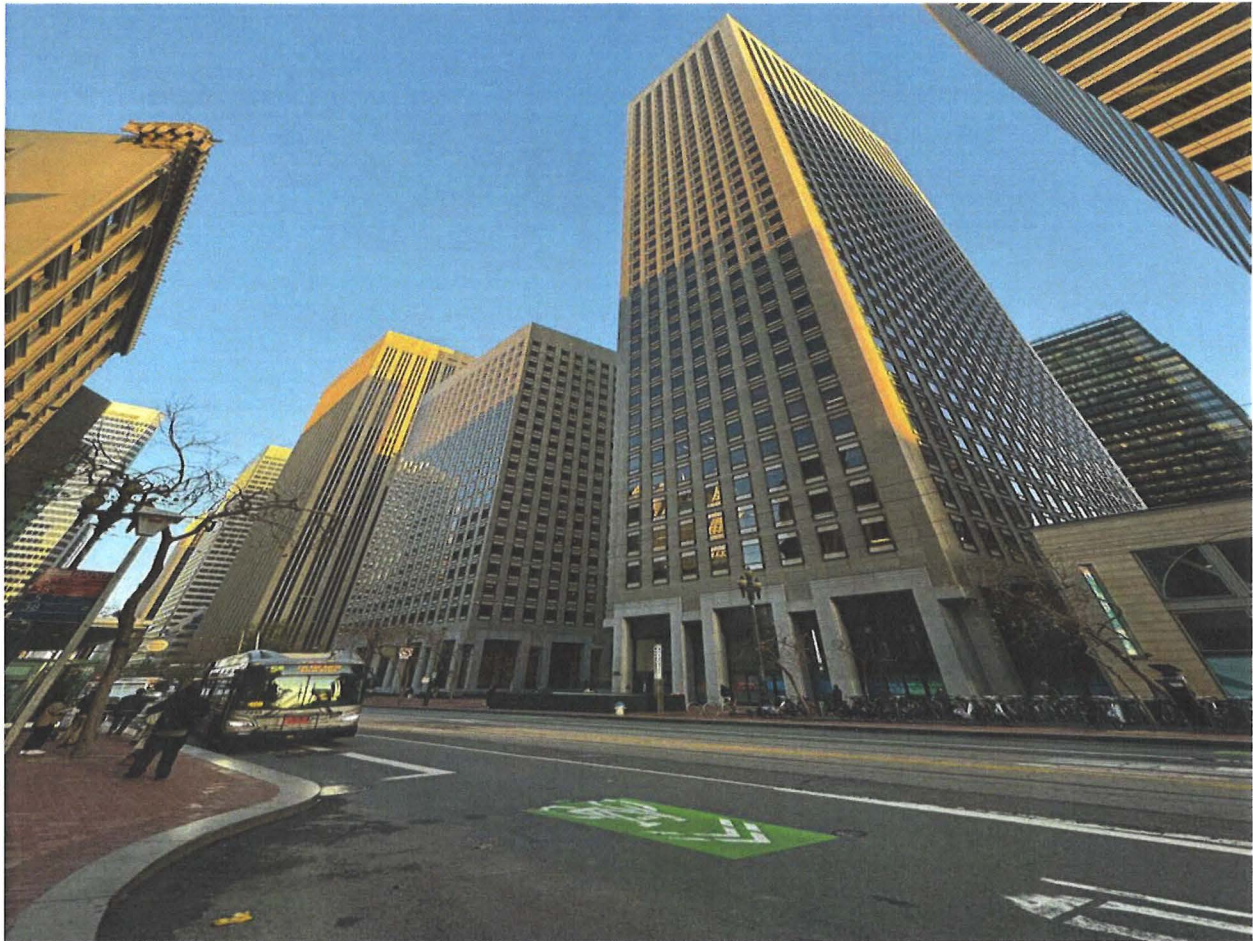
Subject block of Market Street (Source: Google, April 2023)



Subject block of Market Street showing 44 Montgomery Street (December 2024)



Montgomery Street side of subject block (2-44 Montgomery Street) (Source: Google, April 2023)



Buildings across the street (south) from the subject block of Market Street (December 2024)



Buildings across the street (south) from the subject block of Market Street (December 2024)



Buildings across the street (north) from the subject block of Sutter Street (December 2024)

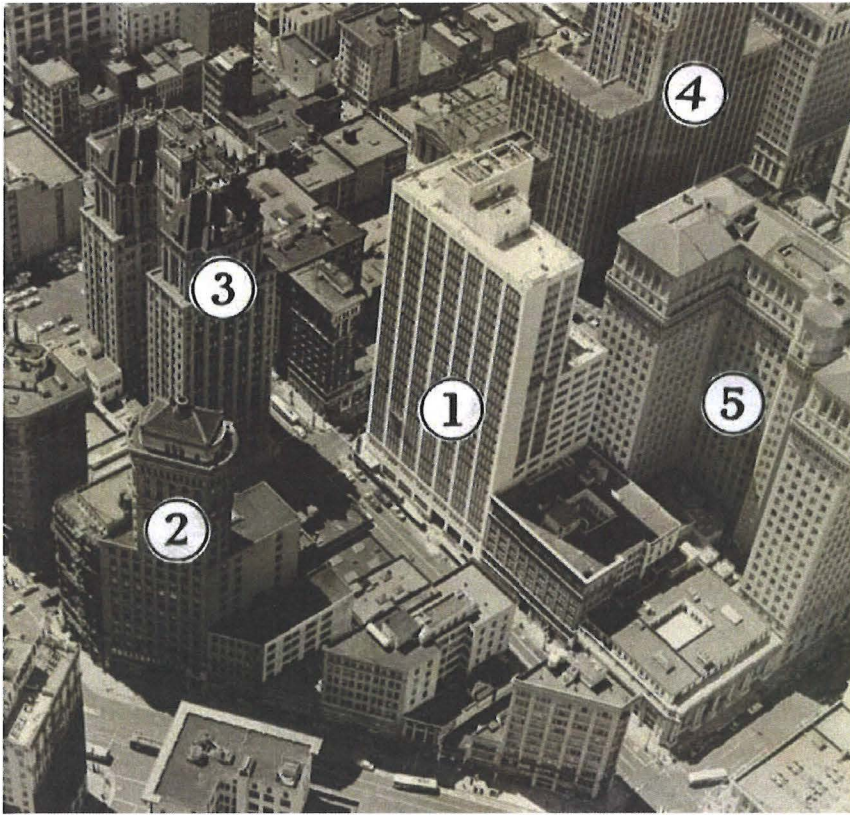
Historic Photographs of Subject Property



500 block of Market Street, August 27, 1934 (Source: San Francisco Public Library, AAC-4928)



Sutter Street from Sansome, May 17, 1938 (Source: San Francisco Public Library, AAF-1080)



500 block of Market Street, July 6, 1955 (Source: San Francisco Public Library, AAB-8489)



Looking northeast toward 500 block of Market Street, October 1967 (Source: San Francisco Public Library, sfm005-10041)



Sutter Street from Montgomery Street, October 1973 (Source: San Francisco Public Library, AAB-5401)



KATHERINE T. PETRIN

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EDUCATION

- ◆ Master of Science, Historic Preservation of Architecture, Columbia University, New York, 1996
- ◆ Bachelor of Arts, Humanities, University of California, Berkeley, 1986

PROFESSIONAL EXPERIENCE

- ◆ Katherine Petrin Consulting, San Francisco, CA
Principal, April 2013 – present
- ◆ Architectural Resources Group, Inc., San Francisco, CA
Senior Associate
Architectural Historian and Preservation Planner, May 2000 - March 2013
- ◆ HOK International, London, UK
Architectural Historian and Conservation Research, 1997 - 1999
- ◆ Fundación Casa Ducal de Medinaceli, Seville, Spain
Documentation of Conservation Projects, 1992-1994

PROFESSIONAL QUALIFICATIONS

Exceeds the *Secretary of the Interior's Professional Qualifications Standards* in History, Preservation Planning, and Architectural History

SKILLS

- ◆ Preservation Planning Technical Expertise
- ◆ Cultural Resource Advocacy
- ◆ Spanish Language Proficiency

SELECTED PROJECT EXPERIENCE

- ◆ Old U.S. Mint Restoration Project, San Francisco, CA
- ◆ North Beach Historic Resources Evaluation and Survey, San Francisco, CA
- ◆ Buon Gusto Sausage Factory, National Register Nomination, San Francisco, CA
- ◆ Coit Memorial Tower, National Historic Landmark Nomination, San Francisco, CA (ongoing)
- ◆ Lakeside Residential Design Guidelines, San Francisco, CA
- ◆ Downtown Pleasanton Historic Resource Survey, City of Pleasanton, CA
- ◆ Presidio of San Francisco Barracks Building 105, Historic Structure Report, San Francisco, CA
- ◆ Old Mint Opportunity Feasibility Study for the California Historical Society, San Francisco, CA
- ◆ Villa Terrace, Modernist Residence, Historic Resource Evaluation, San Francisco, CA
- ◆ Santa Barbara County Courthouse, Historic Structure Report, Santa Barbara, CA*
- ◆ The Ahwahnee, Historic Structures Report, Yosemite National Park, CA*
- ◆ Preservation Element of the City of San Francisco General Plan, San Francisco, CA*
- ◆ Bayview Opera House, National Register Nomination, San Francisco, CA*
- ◆ Fort Mason Center, Cultural Landscape Report Part II, San Francisco, CA*
- ◆ The Old Mint, Historic Structure Report, San Francisco, CA*

**project completed at Architectural Resources Group*

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RELATED PROFESSIONAL ACTIVITIES

Board Memberships

San Francisco Architectural Heritage, Board Member, 2018-present
San Francisco Neighborhood Theater Foundation, Vice President, Board Member, 2004-present
Friends of Mint Plaza, Board of Directors, San Francisco, 2018-2023
Save New Mission Theater, Founding Member, San Francisco, 2001-2016

Active Affiliations and Memberships

California Historical Society
Climate Heritage Network
Friends of Terra Cotta
International Council on Monuments and Sites, US National Committee (US / ICOMOS)
National Trust for Historic Preservation
Telegraph Hill Dwellers
Western Neighborhoods Project
World Monuments Fund

Selected Lectures, Community Events, Conferences and Publications

Invited Speaker, "The U.S. Mint + Advocating for Historic Buildings", Economic Round Table of San Francisco, August 2024.

Invited Speaker, "The Alexandria Theater at 100, "a benefit for Western Neighborhoods Project, November 2023.

Invited Tour Leader, Jackson Square Historic District Walking Tour to benefit Shaping SF, San Francisco, CA, March 2022; a reprise of September 2019 event.

Invited Speaker, "The Old U.S. Mint, A National Treasure," a lecture for The Museum of the San Ramon Valley, July 2021.

Invited Speaker, "The Life and Work of Anne B. Bloomfield" for "Preservationists on Preservationists," a panel discussion organized by San Francisco Heritage, November 2020.

Invited Juror, California Preservation Foundation Design Awards, San Francisco, CA, June 2019.

Invited Guest Critic, ACE Mentor Program, San Francisco, CA, May 2019.

Co-organizer, Local Host Committee for the Cultural Heritage Network Mobilization, an affiliated event of the Global Climate Action Summit in San Francisco, September 2018.

Invited Speaker, "A Commissioner and Planner's Primer to the California Environmental Quality Act" at the California Preservation Foundation, San Francisco, CA, January 2018.

Peer Reviewer, *San Francisco LGBTQ Citywide Historic Context Statement*, 2013-2016.

Invited Speaker, "Discussing Historic Resource Integrity" at the Santa Clara County Historical Heritage Commission, San Jose, CA, November 2015.

Speaker, "Addressing Threats at Historic Seaports" at the National Preservation Conference, Spokane, WA, November 2012.

Co-organizer, "The Architecture of Julia Morgan and Sacred Spaces" a panel discussion organized by San Francisco Zen Center for the statewide program, *Julia Morgan 2012*, October 2012.

Invited Participant, SPUR/SF Architectural Heritage Historic Preservation Task Force, 2011-2013.

Contributing Author, "Palaces for the People: Architecture and the Cinematic Experience" in *Left in the Dark: Portraits of San Francisco Movie Theatres*. Charta, 2010.

Moderator, "Cinema Across Media: The 1920s," at the First International Berkeley Conference on Silent Cinema, UC Berkeley, February 2011.

Speaker, Co-Author, "Glitz and Glam: Theatrics in the Historical Finishes of Timothy Pflueger," International Architectural Paint Research in Building Conservation Conference, New York, NY, January 2008.

Steering Committee, 10th Annual International Symposium, International Council on Monuments and Sites, US National Committee (US/ICOMOS), San Francisco, CA, April 2007.

Invited Speaker, "Preserving Motion Picture Palaces," Program of the National Trust for Historic Preservation and Museum of Modern Art, San Francisco, CA, February 2006.

Speaker, National Trust Conference Session on Modern Historic Resources, Portland, OR, October 2005.

Speaker, Palm Springs Desert Museum, "Building a Desert Oasis: Palm Springs Historic Resources Survey, Palm Springs, CA, May 2004.

Participant, TERRA Conference on Conservation of Earthen Architecture, Yazd, Iran (2003), and Bamako, Mali (2008).

Awards

California Preservation Foundation, Preservation Design Award for *Fort Mason Center Cultural Landscape Report*, 2010.



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570 Market Street MNP Appeal

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