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**To:** [BOS Legislation, \(BOS\)](#)  
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**Subject:** Appellant Correspondence Re: 570 Market Street CEQA Appeal (File No. 251034)  
**Date:** Friday, November 7, 2025 10:54:13 AM  
**Attachments:** [2025.11.07 44 Montgomery Correspondence 570 Market St Appeal \(File No. 251034\) draft.pdf](#)

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To the San Francisco Board of Supervisors and Clerk Calvillo:

Please find attached correspondence submitted on behalf of Appellant BCal 44 Montgomery Property LLC, the owner of 44 Montgomery Street, in support of their CEQA appeal of the mitigated negative declaration prepared for the 570 Market Street Hotel Project (File No. 251034).

Acknowledgment of receipt of this email and attachment would be greatly appreciated.

Thank you,  
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November 7, 2025

*Via Email*

San Francisco Board of Supervisors  
Attn: Angela Calvillo, Clerk of the Board  
San Francisco Board of Supervisors  
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**Re: Appeal of 570 Market Street Mitigated Negative Declaration  
File No. 251034  
Board of Supervisors Appeal Hearing: Nov. 18, 2025, 3 p.m.**

To Board President Mandelman and Honorable San Francisco Supervisors:

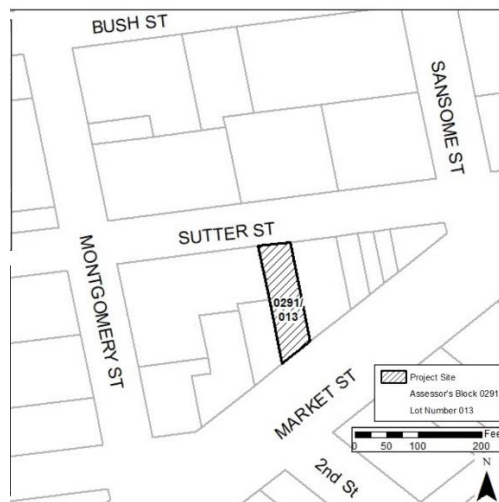
This correspondence is submitted on behalf of appellant BCal 44 Montgomery Property LLC (“44 Montgomery”), the owner of 44 Montgomery Street, in support of their appeal of the mitigated negative declaration (“MND”) prepared for the proposed hotel at 570 Market Street (“Project”) (File No. 251034). 44 Montgomery’s appeal, as well as the appeal filed by the owners of the Chancery Building, is scheduled for hearing on November 18, 2025 at 3 p.m.

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 MND with assistance from noise experts from the environmental consulting firm Wilson Ihrig and historical resource expert Katherine Petrin, an EIR—not an MND—is required for this Project due to a fair argument that the Project may have significant impacts related to construction-related vibration, construction-related noise, and historical resources. Furthermore, the MND is deficient because it fails to provide substantial evidence to support its conclusions that the Project’s impacts related to vibration, noise, historical resources, transportation and circulation, and geotechnical risks will be less than significant.

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

## PROJECT DESCRIPTION

The 570 Market Street Project proposes a 29-story (~ 300-feet), 211-room hotel with a 1,000 square-foot lobby opening to Sutter Street and ground-floor retail opening to Market Street. The 7,045 square-foot Project site is a narrow through lot with frontages on both Market Street and Sutter Street. The 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. The site is currently developed with two 2-story commercial buildings (one on Market Street, one on Sutter Street), which would be demolished. The Project site is adjacent to—and will be constructed within one foot of—three historical resources: (1) Chancery Building at 562-566 Market Street; (2) Finance Building at 576-580 Market Street; (3) and 44 Montgomery Street. The Project, as approved by the Planning Commission, provides no setbacks from interior lot lines, effectively blocking out an entire side of the Chancery Building and the Finance Building.



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.

## PROCEDURAL BACKGROUND

In October 2024, the City released the Project's Preliminary MND ("PMND"). The PMND concluded that, with the incorporation of mitigation measures for impacts to cultural resources, tribal cultural resources, noise, air quality, and paleontological resources, the impacts of the Project would be less than significant. On November 20, 2024, pursuant to Administrative Code Section 31.11(d), 44 Montgomery appealed the PMND and the Planning Department's determination of no significant effect on the environment to the Planning Commission. The owners of the Chancery Building separately appealed the PMND to the Planning Commission.

On March 19, 2025, 44 Montgomery submitted correspondence to the Planning Commission, accompanied by expert reviews of the Project and MND regarding impacts to noise and historical resources ("March 19 Letter"). 44 Montgomery's March 19 Letter is attached hereto, without exhibits, as **Exhibit A**. The March 19 Letter explained that the MND was improper under CEQA due to potentially significant impacts related to vibration (Ex. A, 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). The March 19 Letter included reviews of the MND by noise expert Katie Krainc from the consulting firm Wilson Ihrig and by historical resource expert Katherine Petrin. On April 25, 2025, the Planning Department released a response to 44 Montgomery's March 19 Letter and to correspondence submitted by the owners of the Chancery Building ("Appeal Response").

Wilson Ihrig's expert review of the Project's noise impacts dated December 20, 2024 is attached hereto as **Exhibit B**. Wilson Ihrig's reply to Planning's Appeal Response dated October 27, 2025 is attached hereto as **Exhibit C**. Ms. Petrin's expert review of the of the Project's impacts to historical resources dated January 2025 is attached as **Exhibit D**. Ms. Petrin's reply to Planning's Appeal Response dated November 7, 2025 is attached hereto as **Exhibit E**.

On May 1, 2025, the Planning Commission denied the CEQA appeals of 44 Montgomery and the Chancery Building. However, the Commission voted to continue consideration of the Project's requested entitlements (downtown project authorization ("DNX") and conditional use authorization) based on numerous concerns, including: (1) mismatched lightwells with the neighboring Chancery building; (2) lack of setbacks from neighboring buildings; (3) location and functionality of the privately-owned public open space; and (4) façade design. At a continued hearing on September 11, 2025, the Planning Commission reconsidered and approved the Project.

On September 26, 2025, 44 Montgomery filed a timely appeal of the Project's DNX to the Board of Appeals. On October 10, 2025, 44 Montgomery filed a timely appeal of the MND to the Board of Supervisors.

## 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.) “Substantial evidence” is defined as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” (14 CCR § 15384(a).) 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.)

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.)

In addition, any factual conclusions reached in the MND must be supported by substantial evidence. (*McCann v. City of San Diego* (2021) 70 Cal.App.5th 51, 97 [“An agency abuses its discretion under CEQA by reaching factual conclusions unsupported by substantial evidence.”].) Therefore, even in the absence of a fair argument of an impact, an MND is inadequate under CEQA where the City lacks substantial evidence to conclude that the Project’s impacts will be less than significant. (*Id.*)

## DISCUSSION

### **I. An EIR Is Required Because the Project May Result in Significant Noise Impacts.**

The MND and its associated Noise and Vibration Technical Analysis (Appendix A of the MND) (“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. (MND, pp. 39-40.) Specifically, the

MND concludes that construction-related noise would not result in a 10 dB increase over current ambient noise levels, which the MND adopts as the relevant significance threshold for noise, at the nearest sensitive receptor (the residential building at 333 Bush Street approximately 450 feet away). (MND, pp. 35, 39-40.)

The expert noise and acoustical firm Wilson Ihrig reviewed the MND and Noise Analysis. Wilson Ihrig's review of the Project, which is attached hereto as **Exhibit B**, found that the MND failed to accurately calculate construction-related noise levels and failed to evaluate noise impacts on neighboring commercial buildings. (Ex. B, pp. 1-3.) As discussed below, after correcting for the MND's inaccuracies, Wilson Ihrig found that construction-related noise would result in significant impacts to 44 Montgomery Street, 333 Bush Street, and 580 Market 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 MND's Noise Analysis relied on the general assessment criteria from the Federal Transit Administration Transit Noise and Vibration Assessment Manual ("FTA Manual"). (MND, 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. B, 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. B, 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; Ex. B, p. 2.) However, instead of applying a 100 percent usage factor, the MND'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. B 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. B, p. 2.) The Noise Analysis assumed that construction noise would attenuate at 6 dB per doubling of distance. (Ex. B, 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. B, 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. B, pp. 2-3.) The table below shows a comparison between the noise levels reported in the MND’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 |
| <b>Demolition</b>                                                      | 61                         | 67                        | 2                            | 74                                                                    | 74                        | 9                            |
| <b>Site Preparation</b>                                                | 65                         | 68                        | 3                            | 79                                                                    | 79                        | <b>14</b>                    |
| <b>Grading</b>                                                         | 60                         | 66                        | 1                            | 71                                                                    | 72                        | 7                            |
| <b>Building Construction</b>                                           | 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. B, 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.*)

In response to Wilson Ihrig’s concerns, Planning’s Appeal Response included a supplemental noise analysis, which re-calculated the Project’s noise impacts using a 100 percent usage factor. (Appeal Response, p. 10.) However, the supplemental analysis still assumed that noise would attenuate at 6 dB per doubling of distance, rather than 3 dB, which

more accurately reflects the conditions in the Financial District. (*Id.*; Ex. B, p. 2; Ex. C, p. 2.) The Appeal Response claimed that the use of the 6dB attenuation reduction was required to be consistent with the FTA Manual’s general assessment methodology. (Appeal Response, p. 9.) The Response ignores that the FTA Manual explicitly states that “***each project is unique and must be evaluated on a case-by-case basis.***” (FTA Manual, Appendix G, p. 237 [emph. added]; see Ex. C, p. 2.) The FTA Manual encourages the use of “professional judgment” in order “to extend the basic methods to cover these cases, when appropriate.” (*Id.*)

The MND’s failure to recognize the actual conditions in the Financial District and to adjust its analysis accordingly results in an unsupported conclusion that the Project’s noise impacts will be less than significant. In their reply to the Appeal Response, Wilson Ihrig reiterates their conclusion that the MND’s noise analysis failed to recognize the unique conditions surrounding the Project site:

Market Street in San Francisco has a high concentration of mid- and high-rise buildings, one of the highest such areas within the United States, especially in the Project vicinity. The unique situation we presented of the façades of these buildings being all acoustically reflective, thereby making use of a “free field” calculation erroneous is not addressed and we believe deserves more attention to ‘extend the basic methods’ used in the FTA analysis.

(Ex. C, p. 2.)

Therefore, even with the Appeal Response’s supplemental analysis, the MND still lacked substantial evidence to conclude that noise impacts would be less than significant. Furthermore, Wilson Ihrig’s expert opinion that the Project’s noise levels, with a 100 percent usage factor and a 3dB attenuation reduction, will be significant establishes a fair argument that the Project may result in a significant noise impact. (See 14 CCR § 15064(f)(1) [EIR required if any substantial evidence in the record indicates a possible significant impact—even if contrary evidence exists].”) As a result, an EIR—not an MND—is required for this Project.

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

Although the MND addresses noise impacts at the nearest residential receptor at 333 Bush Street (450 feet away), the MND makes no attempt to address noise impacts on the commercial uses at nearby buildings, including 44 Montgomery Street, the Chancery Building, and the Finance Building. The omission of impacts on these nearby commercial buildings from the MND’s noise analysis is improper. As stated in the MND, 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.” (MND, 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. B, pp. 3-4.)

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

(Ex. B, 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 44 Montgomery, the Chancery Building, and the Finance Building.

The Planning Department’s Appeal Response failed to address the significant increase in ambient noise levels identified by Wilson Ihrig. Although the Appeal Response updated the MND to include noise calculation using the FTA Manual criteria for a distance of 20 feet, as suggested by Wilson Ihrig, the Appeal Response still concluded that impacts would not be significant because noise levels would not exceed 100 dBA. (Appeal Response, p. 9.)

Wilson Ihrig reviewed the Appeal Response and prepared a reply attached hereto as Exhibit C. First, Wilson Ihrig criticizes the Appeal Response for failing to consider increase-over-ambient impacts:

[T]he response does not consider increases over ambient levels. As detailed in our original letter, construction noise levels have the potential to be as high as 28 dBA over ambient levels. The California Environmental Quality Act Guidelines cited in MND state that impacts to noise would be significant if the proposed project would result in ‘generation of a substantial temporary or

permanent increase in ambient noise levels’. The MND lacks a significance threshold for ‘substantial increase.’ The Project must properly evaluate the noise increase over ambient levels at sensitive receptor locations, and if the increase is significant the Project must provide mitigation to reduce the impacts to less than significant.

(Ex. C, p. 2.) Second, Wilson Ihrig criticized the Appeal Response for utilizing a 100 dBA noise threshold, which is “a full 15 dB over the level at which OSHA and NIOSH require worker hearing protection.” (*Id.*)

In total, the MND fails to provide substantial evidence that the Project’s noise impacts will be less than significant by failing to evaluate increase-over-ambient noise levels on surrounding commercial buildings, including 44 Montgomery, and by relying on an absolute threshold of 100 dBA despite the hearing damage that can occur well below that threshold. Furthermore, Wilson Ihrig’s expert opinion that the Project will result in a significant increase-over-ambient noise impact for surrounding commercial buildings, including 44 Montgomery, establishes a fair argument that the Project may result in a significant noise impact. (See 14 CCR § 15064(f)(1) [EIR required if any substantial evidence in the record indicates a possible significant impact—even if contrary evidence exists].”) As a result, an EIR—not an MND—is required for this Project.

## **II. 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 MND 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). (MND, pp. 45-46.) As explained in the MND,

Jackhammering and excavation could occur up to 1 foot from the property lines at 566 Market Street [Chancery Building], 576 Market Street [Finance Building], 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.

(MND, p. 46.)

The MND claims that with the incorporation of Mitigation Measure M-NO-2, vibration impacts would be reduced to less than significant. Measure M-NO-2 is made up of three separate requirements: (1) pre-construction surveys; (2) a future Vibration Management and Monitoring Plan (“Monitoring Plan”); and (3) a Vibration Monitoring Results Report (“Results Report”). (Mitigation Monitoring and Reporting Program (“MMRP”), pp. 10-13.) However, the MND’s conclusions are not supported by substantial evidence because: (1) the MND fails to evaluate 44 Montgomery as a historic resource for the purposes of analyzing and mitigating vibration impacts and (2) Mitigation Measure M-NO-2 fails to ensure that vibration impacts to surrounding buildings, including 44 Montgomery, will be less than significant.

**A. The MND’s vibration impact analysis failed to recognize that 44 Montgomery is a historic resource.**

There is no debate that 44 Montgomery Street is a recognized historical resource. The Planning Department’s Historic Resource Evaluation Response (“HRER”) for the Project lists 44 Montgomery as a nearby/adjacent historical resource. (HRER, p. 2.) The Planning Department has stated that “44Montgomery 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.” (Appeal Response, p. 13.) The Planning Department has assigned 44 Montgomery’s historic resource status as “A-Historic Resource Present.” (Ex. G, p. 8; SF Property Information Map, <https://sfplanninggis.org/pim/>.) As a Category A historic resource, the Planning Department’s rules require that 44 Montgomery “will be evaluated as [a] historical resource[]” for the purposes of CEQA. (SF Planning Department, “San Francisco Preservation Bulletin No. 16 City and County of San Francisco Planning Department CEQA Review Procedures for Historic Resources,” p. 7 *available at* <https://archives.sfplanning.org/documents/5340-PresBulletin16CEQA.pdf>.)

Despite 44 Montgomery’s status as a historic resource, the MND explicitly does not treat 44 Montgomery as a historic resource for the purposes of evaluating construction-related vibration impacts. Although the MND found that, without mitigation, vibration impacts to 44 Montgomery, the Chancery Building, and the Finance Building would be significant, the MND applied a higher significance threshold (i.e. a less protective threshold) for 44 Montgomery than for the Chancery Building and Finance Building. (MND, p. 46.) The MND’s basis for the different thresholds was that it classified 44 Montgomery Street as a “modern industrial/commercial building” and classified the Chancery Building and Finance Building as historic buildings. (MND, p. 46 “[C]onstruction activities within one foot near the adjacent buildings at 566 Market Street, 576 Market Street, and 44 Montgomery Street could result in vibration levels that would exceed the Caltrans criterion of 0.25 in/sec PPV for historic structures and the criterion of 0.5 in/sec PPV for the modern commercial building at 44 Montgomery Street.”].)

Similarly, Mitigation Measure M-NO-2—the MND’s sole mitigation measure for vibration impacts—fails to treat 44 Montgomery as a historic resource. M-NO-2 requires, in part, pre-construction surveys for 44 Montgomery, the Chancery Building, and the Finance

Building. (MMRP, p. 10.) However, 44 Montgomery does not receive the same level of protection as the Chancery Building and the Finance Building. For 44 Montgomery, M-NO-2's survey requires only that "a structural engineer or other professional with similar qualifications shall document and photograph the existing conditions of the potentially affected building." (*Id.*) For the Chancery Building and the Finance Building, M-NO-2 requires much more:

For the two buildings at 566 Market Street and 576 Market Street, the pre-construction survey should be prepared by a qualified historic preservation professional and a structural engineer or other professional with similar qualifications. The pre-construction survey for the two buildings at 566 Market Street and 576 Market Street shall include 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, and shall document existing damage, such as cracks and loose or damaged features (as allowed by property owners).

(MMRP, p. 10.)

The Planning Department's Appeal Response failed to justify why the MND imposed a higher threshold for vibration impacts to 44 Montgomery or why 44 Montgomery was not given the same protections under M-NO-2 as the Chancery Building and Finance Building. Instead, the Appeal Response skirts the issue by claiming that 44 Montgomery *might* be subject to a stricter vibration threshold at some point in the future when a Vibration Monitoring Plan is developed:

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.

(Ex. D, p. 11.) By deferring 44 Montgomery's classification to some later date, the MND utterly fails to ensure that vibration impacts to 44 Montgomery would be less than significant. Furthermore, even if the Monitoring Plan were to require a higher vibration threshold for 44 Montgomery, M-NO-2 would still limit 44 Montgomery's pre-construction survey to photographs taken by a structural engineer rather than the more robust surveys required for the Chancery Building and Finance Building.

By failing to consider 44 Montgomery as a historic resource in its analysis and mitigation of the Project's significant vibration impacts, the MND conclusion that impacts to 44 Montgomery would be less than significant is not supported by substantial evidence. In order to comply with CEQA, the City must revise its analysis to properly categorize 44

Montgomery as a historic resource before determining whether to proceed with an MND or, if the updated analysis reveals a significant impact, an EIR.

**B. The MND’s mitigation measure for vibration impacts fails to ensure that impacts to surrounding buildings, including 44 Montgomery, will be less than significant.**

The MND 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. (MND, 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 44 Montgomery, the Chancery Building, and the Finance Building 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.) As discussed above, 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.

Regardless of 44 Montgomery’s status 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 “*[i]f 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 MND and incorporated into M-NO-2 are the CalTrans thresholds of 0.5 in/sec PPV for 44 Montgomery Street and 0.25 in/sec PPV for the Chancery Building and Finance Building. (MND, pp. 44-46; MMRP, p. 11.) Any exceedance of those thresholds constitutes a significant impact. (MND, p. 46.) M-NO-2’s requirements for the Management Plan and Report Plan listed above confirm that the MND 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 an MND), and then adopt a statement of overriding considerations.

In its Appeal Response, the Planning Department claimed that the CalTrans thresholds are not brightline thresholds but rather “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.” (Appeal Response, p. 11.) However, that response proves the point. When vibration exceeds a CalTrans threshold, that vibration may, as the Planning Department conceded, cause damage to surrounding historic buildings. Under the fair argument standard for this MND, the fact that the vibration impacts may result in damage to surrounding historic buildings is sufficient to establish that an EIR, not an MND, is required for this Project.

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

As noted in the MND, 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.” (MND, 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 MND failed to identify potentially significant impacts to surrounding historical resources. As a result, the MND 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 MND failed to account for all historical resources in the vicinity of the Project site.**

According to the MND'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

(MND, p. 16.) Notably, the MND does not list 44 Montgomery as a nearby historical resource even though it is noted as an adjacent historical resource in the Planning Department's HRE Response. (See MND, p. 16; Appeal Response, p. 13.) 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. D, pp. 8-9.)

Because the MND omits 44 Montgomery from consideration of the Project's impacts to historical resources, the MND 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. D, p. 13.) At the very least, the MND 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.

The Planning Department's Appeal Response did not fix this fundamental deficiency in the MND. The Appeal Response claimed that "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." (Appeal Response, p. 13.) However, the inclusion of 44 Montgomery in the Planning Department's HRE Response (which is merely a 3-page document) does not explain why 44 Montgomery was omitted entirely from the MND's HRE and from the MND itself. Per the Planning Department's own rules, Category A historical resources, like 44 Montgomery, must be evaluated as historical resources in the City's CEQA review of a project. (SF Planning Department, "San Francisco Preservation Bulletin No. 16 City and County of San Francisco Planning Department CEQA Review Procedures for Historic Resources," p. 7.) By failing to include 44 Montgomery in the MND's analysis of impacts to historical resources, the MND violates the Planning Department's own rules and lacks substantial evidence to conclude that impacts to historical resources will be less than significant. (See Ex. E, p. 2 ["The PMND concludes with a no-historical-resource finding at the project site and a 'less-than-significant/no impact' determination for surrounding CEQA historical resources without the necessary analysis."].)

**B. The Project may result in 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. D, p. 15.)

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. D, 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. D, pp. 15-16.)

Based on the above impacts, Ms. Petrin concluded 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. D, 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 an EIR, not an MND, for this Project. (See 14 CCR § 15064(f)(1) [EIR required if any substantial evidence in the record indicates a possible significant impact—even if contrary evidence exists].)”)

The Planning Department’s Appeal Response failed to adequately address Ms. Petrin’s concerns. Like the MND itself, the Appeal Response summarily concludes that historical impacts will be less than significant because “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.” (Appeal Response, p. 12.) However, in reply to the Appeal Response, Ms. Petrin stresses that the City has still failed to conduct the “necessary analysis” to conclude that impacts will be less than significant by failing to analyze “indirect and contextual impacts to adjacent A-rated resources.” (Ex. E, p. 1.) Ms. Petrin also noted that the MND failed to account for the cumulative impacts resulting from “multiple large-scale developments have been proposed or approved since 2019” in the Financial District. (Ex. E, p. 2.) Without such an analysis, the MND lacks substantial evidence to conclude that impacts to historical resources will be less than significant.

Furthermore, in her reply, Ms. Petrin reiterated her conclusion that the Project will result in a significant impact to historical resources:

CEQA Guidelines §15064.5(b)(1) define substantial adverse change to include alteration of a resource’s immediate surroundings such that its significance is materially impaired. The proposed 29-story tower is entirely incompatible in massing, size, and scale with the Hobart Building and the cohesive collection of early 20th-century commercial buildings on this block. Under [Secretary of the Interior] Standards 9 and 10, the proposed building fails because it is not compatible in scale or proportion and would irreversibly alter the historic setting.

(Ex. E, p. 2.) Ms. Petrin’s expert opinion that the Project will result in a significant impacts to historical resources establishes a fair argument that the Project may result in a significant impact. (See 14 CCR § 15064(f)(1) [EIR required if any substantial evidence in the record indicates a possible significant impact—even if contrary evidence exists].”) As a result, an EIR—not an MND—is required for this Project.

#### **IV. The MND Fails to Adequately Consider How the Project Will Exacerbate Congestion on Sutter Street.**

The Planning Commission granted two exceptions for the Project under Section 309 for off-street spaces for freight loading (Section 309(a)(6)) and tour buses (Planning Code Section 309(a)(7)) along Sutter Street. Instead of the one (1) off-street freight loading space required by Code, the Project will rely on an existing yellow-curbed loading area on Sutter Street, which is already in daily heavy use by 44 Montgomery and others along Sutter Street. Instead of the off-street parking space for tour buses required by Code, the Project will provide nothing—with no assurance Sutter Street can absorb the impact of tour buses idling or searching for parking. In addition, the Project does not provide any loading areas for hotel guests, visitors, or employees arriving by taxi, Lyft, Uber, etc. on Sutter Street, where all taxi/rideshare rides will begin/end due to restrictions on Market Street.

Sutter Street is one-way with two travel lanes and a bus/taxi-only lane in the northernmost lane. Street parking, with designations for commercial loading, is provided along both sides of the street. Congestion on Sutter Street is a serious issue. As MND explains, “Sutter Street is a one-way westbound street *designated as a transit conflict street in the general plan’s transportation element*. The transportation element defines transit conflict streets as ‘streets with a primary transit function which are not classified as major arterials but *experience significant conflicts with automobile traffic*.’” (MND, p. 22 [emph. added].) Furthermore, “there are no on-street passenger loading (white zones) on Sutter Street.” (MND, p. 23.) Photographs of congestion on Sutter Street due to deliveries are attached hereto to **Exhibit F**. Furthermore, ever since the increase in federal ICE agents in San Francisco, Sutter Street has been heavily parked with unmarked vans and vehicles.

44 Montgomery and others already receive deliveries on Sutter Street. Adding in additional deliveries for the Project’s hotel and commercial uses will only lead to trucks idling while waiting for curb space. Furthermore, the MND relies on “a proposed passenger loading zone” that has yet to be considered or approved by SFMTA to conclude that the cars/taxis/Ubbers/Lyfts/Waymos for hotel guests “would not create potentially hazardous conditions or significant delays for transit.” (MND, p. 29.) There is no guarantee that the passenger loading zone will be approved and, therefore, it is entirely inappropriate for the MND to rely on it to conclude that impacts will be less than significant. Moreover, the proposed passenger zone would remove 22 feet of an existing 40-foot commercial loading zone on Sutter Street (MND, p. 30), further exacerbating commercial congestion on Sutter Street (see Ex. F).

Because the MND failed to account for existing conditions on Sutter Street and relied on a future passenger loading zone that might not be approved by SFMTA, the MND lacks substantial evidence to conclude that transportation and circulation impacts will be less than significant. The MND must be revised to accurately reflect the current conditions on Sutter Street, including the lack of a passenger loading zone, and to adjust its conclusions accordingly.

**V. The MND 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). (MND, pp. 83-84.) As described in the MND,

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 MND 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 MND relies on measures that *might* be taken or that *might* be required at a later time. (*Id.*) As a result, the MND 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 MND 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.” (MND, p. 87.) If stiff shoring is inadequate to protect 564 and 580 Market Street, the MND should require underpinning as a binding mitigation measure and also fully disclose the extent of the foundation expansion required for underpinning.

The MND 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.” (MND, p. 87.) If there are possible impacts to 44 Montgomery that can be mitigated or avoided by requiring a

gap on drilled shafts, the MND should require the permanent gap as a binding mitigation measure prior to concluding that the impact will be less than significant.

The MND 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.” (MND, p. 87.) The MND references and relies upon a document titled “Geotechnical Investigations” prepared by Langan dated September 2, 2021. (MND, pp. 82-83.) No document attached to the MND 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 MND relies on a report prepared in 2021, that report should be made available for public review prior to further consideration of the MND. 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 MND must adopt the recommendations as binding mitigation prior to concluding that the impacts will be less than significant.

To the extent that the MND 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 MND and 2019 Evaluation defer evaluation of the Project’s impacts and formation of mitigation measures to later studies, the MND is

inadequate under CEQA and must be revised. (See *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275.)

The MND 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. (MND, p. 87.) However, relying on regulatory compliance is insufficient if the MND 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 MND 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.

The Planning Department’s Appeal Response did not adequately address the above concerns. Instead, the Appeal Response claims that compliance with the City’s future review process and building code ensures that impacts will be less than significant. (Appeal Response, p. 5.) However, the question is not whether the Project will comply with existing regulations and processes. Rather, the question is whether the MND demonstrates *how* compliance with the building code and the City’s review process *ensures* that impacts will be less than significant. (See *Save Our Capitol, supra*, 87 Cal.App.5th at 696.) As a result, the MND must 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.

## CONCLUSION

An EIR—not an MND—is required for this Project due to a fair argument that the Project may have significant impacts related to construction-related vibration, construction-related noise, and historical resources. Furthermore, the MND is deficient because it fails to provide substantial evidence to support its conclusions that the Project’s impacts related to vibration, noise, historical resources, transportation and circulation, and geotechnical risks will be less than significant. For those reasons, 44 Montgomery respectfully requests that the Board of Supervisors grant the appeal to ensure that the significant impacts of the Project are properly analyzed, disclosed, and mitigated in accordance with CEQA.

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44 Montgomery Appeal  
570 Market Street Hotel Project MND (File No. 251034)  
November 7, 2025  
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Sincerely,



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**List of Exhibits**

**Exhibit A:** 44 Montgomery Correspondence to Planning Commission (March 19, 2025)  
**Exhibit B:** Wilson Ihrig Review of Noise Impacts (Dec. 20, 2024)  
**Exhibit C:** Wilson Ihrig Reply to Planning Dept.'s Appeal Response (Oct. 27, 2025)  
**Exhibit D:** Katherine Petrin Review of Historical Resource Impacts (Jan. 2025)  
**Exhibit E:** Petrin Reply to Planning Dept.'s Appeal Response (Nov. 7, 2025)  
**Exhibit F:** Photographs of Loading Congestion on Sutter Street

# EXHIBIT A



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March 19, 2025

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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,<sup>1</sup> 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

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<sup>1</sup> 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,<sup>2</sup> 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.)

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<sup>2</sup> 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 “**[i]f 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](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 |
| <b>Demolition</b>                                                      | 61                         | 67                        | 2                            | 74                                                                    | 74                        | 9                            |
| <b>Site Preparation</b>                                                | 65                         | 68                        | 3                            | 79                                                                    | 79                        | <b>14</b>                    |
| <b>Grading</b>                                                         | 60                         | 66                        | 1                            | 71                                                                    | 72                        | 7                            |
| <b>Building Construction</b>                                           | 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.)

| <b>Phase</b>                                              | <b>Existing noise at 570 Market St*</b> | <b>Estimated construction noise level at 20 ft</b> | <b>Exceed 100 dBA FTA criteria?</b> | <b>Resultant Noise level at nearest sensitive use</b> | <b>Increase over existing noise level</b> | <b>Exceed ambient + 10 dB Standard?</b> |
|-----------------------------------------------------------|-----------------------------------------|----------------------------------------------------|-------------------------------------|-------------------------------------------------------|-------------------------------------------|-----------------------------------------|
| <b>Demolition</b>                                         | 71 dBA                                  | 94 dBA                                             | No                                  | 94 dBA                                                | <b>23 dBA</b>                             | <b>Yes</b>                              |
| <b>Site Preparation</b>                                   | 71 dBA                                  | 99 dBA                                             | No                                  | 99 dBA                                                | <b>28 dBA</b>                             | <b>Yes</b>                              |
| <b>Grading</b>                                            | 71 dBA                                  | 92 dBA                                             | No                                  | 92 dBA                                                | <b>21 dBA</b>                             | <b>Yes</b>                              |
| <b>Building Construction</b>                              | 71 dBA                                  | 94 dBA                                             | No                                  | 94 dBA                                                | <b>23 dBA</b>                             | <b>Yes</b>                              |
| * 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](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.<sup>67</sup> 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](mailto:brian@lozeaudrury.com) or by phone at (510) 836-4200.

Sincerely,



Brian Flynn  
Lozeau Drury LLP

# EXHIBIT B



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.<sup>1</sup> 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).”<sup>2</sup> 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.

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

<sup>2</sup> 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 |
| <b>Demolition</b>                                                      | 61                         | 67                        | 2                            | 74                                                                    | 74                        | 9                            |
| <b>Site Preparation</b>                                                | 65                         | 68                        | 3                            | 79                                                                    | 79                        | <b>14</b>                    |
| <b>Grading</b>                                                         | 60                         | 66                        | 1                            | 71                                                                    | 72                        | 7                            |
| <b>Building Construction</b>                                           | 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.”<sup>3</sup> 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.<sup>4,5</sup> 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.

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

<sup>4</sup> <https://www.osha.gov/noise>

<sup>5</sup> <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? |
|-----------------------------------------------------------|----------------------------------|---------------------------------------------|------------------------------|------------------------------------------------|------------------------------------|----------------------------------|
| <b>Demolition</b>                                         | 71 dBA                           | 94 dBA                                      | No                           | 94 dBA                                         | <b>23 dBA</b>                      | <b>Yes</b>                       |
| <b>Site Preparation</b>                                   | 71 dBA                           | 99 dBA                                      | No                           | 99 dBA                                         | <b>28 dBA</b>                      | <b>Yes</b>                       |
| <b>Grading</b>                                            | 71 dBA                           | 92 dBA                                      | No                           | 92 dBA                                         | <b>21 dBA</b>                      | <b>Yes</b>                       |
| <b>Building Construction</b>                              | 71 dBA                           | 94 dBA                                      | No                           | 94 dBA                                         | <b>23 dBA</b>                      | <b>Yes</b>                       |
| * 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 C



WI #25-002.13

October 27<sup>th</sup>, 2025

Brian Flynn  
Lozeau | Drury LLP  
1039 Harrison Street, Suite 150  
Oakland, CA 94612

**SUBJECT: Response to Comments on 570 Market St MND Noise Analysis**

Dear Mr. Flynn,

Per your request, we have reviewed the response to comments on 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 primary documents reviewed were the Memorandums entitled *570 Market Street Acoustical Response to Appeal of Preliminary MND* prepared by Salter and dated 16 April 2025 and Exhibit A to *Draft Motion Planning Department Response to Appeal of Preliminary Mitigated Negative Declaration 570 Market Street* prepared by the San Francisco Planning Department.

Response 3 of the City Planning document details the City's response to our concerns over construction noise and vibration. The noise response can be split into two basic parts. The first part of the response corrects errors within their calculations. The original calculations in the PMND did not include usage factors as recommended by the 'general assessment' procedure in the Federal Transit Administration (FTA) *Transit Noise and Vibration Assessment Manual* methodology for construction noise.

This response in the City Planning document states that "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." Additionally, the response argues that "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."

These statements that construction equipment is only used sporadically throughout the day, and thus a usage factor is recommended to not overestimate level are generally true. However, there is a process in the FTA manual for when Usage Factors (other than 1) are present, namely a 'detailed analysis' (FTA Manual, "Option B: Detailed analysis", Page 178). If these various Usage Factors are present, the 'detailed analysis' is more appropriate, which includes different thresholds of significance due to the differences in the underlying equations (Notably an 85 dBA threshold of commercial properties for the detailed method, in place of a 100 dBA threshold). If the 'detailed analysis' methodology is used, the detailed threshold should be used as well.

Calculations using a Usage Factor of 1 are included in Table 2 of the City Planning document. If this is used as the correct analysis, that modeled construction noise is 1 dB below the FTA guidelines used as significance thresholds.

The second part of the response discusses how to model sound attenuation within the air in the project vicinity. They consider modeling the area as a free field is appropriate because not using a free field calculation would be a “deviation from the FTA General Assessment method.” However, this does not mean that special considerations do not require further study. Appendix G, page 237 of the FTA Manual states

*“Professional judgment may be used to extend the basic methods to cover these cases, when appropriate. It is important to note that each project is unique and must be evaluated on a case-by-case basis.”*

Market Street in San Francisco has a high concentration of mid- and high-rise buildings, one of the highest such areas within the United States, especially in the Project vicinity. The unique situation we presented of the façades of these buildings being all acoustically reflective, thereby making use of a “free field” calculation erroneous is not addressed and we believe deserves more attention to ‘extend the basic methods’ used in the FTA analysis. Using a 3 dBA doubling of distance, as recommended in our original letter, would result in construction noise levels over the 100 dBA threshold, assuming a point source with a known sound power level.

Additionally, the response does not address other concerns we have about threshold levels. No comments were presented on our issue that significance thresholds for “commercial areas” are 100 dBA, a full 15 dB over the level at which OSHA and NIOSH require worker hearing protection.” If anyone was outside the commercial building for a significant portion of the day, hearing damage might occur, which would presumably be considered a significant impact under California CEQA law. Also, the FTA Manual states on page 177 that

*“A detailed analysis of construction noise is warranted when many noise sensitive sites are adjacent to a construction project ... or heightened public concerns expressed in early outreach efforts.”*

Both are the case for the Project. Similarly, the response does not consider increases over ambient levels. As detailed in our original letter, construction noise levels have the potential to be as high as 28 dBA over ambient levels. The California Environmental Quality Act Guidelines cited in MND state that impacts to noise would be significant if the proposed project would result in ‘generation of a substantial temporary or permanent increase in ambient noise levels’. The MND lacks a significance threshold for ‘substantial increase.’ The Project must properly evaluate the noise increase over ambient levels at sensitive receptor locations, and if the increase is significant the Project must provide mitigation to reduce the impacts to less than significant.

Very truly yours,  
WILSON IHRIG



Jack Meighan,  
Associate

# EXHIBIT D

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

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## 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.<sup>1</sup>

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.<sup>2</sup> The pair of buildings were joined in 1952 and now share a basement. In 1972, both Market and

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<sup>1</sup> Historic Sanborn maps show that the two buildings were originally disconnected.

<sup>2</sup> 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).<sup>3</sup> 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 database<sup>4</sup>:

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.*

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<sup>3</sup> "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/>

<sup>4</sup> "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.<sup>5</sup> 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)).<sup>6</sup> 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.<sup>7</sup>

### 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.<sup>8</sup> 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,*

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<sup>5</sup> 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>.

<sup>6</sup> 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>.

<sup>7</sup> State of California, "Technical Assistance Series #1."

<sup>8</sup> 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.<sup>9</sup> The San Francisco Planning Department assigned the subject property a historical resource status of "C," defined as "No Historical Resource Present."<sup>10</sup>

### **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.

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

<sup>10</sup> 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.<sup>11</sup>



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

<sup>11</sup> 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<br>25-27 Sutter Street     | 0291/003  | A - Historic Resource Present    |
| 560 Market Street<br>33 Sutter Street        | 0291/004  | A - Historic Resource Present    |
| 562-566 Market Street<br>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)

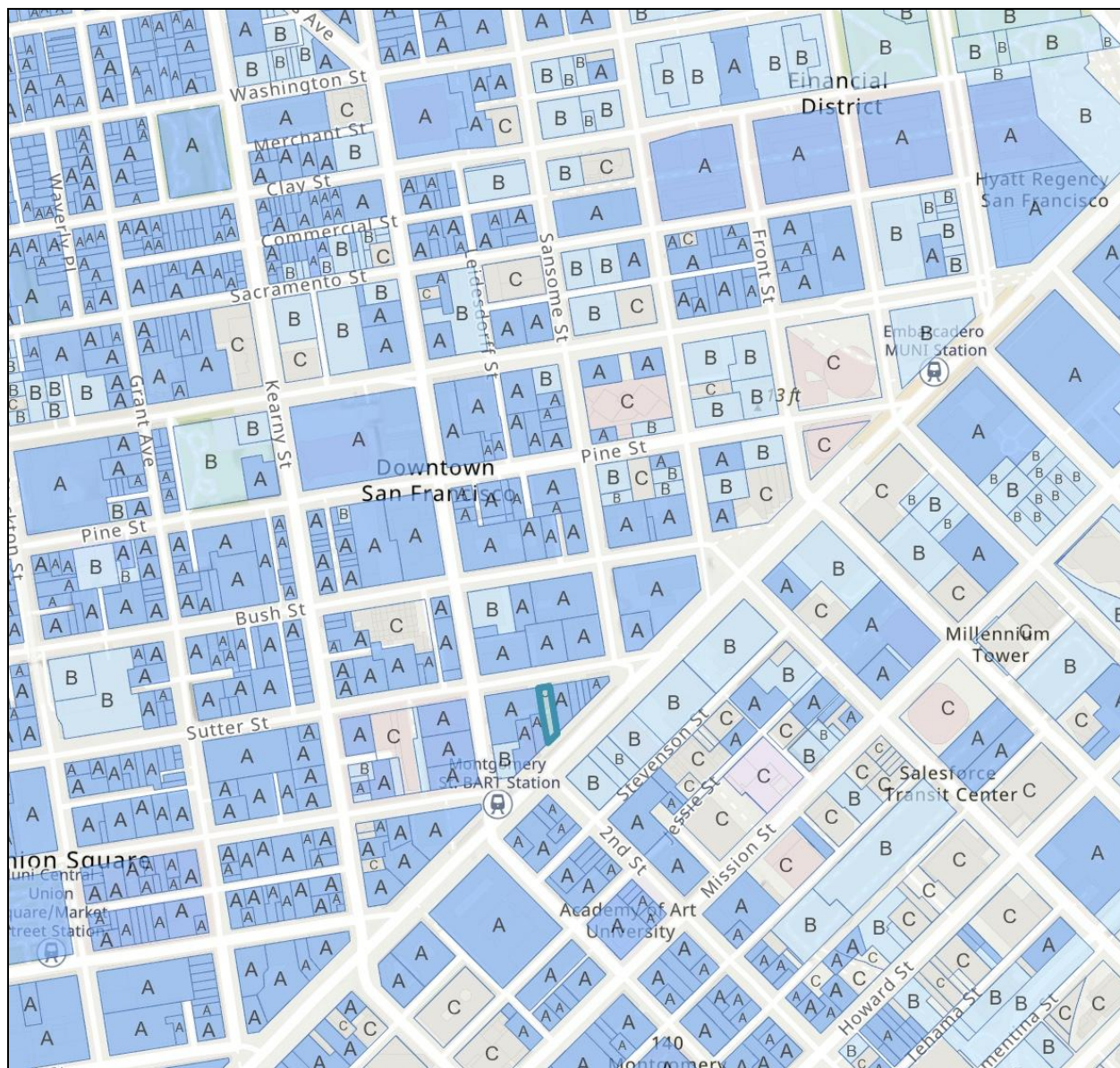
**Article 11 Conservation Districts**

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)).<sup>12</sup> A Project Impacts Analysis (PIA) assesses when proposed alterations to a historical resource cross the threshold into substantial adverse change.<sup>13</sup>

The HRE prepared for 570 Market Street determines that there is *no historical resource present* for the purposes of CEQA.<sup>14</sup> 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.<sup>15</sup>

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.

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<sup>12</sup> 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>.

<sup>13</sup> State of California, "Technical Assistance Series #1."

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

<sup>15</sup> 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.<sup>16</sup> 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.

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<sup>16</sup> 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.

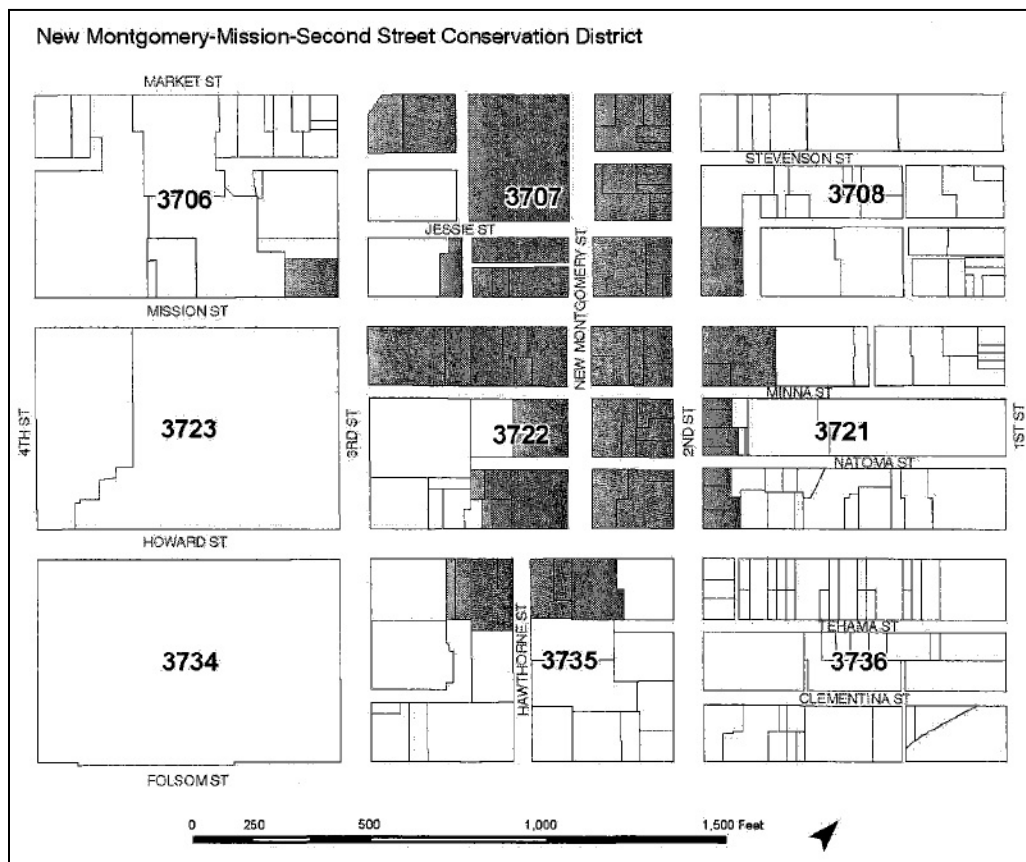
In contrast, Second Street evolved primarily as a warehousing and support service corridor. Its development was shaped by logistical challenges, such as the Second Street Cut, which limited its integration into the retail and office expansions north of Market Street. Together with Mission and Howard 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*

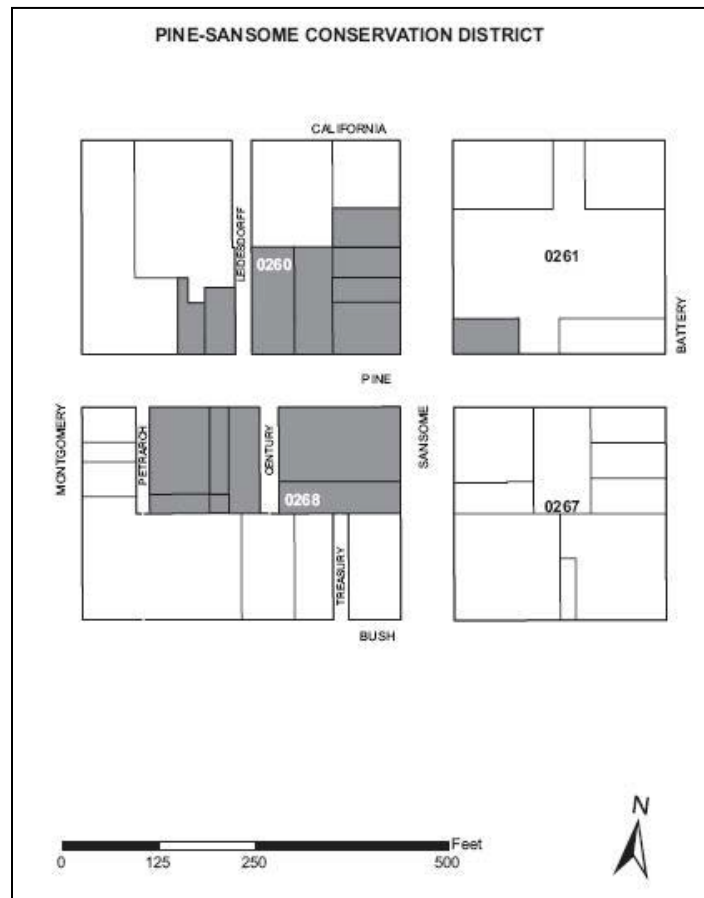
Originally flat, land-filled terrain east of Montgomery Street, the area became a center for household furnishings on Pine Street and hotels on Sansome Street during the mid-nineteenth century. By 1875, financial institutions from Montgomery Street expanded into the area, forming a stock exchange subdistrict 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.*<sup>17</sup>
  - 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*

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<sup>17</sup> 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-101<sup>18</sup>*

- 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*

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<sup>18</sup> 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*

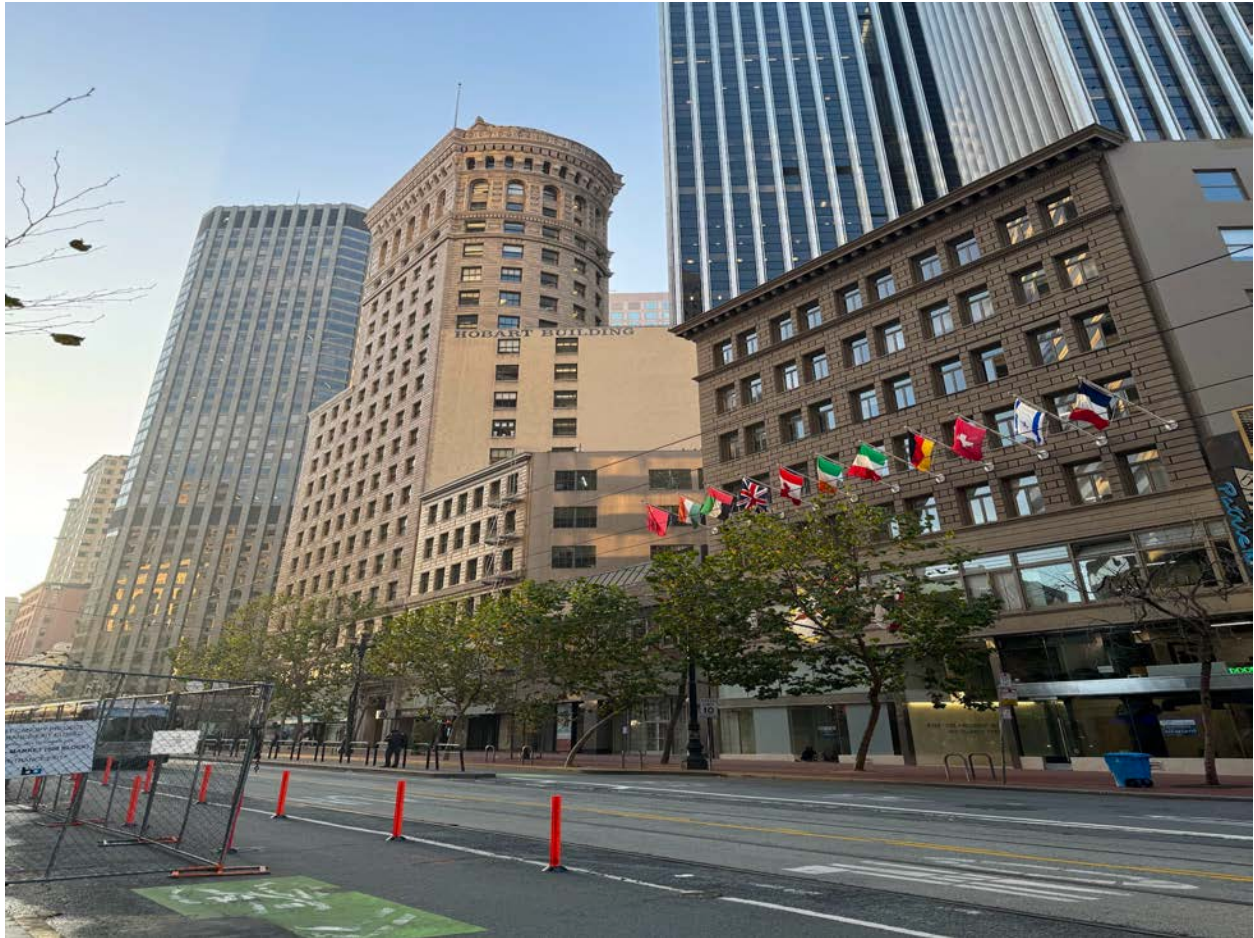
## Existing Conditions Photographs of Subject Block



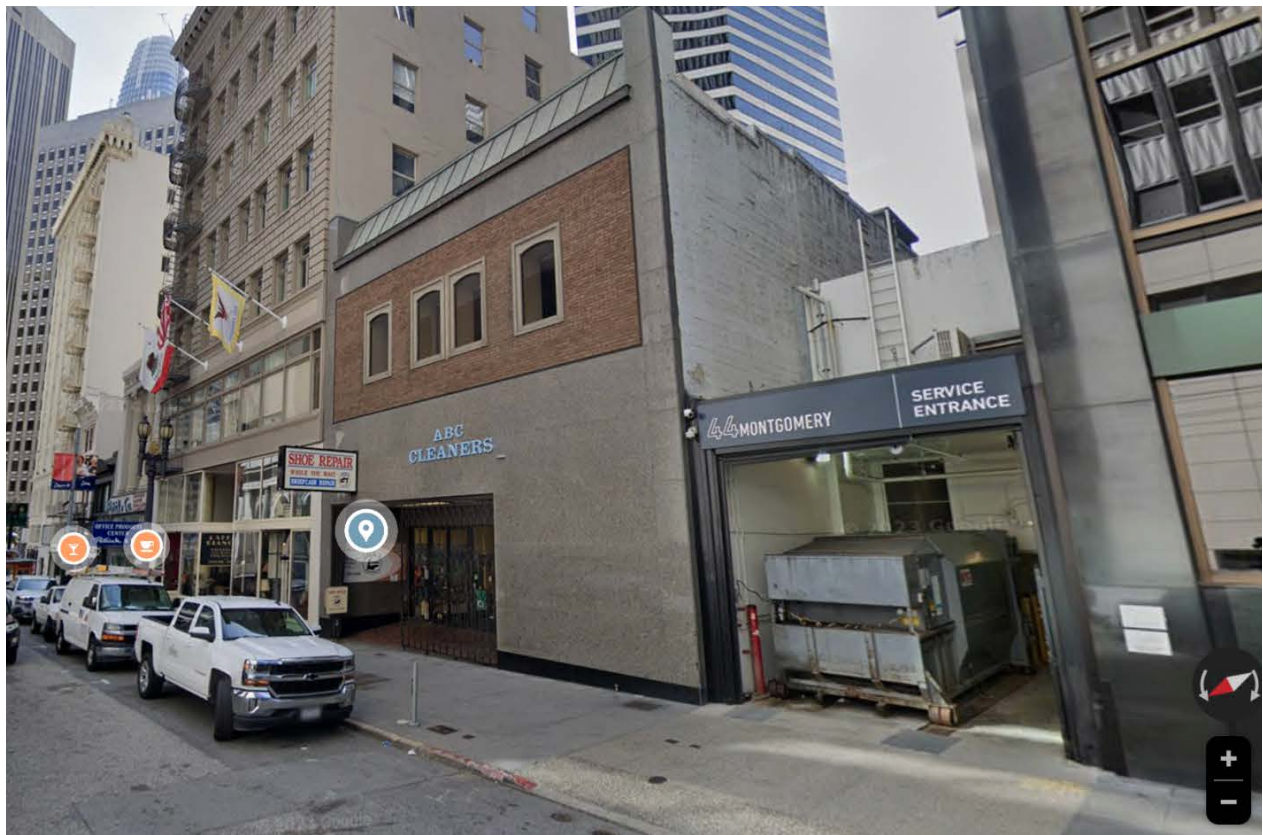
Subject property (570 Market Street) at center left (December 2024)



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)



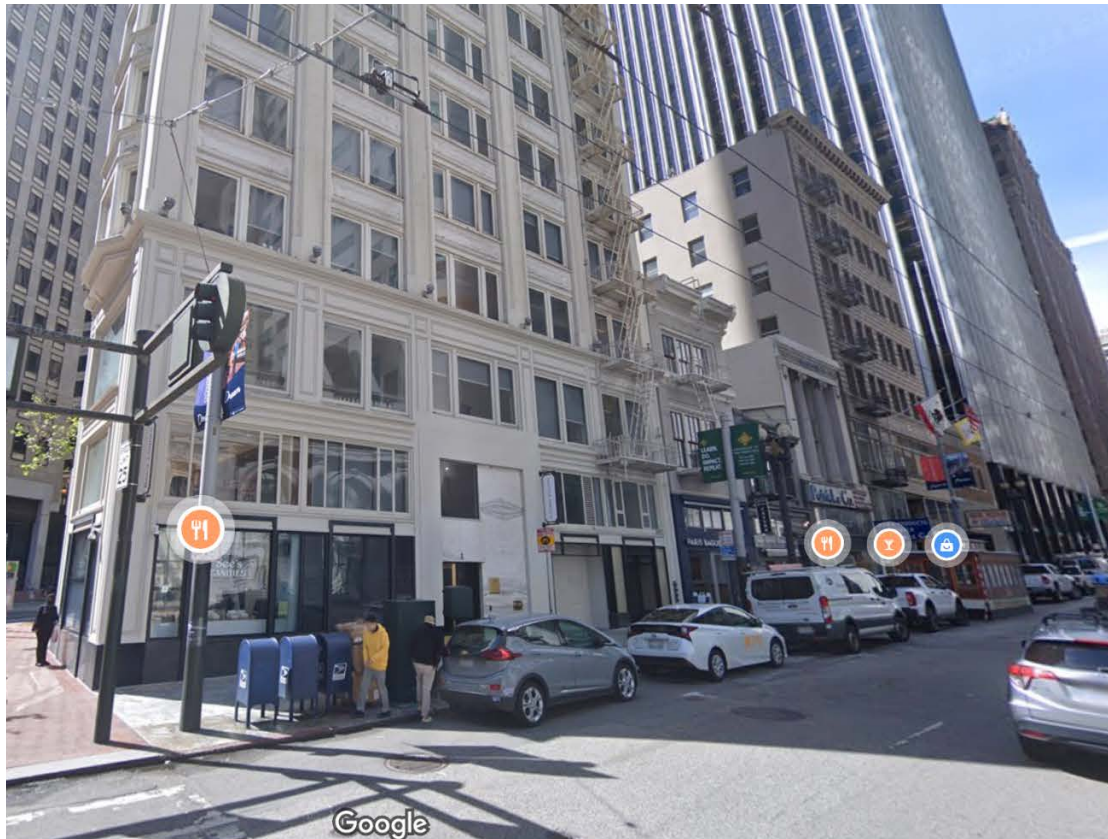
Subject block of Market Street (December 2024)



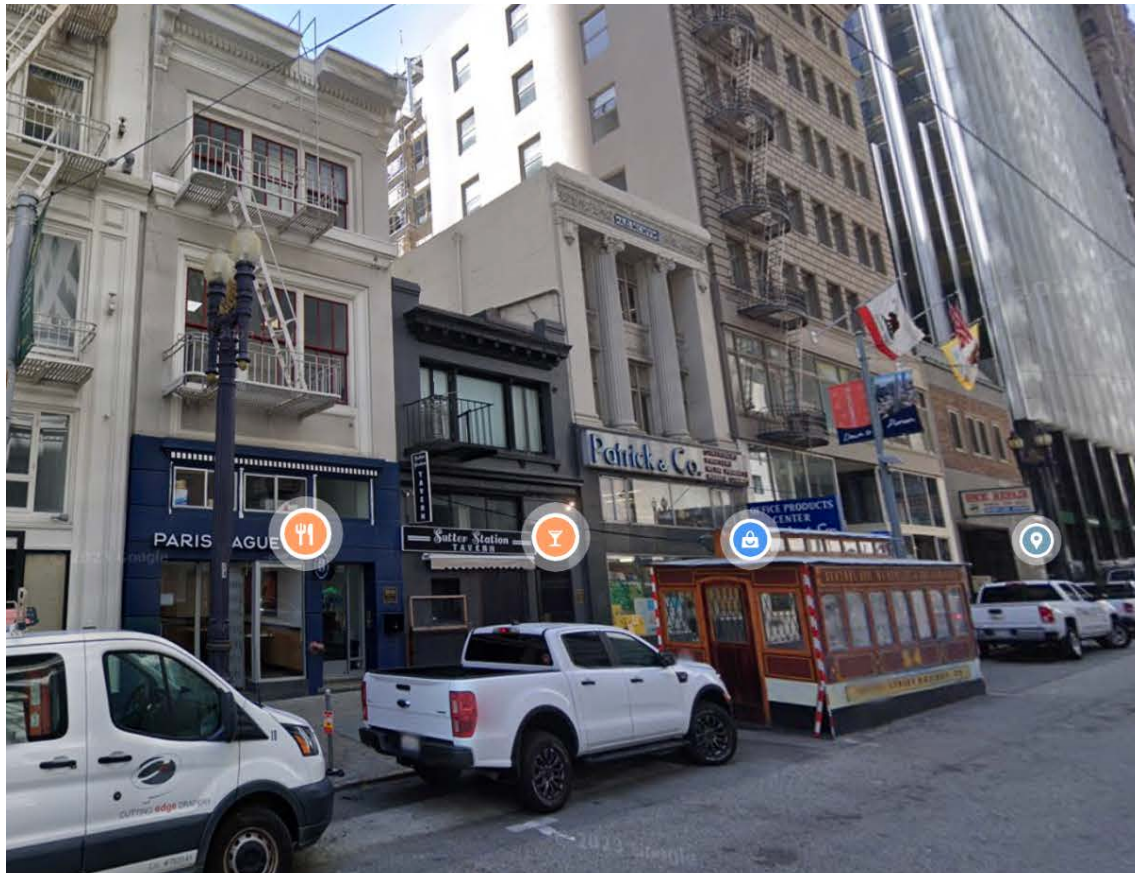
Subject block of Market Street (December 2024)



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)

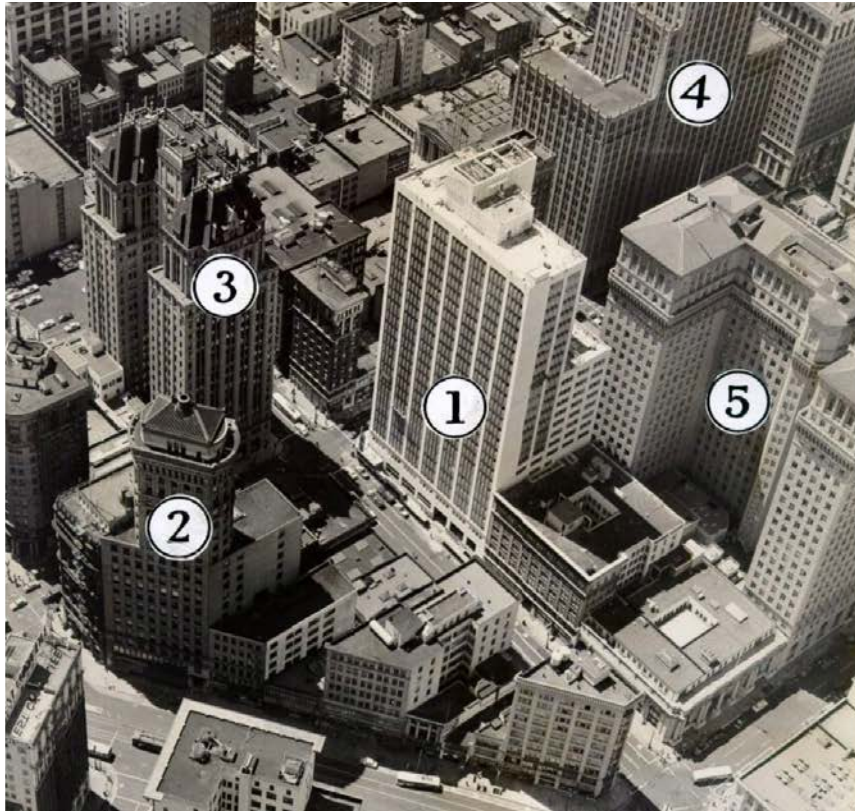
## Historic Photographs of Subject Property



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

Architectural Historian & Preservation Planner

[petrin.katherine@gmail.com](mailto:petrin.katherine@gmail.com) / 415.333.0342

## 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*

Katherine T. Petrin | Architectural Historian & Preservation Planner  
1736 Stockton Street, Suite 2A, San Francisco, California 94133

## 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.

# EXHIBIT E

November 7, 2025

Clerk of the Board of Supervisors  
City and County of San Francisco  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

Re: Appeal of Mitigated Negative Declaration for 570 Market Street Project

Dear President and Members of the Board of Supervisors:

We write in the matter of the proposed 29-story hotel project at 570 Market Street. As qualified architectural historians who meet the Secretary of the Interior's Professional Qualifications Standards, we previously submitted analysis identifying inadequacies in the City's environmental review of this project under the California Environmental Quality Act (CEQA). On April 18, 2025, the San Francisco Planning Department issued its response to appeals of the Preliminary Mitigated Negative Declaration (PMND). That response fails to address the deficiencies we identified and continues to rely on incomplete analysis.

For the reasons set forth below, we respectfully request that the Board of Supervisors grant the appeal, overturn the MND, and direct the preparation of a full Environmental Impact Report (EIR).

### **I. CEQA Historical Resource Analysis is Incomplete**

The Planning Department relies on a 2019 Historic Resource Evaluation (HRE) and a 2020 concurrence letter to conclude that 570 Market is not eligible under California Register Criteria 1–3, noting that the Willis Polk and James Miller designs were obscured by a facade remodel in 1972.

We agree that 570 Market Street does not appear to be individually eligible for listing in the California Register based on the current record. However, the property retains integrity of location, design (footprint/massing), setting, and association, and is historically associated with master architects Willis Polk and James R. Miller. The Planning Department's reliance on the 2019 HRE to assert that the 1972 remodel "removed all traces of the original buildings" and thus making the property ineligible under California Register Criteria 1-3 remains in dispute.

Importantly, our appeal does not depend on establishing individual eligibility at 570 Market Street. The more consequential CEQA errors are the City's (1) failure to analyze indirect and contextual impacts to adjacent A-rated resources and (2) failure to evaluate the subject block's potential as a historic district despite the concentration of A-rated buildings there and on surrounding blocks. (It is worth noting that the entire Financial District is majority A-rated.) The PMND concludes with a no-historical-resource finding at the project site and a "less-than-significant/no impact" determination for surrounding CEQA historical resources without the necessary analysis.

### **II. Impacts to Adjacent Historical Resources and Potential Districts Not Analyzed**

The project site is surrounded by multiple A-rated historic resources, including the Hobart Building, Chancery Building, and 550–560 Market Street, and is adjacent to the New

Montgomery–Mission–Second Street Conservation District. Yet the Planning Department asserts that demolition and new construction “would not affect” these CEQA historical resources. This conclusion disregards both CEQA and the Secretary of the Interior’s Standards.

CEQA Guidelines §15064.5(b)(1) define substantial adverse change to include alteration of a resource’s immediate surroundings such that its significance is materially impaired. The proposed 29-story tower is entirely incompatible in massing, size, and scale with the Hobart Building and the cohesive collection of early 20th-century commercial buildings on this block. Under Standards 9 and 10, the proposed building fails because it is not compatible in scale or proportion and would irreversibly alter the historic setting.

Furthermore, the Department refuses to evaluate the block as a potential historic district despite the concentration of A-rated buildings. CEQA requires consideration of potential districts where such clusters exist.

### **III. Inadequate Cumulative Analysis**

CEQA requires cumulative analysis to reflect past, present, and reasonably foreseeable projects. In the Financial District and Market Street corridor, multiple large-scale developments have been proposed or approved since 2019. These potential cumulative impacts on historical resources have not been studied by the Department as of the last hearing.

### **IV. Mitigation Measures Do Not Address Historical Resource Impacts**

The Department relies heavily on mitigation measures, such as vibration monitoring, to conclude that impacts to CEQA historical resources are less than significant. These measures prevent structural damage but do nothing to mitigate broader impacts on setting, scale compatibility, or the integrity of adjacent resources. CEQA requires analysis and mitigation of these contextual effects.

### **Conclusion**

The City’s response fails to correct the fundamental deficiencies in the MND. By dismissing potential historical resource eligibility, and ignoring cumulative district and setting impacts, the Planning Department has deprived the Board of Supervisors and the public of the comprehensive review CEQA requires.

For these reasons, we respectfully request that the Board of Supervisors uphold the appeal, overturn the MND, and require preparation of a full EIR to adequately address potential environmental impacts at and surrounding 570 Market Street.

Thank you for your consideration.

Sincerely,

Shayne E. Watson

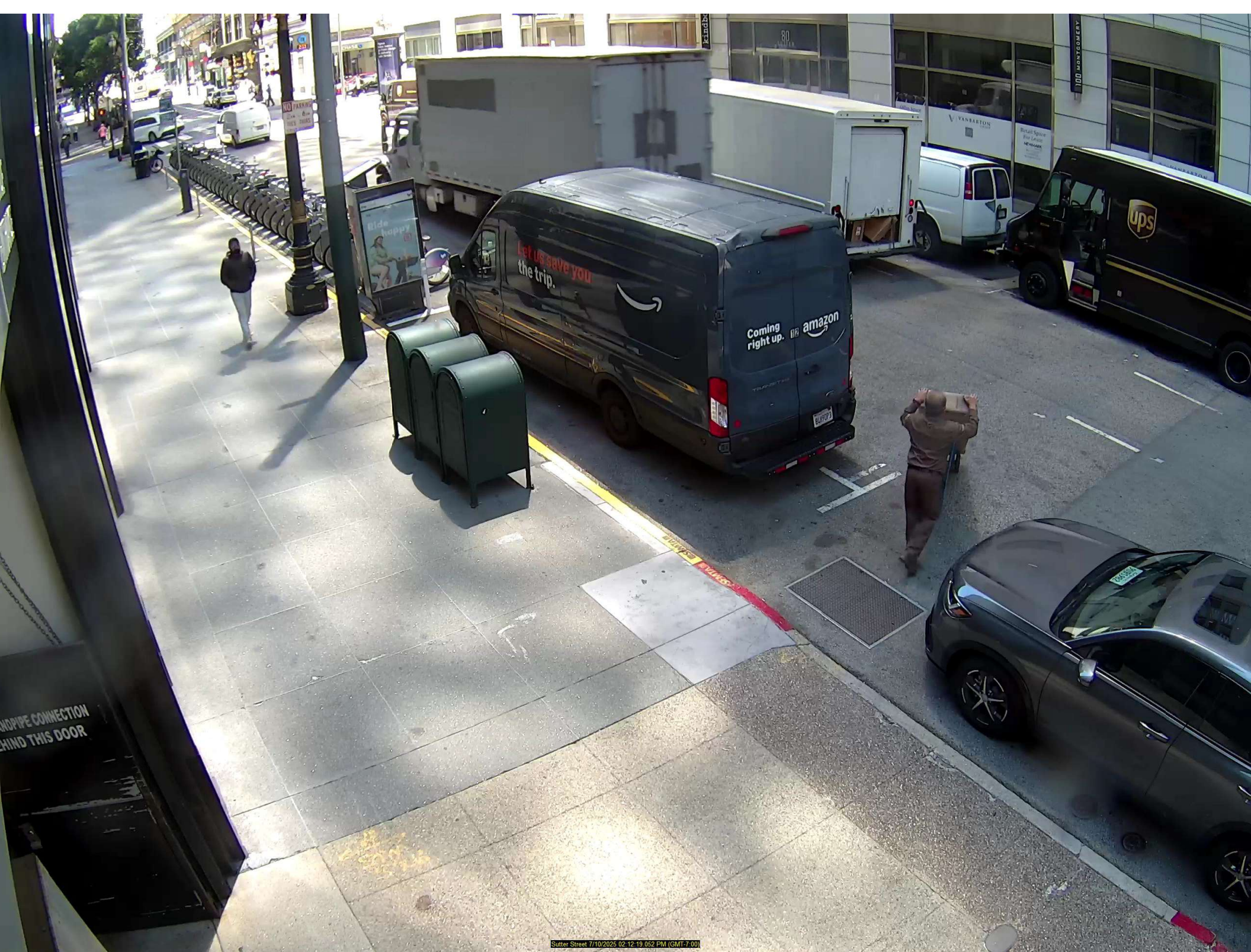
Watson Heritage Consulting

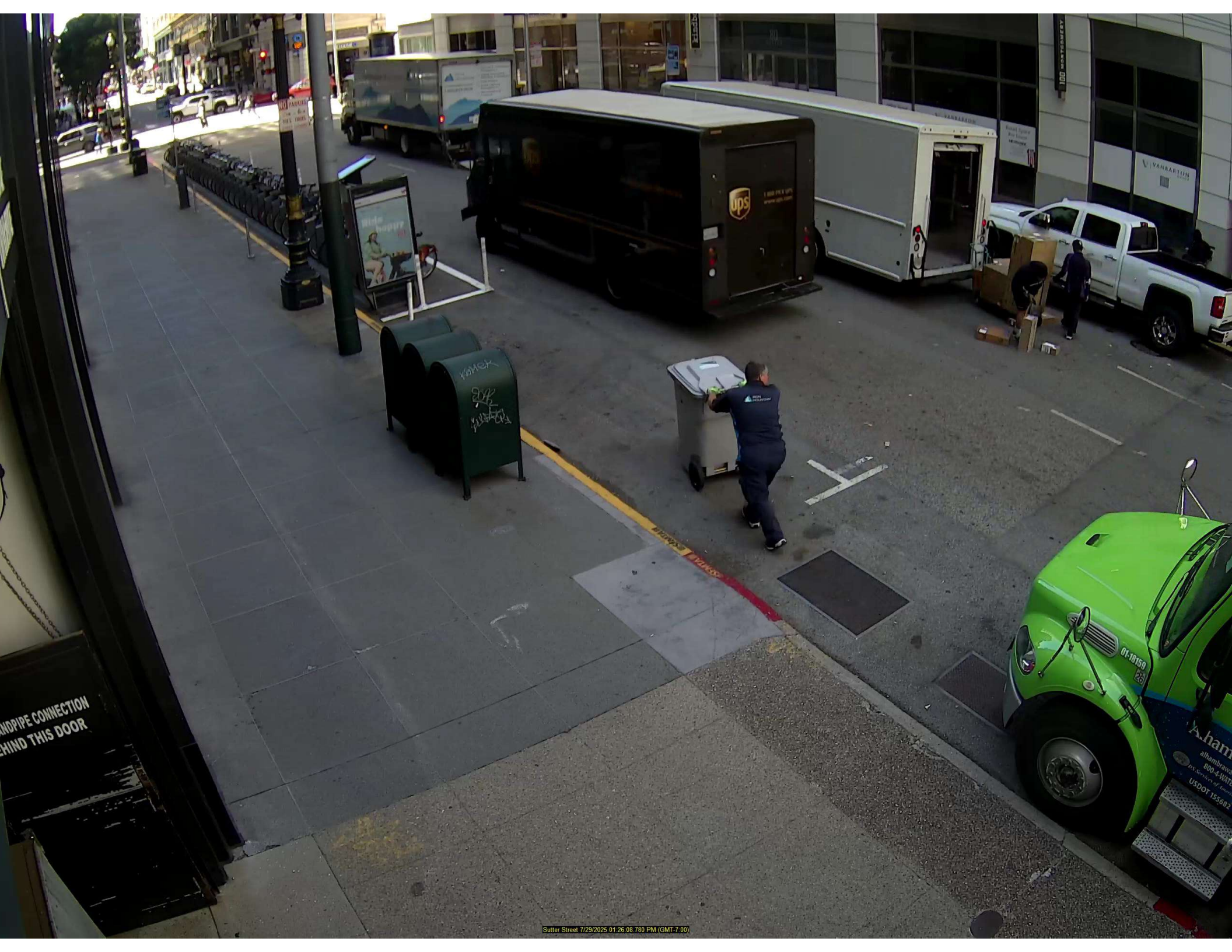
Katherine T. Petrin

Katherine Petrin Consulting



# EXHIBIT F





PIPE CONNECTION  
BEHIND THIS DOOR



PIPE CONNECTION  
AND THIS DOOR