



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

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| <input checked="" type="checkbox"/> Inclusionary Housing (Sec 415) | <input checked="" type="checkbox"/> Public Open Space (Sec 138) |
| <input checked="" type="checkbox"/> Childcare Requirement (Sec 414) | <input checked="" type="checkbox"/> First Source Hiring (Admin. Code) |
| <input checked="" type="checkbox"/> Jobs Housing Linkage Program (Sec 413) | <input checked="" type="checkbox"/> Transportation Sustainability Fee (Sec 411) |
| <input checked="" type="checkbox"/> Downtown Park Fee (Sec 412) | <input checked="" type="checkbox"/> Public Art (Sec 429) |
| <input checked="" type="checkbox"/> Transit Center District Fees (Sec 424) | |

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Planning Commission Motion No. 19634 Section 295

HEARING DATE: MAY 5, 2016

Case No.: 2006.1523ENV/DNX/OFA/CUA/VAR/SHD/GPR
Project Address: **First and Mission Parcels**
40 First Street; 50 First Street; 62 First Street; 76-78 First Street; 88 First Street; 512 Mission Street; 516 Mission Street; 526 Mission Street
"Oceanwide Center"

Project Site Zoning: C-3-O (SD) (Downtown, Office: Special Development)
 550-S and 850-S-2 Height and Bulk Districts
 Transit Center C-3-O (SD) Commercial Special Use District
 Transit Center District and Downtown Plan Areas

Block/Lot: 3708/003, 006, 007, 009, 010, 011, 012 and 055 (Oceanwide Center)
 0308/001 (Union Square)
 0209/017 (Portsmouth Square Plaza)
 0258/003 (St. Mary's Square)
 0233/035 (Justin Herman Plaza)

Project Sponsor: Oceanwide Center LLC
 Attn: Mr. Wu Chen
 88 First Street
 San Francisco, CA 94105

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ADOPTING FINDINGS THAT (1) THE NET NEW SHADOW FROM THE PROPOSED PROJECT AT 50 1ST STREET/OCEANWIDE CENTER WILL NOT HAVE AN ADVERSE IMPACT ON UNION SQUARE, PORTSMOUTH SQUARE PLAZA, ST. MARYS SQUARE, AND JUSTIN HERMAN PLAZA, AS REQUIRED BY PLANNING CODE SECTION 295 (THE SUNLIGHT ORDINANCE), (2) ALLOCATE NET NEW SHADOW TO THE PROPOSED PROJECT AT 50 1ST STREET/OCEANWIDE CENTER FOR UNION SQUARE, PORTSMOUTH SQUARE PLAZA, ST. MARYS SQUARE, AND JUSTIN HERMAN PLAZA, AND (3) ADOPT FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

PREAMBLE

Under Planning Code Section 295 (also referred to as Proposition K from 1984), a building permit application for a project exceeding a height of 40 feet cannot be approved if there is any shadow impact on a property under the jurisdiction of the Recreation and Parks Department, unless the Planning Commission, upon recommendation from the General Manager of the Recreation and Parks Department, in consultation with the Recreation and Parks Commission, makes a determination that the shadow impact will not be significant or adverse.

On February 7, 1989, the Recreation and Parks Commission and the Planning Commission adopted criteria establishing absolute cumulative limits ("ACL") for additional shadows on fourteen parks throughout San Francisco (Planning Commission Resolution No. 11595), as set forth in a February 3, 1989 memorandum (the "1989 Memo"). The ACL for each park is expressed as a percentage of the Theoretically Available Annual Sunlight ("TAAS") on the Park (with no adjacent structures present).

On May 24, 2012, the Planning Commission held a duly advertised public hearing and recommended approval of the Transit Center District Plan ("TCDP" or "Plan") and related implementing Ordinances to the Board of Supervisors. The result of a multi-year public and cooperative interagency planning process that began in 2007, the Plan is a comprehensive vision for shaping growth on the southern side of Downtown to respond to and support the construction of the new Transbay Transit Center project, including the Downtown Rail Extension. Implementation of the Plan would result in generation of up to \$590 million for public infrastructure, including over \$400 million for the Downtown Rail Extension. Adoption of the Plan included height reclassification of numerous parcels in the area to increase height limits, including a landmark tower site in front of the Transit Center with a height limit of 1,000 feet and several other nearby sites with height limits ranging from 600 to 850 feet.

On September 28, 2011, the Department published a draft Environmental Impact Report ("EIR") for the Plan for public review. The draft EIR was available for public comment until November 28, 2011. On November 3, 2011, the Planning Commission ("Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to solicit comments regarding the draft EIR. On May 10, 2012 the Department published a Comments and Responses document, responding to comments made regarding the draft EIR prepared for the Project.

On May 24, 2012, the Commission reviewed and considered the Final EIR ("FEIR") and found that the contents of said report and the procedures through which the FEIR was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) ("CEQA"), 14 California Code of Regulations Sections 15000 et seq. ("the CEQA Guidelines"), and Chapter 31 of the San Francisco Administrative Code ("Chapter 31").

The Commission found the FEIR was adequate, accurate and objective, reflected the independent analysis and judgment of the Department and the Commission, and that the summary of comments and responses contained no significant revisions to the draft EIR, and certified the FEIR for the Project in compliance with CEQA, the CEQA Guidelines and Chapter 31.

On July 24, 2012, the Board of Supervisors held a duly noticed public hearing, affirmed the FEIR and approved the Plan, as well as the associated ordinances to implement the Plan on first reading.

On July 31, 2012, the Board of Supervisors held a duly noticed public hearing, and approved the Plan, as well as the associated ordinances to implement the Plan on final reading.

On August 8, 2012, Mayor Edwin Lee signed into law the ordinances approving and implementing the Plan, which subsequently became effective on September 7, 2012.

The Transit Center EIR is a program-level EIR. Pursuant to CEQA Guideline 15168(c)(2), if the lead agency finds that no new effects could occur or no new mitigation measures would be required of a subsequent project in the program area, the agency may approve the project as being within the scope of the project covered by the program EIR, and no new or additional environmental review is required. In certifying the Transit Center District Plan, the Commission adopted CEQA findings in its Motion No. 18629 and hereby incorporates such Findings by reference herein.

Additionally, State CEQA Guidelines Section 15183 provides a streamlined environmental review for projects that are consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified, except as might be necessary to examine whether there are project-specific effects which are peculiar to the project or its site. Section 15183 specifies that examination of environmental effects shall be limited to those effects that (a) are peculiar to the project or parcel on which the project would be located, (b) were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent, (c) are potentially significant off-site and cumulative impacts which were not discussed in the underlying EIR, or (d) are previously identified in the EIR, but which are determined to have a more severe adverse impact than that discussed in the underlying EIR. Section 15183(c) specifies that if an impact is not peculiar to the parcel or to the proposed project, then an EIR need not be prepared for that project solely on the basis of that impact.

The FEIR prepared for the Plan analyzed and identified potential new shadows that could be created cumulatively by likely development sites in the Plan area on up to nine open spaces (Union Square, St. Mary's Square, Portsmouth Square, Justin Herman Plaza, Willie "Woo Woo" Wong Playground, Maritime Plaza, Woh Hei Yuen Park, Chinese Recreation Center, and Boeddeker Park) under the jurisdiction of the Recreation and Parks Department. Approval of these buildings would thus be subject to approval under the procedures of Planning Code Section 295 by the Recreation and Parks and Planning Commissions. The FEIR also analyzed and identified potential new shadows that the Transit Tower Project would cast on eight open spaces (Union Square, St. Mary's Square, Portsmouth Square, Justin Herman Plaza, Maritime Plaza, Woh Hei Yuen Park, Chinese Recreation Center, and Boeddeker Park) under the jurisdiction of the Recreation and Park Department.

On October 11, 2012, the Planning Commission and the Recreation and Parks Commission held a duly noticed joint public hearing and adopted Planning Commission Resolution No. 18717 and Recreation and Parks Commission Resolution No. 1201-001 amending the 1989 Memo and raising the absolute cumulative shadow limits for seven open spaces under the jurisdiction of the Recreation and Parks Department that could be shadowed by likely cumulative development sites in the Transit Center District Plan ("Plan") Area, including the Project. In revising these ACLs, the Commissions also adopted qualitative criteria for each park related to the characteristics of shading within these ACLs that would not be considered adverse, including the duration, time of day, time of year, and location of shadows on the particular parks. Under these amendments to the 1989 Memo, any consideration of allocation of

“shadow” within these newly increased ACLs for projects must be consistent with these characteristics. The Commissions also found that the “public benefit” of any proposed project in the Plan Area should be considered in the context of the public benefits of the Transit Center District Plan as a whole.

On October 18, 2012, the Planning Commission held a duly noticed public hearing and adopted Motion No. 18724, findings that the shadows cast by the Transbay Tower project on eight open spaces (Union Square, St. Mary’s Square, Portsmouth Square, Justin Herman Plaza, Maritime Plaza, Woh Hei Yuen Park, Chinese Recreation Center, and Boeddeker Park) under the jurisdiction of the Recreation and Parks Department would not be adverse, and allocated to the Transbay Tower project allowable shadow from the absolute cumulative shadow limits of six of these properties (where such limits have been adopted) (Case No. 2008.0789K). As part of this action, the Transbay Tower was allocated as follows: 0.011% of the 0.19% ACL for Union Square, leaving a remaining 0.179% of the ACL for Union Square; 0.133% of the ACL for Portsmouth Square, leaving a remaining 0.277% for Portsmouth Square; 0.048% of the ACL for St. Mary’s Square, leaving a remaining 0.042% for St. Mary’s Square; and 0.046% of the ACL for Justin Herman Plaza, leaving a remaining 0.044% for Justin Herman Plaza.

On November 19, 2012, the Planning Commission held a duly noticed public hearing and adopted Motion No. 18763, findings that the shadows cast by the 181 Fremont Street project on Union Square, under the jurisdiction of the Recreation and Parks Department, would not be adverse, and allocated to the 181 Fremont Street project allowable shadow from the absolute cumulative shadow limits of Union Square (Case No. 2007.0456K). As part of this action, the 181 Fremont Street project was allocated 0.0005% of the 0.179% ACL for Union Square, leaving a remaining 0.1785% of the ACL for Union Square.

On June 4, 2014, an amended request, as modified by subsequent submittals, for an allocation of 1,057,549 gross square feet of net additional office space to the Project was submitted pursuant to Sections 320 through 325 (Annual Office Development Limitation Program) (Case No. 2006.1523OFA). The Project includes retention of 22,376 square feet existing office space in the upper floors of 78 First and 88 First Streets, which is not included in the office allocation request.

On June 1, 2015, the Project Sponsor submitted a request for review of a development exceeding 40 feet in height, pursuant to Section 295, analyzing the potential shadow impacts of the Project to properties under the jurisdiction of the Recreation and Parks Department (Case No. 2006.1523SHD). Department staff prepared a shadow fan depicting the potential shadow cast by the development and concluded that the Project could have a potential impact to properties subject to Section 295. A technical memorandum, prepared by Environmental Science Associates, concluded that the Project would cast new shadow on four parks, as follows: approximately 149,230 square-foot-hours (sfh) of new shadow on Union Square, equal to approximately 0.0035% of the theoretically available annual sunlight (“TAAS”) on Union Square; approximately 457,510 sfh of new shadow on Portsmouth Square Plaza, equal to approximately 0.219% of the theoretical annual available sunlight (“TAAS”) on Portsmouth Square Plaza; 1,342 sfh of net new shadow on Portsmouth Square Plaza on a yearly basis, equal to approximately 0.001% of the theoretical annual available sunlight (“TAAS”) on St. Mary’s Square; and 299,820 sfh of net new shadow on Justin Herman Plaza on a yearly basis, which would be an increase of about 0.044% of the theoretical annual available sunlight (“TAAS”) on Justin Herman Plaza.

On June 5, 2015, the Project Sponsor submitted a request (Case No. 2006.1523DNX) for a Determination of Compliance, pursuant to Section 309, with requested exceptions from Planning Code for “Streetwall Base”, “Tower Separation”, “Rear Yard”, “Ground-Level Wind Currents”, “Freight Loading Access”,

“Commercial to Non-Commercial Use Ratio”, “Unoccupied Vertical Extensions”, “Upper Tower Extensions”, and “Bulk” to allow construction of two towers, 605 feet and 850 feet maximum occupied height, sharing a four-story basement, demolition of three commercial buildings, and rehabilitation of two commercial buildings, for a project containing 265 residential units, a 169 room tourist hotel, approximately 1.07 million gross square feet of office space, and 12,500 square feet of retail space, on eight lots plus vacation of portions of Jessie Street and Elim Alley, located near the northwest corner of First and Mission Streets, within the 550-S and 850-S-2 Height and Bulk Districts, the C-3-O (SD) (Downtown Office – Special Development) Zoning District, Transit Center C-3-O (SD) Commercial Special Use District, and Transit Center District Plan and Downtown Plan Area (collectively, “Project”).

On June 5, 2015, the Project Sponsor applied for a Variance from the requirements of Section 136 (Bay Window Dimensional requirements), Section 140 (Dwelling Unit Exposure), Section 145.1(c)(2) (parking and loading ingress and egress); and Section 155(s) (Parking and Loading Access).

On June 5, 2015, the Project Sponsor submitted a request for Conditional Use Authorization, as modified by subsequent submittals, pursuant to Sections 210.2 and 303 to allow a tourist hotel with 169 rooms.

On July 28, 2015 the Planning Department received from the Department of Public Works a General Plan Referral Application submitted by the Project Sponsor, for street and alley vacations associated with the Project.

On April 1, 2016, the Department determined that the proposed application did not require further environmental review under Section 15183 of the CEQA Guidelines and Public Resources Code Section 21083.3. The Project is consistent with the adopted zoning controls in the Transit Center District Area Plan and was encompassed within the analysis contained in the Transit Center District EIR. Since the Transit Center District EIR was finalized, there have been no substantial changes to the Transit Center District Plan and no substantial changes in circumstances that would require major revisions to the Transit Center District EIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the Transit Center District EIR. The file for this Project, including the Transit Center District EIR and the Community Plan Exemption certificate, is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California.

On April 21, 2016, the Recreation and Parks Commission held a duly noticed public hearing and adopted Recreation and Parks Commission Resolution No. 1604-010 recommending that the General Manager of the Recreation and Parks Department recommend to the Planning Commission that the shadows cast by the Project on Union Square, Portsmouth Square Plaza, St. Mary’s Square and Justin Herman Plaza are not adverse to the use of the parks, and that the Planning Commission allocate to the Project allowable shadow from the absolute cumulative shadow limit for Union Square, Portsmouth Square Plaza, St. Mary’s Square and Justin Herman Plaza.

The Commission has reviewed and considered reports, studies, plans and other documents pertaining to the Project.

The Commission has heard and considered the testimony presented at the public hearing and has further considered the written materials and oral testimony presented on behalf of the Project Sponsor, Planning Department staff, and other interested parties.

FINDINGS

Having reviewed the materials identified in the recitals above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The foregoing recitals are accurate, and also constitute findings of this Commission.
2. CEQA Guidelines Sections 15162 and 15163 require a lead agency to prepare a subsequent EIR or a supplement to an EIR when substantial changes to the project, substantial changes with respect to the circumstances under which the project would be undertaken, or new information of substantial importance would require major revisions of the certified EIR. There have been no substantial changes to the Transit Center District Plan, no substantial changes in circumstances, and no new information of substantial importance since the FEIR was certified on May 24, 2012. Therefore, no subsequent or supplemental environmental review is required.
3. The additional shadow cast by the Project on Union Square, Portsmouth Square, St. Mary's Square, and Justin Herman Plaza, while numerically relevant, would not be adverse, and would not be expected to interfere with the use of these parks, for the following general reasons, and as more specifically described for each park below: (1) the new shadow would be within the absolute cumulative shadow limits adopted for the affected parks by the Planning Commission (Resolution No. 18717) and the Recreation and Parks Commission (Resolution No. 1201-001) at a joint public hearing on October 11, 2012; (2) the new shadow would generally occur in the morning hours during periods of low park usage; (3) the new shadow would generally occur for a limited amount of time on any given day, with durations ranging from twenty minutes to a maximum of approximately less than one hour, depending on the specific park and the time of year; and (4) the new shadow would occur during limited discrete periods of the year, which would vary depending on the specific park and would range from a minimum of a couple weeks to a maximum of approximately fourteen weeks, with fluctuations in the amount of new shadow that would be cast during these periods on a given park property.
4. Descriptions of the additional shadow cast by the Project on individual park properties, and the reasons that the additional shadow would not be considered adverse to those parks are as follows:
 - a. Union Square:
Available ACL: 0.1435%
Net New Shadow from 50 1st Street Project: 0.035%
Dates of Net New 50 1st Street Project Shadow: May 10 – August 2; 12 weeks annually
Time of Day of Net New 50 1st Street Project Shadow: between 7:00 a.m. and 8:00 a.m., average duration of shadow about 30 minutes per day; maximum up to 40 minutes
Usage Analysis: The new project shadow would fall in the southwestern corner of the park, in the location of the terraced lawn and the paved path connecting the interior of the park to the corner of Powell Street and Geary Street. The remainder of the park is shadowed at this time. Usage of the park is very light prior to 9:00am, during the time when the new shadows would fall on the parts of the park. Usage of the park at these hours is predominantly pass-through traffic, with few stationary users.

b. Portsmouth Square:

Available ACL: 0.277%

Net New Shadow from 50 1st Street Project: 0.219%

Dates of Net New 50 1st Street Project Shadow: November 1 – February 8; 12 weeks annually

Time of Day of Net New 50 1st Street Project Shadow: between 8:05 a.m. and 9:10 a.m., average duration of shadow about 37 minutes per day; maximum duration less than one hour

Usage Analysis: The new shadow would fall in the northwestern portion of the park, in the upper terrace seating area beneath the mature landscaping, west of the community room building. Usage of the park is heavy and constant, substantially increasing after 9:00am. Park usage is heavy even before the sunlight reaches the square in the early morning. Usage of the park is dispersed evenly throughout the park, with users spreading themselves out to take advantage of open and available areas for gathering or exercise, regardless of sun/shade or the intended use of the space. For instance, adults use children's play areas to exercise. Some shaded areas of the park are very heavily used, particularly as usage of the park increases and the density of users increases.

c. St. Mary's Square

Available ACL: 0.042%

Net New Shadow from 50 1st Street Project: 0.001%

Dates of Net New 50 1st Street Project Shadow: March 15-22; September 20-27; 4 weeks

Time of Day of Net New 50 1st Street Project Shadow: from 8:50 a.m. to about 9:10 a.m., average duration of shadow 20 minutes; maximum duration 20 minutes

Usage Analysis: The net new shadow cast by the proposed project would cover a small area (a maximum of 233 square feet at any given time), much of it "diffuse" shadow. St. Mary's is a lightly-used park during the morning hours. Usage does not increase substantially as the morning progresses and sunlight increases. Usage of the park is dispersed evenly throughout the park regardless of sun/shade. Park users remain evenly divided between sunlit and shaded areas even after more of the park becomes sunlight as the morning progresses. The majority of park users in the morning are engaged in tai chi/exercise in small groups of 3-4 or individually. These groups gather where open areas exist regardless of sunlight/shading. The park is already heavily shaded during the morning hours due to its location in the Financial District adjacent to tall buildings.

d. Justin Herman Plaza

Available ACL: 0.044%

Net New Shadow from 50 1st Street Project: 0.044%

Dates of Net New 50 1st Street Project Shadow: October 25 – February 14; 14 weeks annually

Time of Day of Net New 50 1st Street Project Shadow: between approximately 1:50 p.m. and 3:25 p.m., average duration of shadow about 36 minutes per day; maximum duration less than one hour

Usage Analysis: The new project shadow would fall in the central portion of the park, in the area between the terminus of Market Street and the southbound lanes of The Embarcadero that is typically occupied by the San Francisco Art Market vendor tents. The Plaza is most heavily used before 2:30pm by downtown workers seeking places to

eat lunch. Usage of the park is heavily dispersed to its edges where seating opportunities exist. Some areas with formal seating are heavily used despite shading.

5. The 1989 Memo provides that the Planning Commission and Recreation and Parks Commission may consider the public good served by development that would cast new shadows on park properties, in terms of a needed use, building design, and urban form. The adoption and implementation of the Transit Center District Plan is intended to shape regional growth patterns through the development of an intense, employment-focused neighborhood situated within downtown San Francisco in an area served by abundant existing and planned transportation infrastructure. The Project would contribute to the new sculpted downtown skyline that marks the location of the Transbay Transit Center, the future nexus of local, regional, and statewide transportation infrastructure in San Francisco.

Development within the Plan area will generate substantial revenue for new infrastructure and improvements to the public realm, including the creation of new open spaces. Within the next five years, about \$9 million of open space impact fees will be allocated to the Chinatown Open Space improvements. Implementation of the Plan, if all major development sites are constructed, would generate up to \$590 million for public infrastructure, including over \$400 million for the Downtown Rail Extension. This contribution of funds to the Downtown Rail Extension represents the vast majority of the City of San Francisco's commitment to provide \$450 million memorialized in a regional agreement with the Metropolitan Transportation Commission to leverage \$2 billion in additional regional and federal funds to construct the rail project.

6. A determination by the Planning Commission and/or the Recreation and Parks Commission to allocate net new shadow to the Project does not constitute an approval of the Project.

DECISION

That based upon the Record, the submissions by the Project Sponsor, the staff of the Planning Department, the recommendation of the General Manager of the Recreation and Parks Department, in consultation with the Recreation and Parks Commission, and other interested parties, the oral testimony presented to the Planning Commission at the public hearing, and all other written materials submitted by all parties, the Planning Commission hereby DETERMINES, under Shadow Analysis Application No. 2006.1523SHD, that the net new shadow cast by the Project on Union Square, Portsmouth Square Plaza, St. Mary's Square, and Justin Herman Plaza will not be adverse to the use of Union Square, Portsmouth Square Plaza, St. Mary's Square, and Justin Herman Plaza.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting on May 5, 2016.



Jonas P. Ionin
Commission Secretary

AYES: Fong, Richards, Antonini, Hillis, Johnson

NAYES: Moore

ABSENT: None

RECUSED: Wu

ADOPTED: May 5, 2016

