

12/1/11

12/4/2003

SAN FRANCISCO

PLANNING COMMISSION

MOTION NO. 16692

ADOPTING FINDINGS PURSUANT TO SECTION 309 OF THE SAN FRANCISCO PLANNING CODE RELATED TO A DETERMINATION OF COMPLIANCE FOR A BUILDING EXCEEDING 50,000 GROSS SQUARE FEET OF FLOOR AREA AND 75 FEET IN HEIGHT AND FOR THE GRANTING OF EXCEPTIONS TO THE PLANNING CODE STANDARDS FOR REDUCTIONS OF GROUND-LEVEL WIND CURRENTS IN C-3 DISTRICTS (SECTION 148) AND BUILDING BULK (SECTIONS 270 AND 272), WITH RESPECT TO A PROPOSAL TO CONSTRUCT A NEW, 23-STORY MIXED-USE (RESIDENTIAL AND PARKING) BUILDING CONTAINING UP TO 246 DWELLING UNITS AND 504 OFF-STREET PARKING SPACES, AT 1160 MISSION STREET, LOTS 37, 38 AND 56 IN ASSESSOR'S BLOCK 3702, IN A C-3-G (DOWNTOWN GENERAL COMMERCIAL) DISTRICT AND IN 150-S AND 240-S HEIGHT AND BULK DISTRICTS.

RECITALS

1. On March 5, 2003, Alexis Wong, president of Fox-Warfield, LLC, owner (hereinafter "Applicant"), filed an application with the Planning Department (hereinafter "Department") requesting, under Planning Code (hereinafter "Code") Section 309 Determination of Compliance for a building exceeding 75 feet in height and 50,000 gross square feet (hereinafter "gsf") and for the granting of exceptions to the Code requirements for reduction of ground-level wind currents in C-3 Districts (Section 148) and building bulk (Sections 270 and 272) (Case No. 2002.0628CEKVX!) on a 43,640-square-foot site (Lots 37, 38 and 56 in Assessor's Block 3702) at 1160 Mission Street, northwest side between Seventh and Eighth Streets, with additional frontage on Stevenson Street (hereinafter "Subject Property"). The proposed 489,652-gross-square-foot building would be 23 stories (approximately 234 feet) high and would contain up to 246 dwelling units and 504 off-street parking spaces. It would also include approximately 5,356 square feet of retail space (collectively hereinafter "Project").
2. The Department published a Final Mitigated Negative Declaration of Environmental Impact (hereinafter "FND") for Case No. 2002.0628CEKVX! on September 22, 2003. This Commission has reviewed and considered the information contained in this Final Negative Declaration of Environmental Impact Hereinafter "FND") and concurs with the findings

made therein. Such concurrence is reflected by the adoption by the Commission, on December 4, 2003, of CEQA findings as described in the FND in Motion No. 16691.

3. On December 4, 2003, the Commission conducted a duly-noticed public hearing for the Project on the request for approval pursuant to Code **Section 309**.
4. **MOVED**, That the Commission hereby makes the Determination of Compliance and authorizes the exceptions requested in Application No. 2002.0628CEKVX!) subject to the conditions contained in "Exhibit A", attached hereto and incorporated herein by reference thereto, based on the following findings:

FINDINGS

Having reviewed all of the materials submitted by the Applicant and having heard all testimony and arguments, this Commission finds, concludes and determines that:

1. Project Site. The Project site consists of Assessors Block 3702, Lots 37, 38 and 56 ("Subject Property") and covers an area of 43,640 square feet. The Project site is located at 1160 Mission Street, northeast side between First and Second Streets in the South of Market Area.
2. Existing Use. The Subject Property is vacant. It has been used, most recently, as a surface parking lot.
3. Surrounding Development. The Project site is in the Mid-Market area southeasterly of the Civic Center. Immediately next door to the northeast is the site of the new GSA Building being built by the Federal government. The GSA building will be a in the form of a slab approximately 280 feet in height. Immediately to the southwest is the site (approximately three acres, a through property from Market to Mission Streets) of the Trinity Properties' 1,410-unit residential redevelopment project (with 1,350 off-street parking spaces) which is proposed for phased construction over the next ten years. At present, this site houses the Trinity Plaza Apartments, 377 residential rental units with approximately 450 off-street parking spaces. The new development would feature five slab buildings (similar in form to the subject Project) from 12 to 24 stories in height. To the north lie two recently-constructed office buildings of 12 and 14 stories. Also to the north, across Stevenson Street, is the site of a proposed new hotel of approximately ten stories and 100 guest rooms. The area also has a number of mixed-use buildings, hotels and theatres. The Civic Center BART station is one half block to the north. The Project site is well served by transit of all varieties.

5. Requirement of Project Compliance with Code Section 309. This Section of the Planning Code (hereinafter "Code") requires review of Building or Site Permit applications for new buildings or for substantial alteration of existing buildings in C-3 Districts. It requires a public hearing by the Commission where there are exceptions requested and / or when the building exceeds 75 feet in height and / or 50,000 square feet of gross floor area. The Commission may approve a project, grant exceptions from certain requirements of the Code and/or impose conditions on an approval. A project is required to meet all applicable Code requirements or request exceptions as allowed under **Section 309(a)(1)-(9)**. Because the Project is located in a C-3-G District, and the Project proposal involves new construction of a 234-foot-tall building than contains in excess of 50,000 *gsf*, it is subject to Planning Commission review with respect to the Project's compliance with applicable Code requirements pursuant to **Section 309**. Two of the exceptions listed in Section 309 are being sought as part of the Project. They are Code standards for reduction of ground-level wind currents in C-3 Districts (**Section 148**) [**Section 309(a)(2)**] and for building bulk (**Sections 270 and 272**) [**Section 309(a)(9)**].

6. Compliance with C-3 District Code Requirements – Code Section 309. In determining if the Project would comply with applicable Code Sections, the Commission has reviewed the Project in reference to the Code Sections listed below. The Commission hereby finds as follows:
 6. Section 101.1(b)(1-8) establishes Eight Priority Planning Policies and requires review of permits for consistency with said policies. They are included in the preamble to the Master Plan and are the basis upon which inconsistencies in the General Plan are resolved:
 - (1) That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Project would not remove or otherwise negatively impact any existing neighborhood-serving retail uses. The Project would enhance neighborhood-serving retail uses because it would provide approximately 6,000 square feet of ground-floor retail use fronting on Mission Street; more retail space than currently exists at the site. The short-term parking proposed as part of the project would enhance other retail and neighborhood-serving commercial and entertainment uses in the vicinity. These uses would create employment opportunities. The Project would add new residents, visitors and employees to the neighborhood, which may strengthen nearby neighborhood retail uses by broadening the consumer base and the demand for such retail services.
 - (2) That existing housing and neighborhood character be conserved and protected in order to

preserve the cultural and economic diversity of our neighborhoods;

The proposed Project design is articulated in such a way as to fit in well with the evolving neighborhood character of large slab buildings set in large open areas. The Project would add economic diversity by providing some retail space.

- (3) That the City's supply of affordable housing be preserved and enhanced;

The Project would enhance the City's supply of housing by adding up to 246 new dwelling units in an emerging mixed-use area, with either 12 percent (if on site – 30 units) or 17 percent (if off site – 43 units), or a mixture thereof) would be affordable for either rental or sale per terms of the City's Inclusionary Affordable Housing Program. Alternately, the Applicant may select to pay an "in lieu" fee.

- (4) That commuter traffic not impede Muni transit service or overburden our streets or neighborhood parking;

Traffic generated by the project would not impede MUNI transit service or local streets or neighborhood parking. The Project site is well served by transit. The proposed residential parking would be accessed from Stevenson Street. The commercial parking would be accessed from Mission Street, through a single driveway, with the proviso that the project sponsor work with the project sponsors of the adjoining Trinity Properties project to effect a sharing of the proposed driveway on that property. Ostensibly, at that future time, the Mission-Street driveway to the subject project would be closed and replace with retail space. In this manner, the goal of reduced or eliminated driveway entrances on the downtown portion of to Mission Street would be enhanced. The project would provide parking greater than Code-complying off-street parking spaces. By including more parking than is required, and limiting that parking to short-term, the Project would help implement the Mid-Market plan goals, one of which is to provide short-term parking in an organized manner in the Plan area (against which businesses in the area could draw rather than providing parking on their own sites).

- (5) That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The project would not remove any industrial or service uses, as no such uses are currently

operating on the site. The project would generate employment opportunities available to a diverse socio-economic range of city residents in its construction phase and, later, in its retail and parking components.

- (6) That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The project will be constructed according to current local building codes to insure a high level of seismic safety.

- (7) That landmarks and historic buildings be preserved; and,

The subject site is a parking lot containing no structures. No landmarks or historic buildings would be affected by the project.

- (8) That our parks and open space and their access to sunlight and vistas be protected from development.

The project would have no impact on public parks, open space, or vistas. I was analyzed for its potential for shadow impacts on the City Hall Plaza and was found not to create any.

In summary, the proposed Project is consistent with and would promote the general and specific purposes of the Code provided under **Section 101.1(b)** in that, as designed, the Project would provide needed market rate and affordable housing and it would contribute to the character and stability of the neighborhood.

7. Code **Section 102.9(b)(16)** exempts area devoted to parking required by the Commission under Section 309 review as replacement for spaces displaced by the project. The Applicant seeks to have the Commission replace 168 parking spaces to be displaced by the Project.
8. **Section 124** of the Code establishes basic floor area ratios (hereinafter "FAR"). In the subject district, 6:1 is the base FAR. This figure is inclusive of residential uses. The base FAR in C-3-G Districts may be increased to 9:1. The Applicant proposes a building of approximately 8.53:1 FAR. Therefore, she will need to seek "TDR" (see discussion of **Section 128** below).
9. Pursuant to **Section 124(f)** thereunder, for buildings in C-3-G and C-3-S Districts other than those designated as Significant or Contributory pursuant to Article 11 of the Code, additional square footage above that permitted by the base floor area ratio limits set forth above may be approved for construction of dwellings on the site of the building

affordable for 20 years to households whose incomes are within 150 percent of the median income as defined herein, in accordance with the Conditional Use procedures and criteria as provided in **Section 303** of the Code.

- *The Applicant is considering filing a subsequent Conditional Use application to provide additional affordable dwelling units pursuant to the provisions of this section.*

10. **Section 128 -- Transfer of Development Rights** (hereinafter "TDR"). Subject to **Section 128(h)**, when TDR is necessary for the approval of a Site Permit for a project on a Development Lot, the Zoning Administrator must impose as a condition of approval of the Site Permit the requirement that the Department of Building Inspection not issue the first addendum to the site permit unless the Zoning Administrator has issued a written certification that the owner of the Development Lot owns the required amount of TDR. In the subject case, the Transfer ("donor") Lot as well as the Development ("receiver") Lot must be within the C-3-G District.

- *The subject Project would require the acquisition of approximately 110,000 square feet of TDR.. The Applicant is prepared to purchase (and to document same) this TDR, or, alternately, to procure it through the process established in Code Section 124(f) (see above).*

11. **Section 134** establishes rear yard requirements. In a C-3-G District, this requirement applies only to dwelling units and must be equal to 25 percent of the total depth of the lot on which the building is situated. In this district, the rear-yard area must be provided at the lowest story containing a dwelling unit, and at each succeeding level or story of the building. These requirements are intended to assure the protection and continuation of established mid-block, landscaped open spaces, and maintenance of a scale of development appropriate to each district, consistent with the location of adjacent buildings.

- *The project complies with the provisions of this Code Section.*

12. **Section 135** establishes standards for usable open space for dwelling units in various zoning districts. In the C-3-G District, it requires 36 square feet of usable open space per dwelling unit if that space is all private. Common usable open space may be substituted for private space at a ratio of 1.33 square feet to one (48 square feet per dwelling unit in the subject case). Accordingly, there would need to be at least 8,856 square feet of private open space or 11,808 square feet of common usable open space for the 246 proposed dwelling units.

- *Some of the units would have large private decks exceeding the private usable open space amounts thereby complying with this Section. A common deck on*

the podium (sixth) level, is proposed for the use of the future residents of the subject building. It would have 12,049 square feet, including a swimming pool. Therefore, the proposed project would comply with the usable open space standards of this Section.

13. **Section 138 – Open Space.** This Section establishes open space requirements in C-3 Districts. An applicant for a permit to construct a new building must provide open space in accordance with the standards set forth in this section. For residential uses, this requirement is that established in **Section 135** (see above).
14. **Section 138.1 – Pedestrian Streetscape Improvements.** This Section requires project sponsors to make street improvements where the proposed project includes the construction of a new building, substantial alterations to an existing building, or the addition of floor area equal to twenty percent or more of an existing building. The location, type, standards and maintenance of such improvements are to be determined by the Planning Commission.
 - *The Applicant will make the required improvements to the Subject Property and surrounding street areas.*
15. **Section 139 – Downtown Park Fund.** New downtown office developments are required to pay a per-square-foot fee to mitigate the increased demand on existing public parks in the Downtown Area. Residential projects are exempt from this requirement.
16. **Section 140—Dwelling Unit Exposure.** This Section requires that one room of each dwelling unit must look out onto the street, onto a Code-complying rear yard, a side yard at least 25 feet in width or onto a courtyard generally of minimum dimensions of at least 25 feet in each direction, which space must increase in its horizontal dimensions as it rises from its lowest level. The space must be unobstructed, except for certain specified permitted obstructions.
 - *Of the proposed 246 dwelling units in the subject building, 180 are side-facing units. They would be set back a minimum of 15 feet from the building's side property lines and would be exposed into the distance (over open areas on adjoining properties) increasingly as they rise from their lowest level (level six of the proposed structure). Technically, however, they would not comply with the "dwelling unit exposure" standards of this Section. Therefore, the project is the subject of a request for a Variance (Case No. 2002.0628CEKVX!) of the **Section 140** dwelling-unit-exposure standards.*
17. **Section 146 – Shadows on Streets.** This Section provides that in order to maintain direct sunlight on public sidewalks in certain downtown areas during critical use periods, new

structures must avoid the penetration of a sun access plane as defined in Table 146 of the Planning Code.

- *The Project meets the standards set forth in Section 146(c) in that any new shadows would not be substantial and cannot be reduced without unduly restricting the development potential of the Project Site. The primary shadow cast by the Project is on Stevenson Street, which has limited pedestrian usage.*

18. **Section 147 – Shadows on Publicly Accessible Open Spaces.** This Section sets forth certain requirements and determinations regarding shadows being cast on public or publicly accessible open space. It seeks to reduce substantial shadow impacts on public plazas and other publicly accessible spaces other than those protected under Section 295.

- *The Project is designed in such a way as to retain sufficient sidewalk sunshine along Mission Street. The Project Site does not adjoin any of the streets specifically designated in Section 146(a). However, it would cast new shadow on United Nations Plaza during the morning hours in Winter. To eliminate this shadow would require a reduction of building height of about 50 percent, thus unduly restricting development in conflict with Code Section 146(c). The primary shadow cast by the Project is on Stevenson Street, which has limited pedestrian usage.*
- *The Project was substantially redesigned so as not to create any shadowing impact on City Hall Plaza thereby complying with the Section 295 standards. As a result, no shadows will be cast by the Project on Recreation and Park Department protected open spaces.*

A shadow fan analysis was completed in conjunction with the Project and showed no impact on any properties under the jurisdiction of the Recreation and Parks Department.

19. **Section 148 – Ground Level Wind Currents.** Pursuant to this Section, new buildings in C-3 Districts must be shaped, or other wind-baffling measures must be adopted, so that the developments will not cause ground-level wind currents to exceed coefficients contained in the text of the Section. When pre-existing ambient wind speeds exceed the comfort level, or when a proposed building or addition may cause ambient wind speeds to exceed the comfort level, the building must be designed to reduce the ambient wind speeds to meet the requirements. An exception may be granted, in accordance with the provisions of Section 309, allowing the building or addition to add to the amount of time that the comfort level is exceeded by the least practical amount if, (1) it can be shown that a building or addition cannot be shaped and other wind-baffling measures cannot be adopted to meet the foregoing requirements without creating an unattractive and ungainly building form and without unduly restricting the development potential of the building site in question, and (2) it is concluded

that, because of the limited amount by which the comfort level is exceeded, the limited location in which the comfort level is exceeded, or the limited time during which the comfort level is exceeded, the addition is insubstantial.

No exception may be granted and not building or addition may be permitted that causes equivalent wind speeds to reach or exceed the hazard level of 26 *mph* for a single hour of the year.

The Final Negative Declaration of Environmental Impact (hereinafter "FND") prepared for the Project proposal identified, under "*Current Conditions*", an average wind speed of approximately 12.7 miles per hour ("*mph*"). Thirteen of the 32 locations tested are at the Code pedestrian-comfort criterion of 11 *mph* with the other 18 test points exceeding this value.

Under the FND section entitled "*Existing Plus Project – Wind Hazard Conditions*", it indicates that, with the project, the wind hazard criterion would be exceeded at three of the 32 locations, compared to two of 32 locations with existing conditions. The wind hazard conditions at one existing exceedance location would decrease by 90 hours per year, and the other existing location would decrease by 23 hours per year. The third, new hazard exceedance location, on the south side of Mission street across from the project site, would exceed the hazard criterion for six hours per year. The total duration of all wind hazard exceedances would be 53 hours per year, compared with 164 hours per year under existing conditions, a reduction of 111 hours per year. The wind-tunnel test model did not include existing street trees along any of the streets in the test vicinity, so the test results are believed to overstate the hour per year wind speeds and hazard exceedance durations within the vicinity of the project site. Considering this, together with the test values which indicate a reduction in the duration of wind hazard exceedances at all locations by 111 hours, the project would be considered to comply with Code **Section 148**, with a condition of approval requiring planting and maintenance of the street trees (that are part of the Project proposal) along Mission Street.

When tested for "*Existing Plus Project-Pedestrian Comfort*", the average wind speed (for all 32 points) rose to 12.9 *mph* (0.2 *mph* higher than under existing conditions). The project would add five new exceedances and eliminate two existing exceedances, for a total of 22 exceedances, three more than under existing conditions. The conditions at the other existing exceedance locations would remain unchanged. Therefore, the project would require an exception to **Section 148** standards as a part of the **Section 309** review.

It is noteworthy that under "*Cumulative Conditions*", a wind-speed test involving the proposed project and five other proposed projects in the vicinity, the overall average wind speed would be lower, by less than one *mph*. With the cumulative scenario, as compared to the project scenario, wind speeds would increase at nine locations, remain unchanged at 13

locations, and decrease at ten locations.

None of the wind velocity measures, at any of the 32 test points, in any of the scenarios ("Current Conditions", "Existing Plus Project" or "Cumulative Conditions") exceeds the 26 mph.

- a. *The building or addition cannot be shaped and other wind-baffling measures cannot be adopted to meet the foregoing requirements without creating an unattractive and ungainly building form and without unduly restricting the development potential of the building site in question.*
- b. *In the subject case, the wind comfort level is exceeded to a minimal amount. One new wind hazard (as indicated by raw data, as described above) would be created for a total of six hours per year (which hazard can be mitigated by the planting of street trees along Mission Street in front of the Subject Property). There is amelioration of the existing wind situation in two of the test points and a slight increase in three others. In fact, on a cumulative basis, the overall wind speed would be reduced for the project and its environs. Therefore, the additional wind effect as a result of the Project would be insubstantial. This issue was covered in the FND prepared for the Project.*

As a result, it is appropriate for the Commission to grant the requested exception to Code standards for reduction of ground-level wind currents in this C-3 District site.

20. **Section 149 – Public Art.** In the case of construction of a new building or addition of floor area in excess of 25,000 square feet to an existing building in a C-3 District, this Section requires a project to include works of art costing an amount equal to one percent of the cost of construction of the building and requires the Commission to approve the type and location of the art work, but not the artistic merits of the specific art work proposed. The types of permitted art work include sculptures, bas-reliefs, murals, mosaics, decorative water features, or other work permanently affixed to the building. This issue was covered in the Negative Declaration prepared for the project. As designed, the project would comply with the terms of **Section 148**.

- *The applicant proposes artworks on the surface of the building and chooses glass as the artistic medium. After design development, she will bring her art scheme back to the Commission for a public presentation (before the approval of a Building Permit Application for the Project).*

21. **Section 151** contains the schedule of required off-street parking spaces. In the C-3 districts, no use other than dwelling units is required to provide off-street parking. In

relation to dwelling units in a the C-3-G District, this Section requires one off-street parking space for each four newly-created dwelling units

- *Consequently, the Project would be required to provide 62 such spaces to serve the 246 dwelling units proposed. The Code permits up to 50 percent above the required number of spaces as a matter of right (or 93 spaces, in this case); any additional parking requires Conditional Use authorization (see discussion of Section 204.5 below). paces displaced by the Project.*

22. **Section 152.1** contains the schedule of required off-street freight loading and service vehicle spaces in C-3 and South of Market Districts. In these districts, hotel, apartment and live-work projects of between 200,001 and 500,000 square feet of gross floor area must provide two off-street freight loading spaces.

- *The Project would comply with this requirement.*

23. **Section 155 – General Standards as to Location and Arrangement of Off- Street Parking, Freight Loading and Service Vehicle Facilities.** Required off-street parking and freight loading facilities must meet the following standards as to location and arrangement. In addition, facilities which are not required but are actually provided shall meet the standards set forth in this Section unless such standards are stated to be applicable solely to required facilities. Pursuant to this Section, downtown commercial parking must be short-term in nature. Additionally, handicapped parking and bicycle parking must be provided and driveways must not interfere with pedestrian movements.

- *The Project would comply with the standards and requirements of Section 155, et seq.*

24. **Section 157** establishes additional criteria for Conditional Use applications for parking exceeding accessory amounts. In considering any application for a Conditional Use for parking for a specific use or uses, where the amount of parking provided exceeds the amount classified as accessory parking in Code **Section 204.5**, the Planning Commission must consider the following criteria in addition to those stated in **Section 303(c)** and elsewhere in this Code.

(a) Demonstration that trips to the use or uses to be served, and the apparent demand for additional parking, cannot be satisfied by the amount of parking classified by the Code as accessory, by transit service which exists or is likely to be provided in the foreseeable future, by car pool arrangements, by more efficient use of existing on-street and off-street parking available in the area, and by other means;

- *The proposed short-term parking would help fulfill the goals of the proposed Mid-Market Redevelopment Plan which plan seeks to provide reservoirs of short-*

term parking for the needs of nearby businesses and emerging nighttime entertainment uses. The provision of one parking space for each two dwelling units represents a compromise between the three-spaces-for-four-units proposal of the Applicant and the one-space-per-four-units required by the Code.

(b) The absence of potential detrimental effects of the proposed parking upon the surrounding area, especially through unnecessary demolition of sound structures, contribution to traffic congestion, or disruption of or conflict with transit services;

- *The Project site is a large surface parking lot. No demolition would be required to accommodate the proposed new building. The arrangement of a temporary driveway onto Mission Street (as outlined elsewhere herein) would help relieve congestion on Mission Street, especially in the future as development proceeds in the area and traffic volumes increase. The residential parking component would be enough to serve the proposed number of dwelling units but not enough to deter the "transit-first" policy of the City.*

(c) In the case of uses other than housing, limitation of the proposed parking to short-term occupancy by visitors rather than long-term occupancy by employees; and

- *All of the proposed non-residential parking in the Project is proposed to be "short-term".*

(d) Availability of the proposed parking to the general public at times when such parking is not needed to serve the use or uses for which it is primarily intended.

The Residential parking would be "un-coupled" from the commercial parking in that it would be made available for use by the public if it exists in numbers in excess of the actual need by residents of the building. The remainder (commercial) parking is to be available to short-term parkers.

24. **Section 158 -- Major Parking Garages in C-3 Districts.** It is the purpose of this Section to establish a procedure by which major parking garages proposed for downtown San Francisco may be reviewed as to the appropriateness of their location and arrangement, recognizing the need for continuing development of a unified transportation system conveniently serving the downtown area. Such garages may be approved by the Commission as a Conditional Use under **Section 303** of the Code subject to eight criteria established therein. These criteria are to be considered as part of the companion Conditional Use application for the parking garage portion of the Project as well as the residential-serving parking in excess of accessory amounts.

25. **Section 204.5 -- Standards for "parking and loading as accessory uses"**. Pursuant thereto, accessory parking includes up to 150 percent of the required number of spaces (when three or more spaces are required). With 62 parking spaces required for the 246 proposed dwelling units, up to 93 spaces may be provided as "accessory parking". The project sponsor wishes to provide 123 spaces to serve the 246 proposed dwelling units (one space per two units). This number of spaces would require a Conditional Use authorization for parking in excess of accessory amounts (Case No. 2002.0628CEKVX!). (see discussion of **Section 157** above.). The standards of this Section will be addressed as part of the companion Conditional Use case (Case No. 2002.0628CEKVX!) requesting, in part, authorization of off-street parking in excess of accessory amounts.
26. **Section 223(m)** requires the authorization by the Commission of a Conditional Use for a storage garage open to the public for passenger automobiles, as regulated in **Sections 155 – 157** of the Code where such storage garage is not a public building requiring approval by the Board of Supervisors under other provisions of law and is completely enclosed. The commercial portion of the proposed Project's parking facility is such a garage.
27. **Section 270 -- Bulk requirements**. For the "S" District in which this site is located, buildings are to be divided into a "base", "lower tower" and "upper tower" for bulk measurement purposes. The base may extend to a streetwall height of 1.25 times the width of the widest abutting street or 50 feet, whichever is more. There are no length or diagonal dimension limitations applicable to the base. The bulk controls for the lower tower (the portion above the base) are maximum length of 160 feet, a maximum floor size of 20,000 square feet, and a maximum diagonal dimension of 190 feet. Upper tower bulk controls apply to buildings over 160 feet in height. The upper-tower bulk controls are a maximum length of 130 feet, a maximum average floor size of 12,000 square feet, a maximum floor size of 17,000 square feet, and a maximum diagonal dimension of 160 feet. At these dimensions, the portion of the building (above the base) could have approximately 364,000 *gsf* of floor area. At approximately 284,500 *gsf*, this portion of the actual building proposal would not exceed this maximum amount.

Mission Street, the widest abutting street of the Subject Property, is 82.5 feet in width. The base of the proposed building is approximately 58.5 feet in height and it covers the entire site (containing five floors of off-street parking plus ground-floor retail space). Above this base, the residential portion of the building (floors six through 21) comprises 16 floors of approximately 16,135 square feet each.. These floors are approximately 246 feet in length with a maximum diagonal dimension of approximately 252 feet. The twenty-second floor would have a gross floor area of 14,722 square feet and the twenty-third (top) floor would be 13,648 square feet in gross floor area. The building would rise to a height of approximately

233 feet. Consequently, the proposed building is the subject of a requested exception (under the **Section 309** review process) for building bulk. This exception would be for building length and diagonal dimension (but not for floor plate) in the "lower tower" portion of the proposed structure (the portion above the "base" and below 160 feet in height) and for similar (but slightly larger) exceptions of those building measurements in its "upper tower" portion (above 160 feet in height). (Please see discussion of **Section 309** below.)

29. **Section 272 -- Bulk Limits: Special Exceptions in C-3 Districts.**

(a) **General.** The bulk limits prescribed by **Section 270** were carefully considered in relation to objectives and policies for conservation and change in C-3 Districts. However, there may be some exceptional cases in which these limits may properly be permitted to be exceeded to a certain degree, provided, however, that there are adequate compensating factors. Exceptions to the bulk limits may be approved in the manner provided in **Section 309**, provided that at least one of the following criteria is met:

- (1) Achievement of a distinctly better design, in both a public and a private sense, than would be possible with strict adherence to the bulk limits, avoiding an unnecessary prescription of building form while carrying out the intent of the bulk limits and the principles and policies of the Comprehensive Plan;
- (2) Development of a building or structure with widespread public service benefits and significance to the community at large, where compelling functional requirements of the specific building or structure make necessary such a deviation; and provided further that all of the following criteria are met:
 - (A) The added bulk does not contribute significantly to shading of publicly accessible open space,
 - (B) The added bulk does not increase ground level wind currents in violation of the provisions of **Section 148** of the Code;
- (3) The added bulk does not significantly affect light and air to adjacent buildings;
- (4) If appropriate to the massing of the building, the appearance of bulk in the building, structure or development is reduced to the extent feasible by means of at least one and preferably a combination of the following factors, so as to produce the impression of an aggregate of parts rather than a single building mass:
 - (A) Major variations in the planes of wall surfaces, in either depth or direction, that significantly alter the mass;

- (B) Significant differences in the heights of various portions of the building, structure or development that divide the mass into distinct elements;
 - (C) Differences in materials, colors or scales of the facades that produce separate major elements;
 - (D) Compensation for those portions of the building, structure or development that may exceed the bulk limits by corresponding reduction of other portions below the maximum bulk permitted; and
 - (E) In cases where two or more buildings, structures or towers are contained within a single development, a wide separation between such buildings, structures or towers;
- (5) The building, structure or development is made compatible with the character and development of the surrounding area by means of all of the following factors:
- (A) A silhouette harmonious with natural land-forms and building patterns, including the patterns produced by height limits,
 - (B) Either maintenance of an overall height similar to that of surrounding development or a sensitive transition, where appropriate, to development of a dissimilar character,
 - (C) Use of materials, colors and scales either similar to or harmonizing with those of nearby development, and
 - (D) Preservation or enhancement of the pedestrian environment by maintenance of pleasant scale and visual interest.

Exceptions to bulk limits may not result in a building of greater total gross floor area than would be permitted if the bulk limits were met. As discussed above under "Section 270", the requested building bulk exception would not result in such a greater *gsf*.

30. **Section 295 – Shadowing.** This Section concerns the review of structures exceeding 40 feet in height insofar as their shadowing of lands under the jurisdiction of the Recreation and Parks Department. It requires that such buildings have no significant or adverse shadow effects on such affected lands. On September 9, 2003, the Planning Department determined that the proposed building (as redesigned to respond to shadow issues) would have no shadow impact on protected properties (Case No. 2002.0628CEKVX!). This finding is reflected in the Negative Declaration of Environmental Impact (Case No. 2002.0628CEKVX!) adopted and issued for the project.

31. Pursuant to **Section 303**, the Commission may authorize a Conditional Use only after

holding a duly noticed public hearing and making findings that the proposed use will provide a development that is necessary or desirable for and compatible with the neighborhood or the community, that such use will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity and that such use will comply with the applicable provisions of the Code, and will not adversely affect the General Plan. The proposed project is the subject of a request for Conditional Use authorization for the public-parking-garage portion of the proposal and for residential-serving off-street parking in excess of accessory amounts.

32. **Section 309 – Permit Review in C-3 Districts.** This Section of the Code requires a hearing before the Commission when a proposed project in a C-3 District exceeds 75 feet in height, proposes the addition of 50,000 square feet in area, or is a substantial alteration. The Commission may approve a project, grant exceptions from certain requirements of the Code and/or impose conditions on approval. A project is required to meet all applicable Code requirements or request exceptions as allowed under Section 309(a)(1)-(9). The Project is located in a C-3-G District. It would comply with all of the applicable Code requirements except two. The two exceptions listed in Section 309 being sought as part of the Project are for reduction of ground-level wind currents in C-3 Districts as set forth in Section 309(a)(2) and for building bulk as set forth in Section 309(a)(9).

33. **Section 309(d) -- Exception from the standards for building bulk set forth in Sections 270 and 272.** The Project requires an exception to the standards for building bulk. For the "S" District in which this site is located, buildings are to be divided into a "base", "lower tower" and "upper tower" for bulk measurement purposes. The base may extend to a streetwall height of 1.25 times the width of the widest abutting street or 50 feet, whichever is more. There are no length or diagonal dimension limitations applicable to the base. The bulk controls for the lower tower (the portion above the base) are maximum length of 160 feet, a maximum floor size of 20,000 square feet, and a maximum diagonal dimension of 190 feet. Upper tower bulk controls apply to buildings over 160 feet in height. The upper-tower bulk controls are a maximum length of 130 feet, a maximum average floor size of 12,000 square feet, a maximum floor size of 17,000 square feet, and a maximum diagonal dimension of 160 feet.

- *Mission Street, the widest abutting street of the Subject Property, is 82.5 feet in width. The base of the proposed building is approximately 58.5 feet in height and it covers the entire site (containing five floors of off-street parking plus ground-floor retail space). Above this base, the residential portion of the building (floors six through 21) comprises 16 floors of approximately 16,135 square feet each. These floors are approximately 246 feet in length with a maximum diagonal dimension of approximately 252 feet. The twenty-second floor would have a gross floor area of 14,722 square feet and the twenty-third (top) floor would be 13,648 square feet in gross floor area. The building would*

rise to a height of approximately 233 feet. Consequently, the proposed building is the subject of a requested exception (under the Section 309 review process) for building bulk.

34. **Section 272** allows, in exceptional cases, the bulk limits of the Code to be exceeded to a certain degree, provided, however, that there are adequate compensating factors. Exceptions to the bulk limits may be approved in the manner provided in **Section 309**, provided that at least one of the criteria set forth in **Section 272** is met.

- *Consistent with Criterion (5) under Finding 29. above, the Project satisfies the exception criteria. The Project setting is one of large lots. Adjoining it to the east is the GSA (Federal) building that is under construction at present. That building would be a large slab tower set in a large pedestrian plaza. To the west is the Trinity Properties' 1,410-unit residential redevelopment project that is in the planning phase now. That proposal is for five slab towers arranged on a podium with large amounts of pedestrian-oriented open space. All of these buildings are in scale with the Project proposal. Therefore, there is an emerging character of development on the "super-block" containing the Project. The Project proposal is consistent with this character and it would help to enhance it.*

35. **Section 314, et seq. -- Childcare Requirements for Office and Hotel Development Projects.** Section 314.3 provides that childcare requirements apply to "office and hotel development projects proposing the net addition of 50,000 or more gross square feet of office or hotel space."

- *In that the Project is a residential, parking and retail building, Section 314.3 does not apply.*

36. **Section 315 -- Housing Requirements for Residential Development Projects. Sections 315.1—315.9** set forth the requirements and procedures for the Residential Inclusionary Affordable Housing Program (hereinafter "Program"). The Program requires that a nominal twelve percent of the dwelling units on site must be affordable either as rentals or as ownership units, for a fifty-year period beginning at issuance of the first Certificate of Occupancy. If the Below Market Residential (hereinafter "BMR") units are to be provided on site, they are required to reflect the proposed mix of unit sizes in the project and to be equal in construction quality and finish materials to the market-rate units. Alternately, pursuant to **Section 315**, the project sponsor may elect to provide "BMR" units off site or pay an in lieu fee which two options must be equivalent to 17 percent of the number of dwelling units in the Project.

- *In order to comply with Section 315 requirements, the project sponsor has elected to provide a mixture of on-site affordable housing units and an in-lieu*

payment to the City's Housing Development Fund.

37. Compliance with other codes. In addition to these requirements of the Planning Code, the Administrative Code contains the following applicable sections.

- The Project is subject to the requirements of the First Source Hiring Program (Chapter 83 of the Administrative Code) and the project sponsor must comply with the requirements of this Program. Prior to the issuance of any building permit to construct or a First Addendum to the Site Permit, the project sponsor must have a First Source Hiring Construction Program approved by the First Source Hiring Administrator, and evidenced in writing.
- Chapter 38 of the Administrative Code establishes the Transit Impact Development Fee to provide capital funding for MUNI. The project is not subject to this Fee in that it does not involve office development.
- The Project is subject to School fees under the Building Code.

38. Compliance with the Objectives and Policies of the General Plan The Commission hereby finds that the Project will comply with or affirmatively promote the following Objectives and Policies of the General Plan (*Project specific findings are in italics*):

The **Downtown Area Plan** contains the following relevant objectives and policies:

Space for Housing

OBJECTIVE 7: EXPAND THE SUPPLY OF HOUSING IN AND ADJACENT TO DOWNTOWN.

Policy 1: Promote the inclusion of housing in downtown commercial developments.

- *The Project would provide a large number of dwelling units in an emerging "C-3" downtown residential neighborhood.*

Urban Form

OBJECTIVE 14: CREATE AND MAINTAIN A COMFORTABLE PEDESTRIAN ENVIRONMENT.

Policy 1: Promote building forms that will maximize the sun access to open spaces and other

public areas.

- *The Project would not create any significant new shadows and is consistent with the General Plan. While some new shadows are unavoidable with high-rise buildings, high-density projects are encouraged by the Code in the C-3 Districts. The proposed tower design is a slab set in an environment of other slabs spaced apart with large open areas in between them and will, therefore, cast only minimal new shadows. Furthermore, the Project meets the standards set forth in Code Section 146(c), in that the new shadows would not be substantial and could not be reduced without unduly restricting the development potential of the Project site. The Project will not cast any shadows on properties under the jurisdiction of the Recreation and Park Department, and is therefore in conformance with Code Section 295.*

Policy 2: Promote building forms that will minimize the creation of surface winds near the base of buildings.

- *As outlined herein, the Project would not significantly affect wind conditions.*

OBJECTIVE 16: CREATE AND MAINTAIN ATTRACTIVE, INTERESTING URBAN STREETSCAPES.

Policy 1: Conserve the traditional street-to-building relationship that characterizes downtown San Francisco.

Policy 4: Use designs and materials and include activities at the ground floor to create pedestrian interest.

- *The Project would contribute to the emerging character of the "super block" on which it finds itself. The area around the Subject Property is proposed for residential intensification as part of the Mid-Market Plan of the San Francisco Redevelopment Agency. The visual characteristics of the buildings in the vicinity of the Project Site are varied, reflecting changing development patterns as well as a variety of land-use patterns and architectural styles over the past one hundred years. The immediate area is characterized predominantly by parking lots, the Federal courthouse, the Federal Government's new GSA building as well as nighttime entertainment uses and affordable housing units. In contrast, the proposed building would be a slab tower of reinforced concrete and large, Chicago-style windows. This new tower would provide a tie-in to the area's emerging character of slab buildings set apart with large amounts of open space between them. Due to the variety of building heights and scales in the general area, the Project would blend into long-range views of the site and into the densely-built urban fabric of the area. New high-rises similar in height and form to the Project building are either under construction or proposed in the immediate vicinity of the Subject Property.*

Moving About -- Moving to and from Downtown

OBJECTIVE 18: ENSURE THAT THE NUMBER OF AUTO TRIPS TO AND FROM DOWNTOWN WILL NOT BE DETRIMENTAL TO THE GROWTH OR AMENITY OF DOWNTOWN.

Policy 2: The Project will further provide incentives for the use of transit, carpools, and vanpools, to reduce the need for new or expanded automobile parking facilities.

- *The Project site, at present, is used as surface (all-day) parking lots. The Project proposal includes fewer than one-to-one parking places for the 246 dwelling units proposed as well as a short-term-only garage to serve the needs of the surrounding businesses and nighttime entertainment uses. These arrangements would discourage commuter parking and would encourage the use of transit.*

Moving Around Downtown

OBJECTIVE 20: PROVIDE FOR THE EFFICIENT, CONVENIENT AND COMFORTABLE MOVEMENT OF PEOPLE AND GOODS, TRANSIT VEHICLES AND AUTOMOBILES WITHIN THE DOWNTOWN.

OBJECTIVE 21: IMPROVE FACILITIES FOR FREIGHT DELIVERIES AND BUSINESS SERVICES.

Policy 2: Discourage access to off-street freight loading and service vehicle facilities from transit preferential streets, or pedestrian oriented streets and alleys.

- *Mission Street in the vicinity of the Subject Property is a Transit Preferential Street. The off-street loading to be provided as part of the Project would be accessed from Stevenson Street thereby avoiding conflicts with Mission Street traffic. In addition, the Project proposal calls for a future diversion of the Mission Street vehicle access to an alley to be shared with the adjoining "Trinity Plaza" project.*

OBJECTIVE 22: IMPROVE THE DOWNTOWN PEDESTRIAN CIRCULATION SYSTEM, ESPECIALLY WITHIN THE CORE, TO PROVIDE FOR EFFICIENT, COMFORTABLE, AND SAFE MOVEMENT.

Policy 1: Provide sufficient pedestrian movement space.

Policy 5: Improve the ambience of the pedestrian environment.

- *The Project Site allows for sufficient pedestrian movement. The Project involves the construction of a new building including dwelling units, retail and off-street parking. The new activity resulting from these changes would improve the ambience of the pedestrian environment by improving the Mission Street frontage and by minimizing vehicle movements across the sidewalk.*

Seismic Safety

OBJECTIVE 23: REDUCE HAZARDS TO LIFE SAFETY AND MINIMIZE PROPERTY DAMAGE AND ECONOMIC DISLOCATION RESULTING FROM FUTURE EARTHQUAKES.

Policy 2: Initiate orderly abatement of hazards from existing buildings and structures, while preserving the architectural and design character of important buildings.

- *The Project would reduce hazards to life safety and minimize property damage and economic dislocation resulting from future earthquakes through building design and construction in compliance with current structural and seismic codes.*

The **Residence Element** contains the following relevant objectives and policies:

OBJECTIVE 1: TO PROVIDE NEW HOUSING, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING, IN APPROPRIATE LOCATIONS WHICH MEETS IDENTIFIED HOUSING NEEDS AND TAKES INTO ACCOUNT THE DEMAND FOR AFFORDABLE HOUSING CREATED BY EMPLOYMENT GROWTH.

Policy 4: Locate infill housing on appropriate sites in established neighborhoods.

- *The Project site is within an emerging residential intensification area as dictated by the Redevelopment Agency's Mid-Market Plan. This area is ripe for an appropriate as a location for new housing. The Project would include on-site affordable units pursuant to the inclusionary housing provisions of Code Section 315, et seq.*

OBJECTIVE 2: TO INCREASE THE SUPPLY OF HOUSING WITHOUT OVER CROWDING OR ADVERSELY AFFECTING THE PREVAILING CHARACTER OF EXISTING NEIGHBORHOODS.

Policy 2: Encourage higher residential density in areas adjacent to downtown, in underutilized commercial and industrial areas proposed for conversion to housing, and in neighborhood commercial districts where higher density will not have harmful

effects, especially if the higher density provides a significant number of units that are permanently affordable to lower income households.

- *The surface parking lots which constitute the current use of the Subject Property represent an underutilization of this C-3 site. The proposed building would place needed housing near the central business district and would include affordable units pursuant to Code Section 315, et seq.*

OBJECTIVE 4: TO REDUCE THE RISK OF BODILY HARM AND LOSS OF HOUSING IN AN EARTHQUAKE.

- *The proposed building would be built to current new-construction standards for seismic safety as contained in the Building Code.*

OBJECTIVE 7: TO INCREASE LAND AND IMPROVE BUILDING RESOURCES FOR PERMANENTLY AFFORDABLE HOUSING.

Policy 2: Include affordable units in larger housing projects.

- *The proposed building would place needed housing near the central business district and would include affordable units pursuant to Code Section 315, et seq.*

OBJECTIVE 12: TO PROVIDE A QUALITY LIVING ENVIRONMENT.

Policy 1: Assure housing is provided with adequate public improvements, services and amenities.

Policy 2: Allow appropriate neighborhood-serving commercial activities in residential areas.

Policy 4: Promote construction of well designed housing that conserves existing neighborhood character.

- *The Project is well designed and would be an attractive addition to the emerging Mid-Market neighborhood. It would include a small amount of retail space and it is in the middle of a nighttime entertainment district. Public services, improvements and amenities (including all varieties of public transit) abound in the vicinity.*

OBJECTIVE 13: TO PROVIDE MAXIMUM HOUSING CHOICE.

Policy 1: Prevent housing discrimination based on age, race, religion, sex, sexual preference, marital status, ancestry, national origin, color, disability, health (AIDS/ARC), source

or amount of income, citizenship or employment status as a family day care provider.

Policy 2: Promote adaptability and maximum accessibility of residential dwellings for disabled occupants.

- *The Project would be handicapped accessible per the City's new-construction building standards. The Project would comply with all applicable City laws in regard to its employment and marketing practices.*

The **Urban Design Element** contains the following relevant policies and objectives:

OBJECTIVE 1: EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

Policy 2: Recognize, protect and reinforce the existing street pattern, especially as it is related to topography.

- *The Project would add to the image and orientation of this downtown neighborhood. The Project site is located within the downtown core on the northwest side of Mission Street, between Seventh and Eighth Streets. There are no significant public views in this area that would be affected by the Project. "Public views" refers to views from public places such as parks and open spaces, views from private open spaces that are open to the public, and views from streets and sidewalks where topography or other local physical features create a significant view corridor*
- *The Project Site is in an area that has been designated for high-density residential development. The area surrounding the site is in transition from low-rise commercial uses to higher-density mixed-use commercial, entertainment and residential uses. In light of the existing and proposed large buildings in the vicinity, the Project would not obstruct any significant public views.*

Policy 3: Recognize that buildings, when seen together, produce a total effect that characterizes the city and its districts.

- *The Project recognizes that buildings, when seen together, produce a total effect that characterizes the City and its districts. The height, massing, color, and shape of the proposed building would ensure its compatibility with the other buildings comprising the San Francisco skyline. In the vicinity of the Subject Property, there is an emerging pattern of large "slab" buildings set amid large open areas.*

OBJECTIVE 3: MODERATION OF MAJOR NEW DEVELOPMENT TO COMPLEMENT THE CITY PATTERN, THE RESOURCES TO BE CONSERVED, AND THE NEIGHBORHOOD ENVIRONMENT.

Policy 1: Promote harmony in the visual relationships and transitions between new and older buildings.

Policy 2: Avoid extreme contrasts in color, shape and other characteristics which will cause new buildings to stand out in excess of their public importance.

Policy 5: Relate the height of buildings to important attributes of the city pattern and to the height and character of existing development.

Policy 6: Relate the bulk of buildings to the prevailing scale of development to avoid an overwhelming or dominating appearance in new construction.

- *The proposed building would promote harmony in the visual relationship and transitions between new and older buildings in the neighborhood. The clean lines of the building would blend with the many new building, both built and proposed, in the area as well as the older traditional buildings in the neighborhood. More importantly, the proposed building materials would relate to buildings throughout the area. Thus the proposed building would incorporate the design elements of nearby existing buildings and would avoid extreme contrasts in color, shape and other characteristics that would make it stand out in excess of its civic importance.*

City Pattern

Policy 5: Relate the height of buildings to important attributes of the city pattern and to the height and character of existing development.

Policy 6: Relate the bulk of buildings to the prevailing scale of development to avoid an overwhelming or dominating appearance in new construction.

- *The Project would be consistent with the surrounding streetscape and would be visually compatible with the surrounding buildings. It is in the middle of an emerging area of tall, slab buildings set amid large amounts of open space. Immediately to the northeast is the new GSA building which is under construction. The subject building and the GSA building will surround a large public plaza. The newly-refurbished Federal courthouse across 7th Street will also front on this plaza. These buildings will help to frame a major new public open space; a focal point of this new neighborhood.*

OBJECTIVE 4: IMPROVEMENT OF THE NEIGHBORHOOD ENVIRONMENT TO INCREASE PERSONAL SAFETY, COMFORT, PRIDE AND OPPORTUNITY.

Policy 12: Install, promote and maintain landscaping in public and private areas.

Policy 13: Improve pedestrian areas by providing human scale and interest.

- *The Project proposal features public and private landscaping as well as street improvements designed to enhance the pedestrian experience on Mission Street.*

The **Transportation Element** contains the following relevant policies and objectives:

OBJECTIVE 2: USE THE TRANSPORTATION SYSTEM AS A MEANS FOR GUIDING DEVELOPMENT AND IMPROVING THE ENVIRONMENT.

Policy 2.1: Use rapid transit and other transportation improvements in the City and region as the catalyst for desirable development, and coordinate new facilities with public and private development.

- *The Project site is rich in transit opportunities. Accordingly, the authorization contained herein is for new residential units with one off-street parking space for each two dwelling units. Additionally, all the non-residential-serving parking to be provided is to be limited to short-term parking (no commuter parking) for the recurring needs of business and entertainment uses in the vicinity. The Project will feature two "car-share" spaces in its garage and a reservation of another two such spaces should demand increase over time.*

OBJECTIVE 11: MAINTAIN PUBLIC TRANSIT AS THE PRIMARY MODE OF TRANSPORTATION IN SAN FRANCISCO AND AS A MEANS THROUGH WHICH TO GUIDE FUTURE DEVELOPMENT AND IMPROVE REGIONAL MOBILITY AND AIR QUALITY.

Policy 11.3: Encourage development that efficiently coordinates land use with transit service, requiring that developers address transit concerns as well as mitigate traffic problems.

- *Recognizing the many transit opportunities available at and near the Project site, the commercial parking to be provided is to be all "short-term" per the specifications of the San Francisco Redevelopment Agency's Mid-Market Plan. Residential-serving parking is hereby limited to one space per each two dwelling units. "Car-share" is to be included in the project.*

OBJECTIVE 24: IMPROVE THE AMBIANCE OF THE PEDESTRIAN ENVIRONMENT.

Policy 24.4: Preserve pedestrian-oriented building frontages.

- *The Project proposes pedestrian-friendly streetscape improvements. It would enhance the pedestrian experience in the area.*

OBJECTIVE 28: PROVIDE SECURE AND CONVENIENT PARKING FACILITIES FOR BICYCLES.

Policy 28.1: Provide secure bicycle parking in new governmental, commercial, and residential developments.

- *Per standards in the Planning Code, the Project would include off-street bicycle parking.*

OBJECTIVE 30: ENSURE THAT THE PROVISION OF NEW OR ENLARGED PARKING FACILITIES DOES NOT ADVERSELY AFFECT THE LIVABILITY AND DESIRABILITY OF THE CITY AND ITS VARIOUS NEIGHBORHOODS.

Policy 30.1: Assure that new or enlarged parking facilities meet need, locational and design criteria.

- *The commercial parking to be provided in conjunction with the Project is designed to provide a reservoir of short-term parking to serve the needs of the businesses and entertainment uses in the vicinity (and not to provide commuter parking). This arrangement recognizes the City's "Transit First" policy and it is consistent with the proposals for parking contained in the San Francisco Redevelopment Agency's Mid-Market Plan. Toward this end, the residential-serving parking is hereby limited to one space for each two dwelling units.*

OBJECTIVE 34: RELATE THE AMOUNT OF PARKING IN RESIDENTIAL AREAS AND NEIGHBORHOOD COMMERCIAL DISTRICTS TO THE CAPACITY OF THE CITY'S STREET SYSTEM AND LAND USE PATTERNS.

Policy 34.1: Regulate off-street parking in new housing so as to guarantee needed spaces without requiring excesses and to encourage low auto ownership in neighborhoods that are well served by transit and are convenient to neighborhood shopping.

- *In this downtown neighborhood, the herein-authorized Project will be limited to the equivalent of one off-street parking space for each two dwelling units and to short-term*

parking only for the remainder of the spaces (the commercial portion) in the garage. The low ration of provision of residential parking is in recognition of the multiplicity of transit options in the area and the convenience of nearby shopping and services.

DECISION

The Commission, after carefully balancing the competing public and private interests, both environmental and otherwise, hereby **APPROVES** Application No. 2003.0628CEKVX!, and determines that the Project complies with the requirements of the relevant Sections of the Code, and grants the requested exceptions as set forth above from the standards for reduction of ground-level wind currents in C-3 Districts pursuant to **Section 148** and from the building bulk standards pursuant to **Sections 270** and **272**, subject to the conditions contained in "Exhibit A" appended hereto and incorporated herein by reference thereto as though fully set forth, and in general conformance with the plan drawings stamped as "Exhibit B".

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Conditional Use authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94012.

I hereby certify that the foregoing Motion was adopted by the Planning Commission on December 4, 2003.

Linda Avery
Commission Secretary

AYES: Commissioners Antonini, Hughes, S. Lee and W. Lee

NOES: Commissioners Bradford Bell and Feldstein

ABSENT: Commissioner Boyd

ADOPTED: December 4, 2003

EXHIBIT A

CONDITIONS OF APPROVAL

Wherever "Project Sponsor" is used in the following conditions, the conditions shall also bind any successor to the Project or other persons having an interest in the Project or underlying property.

This approval is pursuant to Code Section 309 Determinations of Compliance and granting of an exception to otherwise-applicable Code standards for building bulk, for the construction of 489,652 gross square feet of residential, parking and retail space in general conformance with the plans dated March 5, 2003, and stamped "Exhibit B".

1. COMPLIANCE WITH OTHER REQUIREMENTS

- (A) This decision conveys no right to construct. The Project Sponsor must obtain a building permit and satisfy all the conditions thereof, including mitigation measures addressing environmental impacts. The conditions set forth below are additional conditions required in connection with the Project. If these conditions overlap with any other requirement imposed on the Project, the more restrictive or protective condition or requirement, as determined by the Zoning Administrator, shall apply.

2. GENERAL CONDITIONS

(A) Mitigation Measures

Mitigation Measures identified in the Project's Final Negative Declaration (Case No. 2003.0628CEKVX!) shall be conditions of approval and are accepted by the Project Sponsor or its successor in interest, as follows:

Mitigation Measure 1: Construction Air Quality

The Project Sponsor shall require the contractor(s) to spray the site with water during demolition, excavation, and construction activities; spray unpaved construction areas with water at least twice per day; cover stockpiles of soil, sand, and other material; cover trucks hauling debris, soils, sand or other such material; and sweep surrounding streets during demolition, excavation, and construction at least once per day to reduce particulate emissions. Ordinance 175-91, passed by the Board of Supervisors on May 6, 1991, requires that non-potable water be used for dust control activities. Therefore, the Project Sponsor would require that the contractor(s) obtain reclaimed water from the Clean Water Program for this purpose. The Project Sponsors would require the project contractor(s) to maintain and operate construction equipment so as to

minimize exhaust emissions of particulates and other pollutants, by such means as a prohibition on idling motors when equipment is not in use or when trucks are waiting in queues, and implementation of specific maintenance programs to reduce emissions for equipment that would be in frequent use for much of the construction period.

Mitigation Measure 2: Hazardous Materials

According to a site management plan prepared by Baseline Environmental¹ and reviewed and approved by the San Francisco Department of Public Health,² the following measures should be implemented to reduce exposure to hazardous materials.

Construction Health and Safety Provisions. Analytical data from previous investigations at the project site should be provided to all contractors at the site, so that the information can be incorporated into their worker health and safety and hazard communications plans. Although health risk assessment data (see Health Effects of Hazardous Materials in Soil, above) indicate that construction workers would not be significantly affected by lead concentrations in project site soils, health and safety provisions have been recommended to minimize exposure of workers and the nearby public to lead in soil. Prior to installation of the concrete foundation, all construction activities that would disturb the surface or shallow subsurface soils should be conducted in accordance with a site-specific health and safety plan (HSP) prepared by a certified industrial hygienist. The HSP should include measures to minimize inhalation and accidental ingestion of affected soils, dust control measures, and action levels for air monitoring. Particulate air monitoring should be conducted in work areas and at the site perimeter during all construction activities disturbing site soils. Should the air monitoring indicate conditions where lead may be encountered in excess of identified action levels, construction work should be halted until dust control measures reduce potential risks to construction workers and the public to acceptable levels.

- Watering all active construction areas at least twice daily.
- Covering all trucks hauling soil, sand, and other loose materials, or require all trucks to maintain at least two feet freeboard.
- Cleaning of all heavy equipment and truck tires prior to leaving the site.
- Paving, applying water three times daily, or applying non-toxic soil stabilizers on all unpaved and staging areas at construction sites.
- Sweeping daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites.
- Sweeping street daily (with water sweeps) if visible soil material is carried onto adjacent public streets.
- Optional control measures that are encouraged by BAAQMD may also apply at construction sites that are located near sensitive receptors (e.g., day care centers, churches, community centers) which, for any other reason, may warrant additional emission reductions.

- The backfill for three 15-gallon trees shall be clean fill and clean fill shall be separated from contaminated soil.
- Should contamination remain on the site, a deed notification with SMP and a cap management plan shall be recorded.
- Upon the completion of the SMP a final report shall be submitted.
- Two weeks prior to the commencement of work a site specific health and safety plan (HSP) shall be submitted.

Soil Management and Disposal Provisions. All soil stockpiles containing shallow fill materials at the project site should be covered with visquene or similar physical barrier to prevent wind dispersal of potentially lead-affected soils, either until reuse on-site or off-site disposal. All soils not reused on-site that will require off-site disposal should be characterized. At a minimum, four soil samples should be collected from each 1,000 cubic yards of soil proposed to be disposed (or as required by the disposal facility). Soil samples should be analyzed for total and soluble lead by a State-certified laboratory. Analytical results should be used to determine appropriate disposal of excess soils in accordance with State and Federal laws and regulations. Disposal facilities may also require additional sampling or analyses for profiling purposes.

Post Construction Provisions. Following construction of the project, contact with lead-affected soils would be limited to infrequent maintenance of underground utilities by custodial staff and utility workers. Future residents and the general public would not be expected to come into contact with lead-affected soils under any circumstances. As the concentrations of lead in soils would not pose a health risk to workers (see Health Effects of Hazardous Materials in Soil, above), no post-construction provisions would be necessary to protect human health.

Mitigation Measure 3: Archaeological Resources

Based on a reasonable presumption that archeological resources may be present within the project site, the following measures shall be undertaken to avoid any potentially significant adverse effect from the proposed project on buried or submerged historical resources. The project sponsor shall retain the services of a qualified archeological consultant having expertise in California prehistoric and urban historical archeology. The archeological consultant shall undertake an archeological testing program as specified herein. In addition, the consultant shall be available to conduct an archeological monitoring and/or data recovery program if required pursuant to this measure. The archeological consultant's work shall be conducted in accordance with this measure at the direction of the Environmental Review Officer (ERO). All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of the ERO, the suspension of construction can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less than significant level potential

effects on a significant archeological resource as defined in CEQA Guidelines Sect. 15064.5 (a)(c).

Archeological Testing Program. The archeological consultant shall prepare and submit to the ERO for review and approval an archeological testing plan (ATP). The archeological testing program shall be conducted in accordance with the approved ATP. The ATP shall identify the property types of the expected archeological resource(s) that potentially could be adversely affected by the proposed project, the testing method to be used, and the locations recommended for testing. The purpose of the archeological testing program will be to determine to the extent possible the presence or absence of archeological resources and to identify and to evaluate whether any archeological resource encountered on the site constitutes an historical resource under CEQA.

At the completion of the archeological testing program, the archeological consultant shall submit a written report of the findings to the ERO. If based on the archeological testing program the archeological consultant finds that significant archeological resources may be present, the ERO in consultation with the archeological consultant shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archeological testing, archeological monitoring, and/or an archeological data recovery program. If the ERO determines that a significant archeological resource is present and that the resource could be adversely affected by the proposed project, at the discretion of the project sponsor either:

- A) The proposed project shall be re-designed so as to avoid any adverse effect on the significant archeological resource; or
- B) A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.

Archeological Monitoring Program. If the ERO in consultation with the archeological consultant determines that an archeological monitoring program shall be implemented the archeological monitoring program shall minimally include the following provisions:

- The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the AMP reasonably prior to any project-related soils disturbing activities commencing. The ERO in consultation with the archeological consultant shall determine what project activities shall be archeologically monitored. In most cases, any soils- disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles (foundation, shoring, etc.), site remediation, etc., shall require archeological monitoring because of the risk these activities pose to potential archaeological resources and to their depositional context;
- The archeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), of how to

- identify the evidence of the expected resource(s), and of the appropriate protocol in the event of apparent discovery of an archeological resource;
- The archeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archeological consultant and the ERO until the ERO has, in consultation with project archeological consultant, determined that project construction activities could have no effects on significant archeological deposits;
 - The archeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis;
 - If an intact archeological deposit is encountered, all soils-disturbing activities in the vicinity of the deposit shall cease. The archeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction activities and equipment until the deposit is evaluated. If in the case of pile driving activity (foundation, shoring, etc.), the archeological monitor has cause to believe that the pile driving activity may affect an archeological resource, the pile driving activity shall be terminated until an appropriate evaluation of the resource has been made in consultation with the ERO. The archeological consultant shall immediately notify the ERO of the encountered archeological deposit. The archeological consultant shall make a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit, and present the findings of this assessment to the ERO.

Whether or not significant archeological resources are encountered, the archeological consultant shall submit a written report of the findings of the monitoring program to the ERO.

Archeological Data Recovery Program. The archeological data recovery program shall be conducted in accord with an archeological data recovery plan (ADRP). The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the ADRP prior to preparation of a draft ADRP. The archeological consultant shall submit a draft ADRP to the ERO. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, should be limited to the portions of the historical property that could be adversely affected by the proposed project. Destructive data recovery methods shall not be applied to portions of the archeological resources if nondestructive methods are practical.

The scope of the ADRP shall include the following elements:

Field Methods and Procedures. Descriptions of proposed field strategies, procedures, and operations.

- *Cataloguing and Laboratory Analysis.* Description of selected cataloguing system and artifact analysis procedures.
- *Discard and Deaccession Policy.* Description of and rationale for field and post-field discard and deaccession policies.
- *Interpretive Program.* Consideration of an on-site/off-site public interpretive program during the course of the archeological data recovery program.
- *Security Measures.* Recommended security measures to protect the archeological resource from vandalism, looting, and non-intentionally damaging activities.
- *Final Report.* Description of proposed report format and distribution of results.
- *Curation.* Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities.

Human Remains and Associated or Unassociated Funerary Objects. The treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable State and Federal laws. This shall include immediate notification of the Coroner of the City and County of San Francisco and in the event of the Coroner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC) who shall appoint a Most Likely Descendant (MLD) (Pub. Res. Code Sec. 5097.98). The archeological consultant, project sponsor, and MLD shall make all reasonable efforts to develop an agreement for the treatment of, with appropriate dignity, human remains and associated or unassociated funerary objects (CEQA Guidelines. Sec. 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects.

Final Archeological Resources Report. The archeological consultant shall submit a Draft Final Archeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archeological resource and describes the archeological and historical research methods employed in the archeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report.

Once approved by the ERO, copies of the FARR shall be distributed as follows: California Archaeological Site Survey Northwest Information Center (NWIC) shall receive one (1) copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Major Environmental Analysis division of the Planning Department shall receive three copies of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources.

In instances of high public interest in or the high interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that presented above.

3. CONDITIONS TO BE MET PRIOR TO THE ISSUANCE OF A BUILDING (OR SITE) PERMIT OR FINAL ADDENDUM TO A BUILDING (OR SITE) PERMIT

A) Design

- (1) Highly reflective spandrel glass, mirror glass, or deeply tinted glass shall not be permitted. Only clear glass shall be used at pedestrian levels.
- (2) The Project Sponsor and the Project architect shall continue to work on design development with the Department.
- (3) Space shall be included for antennae in the building's design to avoid unattractive appendages.
- (4) The building design shall provide adequate space designated for trash compactors, trash loading, and recycling. These areas shall be indicated on the building plans.
- (5) Final architectural and decorative detailing, materials, glazing, color and texture of exterior finishes shall be submitted for review by, and shall be satisfactory to the Director of the Department. The Project architect shall submit dimensional design drawings for building details with specifications and samples of materials to insure a high design quality is maintained.
- (6) Except as otherwise provided in this motion, the Project shall be completed in general accordance with plans dated August 3, 2001, labeled "Exhibit B," and reviewed by the Commission on September 6, 2001.

(B) Pedestrian Streetscape Improvements: The Project shall include pedestrian streetscape improvements generally as described in this Motion and in conformance with Planning Code Section 138.1. A final pedestrian streetscape improvement plan including landscaping and paving materials and patterns, shall be submitted for review by, and shall be satisfactory to the Director of the Department, in consultation with the Director of the Department of Public Works.

(C) Inclusionary Housing: The Project Sponsor shall comply with the Requirements and procedures for the Residential Inclusionary Affordable Housing Program (hereinafter "Program") as set forth in Sections 315.1—315.9 of the Code. The Program requires that a nominal **twelve percent** of the dwelling units on site must be affordable either as rentals or as ownership units, for a fifty-year period beginning at issuance of the first Certificate of Occupancy. If the Below Market Residential (hereinafter "BMR") units are to be provided on site, they are required to reflect the proposed mix of unit

*50 year
restriction*

sizes in the project and to be equal in construction quality and finish materials to the market-rate units. Alternately, pursuant to **Section 315**, the project sponsor may elect to provide "BMR" units off site or pay an in lieu fee which two options must be equivalent to 17 percent of the number of dwelling units in the Project.

- (D) **Public Artwork:** The Project shall include the work(s) of art valued at an amount equal to one percent of the hard construction costs for the Project as determined by the Director of the Department of Building Inspection. The Project Sponsor shall provide to the Director necessary information to make the determination of construction cost hereunder.

The Project Sponsor and the Project artist shall consult with the Planning Department during design development regarding the height, size, type and location of the art. The final art concept and location shall be submitted for review by, and shall be satisfactory to the Director of the (Planning) Department in consultation with the Commission. The Project Sponsor and the Director shall report to the Commission on the progress of the development and design of the art concept no later than six months after the date of this approval.

- (E) **First Source Hiring Program:** The Project Sponsor shall have a First Source Hiring Construction Program approved by the First Source Hiring Administrator, and evidenced in writing.

- (F) **Recordation:** Prior to the issuance of any building permit for the construction of the Project, the Zoning Administrator shall approve and order the recordation of a notice in the Official Records of the Recorder of the City and County of San Francisco, which notice shall state that construction of the Project has been authorized by and is subject to the conditions of this Motion. From time to time after the recordation of such notice, at the request of the Project Sponsor, the Zoning Administrator shall affirm in writing the extent to which the conditions of this Motion have been satisfied, and record said writing if requested.

- (G) **Transferable Development Rights (TDR):** The Project shall comply with Code **Section 128(h)**, which states that when the transfer of TDR is necessary for the approval of a Site Permit for a project on a Development Lot, the Zoning Administrator shall impose as a condition of approval of the site permit the requirement that the Superintendent of the Bureau of Building Inspection shall not issue the first addendum to the site permit unless the Zoning Administrator has issued a written certification that the owner of the Development Lot owns the required amount of TDR. Alternately, the Project Sponsor may attempt to procure the necessary additional FAR through the method established in Code Section 124(f).

- (H) Off-street parking provided in conjunction with the residential portion of the Project shall not exceed one space for each two dwelling units (123 total spaces). The remainder of the spaces (381) shall be operated in a "short-term" manner consistent with the provisions of Code Section 155(g) wherein it states "(i) in order to discourage long-term commuter parking, any off-street parking spaces provided for a structure or use other than residential or hotel in a C-3 District, whether classified as an accessory or Conditional Use, which are otherwise available for use for long-term parking by downtown workers must maintain a rate or fee structure for their use such that the rate charge for four hours of parking duration is no more than four times the rate charge for the first hour, and the rate charge for eight or more hours of parking duration is no less than 10 times the rate charge for the first hour. Additionally, no discounted parking rate shall be permitted for weekly, monthly or similar time-specific periods."
- (I) In accordance with the terms of the Memorandum of Understanding entered into by the Applicant and "City Car Share" of San Francisco, agreeing that two "car share" spaces would be reserved in the commercial part of the proposed garage with two more spaces being reserved to be devoted to future expansion of the car-share use (if and when such expansion proves to be warranted).

4. CONDITIONS TO BE MET PRIOR TO THE ISSUANCE OF A TEMPORARY OR PERMANENT CERTIFICATION OF OCCUPANCY

- (A) Public Artwork: The Project Sponsor shall install the work(s) of art generally as described in this Motion and make it available to the public. The Project Sponsor shall place a plaque or cornerstone identifying the Project architect, the artwork creator and the Project completion date in a publicly conspicuous location on the Project site.
- (B) Pedestrian Streetscape Improvements: The Project Sponsor shall complete the required pedestrian streetscape improvements. The Project Sponsor shall be responsible for the upkeep and maintenance of such improvements if they exceed City standards.
- (C) Garbage and Recycling: The Project shall provide containers to collect and store recyclable solid waste and the Project Sponsor shall contract for recycling pickup. Trash compactors shall not occupy or impede the use of required freight loading spaces.
- (D) First Source Hiring Program: The Project Sponsor shall have a First Source Hiring Occupancy Program approved by the First Source Hiring Administrator, and evidenced in writing.

- (E) Street Trees. Pursuant to the standards set forth in **Code Section 143**, and in order to mitigate the six hours per year of new wind hazard exceedance at a single location opposite the Subject Property along the south side of Mission Street pursuant to the standards of **Code Section 149**, the Applicant shall plant and maintain a minimum of one tree of 15-gallon size for each 20 feet of frontage along the Mission Street frontage of the Subject Property (as well as along the Stevenson Street frontage thereof) with any remainder of ten feet or more of frontage requiring an additional tree.