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Planning Commission Motion No. 20385

HEARING DATE: February 14, 2019

Case No.:	**2016-007303ENV**
Project Address:	**5 Third Street**
Zoning:	C-3-O (Downtown Office) Use District 120-X Height and Bulk District
Block/Lot:	3707/057
Project Sponsor:	Caroline Guibert Chase Coblentz, Patch, Duffy & Bass 415-772-5793
Staff Contact:	Josh Pollak (415) 575-8766 josh.pollak@sfgov.org

ADOPTING FINDINGS RELATED TO THE APPEAL OF THE PRELIMINARY MITIGATED NEGATIVE DECLARATION, FILE NUMBER 2016-007303ENV FOR THE PROPOSED DEVELOPMENT ("PROJECT") AT 5 THIRD STREET.

MOVED, that the San Francisco Planning Commission (hereinafter "Commission") hereby AFFIRMS the decision to issue a Mitigated Negative Declaration, based on the following findings:

1. On May 18, 2016, pursuant to the provisions of the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code, the Planning Department ("Department") received an Environmental Evaluation Application for the Project, in order that it might conduct an initial evaluation to determine whether the Project might have a significant impact on the environment.

2. On August 22, 2018, the Department determined that the Project, as proposed, could not have a significant effect on the environment.

3. On August 22, 2018, a notice of determination that a Mitigated Negative Declaration would be issued for the Project was duly published in a newspaper of general circulation in the City, and the Preliminary Mitigated Negative Declaration posted in the Department offices, and distributed all in accordance with law.

4. On September 11, 2018, two separate appellants, Rachel Mansfield-Howlett of Provencher & Flatt, LLP, on behalf of Friends of Hearst Building, and Yasin Salma, timely filed appeals of the decision to issue a Mitigated Negative Declaration.

5. On September 17, 2019, a notice of appeal hearing was published in a newspaper of general circulation in the City, sent to the two appellants, and those who requested notification related to the project.

6. On November 15, 2018, Susan Brandt-Hawley of Brandt-Hawley Law Group, on behalf of appellant Friends of Hearst Building, submitted a supplemental appeal letter.

7. On November 15, 2018, the Planning Commission considered a request by the Planning Department for continuance of the appeal hearing to December 13, 2018 and granted such request. By agreement of all parties, the matter was subsequently continued to February 14, 2019.

8. A staff memorandum, dated February 7, 2019, addresses and responds to all points raised by appellants in the appeal letters. That memorandum is attached as Exhibit A and staff's findings as to those points are incorporated by reference herein as the Commission's own findings. Copies of that memorandum have been delivered to the City Planning Commission, and a copy of that memorandum is on file and available for public review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

9. On February 7, 2019, amendments were made to the Preliminary Mitigated Negative Declaration, adding text for information and clarification. Such amendments do not include new, undisclosed environmental impacts and do not change the conclusions reached in the Preliminary Mitigated Negative Declaration. The changes do not require "substantial revision" of the Preliminary Mitigated Negative Declaration, and therefore recirculation of the Preliminary Mitigated Negative Declaration would not be required.

10. On February 12, 2019, Yasin Salma submitted a supplemental appeal letter.

11. On February 13, 2019, Susan Brandt-Hawley of Brandt-Hawley Law Group, on behalf of appellant Friends of Hearst Building, submitted a supplemental appeal letter.

12. On February 14, 2019, the Commission held a duly noticed and advertised public hearing on the appeals of the Preliminary Mitigated Negative Declaration, at which testimony on the merits of the appeals, both in favor of and in opposition to, was received.

13. All points raised in the appeal of the Preliminary Mitigated Negative Declaration at the February 14, 2019 City Planning Commission hearing have been responded to either in the Memorandum or orally at the public hearing.

14. After consideration of the points raised by appellants, both in writing and at the February 14, 2019 hearing, the San Francisco Planning Department reaffirms its conclusion that the proposed project could not have a significant effect upon the environment.

15. In reviewing the Preliminary Mitigated Negative Declaration issued for the Project, the Planning Commission has had available for its review and consideration all information pertaining to the Project in the Planning Department's case file.

16. The Planning Commission finds that Planning Department's determination on the Mitigated Negative Declaration reflects the Department's independent judgment and analysis.

The City Planning Commission HEREBY DOES FIND that the proposed Project, could not have a significant effect on the environment, as shown in the analysis of the Mitigated Negative Declaration, and HEREBY DOES AFFIRM the decision to issue a Mitigated Negative Declaration, as prepared by the San Francisco Planning Department.

I hereby certify that the foregoing Motion was ADOPTED by the City Planning Commission on February 14, 2019.

Jonas P. Ionin
Commission Secretary

AYES:	Fong, Hillis, Johnson, Koppel, Melgar, Moore, Richards
NOES:	None
ABSENT:	None
ADOPTED:	February 14, 2019

Exhibit A

Planning Department Response to Appeal Letters

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Exhibit A to Draft Motion
Planning Department Revised Response to Appeal of Preliminary Mitigated Negative Declaration

CASE NO. 2016-007303ENV – 5 THIRD STREET
PUBLISHED AUGUST 22, 2018, AMENDED FEBRUARY 7, 2019

BACKGROUND

An environmental evaluation application (2016-007303ENV) for the proposed project at 5 Third Street (assessor's block 3707, lot 057) was filed by Harry O'Brien on behalf of Bespoke Hospitality, LLC on May 18, 2016 for a proposal to convert the existing Hearst Building from office and retail use to a mixed-use hotel, including modifications to the rooftop to construct a bar and patio.

The project site is located on the southeast corner of Market and Third streets at the Hearst Building, an approximately 131,650-gross-square-foot, 13-story, 189-foot-tall building, which currently houses a bar/nightclub within the basement level, ground floor retail uses, and commercial office space on floors 2 through 13. The project site is occupied by two buildings: (1) a 13-story building (5 Third Street), which includes an eight-story annex, located on the corner of Third and Market streets; and (2) a three-story building (17-29 Third Street), located at the corner of Third and Stevenson streets, which shares an internal connection with the adjacent 5 Third Street (collectively, the two structures comprise the Hearst Building). The Hearst Building, built in c. 1909, is designated as Category I under Article 11 of the Planning Code, which means the building is judged to be individually important and to have excellent or very good architectural design for historic preservation purposes. In addition, the existing building has status of Category A (historic resource present) for the purpose of environmental review pursuant to CEQA.

The new mixed-use hotel would include ground level retail, restaurant/bar, and hotel lobby space. In the basement, new structural walls would be added as part of a seismic retrofit that would reconfigure and reduce the size of the existing tenant space. Levels 2 and 3 would include a mix of commercial office space, hotel rooms, and event space. Levels 4 through 12 would be occupied by hotel rooms. Level 4 would have an outdoor terrace event space overlooking Stevenson Street, and level 13 will be used as an indoor/outdoor event space with a kitchen, and a rooftop bar and patio overlooking the adjacent Monadnock building (685 Market Street) to the east. The proposed project would result in an approximately 131,550 gross-square-foot, 184-foot-tall building, with up to 170 hotel rooms, 5,920 square feet of office space, and 11,393 square feet of retail space, including 422 square feet of general retail, and 4,005 square feet of restaurant/bar uses. The project would include seismic and structural building system upgrades and would also meet LEED Gold building efficiency standards. No off-street parking would be provided. The sponsor would request reconfiguration of the curb on Stevenson Street to include a 60-foot long passenger loading zone. Valet service would be provided on the Stevenson Street frontage.

The project site is located in a Downtown-Office (C-3-O) zoning district and a 120-X height and bulk district. The proposed project would require a Major Permit to Alter from the Historic Preservation Commission, a Conditional Use Authorization from the Planning Commission for the proposed

hotel uses, a Downtown Project Authorization from the Planning Commission for substantial alterations to the building, a legislative amendment to Planning Code Section 188 to allow for alterations and enlargements to the existing noncomplying rooftop structures, a building permit from the Department of Building Inspection, a street space occupancy permit for construction staging from San Francisco Public Works, and approval of a passenger loading zone from the San Francisco Municipal Transit Agency.

A Preliminary Mitigated Negative Declaration (as revised, "PMND") was published by the Planning Department on August 22, 2018. On September 11, 2018, two separate appellants, (1) Rachel Mansfield-Howlett of Provencher & Flatt, LLP, on behalf of Friends of the Hearst Building, an unincorporated association, and (2) Yasin Salma, filed letters appealing the environmental determination in the PMND.

The Planning Department received a supplemental letter from Susan Brandt-Hawley of Brandt-Hawley Law Group, on behalf of the Friends of the Hearst Building, on November 15, 2018, which contained additional comments and, as an attachment, a letter from the State Historic Preservation Officer ("SHPO") dated November 9, 2018, regarding the project's Historic Preservation Certification Application. Since the supplemental letter and material were received just before the scheduled appeal hearing, the Planning Department requested a continuance in order to consider and respond to the new information. The Planning Commission continued the appeal hearing to December 13, 2018 to allow the project sponsor to address comments from the SHPO related to the project's consistency with the *Secretary of the Interior's Standards for the Treatment of Historic Properties – Rehabilitation* (the Standards).[1] Subsequently, all parties agreed to a further continuance to February 14, 2019.

In response to the SHPO's November 9, 2018 letter, the project sponsor submitted an amended Historic Preservation Certification Application seeking the SHPO's review of project plans modified as described below. Specifically, instead of removing and relocating the glazed gold leaf panels in the lobby accessed from Market Street in order to create lobby doors for the hotel use, the proposed location of the doors was moved further into the lobby from the street entrance to create two doorway openings in the existing niches adjacent to the elevator banks. The position of the corridor doors from the 4th floor upward was adjusted to retain over 90 percent of the existing marble wall cladding and to further retain decommissioned doors. In addition, the height of the proposed elevator machine room was lowered by approximately two feet, so the final proposed building height would be 184 feet, about five feet lower than the existing building height of 189 feet. Access to the rooftop terrace proposed for 17-29 Third Street would be through proposed 4th floor window to door conversions that would retain existing window openings and would be visually consistent with the existing window design. The interconnecting stairs between the 2nd and 3rd floors would be relocated so that they do not intersect windows and new interior partitions have been relocated to avoid intersecting with existing windows.

[1] National Park Service. The Secretary of the Interior's Standards for Treatment of Historic Properties. https://www.nps.gov/tps/standards/four-treatments/treatment-rehabilitation.htm. Accessed: September 27, 2018.

On December 18, 2018, the SHPO issued an amended response to the project's amended Historic Preservation Certification Application, which stated that the elements of the modified project discussed above meet the Standards.[2]

The Planning Department requested the historic resource evaluation previously prepared for the environmental review of the project be updated to reflect the modified project.[3] In addition, Department preservation staff reviewed and concurred with the amended evaluation.[4] The PMND has been revised to include analysis of the project revisions made in response to the SHPO's comments. The conclusions in the PMND, before and after its revision, remain the same. There would be no significant historic resource impacts as a result of the project.

The concerns listed below are summarized from the initial appeal letters and supplemental letters, copies of which are included within the appeal packet. The concerns are listed by appellant in the order presented in the appeal letters.

APPELLANT ISSUES AND PLANNING DEPARTMENT RESPONSES

Appeal 1 - Appellant Friends of the Hearst Building

The concerns raised in the September 11, 2018 Friends of the Hearst Building appeal letter, supplemental letter dated November 15, 2018, and verbal comments at the November 15, 2018 Planning Commission hearing are cited below and are followed by the Planning Department's responses. Changes made to the project to address the SHPO concerns since the letters were received have been highlighted when relevant.

RESPONSE TO CONCERN:

CONCERN 1: Impacts to Historical Resources: The appellant asserts that the project would alter or destroy character-defining features of the Hearst Building, including the gable/flat-roofed penthouse suites added by Julia Morgan in 1938 and a portion of the marble-clad walls and gold leaf panels in the lobby, as well as the removal of marble in the upstairs corridors, and that these changes may constitute a significant impact under CEQA.

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[2] SHPO has remained conditioned the following work which is listed under Undeveloped and Future Work in the Conditions Sheet Historic Preservation Certification Application Part 2 dated November 9, 2018: interior improvements, systems and services, signage, and lighting, The Department's CEQA review of interior work has included identified character-defining interior spaces which include the lobby, that has determined, with SHPO agreement, that proposed work meets the Standards. The portions of the historic exposed interior brick in the commercial units of 17-29 3rd Street is also identified as a character-defining feature and will remain. All future signage will be reviewed by department's preservation staff to ensure that it meets Article 1111.2 of the Planning Code, which requires that signs meets the Standards and Department's sign guidelines. All lighting proposals will be reviewed and approved through the Major Permit to Alter, which also requires that all proposed lighting meeting the Standards.

[3] Page & Turnbull, Inc. January 24, 2019. The Hearst Building and 17-29 3rd Street Historic Resource Evaluation, Part 2. This document, and all other documents cited in this response, unless otherwise noted, are available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, as part of Case File No. 2016-0073030ENV.

[4] San Francisco Planning Department. January 24, 2019. Preservation Team Review Form, Hearst Building.

RESPONSE TO CONCERN 1: The PMND appropriately treats the Hearst Building as an historic resource under CEQA. Pursuant to CEQA Guidelines Sections 15064.5(a)(1) and 15064.5(a)(2), historical resources are buildings or structures that are listed, or are eligible for listing, in the California Register of Historical Resources (CRHR)[5] or are identified in a local register of historical resources, such as Articles 10 and 11 of the San Francisco Planning Code. The PMND describes that the Hearst Building, consisting of the buildings at 5 Third Street and 17-29 Third Street, is a historic resource for the purpose of environmental review. The PMND states on p. 1 that the project site is occupied with a "Category A" property (historic resource present) for purposes of CEQA review. The PMND also notes on p. 20 that each of the buildings on the project site (the Hearst Building and 17-29 Third Street) is designated as a historic resource under Article 11 of the San Francisco Planning Code and are historic resources for the purposes of CEQA review.

As both buildings are historic resources according to CEQA, the PMND evaluated whether the proposed project would cause a substantial adverse change in the significance of a historical resource. A "substantial adverse change" means "physical demolition, destruction, relocation, or alterations of [a] resource or its immediate surroundings such that the significance of an historical resource would be materially impaired." CEQA Guidelines Section 15064.5(b)(1). The significance of an historical resource is "materially impaired" when a project "[d]emolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources[.]" CEQA Guidelines Section 15064.5(b)(2)(A). The PMND found that the project would have a less-than-significant impact with respect to historic resources and would not cause a substantial adverse effect in the significance of a historic resource as described in more detail below.

The historic resource analysis in the original PMND was based on the Historic Resource Evaluation (HRE) Part 2 report prepared by Page & Turnbull, Inc.[6] The report analyzed the proposed project for compliance with the Standards, in the case of this rehabilitation project, the *Standards for Rehabilitation*, a series of 10 standards addressed in pp. 23 through 29 of the PMND. Projects that comply with the Standards would have a less-than-significant adverse impact on a historic resource, pursuant to CEQA Guidelines Section 15064.5(b)(3). The Planning Department concurred with the HRE Part 2 report, and found that the project complies with the Standards and would therefore have a less than significant impact on the historic resources for the purposes of CEQA.

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[5] With respect to eligibility for the CRHR, a property may be considered a historical resource if it meets any of the CRHR criteria related to (1) events, (2) persons, (3) architecture, or (4) information potential, that make it eligible for listing in the California register, or if it is considered a contributor to a potential historic district. Neither building is listed on the CRHR, but both were found to be eligible for CRHR listing in the historic resource evaluation. The Hearst Building would be eligible for the CRHR under Criteria 1, 2, and 3, and that 17-29 Third Street building would be eligible for listing in the CRHR under Criterion 3.

[6] Page & Turnbull, Inc. July 31, 2018. The Hearst Building and 17-29 3rd Street Historic Resource Evaluation, Part 2.

As described above, the project sponsor modified the project to address comments from the SHPO.[7] As a result, the HRE Part 2 report has been updated to analyze the modified project.[8] The Planning Department concurs with the updated report and analysis, and has completed a Preservation Team Review Form,[9] which finds that the modified project continues to comply with the Standards and would therefore have a less than significant impact on the historic resources for the purposes of CEQA.

With respect to the character-defining features cited in the appellant's letter, the Standards analysis in the PMND (strikethrough/additions shown below comparing original and revised PMND) addresses retaining and preserving the historic character of the project site:

> As proposed, the project would not remove distinctive materials and character-defining features of the Hearst Building's exterior facades. Exterior alterations would occur at portions of storefront systems that are not character-defining. At the rooftop of 5 Third Street, the proposed project would demolish the ~~gable/flat-roofed~~ gable and flat-roofed conference penthouse ~~suite added~~ designed by Julia Morgan ca.1938. The Julia Morgan-designed penthouse ~~which~~ is considered a character-defining feature as it dates to the building's period of significance and possesses high artistic value. However, the penthouse is not visible from the public right-of-way and is not publicly accessible (nor was it historically). The spatial relationships between 5 Third Street and neighboring buildings would not change. At the interior of 5 Third Street, the~~The~~ proposed project would remove a portion of the ~~distinctive~~ non-gilded marble-clad walls ~~and eight gold leaf panels~~ within the historic lobby to accommodate two new door openings, each with a single sidelight. The ~~gold leaf panels~~new door openings would be located perpendicular to two existing doors at the north and south niches of the lobby's semi-circular area ~~salvaged and re-used in the building's upstairs public areas~~. The lobby and the exterior of the Hearst Building would retain all other character-defining features and would continue to be able to convey its historic significance.[10]

The project calls for alteration, relocation, and selective demolition of the several rooftop structures include the gable/flat roofed penthouse suite, a character-defining feature as described above. However, the penthouse suite is not visible from the public right-of-way. Even with the proposed removal of the penthouse suite, the building would retain its character so that it would continue to convey its historical significance. In addition, the modified project was determined to be in compliance with the Standards, which allow for limited changes to historic buildings in order to accommodate new contemporary uses.

The PMND describes the project revisions that would preserve the gold leaf panels within the historic lobby, and instead a portion of the non-gilded marble-clad walls within recessed alcoves in

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[7] Forge and Bespoke Hospitality. November 20, 2018. Heart Hotel San Francisco, Project Plans.

[8] Page & Turnbull, Inc. January 24, 2019. The Hearst Building and 17-29 3rd Street Historic Resource Evaluation, Part 2.

[9] San Francisco Planning Department. January 24, 2019. Preservation Team Review Form, Hearst Building.

[10] Page & Turnbull, Inc. January 24, 2019. The Hearst Building and 17-29 3rd Street Historic Resource Evaluation, Part 2, pg. 19.

the historic lobby would be used to accommodate two new door openings, which would be less impactful, as it would leave the gold leaf panels intact. The project would not affect the buildings' eligibility for listing in the California Register. According to CEQA Guidelines Section 15126.4(b)(1), if a project complies with the Standards, the project's impact "shall generally be considered mitigated below a level of significance and thus is not significant."[11] Because the modified project at the Hearst Building complies with the Standards, it would not cause a significant impact to historic resources under CEQA.

While the project is deemed to have a less-than-significant impact as defined by CEQA, two improvement measures would be implemented to reduce the project's less-than-significant historic resources impact. Improvement Measure I-CR-1a: HABS Documentation, would record through measured drawings, photographs, and a written report the pre-project condition of the building and its character-defining architectural features, which would be reviewed and approved by the Planning Department's Preservation Coordinator prior to submission to History Room of the San Francisco Public Library, San Francisco Architectural Heritage, and the Northwest Information Center of the California Historical Information Resource System. Additionally, Improvement Measure I-CR-1b: Construction Best Practices for Historic Resources, would put in place procedures to ensure the masonry and terra cotta cladding are protected throughout the selective demolition, construction activity, and rehabilitation work.[12]

Regarding marble in the upstairs corridors, the HRE Part 2 report does not include the marble in upstairs corridors as part of the list of character-defining features of the Hearst Building. While some marble in the upstairs corridors is proposed for removal as part of the modified project to accommodate the relocation of interior doors, over 90 percent of the existing marble wall cladding would be retained. Where doors are relocated, the existing marble would be reinstalled to infill existing door openings. The appellant has not provided evidence that the marble in the upstairs corridors should be considered a character-defining feature. In addition, the *Guidelines for Rehabilitating Historic Buildings* (Guidelines)[13] note that in building interiors, which include hallways, "extensive changes can often be made in these less important areas without having a detrimental effect on the overall historic character." The Guidelines also recommend that historic material be reused within the rehabilitation project, which the proposed project would do for the marble in the upstairs corridors.

The proposed hotel use is compatible with the existing building in that it retains the historic character of the building while making changes in focused areas of previous alterations and secondary areas, and relocating specific elements so that the new use retains the functionality of original historic spaces.

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[11] See also CEQA Guidelines § 15064.5(b)(3).

[12] Full text of the improvement measures is contained on pp. 30 to 32 of the PMND.

[13] National Park Service. The Secretary of the Interior's Guidelines for Rehabilitating Historic Buildings. https://www.nps.gov/tps/standards/rehabilitation/rehabilitation-guidelines.pdf. Accessed: February 6, 2019

In summary, the HRE Part 2 report and the SHPO's assessment found that the modified project complies with the Standards and the department concurs with that finding.[14] The department determined that the project would therefore have a less-than-significant impact on the historic resources for the purposes of CEQA.

The appellant has not provided any evidence that the project as modified would have significant impacts to historic resources. Therefore, no further response is possible. As described in CEQA Guidelines Section 15384, argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence. The appellant has not provided any evidence that potentially significant environmental impacts not identified in the PMND would occur.

CONCERN 2: Land Use Entitlements: The appellant lists the required approvals for the proposed project and asserts that potentially significant impacts may occur in relation to each discretionary project approval during construction and operation of the proposed project.

RESPONSE TO CONCERN 2: The PMND identifies the physical environmental effects of the whole of the proposed project for each resource topic in the initial study as required by CEQA. For environmental impacts determined to be significant (cultural resources, noise, and air quality), the PMND has identified mitigation measures that would reduce significant impacts to less than significant as summarized on p. 12. The required approvals identified would enable the proposed project to proceed and would not result in any additional physical environmental effects beyond those of the proposed project as described in the PMND. The appellant has not identified any specific environmental impacts that are not addressed in the PMND, nor has the appellant provided any evidence that potentially significant environmental impacts not identified in the PMND would occur in relation to the project approvals listed.

CONCERN 3: Hazardous Materials: The appellant states that the project site is identified by the State Water Resources Control Board as a leaking underground storage tank site and that toxic underground contamination would be exacerbated by excavation due to the project, thereby resulting in a significant environmental impact.

RESPONSE TO CONCERN 3: As described in the on p. 113 of the PMND, the project site is on a list of hazardous materials sites compiled by the California Department of Toxic Substance Control pursuant to Government Code Section 65962.5. According to the State Water Resource Control Board, the site was listed as containing a leaking underground storage tank with heating/fuel oil in May 1996, but the site investigation and remedial action for the underground storage tank were completed and the case was closed in October 1999.[15] The San Francisco Department of Public Health, which is the

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[14] As noted above, SHPO has remained conditioned some interior changes, systems and services, signage, and lighting,

[15] State Water Resource Control Board, Leaking Underground Tank Sites, Geotracker, The Hearst Corporation (T0607501172), 38-1287 (Regional Board), 11164 (Local Agency). Added to list: May 23, 1996. Case Closed: October 8, 1999. Available online at: https://geotracker.waterboards.ca.gov, accessed July 31, 2018.

Local Oversight Program for the State Water Resources Control Board, stated that no further action related to the underground tank is required.[16]

The cleanup that occurred on the project site is the reason that the project site is included in the Maher Area, which is a list of areas that are known or suspected to contain contaminated soil and/or groundwater.[17] If the proposed project were to disturb at least 50 cubic yards of soil, and the site history indicated that hazardous substances may be present, the proposed project would be required to enroll in the Maher program, which is administered and overseen by the San Francisco Department of Public Health.

Less than 50 cubic yards of soil would be disturbed or excavated as part of the proposed project. The foundation reinforcement for the proposed project would require approximately 50 micropiles, which would be about 8 inches in diameter. The micropile installation would require excavation to a depth of approximately 50 feet in depth, which would require excavation and removal of up to 40 cubic yards of soil. As the proposed project would remove less than 50 cubic yards of soil and the project does not propose sensitive land uses, it would not be subject to the Maher Ordinance. Based on guidance from the San Francisco Department of Public Health, excavation of less than 50 cubic yards of soil would not be expected to result in significant impacts to the environment or human health.[18]

In addition, Health Code Article 21 provides for the safe handling of hazardous materials in the City by requiring any business that handles specified quantities of hazardous materials (which includes contaminated soil) to keep a current certificate of registration and to implement a hazardous material plan.

In conclusion, the site contained a leaking underground storage tank, which was remediated in October 1999, and is the reason the project site is within the Maher Area. The volume of soil excavated for the project would be below the 50 cubic yards of soil threshold set by the Department of Public Health to prevent significant impacts to the environment or human health. Any hazardous materials which may be encountered during construction would be required to be handled according to Health Code Article 21. The appellant has not submitted any evidence that hazardous material would be encountered during project construction and that this would result in a potentially significant impact.

CONCERN 4: Displacement of Non-Profit Businesses: The appellant asserts that the displacement of non-profit businesses from the office uses currently in the building may be a potentially significant impact.

RESPONSE TO CONCERN 4: The potential displacement of non-profit businesses under the existing office uses is considered an economic or social effect, and not a physical effect on the

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[16] Remediation Action Completion Certification, Underground Storage Tank (UST) Case, The Hearst Corporation, 5 Third Street, San Francisco, LOP Case No. 11164, October 8, 1999, available online at: https://geotracker.waterboards.ca.gov, accessed October 23, 2018.

[17] See San Francisco Health Code Article 22A (the "Maher Ordinance").

[18] San Francisco Department of Public Health. February 21, 2014. Interagency Memo—Sites Excavating Less than 50 Cubic Yards of Soil and Maher Ordinance Compliance.

environment. CEQA Guidelines Section 15064(e) states that economic and social changes resulting from a project shall not be treated as significant effects on the environment, but such economic and social changes may be used to determine that a physical change shall be regarded as a significant effect on the environment. The appellant has not provided any evidence that displacement of non-profit businesses would result in a potentially significant environmental effect.

CONCERN 5: BART Tunnel Impacts: The appellant asserts that construction adjacent to the BART tunnel under Market Street may be a potentially significant impact.

RESPONSE TO CONCERN 5: As noted in the PMND, the project site is located adjacent to the below grade BART right-of-way along Market Street. BART requires that structures over or adjacent to BART's subway structures shall be designed and constructed so as not to impose any temporary or permanent adverse effects on subway. To achieve this, BART has issued *General Guidelines for Design and Construction Over or Adjacent to BART's Subway Structures,*[19] and *General Guidelines for Design and Construction Over or Adjacent to BART's At-grade and Aerial Structures.*[20] In addition, BART implements a construction permit review process. Portions of the project construction work may be within the BART Zone of Influence.[21] Due to the proximity of the project site to the BART tunnel, project plans must be reviewed by BART and cannot impose any temporary or permanent adverse effects on the BART tunnel structure. Therefore, the project sponsor must submit an application for a construction permit to BART, and if BART determines that inspection or monitoring would be needed for the project, a permit issued by BART would be required prior to the commencement of construction. The potential need for a permit from BART does not indicate the potential for a significant impact to BART infrastructure, nor would the application for a permit require the preparation of an EIR.

In addition, the Department of Building Inspection will not issue site permits for the proposed project without BART's review of, and input regarding, the construction permit application. Overall, review of proposed construction for the project by BART and the building department permit review process would ensure that construction of the project would not result in a significant environmental impact.

In addition, the project sponsor has met with BART's engineering department three times, submitted studies analyzing potential impacts to BART infrastructure to demonstrate that the project would not impact their infrastructure, and submitted detailed engineering calculations. In response, BART issued a letter indicating that BART has no objection to the project proceeding to

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[19] Bay Area Rapid Transit District (BART). July 2003. *General Guidelines for Design and Construction Over or Adjacent to BART's Subway Structures.* Online at https://www.bart.gov/sites/default/files/docs/Gen_Guide_Subway_062012.pdf. Accessed October 19, 2018.

[20] Bay Area Rapid Transit District. October 2001. *General Guidelines for Design and Construction Over or Adjacent to BART's Subway Structures.* Online at https://www.bart.gov/sites/default/files/docs/Gen_Guide_At_Grade_062012.pdf. Accessed October 19, 2018.

[21] The BART Zone of Influence is defined as the area above a line of influence, which is a line from the critical point of BART structures at a slope of 1 ½ horizontal to 1 vertical (as a line sloping towards ground level). See: https://www.bart.gov/sites/default/files/docs/Gen_Guide_Subway_062012.pdf, Accessed: October 16, 2018.

at Planning Commission hearing and BART is currently reviewing the project to determine whether the project would require a permit from BART.[22]

CONCERN 6: Site-Specific and Cumulative Impacts: The appellant states that a full range of site-specific and cumulative environmental resource impacts may occur as a result of the project.

RESPONSE TO CONCERN 6: The PMND for the proposed project analyzed all potentially significant environmental impacts associated with the proposed project, both at a project-specific and a cumulative level. Each of the 17 resource topics covered in the PMND contains project-specific analysis and an analysis of potential cumulative impacts. All potentially significant impacts were mitigated to a less-than-significant level, with mitigation measures implemented for cultural resources (archeology and tribal cultural resources only), noise, and air quality.

CONCERN 7: Preparation of an EIR: The appellant seeks preparation of an Environmental Impact Report (EIR) to study potential project impacts and feasible alternatives and mitigation.

RESPONSE TO CONCERN 7: Following preparation of an Initial Study, the Planning Department issued a PMND, which found that the proposed project could not have a significant effect on the environment. The finding is based on the criteria of CEQA Guidelines Sections 15064 (Determining Significant Effect), 15065 (Mandatory Findings of Significance), and 15070 (Decision to prepare a Negative Declaration), and the reasons documented in the PMND. The PMND does not contain, nor has appellant provided, any substantial evidence that the proposed project would result in potential significant environmental impacts that have not already been addressed and determined to be "Less Than Significant with Mitigation Incorporated" in the PMND.

According to CEQA Guidelines Section 15063(b)(1), an EIR is required to be prepared if the agency determines there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment that cannot be mitigated to a less-than-significant level. As described above, for each concern raised by the appellant, the appellant has not provided substantial evidence that would support a fair argument that any significant environmental effect may occur as a result of the proposed project. Speculation and argument does not constitute evidence that a significant effect on the environment could occur.

In addition, according to CEQA Guidelines Section 15063(b)(2), a Negative Declaration shall be prepared if there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment. As required by CEQA, the PMND provides an accurate characterization of the proposed project and the proposed project's potential environmental impacts. The PMND and its supporting technical studies provide substantial evidence that the proposed project could not result in significant impacts to the environment. Therefore, preparation of an EIR is not required.

CONCERN 8: Concerns Raised in the SHPO's November 9, 2018 Letter: The appellant requested that the appeal be continued pending submission and review of a project that meets the Standards.

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[22] Gary Anderson, Senior Real Estate Engineer, BART. October 29, 2018, File: M-07.0-002-SF. "Re Hearst Hotel—Tunnel Force Analysis."

RESPONSE TO CONCERN 8: The Planning Department requested a continuance of the hearing to review and adequately respond to the concerns raised in the letter. In response to the concerns raised in the SHPO's November 9, 2018 letter, the project sponsor modified the project as described above and as analyzed in the revised PMND. On December 18, 2018, the SHPO issued an amended response to the project's Historic Preservation Certification Application, which stated that the revised elements of the project, as revised, meet the Standards. Per SHPO's response this work included revisions and clarifications concerning the historic lobby, corridors, main elevator penthouse height, rooftop and related landscape work, and the interconnected stairway between the second and third floors.

CONCERN 9: HPC Process-Related Concerns: The appellant states that the Historic Preservation Commission should review the project to provide its expertise on historic resource impacts and appropriate mitigation prior to review by the Planning Commission.

RESPONSE TO CONCERN 9: Pursuant to Section 31.04 of Chapter 31 of the San Francisco Administrative Code, the Historic Preservation Commission (HPC) has the authority to review and comment on environmental documents and determinations, including the PMND. The HPC and Planning Commission as decision-makers for the project were provided with the PMND when it was released on August 22, 2018 through a Notice of Availability of and Intent to Adopt a Mitigated Negative Declaration, which specified a hyperlink to the full PMND document online. No comments were received during the PMND review period from the HPC. Therefore, the HPC had an opportunity to review and comment on the proposed project, and the HPC did not comment on the proposed project. The HPC did not request a hearing or additional information on the PMND from staff.

CEQA must be completed before any discretionary action related to the project may be taken. For this project, the MND would be finalized before the HPC could consider approval of the Major Permit to Alter, required for this project under Article 11 of the Planning Code. According to Section 4.135 of Article 4 of the San Francisco Charter, for projects that require multiple planning approvals (such as this project), the HPC must review and act on any permit to alter before any other planning approval action. The HPC has the authority to approve, disprove, or modify applications for permits to alter as part of their review of projects requiring such actions. Following an approval of the Major Permit to Alter by the HPC (which would include adopting the FMND), the proposed project would then return to the Planning Commission, and subsequently to the Board of Supervisors, for project approvals as outlined in the PMND. In summary, HPC was provided the PMND for review and comment, including the historic resource analysis and determination of the level of significance of project cultural resource impacts. The HPC will review the project during its consideration of the Major Permit to Alter, but CEQA review must be completed before the HPC can act on approval of the project.

CONCERN 10: Input from San Francisco Heritage: The appellant requests review of the proposed project by San Francisco Heritage, a non-profit historic preservation organization.

RESPONSE TO CONCERN 10: The proposed entitlements do not require review by San Francisco Heritage, nor is there a requirement under CEQA for the project to be reviewed by San Francisco Heritage. However, the project sponsor provided San Francisco Heritage the opportunity to review

and comment on the project, as revised. Following its review, San Francisco Heritage provided a comment letter dated January 23, 2019, which has been added to the appeal packet. In summary, the letter states that San Francisco Heritage "feels that the proposed adaptive reuse as a hotel is appropriate and sympathetic to the long-term preservation of the historic building," "applauds the sponsor for its efforts so far to incorporate multiple design changes recommended by the [California Office of Historic Preservation]," and "Heritage is reassured by the project sponsor's demonstrated commitment to fully comply with the Secretary's Standards."[23] Overall, while San Francisco Heritage's review is not required by department process or under CEQA, the letter received from the organization indicates the organization has reviewed the project and feels that the project's proposed adaptive reuse is appropriate and sympathetic to the long-term preservation of the building.

Appeal 2 – Appellant Yasin Salma

The concerns raised by Yasin Salma, in an appeal letter filed September 11, 2018 and supplemental e-mails dated September 19 and 20, are cited below and are followed by the Planning Department's responses. The second appellant's concerns are numbered sequentially, continuing the numbering of the concerns addressed above.

CONCERN 11: Change of Use for Parking: The appellant asserts that the proposed project would illegally change a portion of the use of the first floor from retail to valet parking use.

RESPONSE TO CONCERN 11: The appellant has indicated the basis for his appeal regards the parking for the proposed hotel. No parking, including by valet, would be provided onsite for the proposed hotel. As described in the Transportation topic of the PMND on p. 3, the project sponsor would provide valet service that would be available for all building guests through a contracted third-party valet service. The third-party valet company would be responsible for securing parking contracts with existing local parking garages to accommodate the daily valet parking demand. The valet service would operate in the right-of-way on Stevenson Street. The valet stand would be located at the eastern end of a proposed 60-foot on-street passenger loading zone, approximately 70 feet east of the Third and Stevenson Street intersection. The project sponsor would request that the SFMTA install a 60-foot-long passenger loading zone (3 spaces) for hotel valet service along the project frontage on the north side of Stevenson Street.

The proposed project's valet operations would not displace existing retail uses at the project site, as there are no existing retail uses along Stevenson Street at the project site. In addition, the appellant states that the first floor would be illegally changed from all retail use to retail use on Third Street and "changing 50 percent of first floor from retail to valet parking for the Hearst Hotel." This is incorrect. The proposed project would not alter any existing retail uses at the Hearst Garage (block 3707, lot 057, the block bound by Stevenson Street, Annie Street, Jessie Street and Third Street), which is across Stevenson Street from the site, but not part of the project site. As such, there would be no effect from the proposed project to the existing retail uses at the Hearst Garage. The proposed

[23] San Francisco Heritage, January 23, 2019. Letter Regarding Hearst Building Rehabilitation Project.

project would, however, alter the first floor of the project site by eliminating existing retail east of the building entrance along the building frontage on Third Street in order to accommodate a lobby and lounge, as shown in Figure 3 of the PMND.

The valet service would be located curbside on the north side of Stevenson Street, and would primarily park vehicles at the Hearst Garage across from the project site on Stevenson Street, using the vehicle entrance from the south side of Stevenson Street, approximately 70 feet east of the project site. The proposed project would not result in any physical changes to the Hearst Garage. Currently, there are two retail tenants in the Hearst Garage along Third Street. The proposed project would not affect these retail spaces. The Hearst Garage has been operating based on code-conforming uses. The facility is currently permitted as a continuation of an existing parking facility in the C-3-O zoning district, per sections 178 and 210.2 of the Planning Code. There are currently no open complaints regarding the Hearst Garage, and no applications on file at the Planning Department for the Hearst Garage.

In summary, there is no evidence that the proposed project would result in a change of use or loss of existing retail uses along Third Street in the Hearst Garage, nor has the appellant provided any evidence of a proposed change in use. The proposed changes to retail uses in the Hearst Building on the project site have been described in the PMND. To the extent that this Concern 8 alleges a potential land use change that is not part of proposed project, Concern 8 does not relate to the analysis of the project under CEQA.

CONCERN 12: Inclusion of Public Art/Green Wall: The appellant states that the sponsor should install a green wall or other artwork to beautify the Hearst Garage.

RESPONSE TO CONCERN 12: As stated above, the Hearst Garage is not located on the project site and is not part of the proposed project. Vehicles utilizing the proposed valet service may be parked in the Hearst Garage or elsewhere in the project's vicinity. The appellant's suggestion to include a green wall or other artwork on the outside of the Hearst Garage is noted and has been provided to the project sponsor, which does not own or otherwise control the Hearst Garage. There is no requirement for the proposed project to provide a green wall or other artwork on an adjacent building outside of the project site. This comment does not relate to the analysis of the project under CEQA, nor has the appellant provided any evidence that a green wall or artwork relates to the analysis of the proposed project under CEQA.

CONCERN 13: Analysis of Parking, Noise and Pollution: The appellant asserts that parking, noise, and pollution should be included in the report for the proposed project.

RESPONSE TO CONCERN 13: Parking, noise, and pollution from the proposed project are analyzed as required by CEQA in the PMND. The analysis summarized in the PMND is documented in the supporting technical reports cited. As noted on p. 13 of the PMND, parking impacts are not considered significant environmental impacts for infill projects located within a transit priority area in accordance with California Public Resources Code Section 21099. The transportation impact study (summarized under topic 4, Transportation and Circulation, beginning on p. 40 of the PMND) prepared for the proposed project did, however, analyze vehicular site circulation as well as commercial and passenger loading, among other topics, and no significant impacts were identified. Noise was analyzed under topic 5, beginning on p. 57 of the PMND. All

noise impacts were found to be less than significant with mitigation or less than significant. Three mitigation measures related to noise were identified to reduce outdoor fixed noise, 4th floor terrace noise, and rooftop deck noise. Air quality was analyzed in topic 6, beginning on p. 66 of the PMND. All air quality impacts were found to be less than significant with mitigation or less than significant, and two mitigation measures were identified to reduce construction emissions and diesel generator emissions below significant levels.

The PMND analyzed the topics stated by the appellant, and the appellant has not provided any specific information or any evidence about any of these topics that requires further analysis.

CONCLUSION

According to CEQA Guidelines section 15063(b)(1), an EIR is required to be prepared if there is substantial evidence that any aspect of a project, either individually or cumulatively may, cause a significant effect on the environment that cannot be mitigated to a less-than-significant level. Neither appellant has provided substantial evidence that would indicate that the proposed project would have a significant impact on the environment that cannot be mitigated to a less-than-significant level, necessitating the preparation of an EIR. The PMND provides an accurate characterization of the proposed project (as modified) as required by CEQA and provides substantial evidence that the proposed project would not result in significant impacts to the environment. Therefore, preparation of an EIR is not required.

Staff recommends that the Planning Commission adopt the motion to uphold the MND. The appellants have not presented any substantial evidence supporting a fair argument that a significant environmental effect may occur as a result of the project, and that would warrant preparation of an EIR.