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**Delivered Via E-Mail** (bos.legislation@sfgov.org)

President Norman Yee and Supervisors  
San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102

**Re: 1088 Howard Street  
Opposition to Appeal of Community Plan Evaluation  
BOS File No.: 200891  
BOS Hearing Date: October 6, 2020  
Planning Department Case No.: 2017-009796ENV  
Our File No.: 10894.03**

Dear President Yee and Supervisors:

Our office represents 1088 Howard St., LLC (the “**Project Sponsor**”), the owner of the property located at 1088 Howard Street (the “**Property**”). The Project Sponsor proposes to preserve a portion of the existing historic industrial building at the Property and construct a new seven-story, 24,023 square foot building with 24 two-bedroom dwelling units, including three affordable on-site units, and ground floor retail space (the “**Project**”) on an underutilized opportunity site. The Property is located in the Mixed Use-General (“**MUG**”) zoning district, where housing over ground floor commercial uses is highly encouraged. The City, as this Board well knows, is in the midst of a housing crisis and needs housing supply, particularly the smaller-unit housing type proposed here.

The present appeal is brought following the Planning Commission’s unanimous 6-0 approval of the Project at a discretionary review hearing on June 4, 2020. In approving the Project, the Planning Commission approved a Community Plan Exception (“**CPE**”) under the California Environmental Quality Act (“**CEQA**”) for the Project. The appellants are residents at 195 7<sup>th</sup> Street, which is located adjacent to the Property.

The burden on appellants to overturn the CPE is high, because a significant amount of environmental review already has occurred, and the Project already is subject to a number of mitigation measures. The proposed development density at the Property was studied by the Eastern Neighborhoods Plan Environmental Impact Report (PEIR), and the Project was further

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studied by the CPE to confirm there are no new impacts or more severe impacts than previously identified. The CPE confirmed no such impacts exist. As such, we urge the Board to deny the appeal.

## I. PROJECT BENEFITS

The Project provides much-needed new housing – 24 modestly-sized two-bedroom units, including 3 on-site affordable units. In addition, the Project provides 2,559 square feet of ground-floor retail space along Howard Street and a total of 2,420 square feet of open space for the building’s residents, consisting of 2 private decks at the rear of the second floor, a private deck on the third floor, and a 1,680 square foot roof deck. The Project does not propose any off-street parking, and provides 24 Class 1 and 2 Class 2 bicycle parking spaces for the residential and retail uses.

To preserve the character of the existing historic industrial building, the eastern portion of the new building will include a 10-foot setback along Howard Street to distinguish the new construction from the existing. The floor level of the existing mezzanine will become residential, preserving the original glazing patterns.

- Compatibility with Design Guidelines. The Project is appropriate and desirable in use, massing, size, and overall scope. It is compatible with the surrounding neighborhood and is consistent with the Residential Design Guidelines (“**RDG**”) and the Planning Code, in particular the rear yard location—which matches the existing pattern on the block that includes a large outdoor children’s play area.
- Light, Air, and Privacy. The Project provides a light well on floors two through seven on the western façade that measures 3 feet by 25 feet 9 inches. The Property is located in a densely populated area where the prevailing neighborhood pattern is to construct buildings to the full width of the lot, with most structures abutting each other. Nevertheless, the matching oversized light well proposed by the Project maintains adequate access to light, air, and privacy for the adjacent neighbors. This shared light well matches at least one or two windows for each unit facing the Project site. The Project’s windows will be staggered to break the line of sight between the two buildings. The Project—two stories shorter than the 85-foot height limit—also will not significantly alter access to light for the adjacent building’s solar panels. The Planning Commission required a setback of 1’-0” at the neighbor’s property line windows to provide even more light and air.

## II. NO CEQA VIOLATION EXISTS

### A. THE STANDARD OF REVIEW TO OVERTURN A CPE IS HIGH

Under San Francisco Administrative Code Section 31.16, the Board of Supervisors is required to affirm the exemption determination if it finds that the project conforms to the requirements for exemptions set forth in CEQA.

Under CEQA, projects that are consistent with development density established by an area plan EIR such as the Eastern Neighborhoods PEIR here, do not require additional environmental review except as necessary to determine whether project-specific effects not identified in the area plan EIR exist.<sup>1</sup> In fact, CEQA “mandates” that projects consistent with development density established through an area plan EIR “shall not” require additional environmental review except in limited circumstances.<sup>2</sup> Such limited circumstances include when it is necessary to examine whether the project will result in:

- (1) significant effects that are peculiar to the project or its site,
- (2) new significant impacts that were not analyzed under the prior area plan EIR,
- (3) potentially significant off-site impacts and cumulative impacts which were not discussed in the prior area plan EIR, or
- (4) increased severity of significant impacts discussed in the prior area plan EIR.<sup>3</sup>

In other words, if an impact is not peculiar to the project site or to the project, or has been addressed as a significant effect in the prior area plan EIR, or can be substantially mitigated, then a CPE is required.<sup>4</sup>

Reversal of the Planning Department’s determination to issue the CPE is only appropriate if substantial evidence fails to support the Department’s determination<sup>5</sup>. Substantial evidence means “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”<sup>6</sup> CEQA does not require technical perfection, scientific certainty, or an exhaustive analysis of all potential issues or all information that is available on an issue.<sup>7</sup> Nor is the City required to conduct every recommended test and perform all recommended research in evaluating a project’s environmental impacts.<sup>8</sup> In applying the deferential substantial evidence standard, any reasonable doubts must be resolved in the lead agency’s favor.<sup>9</sup>

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<sup>1</sup> CEQA Guidelines, Section 15183(b).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> CEQA Guidelines, Section 15183(c).

<sup>5</sup> *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1114-1116 (“*Berkeley Hillside*”).

<sup>6</sup> CEQA Guidelines, Section 15384(a).

<sup>7</sup> *Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1397; *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26.

<sup>8</sup> CEQA Guidelines, Section 15204(a).

<sup>9</sup> *Berkeley Hillside, supra*, 60 Cal.4th at p. 1114-1115.

## **B. APPELLANTS DO NOT IDENTIFY ANY CEQA VIOLATIONS**

Appellants raise three issues in this appeal, each of which is described below and, as shown, do not constitute CEQA violations.

### *1. Construction Noise During the Ongoing COVID-19 Pandemic*

Appellants raise concerns about construction noise during the COVID-19 pandemic, stating that being forced to stay at home during the pandemic will subject them to greater construction noise impacts. These concerns are not CEQA violations for a number of reasons.

First, the Eastern Neighborhoods PEIR conservatively analyzed the plan's construction noise impacts by assuming that residential noise sensitive receptors would be home during construction activities, including during normal business hours (*i.e.*, 8 a.m. to 5 p.m.). With these conservative assumptions, the Eastern Neighborhoods PEIR determined that development under the plan would result significant construction noise impacts. But the PEIR also found that these impacts would be reduced to a less-than-significant level with implementation of mitigation measures. These mitigation measures are described below.

In addition, construction of the Project is unlikely to begin for another year. Although we can in no way guarantee what the status of the City's COVID-19 response will be at that time, it is unlikely that we will continue to have the same restrictive measures in place at that time. In addition, the City has determined as a matter of policy that construction, in particular the construction of housing with on-site affordable units, should continue during the pandemic.

Lastly, the Project will be subject to additional measures to ensure that noise impacts are less than significant. The Project Sponsor is required to develop a set of site-specific noise attenuation measures under the supervision of a qualified acoustical consultant. Prior to commencing construction, a plan for such measures must be submitted to the Planning Department and Health Department to ensure that maximum feasible noise attenuation will be achieved. This review will allow the City to ensure that noise impacts are less than significant.

These attenuation measures must include as many of the following control strategies, as feasible, and may include other measures as deemed appropriate by the acoustical consultant:

- Installation of temporary plywood noise barriers around a construction site, particularly where the site adjoins noise-sensitive uses;
- Utilization of noise control blankets on the building structure as the building is erected to reduce noise emission from the site;
- Evaluation of the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings housing sensitive uses;
- Monitoring the effectiveness of noise attenuation measures by taking noise measurements; and

- Posting signs on-site pertaining to permitted construction days and hours and complaint procedures and who to notify in the event of a problem, with telephone numbers listed.

Furthermore, all construction activities are subject to the San Francisco Noise Ordinance (San Francisco Police Code Article 29), which limits the amount of construction noise at the project site and is enforced by the Department of Building Inspection during normal business hours (8:00 a.m. to 5:00 p.m.) and by the Police Department during all other hours. Lastly, the Project would be subject to any requirements imposed by the City in connection with the pandemic should those be in place at the time of construction.

All of the foregoing, in addition to the other information set forth in the record, constitutes substantial evidence supporting the Planning Department's conclusions concerning construction noise in the CPE.

### 2. *Sewage Disruption and Backflow at 195 7th Street Building*

Appellants express concern that their building "already has backflow issues with the sewer line and they anticipate that an additional sewer line from the project will exacerbate this problem." Appellants have raised this concern previously and it has been addressed by the Planning Department. The Property currently consists entirely of impervious surfaces. As a result, the Project would not substantially increase the amount of stormwater entering the combined sewer system because the Project would not increase impervious surfaces at the project site.

In addition, the project site is connected to a different sewer main than the appellants' 195 7<sup>th</sup> Street building. The Property is connected to the Howard Street sewer main and the 195 7<sup>th</sup> Street building is connected to the 7<sup>th</sup> Street sewer main. Furthermore, the Property is downstream from the 195 7<sup>th</sup> Street building. Properties that are downstream are unlikely to affect upstream properties.

The Project is subject to the city's Stormwater Management Ordinance and the Stormwater Management Requirements and Design Guidelines. Compliance with this law and regulations would ensure that the design of the Project includes installation of appropriate stormwater management systems that retain runoff on site, promote stormwater reuse, and limit discharges from the site from entering the city's combined stormwater/sewer system. This would ensure the Project has no significant impacts on the sewer system, including nearby properties.

All of the foregoing, in addition to the other information set forth in the record, constitutes substantial evidence supporting the Planning Department's conclusions concerning sewage disposal in the CPE.

### 3. *Air Quality at 195 7th Street Building*

Appellants express concern that the CPE did not study the Project's impacts on the air quality inside their building, and potential increased PM<sub>2.5</sub> levels. These concerns are unfounded.

The Project is a residential building, the operation of which will not produce any noxious emissions or cause any significant impact concerning PM2.5 levels or any other criteria air pollutants in the appellants' building. (CPE at pp. 32-33.)

Appellants are concerned that certain property line windows will be blocked by the proposed new building, reducing air flow. It is a well-settled rule in San Francisco that property line windows are not protected from adjacent development. (Building Code Section 7.05.8.) To provide the appellants with additional airflow, the Planning Commission required the new building be set back by one foot at the location of the property line windows. The Project will comply with this requirement. The Project also will have a light well matching the appellants' light well to further enhance airflow. Notwithstanding all of the foregoing, the Project cannot cause a significant impact where the underlying cause of the impact is the neighbors' own unlawful property condition.

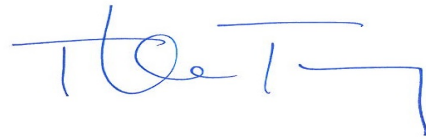
All of the foregoing, in addition to the other information set forth in the record, constitutes substantial evidence supporting the Planning Department's conclusions concerning air quality in the CPE.

### III. CONCLUSION

This is a very worthy Project providing much-needed housing, particularly this type of housing with smaller, two bedroom units, including three on-site affordable units. Development of the Property was first studied by the Eastern Neighborhoods PEIR, and then by the CPE to ensure there were no significant impacts peculiar to the Property or to the Project, or that have not been addressed as a significant impact in the Eastern Neighborhoods PEIR, or that are not mitigated. As such, we urge the Board to uphold the CPE and deny the appeal.

Very truly yours,

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