

File No. 221163

Committee Item No. 1

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight (Special) Date: July 13, 2023

Board of Supervisors Meeting: \_\_\_\_\_ Date: \_\_\_\_\_

#### Cmte Board

<input type="checkbox"/>	<input type="checkbox"/>	Motion
<input type="checkbox"/>	<input type="checkbox"/>	Resolution
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input type="checkbox"/>	<input type="checkbox"/>	Budget and Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Youth Commission Report
<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Department/Agency Cover Letter and/or Report
<input type="checkbox"/>	<input type="checkbox"/>	MOU - FY2022-2024 - Clean
<input type="checkbox"/>	<input type="checkbox"/>	MOU - FY2022-2024 - Redline
<input type="checkbox"/>	<input type="checkbox"/>	Grant Information Form
<input type="checkbox"/>	<input type="checkbox"/>	Grant Budget
<input type="checkbox"/>	<input type="checkbox"/>	Subcontract Budget
<input type="checkbox"/>	<input type="checkbox"/>	Contract / DRAFT Mills Act Agreement
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Form 126 – Ethics Commission
<input type="checkbox"/>	<input type="checkbox"/>	Award Letter
<input type="checkbox"/>	<input type="checkbox"/>	Application
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Public Correspondence

#### OTHER

<input checked="" type="checkbox"/>	<input type="checkbox"/>	DRAFT Development Agrmt
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Developers Request 112122
<input checked="" type="checkbox"/>	<input type="checkbox"/>	PC Motion No. 20196 052418
<input checked="" type="checkbox"/>	<input type="checkbox"/>	PC Motion No. 20707 052120
<input checked="" type="checkbox"/>	<input type="checkbox"/>	PC Motion No. 20708 052120
<input checked="" type="checkbox"/>	<input type="checkbox"/>	PC Motion No. 20726 052820
<input checked="" type="checkbox"/>	<input type="checkbox"/>	PC Motion No. 20727 052820
<input checked="" type="checkbox"/>	<input type="checkbox"/>	PC Motion No. 20728 052820
<input checked="" type="checkbox"/>	<input type="checkbox"/>	PC Reso No. 20709 052120
<input checked="" type="checkbox"/>	<input type="checkbox"/>	PC Reso No. 20710 052120
<input checked="" type="checkbox"/>	<input type="checkbox"/>	PC Reso No. 20711 052120
<input checked="" type="checkbox"/>	<input type="checkbox"/>	PC Reso No. 20712 052120
<input checked="" type="checkbox"/>	<input type="checkbox"/>	PC Reso No. 20713 052120
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Referral FYI 112222
<input checked="" type="checkbox"/>	<input type="checkbox"/>	CEQA Det Referral 062623
<input checked="" type="checkbox"/>	<input type="checkbox"/>	CEQA Determination 070323
<input checked="" type="checkbox"/>	<input type="checkbox"/>	PC Reso No. 21297
<input checked="" type="checkbox"/>	<input type="checkbox"/>	PC Reso No. 21299

**Prepared by:** Stephanie Cabrera  
**Prepared by:** \_\_\_\_\_  
**Prepared by:** \_\_\_\_\_

**Date:** July 5, 2023  
**Date:** \_\_\_\_\_  
**Date:** \_\_\_\_\_



[Development Agreement - 98 Franklin Street, LLC - 98 Franklin Street; Certain Administrative Code Waivers]

**Ordinance approving a Development Agreement between the City and County of San Francisco and 98 Franklin Street, LLC, for certain real property at 98 Franklin Street (Assessor's Parcel Block No. 0836, Lot Nos. 008, 009, and 013), consisting of three parcels located in the Van Ness & Market Residential Special Use District on the east side of Franklin Street, between Oak and Market Streets; waiving certain provisions of Administrative Code, Chapter 56; adopting findings under the California Environmental Quality Act; and making findings of conformity with the General Plan, and the eight priority policies of Planning Code, Section 101.1(b), and findings of public necessity, convenience, and general welfare under Planning Code, Section 302.**

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
**Additions to Codes** are in *single-underline italics Times New Roman font*.  
**Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.  
**Board amendment additions** are in double-underlined Arial font.  
**Board amendment deletions** are in ~~Arial font~~.  
**Asterisks (\* \* \* \*)** indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Project Findings.

The Board of Supervisors makes the following findings:

(a) California Government Code Sections 65864 et seq. authorizes any city, county, or city and county to enter into an agreement for the development of real property within its respective jurisdiction.

(b) Administrative Code Chapter 56 ("Chapter 56") sets forth certain procedures for the processing and approval of development agreements in the City and County of San Francisco (the "City").

1 (c) 98 Franklin Street, LLC, a California limited liability company (the "Developer"),  
2 is the owner of that certain real property located at 98 Franklin Street (Assessor's Parcel  
3 Block No. 0836, Lots 008, 009, and 013; the "Project Site"), which is an irregularly shaped  
4 property formed by three parcels totaling approximately 23,750 square feet, located on the  
5 east side of Franklin Street, between Oak and Market Streets in the Van Ness & Market  
6 Residential Special Use District.

7 (d) On May 21, 2020, the Planning Commission approved Resolution Nos. 20709  
8 through 20712 and 20614, and Motion No. 20707; and on May 28, 2020, the Planning  
9 Commission approved Motion Nos. 20726 through 20728 (collectively, the "Approvals"). The  
10 Approvals entitled the Project Site for a new 36-story mixed-use building reaching a height of  
11 approximately 365 feet (and approximately 397 feet including rooftop screen/mechanical  
12 equipment), with 345 dwelling units, approximately 84,815 gross square feet of school use  
13 floor area, approximately 3,229 gross square feet of retail space, 306 Class 1 and 57 Class 2  
14 bicycle parking spaces, and three below-grade levels to accommodate up to 111 vehicle  
15 parking spaces for the residential and school uses (the "Project"). The Approvals restrict 20%  
16 of the Project's dwelling units as affordable. The Approvals are on file with the Planning  
17 Department, located at 49 South Van Ness, Suite 1400, San Francisco, CA 94103.

18 (e) On November 21, 2022, the Developer submitted to the Planning Department a  
19 request to amend the Approvals and enter into a development agreement to (1) increase the  
20 Project's height limit to 400 feet (excluding permitted rooftop screen/mechanical equipment),  
21 (2) increase the number of dwelling units to 385, (3) permit a land dedication to the City of real  
22 property at 600 Van Ness Avenue (Block 0763, Lots 006 through 009; the "Affordable Housing  
23 Site"), or other real property acceptable to the Mayor's Office of Housing and Community  
24 Development ("MOHCD"), exceeding the dwelling unit requirements of Planning Code Section  
25 249.33(b)(16), at no cost to the City, (4) waive all but one million dollars (\$1,000,000) of the

1 Project's applicable Market and Octavia Affordable Housing fee under Planning Code Section  
2 416 and waive all of the Project's applicable Van Ness Residential Special Use District  
3 Affordable Housing fee pursuant to Planning Code Section 424, with the intent that these  
4 funds be dedicated to Parcel K (located at the southeast corner of the intersection of Hayes  
5 Street and Octavia Boulevard, as described in the Market & Octavia Neighborhood Plan), and  
6 (5) vest the Project's Approvals for five years following the effective date of the development  
7 agreement (collectively, the "Approval Modifications").

8 (f) This ordinance does not constitute an approval of any new or revised project  
9 located at the Affordable Housing Site. In 2018, the Planning Department prepared a  
10 mitigated negative declaration for a 138-foot mixed use project encompassing 156,598 square  
11 feet of residential uses, 168 dwelling units, 6,241 square feet of ground floor commercial uses,  
12 and 22,900 square feet of parking at the Affordable Housing Site (Planning Department Case  
13 Number 2015-012729ENV). At the time, the Planning Commission adopted CEQA findings  
14 and a Mitigation and Monitoring Reporting Program ("MMRP") in its Motion No. 20196  
15 (Planning Department Case No. 2015-012729CUA) for the previously approved 168-unit  
16 project at the Affordable Housing Site. The CEQA findings and the MMRP contained in  
17 Planning Commission Motion No. 20196 are incorporated herein by this reference thereto, as  
18 applicable to the land dedication authorized by this ordinance. The City is not otherwise  
19 approving any changes to the approved project at 600 Van Ness Avenue. If and when any  
20 revised project for the Affordable Housing Site is undertaken, or is submitted to the City for  
21 review, the City will conduct any additional environmental review required by CEQA for that  
22 project.

23 (g) The City and Developer negotiated a development agreement to implement the  
24 Approval Modifications (the "Development Agreement"), a copy of which is on file with the  
25 Clerk of the Board of Supervisors in File No. 221163 and incorporated herein by reference.

1 (h) The Planning Department has determined that as a result of the development of  
2 the Project Site with the Approval Modifications in accordance with the Development  
3 Agreement, clear benefits to the public will accrue that could not be obtained through  
4 application of existing City ordinances, regulations, and policies, as more particularly  
5 described in the Development Agreement. Specifically, the Development Agreement will  
6 provide an affordable housing contribution to the City that will exceed the requirements of  
7 applicable City codes.

8 (i) On March 30, 2023, at a duly noticed public hearing, the Planning Commission  
9 approved (1) Resolution No. R-21297, recommending to the Board of Supervisors approval of  
10 the Approval Modifications, including changes to the Height Map and Planning Code (the  
11 "Companion Rezoning Legislation"), upon the effective date of the Development Agreement,  
12 and (2) Resolution No. R-21299, recommending to the Board of Supervisors approval of the  
13 Development Agreement. In addition, the Planning Commission, as part of Resolution No. r-  
14 21297, adopted findings that the Project, with the Approval Modifications, is, on balance,  
15 consistent with the General Plan and the eight priority policies of Planning Code Section 101.1  
16 and adopted findings under Planning Code Section 302 that the Project will serve the public  
17 necessity, convenience, and general welfare (the "Planning Commission General Plan  
18 Consistency Findings"). The Planning Commission Resolutions referenced in this subsection  
19 (i) are on file with the Clerk of the Board in File No. 221163 and incorporated into this  
20 ordinance.

21  
22 Section 2. California Environmental Quality Act Findings.

23 The Planning Commission in Resolution No. R-21297 also adopted environmental  
24 findings under the California Environmental Quality Act (California Public Resources Code  
25 Sections 21000 et seq.; "CEQA"), that the Project with the Approval Modifications satisfied all

1 the requirements of CEQA (the "Planning Commission CEQA Findings"). A copy of the  
2 Planning Commission CEQA Findings is on file with the Clerk of the Board of Supervisors in  
3 File No. 221163. The Board of Supervisors incorporates the Planning Commission CEQA  
4 Findings into this ordinance, and adopts these finding as its own.

5  
6 Section 3. Public Necessity, General Plan, and Planning Code Section 101.1(b)  
7 Findings.

8 (a) The Board of Supervisors finds that the Development Agreement with the  
9 Approval Modifications will serve the public necessity, convenience, and general welfare in  
10 accordance with Planning Code Section 302 for the reasons set forth in Planning Commission  
11 Resolution No. R-21299 recommending approval of the Development Agreement.

12 (b) The Board of Supervisors finds that the Development Agreement with the  
13 Approval Modifications is, on balance, in conformity with the General Plan and the eight  
14 priority policies of Planning Code Section 101.1 for the reasons set forth in the Planning  
15 Commission General Plan Consistency Findings.

16  
17 Section 4. Approval of Development Agreement.

18 (a) The Board of Supervisors approves all of the terms and conditions of the  
19 Development Agreement, in substantially the form on file with the Clerk of the Board of  
20 Supervisors in File No. 221163.

21 (b) The Board of Supervisors approves and authorizes the execution, delivery, and  
22 performance by the City of the Development Agreement, subject to the Developer's payment  
23 of all City costs with respect to the Development Agreement. Upon receipt of the payment of  
24 the City's costs billed to the Developer, the Director of Planning and other City officials listed  
25 thereon are authorized to execute and deliver the Development Agreement, and the Director

1 of Planning and other applicable City officials are authorized to take all actions reasonably  
2 necessary or prudent to perform the City's obligations under the Development Agreement in  
3 accordance with the terms of the Development Agreement and Chapter 56, as applicable.  
4 Without limiting the foregoing, MOHCD is authorized to take all actions necessary or prudent  
5 to accept title to the Affordable Housing Site, or to an alternative site acceptable to MOHCD  
6 that equals or exceeds the size needed to build not less than 168 dwelling units and does not  
7 materially increase any costs to MOHCD for development of affordable housing on that  
8 alternative site. The Director of Planning, at the Director's discretion and in consultation with  
9 the City Attorney and the Director of MOHCD, is authorized to enter into any additions,  
10 amendments, or other modifications to the Development Agreement that the Director of  
11 Planning determines are in the best interests of the City and that do not materially increase  
12 the obligations or liabilities of the City or materially decrease the benefits to the City under the  
13 Development Agreement, subject to the approval of any affected City agency as more  
14 particularly described in the Development Agreement.

15 (c) As set forth in the Development Agreement, Developer will not receive any of  
16 the fee waivers described as part of the Approval Modifications unless and until the City  
17 accepts title to the Affordable Housing Site, or to an alternative site acceptable to MOHCD, on  
18 or before the date that the fees would otherwise be due and payable.

19  
20 Section 5. Administrative Code Chapter 56 Waivers.

21 In connection with the Development Agreement, the Board of Supervisors finds that the  
22 requirements of Administrative Code, Chapter 56 have been substantially complied with, and  
23 hereby waives any procedural or other requirements of Chapter 56 if and to the extent that  
24 they have not been complied with.  
25

1           Section 6. Ratification of City Officials' Acts.

2           All actions taken by City officials in preparing and submitting the Development  
3 Agreement to the Board of Supervisors for review and consideration are hereby ratified and  
4 confirmed, and the Board of Supervisors hereby authorizes all subsequent action to be taken  
5 by City officials consistent with this ordinance.  
6

7           Section 7. Effective and Operative Dates.

8           (a) This ordinance shall become effective 30 days after enactment. Enactment occurs  
9 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not  
10 sign the ordinance within ten days of receiving it, or the Board of Supervisor's overrides the  
11 Mayor's veto of the ordinance; provided.,

12           (b) This ordinance shall become operative on the effective date of the companion  
13 rezoning ordinance in Board File No. 221164, which, among other things, modifies the height  
14 limit at Assessor's Block No. 0836, Lot No. 013.  
15

16 APPROVED AS TO FORM:  
17 DAVID CHIU, City Attorney

18 By: /s/ CHARLES SULLIVAN  
19 CHARLES SULLIVAN  
Deputy City Attorney

20 n:\vegana\as2022\2300146\01639455.docx  
21  
22  
23  
24  
25

## **LEGISLATIVE DIGEST**

[Development Agreement - 98 Franklin Street, LLC - 98 Franklin Street; Certain Administrative Code Waivers]

**Ordinance approving a Development Agreement between the City and County of San Francisco and 98 Franklin Street, LLC, for certain real property at 98 Franklin Street (Assessor's Parcel Block No. 0836, Lot Nos. 008, 009, and 013), consisting of three parcels located in the Van Ness & Market Residential Special Use District on the east side of Franklin Street, between Oak and Market Streets; waiving certain provisions of Administrative Code, Chapter 56; adopting findings under the California Environmental Quality Act; and making findings of conformity with the General Plan, and the eight priority policies of Planning Code, Section 101.1(b), and findings of public necessity, convenience, and general welfare under Planning Code, Section 302.**

### **Existing Law**

In 2020, the City entitled a project at 98 Franklin Street, for a new 36-story mixed-use building reaching a height of approximately 365 feet, with 345 dwelling units, and restricting 20% of the project's dwelling units as affordable. The project sponsor has applied to the Planning Department for a development agreement that would (1) increase the project's height to 400 feet (excluding rooftop screen/mechanical equipment), (2) increase the number of dwelling units to 385, (3) permit a land dedication to the City of real property at 600 Van Ness Avenue, or other real property acceptable to the Mayor's Office of Housing and Community Development ("MOHCD"), (4) waive all but one million dollars (\$1,000,000) of the applicable affordable housing fees, with the intent that these funds be dedicated to Parcel K in the Market & Octavia Neighborhood Plan, and (5) vest the project approvals for five years following the effective date of the development agreement.

### **Amendments to Current Law**

This is a contract approval item. There are no amendments to law.

### **Background Information**

The affordable housing fee waivers in the development agreement will not occur unless or until MOHCD accepts the land dedication at 600 Van Ness Avenue, or an alternative site approved by MOHCD that can support the required number of affordable housing units. The legislation expresses a non-binding intent that the one million dollars paid by the Project Sponsor for affordable housing fees will be dedicated to Parcel K. This ordinance is the companion to another piece of legislation introduced on the same date, regarding changes to the Planning Code consistent with the proposed development agreement.

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## San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

[ethics.commission@sfgov.org](mailto:ethics.commission@sfgov.org) . [www.sfethics.org](http://www.sfethics.org)

Received On:

File #: 221163

Bid/RFP #:

### Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

#### 1. FILING INFORMATION

<b>TYPE OF FILING</b>	<b>DATE OF ORIGINAL FILING (for amendment only)</b>
original	
<b>AMENDMENT DESCRIPTION – Explain reason for amendment</b>	

#### 2. CITY ELECTIVE OFFICE OR BOARD

<b>OFFICE OR BOARD</b>	<b>NAME OF CITY ELECTIVE OFFICER</b>
Board of Supervisors	Members

#### 3. FILER'S CONTACT

<b>NAME OF FILER'S CONTACT</b>	<b>TELEPHONE NUMBER</b>
Angela Calvillo	415-554-5184
<b>FULL DEPARTMENT NAME</b>	<b>EMAIL</b>
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

#### 4. CONTRACTING DEPARTMENT CONTACT

<b>NAME OF DEPARTMENTAL CONTACT</b>	<b>DEPARTMENT CONTACT TELEPHONE NUMBER</b>
Leigh Lutenski	4155546679
<b>FULL DEPARTMENT NAME</b>	<b>DEPARTMENT CONTACT EMAIL</b>
ECN Office of Economic and workforce Devel	leigh.lutenski@sfgov.org

5. CONTRACTOR	
<b>NAME OF CONTRACTOR</b>  Oak Street Housing Associates, LLC	<b>TELEPHONE NUMBER</b>  415-653-3177
<b>STREET ADDRESS (including City, State and Zip Code)</b>  44 Montgomery Street #1300 San Francisco, CA 94104	<b>EMAIL</b>

6. CONTRACT		
<b>DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)</b>	<b>ORIGINAL BID/RFP NUMBER</b>	<b>FILE NUMBER (If applicable)</b> 221163
<b>DESCRIPTION OF AMOUNT OF CONTRACT</b>  n/a		
<b>NATURE OF THE CONTRACT (Please describe)</b>  A Development Agreement pursuant to San Francisco Administrative Code Section 56.4 with respect to the 98 Franklin Street Development Project (the "Project"). The Project is located on the east side of Franklin Street, between Oak and Market Streets (Assessor's Block 0836, Lots 008, 009, and 013). Project Sponsor proposes to modify the existing Project through execution of a Development Agreement and amendments to certain of the Approvals. The principal change would increase the applicable height limit from 365 feet to 400 feet which would allow the Project to include up to 385 dwelling units. In exchange for the proposed height increase and other amendments to the Approvals, the Development Agreement would require the Project to provide public benefits in excess of the existing Planning Code, including a land dedication to the City of an entitled site to be used for 100% affordable housing.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES  Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Bruce	Beal Jr	Other Principal Officer
2	Bryan	Cho	Other Principal Officer
3	David	Zussman	Other Principal Officer
4	Gino	Canori	Other Principal Officer
5	Jeff	Blau	Other Principal Officer
6	Ken	Wong	Other Principal Officer
7	Richard	O'Toole	Other Principal Officer
8	Joe	walsh	Other Principal Officer
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**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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**9. AFFILIATES AND SUBCONTRACTORS**

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#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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☐ Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.

**10. VERIFICATION**

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

**I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

**SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK**

**DATE SIGNED**

BOS Clerk of the Board

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689  
Tel. No. (415) 554-5184  
Fax No. (415) 554-5163  
TDD/TTY No. (415) 554-5227

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MEMORANDUM

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Date: June 26, 2023  
To: Planning Department  
From: Stephanie Cabrera, Clerk of the Government Audit and Oversight  
Subject: Board of Supervisors Legislation Referral - File No. 221163  
Development Agreement - 98 Franklin Street, LLC - 98 Franklin Street; Certain  
Administrative Code Waivers.

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☒ California Environmental Quality Act (CEQA) Determination  
(*California Public Resources Code, Sections 21000 et seq.*)

- ☒ Ordinance / Resolution  
☐ Ballot Measure

The proposed ordinance is within the scope of The Hub Plan, 30 Van Ness Avenue Project, 98 Franklin Street Project, and Hub Housing Sustainability District Final Environmental Impact Report, Planning Department Case Nos. 2015-000940ENV, 2017-008051ENV, 2016-014802ENV, State Clearinghouse No. 2018052060, certified May 21, 2020.

06/30/2023

A handwritten signature in black ink, appearing to be "Stephanie Cabrera".

☐ Amendment to the Planning Code, including the following Findings:  
(*Planning Code, Section 302(b): 90 days for Planning Commission review*)

- ☐ General Plan    ☐ Planning Code, Section 101.1    ☐ Planning Code, Section 302

☐ Amendment to the Administrative Code, involving Land Use/Planning  
(*Board Rule 3.23: 30 days for possible Planning Department review*)

☐ General Plan Referral for Non-Planning Code Amendments  
(*Charter, Section 4.105, and Administrative Code, Section 2A.53*)

(Required for legislation concerning the acquisition, vacation, sale, or change in use of City property; subdivision of land; construction, improvement, extension, widening, narrowing, removal, or relocation of public ways, transportation routes, ground, open space, buildings, or structures; plans for public housing and publicly-assisted private housing; redevelopment plans; development agreements; the annual capital expenditure plan and six-year capital improvement program; and any capital improvement project or long-term financing proposal such as general obligation or revenue bonds.)

☐ Historic Preservation Commission

- ☐ Landmark (*Planning Code, Section 1004.3*)  
☐ Cultural Districts (*Charter, Section 4.135 & Board Rule 3.23*)  
☐ Mills Act Contract (*Government Code, Section 50280*)  
☐ Designation for Significant/Contributory Buildings (*Planning Code, Article 11*)

Planning Department Referral  
June 26, 2023

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Please send the Planning Department determination to Stephanie Cabrera at  
[Stephanie.Cabrera@sfgov.org](mailto:Stephanie.Cabrera@sfgov.org)

03.17.23

RECORDING REQUESTED BY  
CLERK OF THE BOARD OF SUPERVISORS  
OF THE CITY AND COUNTY OF SAN FRANCISCO

(Exempt from Recording Fees  
Pursuant to Government Code  
Section 27383)

AND WHEN RECORDED MAIL TO:

Angela Calvillo, Clerk of the Board of Supervisors  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

**DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
THE CITY AND COUNTY OF SAN FRANCISCO  
AND 98 FRANKLIN STREET, LLC,  
RELATIVE TO THE DEVELOPMENT KNOWN AS  
98 FRANKLIN STREET DEVELOPMENT PROJECT**

Block 0836; Lots 008, 009, and 013



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**Exhibits**

A	Request Letter
B	Conditions of Approval
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D	Legal Description
E	Form of Assignment and Assumption Agreement
F	Form of Assignment and Assumption Agreement for Acquisition of the Affordable Housing Site

**DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
THE CITY AND COUNTY OF SAN FRANCISCO  
AND 98 FRANKLIN STREET, LLC, A DELAWARE LIMITED LIABILITY COMPANY,  
RELATIVE TO THE DEVELOPMENT KNOWN AS  
THE 98 FRANKLIN STREET DEVELOPMENT PROJECT**

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) dated for reference purposes only as of this \_\_\_\_\_ day of \_\_\_\_\_, 2023, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a political subdivision and municipal corporation of the State of California (the “**City**”), acting by and through its Planning Department, and 98 Franklin Street, LLC, a California limited liability company, its permitted successors and assigns (“**Developer**”), pursuant to the authority of Section 65864 *et seq.* of the California Government Code.

**RECITALS**

This Agreement is made with reference to the following facts:

A. Developer is the owner of that certain property known as 98 Franklin Street (the “**Project Site**”) which is an irregularly shaped property formed by three parcels measuring a total of approximately 23,750 square feet, located on the east side of Franklin Street, between Oak and Market Streets more particularly described in Exhibit D. The Project Site is within the C-3-G District and the Van Ness and Market Residential Special Use District under the San Francisco Planning Code (the “**Planning Code**”).

B. On December 21, 2017, Developer submitted development applications for a proposal to construct on the Project Site a new 36-story mixed use building reaching a height of approximately 365 feet (approximately 397 feet including rooftop screen/mechanical equipment), and including 345 dwelling units, approximately 84,815 gross square feet of school use floor area, approximately 3,229 square feet of retail space, 306 Class 1 and 57 Class 2 bicycle parking spaces, and three below-grade levels to accommodate up to 111 vehicle parking spaces for the residential and school uses (the “**Initial Project**”).

C. The Van Ness and Market Residential Special Use District in Section 249.33 of the Planning Code provides that housing developments must provide affordable housing at the higher of (i) the amount required by Section 249.33(b), or (ii) the amount required by Planning Code Section 415 *et seq.* (the “**Inclusionary Requirement**”).

D. On May 21, 2020, the City’s Planning Commission approved Resolutions 20707 through 20712; and on May 28, 2020, the Planning Commission approved Motions 20726 through 20728 (collectively, the “**Initial Approvals**”) for the Initial Project. In accordance with Section 249.33(b)(15), the Initial Approvals restrict 20% of the Initial Project’s Dwelling Units as affordable.

E. On November 21, 2022, Developer submitted to the Planning Department a letter request (the “**Request Letter**”) to enter into a development agreement to (i) modify certain aspects of the Initial Project’s design (as further detailed herein) such as increasing the Initial Project’s height to 400 feet (excluding permitted rooftop screen/mechanical equipment), (iii) permit a land dedication to the City of the Affordable Housing Site at no cost to the City, (iv) waive all but one million dollars (\$1,000,000.00) of the applicable Market and Octavia Area Plan and Upper Market Neighborhood Commercial District

Affordable Housing Fee under Planning Code Section 416, (v) waive one hundred percent (100%) of the applicable Van Ness and Market Affordable Housing Fee pursuant to Planning Code Section 424, and (vi) vest the Approvals (defined below) in accordance with this Agreement for five years following the effective date of this Agreement. The Request Letter is attached as Exhibit A.

F. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 et seq. (the “**Development Agreement Statute**”), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property related to the development of such property. Pursuant to the Development Agreement Statute, the City adopted Chapter 56 of the San Francisco Administrative Code (“**Chapter 56**”) establishing procedures and requirements for entering into a development agreement. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56.

G. The Parties intend that all acts referred to in this Agreement be accomplished in a way as to fully comply with CEQA, Chapters 31 and 56 of the San Francisco Administrative Code, the Development Agreement Statute, the Code Amendment Ordinance, the Enacting Ordinance (both as defined below) and all other applicable laws as of the Effective Date. This Agreement does not limit the City’s obligation to comply with applicable environmental laws, including CEQA, before taking any discretionary action regarding the Project, or Developer’s obligation to comply with all applicable laws in connection with the development of the Project.

H. On May 28, 2020, through Motion No. 20726, the Planning Commission approved findings required by CEQA, including adoption of a Mitigation Monitoring and Reporting Program (“**MMRP**”), for approval of the Initial Project.

I. Under the Approvals (defined below), the Initial Project will be modified as a 38-story mixed-use building that includes approximately 84,991 square feet of school use floor area (situated on floors 1 through 5) (the “**School Parcel**”) and approximately 385 dwelling units (situated on floors 6 through 38), approximately 2,978 square feet of retail use on the ground floor, and three below-grade levels to accommodate up to 110 vehicle parking spaces and 316 Class 1 bicycle parking spaces (the “**Residential Parcel**”; the School Parcel and Residential Parcel as developed pursuant to the Approvals collectively the “**Project**”). Developer intends to subdivide the Project Site into the Residential Parcel and the School Parcel (with the exact meets and bounds of the Residential Parcel and School Parcel to be refined at a later stage of Project design), and thereafter Transfer the Residential Parcel to Oak Street Housing Associates, LLC, a Delaware limited liability company, or its Affiliate (the “**Residential Developer**”). Developer and Residential Developer would develop the Project pursuant to a private development agreement.

J. On \_\_\_\_\_, the Planning Commission held a public hearing, duly noticed and conducted under the Planning Code, the Development Agreement Statute, and Chapter 56, to consider the Project and this Agreement. Following the public hearing, the Planning Commission, through Motion No. \_\_\_\_\_ approved a Downtown Project Authorization under Planning Code Section 309. In that same Motion No. \_\_\_\_\_, the Planning Commission adopted environmental findings under CEQA that the Project satisfied the requirements of CEQA and that no mitigation measures other than those contained in the MMRP are required to reduce significant impacts, and further determined that the Project and this Agreement will, as a whole, and taken in their entirety, continue to be consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended, and the policies set forth in Planning Code Section 101.1 of the Planning Code (together the “**General Plan Consistency Findings**”). On that same date, through Motion No. \_\_\_\_ adopted shadow

findings under Planning Code Section 295, through Resolution No. \_\_\_\_\_, recommended to the Board of Supervisors approval of this Agreement, and, through Resolution No. \_\_\_\_\_ recommended to the Board of Supervisors the adoption of an ordinance to amend the Planning Code and Zoning Map. The above-described actions, collectively, are defined as the “**Planning Approvals**”.

K. The City has determined that as a result of the development of the Project in accordance with this Agreement additional, clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies because this Agreement will result in the dedication of the Affordable Housing Site that will result in the development of more affordable housing in the City than would otherwise be developed without this Agreement.

L. On \_\_\_\_\_, the Board, having received the Planning Commission recommendations, adopted Ordinance No. \_\_\_\_\_, amending the Zoning Map, Height Map, and Planning Code (File No. \_\_\_\_\_) (the “**Code Amendment Ordinance**”), Ordinance No. \_\_\_\_\_, approving this Agreement (File No. \_\_\_\_\_), and authorizing the Planning Director to execute this Agreement on behalf of the City (the “**Enacting Ordinance**”). The Enacting Ordinance took effect on \_\_\_\_\_. The above-described actions, collectively with the Planning Approvals, are defined as the “**Approvals**” for the Project.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **AGREEMENT**

### **1. GENERAL PROVISIONS**

1.1. Incorporation of Preamble, Recitals and Exhibits. The preamble paragraph, Recitals, and Exhibits, and all defined terms contained therein, are hereby incorporated into this Agreement as if set forth in full.

1.2. Definitions. In addition to the definitions set forth in the above preamble paragraph, Recitals and elsewhere in this Agreement, the following definitions shall apply to this Agreement:

1.2.1. “**Administrative Code**” shall mean the San Francisco Administrative Code.

1.2.2. “**Affiliate**” shall mean any entity controlling, controlled by, or under common control with Developer (and ‘control’ and its correlative terms ‘controlling’, ‘controlled by’ or ‘under common control with’ mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of Developer, whether through the ownership of voting securities, by contract or otherwise).

1.2.3. “**Affordable Housing Site**” shall mean the real property at 600 Van Ness Avenue (Block 0763, Lots 006 through 009), or other real property located within the City that meets the terms and conditions as provided for in Planning Code Section 419.5(a)(2), except that: (1) in lieu of the Land Dedication Alternative requirements of Planning Code Table 419.5, such real property could accommodate a total amount of dwelling units that is equal to or greater than 35% of the units in the Project, as determined by the Planning Department; and (2) the MOHCD Director may waive application of Planning Code Section 419.5(a)(2) and/or the Procedures Manual.

1.2.4. “**Agreement**” shall have the meaning set forth in the Preamble.

- 1.2.5. **“Annual Review Date”** shall have the meaning set forth in Section 5.1.
- 1.2.6. **“Approvals”** shall have the meaning set forth in Recital L.
- 1.2.7. **“Assignment and Assumption Agreement”** shall have the meaning set forth in Section 8.3.
- 1.2.8. **“Board of Supervisors”** or **“Board”** shall mean the Board of Supervisors of the City and County of San Francisco.
- 1.2.9. **“California Environmental Quality Act (CEQA)”** California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*) and the CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 *et seq.*).
- 1.2.10. **“Chapter 56”** shall have the meaning set forth in Recital F.
- 1.2.11. **“City”** shall have the meaning set forth in the preamble paragraph. Unless the context or text specifically provides otherwise, references to the City shall mean the City acting by and through the Planning Director or the MOHCD Director following, if required, approval by the Planning Commission or the Board of Supervisors. The City’s approval of this Agreement will be evidenced by the signatures of the Planning Director.
- 1.2.12. **“City Agency”** or **“City Agencies”** shall mean, where appropriate, all City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement and that have subdivision or other permit, entitlement or approval authority or jurisdiction over the Project or the Project Site, together with any successor to any such City department, agency, board, or commission.
- 1.2.13. **“City Attorney’s Office”** shall mean the Office of the City Attorney of the City and County of San Francisco.
- 1.2.14. **“City Costs”** shall have the meaning set forth in Section 3.11.1.
- 1.2.15. **“City Party”** shall have the meaning set forth in Section 5.2.2.
- 1.2.16. **“City Report”** shall have the meaning set forth in Section 5.2.2.
- 1.2.17. **“Citywide Affordable Housing Fund”** shall have the meaning set forth Administrative Code Section 10.100-49.
- 1.2.18. **“Code Amendment Ordinance”** shall have the meaning set forth in Recital L.
- 1.2.19. **“Development Agreement Statute”** shall have the meaning set forth in the Recital F.
- 1.2.20. **“Director”** or **“Planning Director”** shall mean the Director of Planning of the City and County of San Francisco.
- 1.2.21. **“Effective Date”** shall have the meaning set forth in Section 1.3.
- 1.2.22. **“Enacting Ordinance”** shall have the meaning set forth in Recital L.
- 1.2.23. **“Event of Default”** shall have the meaning set forth in Section 7.2.

1.2.24. **“Excusable Delay”** shall have the meaning set forth in Section 6.2.1.

1.2.25. **“Impact Fees and Exactions”** shall mean any fees, contributions, special taxes, exactions, impositions, and dedications charged by the City, whether as of the date of this Agreement or at any time thereafter during the Term, in connection with the development of the Project, including but not limited to transportation and transit fees, child care requirements or in-lieu fees, housing (including affordable housing) requirements or fees, dedication or reservation requirements, and obligations for on- or off-site improvements. Impact Fees and Exactions shall not include mitigation measures set forth in the MMRP, City Costs, permit application fees, taxes or special assessments or school district fees, SFPUC capacity charges pursuant to SFPUC Resolution Nos. 07-0099 and 07-0100, and any fees, taxes, assessments impositions imposed by any non-City Agency, all of which shall be due and payable by Developer as and when due in accordance with applicable Laws.

1.2.26. **“Inclusionary Requirement”** shall have the meaning set forth in Recital C.

1.2.27. **“Indemnify”** shall mean to indemnify, defend, reimburse, and hold harmless.

1.2.28. **“Indemnified Party”** shall mean the City as indemnified by Developer.

1.2.29. **“Initial Approvals”** shall have the meaning set forth in Recital D.

1.2.30. **“Law(s)”** means, individually or collectively as the context requires, the Constitution and laws of the United States, the Constitution and laws of the State, the laws of the City, any codes, statutes, rules, regulations, or executive mandates under any of the foregoing, and any State or Federal court decision (including any order, injunction or writ) with respect to any of the foregoing, in each case to the extent applicable to the matter presented.

1.2.31. **“Litigation Extension”** shall have the meaning set forth in Section 6.2.

1.2.32. **“Losses”** shall have the meaning set forth in Section 3.10.

1.2.33. **“MMRP”** shall have the meaning set forth in Recital H.

1.2.34. **“MOHCD”** shall mean the Mayor’s Office of Housing and Community Development or successor agency.

1.2.35. **“Mortgage”** shall have the meaning set forth in Section 4.2.

1.2.36. **“Mortgagee”** shall have the meaning set forth in Section 4.2.

1.2.37. **“Notice of Default”** shall have the meaning set forth in Section 7.2.

1.2.38. **“Official Records”** shall mean the official real estate records of the City and County of San Francisco, as maintained by the City’s Recorder’s Office.

1.2.39. **“Party”** means, individually or collectively as the context requires, the City and Developer (and, as Developer, any Transferee that is made a Party to this Agreement under the terms of an Assignment and Assumption Agreement).

1.2.40. **“Parties”** shall have a correlative meaning.

1.2.41. **“Planning Approvals”** have the meaning set forth in Recital I.



1.2.42. “**Planning Code**” shall mean the San Francisco Planning Code.

1.2.43. “**Planning Commission**” or “**Commission**” shall mean the Planning Commission of the City and County of San Francisco.

1.2.44. “**Planning Approvals**” have the meaning set forth in Recital J.

1.2.45. “**Planning Department**” shall mean the Planning Department of the City and County of San Francisco.

1.2.46. “**Procedures Manual**” shall mean the Inclusionary Affordable Housing Program Monitoring and Procedures Manual effective October 11, 2018, as amended from time to time.

1.2.47. “**Project**” shall have the meaning set forth in Recital I.

1.2.48. “**Project Site**” shall have the meaning set forth in Recital A.

1.2.49. “**RED**” is the San Francisco Real Estate Division or successor agency.

1.2.50. “**Residential Parcel**” shall have the meaning set forth in Recital I.

1.2.51. “Request Letter” shall have the meaning set forth in Recital E.

1.2.52. “**School Parcel**” shall have the meaning set forth in Recital I.

1.2.53. “**SFPUC**” means the San Francisco Public Utilities Commission.

1.2.54. “**Site Permit Deadline**” shall have the meaning set forth in Section 2.1.3.

1.2.55. “**Term**” shall have the meaning set forth in Section 1.4.

1.2.56. “**Termination Deadline**” shall have the meaning set forth in Section 2.1.3.

1.2.57. “**Third Party Challenge**” shall have the meaning set forth in Section 4.3.1.

1.2.58. “**Transfer**” shall have the meaning set forth in Section 8.1.

1.2.59. “**Transferee**” shall have the meaning set forth in Section 8.1.

1.2.60. “**Transferred Property**” shall have the meaning set forth in Section 8.1.

1.3. Effective Date. This Agreement shall take effect upon the later of (i) the full execution of this Agreement by the Parties and (ii) the effective date of the Enacting Ordinance (“**Effective Date**”). The Effective Date is \_\_\_\_\_, 202\_\_.

1.4. Term. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect until the earlier of (i) Project completion (as evidenced by issuance of the temporary or final certificate of occupancy) or (ii) five (5) years after the Effective Date, unless extended or earlier terminated as provided herein (“**Term**”). Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provisions which, by their express terms, survive the expiration or termination of this Agreement.

## 2. PROJECT CONTROLS AND VESTING

### 2.1. Affordable Housing Site Dedication; Impact Fees; Planning Approvals.

2.1.1. During the Term, Developer shall have the vested right as more fully described in Section 2.2 to develop the Project in accordance with the Approvals, provided that (1) before issuance of the “first construction document” for the Project, as defined in Planning Code Section 401 and Building Code Section 107A.13.1, Developer shall have, at no cost to the City, irrevocably offered and the City, through RED and MOHCD, has accepted title to the Affordable Housing Site by either (A) an assignment of Developer’s right to accept title from the owner of the Affordable Housing Site, or (B) a direct transfer from Developer to City; (2) Developer has paid to the City’s Department of Building Inspection within the timeframes permitted under Section 2.1.2 (A) one million and No/100 dollars (\$1,000,000.00) of the Market and Octavia Area Plan and Upper Market Neighborhood Commercial District Affordable Housing Fee (which the City shall be deposited into the Citywide Affordable Housing Fund), and (B) all other applicable Impact Fees and Exactions due under Section 2.1.2. No provision of the San Francisco Municipal Code (including Planning Code Section 249.33(16)) that conflicts with the land dedication requirements, or fee collection and timing described in this Agreement (including Section 2.1.1 or Section 2.1.2) shall apply to the Project. If Developer elects to dedicate land other than the real property located at 600 Van Ness, the proposed Affordable Housing Site shall be acceptable to MOHCD to develop and construct affordable housing. In order for MOHCD to perform the review of a proposed Affordable Housing Site, the Developer shall provide due diligence documents to MOHCD as required under Section VI(F)(3) of the Procedures Manual. By approving this Agreement, the Board of Supervisors authorizes RED and MOHCD to enter into the assignment and assumption agreement, substantially in the form attached as Exhibit F, for the Affordable Housing Site pursuant to this Section 2.1.1, and to accept the Affordable Housing Site, without further action by the Board of Supervisors.

2.1.2. During the Term, (i) Developer shall pay only the Impact Fees and Exactions set forth in Exhibit C, with the amount calculated on the date payment is due as required under the applicable section of the Planning Code, and (ii) the City shall not impose any new Impact Fees and Exactions that are adopted after the Effective Date. With the exception of the Market and Octavia Area Plan and Upper Market Neighborhood Commercial District Affordable Housing Fee of one million and No/100 dollars (\$1,000,000.00), Developer will be subject to any increase or decrease in the fee amount payable and any changes in methodology of calculation (e.g., use of a different index to calculate annual increases) but will not be subject to any new types of Impact Fees and Exactions that may arise after the Effective Date. Developer shall not be required to pay any Impact Fees and Exactions set forth in Exhibit C that are no longer applicable to the Project after the Effective Date, but if such fees are expressly replaced with a different fee (as, for example, when the City expressly replaced the Transportation Impact Development Fee (TIDF) with Transportation Sustainability Fee (TSF)), then Developer will pay the replacement fee in the amount calculated on the date the payment is due. Developer will be permitted to utilize any applicable fee deferral program if enacted by the Board of Supervisors (such as in Building Code Section 107A13.3.1.1).

2.1.3. Developer may elect to terminate this Agreement at its sole discretion prior to issuance of the first construction document for the Project (the “**Termination Deadline**”) by written notice thereof to the City. Upon such termination, Developer shall have no further obligations under this Agreement (with Developer being automatically released from all obligations under this Agreement effective upon such termination) and no further rights under this Agreement, including the right to construct the Project consistent with the Approvals under Section 2.2. Upon such termination, Developer may construct the Initial Project in accordance with the Initial Approvals, subject to then-applicable Law and the conditions of such Initial Approvals, except that notwithstanding any contrary

conditions of the Initial Approvals, any deadline set forth in the Initial Approvals for issuance of a building permit or site permit to construct the Initial Project (any “**Site Permit Deadline**”) shall be extended such that Developer shall have two years to obtain an issued building permit or site permit to construct the Initial Project following Developer’s termination of this Agreement prior to the Termination Deadline. In the event Developer terminates this Agreement, nothing herein shall be interpreted to limit Developer’s right to seek revisions to the Initial Project, additional extensions of any Site Permit Deadline, or modifications of the Initial Approvals in accordance with then-applicable Law and the conditions of such Initial Approvals.

2.1.4. Notwithstanding the requirements of Planning Code Sections 145.1, 155.1, 305, or 309, the City hereby approves (1) a residential lobby with a street fronting width of approximately 52 feet and (2) an elevator to access bicycle parking facilities for non-residential uses in the building with clear passenger cab dimensions less than 70 feet and no smaller than 45 square feet, all as generally shown on the plan set attached to the Planning Approvals.

2.2. Vested Rights. The City, by entering into this Agreement, is limiting its future discretion with respect to the Approvals during the Term. Consequently, the City shall not use its discretionary authority in considering any application to change the policy decisions reflected by the Agreement and the Approvals, or otherwise to prevent or to delay development of the Project as set forth in the Agreement or the Approvals. Instead, implementing approvals that substantially conform to or implement the Agreement and the Approvals shall be issued by the City so long as they substantially comply with and conform to this Agreement and the Approvals. Developer shall have the vested right to develop the Project as set forth in this Agreement and the Approvals, including with the following vested elements: height and bulk limits, including the maximum density, intensity, gross square footages, permitted uses, amount of parking, Impact Fees and Exactions, and affordable housing requirements. The City shall not impose any additional affordable housing fees or affordable housing production requirements on the Project other than those described in this Agreement. The City shall not use its discretionary authority to change the policy decisions reflected by this Agreement or the Approvals, or otherwise to prevent or to delay development of the Project as contemplated in this Agreement or the Approvals. The City shall take no action under this Agreement or the Approvals, nor impose any condition on the Project, that would conflict with this Agreement or the Approvals.

2.3. Changes in Federal or State Laws. If Federal or State Laws issued, enacted, promulgated, adopted, passed, approved, made, implemented, amended, or interpreted after the Effective Date have gone into effect and (i) preclude or prevent compliance with one or more provisions of this Agreement, or (ii) materially and adversely affect Developer’s or the City’s rights, benefits or obligations, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State Law. In such event, this Agreement shall be modified only to the extent necessary or required to comply with such Law. If any such changes in Federal or State Laws would materially and adversely affect the construction, development, use, operation or occupancy of the Project such that the Development becomes economically infeasible, then Developer shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties, and Developer and City agree to negotiate any such amendments or solutions in good faith. Any amendment under this Section 2.3 will be subject to required City approvals, which may include the approval of the Board of Supervisors in its sole discretion.

2.4. Changes to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute. No amendment of or addition to the Development Agreement Statute which would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights of Developer hereunder, or increase the obligations or diminish the benefits to the City hereunder, shall be applicable to this

Agreement unless such amendment or addition is specifically required by Law or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected.

2.5. Taxes. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment.

### **3. DEVELOPER REPRESENTATIONS, WARRANTIES AND COVENANTS**

3.1. Interest of Developer; Due Organization and Standing. Developer represents that it is the legal owner of the Project Site, and that all other persons with an ownership or security interest in the Project Site have consented to this Agreement. Developer is a California limited liability company. Developer has all requisite power to own its property and authority to conduct its business as presently conducted. Developer has made all required state filings required to conduct business in the State of California and is in good standing in the State of California.

3.2. No Conflict with Other Agreements; No Further Approvals; No Suits. Developer warrants and represents that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement. Neither Developer's articles of organization, bylaws, or operating agreement, as applicable, nor any other agreement or Law in any way prohibits, limits, or otherwise affects the right or power of Developer to enter into and perform all of the terms and covenants of this Agreement. No consent, authorization, or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person is required for the due execution, delivery, and performance by Developer of this Agreement or any of the terms and covenants contained in this Agreement. To Developer's knowledge, there are no pending or threatened suits or proceedings or undischarged judgments affecting Developer or any of its members before any court, governmental agency, or arbitrator which might materially adversely affect Developer's business, operations, or assets or Developer's ability to perform under this Agreement.

3.3. No Inability to Perform; Valid Execution. Developer warrants and represents that it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid, and binding obligation of Developer, enforceable against Developer in accordance with its terms.

3.4. Conflict of Interest. Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the Term.

3.5. Notification of Limitations on Contributions. Through its execution of this Agreement, Developer acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for that contract or twelve (12) months after the date that contract is approved. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a

prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract. Developer acknowledges that (i) the prohibition on contributions applies to Developer, each member of Developer's board of directors, Developer's chief executive officer, chief financial officer and chief operating officer, any person with an ownership interest of more than ten percent (10%) in Developer, any subcontractor listed in the contract, and any committee that is sponsored or controlled by Developer, and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department seeking to enter into the contract must notify the Ethics Commission of the parties and any subcontractor to the contract. Additionally, Developer certifies it has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract to the City, and has provided the names of the persons required to be informed to the City department seeking to enter into that contract within thirty (30) days of submitting its contract proposal to the City department receiving that submittal, and acknowledges the City department receiving that submittal was required to notify the Ethics Commission of those persons.

3.6. Other Documents. No document furnished or to be furnished by Developer to the City in connection with this Agreement contains or will contain to Developer's knowledge any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading under the circumstances under which any such statement shall have been made.

3.7. No Suspension or Debarment. Neither Developer, nor any of its officers, have been suspended, disciplined, or debarred by, or prohibited from contracting with, the U.S. General Services Administration or any federal, state, or local governmental agency.

3.8. No Bankruptcy. Developer represents and warrants to City that Developer has neither filed nor is the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Developer's knowledge, no such filing is threatened.

3.9. Nexus/Reasonable Relationship Waiver. Developer consents to, and waives any rights it may have now or in the future, to challenge with respect to the Project, the legal validity of, the conditions, requirements, policies, or programs required by this Agreement, including, without limitation, any claim that they constitute an abuse of police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

3.10. Indemnification of City. Developer shall Indemnify the City (the "**Indemnified Party**") and the Indemnified Party's officers, agents and employees from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims ("**Losses**") arising or resulting directly or indirectly from any third party claim against any Indemnified Party arising from this Agreement or Developer's performance (or nonperformance) of this Agreement, regardless of negligence and regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed on the City or any of the City Parties, except to the extent that (i) any of the foregoing Indemnity is void or unenforceable under applicable Law, or (ii) any such Loss is the result of the negligence or willful misconduct of any Indemnified Party. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs, and the Indemnified Party's cost of investigating any claims against the Indemnified Party. All indemnifications

set forth in this Agreement shall survive until the expiration of the applicable statute of limitation or statute of repose.

3.11. Payment of Fees and Costs.

3.11.1. Developer shall pay to the City all City Costs (defined below) during the Term within thirty (30) days following receipt of a written invoice from the City. Each City Agency shall submit to the Planning Department or another City Agency as designated by the Planning Department monthly or quarterly invoices for all City Costs incurred by the City Agency for reimbursement under this Agreement, and the Planning Department or its designee shall gather all such invoices so as to submit one City bill to Developer each month or quarter. To the extent that a City Agency fails to submit such invoices, then the Planning Department or its designee shall request and gather such billing information, and any City Cost that is not invoiced to Developer within eighteen (18) months from the date the City Cost was incurred shall not be recoverable. For purposes of this Agreement, “**City Costs**” means the actual and reasonable costs incurred by a City Agency in preparing, adopting or amending this Agreement, in performing its obligations or defending its actions under this Agreement or otherwise contemplated by this Agreement, as determined on a time and materials basis, including reasonable attorneys’ fees and costs but excluding (i) Impact Fees or Exactions, and (ii) work, hearings, costs or other activities contemplated or covered by the standard application or processing fees imposed by the City upon the submission of an application for a permit or approval in accordance with City practice on a City-wide basis.

3.11.2. The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which payments from Developer are past due. If such failure to make payment continues for a period of more than sixty (60) days following notice, it shall be a Default for which the City shall have all rights and remedies as set forth in Section 7.4.

**4. MUTUAL OBLIGATIONS**

4.1. Notice of Completion or Revocation. Upon the expiration of the Term or revocation of this Agreement, a written statement acknowledging such expiration or revocation, signed by the appropriate agents of City and Developer, shall be recorded in the Official Records.

4.2. Estoppel Certificate. Developer may, at any time, and from time to time, deliver written notice to the Planning Director requesting that the Planning Director certify in writing that to the best of his or her knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended or modified, identifying the amendments or modifications and stating their date and nature; (iii) Developer is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature and amount of any such defaults; (iv) the findings of the City with respect to the most recent annual review performed pursuant to Section 5.2 below, and (v) such other things as may be reasonably requested by Developer, its lenders and/or its investors. The Planning Director shall execute and return such certificate within forty-five (45) days following receipt of the request. Each Party acknowledges that any mortgagee with a deed of trust (“**Mortgage**”) on all or part of the Project Site (and any mezzanine lender) (each, hereinafter referred to as a “**Mortgagee**”), acting in good faith, may rely upon such a certificate. A certificate provided by the City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form and may be recorded with respect to the affected lot or parcel at the expense of the recording party.

4.3. Cooperation in the Event of Third-Party Challenge.

4.3.1. In the event any legal action or proceeding is instituted challenging the validity of any provision of this Agreement, the Parties shall cooperate in defending against such challenge. The City shall promptly notify Developer of any such “**Third-Party Challenge**” instituted against the City.

4.3.2. Developer shall assist and cooperate with the City at its own expense in connection with any Third-Party Challenge. The City Attorney’s Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney’s sole discretion. Developer shall Indemnify and reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney’s Office and any consultants; provided, however, Developer shall have the right to receive monthly invoices for all such costs, and in the event of any Third-Party Challenge, Developer may elect to terminate this Agreement by written notice thereof to the City, and the Parties will thereafter seek to have the Third-Party Challenge dismissed. The filing of any third-party action or proceeding shall not delay or stop the development, processing, or construction of the Project unless the third party obtains a court order preventing the activity. This Section 4.3.2 shall survive any judgment invalidating all or any part of this Agreement.

4.4. Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement. In their course of performance under this Agreement, the Parties shall cooperate and shall undertake such actions as may be reasonably necessary to implement the Project as contemplated by this Agreement.

4.5. Agreement to Cooperate; Other Necessary Acts. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of the Agreement are fulfilled during the Term. Each Party shall use good faith efforts to take such further actions as may be reasonably necessary to carry out this Agreement, in accordance with the terms of this Agreement (and subject to all applicable laws) in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

## **5. PERIODIC REVIEW OF DEVELOPER’S COMPLIANCE**

5.1. Annual Review. Pursuant to Section 65865.1 of the Development Agreement Statute, at the beginning of the second week of each January following final adoption of this Agreement and for so long as the Agreement is in effect (the “**Annual Review Date**”), the Planning Director shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement. The failure to commence such review in January shall not waive the Planning Director’s right to do so later in the calendar year. The Planning Director may elect to forego an annual review if no significant construction work occurred on the Project Site during that year, or if such review is otherwise not deemed necessary.

5.2. Review Procedure. In conducting the required initial and annual reviews of Developer’s compliance with this Agreement, the Planning Director shall follow the process set forth in this Section 5.2.

5.2.1. Required Information from Developer. Upon request by the Planning Director but not more than sixty (60) days and not less than forty-five (45) days before the Annual Review Date, Developer shall provide a letter to the Planning Director confirming, with appropriate backup documentation, Developer’s compliance with this Agreement for the preceding calendar year. The Planning Director shall post a copy of Developer’s submittals on the Planning Department’s website.

5.2.2. City Compliance Review. The Planning Director shall notify Developer in writing whether Developer has complied with the terms of this Agreement (the “**City Report**”), and post the City Report on the Planning Department’s website. If the Planning Director finds Developer not in compliance with this Agreement, then the City may pursue available rights and remedies in accordance with this Agreement and Chapter 56. The City’s failure to initiate or to timely complete the annual review shall not be a Default and shall not be deemed to be a waiver of the right to do so at a later date. All costs incurred by the City under this Section 5.2.2 shall be included in the City Costs.

## **6. AMENDMENT; TERMINATION; EXTENSION OF TERM**

6.1. Amendment or Termination. Except as provided in Section 2.3 (Changes in State and Federal Rules and Regulations) and Section 7.4 (Remedies), this Agreement may only be amended or terminated with the mutual written consent of the Parties. Except as provided in this Agreement to the contrary, the amendment or termination, and any required notice thereof, shall be accomplished in the manner provided in the Development Agreement Statute and Chapter 56.

6.2. Extension Due to Legal Action, Referendum, or Excusable Delay. If any litigation is filed challenging this Agreement or the validity of this Agreement or any of its provisions and it directly or indirectly delays this Agreement, then the Term shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension to the end of such litigation or suspension (a “**Litigation Extension**”). The Parties shall document the start and end of a Litigation Extension in writing within thirty (30) days from the applicable dates.

6.2.1. In the event of changes in State or Federal Laws or regulations, inclement weather, delays due to strikes, inability to obtain materials, civil commotion, war, acts of terrorism, fire, acts of God, litigation, lack of availability of commercially-reasonable project financing (as a general matter and not specifically tied to Developer), or other circumstances beyond the control of Developer and not proximately caused by the acts or omissions of Developer that substantially interfere with carrying out the obligations under this Agreement (“**Excusable Delay**”), the Parties agree to extend the time periods for performance, as such time periods have been agreed to by Developer, of Developer’s obligations impacted by the Excusable Delay. In the event that an Excusable Delay occurs, Developer shall notify the City in writing of such occurrence and the manner in which such occurrence substantially interferes with the ability of Developer to perform under this Agreement. In the event of the occurrence of any such Excusable Delay, the time or times for performance of the obligations of Developer, will be extended for the period of the Excusable Delay if Developer cannot, through commercially reasonable and diligent efforts, make up for the Excusable Delay within the time period remaining before the applicable completion date; provided, however, within thirty (30) days after the beginning of any such Excusable Delay, Developer shall have first notified City of the cause or causes of such Excusable Delay and claimed an extension for the reasonably estimated period of the Excusable Delay. In the event that Developer stops any work as a result of an Excusable Delay, Developer must take commercially reasonable measures to ensure that the affected real property is returned to a safe condition and remains in a safe condition for the duration of the Excusable Delay.

## **7. ENFORCEMENT OF AGREEMENT; REMEDIES FOR DEFAULT; DISPUTE RESOLUTION**

7.1. Enforcement. The only Parties to this Agreement are the City and Developer. This Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.



7.2. Default. For purposes of this Agreement, the following shall constitute an event of default (an “**Event of Default**”) under this Agreement: (i) except as otherwise specified in this Agreement, the failure to make any payment within ninety (90) calendar days of when due; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant hereunder, including complying with all terms of the Conditions of Approval, attached hereto as Exhibit B (as such conditions may be amended), and the continuation of such failure for a period of thirty (30) calendar days following a written notice of default and demand for compliance (a “**Notice of Default**”); provided, however, if a cure cannot reasonably be completed within thirty (30) days, then it shall not be considered a default if a cure is commenced within said 30-day period and diligently prosecuted to completion thereafter.

7.3. Notice of Default. Prior to the initiation of any action for relief specified in Section 7.4 below, the Party claiming default shall deliver to the other Party a Notice of Default. The Notice of Default shall specify the reasons for the allegation of default with reasonable specificity. If the alleged defaulting Party disputes the allegations in the Notice of Default, then that Party, within twenty-one (21) calendar days of receipt of the Notice of Default, shall deliver to the other Party a notice of non-default which sets forth with specificity the reasons that a default has not occurred. The Parties shall meet to discuss resolution of the alleged default within thirty (30) calendar days of the delivery of the notice of non-default. If, after good faith negotiation, the Parties fail to resolve the alleged default within thirty (30) calendar days, then the Party alleging a default may (i) institute legal proceedings pursuant to Section 7.4 to enforce the terms of this Agreement or (ii) send a written notice to terminate this Agreement pursuant to Section 7.4. The Parties may mutually agree in writing to extend the time periods set forth in this Section 7.3.

#### 7.4. Remedies.

7.4.1. Specific Performance; Termination. In the event of an Event of Default under this Agreement, the remedies available to a Party are limited to specific performance or termination of this Agreement, and limited damages as set forth in Section 7.4.2 below. In the event of an Event of Default under this Agreement, and following a public hearing at the Board of Supervisors regarding such Event of Default and proposed termination, the non-defaulting Party may terminate this Agreement by sending a notice of termination to the other Party setting forth the basis for the termination. The Party alleging a material breach shall provide a notice of termination to the breaching Party, which notice of termination shall state the material breach. The Agreement will be considered terminated effective upon the date set forth in the notice of termination, which shall in no event be earlier than ninety (90) days following delivery of the notice. The Party receiving the notice of termination may take legal action if it believes the other Party’s decision to terminate was not legally supportable.

7.4.2. Actual Damages. Developer agrees that the City shall not be liable to Developer for damages under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) after the date of termination pursuant to Section 7.4.1 (and so long as Developer has not terminated this Agreement on or before such date as permitted under Section 2.1.3 of this Agreement) City shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for (a) Developer’s failure to pay sums or dedicate the Affordable Housing Site to the City as and when due under this Agreement and (b) Developer’s failure to make payment due under any Indemnity in this Agreement, and (2) either Party shall have the right to recover attorneys’ fees and costs as set forth in Section 7.7, when awarded by an arbitrator or a court with jurisdiction. For purposes of the foregoing, (a) the City may seek monetary damages only from the defaulting Party and not from any other Developer or Mortgagee (it being expressly understood

and agreed that under no circumstances shall any Mortgagee have any rights, obligations or liabilities under this Agreement unless and until (with no obligation to do so) it expressly assumes in writing Developer's obligations under this Agreement), and (b) "actual damages" shall mean the actual amount of the sum due and owing under this Agreement, with interest as provided by Law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums. City may terminate this Agreement, upon thirty (30) days prior written notice, if any successor owner of the Project Site elects not to assume this Agreement, and City shall have no obligation to issue any permits for the Project during such thirty (30) day period.

7.5. Dispute Resolution. The Parties recognize that disputes may arise from time to time regarding application to the Project. Accordingly, in addition and not by way of limitation to all other remedies available to the Parties under the terms of this Agreement, including legal action, the Parties agree to follow the dispute resolution procedure in Section 7.6 that is designed to expedite the resolution of such disputes. If, from time to time, a dispute arises between the Parties relating to application to the Project the dispute shall initially be presented by Planning Department staff to the Planning Director, for resolution. If the Planning Director decides the dispute to Developer's satisfaction, such decision shall be deemed to have resolved the matter. Nothing in this Section 7.5 shall limit the rights of the Parties to seek judicial relief in the event that they cannot resolve disputes through the above process.

7.6. Dispute Resolution Related to Changes in State and Federal Rules and Regulations. The Parties agree to the dispute resolution procedure in this Section 7.6 for disputes regarding the effect of changes to State and federal rules and regulations to the Project pursuant to Section 2.3

7.6.1. Good Faith Meet and Confer Requirement. The Parties shall make good faith effort to resolve the dispute before non-binding arbitration. Within five (5) business days after a request to confer regarding an identified matter, representatives of the Parties who are vested with decision-making authority shall meet to resolve the dispute. If the Parties are unable to resolve the dispute at the meeting, the matter shall immediately be submitted to the arbitration process set forth in Section 7.6.2.

7.6.2. Non-Binding Arbitration. The Parties shall mutually agree on the selection of an arbiter at JAMS in San Francisco or other mutually agreed to arbiter to serve for the purposes of this dispute. The arbiter appointed must meet the Arbiters' Qualifications. The "Arbiters' Qualifications" shall be defined as at least ten (10) years of experience in a real property professional capacity, such as a real estate appraiser, broker, real estate economist, or attorney, in the Bay Area. The disputing Party(ies) shall, within ten (10) business days after submittal of the dispute to non-binding arbitration, submit a brief with all supporting evidence to the arbiter with copies to all Parties. Evidence may include, but is not limited to, expert or consultant opinions, any form of graphic evidence, including photos, maps or graphs and any other evidence the Parties may choose to submit in their discretion to assist the arbiter in resolving the dispute. In either case, any interested Party may submit an additional brief within ten (10) business days after distribution of the initial brief. The arbiter thereafter shall hold a telephonic hearing and issue a decision in the matter promptly, but in any event within five (5) business days after the submittal of the last brief, unless the arbiter determines that further briefing is necessary, in which case the additional brief(s) addressing only those items or issues identified by the arbiter shall be submitted to the arbiter (with copies to all Parties) within five (5) business days after the arbiter's request, and thereafter the arbiter shall hold a telephonic hearing and issue a decision promptly but in any event not sooner than two (2) business days after submission of such additional briefs, and no later than thirty-two (32) business days after initiation of the non-binding arbitration. Each Party will give due consideration to the arbiter's decision before pursuing further legal action, which decision to pursue further legal action shall be made in each Party's sole and absolute discretion.

7.7. Attorneys' Fees. Should legal action be brought by either Party against the other for an Event of Default under this Agreement or to enforce any provision herein, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees and costs. For purposes of this Agreement, "reasonable attorneys' fees and costs" shall mean the fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, librarians, and others not admitted to the bar but performing services under the supervision of an attorney. The term "reasonable attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Agreement, the reasonable fees of attorneys of the City Attorney's Office shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's Office's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

7.8. No Waiver. Failure or delay in giving a Notice of Default shall not constitute a waiver of such Event of Default, nor shall it change the time of such Event of Default. Except as otherwise expressly provided in this Agreement, any failure or delay by a Party in asserting any of its rights or remedies as to any Event of Default shall not operate as a waiver of any Event of Default or of any such rights or remedies, nor shall it deprive any such Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any such rights or remedies.

7.9. Future Changes to Existing Standards. Pursuant to Section 65865.4 of the Development Agreement Statute, unless this Agreement is terminated by mutual agreement of the Parties or terminated for default as set forth in Section 7.4.1, either Party may enforce this Agreement notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City or the voters by initiative or referendum (excluding any initiative or referendum that successfully defeats the enforceability or effectiveness of this Agreement itself).

7.10. Joint and Several Liability. If there is more than one Person that comprises any Person that is Developer, the obligations and liabilities under this Agreement imposed on each such Person shall be joint and several (i.e., if more than one Person executes an Assignment and Assumption Agreement as Developer of Transferred Property, then the liability of such Persons shall be joint and several with respect thereto).

## **8. TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE**

8.1. Permitted Transfer of this Agreement. At any time and from time to time, Developer shall have the right to convey, assign or transfer (each, a "**Transfer**") all or any portion of its right, title and interest in the Project Site (the "**Transferred Property**") to any Person (each, a "**Transferee**") without the City's consent, provided that (1) Developer contemporaneously transfers to the Transferee all of its right, title and interest under this Agreement with respect to the Transferred Property and (2) the Planning Director reviews and confirms Developer's Assignment and Assumption Agreement as required under in Section 8.3. If Developer transfers less than the entire Project Site or a portion of its right, title and interest under this Agreement, then such Transfer shall require the City's prior written consent. Notwithstanding the foregoing sentence, Developer shall have the right to Transfer all of its right, title and interest in the Residential Parcel to the Residential Developer without the City's consent, provided that (1) Developer contemporaneously transfers to such Person (i) all of its right, title and interest under this Agreement with respect to the Residential Parcel, (ii) all obligations of this Agreement to dedicate the Affordable Housing Site to the City and pay any and all Impact Fees and Exactions due under Section 2.1.1; and (2) the Planning Director reviews and confirms Developer's Assignment and

Assumption Agreement as required under in Section 8.3. Nothing herein or in any Approval shall limit the rights of Developer to transfer to the Transferee any or all of its right, title and interest under the Approvals to the extent related to the Transferred Property. For avoidance of confusion, a "Transfer" may include a long-term ground lease of some or all of the Project Site. A Transferee shall be deemed "Developer" under this Agreement to the extent of the rights, interests and obligations assigned to and assumed by such Transferee under the applicable Assignment and Assumption Agreement. Upon execution and delivery of any Assignment and Assumption Agreement, the assignor thereunder shall be released from any future obligation under this Agreement to the extent Transferred under the applicable Assignment and Assumption Agreement. The provisions in this Article 8 shall not prohibit or otherwise restrict (a) Developer from (i) granting easements or permits to facilitate the development of the Project Site, (ii) entering into occupancy leases, subleases, licenses or permits for portions of the building on the Project Site for occupancy upon Developer's completion of the building, (iii) encumbering the Project Site or any portion of the improvements thereon by any Mortgage, (iv) granting an occupancy or leasehold interest in portions of the Project Site, (v) entering into agreements with third parties to fulfill Developer's obligations under this Agreement, (vi) transferring all or any portion of the Project to a Mortgagee pursuant to a conveyance in lieu of foreclosure or other remedial action in connection with a Mortgage, or (vii) selling or transferring any membership or ownership interest (direct or indirect) in the entity that is Developer, or (b) the transfer of all or a portion of any interest in the Project pursuant to a foreclosure (judicial or pursuant to the power of sale).

8.2. Multiple Developers. Notwithstanding anything to the contrary in this Agreement, if there is a Transfer of some but not all of the Project Site (i.e., there is more than one Developer at any time), then each obligation of this Agreement shall be either (i) the sole responsibility of the applicable Transferee or (ii) the sole responsibility of its predecessor. Nothing herein shall entitle any Person that is Developer to enforce this Agreement against any other Person that is Developer. Except as specified in Section 8.1, City consent to any Transfer that includes less than the entire Project Site is required.

8.3. Notice of Transfer. Developer shall provide not less than ten (10) Business Days' notice to the City before any anticipated Transfer, together with the anticipated final assignment and assumption agreement for that Transfer (the "**Assignment and Assumption Agreement**"). The Assignment and Assumption Agreement shall be in recordable form, in substantially the form attached as Exhibit E. Without limiting Developer's rights for Transfers without the City's consent as set forth in Section 8.1, the final Assignment and Assumption Agreement for a Transfer shall be subject to the review of the Planning Director to confirm that such Assignment and Assumption Agreement meets the requirements of this Agreement and, if there are any material changes to the form attached as Exhibit E, that the Planning Director approves such changes and such division of rights and responsibilities. The Planning Director shall grant (through execution of the provided Assignment and Assumption Agreement in the space provided therefor and delivery of same to Developer that provided same) or withhold confirmation (or approval of any such material changes) within ten (10) Business Days after the Planning Director's receipt of the proposed Assignment and Assumption Agreement. Failure to grant or withhold such confirmation (or approval) in accordance with the foregoing within such period shall be deemed confirmation (or approval), provided that Developer shall have first provided notice of such failure and a three (3) Business Day opportunity to cure and such notice shall prominently indicate that failure to act shall be deemed to be confirmation (or approval).

8.4. Mortgagee Protections. Notwithstanding anything stated to the contrary in this Agreement, Developer shall have the right to collaterally assign its rights under this Agreement to any Mortgagee providing financing in connection with the acquisition or development of the Project Site and City shall, within 20 days following a written request by Developer, execute a consent (in a form reasonably satisfactory to the City and any such Mortgagee) pursuant to which the City shall, (a) grant its consent to such collateral assignment of this Agreement, (b) confirm the absence of any defaults

under this Agreement (or if there any defaults, stating such defaults), and (c) acknowledge and agree that if such Mortgagee (or its designee) takes title to all or a portion of the Project Site pursuant to a foreclosure (judicial or through the power of sale) or conveyance in lieu of foreclosure, that such Mortgagee (or its designee) shall have no obligations (nor shall it have any rights) under this Agreement unless, and until, it enters into (with no obligation to do so) an Assignment and Assumption Agreement with City. The parties understand and agree that upon the expiration or earlier termination of this Agreement, the City may revoke or revise any Project approvals or entitlements as permitted by Law, except as limited by Section 2.1.3.

8.5. Release of Liability. Upon execution and delivery of any Assignment and Assumption Agreement (following the City's confirmation (or approval) or deemed confirmation (or approval) pursuant to Section 8.3), the assignor thereunder shall be automatically released (and City will confirm the same in writing upon written request) from any prospective liability or obligation under this Agreement to the extent Transferred under the applicable Assignment and Assumption Agreement. The foregoing release shall not extend to events, acts or omissions that occurred prior to the date of Transfer.

## **9. MISCELLANEOUS PROVISIONS**

9.1. Entire Agreement. This Agreement, including the preamble paragraph, Recitals and Exhibits, constitute the entire understanding and agreement between the Parties with respect to the subject matter contained herein.

9.2. Binding Covenants; Run With the Land. Pursuant to section 65868 of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to Article 8 above, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable Law, including but not limited to California Civil Code section 1468.

9.3. Applicable Law and Venue. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the laws of the State of California. All rights and obligations of the Parties under this Agreement are to be performed in the City and County of San Francisco, and such City and County shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

9.4. Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both the City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement or to this Agreement shall be deemed to refer to the Agreement as amended from time to time pursuant to the provisions of the Agreement, whether or not the particular reference refers to such possible amendment.

9.5. Project Is a Private Undertaking; No Joint Venture or Partnership.

9.5.1. The Project is a private development and no portion shall be deemed a public work. The City has no interest in, responsibility for, or duty to third persons concerning the Project. Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement.

9.5.2. Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. Developer is not a state or governmental actor with respect to any activity conducted by Developer hereunder.

9.6. Recordation. Pursuant to section 65868.5 of the Development Agreement Statute, the clerk of the Board shall cause a copy of this Agreement or any amendment thereto to be recorded in the Official Records within ten (10) business days after the Effective Date of this Agreement or any amendment thereto, as applicable, with costs to be borne by Developer.

9.7. Obligations Not Dischargeable in Bankruptcy. Developer's obligations under this Agreement are not dischargeable in bankruptcy.

9.8. Signature in Counterparts. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

9.9. Time of the Essence. Time is of the essence in the performance of each and every covenant and obligation to be performed by the Parties under this Agreement.

9.10. Notices. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, with return receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon written notice to the other Party, designate any other person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

**To City:**

Rich Hillis  
Director of Planning  
San Francisco Planning Department  
49 South Van Ness, Suite 1400  
San Francisco, California 94103  
Re: 98 Franklin Street DA

with a copy to:

David Chiu, Esq.  
City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102

Attn: RE/Finance Team  
Re: 98 Franklin Street DA

**To Developer:**

98 Franklin Street, LLC

Aaron Levine  
CFO and Director of Operations  
French American International School | International High School  
Lycée International Franco-Américain  
150 Oak Street | San Francisco, CA 94102 | USA

with a copy to:

Jim Abrams, Esq.  
J. Abrams Law, P.C.  
538 Hayes Street  
San Francisco, California, 94102

9.11. Limitations on Actions. Pursuant to Administrative Code Section 59.19, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board shall be commenced within ninety (90) days after such decision or determination is final and effective. Any court action or proceeding to attack, review, set aside, void, or annul any final decision by (i) the Planning Director made pursuant to Administrative Code Section 56.15(d)(3) or (ii) the Planning Commission pursuant to Administrative Code Section 56.17(e) shall be commenced within ninety (90) days after said decision is final.

9.12. Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, or if any such term, provision, covenant, or condition does not become effective until the approval of any non-City Agency, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of the Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement. Notwithstanding the foregoing, Developer and the City agree that the Agreement will terminate and be of no force or effect if Section 2.1 is found invalid, void, or unenforceable.

9.13. Sunshine. Developer understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code section 7920 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Developer in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other applicable laws, Developer shall mark any such materials as such. When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

9.14. Approvals and Consents. As used herein, the words "approve", "consent" and words of similar import and any variations thereof refer to the prior written consent of the applicable Party or other Person, including the approval of applications by City Agencies. Whenever any approval or consent is required or permitted to be given by a Party hereunder, it shall not be unreasonably withheld, conditioned or delayed unless the approval or consent is explicitly stated in this Agreement to be within the "sole discretion" (or words of similar import) of such Party. Approval or consent by a Party to or of any act or request by the other Party shall not be deemed to waive or render unnecessary approval or consent to or of any similar or subsequent acts or requests. Unless otherwise provided in this Agreement, approvals, consents or other actions of the City shall be given or undertaken, as applicable, by the Planning Director or, if it relates to the Affordable Housing Site, by the MOHCD Director. Any consent or approval required by the Board of Supervisors, Mayor and/or a City Commission may be given or withheld in the sole discretion of the Board, Mayor or Commission, respectively.

*[Remainder of Page Intentionally Blank;  
Signature Page Follows]*



**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the day and year first above written.

**CITY**

CITY AND COUNTY OF SAN FRANCISCO, a  
municipal corporation

Approved as to form:  
David Chiu, City Attorney

By: \_\_\_\_\_  
Richard Hillis  
Director of Planning

By: \_\_\_\_\_  
Keith Nagayama  
Deputy City Attorney

Approved on \_\_\_\_\_  
Board of Supervisors Ordinance No. \_\_\_\_\_

Consented to by:

Mayor's Office of Housing and Community  
Development

By: \_\_\_\_\_  
Eric Shaw, Director

**DEVELOPER**

98 FRANKLIN STREET, LLC, a California limited  
liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

**Request Letter**

*{See Attached}*

**J. ABRAMS LAW, P.C.**

538 Hayes Street  
San Francisco, CA 94102

Jim Abrams  
[jabrams@jabramslaw.com](mailto:jabrams@jabramslaw.com)  
415-999-4402

VIA EMAIL

March 15, 2023

San Francisco Planning Department  
49 South Van Ness Avenue, Suite 1400  
San Francisco, California 94103  
Attn: Rich Hillis, Director

Re: Application for Development Agreement for the 98 Franklin Street Development Project,  
Administrative Code § 56.4

Dear Director Hillis:

98 Franklin Street, LLC ("Project Sponsor") submits this letter application for a Development Agreement pursuant to San Francisco Administrative Code Section 56.4 with respect to the 98 Franklin Street Development Project (the "Project"). The Project is located on the east side of Franklin Street, between Oak and Market Streets (Assessor's Block 0836, Lots 008, 009, and 013).

In May 2020, the Planning Commission approved various resolutions and motions (collectively, the "Approvals") related to the Project, which involves construction of a new 36-story mixed use building reaching a height of approximately 365 feet (approximately 397 feet including rooftop screen/mechanical equipment) with about 345 dwelling units, approximately 84,815 gross square feet of school use floor area, approximately 3,229 gross square feet of retail space, 306 Class 1 and 57 Class 2 bicycle parking spaces, and three below-grade levels to accommodate up to 111 vehicle parking spaces for the residential and school uses. The Approvals require the Project to restrict 20% of the Project's dwelling units as affordable.

Project Sponsor now proposes to modify the Project through execution of a Development Agreement and amendments to certain of the Approvals. As more fully described in the Project's application to amend its Section 309 Downtown Project Authorization, the principal change would increase the applicable height limit from 365 feet to 400 feet, which would allow the Project to include up to 385 dwelling units.

In exchange for the proposed height increase and other amendments to the Approvals, the Development Agreement would require the Project to provide public benefits in excess of the existing Planning Code as follows:

- Dedication of Land Exceeding Current Code Requirements. The Development Agreement would change the Project's method of affordable housing compliance under Planning Code Sections 249.33 and 415 *et seq.* to land dedication. Specifically, Project Sponsor would purchase and dedicate a site (currently proposed as 600 Van Ness Avenue) to the City for purposes of constructing an 100% affordable housing project. The land would be dedicated at no cost to the City. As currently entitled, the 600 Van Ness site accommodates far more than 35% of the number of units in the principal 98 Franklin project, as required by Planning Code Section 249.33. More specifically, as amended, the Project would include up to 385 units, 35% of which is 135 units. As currently entitled, the 600 Van Ness project includes 168 units, or 33 more units than required by Planning Code Section 249.33's land dedication provision.

I am available to answer any questions you might have and otherwise look forward to working with you and your staff on this request.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line and a small flourish.

James Abrams, Esq.  
Authorized Agent

cc: Nick Foster, San Francisco Planning Department  
Christy Alexander, San Francisco Planning Department  
Anne Taupier, Mayor's Office of Economic & Workforce Development  
Leigh Lutenski, Mayor's Office of Economic & Workforce Development

## **EXHIBIT B**

### **Conditions of Approval**

The Conditions of Approval for the Project are set forth in San Francisco Planning Commission Motion No. \_\_\_\_\_ (Downtown Project Authorization), approved on \_\_\_\_\_, 2023. This Motion is incorporated by reference, modified, and superseded in part the Conditions of Approval in Motion No. 20728, approved on May 28, 2020.

## EXHIBIT C

### Schedule of Impact Fees (subject to Section 2.1.2 of this Agreement)

Planning Code Section	Title
411A	Transportation Sustainability Fee
414A	Residential Child Care Impact Fee
416	Market and Octavia Affordable Housing Fee of One Million Dollars (\$1,000,000) [this amount is an absolute value and not subject to change under <u>Section 2.1.2</u> ]
421	Market and Octavia Community Infrastructure Impact Fee
424	Van Ness & Market Neighborhood Infrastructure Fee (for avoidance of doubt, the entirety of Van Ness & Market Affordable Housing Fee under Planning Code Section 424 is waived)
425	Van Ness & Market Community Facilities Fee
429	Public Art

## **EXHIBIT D**

### **Legal Description**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

**Parcel I:**

Beginning at a point on the Northwestern line of Market Street, distant thereon 76 feet and 9-3/4 inches Northeasterly from the Northerly line of Page Street; running thence Northeasterly along said line of Market Street 27 feet and 1-3/8 inches; thence Northerly and parallel with the Easterly line of Franklin Street 214 feet and 1 inch to the Southerly line of Oak Street; thence at a right angle Westerly 44 feet; thence at a right angle Southerly 118 feet; thence at a right angle Easterly 22 feet; thence at a right angle Southerly 112 feet and 5/8 inch to the Northwestern line of Market Street and the point of beginning.

**Being a part of Western addition Block No. 71. Parcel II:**

Beginning at a point on the Northwestern line of Market Street, distant thereon Southwesterly 326 feet and 7-1/8 inches from the intersection of said Northwestern line of Market Street with the Westerly line of Van Ness Avenue; thence Southwesterly along said Northwestern line of Market Street 27 feet, and 1-3/8 inches; thence Northerly and parallel with Van Ness Avenue 127 feet and 10-3/4 inches; thence at a right angle Easterly 22 feet; thence at a right angle Southerly and parallel with Van Ness Avenue 112 feet and 5/8 inches to the Northwestern line of Market Street and the point of beginning.

**Being a part of Western Addition Block No. 71. Parcel III:**

Beginning at the point of intersection of the Southerly line of Oak Street with the Easterly line of Franklin Street; running thence Southerly along said line of Franklin Street 125 feet; thence at a right angle Easterly 97 feet, 9 inches; thence at a right angle Northerly 125 feet to the Southerly line of Oak Street; thence at a right angle Westerly 97 feet, 9 inches to the Easterly line of Franklin Street and the point of beginning.

**Being a part of Western Addition Block No. 71.**

APN: Lot 008, Block 0836, Lot 009, Block 0836, Lot 013, Block 0836 APN: 0836-008, 0836-009, 0836-013

## EXHIBIT E

### Form of Assignment and Assumption Agreement

This instrument is exempt from Recording Fees (CA Govt. Code § 27383)

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

[ASSIGNEE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_]

APN(s): [\_\_\_\_\_]

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

### ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this “**Assignment**”) is made and entered into as of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”) by and between \_\_\_\_\_, a \_\_\_\_\_ (“**Assignor**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**Assignee**”).

### RECITALS

A. Reference is hereby made to that certain Development Agreement between the City and County of San Francisco, a municipal corporation (the “**City**”), acting by and through its Planning Department, and \_\_\_\_\_, a \_\_\_\_\_, dated as of \_\_\_\_\_, 202\_\_ and recorded in the Official Records on \_\_\_\_\_, 202\_\_ as Document No. \_\_\_\_\_ [DESCRIBE ANY AMENDMENTS] (collectively, the “**Agreement**”). All initially capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Agreement.

B. Pursuant to section 8.1 of the Agreement, Developer has the right to Transfer all or any portion of its right, title and interest in and to all or part of the Project Site to any Person without the City's consent, provided that Developer contemporaneously transfers to the Transferee all of its right, title and interest under the Agreement with respect to the Project Site or such part thereof, as more particularly described therein.

C. Pursuant to section 8.4 of the Agreement, upon the execution and delivery of any Assignment and Assumption Agreement, Developer shall be automatically released from any liability or obligation under the Agreement to the extent Transferred under such Assignment and Assumption Agreement.

D. Assignor is “Developer” under the Agreement with respect to the [entire] [portion of the] Project Site described on Exhibit A attached hereto (the “**Transferred Property**”).



E. Contemporaneously herewith, Assignor has Transferred to Assignee Assignor's right, title and interest in and to the Transferred Property.

F. Assignor has agreed to assign to Assignee, and Assignee has agreed to assume, all of Assignor's right, title and interest under the Agreement [with respect to the Transferred Property], all as more particularly described in this Assignment.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignment of Agreement. Subject to the terms and conditions of this Assignment, Assignor hereby assigns to Assignee as of the Effective Date all of Assignor's right, title and interest under the Agreement [with respect to the Transferred Property], [, all as more particularly described on Exhibit B] (collectively, the "**Assigned Rights and Obligations**"). [For the avoidance of doubt, Assignor retains all of Assignor's right, title and interest under the Agreement other than the Assigned Rights and Obligations.]

2. Assumption of Agreement. Subject to the terms and conditions of this Assignment, Assignee hereby assumes as of the Effective Date the Assigned Rights and Obligations and agrees to observe and fully perform all of the duties and obligations of Assignor under the Agreement with respect to the Assigned Rights and Obligations and to be subject to all of the terms and conditions of the Agreement with respect to the Assigned Rights and Obligations. Assignor and Assignee acknowledge and agree that Assignee is "Developer" under the Agreement [with respect to the Transferred Property].

3. Indemnifications. Assignee hereby consents to and expressly reaffirms any and all indemnification, reimbursement, hold harmless and defense obligations of Developer set forth in the Agreement [to the extent applicable to Assignee and the Transferred Property], including section 3.10 of the Agreement, including resulting from any disputes between Assignee and Assignor.

4. Assignee's Covenants. Assignee hereby covenants and agrees that: (a) Assignee shall not challenge the enforceability of any provision or requirement of the Agreement; and (b) Assignee shall not sue the City in connection with any disputes between Assignor and Assignee arising from this Assignment or the Agreement, including any failure to complete all or any part of the Project by Assignor or Assignee, except to the extent caused by the negligence or willful misconduct of any of the City Parties.

5. Modifications. Assignor and Assignee acknowledge and agree that any modification of any provision of the Agreement that constitutes a modification of the Assigned Rights and Obligations must be in a writing signed by a person having authority to do so on behalf of each of Assignor and Assignee. For the avoidance of doubt, (i) the approval of Assignee shall not be required for any modification of the Agreement that does not constitute a modification of the Assigned Rights and Obligations and (ii) Assignee shall not have the right to modify the Agreement except as provided in the first sentence of this Section 5. Any modification of any provision of this Assignment must be in a writing signed by a person having authority to do so on behalf of each of Assignor and Assignee.

6. Further Assignment; Binding on Successors. Without limiting any requirements under the Agreement, including article 8 thereof, Assignee shall not assign this Assignment without obtaining the prior written approval of Assignor, provided that to the extent that Assignee Transfers any of the Assigned Rights and Obligations in accordance with the Agreement to any Person, Assignee shall (without the

requirement of any approval hereunder) contemporaneously assign this Assignment to such Person. This Assignment shall run with the Transferred Property, and all of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of Assignor and Assignee and their respective heirs, successors and assigns.

7. Notices. The notice address for Assignee under section 9.10 of the Agreement as of the Effective Date shall be, subject to change as set forth therein:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

with copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

8. Counterparts. This Assignment may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

9. Governing Law. This Assignment and the legal relations of Assignor and Assignee shall be governed by and construed and enforced in accordance with the laws of the State of California, without regard to its principles of conflicts of law.

10. Attorneys' Fees. Should legal action be brought by Assignor or Assignee against the other for a default under this Assignment or to enforce any provision herein, the prevailing party in such action shall be entitled to recover its "reasonable attorneys' fees and costs" (as such phrase is defined in the Agreement) from the non-prevailing party.

11. Severability. If any term, provision, covenant or condition of this Assignment is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Assignment shall continue in full force and effect, except to the extent that enforcement of the remaining provisions of this Assignment would be unreasonable or grossly inequitable under all the circumstances or would frustrate the fundamental purpose of this Assignment or the Agreement.

12. Entire Agreement. Without limiting the Agreement or agreements executed in connection therewith or any separate agreements with respect to the Transferred Property between Assignor and Assignee, this Assignment contains all of the representations and warranties and the entire agreement between Assignor and Assignee with respect to the subject matter of this Assignment. Any prior correspondence, memoranda, agreements, warranties or representations between Assignor and Assignee relating to such subject matter are incorporated into and superseded in total by this Assignment. Notwithstanding the foregoing, this Assignment shall not change or supersede the Agreement or agreements executed in connection therewith, which remain in full force and effect according to their terms. No prior drafts of this Assignment or changes from those drafts to the executed version of this Assignment shall be introduced as evidence in any litigation or other dispute resolution proceeding by Assignor, Assignee or any other Person, and no court or other body shall consider those drafts in interpreting this Assignment.

13. No Waiver. The waiver or failure to enforce any provision of this Assignment shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

14. Construction of Assignment. Assignor and Assignee have mutually negotiated the terms and conditions of this Assignment, which have been reviewed and revised by legal counsel for each of Assignor and Assignee. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Assignment. Wherever in this Assignment the context requires, references to the masculine shall be deemed to include the feminine and the neuter and vice-versa, and references to the singular shall be deemed to include the plural and vice versa. Unless otherwise specified, whenever in this Assignment, including its Exhibits, reference is made to any Recital, Article, Section, Exhibit, Schedule or defined term, the reference shall be deemed to refer to the Recital, Article, Section, Exhibit, Schedule or defined term of this Assignment. Any reference in this Assignment to a Recital, an Article or a Section includes all subsections and subparagraphs of that Recital, Article or Section. Section and other headings and the names of defined terms in this Assignment are for the purpose of convenience of reference only and are not intended to, nor shall they, modify or be used to interpret the provisions of this Assignment. Except as otherwise explicitly provided herein, the use in this Assignment of the words “including”, “such as” or words of similar import when accompanying any general term, statement or matter shall not be construed to limit such term, statement or matter to such specific terms, statements or matters. In the event of a conflict between the Recitals and the remaining provisions of this Assignment, the remaining provisions shall prevail. Words such as “herein”, “hereinafter”, “hereof”, “hereby” and “hereunder” and the words of like import refer to this Assignment, unless the context requires otherwise. Unless the context otherwise specifically provides, the term “or” shall not be exclusive and means “or, and, or both”.

15. Recordation. Assignor and Assignee shall record this Assignment in the Official Records against the Transferred Property promptly following the recordation of the instrument conveying title to the Transferred Property to Assignee.

[Signatures on following page]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the Effective Date.

**ASSIGNOR:**

[insert signature block]

**ASSIGNEE:**

[insert signature block]

**ACKNOWLEDGED:**

City and County of San Francisco, a municipal corporation

By: \_\_\_\_\_  
Planning Director

**EXHIBIT A**  
**TRANSFERRED PROPERTY**

[To be provided]

**EXHIBIT B**  
**ASSIGNED RIGHTS AND OBLIGATIONS**

[To be provided if applicable]

**EXHIBIT F**

**Form of Assignment and Assumption Agreement for the City's Acquisition of the Affordable  
Housing Site**

**EXHIBIT F**  
**ASSIGNMENT AGREEMENT FOR PURCHASE AND SALE AGREEMENT**  
**(Property Address)**

This Assignment Agreement (the “**Agreement**”) is entered into as of \_\_\_\_\_, 2023, by and between [RELATED CALIFORNIA] (“**Assignor**”) and the City and County of San Francisco, a municipal corporation (“**Assignee**” or “**City**”), with reference to the following facts:

A. Assignor is the owner of a portion of certain real property located at 98 Franklin Street in San Francisco, California, and intends to construct a new 38-story mixed-use building that includes approximately 385 dwelling units, 84,991 square feet of school use floor area, 2,978 square feet of retail use floor area, 316 Class 1 and 60 Class 2 bicycle parking spaces, and three below-grade levels to accommodate up to 110 vehicle parking spaces (the “**Principal Project**”).

B. San Francisco Planning Code (“**Planning Code**”) Section 415 *et seq.* requires residential projects to comply with certain requirements to create affordable housing in San Francisco. On May 21, 2020, the City’s Planning Commission approved Resolutions 20708 through 20713; and on May 28, 2020, the Planning Commission approved Motions 20726 through 20728 (collectively, the “**Initial Approvals**”) for the Principal Project. In accordance with Planning Code Section 249.33(b)(16), the Initial Approvals restrict 20% of the Project’s Dwelling Units as affordable.

C. On November 21, 2022, 98 Franklin, LLC submitted to the Planning Department a request to enter into a development agreement to, among other things (i) permit a land dedication to the City of the Property (defined below) at no cost to the City (“**Affordability Requirement**”), (ii) waive all but one million dollars (\$1,000,000.00) of the Principal Project’s applicable Market and Octavia Area Plan and Upper Market Neighborhood Commercial District Affordable Housing Fee under Planning Code Section 416, and (iii) waive one hundred percent (100%) of the Principal Project’s applicable Van Ness and Market Affordable Housing Fee pursuant to Planning Code Section 424 (“**Development Agreement**”). Pursuant to that Assignment and Assumption Agreement dated [DATE], 98 Franklin, LLC has assigned to Assignor the obligations of the Development Agreement to perform the Affordability Requirement.

D. Assignor, as Buyer, and \_\_\_\_\_, a \_\_\_\_\_ (“**Seller**”), as Seller, entered into that certain Purchase and Sale Agreement dated as of \_\_\_\_\_, 2023 (the “**Purchase Agreement**”) pursuant to which Assignor agreed to purchase from Seller certain real and personal property located at [Insert Address of Affordable Site: \_\_\_\_\_], San Francisco, California, as more particularly described in the Purchase Agreement (the “**Property**”). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Purchase Agreement.

E. By a letter dated \_\_\_\_\_, 2023 (the “**MOHCD Letter**”), from the Mayor’s Office of Housing and Community Development (“**MOHCD**”), the City verified the Property as acceptable for dedication pursuant to the Development Agreement described above. Assignor and Assignee are entering into this Agreement in order to facilitate satisfaction of the Affordability Requirement for the Principal Project under the Development Agreement through a transfer to the

City of the Property, which will be under the jurisdiction of MOHCD. The City acknowledges that Assignee's acceptance of the Property to satisfy the Affordability Requirement for the Principal Project has induced Assignor to purchase the Property and, absent such acceptance, Assignor would not have otherwise entered into the Purchase Agreement.

F. Assignor and Seller are prepared to close escrow pursuant to the Purchase Agreement ("**Closing**"). At Closing, Assignor shall designate Assignee as Permitted Assignee pursuant to Section \_\_\_\_\_ of the Purchase Agreement and Seller shall transfer title to the Property to Assignee pursuant to the Deed and the other Seller Closing Deliverables.

G. Assignor desires to assign, and Assignee desires to assume, as Permitted Assignee under Section \_\_\_\_\_ of the Purchase Agreement, all of Assignor's rights, interest and obligations under the Purchase Agreement that relate to the period immediately before the Closing, from and after the Closing, or survive the Closing including, but not limited to, the right to be named in the Deed and the other Seller Closing Deliverables, and the obligation to execute and deliver the Assignment and Assumption Agreement, but expressly excluding (i) the obligation of Assignor to deliver the balance of the Purchase Price or pay any other closing costs at Closing, and (ii) the indemnification, defense and hold harmless obligations of Assignor set forth in Section \_\_\_\_\_ of the Purchase Agreement, which each shall remain the obligations of Assignor (the "**Assigned Rights and Obligations**"), effective as of the Closing Date (the "**Effective Date**").

H. On \_\_\_\_\_, 2023, the City's Board of Supervisors and the Mayor approved Ordinance No. \_\_\_\_\_, authorizing the City's Real Estate Division and the Mayor's Office of Housing and Community Development (or successor agencies) to enter into the Agreement and to accept the Property, without further action by the Board of Supervisors.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

**1. Assignment and Assumption.** As of the Effective Date, Assignor hereby assigns and delegates to Assignee the Assigned Rights and Obligations. As of the Effective Date, Assignee hereby accepts and assumes such Assigned Rights and Obligations.

**2. City Commitment to Take Title.** If Assignor and Seller have each satisfied all conditions to consummate the purchase and sale of the Property required under the Purchase Agreement, and Assignor and Seller are prepared to proceed with the Closing, the City hereby covenants and agrees that it will accept title to the Property pursuant to recordation of the Grant Deed in substantially the form attached to the Purchase Agreement upon authorization of the Closing by Assignor and Seller. Notwithstanding the foregoing, the City shall not be obligated to accept title to the Property at Closing solely if the City is prohibited from accepting title to the Property as a result of an order issued by a court of law which prohibits Seller's ability to convey title or the City's ability to accept title to the Property due to a lawsuit filed by an unrelated third-party. For purposes of clarity, the City shall not be permitted to refuse acceptance of title to the Property simply because there is litigation seeking to prevent Seller's ability to convey or the City's ability to accept title to the Property; rather, there must be an order issued by a court of law which expressly prevents such transfer to or acceptance by the City.



To the extent the City is in default of its obligation to accept title to the Property as provided herein, Assignor shall have all rights and remedies available to it at law or in equity including, without limitation, the right to seek specific performance and/or the right to bring an action against the City seeking any and all damages, liabilities and expenses incurred by Assignor as a result of the City's breach of its obligations set forth in this Agreement.

**3. Indemnity.** Assignor hereby agrees to indemnify Assignee against and hold Assignee harmless from any and all costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees), arising out of Assignor's obligations under the Purchase Agreement prior to the Effective Date, including the indemnification, defense and hold harmless obligations of Assignor set forth in Section \_\_\_\_ of the Purchase Agreement, which shall remain the obligations of Assignor.

**4. Notices.** All notices, consents, directions, approvals, instructions, requests and other communications regarding this Agreement or the Purchase Agreement shall be in writing, shall be addressed to the person and address set forth below and shall be (a) sent via electronic mail (if e-mail address is provided below) and deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, or (b) hand delivered. All communications sent in accordance with this Section shall become effective on the date of receipt. From time to time Assignor and Assignee may designate a new address for purposes of this Section by notice to the other signatories to this Agreement.

If to Assignor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

E-Mail: \_\_\_\_\_

If to Assignee:

City and County of San Francisco  
Real Estate Division  
25 Van Ness, #400  
San Francisco, CA 94102  
Attn: Director  
E-Mail: andrico.penick@sfgov.org

With Copy to:

Mayor's Office of Housing and Community Development  
1 South Van Ness, Fifth Floor  
San Francisco, CA 94103  
Attn: Director  
E-Mail: eric.shaw@sfgov.org

**5. Government Requirements.**

A. Assignor understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. Assignor hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

B. Through its execution of this Agreement, Assignor acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Assignor becomes aware of any such fact during the term of this Agreement, Assignor shall immediately notify City.

C. Through its execution of this Agreement Assignor acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from any department of the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Assignor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$100,000 or more. Assignor further acknowledges that the (i) prohibition on contributions applies to Assignor; each member of Assignor's board of directors, and Assignor's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Assignor; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Assignor; and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department with whom Assignor is contracting is obligated to submit to the Ethics Commission the parties to the contract and any subcontractor. Additionally, Assignor certifies that Assignor has informed each of the persons described in the preceding sentence of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

**6. Unconditional Approval of the Affordability Requirement.** Notwithstanding anything to the contrary in the MOHCD Letter, the City hereby acknowledges and agrees that the transfer of title to the Property to the City in accordance with this Agreement shall be deemed to be the unconditional acceptance of the dedication of the Property pursuant to the Development Agreement and full satisfaction of the land dedication with respect to the Principal Project.

**7. Miscellaneous.**

A. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

B. This Agreement contains the entire agreement between the parties pertaining to the terms hereof and all prior written or oral negotiations, understandings and agreements are merged herein.

C. Subject to the terms of the Purchase Agreement, this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Except as otherwise provided herein, nothing in this Agreement shall be construed to give any person or entity (other than Assignor and Assignee and their respective successors and assigns) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

D. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument. This Agreement may be executed by facsimile or email, and a copy distributed by facsimile or by email as a pdf shall be deemed an original.

**[SIGNATURES ON THE NEXT PAGE]**

IN WITNESS WHEREOF, the undersigned hereby execute this Agreement as of the date first written above.

**“ASSIGNOR”**

[RELATED CALIFORNIA], a California  
limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**“ASSIGNEE”**

City and County of San Francisco, a  
municipal corporation

By: \_\_\_\_\_  
Andrico Q. Penick  
Director of Property

Recommended by:

Mayor’s Office of Housing and Community  
Development

By: \_\_\_\_\_  
Eric D. Shaw  
Director of the Mayor’s Office of  
Housing and Community Development

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

**From:** [Melinda Bihn](#)  
**To:** [PrestonStaff \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [ChanStaff \(BOS\)](#); [Cabrera, Stephanie \(BOS\)](#)  
**Subject:** Government Audit & Oversight Committee: 98 Franklin Street Development Support  
**Date:** Friday, July 7, 2023 9:42:23 AM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors Preston, Stefani, and Chan,

On behalf of the French American International School, we write to you in strong support of the 98 Franklin Street development. This project is a unique opportunity to create a world-class academic building for the French American Internal School – a diverse and innovative international school with deep roots in San Francisco and Hayes Valley.

The project sponsor, Related, has made architectural changes to the project involving a 35-foot height increase from 365 feet to 400 feet, providing an opportunity for significant investment in affordable housing. These changes will result in the land dedication of a nearby building site - at no cost to the City - allowing for the construction of a 100% affordable housing complex.

French American International School is committed to this transformative project. While the 98 Franklin project was changing, we used this time to raise significant private money to support a new world-class campus for an academic institution that has served San Francisco for decades. Our school is closed for summer break, and we cannot attend Thursday's Government Audit & Oversight Committee meeting to express our strong support for this project. However, we want to share some of the letters of support linked [here](#), submitted by our community members to the Planning Commission in March 2023.

We applaud Related's commitment to the 98 Franklin development. The changes proposed for the project reflect the changing economic environment in San Francisco post-pandemic and are necessary to move the project ahead so that the City can obtain affordable housing and French American International School can build a new high school.

From the beginning, we have been excited by this project and what it will provide for our community. The proposed development at 98 Franklin is precisely the mixed-use, mixed-income, transit-oriented development that will serve Hayes Valley and San Francisco well in the future. We urge the committee's support of this critical project.

Sincerely,  
Melinda Bihn, Ed. D.

--

Melinda Bihn, Ed. D. (She/Her/Hers)

Head of School | Proviseur

+1 415 558-2022

[150 Oak Street | San Francisco, CA 94102 | USA](#)





# SAN FRANCISCO PLANNING DEPARTMENT

*Subject to: (Select only if applicable)*

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Affordable Housing (Sec. 415) | <input checked="" type="checkbox"/> First Source Hiring (Admin. Code)  |
| <input type="checkbox"/> Jobs Housing Linkage Program (Sec. 413)  | <input checked="" type="checkbox"/> Child Care Requirement (Sec. 414A) |
| <input type="checkbox"/> Downtown Park Fee (Sec. 412)             | <input checked="" type="checkbox"/> Other (TSF Sec. 411A)              |

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

## Planning Commission Motion No. 20196

HEARING DATE: MAY 24, 2018

*Case No.:* 2015-012729CUA  
*Project Address:* 600 Van Ness Avenue  
*Zoning:* RC-4 (Residential, Commercial, High-Density)  
NC-3 (Moderate Scale, Neighborhood Commercial)  
Van Ness Special Use District  
130-V and 130-E Height and Bulk Districts  
*Block/Lot:* 0763/006-009  
*Project Sponsor:* John Kevlin  
Reuben, Junius and Rose, LLP  
One Bush Street, Suite 600  
San Francisco, CA 94104  
*Staff Contact:* Brittany Bendix – (415) 575-9114  
brittany.bendix@sfgov.org

ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 253, 253.2, 303, AND 304 OF THE PLANNING CODE TO CONSTRUCT A 130-FOOT TALL BUILDING OF APPROXIMATELY 185,670 GROSS SQUARE FEET CONTAINING 168 DWELLING UNITS AND UP TO 103 OFF-STREET PARKING SPACES, AND AS A PLANNED UNIT DEVELOPMENT, TO SEEK EXCEPTIONS FROM THE REQUIREMENTS FOR 1) FLOOR AREA RATIO (PLANNING CODE SECTION 124), 2) REAR YARD (PLANNING CODE SECTION 134), AND 3) OBSTRUCTIONS OVER THE PUBLIC RIGHT-OF-WAY (PLANNING CODE SECTION 136), WITHIN AN RC-4 (RESIDENTIAL, COMMERCIAL, HIGH-DENSITY) ZONING DISTRICT, AN NC-3 (MODERATE SCALE, NEIGHBORHOOD COMMERCIAL) ZONING DISTRICT, THE VAN NESS SPECIAL USE DISTRICT AND THE 130-V AND 130-E HEIGHT AND BULK DISTRICTS AND ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

### PREAMBLE

On March 11, 2016, John Kevlin of Reuben, Junius and Rose, LLP, (hereinafter "Project Sponsor") filed an application with the Planning Department (hereinafter "Department") for Conditional Use Authorization under Planning Code Section(s) 253, 253.2, 303, and 304 to construct a 130-foot tall building of approximately 185,670 gross square feet containing 168 dwelling units and up to 103 off-street parking spaces, and as a Planned Unit Development, to seek exceptions from the requirements for 1) floor area



ratio (Planning Code Section 124), 2) rear yard (Planning Code Section 134), and 3) obstructions over the public right-of-way (Planning Code Section 136), within an RC-4 (Residential, Commercial, High-Density) Zoning District, and NC-3 (Moderate scale, Neighborhood Commercial) Zoning District, the Van Ness Special Use District, and the 130-V and 130-E Height and Bulk Districts.

On May 24, 2018, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2015-012729.

On February 28, 2018, the Planning Department's Environmental Review Office published a Preliminary Mitigated Negative Declaration (PMND) for the project that included a Mitigation Monitoring and Reporting program (MMRP) which is included as a Condition of Approval for the project. The comment period for the PMND expired on March 20, 2018 with no appeals. The Final Mitigated Negative Declaration (MND) was issued on XXX, XXX, 2018, and is available online at <http://tinyurl.com/sfceqadocs>.

On March 20, 2018, an appeal of the PMND was filed with the Department.

On April 27, 2018, the appeal of the PMND was withdrawn.

On May 24, 2018, the Planning Department/Planning Commission reviewed and considered the Final Mitigated Negative Declaration (FMND) and found that the contents of said report and the procedures through which the FMND was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) (CEQA), Title 14 California Code of Regulations Sections 15000 et seq. (the "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"): and

The Planning Department/Planning Commission found the FMND was adequate, accurate and objective, reflected the independent analysis and judgment of the Department of City Planning and the Planning Commission, [and that the summary of comments and responses contained no significant revisions to the Draft IS/MND,] and approved the FMND for the Project in compliance with CEQA, the CEQA Guidelines and Chapter 31.

The Planning Department Planning Department Commission Secretary is the custodian of records, located in File No. 2015-012729ENV, at 1650 Mission Street, Fourth Floor, San Francisco, California.

Planning Department staff prepared a Mitigation Monitoring and Reporting program (MMRP), which material was made available to the public and this Commission for this Commission's review, consideration and action.

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

**MOVED**, that the Commission hereby authorizes the Conditional Use requested in Application No. 2015-012729CUA, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

## FINDINGS

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

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The project site contains Lots 006, 007, 008 and 009 of Assessor's Block 0763. These four lots account for the western half of the subject block, bounded by Elm Street, Polk Street, Golden Gate Avenue, and Van Ness Avenue. Lots 006 and 007 are within the NC-3 Zoning District and have a combined area of 6,900 sf. Previously, these lots were occupied by a commercial parking lot. Lots 008 and 009 are within the RC-4 Zoning District and Van Ness Special Use District and have a combined area of 16,080 sf. Previously, these lots were occupied by a formula retail restaurant (d.b.a. McDonald's). The total project site is 22,980 sf and has 120 feet of frontage on Van Ness Avenue, 191.5 feet of frontage on Golden Gate Avenue and 191.5 feet of frontage on Elm Street. Since demolition of the restaurant building, the site has been used to stage construction activities for the Van Ness Improvement Project.
3. **Surrounding Properties and Neighborhood.** The subject property is located in the south end of an RC-4 Zoning District which extends north from Civic Center to Broadway and east across Van Ness Avenue into the Tenderloin neighborhood. To the west, the zoning transitions to the less dense RM-4 and RM-3 Zoning Districts with supporting Neighborhood Commercial Zoning Districts on Polk, Franklin and Fillmore Streets. Similarly, the NC-3 Zoning District containing the subject property, has its southern boundary at Golden Gate Avenue, where the zoning then transitions into a Public Zoning District to accommodate the Civic Center uses. The property is also at the southern edge of the Van Ness Special Use District, directly reflecting the Van Ness Avenue Area Plan, which stretches from Golden Gate Avenue to Chestnut Street and calls for well-designed high-density mixed use development along the north/south corridor. This area along Van Ness Avenue also includes a combination of institutional, commercial, and residential uses that reflect the convergence of the Hayes Valley, Civic Center, and Tenderloin neighborhoods.

More specifically, to the north of the of the subject property, across Elm Street and spanning more than half the width of the northern adjacent block, is a four-story building owned by the San Francisco Unified School District. This building contains the Tenderloin Community Elementary School, which has playgrounds that face the project site at the ground and roof levels. Immediately east of the project site, and occupying the remaining half of the subject block are two tall two-story buildings and a four story building, containing institutional and commercial uses such as the Consulate General of Guatemala, Mela Tandoori Kitchen, the American Academy of English, Golden 1 Credit Union, and the Consulate General of El Salvador. The block directly south of the project site also contains a collection of institutional and commercial uses, such as the SFPUC, Fine and Rare restaurant, the Empire Room lounge, H&R Block, and Hospice by the Bay. There is one active project on this block under review by the Planning Department at 555 Golden Gate Avenue, which proposes construction of an 11-story 120-foot tall mixed use building containing approximately 60 dwelling units. Directly west of the subject property, and across Van



Ness Avenue is the Opera Plaza mixed-use development, containing neighborhood serving retail uses such as Max's Opera Café and a Landmark Theater, as well as 449 dwelling units.

4. **Project Description.** The proposed project would construct a 185,670 square-foot, 130-foot tall mixed use building containing 168 units, approximately 6,200 sf of ground floor retail, up to 103 off-street parking spaces, 117 Class 1 bicycle parking spaces and 14 Class 2 bicycle parking spaces. The project includes a dwelling unit mix consisting of 78 studios (46.43 percent), 54 one-bedroom units (32.14 percent), 31 two-bedroom units (18.45 percent) and one three-bedroom unit (.6 percent).
5. **Public Comment.** As of March 15, 2018, the Department has not received any public comment.
6. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:
  - A. **Single Development Lot.** As noted in the site description above, the subject property contains lots 006, 007, 008, and 009 of Assessor's Block 0763. As these lots are under the same ownership, they may be treated as a singled development lot for the purpose of applying the Planning Code.
  - B. **Split Zoning.** The zoning for the subject property is split into two parts. Lots 006 and 007, the two most eastern parcels are within the NC-3 Zoning District and the 130-E Height and Bulk District. Lots 008 and 009, the two most western parcels are within the RC-4 Zoning District, the Van Ness Special Use District, and the 130-V Height and Bulk District. While both zoning districts principally permit the proposed residential and ground floor retail uses, the districts have different requirements for rear yards, residential open space, parking, and heights along alleys. As necessary, this distinction is called out through the code analysis below. Additionally, the floor plans submitted as Exhibit B include a hatched line indicating where the split in zoning applies.
  - C. **Permitted Uses in the RC-4 and NC-3 Zoning Districts.** Planning Code Sections 209.3 (RC-4) and 712 (NC-3) states that 'Residential' and 'Retail Sales and Service' uses are permitted as of right.

*The proposed new building will contain approximately 156,600 gsf of residential uses and 6,200 gsf of ground floor retail uses.*

- D. **Planned Unit Development.** Planning Code Section 304 allows projects on sites larger than ½ acre to seek Conditional Use authorization from the Planning Commission and to seek exceptions from other provisions of the Code only to the extent specified in the authorization.

*The subject property is 22,980 square feet and qualifies as a Planned Unit Development. The proposal is seeking Conditional Use Authorization from Planning Code Section 304 as a Planned Unit Development and requesting exceptions from the following Planning Code requirements: 1) floor area ratio (Section 124); 2) rear yard (Section 134); and 3) obstructions over the public right-of-way*

*(Section 136). The exceptions are addressed throughout the findings below, the specific Planned Unit Development findings are listed under Subsection 10.*

- E. **Height in the RC-4 Zoning District and Van Ness Special Use District.** Planning Code Section 253 requires Conditional Use authorization for any new building or structure in an RC District that exceeds 50 feet in height or has a street frontage of more than 50 feet. Additionally, for properties located in the Van Ness Special Use District Planning Code Section 253.2 requires Conditional Use authorization for any new building or structure that exceeds 50 feet in height.

*The proposed 130-foot tall building is within both the RC-4 Zoning District and the Van Ness Special Use District. The subject property also has a total of 388 feet of frontage within the RC-4 Zoning District. Therefore, the project requires Conditional Use Authorization per Planning Code Sections 253 and 253.2. The required findings are listed below under Subsections 7 and 8.*

- F. **Height Limits for Narrow Streets in NC Districts.** Planning Code Section 261.1 requires that all frontages of a property located on the southern side of an east-west narrow street, defined as having a width less than 40 feet, must have upper stories set back at the property line such that they avoid penetration of a sun access plane defined by an angle of 45 degrees extending from the most directly opposite northerly property line. No part or feature of a building may penetrate the required setback plane.

*The project site is located on the southern side of Elm Street, which is 35 feet wide and has an east-west orientation. Therefore, the 57.5-foot wide portion of the property within the NC-3 Zoning District is subject to additional height limits as described above. Section B-B of the plans submitted as Exhibit B illustrates that the project complies with this requirement for the portion of the site in the NC-3 Zoning District.*

- G. **Bulk.** Planning Code Section 270 states that the "E" Bulk District shall have a maximum length of 110 feet and a maximum diagonal dimension of 140 feet, at a setback height of 65 feet. Planning Code Section 243(c)(3) and 270 states that the "V" Bulk District shall have a maximum length of 110 feet and a maximum diagonal dimension of 140 feet, at a setback height of 71.33 feet established per Section 253.2.

*The portion of the project within the "E" Bulk District has a maximum horizontal dimension of 76 feet and a maximum diagonal dimension of 93 feet above a height of 65 feet. The portion of the project within the "V" Bulk District has a maximum horizontal dimension of 102.5 feet and a maximum diagonal dimension of 127 feet above a height of 71.33. Therefore, the project complies with the bulk requirements.*

- H. **Basic Floor Area Ratio (FAR) and Floor Area Premium.** Planning Code Section 124(d) limits the basic Floor Area Ratio (FAR) of residential uses in the Van Ness Special Use District to 7:1 square feet of building area for every 1 square foot of lot area, or approximately 112,560 gross square feet (gsf) of building area for the subject site. Planning Code Section 125(a) allows corner lots to increase the area of the lot, for purposes of floor area computation, by 25 percent. However, in the Van Ness Special Use District, Section 243(c)(1) does not allow floor



area premiums permitted under Section 125(a). The project is seeking a PUD exception pursuant to Section 304 to permit a corner lot FAR premium.

*The proposal is to establish 126,576 gsf of residential floor area to the portion of the property within the Van Ness Special Use District, at a ratio of 7.87:1. The project does not comply with the residential FAR requirement and is therefore seeking an exception as a Planned Unit Development with findings discussed in subsection 10. With a floor area premium, the project could increase the allowable gross floor area from 112,560 gsf to 140,700 gsf, increasing the permitted FAR from 7:1 to 8.75:1.*

- I. **Residential Density.** For properties within the NC-3 Zoning District, Planning Code Sections 207 and 712 allows residential density of 1 unit per 600 square feet of lot area, or the density permitted in the nearest Residential District, whichever is greater. The nearest residential district is the RC-4 Zoning District which allows up to one unit per 200 square feet of lot area. Further, Planning Code Section 243(c)(2) states that the restrictions on density set forth in the Zoning Control Tables shall not apply to the Van Ness Special Use District.

*The Project proposes a total of 168 dwelling units, 133 units are on the portion of the property within the Van Ness Special Use District and are not subject to density limitations. The remaining 35 units are within the 6,900 sf portion of the site in the NC-3 Zoning District, which permits up to 35 units.*

- J. **Rear Yard.** Planning Code Section 134(a)(1) requires that projects in both NC-3 and RC-4 Districts provide a rear yard equal to 25 percent of the total lot depth at the lowest level containing a residential unit, and at each succeeding level or story of the building. Further, in the Van Ness Special Use District, Section 243(c)(6) allows the rear yard requirements to be modified by the Zoning Administrator with consideration of the effect on the subject block's interior open space, the total amount of useable open space provided elsewhere on the lot, and the access of light and air to abutting properties. Alternatively, the modification may be reviewed as an exception to a Planned Unit Development.

*The subject property has a rear yard requirement of 30 feet for the portion of the site proposed for development. If provided, the required rear yard would provide approximately 5,745 square feet of open area. The project does not include a code-complying rear yard and is therefore seeking an exception as a Planned Unit Development with findings discussed in subsection 10.*

- K. **Useable Open Space - Residential.** Planning Code Section 135 requires that for the portion of the project within the RC-4 District and Van Ness Special Use District, the project provide a minimum of 36 square feet of usable open space per dwelling unit, if private, or 48 square feet of usable open space per dwelling unit if common. For the portion of the project within the NC-3 District, the project must provide a minimum of 80 square feet of usable open space per dwelling unit, if private, or 100 square feet of usable open space per dwelling unit if common. Further, any private usable open space shall have a minimum horizontal dimension of six feet and a minimum area of 36 square feet if located on a deck, balcony, porch or roof, and shall have a minimum horizontal dimension of 10 feet and a minimum area of 100 square feet if located on open ground, a terrace or the surface of an inner or outer court. Alternatively, common useable open space shall be at least 15 feet in every horizontal dimension and shall be a minimum of 300 square feet.

*For the proposed 168 dwelling units, 18 units have direct access to private open space. The project is required to provide 7,200 square feet of common open space for the remaining 150 units. The decks and terraces on Levels 3, 8, and 10, combine to provide 8,782 sf of common open space.*

- L. **Obstructions.** Planning Code Section 136 lists obstructions permitted over streets and alleys, and in required setbacks, yards and useable open space. Features permitted over the street include the following: overhead horizontal projections (cornices, eaves, sills and belt courses) with vertical dimensions of no more than two feet six inches; bay windows; balconies; fire escapes; awnings; canopies; and, marquees.

*The project includes the following two elements that do not fit within the list of permitted obstructions in Planning Code Section 136: (1) a perforated metal and glass awning above the ground floor retail frontage on the Van Ness Avenue and Golden Gate Avenue facades; and (2) a two-story and three-story cantilevered portion of the building mass that projects 3 feet beyond the Golden Gate Avenue property line. As neither of these elements complies with Planning Code Section 136, the project is seeking an exception as a Planned Unit Development with findings discussed in Subsection 10.*

- M. **Streetscape Plan.** Planning Code Section 138.1 requires that new developments on lots greater than one-half acre in total area or containing 250 feet of total lot frontage on one or more publicly-accessible rights-of-way, submit a streetscape plan conforming to the Better Streets Plan.

*The project includes new construction on a lot of 22,980 square feet with a total of 503 feet of frontage. Accordingly, the Project proposes a streetscape plan that includes street trees with planting in tree wells and tree grates, landscaping, bulb-outs, paving treatments and a raised crosswalk at Elm Street, and residential stoops. Further, the project will remove all four of the existing curb cuts, and establish an 18-foot wide single point of vehicular access from Golden Gate Avenue.*

- N. **Bird Safety.** Planning Code Section 139 outlines the standards for bird-safe buildings, including the requirements for location-related and feature-related hazards.

*The subject lot is not located in close proximity to an Urban Bird Refuge and is not a location-related hazard. To comply with the Planning Code's bird-safe standards any glazed segments greater than 24 square feet will be treated with a UV reflective coating.*

- O. **Dwelling Unit Exposure.** Planning Code Section 140 requires that at least one room of all dwelling units faces onto a public street, rear yard or other open area that meets minimum requirements for area and horizontal dimensions. To meet exposure requirements, a public street, public alley, side yard or rear yard must be at least 25 feet in width, or an open area (inner court) must be no less than 25 feet in every horizontal dimension for the floor at which the dwelling unit is located and the floor immediately above it, with an increase of five feet in every horizontal dimension at each subsequent floor.

*The Project organizes all of the 168 dwelling units to have exposure onto Van Ness Avenue, Elm Street, Golden Gate Avenue, or the code-complying third story open terrace facing Elm Street.*



- P. **Street Frontage in RC and NC Districts.** Planning Code Section 145.1 requires that any new development in an RC or NC District must include the following: 1) No more than one-third of the width or 20 feet, whichever is less, of any given street frontage of a new or altered structure parallel to and facing a street shall be devoted to parking and loading ingress or egress. 2) With the exception of space allowed for parking and loading access, building egress, and access to mechanical systems, space for active uses shall be provided within the first 25 feet of building depth on the ground floor and 15 feet on the floors above from any façade facing a street at least 30 feet in width. Residential uses are considered active uses at the ground floor if at least 50 percent of the linear residential street frontage at the ground level features walk-up dwelling units that provide direct, individual pedestrian access to a public sidewalk, and are consistent with the Ground Floor Residential Design Guidelines. 3) Ground floor ceiling heights for non-residential uses, of no less than 14 feet from floor-to-floor. 4) Street-facing ground-level spaces for non-residential uses that open directly onto the street and that are open to the public during business hours. And, 5) frontages with active uses that are not residential or PDR must be fenestrated with transparent windows and doorways for no less than 60 percent of the street frontage at the ground level and allow visibility to the inside of the building.

*The proposed building complies with all of the requirements noted above. The vehicular entrance is 18 feet wide, less than the maximum of 20 feet that is allowed. The ground floor has a floor to floor height of 14 feet and will be occupied by both commercial and residential active uses that include direct access to the street. Additionally, the non-residential street frontage features a transparent storefront allowing visibility into the building.*

- Q. **Off-Street Parking Maximums and Minimums.** Planning Code Section 151.1 sets forth a maximum amount of off-street parking that a development may provide in an RC-4 Zoning District. For residential uses, one off-street parking space is permitted as of right for each two dwelling units. For restaurant/retail uses one off-street parking space is permitted for each 200 square feet of occupied floor area. However, Planning Code Section 151 sets forth a minimum amount of off-street parking that a development may provide in an NC-3 Zoning District. For residential uses, one off-street parking space is required for each dwelling unit. For retail sales and services, one off-street parking space is required for each 500 square feet of occupied floor area up to 20,000 sf where the occupied floor area exceeds 5,000 square feet, plus one for each 250 square feet of occupied floor area in excess of 20,000 sf.

*The project proposes 133 dwelling units and approximately 4,132 square feet of occupied floor area dedicated to retail uses on the portion of the property within the RC-4 Zoning District. Per the controls noted above, the project is allowed a maximum of 87 off-street parking spaces on the RC-4 portion of the site. The project proposes 35 dwelling units and approximately 828 square feet of occupied floor area dedicated to retail uses on the portion of the property within the NC-3 Zoning District. Per the controls noted above, the project must provide a minimum of 35 off-street parking spaces on the entire site, or seek an exception as a Planned Unit Development. The proposal includes a total of 89 off-street parking spaces – 84 residential stacker spaces, 2 ADA residential spaces, 2 retail spaces and 1 ADA retail space. Approximately 73 off-street parking spaces are within the RC-4 portion of the site and 16 off-street parking spaces are within the NC-3 portion of the site.*

- R. **Off-Street Loading.** Planning Code Section 152 requires one off-street loading space for new residential developments with an occupied floor area of 100,001 to 200,000 square feet.

*The Project proposes a new residential development containing approximately 127,815 square feet of occupied floor area of residential uses and therefore, requires one off-street loading space. The project is providing one off-street loading space in the basement level parking garage.*

- S. **Bicycle Parking.** Planning Code Section 155.1 requires Class 1 and Class 2 bicycle parking for all uses of a development site if the proposal includes addition or creation of new gross floor area or an increase in the capacity of off-street vehicle parking spaces for an existing building or lot. Accordingly, Class 1 bicycle parking is required as follows: one per every dwelling unit, for the first one hundred units, then one per every four units, and, one per every 7,500 square feet of occupied square feet of retail uses. Class 2 bicycle parking is required as follows: one per every 20 dwelling units and one per every 750 square feet of occupied floor area of retail uses.

*The Project includes new construction of 168 dwelling units and approximately 4,960 square feet of occupied floor area dedicated to retail uses. Therefore, the Planning Code requires that the project provide 117 Class 1 bicycle parking spaces and 14 Class 2 bicycle parking spaces. The project will provide 169 Class 1 bicycle parking spaces and 14 Class 2 bicycle parking spaces at two locations on Golden Gate Avenue.*

- T. **Car Share.** Planning Code Section 166 requires newly constructed building containing off-street parking for residential and non-residential uses to provide one car-share parking space for buildings containing between 50 and 200 dwelling units and to provide one car-share parking space for buildings containing 25 to 49 off-street parking spaces for non-residential uses.

*The Project proposes new construction of a building that contains 168 dwelling units and 2 off-street parking spaces dedicated to non-residential uses. Planning Code Section 166 requires that the Project include a minimum of one off-street parking space dedicated to car-share parking. The Project includes four car-share parking spaces on the basement level.*

- U. **Unbundled Parking.** Planning Code Section 167 requires that all off-street parking spaces accessory to residential uses in new structures of 10 dwelling units or more be leased or sold separately from the rental or purchase fees for dwelling units for the life of the dwelling units.

*The Project is providing off-street parking that is accessory to 168 dwelling units. These spaces will be unbundled and sold and/or leased separately from the dwelling units; therefore, the Project meets this requirement.*

- V. **Transportation Demand Management (TDM) Plan.** Pursuant to Planning Code Section 169 and the TDM Program Standards, the Project shall finalize a TDM Plan prior Planning



Department approval of the first Building Permit or Site Permit. As currently proposed, the Project must achieve a target of 10 points.

*The Project submitted a completed Environmental Evaluation Application prior to September 4, 2016. Therefore, the Project must only achieve 50% of the point target established in the TDM Program Standards, resulting in a required target of 10 points. As currently proposed, the Project will achieve its required 10 points through the following TDM measures:*

- *Unbundled Parking*
- *Bicycle Parking (Option A)*
- *Bicycle Repair Station*
- *Car-share Parking (Option B)*
- *Multimodal Wayfinding Signage*
- *Real Time Transportation Displays*
- *On-Site Affordable Housing*

- W. **Shadow.** Planning Code Sections 147 and 295 restricts net new shadow, cast by structures exceeding a height of 40 feet, upon property under the jurisdiction of the Recreation and Park Commission. Any project in excess of 40 feet in height and found to cast net new shadow must be found by the Planning Commission, with comment from the General Manager of the Recreation and Parks Department, in consultation with the Recreation and Park Commission, to have no adverse impact upon the property under the jurisdiction of the Recreation and Park Commission.

*Based upon a detailed shadow analysis, the Project does not cast any net new shadow upon property under the jurisdiction of the Recreation and Parks Commission.*

- X. **Wind Currents at Ground Level.** Planning Code Section 24(c)(15) states that new buildings be shaped, or other wind baffling measures be adopted, so that the development will not cause year-round ground level wind currents to exceed, more than 10 percent of the time, between 7:00 a.m. and 6:00 p.m., the comfort level of 11 miles per hour (mph) equivalent wind speed in areas of pedestrian use and 7 mph equivalent wind speed in public seating areas. When pre-existing ambient wind speeds exceed the comfort levels specified above, the building shall be designed to reduce the ambient wind speeds in efforts to meet the goals of this requirement.

*A wind assessment was prepared for the proposed 130-foot-tall development at 600 Van Ness Avenue and reviewed as part of the of the environmental evaluation application 2015-012729ENV. On pages 83-85 of the Preliminary Mitigated Negative Declaration, the analysis of wind currents determines that the project would increase the number of sensor locations that exceed the Planning Code's 11 mph comfort criterion from 58 under existing conditions to 60 under existing plus project conditions, and that these two additional sensor locations are located along the Van Ness Avenue frontage of the proposed project. However, the analysis also notes that the addition of the proposed project would reduce the total hours of hazardous wind speeds from 124 hours under existing conditions to 99 hours with the addition of the proposed project.*

- Y. **Inclusionary Affordable Housing Program.** Planning Code Section 415 sets forth the requirements and procedures for the Inclusionary Affordable Housing Program. Under Planning Code Section 415.3, these requirements apply to projects that consist of 10 or more units. The applicable percentage is dependent on the number of units in the project, the zoning of the property, and the date that the project submitted a complete Environmental Evaluation Application. A complete Environmental Evaluation Application was submitted on September 24, 2015; therefore, pursuant to Planning Code Section 415.3 the Inclusionary Affordable Housing Program requirement for the On-site Affordable Housing Alternative is to provide 14.5% of the proposed dwelling units as affordable

*The Project Sponsor has demonstrated that it is eligible for the On-Site Affordable Housing Alternative under Planning Code Section 415.5 and 415.6, and has submitted an 'Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415,' to satisfy the requirements of the Inclusionary Affordable Housing Program by providing the affordable housing on-site instead of through payment of the Affordable Housing Fee. The Project Sponsor submitted such Affidavit on February 19, 2018. The applicable percentage is dependent on the total number of units in the project, the zoning of the property, and the date that the project submitted a complete Environmental Evaluation Application. A complete Environmental Evaluation Application was submitted on September 24, 2015; therefore, pursuant to Planning Code Section 415.3 the Inclusionary Affordable Housing Program requirement for the On-site Affordable Housing Alternative is to provide 14.5% of the total proposed dwelling units as affordable. 24 units (11 studios, 8 one-bedroom, 5 two-bedroom, and 0 three-bedroom) of the 168 total units provided will be affordable units. If the Project becomes ineligible to meet its Inclusionary Affordable Housing Program obligation through the On-site Affordable Housing Alternative, it must pay the Affordable Housing Fee with interest, if applicable.*

- Z. **First Source Hiring.** The Project is subject to the requirements of the First Source Hiring Program as they apply to permits for residential development (Section 83.4(m) of the Administrative Code), and the Project Sponsor shall comply with the requirements of this Program as to all construction work and on-going employment required for the Project. Prior to the issuance of any building permit to construct or a First Addendum to the Site Permit, the Project Sponsor shall have a First Source Hiring Construction and Employment Program approved by the First Source Hiring Administrator, and evidenced in writing. In the event that both the Director of Planning and the First Source Hiring Administrator agree, the approval of the Employment Program may be delayed as needed.

*The Project Sponsor submitted a First Source Hiring Affidavit and prior to issuance of a building permit will execute a First Source Hiring Memorandum of Understanding and a First Source Hiring Agreement with the City's First Source Hiring Administration.*

- AA. **Child-Care and Transportation Sustainability Impact Fees.** Sections 411 and 414 authorize the imposition of certain development impact fees on new development projects to off-set impacts on child-care services and the transit system. Land use categories for all impact fees are defined in Section 401.

*The Project Sponsor will comply with the requirements of this section prior to the issuance of the first construction document.*



BB. **Signage.** Any proposed signage will be subject to the review and approval of the Planning Department.

**7. Planning Code Section 253 – Height Above 50 Feet and Street Frontage Greater than 50 Feet in RC Districts.** Planning Code Section 253 establishes criteria for the Planning Commission to consider when reviewing applications for projects where the building height exceeds 50 feet in an RC District and has more than 50 feet of street frontage on the front façade.

- a. In reviewing any such proposal for a building or structure exceeding 40 feet in height in a RH District, 50 feet in height in a RM or RC District, or 40 feet in a RM or RC District where the street frontage of the building is more than 50 feet the Planning Commission shall consider the expressed purposes of this Code, of the RH, RM, or RC Districts, and of the height and bulk districts, set forth in Sections 101, 209.1, 209.2, 209.3, and 251 hereof, as well as the criteria stated in Section 303(c) of this Code and the objectives, policies and principles of the General Plan, and may permit a height of such building or structure up to but not exceeding the height limit prescribed by the height and bulk district in which the property is located.

*Per Planning Code Section 209.3 the expressed purpose of the RC (Residential-Commercial) Districts is "to recognize, protect, conserve, and enhance areas characterized by structures combining Residential uses with neighborhood-serving Commercial uses. The predominant Residential uses are preserved, while provision is made for supporting Commercial uses, usually in or below the ground story, that meet the frequent needs of nearby residents without generating excessive vehicular traffic." More specifically, RC-4 Districts are intended to provide for a mixture of high-density dwellings with supporting commercial uses. The Project proposes a building that is 130-feet tall and has 388 feet of frontage on Van Ness Avenue, and the portions of Elm Street and Golden Gate Avenue within the RC-4 Zoning District and 130-V Height and Bulk District. The height of the proposed structure complies with the 130 foot height limit and 'V' bulk.*

- b. In reviewing a proposal for a building exceeding 50 feet in RM and RC districts, the Planning Commission may require that the permitted bulk and required setbacks of a building be arranged to maintain appropriate scale on and maximize sunlight to narrow streets (rights-of-way 40 feet in width or narrower) and alleys.

*The proposed development has 134 feet of street frontage on Elm Street, for the portion of the project within the RC-4 District. Elm Street, which is 35 feet wide, is considered a narrow street because it is less than 40 feet wide. In an effort to provide relief to Elm Street, a 50-foot wide portion of the RC-4 Elm Street frontage is set back to reflect the narrow street height limits applicable in NC Districts as noted previously, which accommodates an unobstructed 45 degree angle solar plane. The remaining 84-feet of the Elm Street frontage is at the property line and establishes the massing of the building associated with the Van Ness Avenue street frontage. However, this massing is reduced by a 17.5-foot set back from Elm Street on the 6<sup>th</sup> Level, and a 47-foot setback from Elm Street on the 10<sup>th</sup> Level.*

8. **Planning Code Section 253.2 – Height Above 50 Feet in the Van Ness SUD.** Planning Code Section 253.2 establishes criteria for the Planning Commission to consider when reviewing applications for projects where the building height exceeds 50 feet in the Van Ness Special Use District.

- a. The Planning Commission may require that the permitted bulk and required setbacks of a building be arranged to maintain appropriate scale on and maximize sunlight to narrow streets (rights-of-way 40 feet in width or narrower) and alleys.

*As previously noted, the proposed building fronts onto Elm Street, which is 35 feet wide and therefore considered a narrow street because it has a width less than 40 feet. The project proposes an appropriate stepping of the building mass, which protects sunlight onto the narrow street while maintaining a prominent building form along Van Ness Avenue.*

9. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply with said criteria in that:

- A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

*The Project will add 168 residential units to the subject property and 6,200 square feet of ground floor retail. The additional residential use, supporting neighborhood serving scaled retail, density of units, mixture of unit types, and overall scale of development is appropriate for the subject location and compatible with the neighborhood. Furthermore, the proposal makes use of an underdeveloped lot containing and contributes to the City's housing stock and while providing a mix of unit types. The project is both necessary and desirable.*

- B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

- i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

*As proposed, the development site will include a new 130-foot tall residential building containing 168 dwelling units. The scale of the new building is appropriate in size and shape as it is sculpted to reduce the massing against Elm Street and establish the building's main presence on Van Ness Avenue, with a strong secondary façade along Golden Gate Avenue.*

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;



*The proposal includes up to 89 accessory off-street parking spaces, but could provide up to 122 spaces per the Planning Code. Additionally, the Project will include 4 car share spaces, 169 Class 1 bicycle parking spaces and one off-street freight loading space. The proposal will also reduce the number of vehicular ingress/egress points on the site from four to one. In conjunction with the nine Muni bus lines within .25-miles of the site and the forthcoming Van Ness BRT service, the site adequately provides for parking and loading while facilitating accessibility and traffic patterns for persons and vehicles.*

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

*The Project, which is predominantly residential in nature, will not emit any noxious odors or other offensive emissions. All window glazing will comply with the Planning Code and relevant design guidelines to eliminate or reduce glare. During construction, the Project Sponsor would take appropriate measures to minimize dust and noise as required by the Building Code any measures set forth in the Project's CEQA documentation.*

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

*The Project includes a streetscape plan that addresses landscaping, lighting and street furniture for all the subject property's street frontages. Particular attention is given to the treatment of ground floor residential entries on Elm Street, the retail frontage on Van Ness Avenue, and the lobby entry on Golden Gate Avenue. Additionally, the proposed open space areas are designed with decorative railings (at street level), various types of landscaping, and amenities that enable usability of the common areas. Entrance to the off-street parking and loading area is also minimized to 18-feet wide.*

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

*The Project complies with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed below.*

- 10. **Planning Code Section 304 - Planned Unit Development.** Planning Code Section 304 allows projects on sites larger than ½ acre to seek Conditional Use authorization from the Planning Commission and to seek exceptions from other provisions of the Code only to the extent specified in the authorization.

- a. The procedures for Planned Unit Developments (PUDs) are intended for projects on sites of considerable size, developed as integrated units and designed to produce an environment of stable and desirable character which will benefit the occupants, the neighborhood and the City as a whole.

*The proposed project is of a size and scale specifically anticipated by the provisions of Section 304. The existing lot, containing approximately 22,980 square feet (.53 acre), exceeds the size of one-*

*half acre (21,780 sf) that enables PUD consideration. Further, the project will replace a surface commercial parking lot with a 168 unit residential building, containing 6,200 gross square feet of ground floor retail space. Therefore, the project will provide benefits to future occupants, the neighborhood, and the City as a whole, by alleviating the City's housing shortage for numerous families and smaller households, generating more patrons for local businesses, and by adding to an assortment of existing neighborhood-serving retail uses.*

- b. In cases of outstanding overall design, complementary to the design and values of the surrounding area, such a project may merit a well reasoned modification of certain provisions contained elsewhere in this Code.

*The project is seeking modifications to the Planning Code requirements for floor area ratio (FAR), rear yard, and obstructions projecting over the public right-of-way. The FAR, rear yard and obstruction modifications provide flexibility in design that enables greater massing along Van Ness Avenue, and a reduction in massing against the interior mid-block, Elm Street, and the Tenderloin Children's School. As the massing is focused towards the Van Ness and Golden Gate Avenue facades, the obstruction modifications serve to facilitate outstanding overall design. The cantilevered building sections provide an articulation in plane that references the overall stacked and contorted form, and the proposed awning adds cohesiveness between the upper volumes of the building, as well as between the street presence of the retail and residential uses.*

Through this PUD authorization, the Commission approves the following modifications to otherwise applicable provisions of the Planning Code:

- i. Floor Area Premium for Corner Lot – relief from the prohibition on floor area premium for corner lots not allowed in the Van Ness Special Use District by Section 243(c)(1); provisions of floor area ratio requirements for the portion of the of the site located within the Van Ness Special Use District.

*Planning Code Section 124(d) limits the basic Floor Area Ratio (FAR) of residential uses in the Van Ness Special Use District to 7:1 square feet of building area for every 1 square foot of lot area, or approximately 112,560 gsf of building area for the portion of the project site within the special use district. Planning Code Section 125(a) allows corner lots to increase the area of the lot, for the purposes of floor area computation, by 25 percent. However, in the Van Ness Special Use District, Section 246(c)(1) does not allow floor area premiums permitted under Section 125(a).*

*The project is seeking a PUD modification to permit a floor area premium under Section 125(a). It would allow an increase in gross floor area from 112,560 gsf to 140,700 gsf, increasing the permitted FAR from 7:1 to 8.75:1. The project proposes an FAR of 126,576, or 7.87:1, which is an increase of 14,016 gsf.*

- ii. Rear Yard – relief from the provisions of rear yard requirements for the residential units as required in the RC District by Section 134(a)(1).



Planning Code Section 134(a)(1) requires that the project provide a rear yard depth equal to 25 percent of the total lot depth. The subject property has a rear yard requirement of 30 feet for the portion of the site proposed for development and would result in 5,745 square feet of open space, if provided. Per Planning Code Section 243(c)(6), projects may seek a modification from the rear yard requirements from the Zoning Administrator with consideration of the effect on the subject block's interior open space, the total amount of useable open space provided elsewhere on the lot and the access of light and air to abutting properties. Alternatively, projects qualifying as a PUD, may seek a modification from the Planning Commission.

The project provides a total of 12,587 square feet of code-complying open space, over twice the amount of open space provided by a code-complying rear yard. The proposed massing is also sensitively designed to consider its effect on the subject block's interior open space, as well as the access to light and air to abutting properties. The massing is concentrated towards the southwest portion of the site, along Van Ness and Golden Gate Avenues, and provides relief against the Elm Street frontage, where the majority of the structure is no taller than three stories and provides a solar access plane serving to reduce the shadows on the Tenderloin Children's School.

- iii. Obstructions over the Public Right-of-Way – relief from the obstructions allowed over the public right-of-way as required by Section 136(c).

The project includes the following two elements that do not fit within the list of permitted obstructions in Planning Code Section 136: (1) a perforated metal and glass awning above the ground floor retail frontage on the Van Ness and Golden Gate Avenue facades; and (2) one two-story and one three-story projection of the building mass cantilevered 3-feet beyond the Golden Gate Avenue property line.

Planning Code Section 136 and 136.1 permit awnings in residential districts so long as they do not exceed a height of 16 feet, that they do not project more than four feet from the face of the supporting building, and the distance from the top to the bottom of such awning does not exceed six feet. The project proposes an awning that extends the width of the entire Van Ness Avenue front façade at a height of 22 feet and then wraps around the Golden Gate Avenue façade where it drops to 12.5 feet at the residential lobby entrance. At the northwest corner of the building, the awning projects 3 feet from the face of the building wall, and then gradually extends up to 8 feet at the southwest corner of the building. As the awning wraps around to the Golden Gate Avenue frontage it projects 5 feet from the building wall.

Planning Code Section 136 provides maximum envelope requirement for bay windows that is 15 feet at the line establishing the required open area, and which is then reduced in proportion to the distance from that line by a means of 45 degree angles drawn inward from the ends of the 15-foot dimension, reaching a maximum of nine feet along a line parallel to and at a distance of three feet from the line establishing the required open area. This envelope may then be extended upwards to the height limit. The project is proposing alternative bay features. The most western bay will project three feet beyond the Golden Gate Avenue property line for a horizontal dimension of 69 feet, with a height of 21 feet, at the 6<sup>th</sup> and 7<sup>th</sup> levels. The most

*eastern bay will also extend three feet beyond the Golden Gate Avenue property line for a horizontal dimension of 33.5 feet, with a height of 32 feet, at the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> levels.*

- c. Planning Code Section 304(d) sets forth criteria, which must be met before the Commission may authorize a Conditional Use for a Planned Unit Development. On balance, the Project generally complies with all applicable criteria:

- i. The development shall affirmatively promote applicable objectives and policies of the General Plan.

*See "General Plan Compliance" findings discussed in Subsection 11.*

- ii. The development shall provide off-street parking adequate for the occupancy proposed.

*As proposed, the Project complies with the Planning Code's off-street parking requirements. The project proposes a total of 89 off-street parking spaces which satisfies the conflicting requirements of the NC-3 Zoning District, which requires a minimum amount of off-street parking, and the RC-4 Zoning District, which has no minimum requirement and instead limits the maximum amount of off-street parking spaces. Additionally, the proposal includes 169 bicycle parking spaces and is within .25 miles of nine Muni bus lines, including the forthcoming Van Ness BRT.*

- iii. The development shall provide open space usable by the occupants and, where appropriate, by the general public, at least equal to the open space required by the Planning Code.

*The project provides open space in excess of the area required by the Code via terraces at the 3<sup>rd</sup>, 8<sup>th</sup> and 10<sup>th</sup> levels of the building, in addition to a series of private porches and balconies overlooking Elm Street, Van Ness Avenue and the third level terrace.*

- iv. The development shall be limited in dwelling unit density to less than the density that would be allowed by Article 2 of this Code for a district permitting a greater density, so that the PUD will not be substantially equivalent to a reclassification of property.

*The RC-4 District allows for a dwelling unit density of 1 unit per 200 square feet of lot area. The next level of density limit would allow for a density of 1 unit per 125 square feet of lot area. Thus, based on a lot area of 21,980 square feet, the maximum dwelling unit density that could be permitted at the project site without meeting or exceeding a density of 1 unit per 125 square feet of lot area is 175 units. The project proposes 168 dwelling units, 7 units less than permitted under the Code. However, Planning Code Section 243(c)(3) eliminates restrictions on density controls for properties within the Van Ness Special Use District.*



- v. The development shall include commercial uses only to the extent that such uses are necessary to serve residents of the immediate vicinity.

*The project proposes 6,200 square feet of retail uses on the ground floor that will accommodate at least three neighborhood serving tenants.*

- vi. The development shall under no circumstances be excepted from any height limit.

*The project is within the 130-foot height limit. The project is proposed at a height of 130 feet as measured from Van Ness Avenue.*

- vii. Provide street trees as required by the Code.

*The project proposes the required number of street trees as prescribed by Code.*

11. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

## **VAN NESS AVENUE AREA PLAN**

### **Objectives and Policies**

#### **OBJECTIVE 1:**

IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING. CONTINUE EXISTING COMMERCIAL USES AND ADD A SIGNIFICANT INCREMENT OF NEW HOUSING.

#### **Policy 1.1:**

Encourage development of high density housing above a podium of commercial uses in new construction or substantial expansion of existing buildings.

#### **Policy 1.3:**

Allow residential densities to be established by building volume rather than lot size.

#### **Policy 1.4:**

Maximize the number of housing units.

#### **Policy 1.5:**

Employ various techniques to provide more affordable housing.

*The project proposes new construction a 168-unit development of high-density housing while providing ground floor neighborhood-serving retail spaces. The 168 unit density is a function of building volume and height as there are no density limits in the Van Ness Special Use District. Based on the 130-foot height limit on the site and the desire to activate the pedestrian levels with active uses, 168 units ranging from*

*studios to 3-bedrooms was deemed the maximum density for this project. The maximum density is also accommodated by modifications to the Planning Code's requirements for FAR, rear yard, and obstructions. Compliance with the City's inclusionary housing requirement will be satisfied by 24 on-site units.*

## **HOUSING ELEMENT**

### **Objectives and Policies**

#### **OBJECTIVE 4:**

**FOSTER A HOUSING STOCK THAT MEETS THE NEEDS OF ALL RESIDENTS ACROSS LIFECYCLES.**

##### **Policy 4.1:**

Develop new housing, and encourage the remodeling of existing housing, for families with children.

##### **Policy 4.5:**

Ensure that new permanently affordable housing is located in all of the city's neighborhoods, and encourage integrated neighborhoods, with a diversity of unit types provided at a range of income levels.

*The Project provides 168 dwelling units which will include 78 studios (46.43 percent), 54 1-Bedroom units (32.14 percent) and 36 +2-Bedroom units (21.43 percent). The project will also provide 24 below market rate units which will reflect this bedroom mix. Collectively, these units accommodate a variety of household sizes and types, from a single person household to a family with two or more children and/or older generations.*

#### **OBJECTIVE 11:**

**SUPPORT AND RESPECT THE DIVERSE AND DISTINCT CHARACTER OF SAN FRANCISCO'S NEIGHBORHOODS.**

##### **Policy 11.1:**

Promote the construction and rehabilitation of well-designed housing that emphasizes beauty, flexibility, and innovative design, and respects existing neighborhood character.

##### **Policy 11.2:**

Ensure implementation of accepted design standards in project approvals.

##### **Policy 11.3:**

Ensure growth is accommodated without substantially and adversely impacting existing residential neighborhood character.

##### **Policy 11.6:**

Foster a sense of community through architectural design, using features that promote community interaction.



**Policy 11.9:**

Foster development that strengthens local culture sense of place and history.

*The project proposes a mixed use building on an under-developed lot, formerly occupied by a formula retail restaurant (d.b.a. McDonald's) and a commercial off-street parking lot. The project is well-designed, as the architecture employs flexibility to accommodate sensitive neighbors and public spaces, while presenting a contemporary residential aesthetic. Further, by adding new residents to this area, the project promotes growth of the area's residential neighborhood character, as residential uses are not prominent in this area of the Van Ness and Polk Street corridors. Finally, by designing with sensitivity towards the neighboring school and improving the Elm Street streetscape, the project will help foster both a sense of community and place for the site's future residents and the local school children.*

**OBJECTIVE 13:**

PRIORITIZE SUSTAINABLE DEVELOPMENT IN PLANNING FOR AND CONSTRUCTING NEW HOUSING.

**Policy 13.1:**

Support "smart" regional growth that locates new housing close to jobs and transit.

**Policy 13.3:**

Promote sustainable land use patterns that integrate housing with transportation in order to increase transit, pedestrian, and bicycle mode share.

**Policy 13.4:**

Promote the highest feasible level of "green" development in both private and municipally-supported housing.

*The Project site is well-served by transit, due to its location on Van Ness Avenue and near Polk Street. Nine MUNI bus lines are within .25-miles of the subject property, many of which provide service to the Van Ness or Civic Center MUNI Station. Also immediately available will be the Van Ness BRT line. With respect to regional transit the site is also accessible to BART and Golden Gate Transit lines. The Project furthers "smart" regional growth by providing off-street parking for 89 cars for 168 dwelling units and the sites commercial activities, 4 car share spaces and 169 bicycle parking spaces. Similar to its proximity to numerous transit line, the site is close to the numerous bicycle routes that the City has already created, particularly for bicycle travel N/S on Polk and Larkin, and E/W on Sutter and McAllister. These routes link up to other bicycle routes in the City to facilitate bicycle travel Downtown and South of Market.*

**COMMERCE AND INDUSTRY ELEMENT**

**Objectives and Policies**

**OBJECTIVE 2:**

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

**Policy 2.1:**

Seek to retain existing commercial and industrial activity and to attract new such activity to the City.

*The Project will establish three new retail spaces that will provide new opportunities for business and residents within the City.*

12. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

*The project will establish three new neighborhood-serving retail uses that will contribute to future resident employment and ownership opportunities.*

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

*The existing units in the surrounding neighborhood would not be adversely affected. There are no existing dwelling units on the site. The Project proposes to add 168 new dwelling units to the City's housing stock.*

- C. That the City's supply of affordable housing be preserved and enhanced,

*The existing building to be demolished does not contain housing. The Project would enhance the City's supply of affordable housing by providing BMR units on-site.*

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

*The transportation study prepared for the Project concluded that the Project will not have any significant effect on the streets, neighborhood parking and MUNI services.*

- E. 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 will not displace any service or industrial establishment and is not a commercial office development. The Project will not affect industrial or service sector uses or related employment opportunities. Ownership of industrial or service sector businesses will not be affected by this project.*

- F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

*The Project is designed and will be constructed to conform to the structural and seismic safety requirements of the City Building Code.*

- G. That landmarks and historic buildings be preserved.

*A landmark or historic building does not occupy the Project site.*

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

*The Project proposes a building up to 130 feet in height. A shadow fan study was prepared by the Department and determined that the Project will not affect sunlight access to any public parks or open space.*

13. The 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 contribute to the character and stability of the neighborhood and would constitute a beneficial development.
14. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.



## DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2015-012729CUA** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated February 22, 2018, and stamped "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

The Planning Commission has reviewed and considered the IS/MND and the record as a whole and finds that there is no substantial evidence that the Project will have a significant effect on the environment with the adoption of the mitigation measures contained in the MMRP to avoid potentially significant environmental effects associated with the Project, and hereby adopts the FMND.

The Planning Commission hereby adopts the MND and the MMRP attached hereto as Exhibit C and incorporated herein as part of this Resolution/Motion by this reference thereto. All required mitigation measures identified in the IS/MND and contained in the MMRP are included as conditions of approval.

**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. 20196. 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 94102.

**Protest of Fee or Exaction:** You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development.

If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Variance Decision Letter constitutes the approval or conditional approval of the development and the City hereby gives **NOTICE** that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not re-commence the 90-day approval period.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on May 24, 2018.



Jonas P. Ionin  
Commission Secretary

AYES: Fong, Hillis, Johnson, Koppel, Melgar, and Moore

NAYS: None

ABSENT: Richards

ADOPTED: May 24, 2018

## EXHIBIT A

### AUTHORIZATION

This authorization is for a conditional use to construct a 130-foot tall building of approximately 185,670 gross square feet containing 168 dwelling units and up to 103 off-street parking spaces pursuant to Planning Code Section(s) 253, 253.2, 303 and 304 within an RC-4 (Residential, Commercial, High-Density) Zoning District, and NC-3 (Moderate scale, Neighborhood Commercial) Zoning District, the Van Ness Special Use District, and the 130-V and 130-E Height and Bulk Districts.; in general conformance with plans, dated **February 22, 2018**, and stamped "EXHIBIT B" included in the docket for Case No. **2015-012729** and subject to conditions of approval reviewed and approved by the Commission on **May 24, 2018** under Motion No **20196**. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

### RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for 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 for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on **May 24, 2018** under Motion No. **20196**.

### PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. **20196** shall be reproduced on the Index Sheet of construction plans submitted with the site or building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

### SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

### CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.



## Conditions of Approval, Compliance, Monitoring, and Reporting PERFORMANCE

1. **Validity.** The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. The Department of Building Inspection shall have issued a Building Permit or Site Permit to construct the project and/or commence the approved use within this three-year period.  
*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*
2. **Expiration and Renewal.** Should a Building or Site Permit be sought after the three (3) year period has lapsed, the project sponsor must seek a renewal of this Authorization by filing an application for an amendment to the original Authorization or a new application for Authorization. Should the project sponsor decline to so file, and decline to withdraw the permit application, the Commission shall conduct a public hearing in order to consider the revocation of the Authorization. Should the Commission not revoke the Authorization following the closure of the public hearing, the Commission shall determine the extension of time for the continued validity of the Authorization.  
*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*
3. **Diligent pursuit.** Once a site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. Failure to do so shall be grounds for the Commission to consider revoking the approval if more than three (3) years have passed since this Authorization was approved.  
*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*
4. **Extension.** All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.  
*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*
5. **Conformity with Current Law.** No application for Building Permit, Site Permit, or other entitlement shall be approved unless it complies with all applicable provisions of City Codes in effect at the time of such approval.  
*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*
6. **Mitigation Measures.** Mitigation measures described in the MMRP attached as Exhibit C are necessary to avoid potential significant effects of the proposed project and have been agreed to by the project sponsor. Their implementation is a condition of project approval.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

## DESIGN

7. **Final Materials.** The Project Sponsor shall continue to work with Planning Department on the building design. Final materials, glazing, color, texture, landscaping, and detailing shall be subject to Department staff review and approval. The architectural addenda shall be reviewed and approved by the Planning Department prior to issuance.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

8. **Garbage, composting and recycling storage.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and clearly labeled and illustrated on the building permit plans. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

9. **Rooftop Mechanical Equipment.** Pursuant to Planning Code 141, the Project Sponsor shall submit a roof plan to the Planning Department prior to Planning approval of the building permit application. Rooftop mechanical equipment, if any is proposed as part of the Project, is required to be screened so as not to be visible from any point at or below the roof level of the subject building.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

10. **Streetscape Plan.** Pursuant to Planning Code Section 138.1, the Project Sponsor shall continue to work with Planning Department staff, in consultation with other City agencies, to refine the design and programming of the Streetscape Plan so that the plan generally meets the standards of the Better Streets Plan and all applicable City standards. The Project Sponsor shall complete final design of all required street improvements, including procurement of relevant City permits, prior to issuance of first architectural addenda, and shall complete construction of all required street improvements prior to issuance of first temporary certificate of occupancy.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

11. **Transformer Vault.** The location of individual project PG&E Transformer Vault installations has significant effects to San Francisco streetscapes when improperly located. However, they may not have any impact if they are installed in preferred locations. Therefore, the Planning Department recommends the following preference schedule in locating new transformer vaults, in order of most to least desirable:

- a. On-site, in a basement area accessed via a garage or other access point without use of separate doors on a ground floor façade facing a public right-of-way;
- b. On-site, in a driveway, underground;



- c. On-site, above ground, screened from view, other than a ground floor façade facing a public right-of-way;
- d. Public right-of-way, underground, under sidewalks with a minimum width of 12 feet, avoiding effects on streetscape elements, such as street trees; and based on Better Streets Plan guidelines;
- e. Public right-of-way, underground; and based on Better Streets Plan guidelines;
- f. Public right-of-way, above ground, screened from view; and based on Better Streets Plan guidelines;
- g. On-site, in a ground floor façade (the least desirable location).

Unless otherwise specified by the Planning Department, Department of Public Work's Bureau of Street Use and Mapping (DPW BSM) should use this preference schedule for all new transformer vault installation requests.

*For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org>*

## PARKING AND TRAFFIC

12. **Transportation Demand Management (TDM) Program.** Pursuant to Planning Code Section 169, the Project shall finalize a TDM Plan prior to the issuance of the first Building Permit or Site Permit to construct the project and/or commence the approved uses. The Property Owner, and all successors, shall ensure ongoing compliance with the TDM Program for the life of the Project, which may include providing a TDM Coordinator, providing access to City staff for site inspections, submitting appropriate documentation, paying application fees associated with required monitoring and reporting, and other actions.

Prior to the issuance of the first Building Permit or Site Permit, 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 for the subject property to document compliance with the TDM Program. This Notice shall provide the finalized TDM Plan for the Project, including the relevant details associated with each TDM measure included in the Plan, as well as associated monitoring, reporting, and compliance requirements.

13. **Parking for Affordable Units.** All off-street parking spaces shall be made available to Project residents only as a separate "add-on" option for purchase or rent and shall not be bundled with any Project dwelling unit for the life of the dwelling units. The required parking spaces may be made available to residents within a quarter mile of the project. All affordable dwelling units pursuant to Planning Code Section 415 shall have equal access to use of the parking as the market rate units, with parking spaces priced commensurate with the affordability of the dwelling unit. Each unit within the Project shall have the first right of refusal to rent or purchase a parking space until the number of residential parking spaces are no longer available. No conditions may be placed on the purchase or rental of dwelling units, nor may homeowner's rules be established, which prevent or preclude the separation of parking spaces from dwelling units.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

14. **Car Share.** Pursuant to Planning Code Section 166, no fewer than one (1) car share space shall be made available, at no cost, to a certified car share organization for the purposes of providing car share services for its service subscribers.  
*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*
15. **Bicycle Parking.** Pursuant to Planning Code Sections 155, 155.1, and 155.2, the Project shall provide no fewer than 132 bicycle parking spaces (117 Class 1 spaces and 8 Class 2 spaces for the residential portion of the project, and 7 Class 2 spaces for the commercial portion of the Project). SFMTA has final authority on the type, placement and number of Class 2 bicycle racks within the public ROW. Prior to issuance of first architectural addenda, the project sponsor shall contact the SFMTA Bike Parking Program at [bikeparking@sfmta.com](mailto:bikeparking@sfmta.com) to coordinate the installation of on-street bicycle racks and ensure that the proposed bicycle racks meet the SFMTA's bicycle parking guidelines. Depending on local site conditions and anticipated demand, SFMTA may request the project sponsor pay an in-lieu fee for Class II bike racks required by the Planning Code.
16. **Managing Traffic During Construction.** The Project Sponsor and construction contractor(s) shall coordinate with the Traffic Engineering and Transit Divisions of the San Francisco Municipal Transportation Agency (SFMTA), the Police Department, the Fire Department, the Planning Department, and other construction contractor(s) for any concurrent nearby Projects to manage traffic congestion and pedestrian circulation effects during construction of the Project.  
*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

## PROVISIONS

17. **Anti-Discriminatory Housing.** The Project shall adhere to the requirements of the Anti-Discriminatory Housing policy, pursuant to Administrative Code Section 1.61.  
*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*
18. **First Source Hiring.** The Project shall adhere to the requirements of the First Source Hiring Construction and End-Use Employment Program approved by the First Source Hiring Administrator, pursuant to Section 83.4(m) of the Administrative Code. The Project Sponsor shall comply with the requirements of this Program regarding construction work and on-going employment required for the Project.  
*For information about compliance, contact the First Source Hiring Manager at 415-581-2335, [www.onestopSF.org](http://www.onestopSF.org)*
19. **Transportation Sustainability Fee.** The Project is subject to the Transportation Sustainability Fee (TSF), as applicable, pursuant to Planning Code Section 411A.  
*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*
20. **Child Care Fee - Residential.** The Project is subject to the Residential Child Care Fee, as applicable, pursuant to Planning Code Section 414A.



*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

21. **Affordable Units.** The following Inclusionary Affordable Housing Requirements are those in effect at the time of Planning Commission action. In the event that the requirements change, the Project shall comply with the requirements in place at the time of issuance of first construction document.

- a. **Number of Required Units.** Pursuant to Planning Code Section 415.6, the Project is required to provide 14.5% of the proposed dwelling units as affordable to qualifying households. The Project contains 168 units; therefore, 24 affordable units are required. The Project Sponsor will fulfill this requirement by providing the 24 affordable units on-site. If the number of market-rate units change, the number of required affordable units shall be modified accordingly with written approval from Planning Department staff in consultation with the Mayor's Office of Housing and Community Development ("MOHCD").

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing and Community Development at 415-701-5500, [www.sf-moh.org](http://www.sf-moh.org).*

- b. **Unit Mix.** The Project contains 78 studios, 54 one-bedroom, 35 two-bedroom, and 1 three-bedroom units; therefore, the required affordable unit mix is 11 studios, 8 one-bedroom, 5 two-bedroom, and 0 three-bedroom units. If the market-rate unit mix changes, the affordable unit mix will be modified accordingly with written approval from Planning Department staff in consultation with MOHCD.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing and Community Development at 415-701-5500, [www.sf-moh.org](http://www.sf-moh.org).*

- c. **Unit Location.** The affordable units shall be designated on a reduced set of plans recorded as a Notice of Special Restrictions on the property prior to the issuance of the first construction permit.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing and Community Development at 415-701-5500, [www.sf-moh.org](http://www.sf-moh.org).*

- d. **Phasing.** If any building permit is issued for partial phasing of the Project, the Project Sponsor shall have designated not less than twelve percent (14.5%) of the each phase's total number of dwelling units as on-site affordable units.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing and Community Development at 415-701-5500, [www.sf-moh.org](http://www.sf-moh.org).*

- e. **Duration.** Under Planning Code Section 415.8, all units constructed pursuant to Section 415.6, must remain affordable to qualifying households for the life of the project.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing and Community Development at 415-701-5500, [www.sf-moh.org](http://www.sf-moh.org).*

- f. **Other Conditions.** The Project is subject to the requirements of the Inclusionary Affordable Housing Program under Section 415 et seq. of the Planning Code and City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual ("Procedures Manual"). The Procedures Manual, as amended from time to time, is incorporated herein by reference, as published and adopted by the Planning Commission, and as required by Planning Code Section 415. Terms used in these conditions of approval and not otherwise defined shall have the meanings set forth in the Procedures Manual. A copy of the Procedures Manual can be obtained at the MOHCD at 1 South Van Ness Avenue or on the Planning Department or MOHCD websites, including on the internet at: <http://sf-planning.org/Modules/ShowDocument.aspx?documentid=4451>. As provided in the Inclusionary Affordable Housing Program, the applicable Procedures Manual is the manual in effect at the time the subject units are made available for sale.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing and Community Development at 415-701-5500, [www.sf-moh.org](http://www.sf-moh.org).*

- i. The affordable unit(s) shall be designated on the building plans prior to the issuance of the first construction permit by the Department of Building Inspection ("DBI"). The affordable unit(s) shall (1) reflect the unit size mix in number of bedrooms of the market rate units, (2) be constructed, completed, ready for occupancy and marketed no later than the market rate units, and (3) be evenly distributed throughout the building; and (4) be of comparable overall quality, construction and exterior appearance as the market rate units in the principal project. The interior features in affordable units should be generally the same as those of the market units in the principal project, but need not be the same make, model or type of such item as long they are of good and new quality and are consistent with then-current standards for new housing. Other specific standards for on-site units are outlined in the Planning Code and Procedures Manual.
- ii. If the units in the building are offered for rent, the affordable unit(s) shall be rented to qualifying households, as defined in the Procedures Manual, whose gross annual income, adjusted for household size, does not exceed an average fifty-five (55) percent of Area Median Income under the income table called "Maximum Income by Household Size derived from the Unadjusted Area Median Income for HUD Metro Fair Market Rent Area that contains San Francisco." The initial and subsequent rent level of such units shall be calculated according to the Procedures Manual. Limitations on (i) occupancy; (ii) lease changes; (iii) subleasing, and; are set forth in the Inclusionary Affordable Housing Program and the Procedures Manual.



- iii. The Project Sponsor is responsible for following the marketing, reporting, and monitoring requirements and procedures as set forth in the Procedures Manual. MOHCD shall be responsible for overseeing and monitoring the marketing of affordable units. The Project Sponsor must contact MOHCD at least six months prior to the beginning of marketing for any unit in the building.
- iv. Required parking spaces shall be made available to initial buyers or renters of affordable units according to the Procedures Manual.
- v. Prior to the issuance of the first construction permit by DBI for the Project, the Project Sponsor shall record a Notice of Special Restriction on the property that contains these conditions of approval and a reduced set of plans that identify the affordable units satisfying the requirements of this approval. The Project Sponsor shall promptly provide a copy of the recorded Notice of Special Restriction to the Department and to MOHCD or its successor.
- vi. The Project Sponsor has demonstrated that it is eligible for the On-site Affordable Housing Alternative under Planning Code Section 415.6 instead of payment of the Affordable Housing Fee, and has submitted the *Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415* to the Planning Department stating that any affordable units designated as on-site units shall be sold as ownership units and will remain as ownership units for the life of the Project.
- vii. If the Project Sponsor fails to comply with the Inclusionary Affordable Housing Program requirement, the Director of DBI shall deny any and all site or building permits or certificates of occupancy for the development project until the Planning Department notifies the Director of compliance. A Project Sponsor's failure to comply with the requirements of Planning Code Section 415 et seq. shall constitute cause for the City to record a lien against the development project and to pursue any and all available remedies at law.
- viii. If the Project becomes ineligible at any time for the On-site Affordable Housing Alternative, the Project Sponsor or its successor shall pay the Affordable Housing Fee prior to issuance of the first construction permit. If the Project becomes ineligible after issuance of its first construction permit, the Project Sponsor shall notify the Department and MOHCD and pay interest on the Affordable Housing Fee and penalties, if applicable.

## MONITORING - AFTER ENTITLEMENT

22. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code

Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction. *For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

23. **Monitoring.** The Project requires monitoring of the conditions of approval in this Motion. The Project Sponsor or the subsequent responsible parties for the Project shall pay fees as established under Planning Code Section 351(e) (1) and work with the Planning Department for information about compliance.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

24. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

## OPERATION

25. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards.

*For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org>*

26. **Community Liaison.** Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*



# 600 VAN NESS

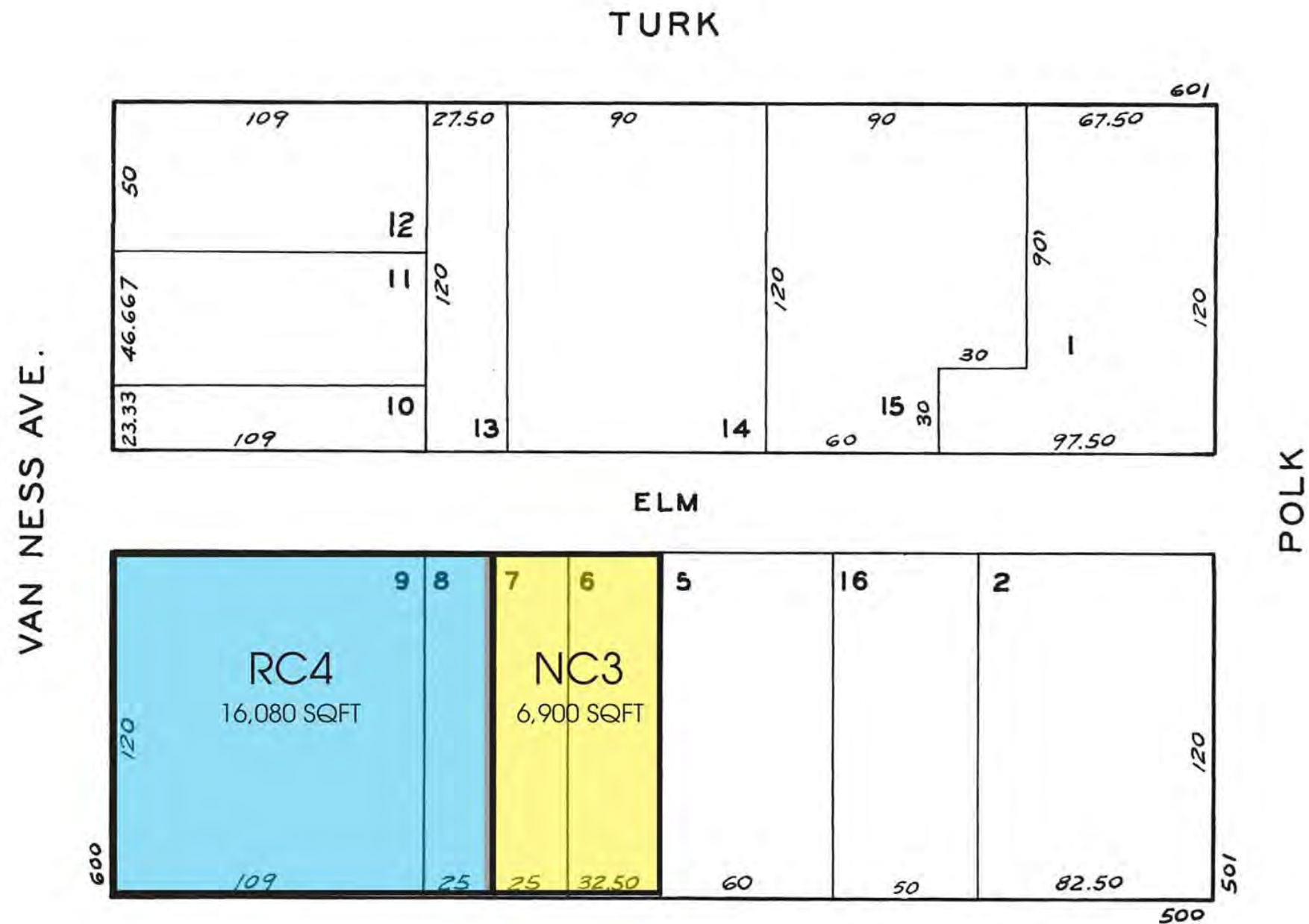
## PLANNING COMMISSION PACKET











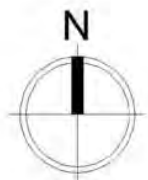
Project Information:

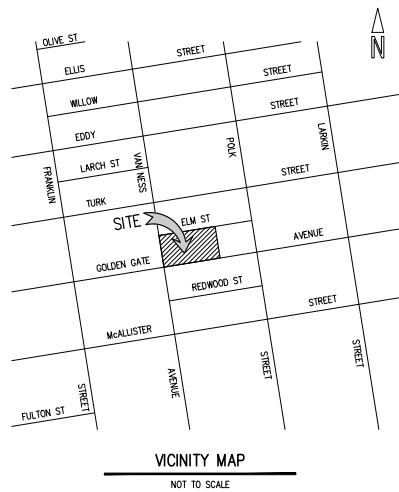
Property Address: 600 Van Ness Avenue San Francisco, CA 94102

Assessor's Block/Lot(s): 0763-009, 0763-008, 0763-007, 0763-006

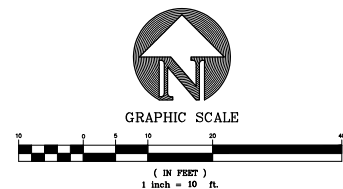
Zoning Districts: RC\$ & NC3

Height and Bulk Districts: 130-V & 130-E





1. WAITING FOR ZONING REPORT.



SCALE:  
HORIZ.: 1" = 10'  
VERT.:  
1 OF 1

AREA SUMMARY				
FLOORS	FLOOR HEIGHT (feet)	TOTAL NSA	TOTAL GFA	FLOOR EFF.
Roof			659	
13	9'-8"	4,155	5,845	71.1%
12	9'-8"	4,168	5,845	71.3%
11	9'-8"	4,168	5,845	71.3%
10	9'-8"	4,253	5,937	71.6%
9	10'-0"	5,980	7,847	76.2%
8	9'-8"	8,075	10,204	79.1%
7	10'-0"	12,555	14,892	84.3%
6	10'-0"	12,555	14,892	84.3%
5	10'-0"	14,745	17,226	85.6%
4	9'-8"	14,745	17,226	85.6%
(incl. Club) 3	9'-8"	14,316	17,732	80.7%
2	9'-6"	9,845	18,356	53.6%
GROUND	14'-0"	5,644	20,282	24.7%
BASEMENT	13'-6"		22,882	
TOTAL AREA		115,204	185,670	62.0%
AREA w/o PARKING		115,204	162,788	70.8%

RETAIL NSA	6,200
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OPEN SPACE CALCULATION	
18 UNITS HAVE PRIVATE OPEN SPACE = 3,805 SF (36 sf/unit in RC-4 district or 80 sf/unit in NC-3 district)	
REQUIRED OPEN SPACE : (168-18) X 48 SF = 7,200 SF	
PROVIDED OPEN SPACE :	4,037 SF @ LEVEL 3
(Commonly Accessible)	3,727 SF @ LEVEL 8
	1,018 SF @ LEVEL 10
TOTAL	8,782 SF > 7,200 SF

UNIT SUMMARY						
FLOORS	STUDIO	1 BR	2 BR	3BR	TOTAL	AVERAGE UNIT NSA
Roof						
13			3	1	4	1039
12		2	3		5	834
11		2	3		5	834
10		2	3		5	851
9	1	5	2		8	981
8	1	5	2		8	1009
7	10	4	7		21	598
6	14	4	3		21	598
5	11	9	3		23	641
4	11	9	3		23	641
3	11	8	3		22	651
2	11	4			15	656
GROUND	8				8	706
BASEMENT						
TOTAL UNITS	78	54	35	1	168	686
UNIT MIX	46.4%	32.1%	20.8%	0.6%	100.0%	

OPEN SPACE	
COMMONLY ACCESSIBLE OPEN SPACE	QUALIFYING PRIVATE OPEN SPACE
1,018	784
3,727	
	2,325
4,037	
	375
	321
8,782	3,805



GROUND	TYPE	ST	ST	ST	ST	ST	ST	ST	ST																		8	UNIT
	NSA	690	690	755	690	690	690	690	754																		5649	NSA
2ND	TYPE	ST	ST	ST	ST	ST	ST	ST	1BR	1BR	ST	ST	ST	ST	1BR	1BR											15	UNIT
	NSA	641	627	694	627	627	627	627	1037	938	449	449	448	531	719	754											9795	NSA
3RD	TYPE	2BR	ST	ST	2BR	1BR	1BR	1BR	ST	1BR	1BR	1BR	ST	ST	ST	ST	ST	ST	ST	ST	ST	2BR	1BR	1BR			22	UNIT
	NSA	959	566	565	993	719	763	768	528	707	734	677	512	428	429	432	448	449	449	454	1042	811	846				14279	NSA
4TH	TYPE	2BR	ST	ST	2BR	1BR	ST	1BR	1BR	1BR	1BR	1BR	ST	ST	ST	ST	ST	ST	ST	ST	ST	2BR	1BR	1BR	1BR		23	UNIT
	NSA	959	566	566	993	718	467	733	705	673	667	734	677	512	428	429	432	448	449	449	454	1042	811	846			14758	NSA
5TH	TYPE	2BR	ST	ST	2BR	1BR	ST	1BR	1BR	1BR	1BR	1BR	ST	ST	ST	ST	ST	ST	ST	ST	ST	2BR	1BR	1BR			23	UNIT
	NSA	959	566	566	993	718	467	733	705	673	667	734	677	512	428	429	432	448	449	449	454	1042	811	846			14758	NSA
6TH	TYPE	2BR	1BR	1BR	ST	1BR	1BR	ST	ST	ST	ST	ST	ST	ST	ST	ST	ST	ST	ST	ST	ST	2BR	2BR				21	UNIT
	NSA	881	820	863	438	728	700	459	460	570	584	463	445	513	430	429	432	495	492	484	1066	816					12568	NSA
7TH	TYPE	2BR	1BR	1BR	TH	TH	TH	TH	ST	1BR	1BR	ST	ST	ST	ST	ST	ST	ST	ST	ST	ST	2BR	2BR				21	UNIT
	NSA	881	820	863	471	533	547	478	438	728	700	441	431	513	430	429	432	495	492	484	1066	816					12488	NSA
8TH	TYPE	1BR	ST	1BR					1BR	1BR	1BR	2BR	2BR														8	UNIT
	NSA	745	489	772	564	558	572	578	683	711	695	989	923														8279	NSA
9TH	TYPE	1BR	ST	1BR	1BR	1BR	1BR	2BR	2BR																		8	UNIT
	NSA	745	489	772	683	711	695	989	923																		6007	NSA
10TH	TYPE	2BR	2BR	1BR	1BR	2BR																					5	UNIT
	NSA	923	850	711	695	1081																					4260	NSA
11TH	TYPE	2BR	2BR	1BR	1BR	2BR																					5	UNIT
	NSA	843	850	711	695	1081																					4180	NSA
12TH	TYPE	2BR	2BR	1BR	1BR	2BR																					5	UNIT
	NSA	843	850	711	695	1081																					4180	NSA
13TH	TYPE	2BR	2BR	2BR	3BR																						4	UNIT
	NSA	843	850	1069	1423																						4185	NSA

ST	1BR	2BR	TH	3BR	NSA TOTAL	115,386
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	STUDIO	1BR	2BR	TH	3BR	TOTAL
GROUND	8	0	0	0	0	8
2ND	11	4	0	0	0	15
3RD	11	8	3	0	0	22
4TH	11	9	3	0	0	23
5TH	11	9	3	0	0	23
6TH	14	4	3	0	0	21
7TH	10	4	3	4	0	21
8TH	1	5	2	0	0	8
9TH	1	5	2	0	0	8
10TH	0	2	3	0	0	5
11TH	0	2	3	0	0	5
12TH	0	2	3	0	0	5
13TH	0	0	3	0	1	4
	78	54	31	4	1	168
BMR	11.31	7.83	4.495	0.58	0.145	24.36
UNIT MIX	STUDIO	1BR	2BR	TH	3BR	
	46.43%	32.14%	18.45%	2.38%	0.60%	



IWAMOTOSCOTT  
ARCHITECTURE

600 VAN NESS  
GOLDEN GATE VAN NESS LLC

UNIT SUMMARY  
February 22, 2018



Golden Gate Van Ness LLC  
Architecture International / Iwamoto Scott  
600 Van Ness

February 15, 2018

(based on Site Permit documents dated 12.15.17)

LOT 1			
BLOCKS 0763 , LOTS 8 & 9		SITE AREA:	16,080
ZONED RC-4			
130 V HEIGHT / BULK LIMIT			
FAR (FLOOR AREA RATIO)		7	112,560
FAR WITH 25% BONUS	Per Section 125 (a)		140,700

RESIDENTIAL												
FLOORS	FLOOR HEIGHT (feet)	NSA	PARKING / SERVICE	MEPS	BIKE PARKING	LOBBY / COMMON AREAS	OFFICE	RETAIL	CORE + CORRIDOR	# OF UNITS	TOTAL	FLOOR EFF.
ROOF									659	0.0	659	0.00%
13	9'8"	4,155		142					1,548	4.0	5,845	71.09%
12	9'8"	4,168		140					1,537	5.0	5,845	71.31%
11	9'8"	4,168		140					1,537	5.0	5,845	71.31%
10	9'8"	4,253		140					1,544	5.0	5,937	71.64%
9	10'0"	5,980		140					1,727	8.0	7,847	76.21%
8	9'8"	5,980		140					1,727	8.0	7,847	76.21%
7	10'0"	8,970		103					1,684	14.0	10,757	83.39%
6	10'0"	8,970		103					1,684	14.0	10,757	83.39%
5	10'0"	11,388		108					1,865	18.0	13,361	85.23%
4	9'8"	11,388		108					1,865	18.0	13,361	85.23%
3	9'8"	11,069		61		238			1,993	17.0	13,361	82.85%
2	9'6"	6,241		104		3,331			2,235	11.0	11,922	52.35%
GROUND	14'0"	3,969	0	529	356	2,268	1,041	5,165	2,001	6.0	15,329	25.89%
BASEMENT	13'6"	0	14,541	663					876		16,080	0
TOTAL AREA		90,699	14,541	2,621	356	5,837	1,041	5,165	24,482	133.0	144,753	

Area Exempt from FAR	Per Planning Section	MINUS									
PARKING / SERVICE	102.9 (b) (6)	14,541									14,541
BIKE PARKING	102.9 (a) (8)			356							356
BASEMENT MEP + MEP	102.9 (b) (1)			2,621							2,621
ELEV.PENTHOUSE	102.9 (b) (3)							659			659

SUBTOTAL											18,177
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TOTAL AREA (FAR)											126,576
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TOTAL LOT 1 FAR GFA =	126,576	VS.	140,700
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TOTAL UNITS (LOT 1) =	133.0
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TOTAL UNITS (LOT 1 + LOT 2) =	168.0
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LOT 2			
BLOCKS 0763 , LOTS 6 & 7	SITE AREA:		6,900
ZONED NC-3	Residential Density:	125 sf / Unit:	55.2
130 E HEIGHT / BULK LIMIT			
FAR (FLOOR AREA RATIO) - For Non-Residential	3.6		24,840

RESIDENTIAL												
FLOORS	FLOOR HEIGHT (feet)	NSA	PARKING	MEPS	BIKE PARKING	LOBBY / COMMON AREAS	TERRACE CLUB	RETAIL	MECH. / CORE + CORRIDOR	# OF UNITS	TOTAL	FLOOR EFF.
ROOF												
13	9'8"	0							0			
12	9'8"	0							0			
11	9'8"	0							0			
10	9'8"	0							0			
9	10'0"	0							0		0	
8	9'8"	2,095							262		2,357	88.88%
7	10'0"	3,585		26					524	7.0	4,135	86.70%
6	10'0"	3,585		26					524	7.0	4,135	86.70%
5	10'0"	3,357		27					481	5.0	3,865	86.86%
4	9'8"	3,357		27					481	5.0	3,865	86.86%
3	9'8"	3,247		27			520		577	5.0	4,371	74.29%
2	9'6"	3,604		27		1,707			1,096	4.0	6,434	56.01%
GROUND	14'0"	1,675		472	605			1,035	1,166	2.0	4,953	
BASEMENT	13'6"		3,232	3,258					312		6,802	
TOTAL AREA		24,505	3,232	3,890	605	1,707		1,035	5,423	35.0	40,917	

Area Exempt from FAR	Per Planning Section	MINUS									
PARKING	102.9 (b) (6)	3,232									3,232
BIKE PARKING	102.9 (a) (8)			605							605
BASEMENT MEP + MEP	102.9 (b) (1)			3,890							3890
ELEV.PENTHOUSE	102.9 (b) (3)										0

SUBTOTAL											7,727
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TOTAL AREA (FAR)											33,190
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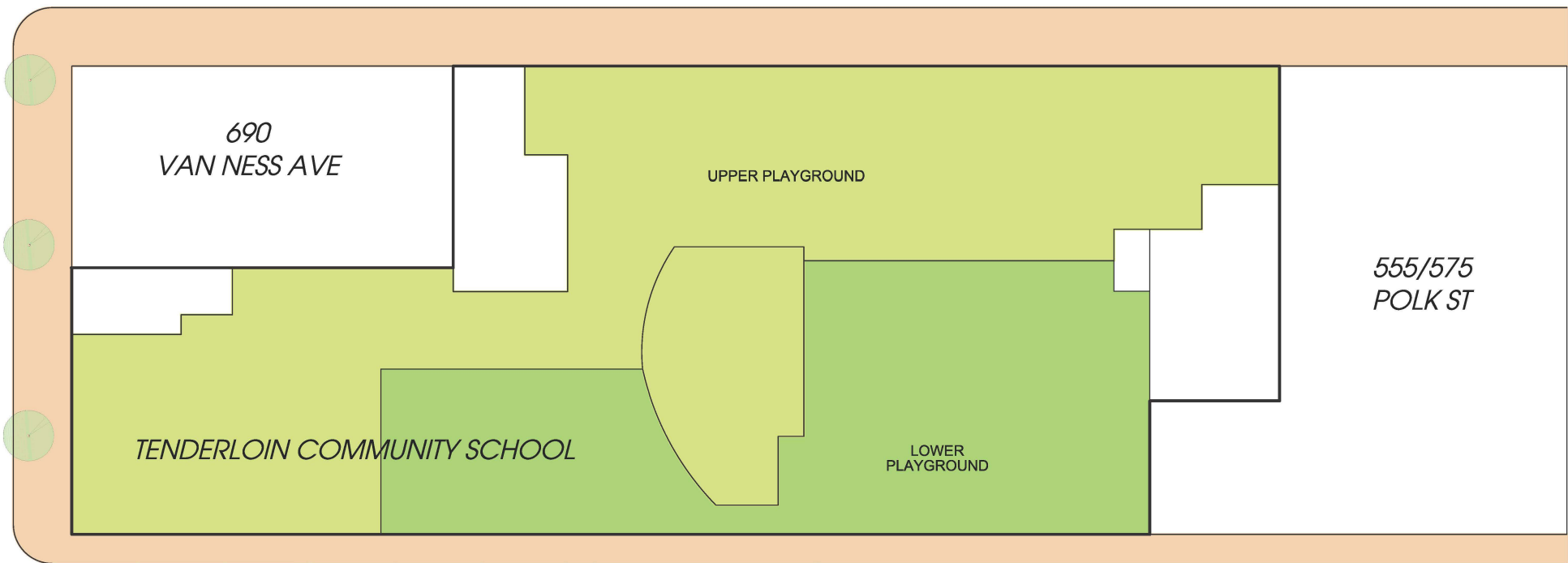
TOTAL UNITS (LOT 2) =	35.0
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TOTAL	TOTAL NSA	TOTAL GFA
659	0	659
5,845	4,155	5,845
5,845	4,168	5,845
5,845	4,168	5,845
5,937	4,253	5,937
7,847	5,980	7,847
10,204	8,075	10,204
14,892	12,555	14,892
17,226	14,745	17,226
17,226	14,745	17,226
17,732	14,316	17,732
18,356	9,845	18,356
20,282	5,644	20,282
22,882	0	22,882
185,670	115,204	185,670

17,773	17,773
961	961
6,511	6,511
659	659

25,904	25,904
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159,766	159,766
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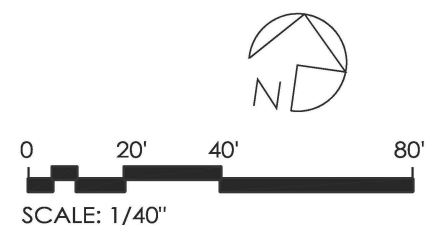
RC-4  
ZONE

NC-3  
ZONE

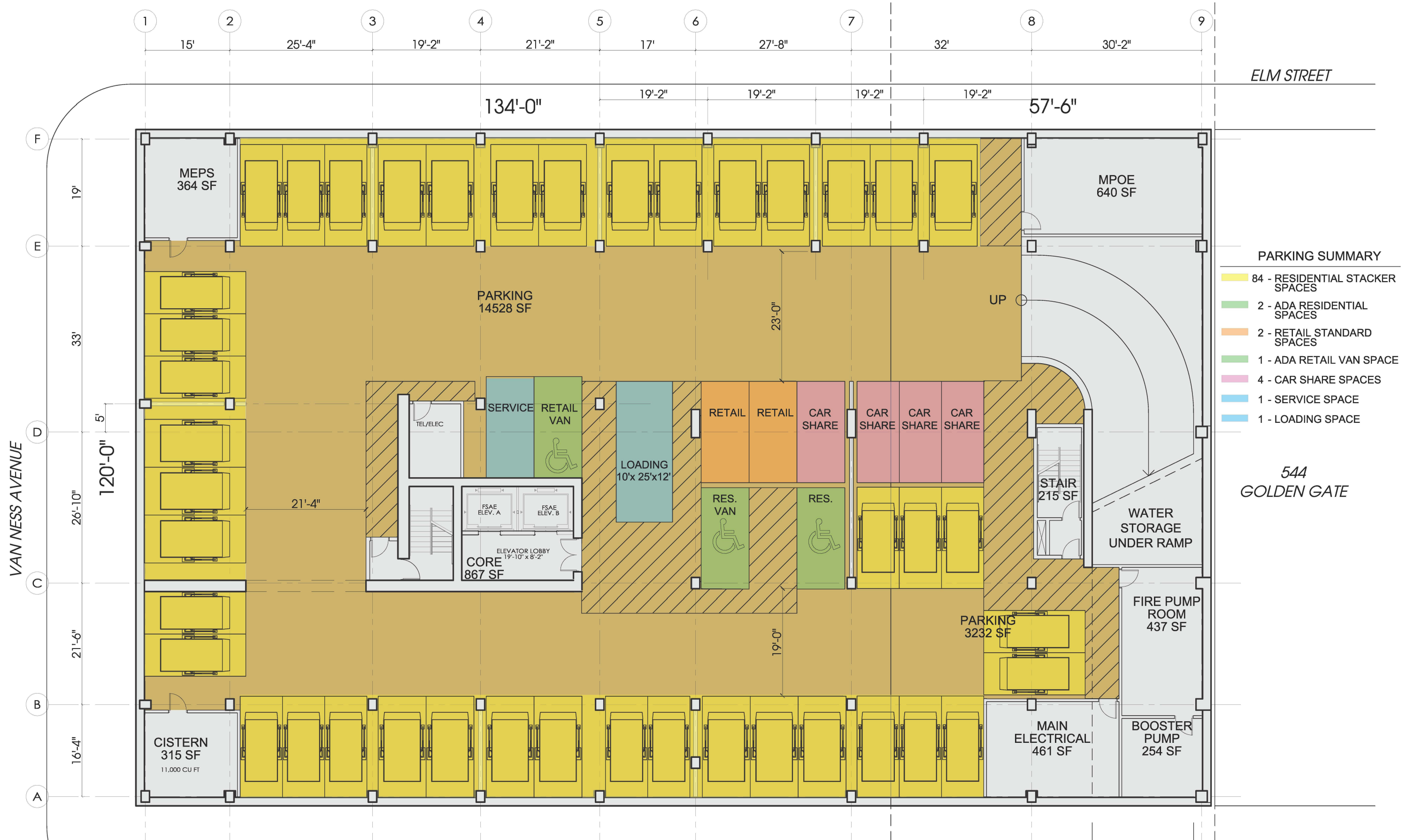
600 VAN NESS  
GOLDEN GATE VAN NESS LLC

SITE PLAN

NOVEMBER 16, 2017



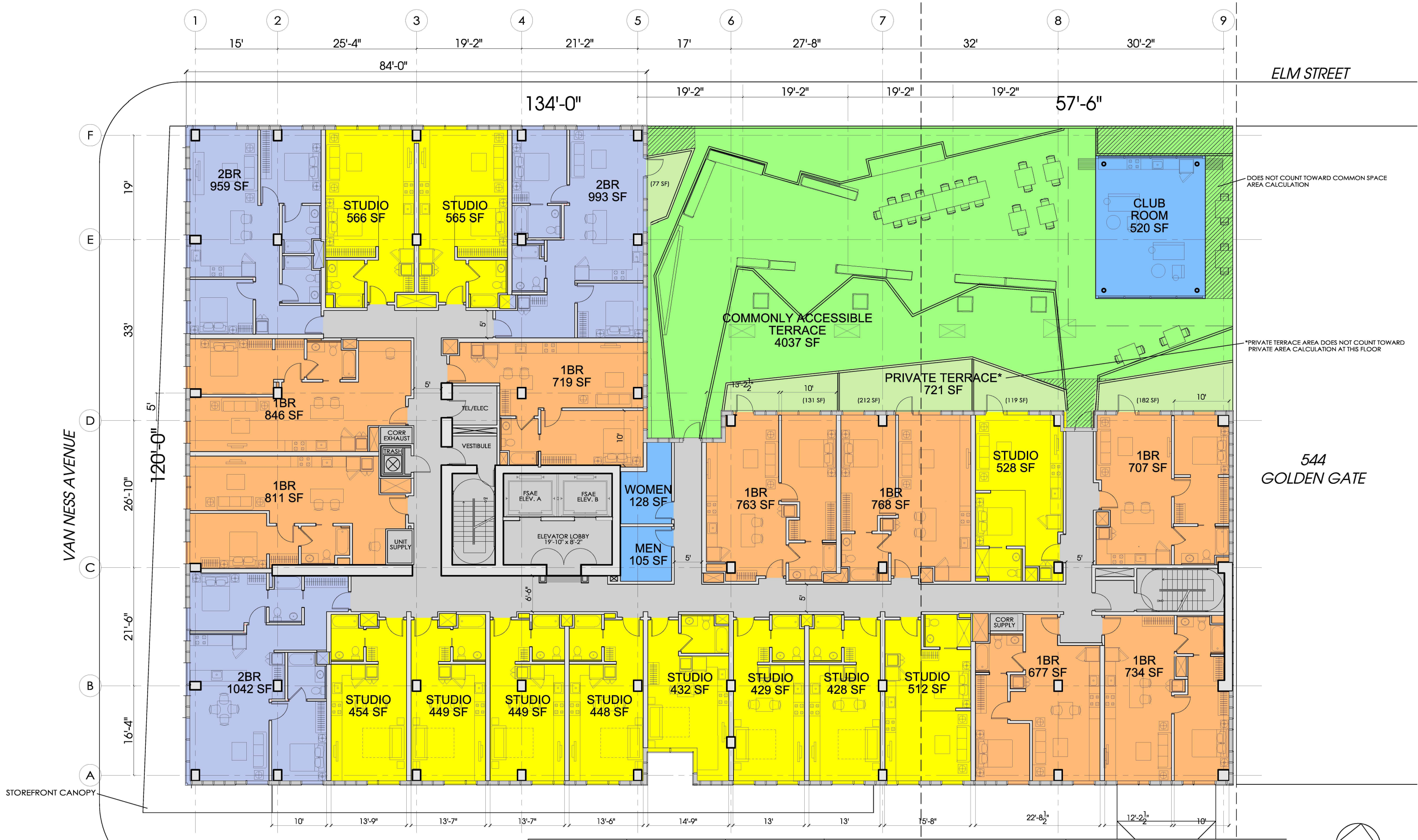










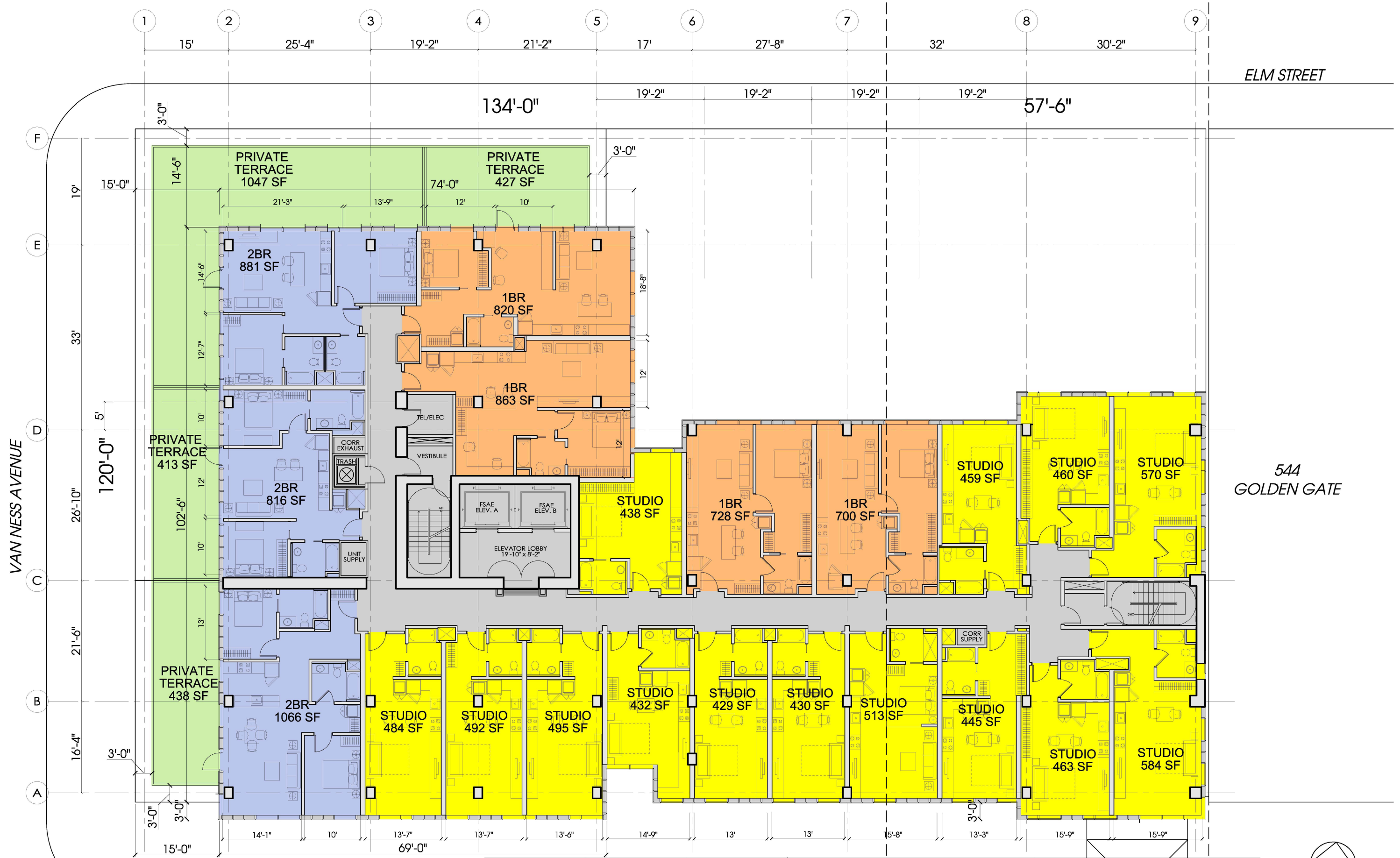








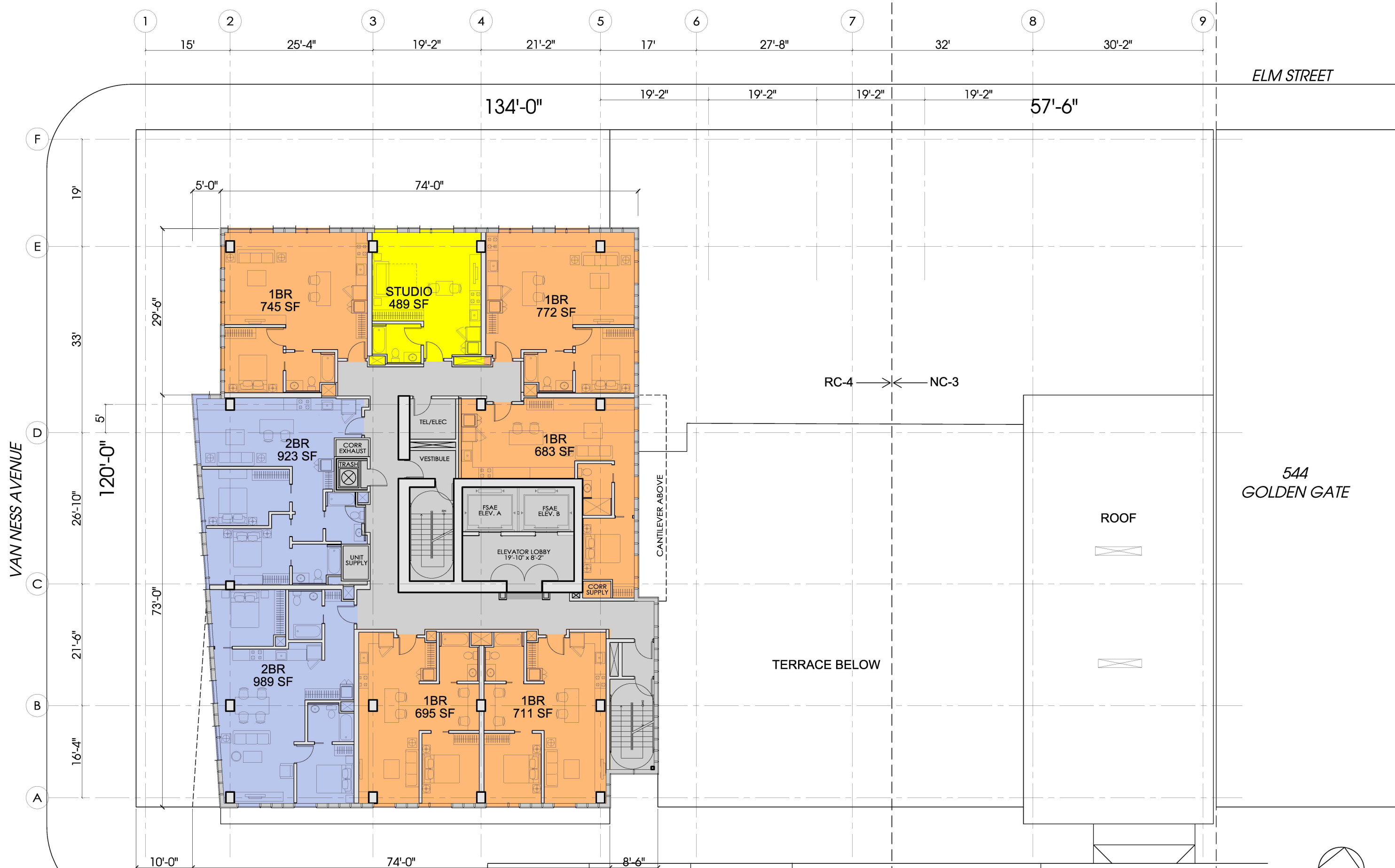




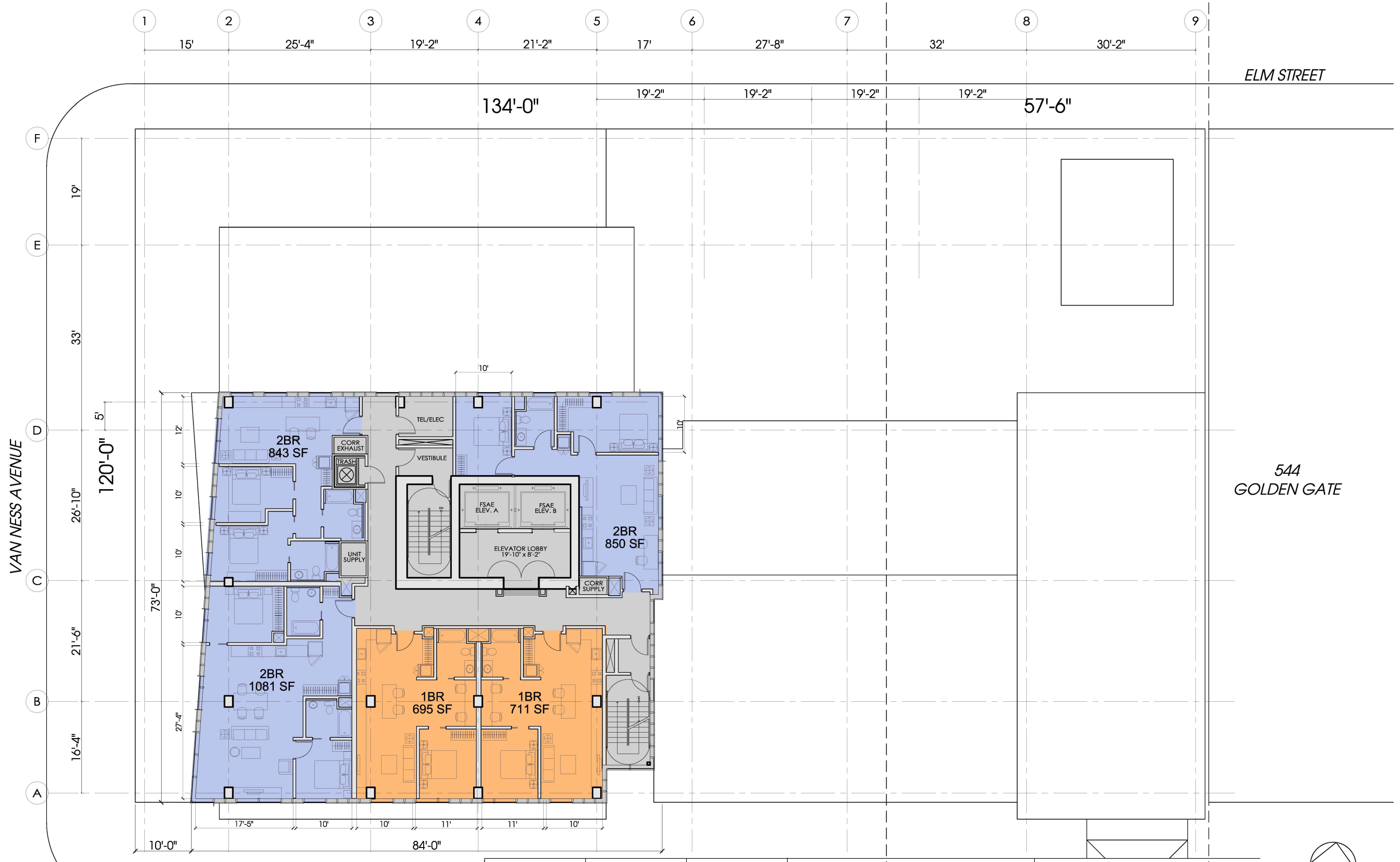




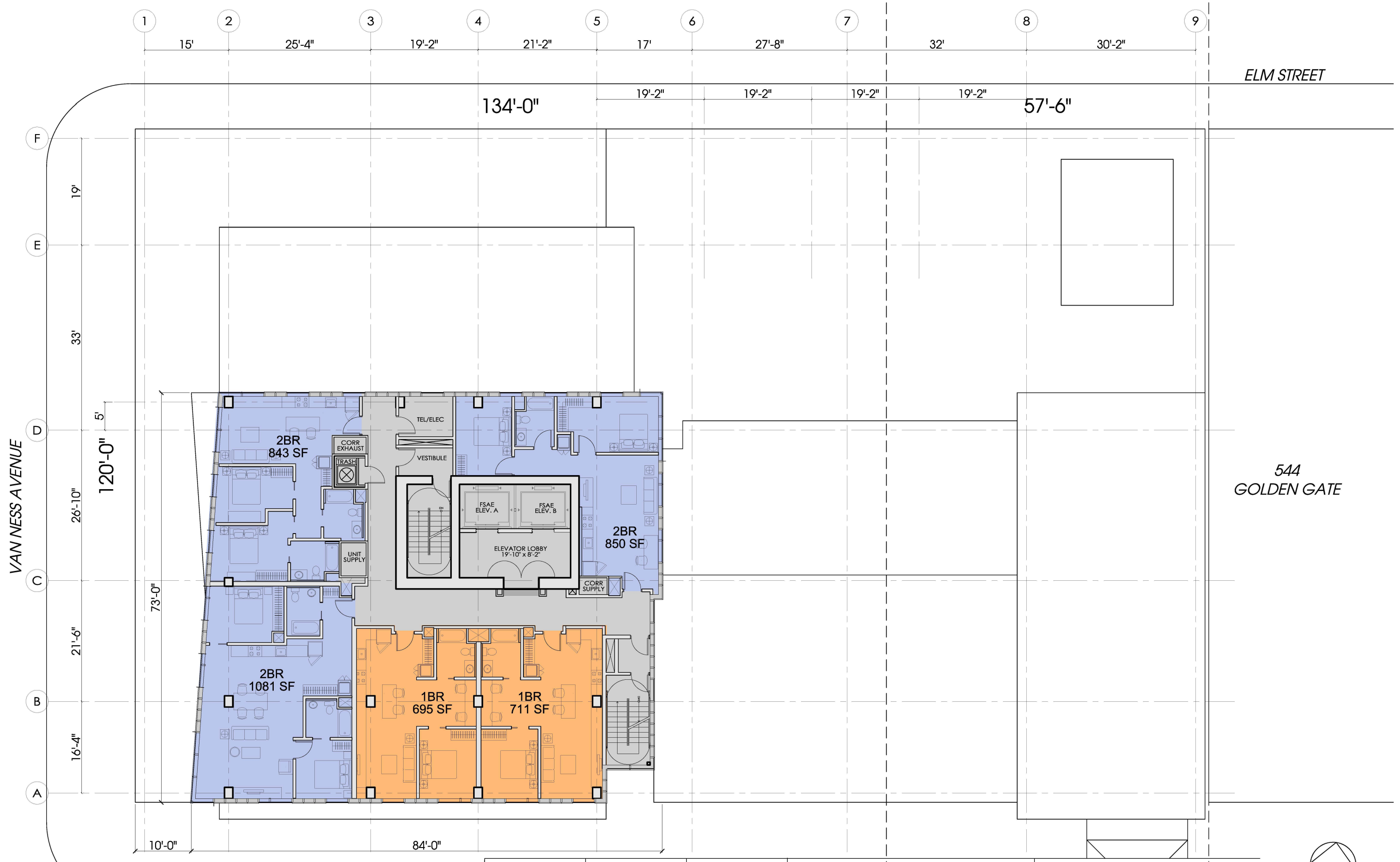


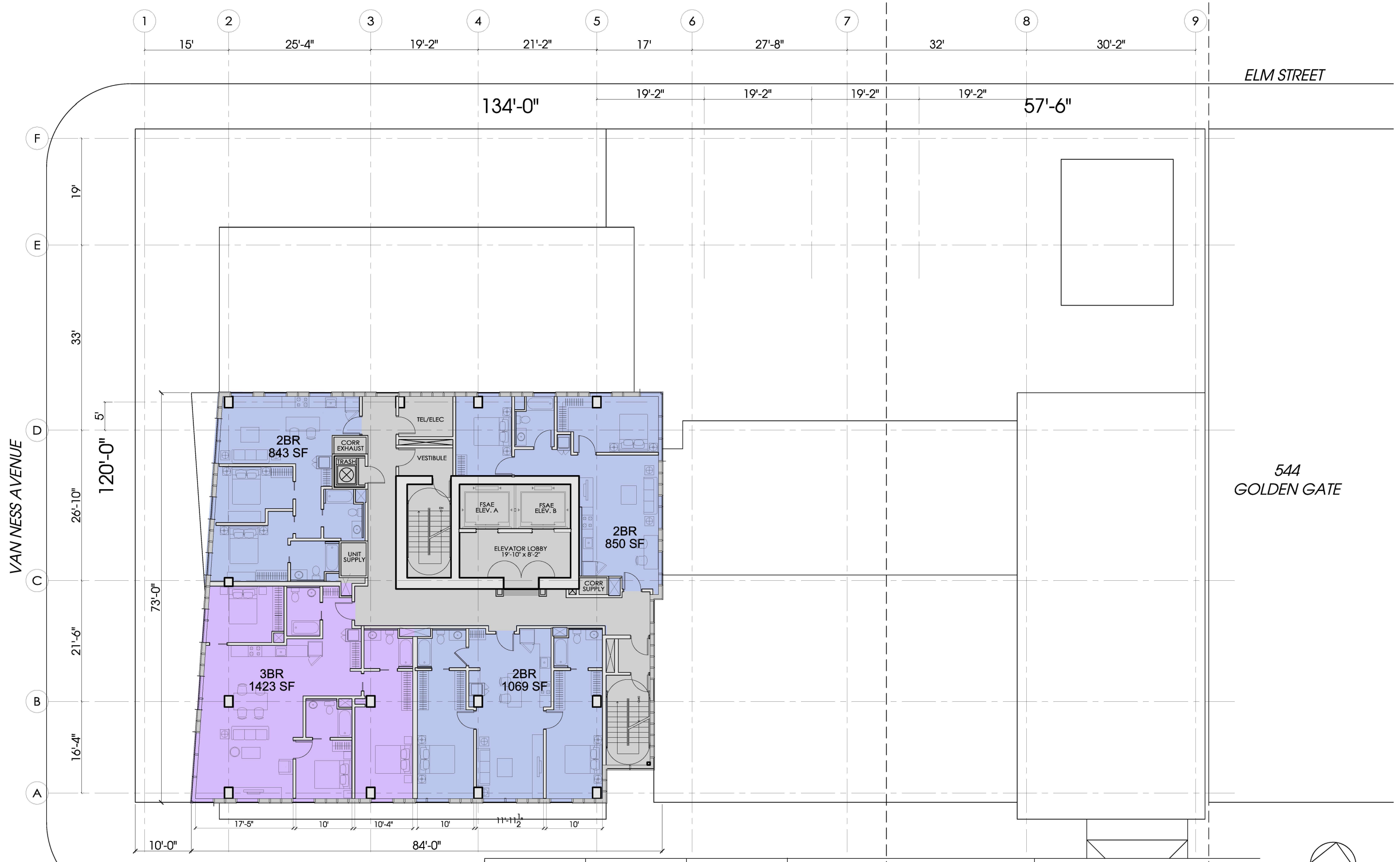


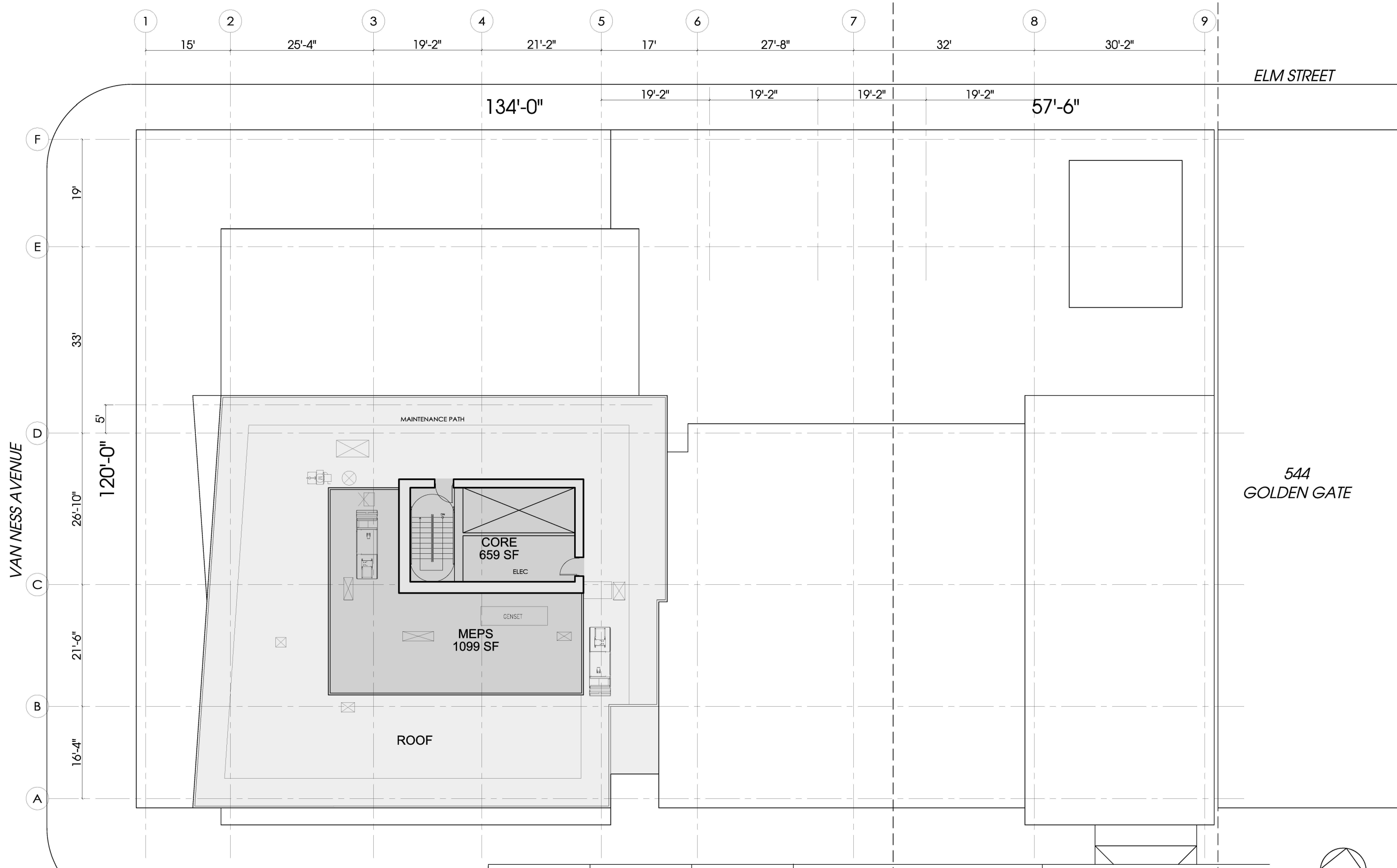




















Note: The Ground Level Transparency on the Van Ness Facade is greater than 60%



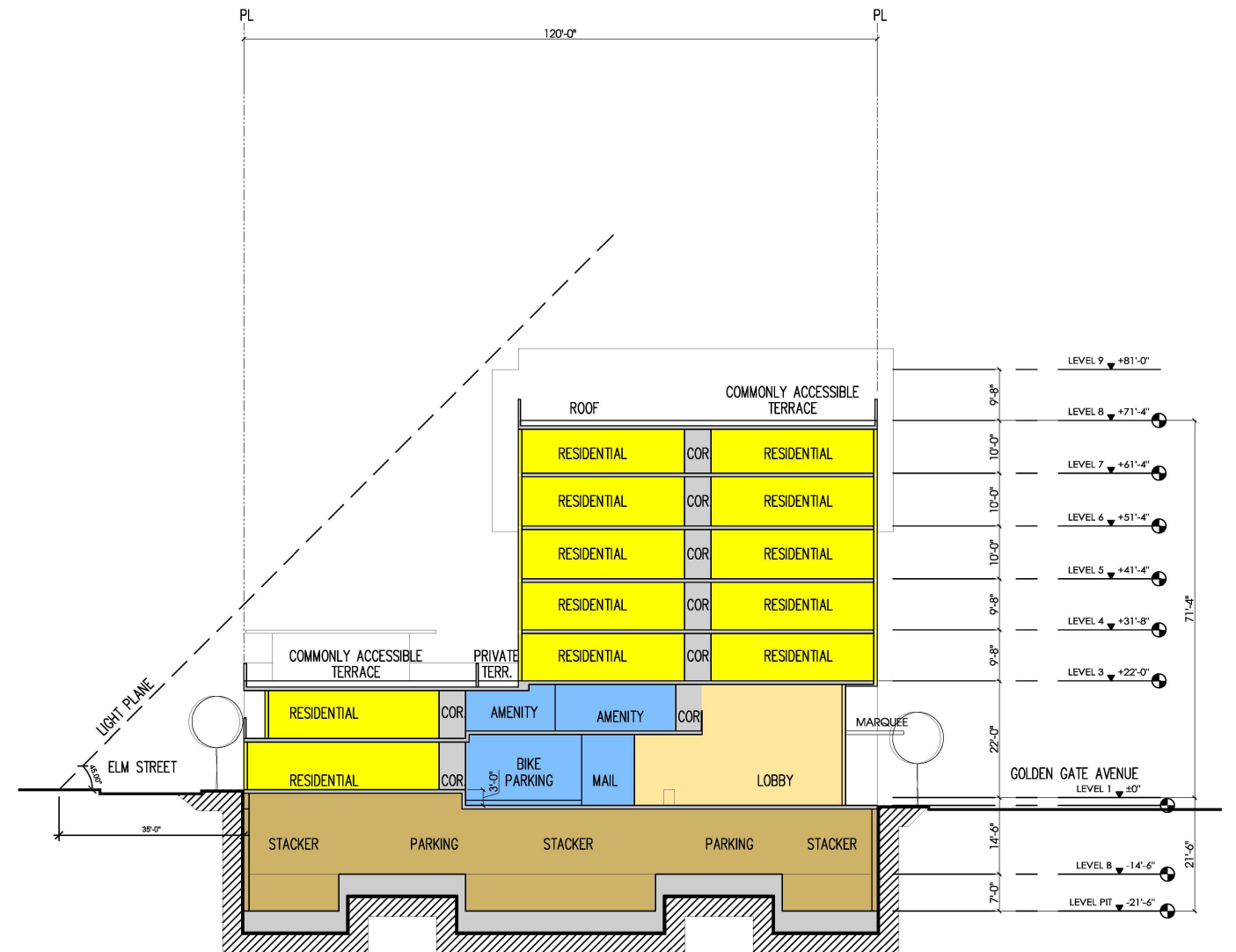




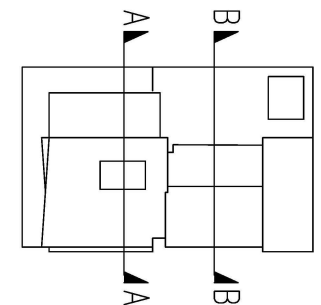


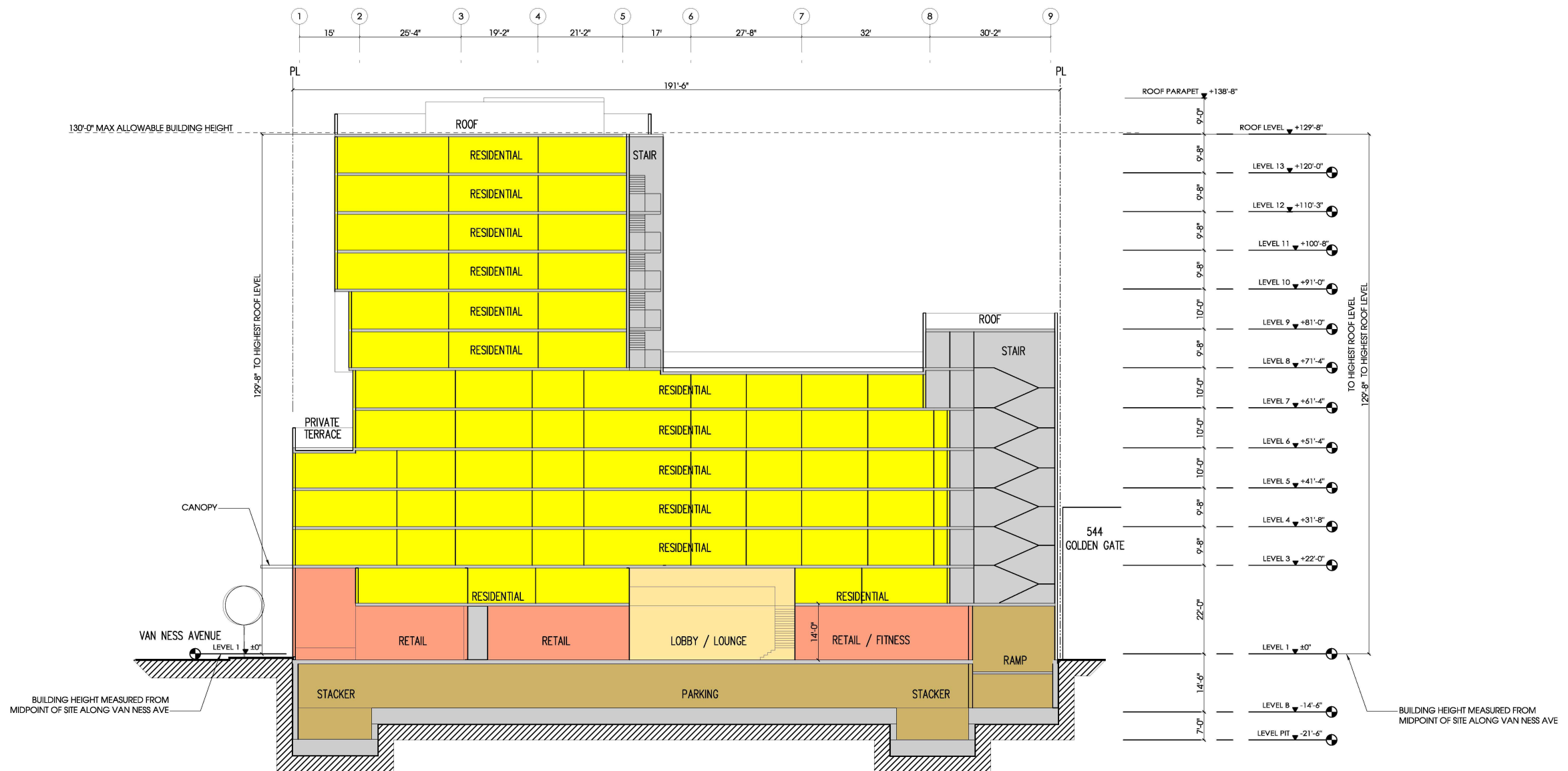


SECTION A-A

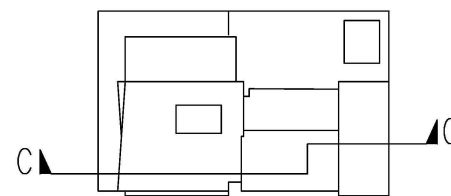


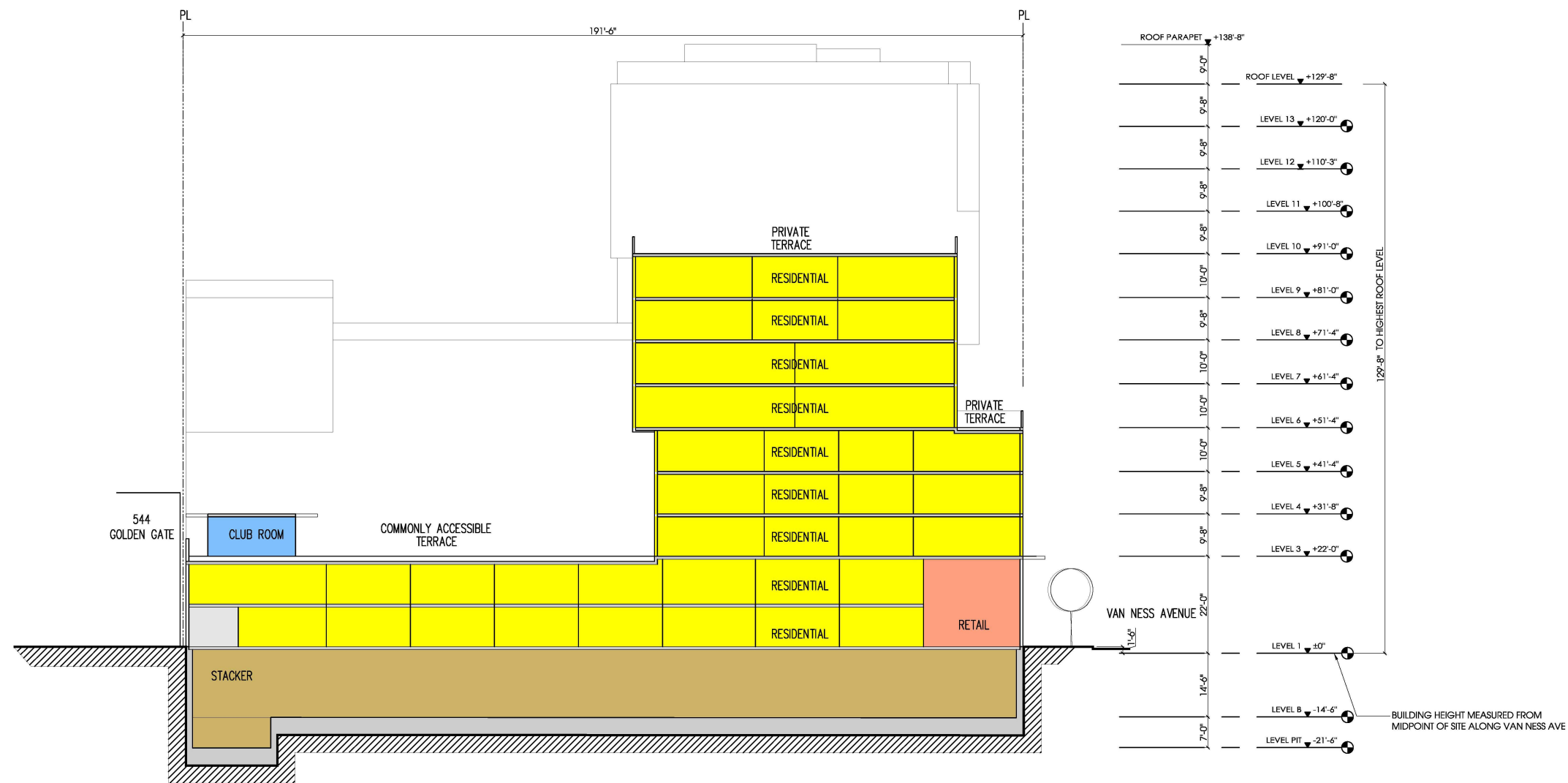
SECTION B-B



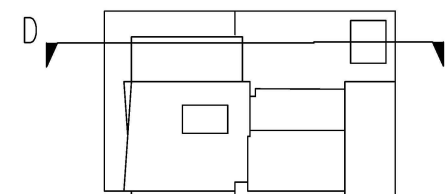


**SECTION C-C**





**SECTION D-D**











IWAMOTOSCOTT  
ARCHITECTURE

600 VAN NESS  
GOLDEN GATE VAN NESS LLC

ARCHITECTURAL FACADE CONCEPT

February 22, 2018







**PERSPECTIVE**  
**LOOKING UP THE VAN NESS FACADE**



**IWAMOTOSCOTT**  
**ARCHITECTURE**

**600 VAN NESS**  
**GOLDEN GATE VAN NESS LLC**

**ARCHITECTURAL FACADE CONCEPT**

February 22, 2018







**STREET VIEW**  
**LOOKING INTO RESIDENTIAL LOBBY ON GOLDEN GATE**





# STREET VIEW

LOOKING AT CORNER OF VAN NESS AND GOLDEN GATE AVE





**STREET VIEW**  
**ZOOMED INTO RETAIL STOREFRONT**





STREET VIEW

LOOKING AT CORNER OF VAN NESS AND ELM STREET



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ARCHITECTURE

600 VAN NESS  
GOLDEN GATE VAN NESS LLC

ARCHITECTURAL FACADE CONCEPT

February 22, 2018



**STREET VIEW**  
**LOOKING WEST ON ELM TOWARD VAN NESS**



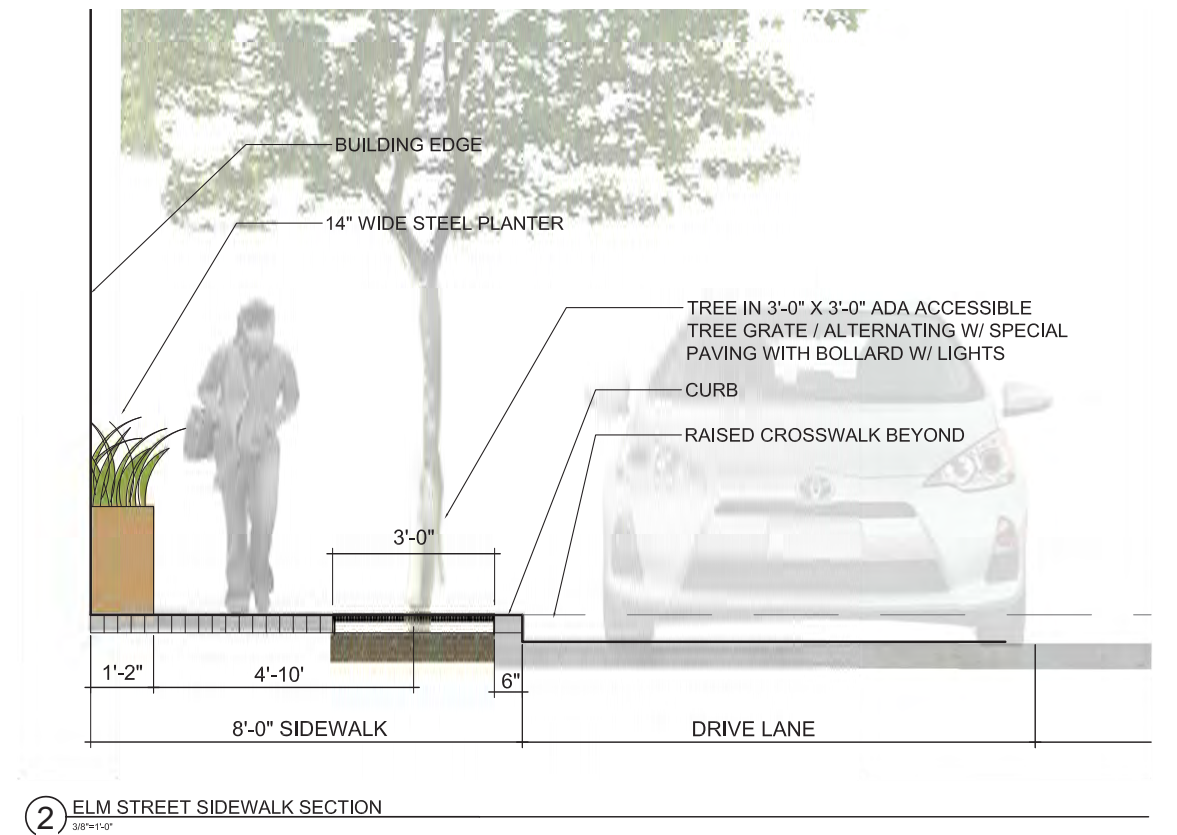
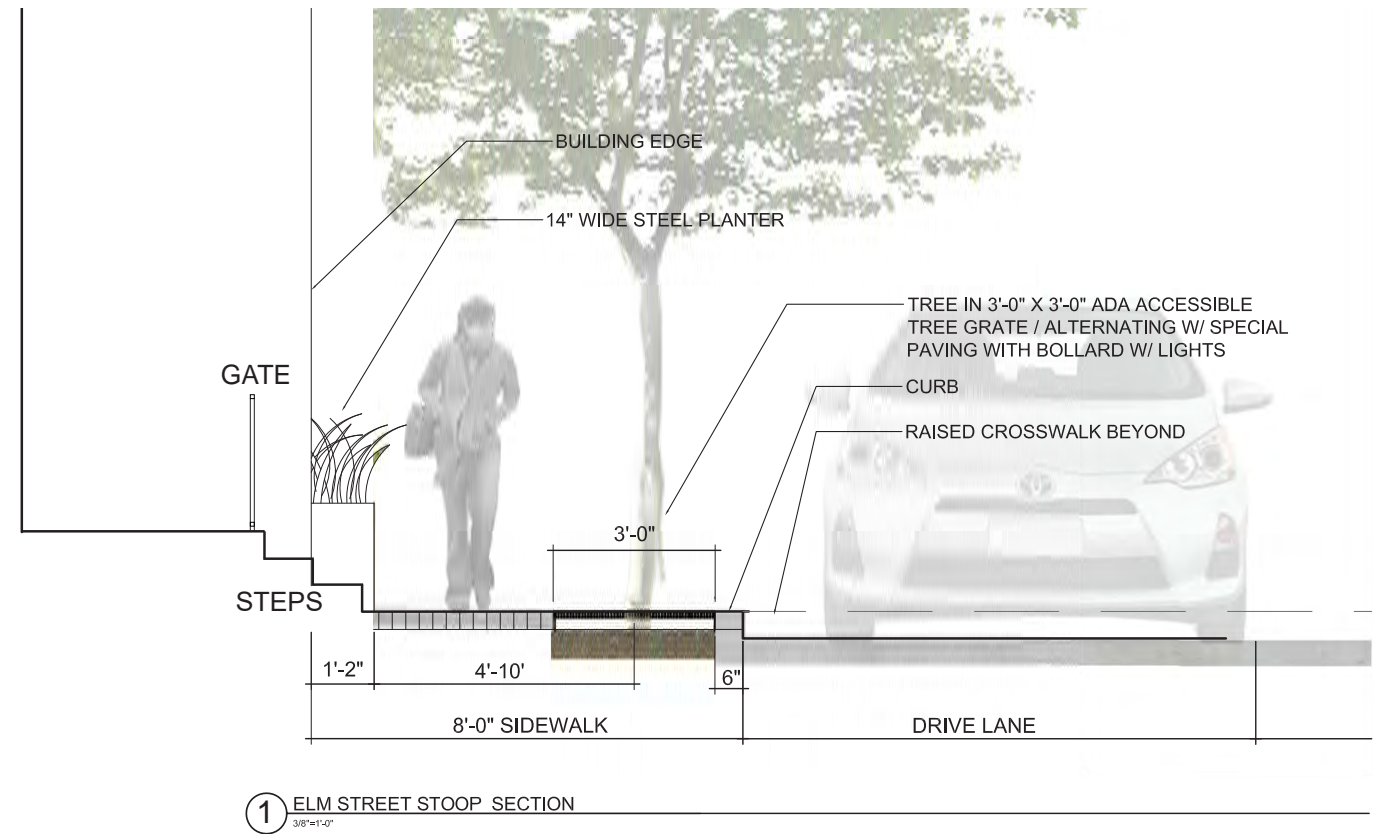
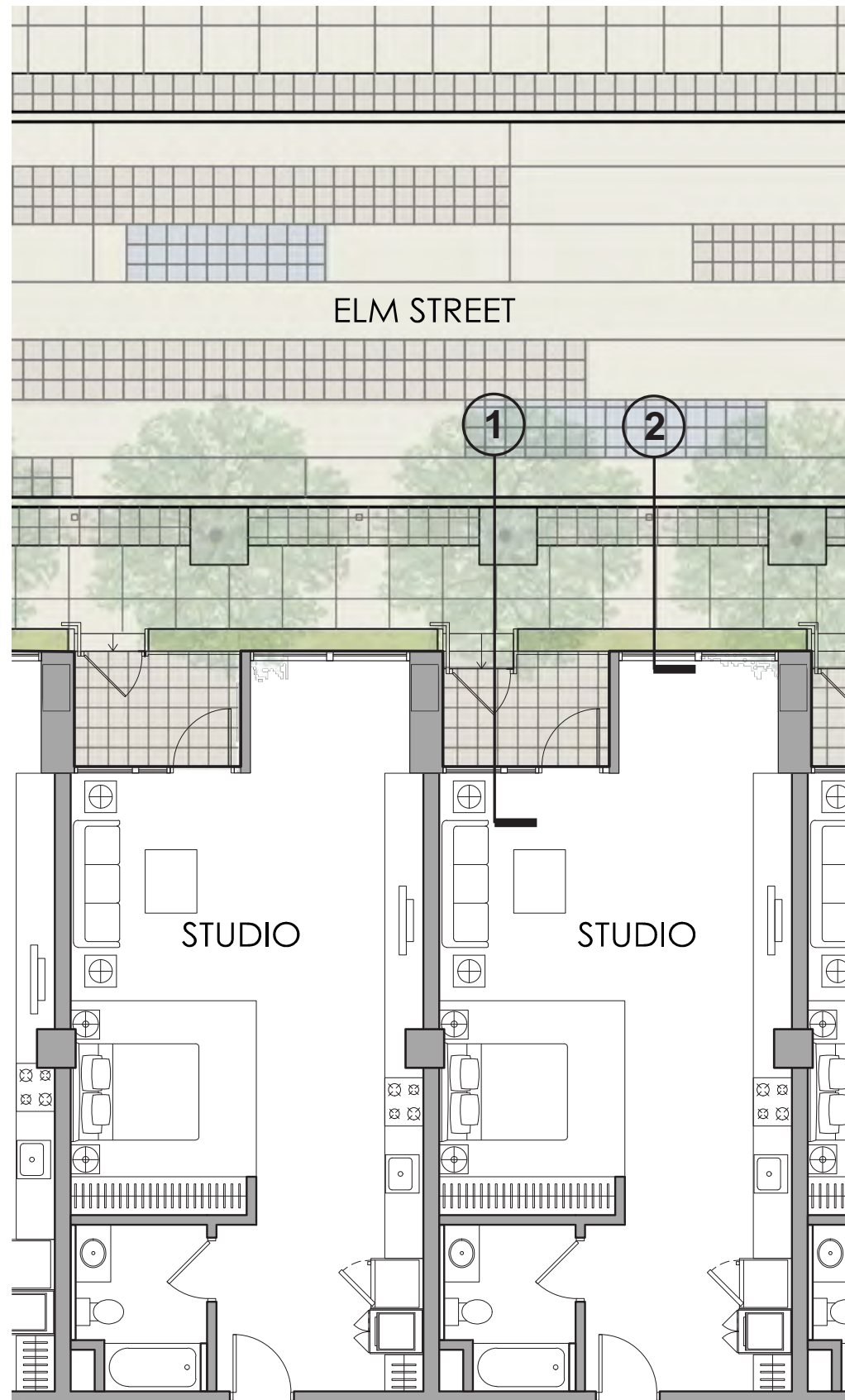
**IWAMOTOSCOTT**  
**ARCHITECTURE**

**600 VAN NESS**  
**GOLDEN GATE VAN NESS LLC**

**ARCHITECTURAL FACADE CONCEPT**

February 22, 2018















# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Motion No. 20707

HEARING DATE: May 21, 2020

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

*Case No.:* 2015-000940ENV, 2017-008051ENV, and 2016-014802ENV  
*Project Address:* The Hub Plan, 30 Van Ness Avenue Project, 98 Franklin Street Project, and Hub Housing Sustainability District  
*Zoning:* NCT-3 (Neighborhood Commercial), C-3-G (Downtown General Commercial), Hayes NCT (Hayes Neighborhood Commercial), and P (Public) Districts Height and Bulk Districts  
*Block/Lot:* Multiple Blocks and Lots (The Hub Plan and Hub HSD), Block 0835/Lot 004 (30 Van Ness Avenue Project site), Block 0836/Lots 008, 009, 013 (98 Franklin Street Project site)  
*Project Sponsor:* Lily Langlois, Planning Department, (415) 575-9083 or [lily.langlois@sfgov.org](mailto:lily.langlois@sfgov.org) (The Hub Plan and Hub HSD); Samidha Thakral, 30 Van Ness Development, LLC, (415) 995-4857 or [samidha.thakral@lendlease.com](mailto:samidha.thakral@lendlease.com) (30 Van Ness Avenue); Matt Witte, Related California, (949) 697-8123 or [matthew.witte@related.com](mailto:matthew.witte@related.com) (98 Franklin Street)  
*Staff Contact:* Alana Callagy, San Francisco Planning Department, (415) 575-8734 or [alana.callagy@sfgov.org](mailto:alana.callagy@sfgov.org)

### ADOPTING FINDINGS RELATED TO THE CERTIFICATION OF A FINAL ENVIRONMENTAL IMPACT REPORT FOR THE HUB PLAN, THE 30 VAN NESS AVENUE PROJECT, THE 98 FRANKLIN STREET PROJECT, AND HUB HOUSING SUSTAINABILITY DISTRICT.

MOVED, that the San Francisco Planning Commission (hereinafter "Commission") hereby CERTIFIES the Final Environmental Impact Report (hereinafter "FEIR") identified as Case Nos. 2015-000940ENV, 2017-008051ENV, and 2016-014802ENV, "The Hub Plan, 30 Van Ness Avenue Project, 98 Franklin Street Project, and Hub Housing Sustainability District" in the Hub Plan area (hereinafter "the Project"), based upon the following findings:

1. The Hub Area is an irregular area bounded by portions of Haight Street, Gough Street, Franklin Street, Fell Street, Van Ness Avenue, Hayes Street, Market Street, midblock between 10th Street and 11th Street from Market Street to Mission Street, Mission Street, Washburn Street, Minna Street, midblock between Lafayette Street and 12th Street to Howard Street, Howard Street, and 13th Street, totaling approximately 84 acres.
2. The Hub Plan would include changes to height and bulk districts for select parcels. The proposed Hub Project would rezone the area to have two zoning districts, Downtown General Commercial (C-3-G) and Public (P), and the Van Ness and Market Residential Special Use District would be expanded to encompass the entire Hub Plan area. The plan also calls for public-realm improvements to streets and alleys within and adjacent to the hub plan area. Two individual private development

projects within the Hub Plan area are also evaluated. The proposed project at 30 Van Ness Avenue includes retention of portions of the existing 75-foot-tall, five-story building and construction of a 47-story building with ground-floor retail space, 10 floors of office space, and approximately 37 floors of residential space. The proposed project at 98 Franklin Street includes demolition of the existing 100-space surface vehicular parking lot and construction of a 31-story residential tower above a five-story podium that would be occupied by new high school facilities for the International High School (grades 9–12 of the French American International School).

3. The proposed zoning changes in the Hub Plan would result in more cohesive zoning in the Hub area and more flexibility and variety of nonresidential uses allowed while increasing the residential capacity and application of consistent zoning controls and impact fees across the hub plan area.
4. The project includes designation of a housing sustainability district which, through adoption of an ordinance by the San Francisco Board of Supervisors, would allow the City and County of San Francisco to exercise streamlined ministerial approval of residential and mixed-use development projects meeting certain requirements.
5. The City and County of San Francisco, acting through the Planning Department (hereinafter “the Department”) fulfilled all procedural requirements of the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 *et seq.*, hereinafter “CEQA”), the State CEQA Guidelines (Cal. Admin. Code Title 14, Section 15000 *et seq.*, hereinafter “CEQA Guidelines”) and Chapter 31 of the San Francisco Administrative Code (hereinafter “Chapter 31”).
  - A. The Department determined that an Environmental Impact Report (hereinafter “EIR”) was required and provided public notice of that determination by publication in a newspaper of general circulation on May 23, 2018.
  - B. The Department published the Draft EIR (hereinafter “DEIR”) on July 24, 2019, and provided public notice in a newspaper of general circulation of the availability of the DEIR for public review and comment and of the date and time of the Planning Commission public hearing on the DEIR; this notice was mailed to the Department’s list of persons requesting such notice and to property owners and occupants within a 300-foot radius of the site on July 24, 2019.
  - C. Notices of availability of the DEIR and of the date and time of the public hearing were posted near the project site by the project sponsor on July 24, 2019.
  - D. Copies of notices of availability of the DEIR or the DEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DEIR, to adjacent property owners, and to government agencies, the latter both directly and through the State Clearinghouse, on July 24, 2019.
  - E. A Notice of Completion was filed with the State Secretary of Resources via the State Clearinghouse on July 24, 2019.

6. The Commission held a duly advertised public hearing on said DEIR on August 29, 2019, at which opportunity for public comment was given, and public comment was received on the DEIR. The period for acceptance of written comments ended on September 9, 2019.
7. The Department prepared responses to comments on environmental issues received at the public hearing and in writing during the public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, and corrected errors in the DEIR. This material was presented in the Responses to Comments (hereinafter "RTC") document published on March 12, 2020, distributed to the Commission and all parties who commented on the DEIR, and made available to others upon request at the Department.
8. An FEIR has been prepared by the Department, consisting of the DEIR, any consultations and comments received during the review process, any additional information that became available, the RTC document, and an Errata to the EIR dated April 20, 2020, all as required by law.
9. Project EIR files have been made available for review by the Commission and the public. These files are available for public review at the Department at 1650 Mission Street, Suite 400, and are part of the record before the Commission.
10. On May 21, 2020, the Commission reviewed and considered the information contained in the FEIR and hereby does find that the contents of said report and the procedures through which the FEIR was prepared, publicized, and reviewed comply with the provisions of CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code.
11. The project sponsors have indicated that the presently preferred alternative is the Project analyzed in the FEIR.
12. The Planning Commission hereby does find that the FEIR concerning File Nos. 2015-000940ENV, 2017-008051ENV, and 2016-014802ENV reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate, and objective, and that the RTC document and the Errata dated April 20, 2020 contain no significant revisions to the DEIR, and hereby does CERTIFY THE COMPLETION of said FEIR in compliance with CEQA, the CEQA Guidelines, and Chapter 31.
13. The Commission, in certifying the completion of said FEIR, hereby does find that the Project described in the FEIR:
  - A. Will have significant and unavoidable project-level environmental effects related to cultural resources, transportation and circulation, noise, shadow, and air quality; and
  - B. Will have significant and unavoidable cumulative environmental effects related to cultural resources, transportation and circulation, noise, air quality, shadow, and wind.
14. The Planning Commission reviewed and considered the information contained in the FEIR prior to approving the Project.



**Motion No. 20707  
May 21, 2020**

**CASE NOS. 2015-000940ENV, 2017-008051ENV, and 2016-014802ENV  
The Hub Plan, 30 Van Ness Avenue Project, 98 Franklin Street Project, and  
Hub Housing Sustainability District**

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting of May 21, 2020.



Jonas P. Ionin  
Commission Secretary

AYES: Diamond, Fung, Imperial, Johnson, Koppel, Moore

NOES: None

ABSENT: None

ADOPTED: May 21, 2020



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Motion No. 20708 HEARING DATE: MAY 21, 2020

*Project Name:* Market and Octavia Area Plan Amendment: CEQA Findings  
*Case Number:* 2015-000940ENV  
*Initiated by:* Planning Commission  
*Staff Contact:* Lily Langlois, Principal Planner  
Lily.Langlois@sfgov.org, 415-575-9083  
*Reviewed by:* Joshua Switzky, Land Use and Community Planning Program Manager  
Joshua.switzky@sfgov.org, 415-575-6815

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Information:  
**415.558.6377**

**ADOPTING FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, INCLUDING FINDINGS OF FACT, FINDINGS REGARDING SIGNIFICANT AND UNAVOIDABLE IMPACTS, EVALUATION OF MITIGATION MEASURES AND ALTERNATIVES, AND A STATEMENT OF OVERRIDING CONSIDERATIONS IN CONNECTION WITH THE ADOPTION OF AN AMENDMENT TO THE MARKET AND OCTAVIA AREA PLAN, AND RELATED ACTIONS NECESSARY TO IMPLEMENT SUCH PLAN.**

### PREAMBLE

The Planning Department ("Department"), the Lead Agency responsible for the implementation of the California Environmental Quality Act, California Public Resources Code Section 21000 et seq., ("CEQA"), the Guidelines for Implementation of CEQA, 14 California Code of Regulations Section 15000 et seq. ("CEQA Guidelines"), and Chapter 31 of the San Francisco Administrative Code ("Chapter 31") has undertaken a planning and environmental review process for the proposed Market and Octavia Area Plan Amendment and provided appropriate public hearings before the Planning Commission ("Commission"). In 2008, the City and County of San Francisco ("City") adopted the Market and Octavia Area Plan into the General Plan to guide growth in the Market and Octavia neighborhood. Recognizing the potential for transit-oriented growth in the vicinity of neighborhood at the junction of three of the city's grid systems, colloquially known as "the Hub," the Market and Octavia Area Plan called for a vibrant new mixed-use neighborhood.

While the Market and Octavia Area Plan established a new framework for development, the Department did not receive many major development applications in the Hub neighborhood until 2012 (four years after the Market and Octavia Area Plan was adopted), largely due to the 2009 recession. In 2016 the Department initiated a community planning process to reconsider the area holistically and identify and coordinate updated designs for the public realm, and to update the Market and Octavia Community Improvements Neighborhood programs with specific infrastructure projects in the Hub area and streets adjacent to the Hub area.

The Market and Octavia Area Plan Amendment (the "Hub Plan") supports and builds on the Market and Octavia Area Plan's vision for the area around Market Street and Van Ness Avenue as a vibrant mixed-use

residential neighborhood. The Hub Plan enhances and augments the Market and Octavia Area Plan's patterns of land use, urban form, public space, circulation, and historic preservation, and makes adjustments to this specific sub-area based on today's understanding of the issues and constraints facing the area, particularly in light of the infrastructure improvements and the City's current housing needs. The Plan's core recommendations include: Increase housing and affordable housing near transit; Develop and coordinate designs for the public realm; Update the Market and Octavia public benefits package and prioritize projects for implementation.

The Department is seeking to make amendments to the existing Market and Octavia Area Plan and other elements of the General Plan, Planning Code, Business and Tax Regulations Code, Zoning Map, and public benefits document to provide a comprehensive updated set of policies and implementation programming to realize the vision of the Hub area as originally described in the Market and Octavia Area Plan amend the Market and Octavia Area Plan.

The actions listed in Attachment A hereto ("Actions") are part of a series of considerations in connection with the adoption of the Plan and various implementation actions ("Project"), as more particularly described in Attachment A hereto.

Environmental review for the Hub Plan ("Project") was coordinated with environmental review of separate private development projects at 30 Van Ness Avenue and 98 Franklin Street. On May 23, 2018, the Department published a Notice of Preparation of an Environmental Impact Report ("NOP") and Notice of Public Scoping Meeting for the Hub Plan, 30 Van Ness Avenue, 98 Franklin Street, and Hub Housing Sustainability District. Publication of the NOP initiated a 30-day public review and comment period that ended on June 22, 2018. On June 12, 2018, the Department held a public scoping meeting regarding the Project.

On July 24, 2019, the Department published the Draft Environmental Impact Report ("DEIR") and provided public notice in a newspaper of general circulation of the availability of the DEIR for public review and comment and of the date and time of the Planning Commission public hearing on the DEIR; this notice was mailed to the Department's list of persons requesting such notice. Notices of availability of the DEIR and the date and time of the public hearing were posted near the project site by the Department on July 24, 2019. The DEIR contains both analysis at a "program-level" pursuant to CEQA Guidelines section 15168 for adoption and implementation of the Hub Plan, and "project-level" environmental review for the streetscape and street network improvements, the project at 30 Van Ness Avenue and the project at 98 Franklin Street. This DEIR also evaluates the designation of portions or all of the Hub Plan area as a Housing Sustainability District ("HSD"), in accordance with Assembly Bill 73 (Government Code sections 66202 to 66210 and Public Resources Code sections 21155.10 and 21155.11). Designation of an HSD, through adoption of an ordinance by the San Francisco Board of Supervisors, would allow the City to exercise streamlined ministerial approval of residential and mixed-use development projects meeting certain requirements within the HSD.

On August 29, 2019, the Commission held a duly advertised public hearing on the DEIR, at which opportunity for public comment was given, and public comment was received on the DEIR. The period for commenting on the DEIR ended on September 9, 2019. The Department prepared responses to comments on environmental issues received during the 46 day public review period for the DEIR, prepared revisions

to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, and corrected clerical errors in the DEIR.

On March 12, 2020, the Department published a Responses to Comments document. A Final Environmental Impact Report (hereinafter “FEIR”) has been prepared by the Department, consisting of the DEIR, any consultations and comments received during the review process, any additional information that became available, and the Responses to Comments document, all as required by law.

On February 13, 2020, the Commission adopted Resolutions R-20653, R-20654, R-2065, R-20655 to initiate the following pieces of legislation: (1) Ordinance amending the General Plan to amend the Market and Octavia Area Plan (“general plan amendments”); (2) Ordinance amending the Planning Code to amend the Van Ness & Market Downtown Residential Special Use District, to encourage more housing and uses that support the neighborhood residents and businesses, and to give effect to the Market and Octavia Area Plan (“planning code amendments”); (3) Ordinance amending the Zoning Map of the Planning Code to amend the boundaries of the Van Ness & Market Downtown Residential Special Use District, and to make other amendments to the Height and Bulk District Maps and Zoning Use District Maps consistent with amendments to the Market and Octavia Area Plan (“zoning map amendments”); and (4) Ordinance amending the Business and Tax Regulations and Planning Codes to create the Hub Housing Sustainability District (“Hub HSD”).

On May 21, 2020, the Commission reviewed and considered the FEIR and found that the contents of said report and the procedures through which the FEIR was prepared, publicized, and reviewed comply with the provisions of CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code. The FEIR was certified by the Commission on May 21, 2020 by adoption of its Motion No. 20708.

At the same hearing and in conjunction with this motion, the Commission made and adopted findings of fact and decisions regarding the Project description and objectives, significant impacts, significant and unavoidable impacts, mitigation measures and alternatives, and a statement of overriding considerations, based on substantial evidence in the whole record of this proceeding and pursuant to CEQA, particularly Sections 21081 and 21081.5, the CEQA Guidelines, particularly Sections 15091 through 15093, and Chapter 31, by its Motion No. 20708 The Commission adopted these findings as required by CEQA, separate and apart from the Commission’s certification of the EIR, which the Commission certified prior to adopting these CEQA findings. The Commission hereby incorporates by reference the CEQA findings set forth in Motion No. 20708.

On May 21, 2020, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting regarding (1) the general plan amendments; (2) the planning code amendments; (3) the zoning map amendments; (4) the Hub HSD Ordinance; and (5) the implementation program. At that meeting the Commission adopted (1) Resolution 20709 recommending that the Board of Supervisors approve the requested General Plan Amendment; (2) Resolution 20710 recommending that the Board of Supervisors approve the requested Planning Code Amendments; (3) Resolution 20711 recommending that the Board of Supervisors approve the requested Zoning Map Amendments; (4) resolution 20712 recommending that the Board of Supervisors approve the requested Hub HSD; and (5) resolution 20713 recommending that the Board of Supervisors approve the Implementation Program.

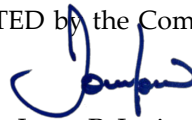


The Department, Jonas P. Ionin, is the custodian of records; all pertinent documents are located in the File for Case No. 2015-000940ENV, at 1650 Mission Street, Fourth Floor, San Francisco, California.

This Commission has reviewed the entire record of this proceeding, the Environmental Findings, attached to this Motion as Attachment A, regarding the alternatives, mitigation measures, environmental impacts analyzed in the FEIR, overriding considerations for approving the Project, and the proposed Mitigation Monitoring and Reporting Program ("MMRP") attached as Attachment B, which material was made available to the public.

MOVED, that the Commission hereby adopts findings under the CEQA, including rejecting alternatives as infeasible and adopting a Statement of Overriding Considerations, and adopts the Mitigation Measures identified for the Hub Plan in the MMRP, attached as Attachment B, based on the findings attached to this Motion as Attachment A as though fully set forth in this Motion, and based on substantial evidence in the entire record of this proceeding.

I hereby certify that the foregoing Motion was ADOPTED by the Commission at its regular meeting on May 21, 2020.



Jonas P. Ionin  
Commission Secretary

AYES: Koppel, Diamond, Fung, Johnson

NOES: Imperial, Moore

ABSENT: None

ADOPTED: May 21, 2020



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Motion No. 20726

HEARING DATE: MAY 28, 2020

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

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**415.558.6409**

Planning  
Information:  
**415.558.6377**

*Record No.:* 2016-014802ENV  
*Project Address:* 98 FRANKLIN STREET  
*Zoning:* C-3-G (Downtown General Commercial) Zoning District  
85-X // 120/365-R-2 Height and Bulk District  
Van Ness & Market Residential Special Use District  
Downtown and Market & Octavia Plan Areas  
*Block/Lots:* 0836 / 008, 009 & 013  
*Project Sponsor:* Jim Abrams  
J. Abrams Law, P.C.  
One Maritime Plaza, Suite 1900  
San Francisco, CA 94111  
*Property Owner:* 98 Franklin Street, LLC  
150 Oak Street, 4<sup>th</sup> Floor  
San Francisco, CA 94102  
*Staff Contact:* Christy Alexander, AICP  
[christy.alexander@sfgov.org](mailto:christy.alexander@sfgov.org), (415) 575-8724

ADOPTING FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, INCLUDING FINDINGS OF FACT, FINDINGS REGARDING SIGNIFICANT AND UNAVOIDABLE IMPACTS, EVALUATION OF MITIGATION MEASURES AND ALTERNATIVES, AND A STATEMENT OF OVERRIDING CONSIDERATIONS RELATED TO APPROVALS FOR THE PROJECT AT 98 FRANKLIN STREET TO CONSTRUCT A 36-STORY, 365 FOOT TALL BUILDING (396'8" FEET TALL INCLUSIVE OF ROOFTOP SCREENING AND EQUIPMENT) WITH THE FIRST 5 FLOORS CONSISTING OF SECONDARY SCHOOL SPACE, AND APPROXIMATELY 31 FLOORS OF RESIDENTIAL SPACE WITH UP TO 345 RESIDENTIAL UNITS LOCATED ON A 23,753 SQUARE-FOOT LOT WITHIN THE PROPOSED HUB PLAN AREA.

### PREAMBLE

On October 27, 2017, Jim Abrams ("Project Sponsor") filed an Environmental Evaluation Application for the Project, and thereafter submitted a revised Application on April 13, 2018. The Planning Department ("Department") is the Lead Agency responsible for the implementation of the California Environmental Quality Act, California Public Resources Code Section 21000 et seq., ("CEQA"), the Guidelines for Implementation of CEQA, 14 California Code of Regulations Section 15000 et seq. ("CEQA Guidelines"), and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"). Environmental review for the Project, as well as a separate private development project at 98 Franklin Street, was coordinated with the environmental review of the Hub Plan, which would amend the 2008 Market and Octavia Area Plan of the

San Francisco General Plan for the easternmost portions of the Market and Octavia Area Plan, including the Project Site. On May 23, 2018, the Department published a Notice of Preparation of an Environmental Impact Report and Notice of Public Scoping Meeting (“NOP”) for the Hub Plan, 30 Van Ness Avenue Project, 98 Franklin Street Project, and Hub Housing Sustainability District. Publication of the NOP initiated a 30-day public review and comment period that ended on June 22, 2018. On June 12, 2018, the Department held a public scoping meeting regarding the Project.

On July 24, 2019, the Department published the Draft Environmental Impact Report (hereinafter, “DEIR”) and provided public notice in a newspaper of general circulation of the availability of the DEIR for public review and comment and of the date and time of the Planning Commission (“Commission”) public hearing on the DEIR; this notice was mailed to the Department’s list of persons requesting such notice. Notices of availability of the DEIR and the date and time of the public hearing were posted near the project site by the Project Sponsor on July 24, 2019. On July 24, 2019, copies of the DEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DEIR, and to government agencies, the latter both directly and through the State Clearinghouse. A notice of completion was filed with the State Secretary of Resources via the State Clearinghouse on July 24, 2019.

The EIR contains both analysis at a “program-level” pursuant to CEQA Guidelines section 15168 for adoption and implementation of the Hub Plan, and “project-level” environmental review for the Hub Plan streetscape and street network improvements, the Project, and the individual development project at 30 Van Ness Avenue. This EIR also evaluates the designation of portions or all of the Hub Plan area as a Housing Sustainability District (“HSD”), in accordance with Assembly Bill 73 (Government Code sections 66202 to 66210 and Public Resources Code sections 21155.10 and 21155.11). Designation of an HSD, through adoption of an ordinance by the San Francisco Board of Supervisors, would allow the City and County of San Francisco (“City”) to exercise streamlined ministerial approval of residential and mixed-use development projects meeting certain requirements within the HSD.

On December 21, 2017, the Project Sponsor filed an application requesting approval of a Downtown Project Authorization pursuant to Section 309 of the San Francisco Planning Code to facilitate the demolition of the existing surface parking lot and the construction 36-story residential tower above a 5-story podium that is 365 feet tall (396’8” feet tall inclusive of rooftop screening and appurtenances). The podium (Floors 1 to 5) will be occupied by new secondary school facilities for the International High School of the French American International School. Floors 6 to 36 will contain approximately 345 rental dwelling units in a mix of studio, 1-bedroom, 2-bedroom and 3-bedroom units (including residential amenity space on floor 6). Off street parking, service vehicle loading, and residential bicycle parking would be provided in two below-grade garage levels (the “Project”).

On August 29, 2019, the Commission held a duly advertised public hearing on the DEIR, at which opportunity for public comment was given, and public comment was received on the DEIR. The period for commenting on the DEIR ended on September 9, 2019. The Department prepared responses to comments on environmental issues received during the 46 day public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, and corrected clerical errors in the DEIR.

On March 12, 2020, the Department published a Responses to Comments document. A Final Environmental Impact Report (hereinafter “FEIR”) has been prepared by the Department, consisting of the DEIR, any consultations and comments received during the review process, any additional information that became available, the Responses to Comments document, and an Errata document dated April 20, 2020, all as required by law.

On February 13, 2020, the Planning Commission adopted Resolutions 20653 and 20656 to initiate legislation entitled (1) Ordinance amending the General Plan to amend the Market and Octavia Plan, (2) Ordinance amending the planning code to update the Market and Octavia Area Plan, (3) Ordinance amending the zoning map to change the land use, zoning, and height and bulk classifications in the Hub Plan area, respectively, and (4) Ordinance amending the Business and Tax Regulations and Planning Code to create the HUB Housing Sustainability District.

On May 21, 2020, the Commission reviewed and considered the FEIR and found that the contents of said report and the procedures through which the FEIR was prepared, publicized, and reviewed comply with the provisions of CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code, which findings are incorporated by reference as though fully set forth herein. The FEIR was certified by the Commission on May 21, 2020, 2020 by adoption of its Motion No. 20707.

At the same hearing and in conjunction with this motion, the Commission approved findings required by CEQA, including adoption of a Mitigation Monitoring and Reporting Program (“MMRP”), under Case Nos. 2015-000940ENV, 2017-008051ENV, and 2016-014802ENV, for approval of the Hub Plan (“Hub Plan CEQA Findings”), which findings are found in “**EXHIBIT C**” to this Motion No. 20726. The Commission adopted these findings as required by CEQA, separate and apart from the Commission’s certification of the Final EIR, which the Commission certified prior to adopting these CEQA findings. The Commission hereby incorporates by reference the CEQA findings set forth in Motion No. 20726.

On May 21, 2020, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting regarding (1) the General Plan Amendment to amend the Market and Octavia Plan; and (2) the ordinance amending the Planning Code to update the Market and Octavia Area Plan; (3) the Ordinance amending the zoning map to change the land use, zoning, and height and bulk classifications in the Hub Plan area, respectively; (4) the Ordinance amending the Business and Tax Regulations and Planning Code to create the Hub Housing Sustainability District; and (5) an Implementation Program, consisting of the Market and Octavia Area Plan: Hub Public Benefits Document and the Market and Octavia Community Improvements Program. At that meeting the Commission adopted Resolutions 20709 through 20712 to recommend that the Board of Supervisors approve these five items.

On May 21, 2020, the Recreation and Park Commission recommended that the General Manager of the Recreation and Parks Department recommend to the Planning Commission that the shadows cast by the Project on six (6) properties under the jurisdiction of the Recreation and Parks Department would not be adverse to the use of these properties. As part of this recommendation, the Recreation and Park Commission adopted environmental findings in accordance with CEQA, along with an MMRP for the Project (Recreation and Park Commission Resolution No. 2005-008).



On May 28, 2020, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the various approval for the Project, including the Downtown Project Authorization (application **2016-014802DNX**). At that meeting the Commission approved Motions 20726 through 20728 to approve the Project. At the same hearing, the Commission determined that the shadow cast by the Project would not have any adverse effect on parks within the jurisdiction of the Recreation and Parks Department. The Commission heard and considered the testimony presented to it at the public hearing and further considered written materials and oral testimony presented on behalf of the applicant, Department staff, expert consultants, and other interested parties, and the record as a whole.

The Department's Commission Secretary is the Custodian of Records; all pertinent documents are located in the File for Case No. 2015-000940ENV, at 1650 Mission Street, Fourth Floor, San Francisco, California.

The City and County of San Francisco, acting through the Department, fulfilled all procedural requirements of the California Environmental Quality Act, the State CEQA Guidelines, and Chapter 31.

The Department prepared the California Environmental Quality Act Findings, attached to this Motion as "ATTACHMENT A" and incorporated fully by this reference, regarding the alternatives, mitigation measures, improvement measures, environmental impacts analyzed in the FEIR and overriding considerations for approving the Project, and the proposed MMRP attached as "EXHIBIT C" and incorporated fully by this reference, which includes both mitigation measures and improvement measures. The Commission has reviewed the entire record, including "ATTACHMENT A" and "EXHIBIT C", which material was also made available to the public.

MOVED, that the Planning Commission hereby adopts findings under CEQA, including rejecting alternatives as infeasible and adopting a Statement of Overriding Considerations, as further set forth in "ATTACHMENT A" hereto, and adopts the mitigation measures set forth for the Project in the MMRP attached as "EXHIBIT C", based on the findings attached to this Motion as "ATTACHMENT A", as though fully set forth in this Motion, and based on substantial evidence in the entire record of this proceeding.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting on May 28, 2020.



Jonas P. Ionin  
Commission Secretary

AYES: Koppel, Moore, Fung, Johnson, Imperial, Diamond, Chan

NAYS: None

ABSENT: None

ADOPTED: May 28, 2020

# ATTACHMENT A

## 98 FRANKLIN STREET MIXED-USE PROJECT

### California Environmental Quality Act Findings:

### FINDINGS OF FACT, EVALUATION OF MITIGATION MEASURES AND ALTERNATIVES, AND STATEMENT OF OVERRIDING CONSIDERATIONS

### SAN FRANCISCO PLANNING COMMISSION

May 28, 2020

#### PREAMBLE

In determining to approve the Project described in Section I, Project Description below, the San Francisco Planning Commission ("Commission") makes and adopts the following findings of fact and decisions regarding the significant and unavoidable impacts of the Project, and mitigation measures and alternatives, and adopts the statement of overriding considerations, based on substantial evidence in the whole record of this proceeding and pursuant to the California Environmental Quality Act, California Public Resources Code Section 21000 et seq. ("CEQA"), particularly Section 21081 and 21081.5, the Guidelines for Implementation of CEQA, 14 California Code of Regulations Section 15000 et seq. ("CEQA Guidelines"), particularly Sections 15091 through 15093, and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"). The Commission adopts these findings in conjunction with the Approval Actions described in Section I.D., below, as required by CEQA, separate and apart from the Commission's certification of the Project's Final EIR, which the Commission certified prior to adopting these CEQA findings. These findings are also separate and apart from, and incorporate by reference, the CEQA findings previously adopted by the Commission in support of its approval of the Hub Plan, Hub Housing Sustainability District, and related streetscape and street network improvements.

These findings are organized as follows:

- **Section I** provides a description of the proposed project at 98 Franklin Street (hereinafter, the "Project"), the environmental review process for the Project, the City approval actions to be taken, and the location and custodian of the record.
- **Section II** identifies the Project's less-than-significant impacts that do not require mitigation.
- **Section III** identifies potentially significant impacts that can be avoided or reduced to less-than-significant levels through mitigation and describes the disposition of the mitigation measures.

- **Section IV** identifies significant project-specific or cumulative impacts that would not be eliminated or reduced to a less-than-significant level and describes any applicable mitigation measures as well as the disposition of the mitigation measures.
- **Section V** evaluates the different Project alternatives and the economic, legal, social, technological, and other considerations that support approval of the Project and the rejection of the alternatives, or elements thereof.
- **Section VI** presents a statement of overriding considerations pursuant to CEQA Guidelines Section 15093 that sets forth specific reasons in support of the Commission's actions and its rejection of the alternatives not incorporated into the Project.

The Mitigation Monitoring and Reporting Program ("MMRP") for the mitigation measures that have been proposed for adoption is attached with these findings as "**EXHIBIT C**" to Planning Commission Motion No. 20726. The MMRP is required by CEQA Section 21081.6 and CEQA Guidelines Section 15091. The MMRP provides a table setting forth each mitigation measure listed in the FEIR that is required to reduce or avoid a significant adverse impact. "**EXHIBIT C**" also specifies the agency responsible for implementation of each measure and establishes monitoring actions and a monitoring schedule. The full text of the mitigation measures is set forth in "**EXHIBIT C**".

These findings are based upon substantial evidence in the entire record before the Planning Commission. The references set forth in these findings to certain pages or sections of the Draft Environmental Impact Report (Draft EIR) or Responses to Comments Document (RTC) are for ease of reference and are not intended to provide an exhaustive list of the evidence relied upon for these findings.

## **SECTION I. Project Description and Procedural Background**

### **A. The Hub Plan**

The project sponsor for the Hub Plan and the Hub HSD, the San Francisco Planning Department ("Department"), proposes to implement the Hub Plan, which would amend the 2008 Market and Octavia Area Plan of the San Francisco General Plan for the easternmost portions of the Market and Octavia Area Plan. The Hub Plan would encourage housing and safer and more walkable streets, as well as welcoming and active public spaces and increased transportation options by changing current zoning controls applicable to the area and implementing public realm improvements. In addition, the Department proposes the designation of all or portions of the Hub Plan area as an HSD to allow the City of San Francisco (City) to exercise streamlined ministerial approval of residential and mixed-use development projects meeting certain requirements.

The Hub Plan would change current zoning controls in the Hub Plan area to meet plan objectives. This would include changes to height and bulk districts for select parcels to allow more housing, including more affordable housing. Modifications to land use zoning controls would also allow more flexibility for development of nonresidential uses, specifically office, institutional, art, and public uses. Under the proposed zoning, there would be two zoning districts, Downtown General Commercial (C-3-G) and Public (P), and the Van Ness & Market Downtown Residential Special Use District ("SUD") (Planning Code



Section 249.33) would be expanded to encompass the entire Hub Plan area. A portion of the Veterans Commons SUD (Planning Code Section 249.46) would be changed to the Van Ness and Market Downtown Residential SUD. All sites in the Hub Plan area would continue to be zoned for residential and active commercial uses on the ground floor. In addition, the existing prohibition on certain nonresidential uses above the fourth floor would be eliminated. Further, the SUD residential-to-nonresidential ratio would increase to three square feet of residential use for every one square foot of nonresidential land use (i.e., a 3:1 ratio), with arts, institutional, replacement office, and public uses exempt from this requirement. In addition, requirements for micro retail would encourage a mix of retail sizes and uses and decrease off-street vehicular parking capacity within the Hub Plan area, a transit-rich location, by reducing the currently permitted off-street vehicular parking maximums. The Hub Plan also calls for public-realm improvements to streets and alleys within and adjacent to the Hub Plan area, such as sidewalk widening, streetlight upgrades, median realignment, road and vehicular parking reconfiguration, tree planting, the elimination of one segment of travel on Duboce Avenue, and the addition of bulb-outs.

The Hub Plan seeks to increase the space available for housing through changes to the planning code and zoning map to allow the development of a taller, larger, denser, and more diverse array of buildings and heights on select parcels within the Hub Plan area. The proposed zoning under the Hub Plan would allow for additional height at the two major intersections at Market Street and Van Ness Avenue and Mission Street and South Van Ness Avenue, with towers ranging from 250 to 650 feet. This proposed zoning would allow increases in heights for 18 sites. If all of these sites were to be developed to the proposed maximum height limit, the changes would result in approximately 8,530<sup>1</sup> new residential units (approximately 16,540 new residents). This estimate also assumes a 15 percent increase in the number of units to account for potential density bonuses allowed by either state or local regulations.

The Hub Plan area, which is irregular in shape and approximately 84 acres, is spread across various city neighborhoods, such as the Downtown/Civic Center, South of Market (SoMa), Western Addition, and Mission neighborhoods. The Hub Plan area is entirely within the boundaries of the Market and Octavia Area Plan. In addition to the streets in the Hub Plan area, adjacent streets such as Lily Street between Gough Street and Franklin Street, Minna Street between 10<sup>th</sup> Street and Lafayette Street, and Duboce Avenue between Valencia Street and Mission Street are included in the project.

## **B. Project Description**

The site for the Project encompasses an approximately 23,753-square-foot lot on Assessor's Block 0836/Lots 008, 009, and 013. It is developed with a surface parking lot with 100 parking spaces. The project site is irregular and bounded by Franklin Street to the west, Oak Street to the north, and Market Street to the south. The project site is also bounded by the 8-story building at 22 Franklin Street to the south (Assessor's Block 0836, Lot 031) and the 1-story building to the east at 55 Oak Street (Assessor's Block 0836, Lot 007). The project site at 98 Franklin Street is in the Downtown/Civic Center neighborhood, within the Downtown General Commercial (C-3-G) zoning district and the Van Ness and Market Downtown Residential SUD. The parking lot was entitled in 1970.

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<sup>1</sup> This represents the number of new housing units that could be built. This number does not represent capacity of housing units under the proposed zoning.

The proposed project at 98 Franklin Street would include a 5-story podium, consisting of school facilities for the French American International High School (levels 1 through 5). It would also include a residential amenity floor on level 6 and a residential tower with at least 345 residential units on approximately 31 floors (levels 7 through 36), reaching a height of approximately 365 feet, with an additional 31 feet, 8 inches to the top of the rooftop mechanical features. The building podium would have a trapezoidal shape, with frontages along Oak and Franklin streets, with an extension down to a frontage on Market Street. The tower would be set back approximately 17 feet from the east face of the podium, and 19 feet from the south face of the podium. The podium height would be up to a maximum of 68 feet at the roofline. In total, the structure would consist of approximately 524,014 gross square feet.

The proposed development at 98 Franklin Street would total approximately 524,014 square feet, including up to 3,229 square feet of retail, up to 84,815 square feet of school use, and up to 379,003 square feet of residential (the Project would include at least 345 residential units on floors 7 through 36). The Project would include approximately 20,804 square feet of garage uses for 111 vehicular parking spaces within three below-grade garage levels.

### **C. Project Objectives**

The Final EIR discusses several 98 Franklin Street Project objectives identified by the Project Sponsor. The objectives are as follows:

1. Develop a new high school building for the International High School in proximity to the existing French American International School ("FAIS") and in proximity to public transportation facilities.
2. Replace an underutilized site with a vibrant mixed-use development, including an educational institution of long standing in the city.
3. Leverage the value of the 98 Franklin Street property by partnering with a residential developer to build housing in the air space above the school.
4. Develop a project that enhances the larger community and generally conforms to the objectives and policies of the Hub Plan.
5. Assist FAIS's efforts to develop a new building for the International High School on the lower five floors of the proposed building.
6. Increase the supply of housing near the Van Ness Avenue and Market Street intersection.
7. Construct a substantial number of dwelling units to contribute to implementation of the City's general plan housing element goals and the Association of Bay Area Governments' Regional Housing Needs Allocation for the city.
8. Create a mixed-use project that is generally consistent with the land use, housing, open space, and other objectives and policies of the Hub Plan.

In addition to the Project Sponsor's objectives for the Project, the Hub Plan's six primary goals are used as the project objectives for that project. The six goals are:

1. Create a vibrant mixed-use neighborhood.
2. Maintain a strong preference for housing as a desired use.
3. Encourage residential towers on selected sites.
4. Establish a functional, attractive, and well-integrated system of public streets and open spaces.

5. Reconfigure major streets and intersections to make them safer for people walking, bicycling, and driving.
6. Take advantage of opportunities to create public spaces.

In addition, the project objectives for the Hub HSD are:

1. To allow for ministerial approval of housing projects in the Hub Plan area.
2. To streamline environmental review of housing projects in the Hub Plan area.

#### **D. Project Approvals**

##### **The Hub Plan**

The Project requires approval of the Hub Plan, including the General Plan, Planning Code, and Zoning Map amendments by the Planning Commission and Board of Supervisors. On May 28, 2020, the Planning Commission recommended approval of those amendments to the Board of Supervisors.

##### **98 Franklin Street Project**

In addition to the above, the Project requires the following Planning Commission approvals:

- Certification of the FEIR.
- Approve a Downtown Project Authorization, pursuant to Planning Code section 309, for new construction or substantial alteration of structures in C-3 Districts, with exceptions to the requirements regarding: awnings, canopies and marquees (Planning Code Section 136.1); technical standards for usable open space (Planning Code Section 135); technical standards for dwelling unit exposure (Planning Code Section 140); reduction of ground-level wind currents in C-3 districts (Planning Code section 148); height limits for parcels within the Van Ness & Market Residential Special Use District (Planning Code Section 263.19); and bulk controls (Planning Code Section 270).
- Approve potential in-kind agreement for public infrastructure or facilities (including the proposed improvements to Lily Street) consistent with Planning Code requirements if proposed by the sponsor.
- Determination that the project complies with the requirements of Planning Code section 295.

##### ***Actions by Other City Departments and State Agencies***

- SFMTA approval of on-street vehicular and bicycle parking and on-street loading changes.
- San Francisco Public Health approval of the use of groundwater wells during dewatering associated construction.
- SFPUC approval of:



- landscape and irrigation plans. This applies to projects installing or modifying 500 square feet or more of landscape area.
  - the use of groundwater wells during dewatering associated construction.
- San Francisco Public Works approval of:
  - any proposed new, removed, or relocated street trees and/or landscaping within the public sidewalk.
  - streetscape changes.
  - situations where construction would need to extend beyond normal hours, between the hours of 8 p.m. and 7 a.m., such as concrete pours, crane and hoist erection and adjustment activities, site maintenance activities, and material delivery and handling.
  - and issuance of permits for wind canopies.
- San Francisco Recreation and Parks Department
  - Review and comment of general manager, in consultation with Recreation and Parks Commission, to the San Francisco Planning Commission that the project complies with the requirements of Planning Code Section 295.

#### **E. Environmental Review**

On October 27, 2017, the Project Sponsor filed an Environmental Evaluation Application for the Project. On May 23, 2018, the Department published a NOP for the EIR and Notice of Public Scoping Meeting for the Hub Plan, 30 Van Ness Avenue, 98 Franklin Street, and Hub Housing Sustainability District. Publication of the NOP initiated a 30-day public review and comment period that ended on June 22, 2018. On June 12, 2018, the Department held a public scoping meeting regarding the Project.

On July 24, 2019, the Department published the DEIR and provided public notice in a newspaper of general circulation of the availability of the DEIR for public review and comment and of the date and time of the Planning Commission public hearing on the DEIR; this notice was mailed to the Department's list of persons requesting such notice. Notices of availability of the DEIR and the date and time of the public hearing were posted near the project site by the Project Sponsor on July 24, 2019. The EIR contains both analysis at a "program-level" pursuant to California Environmental Quality Act (CEQA) Guidelines section 15168 for adoption and implementation of the Hub Plan, and "project-level" environmental review for the streetscape and street network improvements, the Project, and the project at 30 Van Ness Avenue. This EIR also evaluates the designation of portions or all of the Hub Plan area as an HSD, in accordance with Assembly Bill 73 (Government Code sections 66202 to 66210 and Public Resources Code sections 21155.10 and 21155.11). Designation of an HSD, through adoption of an ordinance by the San Francisco Board of Supervisors, would allow the City and County of San Francisco (City) to exercise streamlined ministerial approval of residential and mixed-use development projects meeting certain requirements within the HSD.

On August 29, 2019, the Commission held a duly advertised public hearing on the DEIR, at which opportunity for public comment was given, and public comment was received on the DEIR. The period for commenting on the DEIR ended on September 9, 2019. The Department prepared responses to comments on environmental issues received during the 46 day public review period for the DEIR, prepared revisions

to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, and corrected clerical errors in the DEIR.

A Final Environmental Impact Report (hereinafter, "FEIR") has been prepared by the Department consisting of the DEIR, any consultations and comments received during the review process, any additional information that became available, the Responses to Comments document, and an Errata document dated April 20, 2020, all as required by law. The Initial Study is included as Appendix A to the DEIR and is incorporated by reference thereto.

Project EIR files have been made available for review by the Commission and the public. These files are available for public review at the Department at 1650 Mission Street, Suite 400, and are part of the record before the Commission.

On May 21, 2020, the Commission reviewed and considered the FEIR and found that the contents of said report and the procedures through which the FEIR was prepared, publicized and reviewed comply with the provisions of CEQA, the CEQA Guidelines, and Chapter 31 of the Administrative Code. The FEIR was certified by the Commission on May 21, 2020 by adoption of its Motion No. 20707.

#### **F. Content and Location of Record**

The record upon which all findings and determinations related to the adoption of the proposed Project are based include the following:

- The FEIR, and all documents referenced in or relied upon by the FEIR, including the Responses to Comments document;
- All information (including written evidence and testimony) provided by City staff to the Planning Commission relating to the FEIR, the proposed approvals and entitlements for the Hub Plan and the Project, the Project, and the alternatives set forth in the FEIR;
- All information (including written evidence and testimony) presented to the Planning Commission by the environmental consultant and subconsultants who prepared the FEIR, or incorporated into reports presented by the Planning Commission;
- All information (including written evidence and testimony) presented to the City from other public agencies relating to the Hub Plan, the Project or the FEIR;
- All applications, letters, testimony, and presentations presented to the City by the Project Sponsor and its consultants in connection with the Project;
- All information (including written evidence and testimony) presented at any public hearing or workshop related to the Hub Plan, the Project, and the FEIR;
- The MMRP; and
- All other documents comprising the record pursuant to Public Resources Code Section 21167.6(e).

The public hearing transcripts and audio files, a copy of all letters regarding the FEIR received during the public review period, the administrative record, and background documentation for the FEIR are located at the Department, 1650 Mission Street, 4<sup>th</sup> Floor, San Francisco. The Department's Commissions Secretary, Jonas P. Ionin, is the custodian of these documents and materials.

### **G. Findings about Environmental Impacts and Mitigation Measures**

The following Sections II, III and IV set forth the Commission's findings about the FEIR's determinations regarding significant environmental impacts and the mitigation measures proposed to address them. These findings provide the written analysis and conclusions of the Commission regarding the environmental impacts of the Project and the mitigation measures included as part of the FEIR and adopted by the Commission as part of the Project. To avoid duplication and redundancy, and because the Commission agrees with, and hereby adopts, the conclusions in the FEIR, these findings will not repeat the analysis and conclusions in the FEIR, but instead incorporate them by reference and rely upon them as substantial evidence supporting these findings. These findings are also separate and apart from, and incorporate by reference, the CEQA findings previously adopted by the Commission in support of its approval of the Hub Plan, Hub Housing Sustainability District, and related streetscape and street network improvements.

In making these findings, the Commission has considered the opinions of the Department and other City staff and experts, other agencies, and members of the public. The Commission finds that (i) the determination of significance thresholds is a judgment decision within the discretion of the City; (ii) the significance thresholds used in the FEIR are supported by substantial evidence in the record, including the expert opinion of the FEIR preparers and City staff; and (iii) the significance thresholds used in the FEIR provide reasonable and appropriate means of assessing the significance of the adverse environmental effects of the Project. Thus, although, as a legal matter, the Commission is not bound by the significance determinations in the FEIR (see Public Resources Code, Section 21082.2, subdivision(e)), the Commission finds them persuasive and hereby adopts them as its own.

These findings do not attempt to describe the full analysis of each environmental impact contained in the FEIR. Instead, a full explanation of these environmental findings and conclusions can be found in the FEIR, and these findings hereby incorporate by reference the discussion and analysis in the FEIR supporting the determination regarding the project impact and mitigation measures designed to address those impacts. In making these findings, the Commission ratifies, adopts and incorporates in these findings the determinations and conclusions of the FEIR relating to environmental impacts and mitigation measures, except to the extent any such determinations and conclusions are specifically and expressly modified by these findings, and relies upon them as substantial evidence supporting these findings.

As set forth below, the Commission adopts and incorporates the mitigation measures set forth in the FEIR, which are set forth in the attached MMRP, to reduce the significant and unavoidable impacts of the Project. The Commission intends to adopt the mitigation measures proposed in the FEIR that are within its jurisdiction and urges other City agencies and departments that have jurisdiction over other mitigation measures proposed in the FEIR, and set forth in the MMRP, to adopt those mitigation measures. Accordingly, in the event a mitigation measure recommended in the FEIR has inadvertently been omitted in these findings or the MMRP, such mitigation measure is hereby adopted and incorporated in the findings below by reference. In addition, in the event the language describing a mitigation measure set forth in these findings or the MMRP fails to accurately reflect the mitigation measures in the FEIR due to a clerical error, the language of the policies and implementation measures as set forth in the FEIR shall control. The impact numbers and mitigation measure numbers used in these findings reflect the information contained in the FEIR.



In Sections II, III and IV below, the same findings are made for a category of environmental impacts and mitigation measures. Rather than repeat the identical finding to address each and every significant effect and mitigation measure, the initial finding obviates the need for such repetition because in no instance is the Commission rejecting the conclusions of the FEIR or the mitigation measures recommended in the FEIR for the Project.

These findings are based upon substantial evidence in the entire record before the Planning Commission. The references set forth in these findings to certain pages or sections of the EIR or responses to comments in the Final EIR are for ease of reference and are not intended to provide an exhaustive list of the evidence relied upon for these findings.

## **SECTION II. IMPACTS OF THE PROJECT FOUND TO BE LESS-THAN SIGNIFICANT AND THUS DO NOT REQUIRE MITIGATION**

Under CEQA, no mitigation measures are required for impacts that are less than significant (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.). Based on the evidence in the whole record of this proceeding, the Planning Commission finds that the Project will not result in any significant impacts in the following areas and that these impact areas therefore do not require mitigation:

### **Cultural Resources**

- Substantial adverse change to individual built environment resources and/or historic districts, as defined in section 15064.5, including those resources listed in article 10 or 11 of the San Francisco Planning Code.
- In combination with past, present and future project in the vicinity of the Project site, result in demolition and/or alteration of built environment resources.

### **Transportation and Circulation**

- Require an extended duration for the construction period or intense construction activity, the secondary effects of which could not create potentially hazardous conditions for people walking, bicycling, or driving; interfere with accessibility for people walking or bicycling; or substantially delay public transit.
- Cause substantial additional VMT or substantially induce automobile travel.
- Cause major traffic hazards.
- Cause a substantial increase in transit demand that could not be accommodated by adjacent transit capacity such that unacceptable levels of transit service could result or cause a substantial increase in delays or operating costs such that significant adverse impacts in transit service levels would result.
- Create potentially hazardous conditions for bicyclists or otherwise substantially interfere with bicycle accessibility to the site or adjoining areas.
- Create potentially hazardous conditions for pedestrians, or otherwise interfere with pedestrian accessibility to the site and adjoining areas.
- Result in a substantial vehicular parking deficit.
- Result in inadequate emergency access to the project site or adjoining areas.

- In combination with past, present, and reasonably foreseeable future projects in the vicinity of the project site, contribute considerably to significant cumulative impacts related to VMT or substantially induce automobile travel.
- In combination with past, present, and reasonably foreseeable future projects in the vicinity of the project site, contribute considerably to significant cumulative impacts on transit, bicycle, or pedestrian travel, loading, or emergency access.

#### **Noise**

- Generate or result in the generation of a substantial temporary or permanent increase in ambient noise levels in excess of standards.
- In combination with past, present, and reasonably foreseeable future projects, result in a significant cumulative impact related to vibration.
- In combination with past, present, and reasonably foreseeable future projects, result in a considerable contribution to significant cumulative impacts related to substantial temporary or permanent increase in ambient noise levels in excess of standards.

#### **Air Quality**

- Conflict with or obstruct implementation of the 2017 Bay Area Clean Air Plan.
- During Project construction or operation, violate an air quality standard, contribute substantially to an existing or projected air quality violation, or result in a cumulatively considerable net increase in criteria air pollutants.
- Generate emissions that create objectionable odors affecting a substantial number of people.
- In combination with past, present, and reasonably foreseeable future projects in the vicinity of the project site, contribute considerably to cumulative regional air quality impacts.

#### **Shadow**

- Alter shadows in a manner that would substantially affect public areas or outdoor recreation facilities.
- In combination with past, present, and reasonably foreseeable future projects in the project area, create new shadow in a manner that would substantially affect outdoor recreation facilities or other public areas.

The Initial Study determined that the Project would result in a less than significant impact or no impact for the following impact areas and, therefore, these impact areas were not included in the EIR for further analysis:

- Land Use and Land Use Planning (all impacts)
- Population and Housing (all impacts)
- Transportation and Circulation (impacts to air traffic)
- Noise (impacts related to airport noise)
- Greenhouse Gas Emissions (all impacts)
- Recreation (all impacts)
- Utilities and Services Systems (all impacts)

- Public Services (all impacts)
- Biological Resources (all impacts)
- Geology and Soils (all impacts, except impacts to paleontological resources/unique geological features)
- Hydrology and Water Quality (all impacts)
- Hazards and Hazardous Materials (all impacts)
- Mineral and Energy Resources (all impacts)
- Agriculture and Forest Resources (all impacts)

Note: Senate Bill (SB) 743 became effective on January 1, 2014. Among other things, SB 743 added § 21099 to the Public Resources Code and eliminated the requirement to analyze aesthetics and parking impacts for certain urban infill projects under CEQA. The proposed Project meets the definition of a residential project on an infill site within a transit priority area as specified by Public Resources Code § 21099. Accordingly, the FEIR did not discuss the Project's impacts related to Aesthetics, which is no longer considered in determining the significance of the proposed Project's physical environmental effects under CEQA. The FEIR nonetheless provided visual simulations for informational purposes. Similarly, the FEIR included a discussion of parking for informational purposes. This information, however, did not relate to the significance determinations in the FEIR.

### **SECTION III. FINDINGS OF POTENTIALLY SIGNIFICANT IMPACTS THAT CAN BE AVOIDED OR REDUCED TO A LESS-THAN-SIGNIFICANT LEVEL THROUGH MITIGATION**

CEQA requires agencies to adopt mitigation measures that would avoid or substantially lessen a project's identified significant impacts or potential significant impacts if such measures are feasible. The findings in this Section III and in Section IV concern mitigation measures set forth in the Draft EIR to mitigate the potentially significant impacts of the Project. These mitigation measures are included in the MMRP. A copy of the MMRP is included as "**EXHIBIT C**" to the Planning Commission Motion adopting these findings.

The Project Sponsor has agreed to implement the following mitigation measures to address the potential transportation and circulation, noise, air quality, cultural resources, and geology and soils impacts identified in the Initial Study and/or FEIR. As authorized by CEQA Section 21081 and CEQA Guidelines Section 15091, 15092, and 15093, based on substantial evidence in the whole record of this proceeding, the Planning Commission finds that, unless otherwise stated, the Project will be required to incorporate mitigation measures identified in the Initial Study and/or FEIR into the Project to mitigate or avoid significant or potentially significant environmental impacts. For the reasons set forth in the FEIR and/or the Initial Study, these mitigation measures will reduce or avoid the potentially significant impacts described in the Initial Study and/or FEIR, and the Commission finds that these mitigation measures are feasible to implement and are within the responsibility and jurisdiction of the City and County of San Francisco to implement or enforce.

Additionally, the required mitigation measures are fully enforceable and are included as conditions of approval in the Planning Commission's Downtown Project Authorization for the Project under Planning Code Section 309, and also will be enforced through conditions of approval in any building permits issued for the Project by the San Francisco Department of Building Inspection. With the required mitigation



measures, these Project impacts would be avoided or reduced to a less-than-significant level. The Planning Commission finds that the mitigation measures presented in the MMRP are feasible and shall be adopted as conditions of project approval.

### **Cultural Resources**

- **Impact CUL-3:** The proposed Project could result in a substantial adverse change in the significance of an individual built environment resource and/or historic district, as defined in section 15064.5, including those resources listed in article 10 or 11 of the San Francisco Planning Code, from ground-borne vibration caused by temporary construction activities. With implementation of *Mitigation Measures M-NOI-3a (Protect Adjacent Potentially Susceptible Structures from Construction-Generated Vibration)* and *M-NOI-3b (Construction Monitoring Program for Structures Potentially Affected by Vibration)* Impact CUL-3 is reduced to a less-than-significant level, for the reasons set forth in the DEIR, at pages 3.C-53 to 3.C-58; 3.C-61 to 3.C-64.

Construction activities occurring as a result of the Project are analyzed for their potential to materially impair the significance of historical resources under Impact NOI-3. Impact CUL-3 is reduced to a less-than-significant level, for the reasons on pages 3.C-53 to 3.C-58; 3.C-61 to 3.C-64 of the DEIR, and discussed under Impact NOI-3, below.

- **Impact CUL-4:** The proposed Project could cause a substantial adverse change in the significance of an archaeological resource, as defined in section 15064.5. With implementation of *Mitigation Measure M-CUL-4d: Requirements for Archaeological Testing Consisting of Consultation with Descendent Communities, Testing, Monitoring, and a Report*, Impact CUL-4 is reduced to a less-than-significant level, for the reasons set forth in the DEIR, at pages. 3.A-97 to 3.A-104.

The proposed project at 98 Franklin Street would include demolition of an existing surface vehicular parking lot and construction of a 31-story residential tower above a five-story podium, with one basement level to accommodate bicycle parking, loading, and other building services and two below-grade vehicular parking levels (a total of three basement levels). The project proposes a mat slab foundation with soil-cement columns across the entire site. The project proposes no building setback on the ground floor and excavation to a depth of 39 feet within the boundaries of the entire lot. The estimated amount of excavation at this location would be approximately 31,670 cubic yards. Specific underground utility relocations associated with this project are unknown but assumed to require excavation to a depth of more than 12 feet. This project also proposes improvements to Lily Street from Franklin Street to Gough Street, including a midblock crossing on Lily Street between Franklin and Gough streets and improvements on the western portion of Oak Street between Van Ness Avenue and Franklin Street. This would include ground-disturbing activities, such as those associated with the installation of lighting for people walking. Although there are no known archaeological resources in the project vicinity, proposed construction activity would extend below the known depth of fill and into undisturbed dune and marsh deposits, which have elevated potential for containing buried archaeological resources. Therefore, project-related excavations at this location have the potential to physically damage or destroy as-yet undocumented archaeological resources, resulting in significant impacts on archaeological resources. The Project has already implemented the equivalent of Mitigation Measure M-CUL-4a: Project-Specific Preliminary Archaeological Review for Projects Involving Soil Disturbance as part of the DEIR. As stated on pages 3.A-97 to 3.A-104 of the DEIR,

with implementation of Mitigation Measure M-CUL-4d, project-related impacts on archaeological resources would be avoided or minimized; when avoidance or minimization is impossible, impacts would be mitigated through archaeological testing. As a result, impacts on archaeological resources would be reduced to less than significant.

- **Impact CUL-5:** The proposed Project could disturb human remains, including those interred outside of formal cemeteries. With implementation of *Mitigation Measure M-CUL-4d (Requirements for Archaeological Testing Consisting of Consultation with Descendent Communities, Testing, Monitoring, and a Report)*, Impact CUL-5 is reduced to a less-than-significant level, for the reasons set forth in the DEIR at page 3.A-105.

There are no known extant archaeological resources that contain human remains within the Hub Plan area; CA-SFR-28 was discovered in the Hub Plan area but was removed during construction of the Civic Center BART station. However, proposed construction activity would extend below the known depth of fill and into undisturbed dune and marsh deposits, which have elevated potential for containing buried archaeological resources and associated human remains. Therefore, excavations have the potential to damage or destroy known archaeological resource and/or as-yet undocumented archaeological resources that include human remains, resulting in a significant impact. Impacts on archaeologically significant human remains would be mitigated to a less-than-significant level with implementation of Mitigation Measures M-CUL-4a, M-CUL-4b, M-CUL-4c, and M-CUL-4d, through avoidance or minimization of adverse effects on archaeological resources, or when avoidance or minimization is not possible archaeological monitoring to preserve significant information from an archaeological resource, as stated on pages 3.A-90 to 3.A-104 of the DEIR.

- **Impact C-CUL-3:** In combination with past, present, and reasonably foreseeable projects in the vicinity, the proposed Project could result in a significant cumulative impact on archaeological resources and human remains. With implementation of *Mitigation Measures M-CUL-4a (Project-Specific Preliminary Archaeological Review for Projects Involving Soil Disturbance)*; *M-CUL-4 (Procedures for Accidental Discovery of Archaeological Resources for Projects Involving Soil Disturbance)*; *M-CUL-4c (Requirement for Archaeological Monitoring for Streetscape and Street Network Improvements)*; *M-CUL-4d (Requirements for Archaeological Testing Consisting of Consultation with Descendent Communities, Testing, Monitoring, and a Report)*, Impact C-CUL-3 is reduced to a less-than-significant level, for the reasons set forth in the DEIR, at page 3.A-110.

The proposed 98 Franklin Street Project would result in excavation to a depth of 39 feet within the boundaries of the entire lot. Specific underground utility relocations associated with this project are unknown but assumed to require excavation to a depth of more than 12 feet. These ground-disturbing activities would occur in areas identified as having moderate to high sensitivity for containing buried undocumented historical and prehistoric archaeological resources, which may also contain human remains, as discussed above under Impact CUL-4. Therefore, these ground-disturbing activities have the potential to affect known and undocumented archaeological resources and human remains. The 98 Franklin Street Project when considered with cumulative projects that would include ground-disturbing activities that have the potential to encounter sediments that have moderate to high archaeological sensitivity, has the potential to contribute considerably to the overall cumulative impact on archaeological resources and human remains; the impact would be significant. Implementation of Mitigation Measures

M-CUL-4a, M-CUL-4b, M-CUL-4c, in instances where street network improvements are proposed within the Hub Plan area, and M-CUL-4d would reduce cumulative impacts of the Project on archaeological resources and human remains to less-than-significant levels through avoidance or minimization of adverse effects on archaeological resources, or when avoidance or minimization is not possible archaeological monitoring to preserve significant information from an archaeological resources as stated on page 3.A-110 of the DEIR.

## Noise

- **Impact NOI-2:** Construction of the proposed Project could generate a substantial temporary or permanent increase in ambient noise levels in excess of standards. With implementation of Mitigation Measure M-NOI-1a (Construction Noise Control Plan for Projects Within 250 Feet of a Noise-Sensitive Land Use), Impact NO-2 is reduced to a less-than-significant level, for the reasons set forth in the DEIR, at pages 3.C-41 to 3.C-53 and 3.C-36 to 3.C-39.

The degree of the increase in noise levels above the ambient noise level that could occur during daytime hours, in combination with construction occurring over a two-year period in proximity to noise-sensitive receptors, would be considered a substantial temporary increase in noise during daytime hours. In addition, nighttime construction activities may also result in substantial noise increases. Therefore, construction noise from the 98 Franklin Street Project would be significant. With implementation of Mitigation Measure M-NOI-1a, noise levels from project construction at 98 Franklin Street, as well as the intensity of potential noise effects, would be reduced to the maximum extent feasible. Although the duration or frequency of the construction activities would not change as a result of this mitigation measure, the noise levels at nearby receivers would be reduced such that the temporary noise increases would be less substantial. For example, depending on the specifics of the measures outlined in the noise control plan once finalized, construction equipment would be intentionally located as far as feasible from adjacent noise sensitive receptors, and shielding to reduce noise may be incorporated, as feasible. In addition, an onsite construction complaint and enforcement manager would be designated for the project, to ensure noise complaints would be addressed. Construction noise is temporary in nature. In addition, as well as implementation of Mitigation Measure M-NOI-1a, impacts related to construction noise would be less than significant for the Project, as stated in the DEIR at page 3.C-52 to 3.C-53.

- **Impact NOI-3:** The proposed Project would generate excessive ground-borne vibration or ground-borne noise levels. With implementation of *Mitigation Measure M-NOI-3a (Protect Adjacent Potentially Susceptible Structures from Construction-Generated Vibration)*, and *Mitigation Measure M-NOI-3b (Construction Monitoring Program for Structures Potentially Affected by Vibration)*, Impact NO-3 is reduced to a less-than-significant level, for the reasons set forth in the DEIR at pages 3.C-56 to 3.C-58 and 3.C-62 to 3.C-64.

Construction of the Project would involve the use of construction equipment that could generate ground-borne vibration. The project site is surrounded by development, including some historic structures. The closest potentially historic resources to the site are the residential complexes located south of the site, 20 Franklin Street, and 1580–1598 Market Street. The closest of these is immediately adjacent to the project site. In addition, 50 Oak Street, 55 Oak Street, and 57 Oak Street are also potentially historic resources. These are located across the street diagonally from the project site, at a distance of approximately 75 feet from the

project site's northern perimeter. The potentially historic resources at 50 Oak Street, 55 Oak Street, and 57 Oak Street, which would fall under the category of historic and some old buildings, are approximately 75 feet from the project's northern perimeter. A drill and a large bulldozer could both generate ground-borne vibration levels of 0.017 PPV in/sec at a distance of 75 feet. Therefore, vibration levels from equipment proposed for use at the 98 Franklin Street project site would be below the applicable damage criterion (or 0.25 PPV in/sec for historic and some old buildings) at a distance of 75 feet. 20 Franklin Street, and 1580–1598 Market Street are located directly south of the project site. At times, vibration-generating activities may not occur near the project perimeter. Activities that occur farther away from the southern perimeter of the project site would be less likely to result in damage-related vibration effects. For example, at a distance of 15 feet from nearby structures, vibration levels from the use of a large bulldozer or drill would be approximately 0.192 PPV in/sec. This is below the vibration damage criteria for all types of buildings in the project area. Should vibration-generating construction activity occur at least 15 feet away from nearby structures, impacts related to potential damage would be less than significant. However, it is possible that construction activities could occur as close as 1 to 3 feet away from the neighboring property located directly east of the project site. Because the equipment proposed for project construction would generate ground-borne vibration levels of up to 2.141 PPV in/sec at a distance of 3 feet, and even greater levels should equipment be required for use at closer distances (e.g., 1 foot), vibration levels from project construction would be expected to exceed the damage criteria for all building types at the adjacent structures (located south of the project site). Potential vibration-related damage impacts would be considered significant for the 98 Franklin Street Project. Implementation of Mitigation Measures M-NOI-3a and M-NOI-3b would ensure that any cosmetic or structural damage caused by construction-related vibration would be avoided or identified through a monitoring program and repaired as necessary to its pre-construction condition. Therefore, following the implementation of M-NOI-3a and M-NOI-3b, construction vibration impacts from the Project would be reduced to a less-than-significant level, as stated in the DEIR at pages 3.C-56 to 3.C-58 and 3.C-62 to 3.C-64.

### Air Quality

- **Impact AQ-9:** Construction and operation of the Project could generate toxic air contaminants, including fine particulate matter, exposing sensitive receptors to substantial air pollutant concentrations. With implementation of *Mitigation Measures M-AQ-5c (Best Available Control Technology for Projects with Diesel Generators and Fire Pumps)*, and *M-AQ-9c (Construction Emissions Minimization Plan for 98 Franklin Street Project)*, Impact AQ-9 is reduced to a less-than-significant level, for the reasons set forth in the DEIR at pages 3.D-86 to 3.D-93.

Construction and operation of the Project would result in emissions of PM<sub>2.5</sub> and toxic air contaminants and expose onsite and nearby sensitive receptors to substantial pollutant concentrations. Construction activities that would result in such emissions include demolition, excavation, building construction and interior and exterior finishing. Off-road diesel equipment used for clearing and grading, materials handling and installation, and other construction activities would generate diesel PM and TAC emissions. Operational emissions would result from periodic testing of the backup diesel generators and additional traffic volumes that would be generated by the Project. Therefore, a project-specific health risk assessment was conducted for the Project. The Project's contribution to cancer risk at onsite and offsite receptors would be 305 and 70 in 1 million, respectively, which would exceed the significance threshold of seven per 1 million persons exposed, resulting in a significant impact. Implementation of Mitigation Measures M-AQ-



5c and M-AQ-9c would reduce cancer risk levels at both offsite and onsite MEISRs. Therefore, with mitigation, the cancer risk from the Project would be reduced to a less-than-significant level, as stated in the DEIR at pages 3.D-86 to 3.D-93.

- **Impact C-AQ-2:** The Project, in combination with past, present, and reasonably foreseeable future projects in the vicinity of the project site, would contribute to exposure of sensitive receptors to substantial levels of fine particulate matter (PM<sub>2.5</sub>) and toxic air contaminants under 2040 cumulative conditions. With implementation of *Mitigation Measures M-AQ-5c (Best Available Control Technology for Projects with Diesel Generators and Fire Pumps)*, and *M-AQ-9c (Construction Emissions Minimization Plan for 98 Franklin Street Project)*, Impact C-AQ-2 is reduced to a less-than-significant level, for the reasons set forth in the DEIR at pages 3.D-102 to 3.D-103, and to 3.D-108 to 3.D-112.

The Cumulative (2040) + 98 Franklin Street Project scenario analyzed the impacts from the 98 Franklin Street Project combined with the impacts from the Cumulative (2040) with Hub Plan scenario. The cumulative (2040) + 98 Franklin Street Project scenario included all of the emissions sources evaluated for the cumulative (2040) + Hub Plan scenario because the Hub Plan scenario also includes the individual projects at 30 Van Ness Avenue and 98 Franklin Street. The Project's contribution to cancer risk at onsite and offsite receptors would exceed the significance threshold of seven in 1 million persons exposed, resulting in a significant impact. Implementation of Mitigation Measure M-AQ-9c, and Mitigation Measure M-AQ-5c would be required to reduce the cancer risk. Implementation of these mitigation measures would reduce cancer risk contributions from the project at both offsite and onsite MEISRs to 0.032 µg/m<sup>3</sup> and 0.0012 µg/m<sup>3</sup>, respectively. Therefore, because the mitigated PM<sub>2.5</sub> concentration would be below the significance threshold of 0.2 µg/m, the PM<sub>2.5</sub> concentration impact would be reduced to a less-than-significant level, for the reasons set forth in the DEIR at pages 3.D-102 to 3.D-103, and to 3.D-108 to 3.D-112.

## **Wind**

- **Impact WI-2:** The proposed Project would create wind hazards in publicly accessible areas with substantial pedestrian use. With Implementation of *Mitigation Measure M-WI-1b (Maintenance Plan for Landscaping and Wind Baffling Measures in the Public Right-of-Way)*, Impact WI-2 is reduced to a less-than-significant level, for the reasons set forth in the DEIR at pages 3.E-34 and 3.E-21 to 3.E-22.

The 98 Franklin Street Project would result in a slight net decrease of test locations exceeding the wind hazard criterion. In addition, the total number of hours with hazardous wind conditions would be reduced under the 98 Franklin Street Project. The 98 Franklin Street Project would include evergreen trees along Franklin and Oak streets, four replacement evergreen trees along Oak Street, and a canopy along the western façade of the project (along Franklin Street). The proposed landscaping is expected to improve wind hazard conditions compared with the Existing Scenario. However, because the proposed landscaping is not guaranteed to be maintained during operation of the 98 Franklin Street Project, impacts would be significant. Implementation of Mitigation Measure M-WI-1b requires a maintenance plan for landscaping and wind baffling measures in the public right-of-way. This mitigation measure would reduce the potential for a net increase in wind hazard exceedances and the hours of wind hazard exceedances through a specific maintenance plan to ensure wind baffling in perpetuity. Therefore, the wind impact from the Project would be reduced to less than significant with mitigation, for the reasons set forth in the DEIR at pages 3.E-34 and 3.E-21 to 3.E-22.

## Tribal Cultural Resources

- **Impact TCR-1:** The proposed Project could result in a substantial adverse change in the significance of a tribal cultural resource. With implementation of *Mitigation Measure M-TCR-1 (Project-Specific Tribal Cultural Resources Assessment for Projects Involving Ground Disturbance)*, Impact TCR-1 is reduced to a less-than-significant level, for the reasons set forth in the Initial Study at pages E.5-4 to E.5-5.

Prehistoric archaeological resources may also be considered tribal cultural resources. In the event that project activities associated with the Project disturb unknown archaeological sites that are considered tribal cultural resources, any inadvertent damage would be considered a significant impact. Implementation of Mitigation Measure M-TCR-1, Project-Specific Tribal Cultural Resources Assessment for Projects Involving Ground Disturbance, would require the Project to be redesigned to avoid adverse effects on significant tribal cultural resource, if feasible. If preservation in place is not feasible, the measure would require implementation of an interpretative program for the tribal cultural resource, in consultation with affiliated tribal representatives. With implementation of this mitigation measure, Project would have a less-than-significant impact on tribal cultural resources, for the reasons set forth in the Initial Study at pages E.5-4 to E.5-5.

- **Impact C-TCR-1:** In combination with past, present, and reasonably foreseeable projects in the city, the proposed Project could result in a significant cumulative impact on tribal cultural resources. With implementation of *Mitigation Measure M-TCR-1 (Project-Specific Tribal Cultural Resources Assessment for Projects Involving Ground Disturbance)*, Impact C-TCR-1 is reduced to a less-than-significant level, for the reasons set forth in the Initial Study at p. E.5-6.

Ground-disturbing activities have the potential to affect undocumented tribal cultural resources. Without mitigation, the Project, when considered against the past, present, and reasonably foreseeable future projects within and surrounding the Hub Plan area that would include ground-disturbing activities that have the potential to encounter sediments that have moderate to high archaeological sensitivity, has the potential to contribute considerably to the overall cumulative impact on tribal cultural resources. This is because the Project has the potential to damage or destroy as-yet undocumented archaeological resources that have the potential to be eligible for listing in the California Register, and which may be considered of traditional importance to Native American tribes. Implementation of Mitigation Measure M-TCR-1, Project-Specific Tribal Cultural Resources Assessment for Projects Involving Ground Disturbance, would require redesign to avoid adverse effects on significant tribal cultural resource, if feasible; and if preservation in place is not feasible, the measure would require implementation of an interpretative program for the tribal cultural resource, in consultation with affiliated tribal representatives, which would reduce the cumulative impacts of the Hub Plan and individual development projects, including the Project, on potential tribal cultural resources to less-than-significant levels by providing mitigation for impacts on these resources, as stated on page E.5-6 of the Initial Study.

## Biological Resources

- **Impact BI-1:** The proposed Project could have a substantial adverse effect, either directly or through habitat modifications, on species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service. With implementation of *Mitigation Measures M-BI-1 (California Fish and Game Code Compliance to Avoid Active Nests During Construction Activities)* and *M-BI-2 (Avoid Impacts on Special-status Bat Roosts During Construction Activities)*, Impact BI-1 is reduced to a less-than-significant level.

Impacts on nesting special-status birds, American peregrine falcon nests or individuals, and special-status bat roosts could be significant. The implementation of Mitigation Measures M-BI-1 and M-BI-2 would avoid impacts on nesting special-status birds, American peregrine falcon nests or individuals, and the roosts of special-status bat species through the avoidance of active nests and roosts specified in the mitigation measures, thereby reducing these impacts to a less-than-significant level, for the reasons set forth in the Initial Study at pages E.15-5 to E.15-7.

- **Impact C-BI-1:** In combination with other past, present, or reasonably foreseeable projects, the proposed Project would not result in a considerable contribution to cumulative impacts on biological resources. With implementation of *Mitigation Measures M-BI-1 (California Fish and Game Code Compliance to Avoid Active Nests During Construction Activities)* and *M-BI-2 (Avoid Impacts on Special-status Bat Roosts During Construction Activities)*, Impact C-BI-1 is reduced to a less-than-significant level, for the reasons set forth in the Initial Study at page E.15-12.

The subsequent development projects incentivized by the Hub Plan would not adversely affect biological resources; however, vegetation removal and structure demolition or modification could result in potential impacts on nesting migratory and special-status birds and roosting bats. Through the avoidance of active nests and roosts specified in the relevant mitigation measures described above (M-BI-1 and M-BI-2) and compliance with the City of San Francisco Standards for Bird-Safe Buildings (I-BI-1), subsequent development projects incentivized by the Hub Plan would have less-than-significant impacts on sensitive species. Tree removals would require permits through public works, and subsequent tree replacement would occur pursuant to the Planning Code and the Better Streets Plan. Development projects in downtown San Francisco would be required to comply with the same laws and regulations. Therefore, with implementation of mitigation measures, no significant cumulative effects on biological resources would result from development within the Hub Plan area, including the Project, combined with the effects of development projects in the greater downtown San Francisco area. The impact would be reduced to a less-than-significant level, as stated on page E.15-12 of the Initial Study.

## Geology and Soils

- **Impact GE-7:** Construction activities for the Project would directly or indirectly result in damage to, or destruction of, as-yet unknown paleontological resources or sites, should such resources, sites, or features exist on or beneath the Project site. With implementation of Mitigation Measure

M-GE-1 (Inadvertent Discovery of Paleontological Resources), Impact GE-7 would be less-than-significant, for the reasons set forth on pages E.16-24 to E.16-26 of the Initial Study.

The Project could extend into the Colma formation; impacts on significant fossils would be significant. Implementation of Mitigation Measure M-GE-1, which would require that the project applicant educate construction workers, monitor for discovery of paleontological resources, evaluate found resources, and prepare and follow a recovery plan for found resources, would reduce the likelihood that significant, or unique, paleontological resources would be destroyed or lost. With implementation of this mitigation measure, the impact would be less than significant, as stated on pages E.16-24 to E.16-26 of the Initial Study.

#### **SECTION IV. SIGNIFICANT IMPACTS THAT CANNOT BE AVOIDED OR REDUCED TO A LESS-THAN-SIGNIFICANT LEVEL**

Based on substantial evidence in the whole record of these proceedings, the Planning Commission finds that there are significant project-specific and cumulative impacts that would not be eliminated or reduced to an insignificant level by the mitigation measures listed in the MMRP. The FEIR identifies one significant and unavoidable impact on transportation and circulation, one significant and unavoidable impact on noise, and one significant and unavoidable impact on wind.

The Planning Commission further finds based on the analysis contained within the FEIR, other considerations in the record, and the significance criteria identified in the FEIR, that feasible mitigation measures are not available to reduce the significant Project impacts to less-than-significant levels, and thus those impacts remain significant and unavoidable. The Commission also finds that, although measures were considered in the FEIR that could reduce some significant impacts, certain measures, as described in this Section IV below, are infeasible for reasons set forth below, and therefore those impacts remain significant and unavoidable or potentially significant and unavoidable.

Thus, the following significant impacts on the environment, as reflected in the FEIR, are unavoidable. But, as more fully explained in Section VI, below, under Public Resources Code Section 21081(a)(3) and (b), and CEQA Guidelines 15091(a)(3), 15092(b)(2)(B), and 15093, the Planning Commission finds that these impacts are acceptable for the legal, environmental, economic, social, technological and other benefits of the Project. This finding is supported by substantial evidence in the record of this proceeding.

The FEIR identifies the following impacts for which no feasible mitigation measures were identified that would reduce these impacts to a less than significant level:

##### **Impacts to Transportation and Circulation – Impact C-TR-1**

The proposed Project, combined with past, present, and reasonably foreseeable future projects, would contribute considerably to significant cumulative construction-related transportation impacts. No feasible mitigation measures were identified that would reduce this impact to a less than significant level after consideration of several potential mitigation measures. The Project Sponsor has agreed to implement the following mitigation measure:



- *Mitigation Measure M-TR-1: Construction Management Plan*, set forth in the DEIR at pages 3.B-56 to 3.B-58.

The Commission finds that, for the reasons set forth in the FEIR, and specifically, in the DEIR, at p. 3.B-58, although implementation of *Mitigation Measure M-TR-1* would reduce the cumulative transportation and circulation impact of the construction phase of the Project, this impact would nevertheless remain significant and unavoidable because the mitigation measures would reduce but not eliminate the significant cumulative impacts related to conflicts between multiple construction activities and pedestrians, bicyclists, transit vehicles and automobiles.

### **Impacts to Noise – Impact C-NOI-1**

The proposed Project, combined with past, present, and reasonably foreseeable future projects, would make a cumulatively considerable contribution to a significant cumulative noise impact and result in the generation of a substantial temporary or permanent increase in ambient noise levels in excess of standards. No feasible mitigation measures were identified that would reduce this impact to a less than significant level after consideration of several potential mitigation measures. The Project Sponsor has agreed to implement the following mitigation measures:

- *Mitigation Measures M-NOI-1a (Construction Noise Control Plan for Projects Within 250 Feet of a Noise-Sensitive Land Use)*, set forth in the DEIR at pages 3.C-36 to 3.C-38; and
- *M-NOI-1b (Site-Specific Noise Control Measures for Projects Involving Pile Driving)*, set forth in the DEIR at page 3.C-38.

The Commission finds that, for the reasons set forth in the FEIR, and specifically, in the DEIR, at pages 3.C-38 to 3.C-39, although implementation of *Mitigation Measures M-NOI-1a and M-NOI-1b* would reduce the cumulative noise impact resulting from the generation of substantial temporary or permanent increases in ambient noise levels, this impact would nevertheless remain significant and unavoidable because the mitigation measures would reduce but not eliminate the significant cumulative increase in ambient noise.

### **Impacts to Wind – Impact C-WI-1**

The proposed Project, combined with past, present, and reasonably foreseeable future projects, would alter wind in a manner that would make a cumulatively considerable contribution to a significant cumulative wind impact. No feasible mitigation measures were identified that would reduce this impact to a less than significant level after consideration of several potential mitigation measures. The Project Sponsor has agreed to implement the following Mitigation Measures:

- *Mitigation Measures M-WI-1a (Wind Analysis and Minimization Measures for Subsequent Projects)*, set forth in the DEIR at pages 3.E-20 to 3.E-21; and
- *M-WI-1b (Maintenance Plan for Landscaping and Wind Baffling Measures in the Public Right-of-Way)*, set forth in the DEIR at page 3.E-21.

The Commission finds that, for the reasons set forth in the FEIR, and specifically, in the DEIR, at p. 3.E-40, although implementation of *Mitigation Measures M-WI-1a and M-WI-1b* would reduce the cumulative wind

impact of the Project, this impact would nevertheless remain significant and unavoidable. The specific design for subsequent reasonably foreseeable projects, when proposed, would be required not to exceed the wind hazard criterion specified in Planning Code section 148. Building articulation and landscaping features for subsequent development projects could eliminate new hazard criterion exceedances for future projects. Although future project mitigation and/or design modifications would be based on a test of existing conditions (i.e., when a future project is proposed), using section 148 alone, they would not consider other foreseeable buildings in the area. Therefore, it cannot be stated with certainty that each subsequent development project would not contribute to a cumulative impact without substantial modifications to individual project design and programs.

## **SECTION V. Evaluation of Project Alternatives**

### **A. Alternatives Analyzed in the FEIR**

This section describes the EIR alternatives and the reasons for rejecting the alternatives as infeasible. CEQA mandates that an EIR evaluate a reasonable range of alternatives to the Project or the Project location that would feasibly attain most of the Project's basic objectives, but that would avoid or substantially lessen any identified significant adverse environmental effects of the project. An EIR is not required to consider every conceivable alternative to a proposed project. Rather, it must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation. CEQA requires that every EIR also evaluate a "No Project" alternative. Alternatives provide a basis of comparison to the Project in terms of their significant impacts and their ability to meet project objectives. This comparative analysis is used to consider reasonable, potentially feasible options for minimizing environmental consequences of the Project.

The Department considered a range of alternatives in Chapter 5 of the FEIR. The FEIR analyzed the Hub Plan and Hub HSD No Project Alternative (Alternative A), the Hub Plan Land Use Plan Only Alternative (Alternative B), the Hub Plan Reduced Intensity Alternative (Alternative C), the 98 Franklin Street No Project Alternative (Alternative F), and the 98 Franklin Street Reduced Intensity Alternative (Alternative G). Each alternative is discussed and analyzed in these findings, in addition to being analyzed in Chapter 5 of the FEIR.

In addition, in developing the Hub Plan, two individual projects, and the Hub HSD, the Department and the project sponsors analyzed a series of alternatives that were rejected and did not receive in-depth analysis in the FEIR, including various variations of the reduced development alternatives. These alternatives were rejected and not studied in depth because either they were determined to be infeasible, or they did not avoid or lessen (and sometimes increased) the impacts of the Hub Plan, the individual projects, or the Hub HSD, or were covered by the range of alternatives selected. These alternatives considered but rejected included the search for an alternative location, and design alternatives for the 30 Van Ness Avenue and 98 Franklin Street projects.

At the time the Commission adopted the Hub Plan through Resolutions No. 20709 through 20712, the Commission approved findings required by CEQA, through Motion No. 20707, which is attached herein as "ATTACHMENT A" and incorporated by reference. That Motion rejected as infeasible Alternative A (Hub Plan and Hub HSD No Project), Alternative B (the Hub Plan Land Use Plan Only Alternative), and

Alternative C (the Hub Plan Reduced Intensity Alternative), for the reasons set forth therein. These Findings, therefore, do not repeat those reasons here, except to affirm the rejection of Alternatives A, B, and C as they pertain to the Project, because they fail to meet the Project's objectives to the same degree as the Project, and the City's policy objectives cited in Motion No. 20728.

The Planning Commission certifies that it has independently reviewed and considered the information on the alternatives provided in the FEIR and in the record. The FEIR reflects the Planning Commission's and the City's independent judgment as to the alternatives.

The Planning Commission finds that the Project provides the best balance between satisfaction of Project objectives and mitigation of environmental impacts to the extent feasible, as described and analyzed in the FEIR.

## **B. Evaluation of Project Alternatives**

CEQA provides that alternatives analyzed in an EIR may be rejected if "specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible ... the project alternatives identified in the EIR." (CEQA Guidelines § 15091(a)(3).) The Commission has reviewed each of the alternatives to the Project as described in the FEIR that would reduce or avoid the impacts of the Project and finds that there is substantial evidence of specific economic, legal, social, technological and other considerations that make these Alternatives infeasible, for the reasons set forth below.

In making these determinations, the Planning Commission is aware that CEQA defines "feasibility" to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, legal, and technological factors." The Commission is also aware that under CEQA case law the concept of "feasibility" encompasses (i) the question of whether a particular alternative promotes the underlying goals and objectives of a project, and (ii) the question of whether an alternative is "desirable" from a policy standpoint to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, legal, and technological factors.

In addition to Alternatives A, B, and C, already rejected in Motion No. 20707, incorporated herein by reference, the following Hub Plan alternatives and Project were fully considered and compared in the FEIR:

### **1. 98 Franklin No Project Alternative (Alternative F)**

Under Alternative F, the proposed individual development project at 98 Franklin Street would be removed from the project and would not be built as proposed in this EIR, and the existing conditions at 98 Franklin would not change. In the near-term, the project site at 98 Franklin Street, which includes an approximately 100-space surface parking lot, would remain substantially in its existing physical condition, and the proposed new educational, residential, and retail uses would not be developed. In addition, no changes to curbside parking or loading would occur. However, with current land values and housing demand in San Francisco being relatively high, and given the project site's location near downtown, employment centers, and public transit facilities, it is unlikely that this project site would remain in its existing condition for the long term.

At the project level, Alternative F would avoid all project-specific impacts associated with the 98 Franklin Street Project. This alternative would substantially lessen the severity of the following impacts, reducing them from significant and unavoidable or less than significant with mitigation to no impact:

- Construction noise and vibration impacts (Impacts NOI-2 and NOI-3)
- Cumulative construction noise impacts (Impact C-NOI-2)
- Archaeological impacts (Impacts CUL-4, CUL-5, and CUL-6)
- Cumulative archaeological impact contribution (Impact C-CUL-3)
- Cumulative wind impact contribution (Impact C-WI-1)
- Emissions of fine particulate matter (PM<sub>2.5</sub>) and toxic air contaminants from construction and operational activities (Impact AQ-9)
- Cumulative air quality impacts from (PM<sub>2.5</sub>) and toxic air contaminants (Impact C-AQ-2)

Alternative F would meet none of the project objectives of the 98 Franklin Project. Under Alternative F, the proposed "high-density, mixed-use development" comprising housing units, school use, commercial square footage, parking, and streetscape improvements at 98 Franklin Street would not be implemented, resulting in less residential growth in the Hub Plan area and undermining the residential growth potential and needs of an area of the city that could accommodate it with nearby transit, job centers, services, and growth forecasts. Therefore, Alternative F would not meet or be consistent with any of the 98 Franklin Street Project objectives. Alternative D also fails to meet several of the basic objectives of the Hub Plan and the City's policy objectives, because it would be less successful than the Project at maximizing housing in an area of the city that needs it, creating "a vibrant mixed-use neighborhood," and maintaining "a strong preference for housing as a desired use." In addition, Alternative D would not prioritize and facilitate the creation of housing in the same way and to the same degree that the Project would.

The Commission concurs with these findings in the EIR, and rejects this alternative as infeasible because it fails to meet any of the basic objectives of the Project, and would be less successful than the Project at meeting the objectives of the Hub Plan and the City's policy objectives.

## **2. 98 Franklin Street Reduced Intensity Alternative (Alternative G)**

Alternative G includes a 162,358 square foot, 120-foot tall (10-story) building that includes 54,505 square feet of residential uses, 81,000 square feet of school uses, 23,753 square feet of parking uses, and 3,100 square feet of retail uses. Under this alternative, FAIS would be located within five levels in the podium (the same as under the proposed project), and 47 residential units would be constructed in a five-story tower, as compared to 345 residential units in a 31-story tower under the proposed project. The residential units would include 10 studios, 24 one-bedroom units, eight two-bedroom units, and five three-bedroom units, as compared to 172 studios, 86 one-bedroom units, 54 two-bedroom units, and 33 three-bedroom units under the proposed project. This alternative would also include 41 below-ground parking spaces, three car share spaces, 191 bicycle parking spaces, three loading spaces, and nine permanent employees, while the proposed project would include 111 below-ground parking spaces, three car share spaces, 539 bicycle parking spaces, three loading spaces, and 14 permanent employees. As with the proposed project, one 1,500-horsepower emergency diesel generator is proposed. Unlike the proposed project, no changes to curbside parking and loading are proposed for the alternative. This alternative would reduce shadow



impacts on Patricia's Green and reduce the amount of excavation required (approximately 10 feet less than the project), which would reduce impacts on archaeological resources as well as air quality and noise.

Alternative G would not avoid any project-specific impacts because it would retain the same project-level components as the project, at a reduced rate. This alternative would, however, reduce some impacts identified as significant and unavoidable and less than significant with mitigation. This alternative would substantially lessen the severity of the following impacts associated with project-level actions:

- Archaeological impacts (Impacts CUL-4, CUL-5, and CUL-6)
- Cumulative archaeological impact contribution (Impact C-CUL-3)
- Cumulative wind impact contribution (Impact C-WI-1)
- Emissions of fine particulate matter (PM2.5) and toxic air contaminants from construction and operational activities (Impact AQ-9)
- Cumulative air quality impacts from (PM2.5) and toxic air contaminants (Impact C-AQ-2)

Alternative G would be considered the environmentally superior alternative because it would reduce impacts when compared to the Project, while still meeting some of the Project's objectives. Alternative G, however, would reduce the development program and residential uses at 98 Franklin Street, resulting in less residential growth. When compared to the Project, Alternative G's reduction of the Project's residential component would not achieve objectives to create "a substantial number of dwelling units to contribute to the general plan housing element goals and the ABAG Regional Housing Needs Allocation for the city" and "increase the supply of housing near the Van Ness Avenue and Market Street intersection." Therefore, Alternative F would only partially meet the project objectives of the 98 Franklin Street Project.

The Commission concurs with these findings in the EIR, and rejects this alternative as infeasible because it (1) would fail to avoid several significant and unavoidable impacts of the Project, and (2) fails to meet several of the basic objectives of the Project. This Alternative would also be less successful than the Project at meeting the objectives of the Hub Plan and the City's policy objectives related to the creation of housing. For these reasons, each of which is independently sufficient, the Commission rejects Alternative G as infeasible.

## **VI. STATEMENT OF OVERRIDING CONSIDERATIONS**

The Planning Commission finds that, notwithstanding the imposition of all feasible mitigation measures, three impacts related to cumulative transportation (construction traffic), cumulative noise, and cumulative wind conditions will remain significant and unavoidable if the Project is approved. Pursuant to CEQA section 21081 and CEQA Guideline Section 15093, the Planning Commission hereby finds, after consideration of the Final EIR and the evidence in the record, that each of the specific overriding economic, legal, social, technological and other benefits of the Project as set forth below independently and collectively outweighs these significant and unavoidable impacts and is an overriding consideration warranting approval of the Project. Any one of the reasons for approval cited below is sufficient to justify approval of the Project. Thus, even if a court were to conclude that not every reason is supported by substantial evidence, the Commission will stand by its determination that each individual reason is sufficient. The substantial evidence supporting the various benefits can be found below.

On the basis of the above findings and the substantial evidence in the whole record of this proceeding, the Planning Commission specifically finds that there are significant benefits of the Project to support approval of the Project in spite of the unavoidable significant impacts, and therefore makes this Statement of Overriding Considerations. The Commission further finds that, as part of the process of obtaining Project approvals, significant effects on the environment from implementation of the Project have been eliminated or substantially lessened where feasible. All mitigation measures and improvement measures identified in the FEIR/Initial Study and MMRP are adopted as part of the Approval Actions described in Section I, above.

Furthermore, the Commission has determined that any remaining significant effects on the environment found to be unavoidable are acceptable due to the following specific overriding economic, technological, legal, social and other considerations.

In addition to the benefits of the Project described in the reasons for rejecting alternatives in Section V., which are incorporated herein by reference, the Project will have the following benefits:

1. The Project would develop a new high school in an area well served by public transportation options.
2. The Project would add up to 345 dwelling units the City's housing stock on a currently underutilized site. The City's important policy objective, as expressed in Policy 1.1 of the Housing Element of the General Plan, is to increase the housing stock whenever possible to address a shortage of housing in the City. Additionally, the Project promotes the objectives and policies of the General Plan by providing a range of unit types to serve a variety of needs. The Project would bring additional housing into a neighborhood that is well served by public transit on the edge of Downtown. The Project also would not displace any housing
3. The Project would increase the stock of permanently affordable housing by providing onsite affordable residential units (approximately 20 percent of the total number of onsite units).
4. The Project would promote the objectives and policies of the General Plan by replacing the existing surface parking lot with a residential high-rise tower that is more consistent and compatible with the surrounding high-rise residential and commercial architecture. This new development will greatly enhance the character of the existing neighborhood. In addition, the removal of the parking lot and replace with active street frontages will improve pedestrian and neighborhood safety. By including school use, the Project would promote pedestrian traffic in the vicinity and provide "eyes on the street" and encourage investment in the area. The Project would include significant streetscape improvements that would meet or exceed Better Streets Plan requirements. These changes will enhance the attractiveness of the site for pedestrians and bring this site into conformity with principles of good urban design.
5. The Project would construct a development that is in keeping with the scale, massing, and density of other structures in the immediate vicinity, and with that envisioned for the site under the Planning Code and General Plan.

6. The Project's iconic and attractive design furthers Housing Element Policy 11.1, which provides that "The City should continue to improve design review to ensure that the review process results in good design that complements existing character."
7. The Project will substantially increase the assessed value of the Project Site, resulting in corresponding increases in tax revenue to the City.
8. The Project will include a high-quality streetscape improvements in accordance with the Market and Octavia Area Plan Design Standards, which would activate the streetscape, serve to calm traffic on the street and build on the positive traits of the Hayes Valley neighborhood, extending its walkable scale outward toward the Van Ness and Market intersection.
9. The Project includes a massing scheme and wind reduction elements to avoid the creation of any net new hazardous wind conditions on any nearby public sidewalks or seating areas and would reduce hazardous wind hours over current conditions.
10. The Project provides approximately 306 Class 1 secure indoor bicycle parking spaces and 57 Class 2 bicycle rack spaces, encouraging residents and visitors to access the site by bicycle.
11. The Project promotes a number of Downtown Area Plan Objectives and Policies, including Policies 7.1 and 7.2, which further the Objective of expanding the supply of housing in and adjacent to Downtown. The Project also promotes several Market and Octavia Area Plan Objectives and Policies, including Objectives 2.3 and 2.4, which encourage increasing the existing housing stock, including affordable units.
12. The Project will create temporary construction jobs and permanent jobs in the educational sector and for building operations. These jobs will provide employment opportunities for San Francisco residents, promote the City's role as a commercial center, and provide additional payroll tax revenue to the City, providing direct and indirect economic benefits to the City.

Having considered the above, the Planning Commission finds that the benefits of the Project outweigh the unavoidable adverse environmental effects identified in the Final EIR, and that those adverse environmental effects are therefore acceptable.



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Motion No. 20727

HEARING DATE: MAY 28, 2020

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*Record No.:* 2016-014802SHD  
*Project Address:* 98 FRANKLIN STREET  
*Zoning:* C-3-G (Downtown General Commercial) Zoning District  
85-X // 120/365-R-2 Height and Bulk District  
Van Ness & Market Residential Special Use District  
Downtown and Market & Octavia Plan Areas  
*Block/Lot:* 0836 / 008, 009 & 013  
*Project Sponsor:* Jim Abrams  
J. Abrams Law, P.C.  
One Maritime Plaza, Suite 1900  
San Francisco, CA 94111  
*Property Owner:* 98 Franklin Street, LLC  
150 Oak Street, 4<sup>th</sup> Floor  
San Francisco, CA 94102  
*Staff Contact:* Christy Alexander, AICP  
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ADOPTING FINDINGS, WITH THE RECOMMENDATION FROM THE GENERAL MANAGER OF THE RECREATION AND PARKS DEPARTMENT, IN CONSULTATION WITH THE RECREATION AND PARK COMMISSION, THAT NET NEW SHADOW CAST UPON FOUR (4) PROPERTIES UNDER THE JURISDICTION OF THE RECREATION AND PARK DEPARTMENT (KOSHLAND COMMUNITY PARK, PAGE AND LAGUNA MINI PARK, PATRICIA'S GREEN AND THE FUTURE 11<sup>TH</sup>/NATOMA PARK SITE) BY THE PROPOSED PROJECT THAT INCLUDES NEW CONSTRUCTION ON AN EXISTING SURFACE PARKING LOT OF A NEW 36-STORY MIXED-USE BUILDING REACHING A ROOF HEIGHT OF UP TO 365 FEET TALL (396'8" INCLUSIVE OF ROOFTOP SCREENING/MECHANICAL EQUIPMENT) WITH APPROXIMATELY 524,014 GROSS SQUARE FEET, INCLUDING APPROXIMATELY 379,003 GROSS SQUARE FEET OF RESIDENTIAL USE WITHIN A TOWER SITUATED ATOP A 5-STORY PODIUM CONTAINING APPROXIMATELY 84,815 GROSS SQUARE FEET OF INSTITUTIONAL USE (FRENCH AMERICAN INTERNATIONAL SCHOOL) AND APPROXIMATELY 3,229 GROSS SQUARE FEET OF RETAIL USES, LOCATED AT 98 FRANKLIN STREET, LOTS 008, 009 & 013 OF ASSESSOR'S BLOCK 0836, WITHIN THE C-3-G (DOWNTOWN GENERAL COMMERCIAL) ZONING DISTRICT AND 85-X // 365-R-2 HEIGHT AND BULK DISTRICT WOULD NOT BE ADVERSE TO THEIR USE.

### PREAMBLE

Under Planning Code Section 295, a building permit application for a project exceeding a height of 40 feet cannot be approved if there is any shadow impact on a property under the jurisdiction of the Recreation and Park Department, unless the Planning Commission ("Commission"), upon recommendation from the



general manager of the Recreation and Park Department in consultation with the Recreation and Park Commission, makes a determination that the shadow impact will not be significant or adverse.

In 1989, the Recreation and Park Commission and Commission jointly adopted a memorandum ("1989 Memorandum") which identified quantitative and qualitative criteria for determinations of significant shadows in parks under the jurisdiction of the Recreation and Park Department. On February 7, 1989, the Recreation and Park Commission and the Commission adopted criteria establishing absolute cumulative limits for additional shadows on fourteen parks throughout San Francisco (Commission Resolution No. 11595). The 1989 Memorandum established generic criteria for determining a potentially permissible quantitative limit for additional shadows, known as the absolute cumulative limit, for parks not expressly named in the 1989 Memorandum. The qualitative criteria includes existing shadow profiles, important times of day and seasons in the year associated with the park's use, the size and duration of new shadows, and the public good served by the buildings casting new shadow.

On or after December 21, 2017, Jim Abrams (hereinafter "Project Sponsor") submitted the following applications with the Planning Department (hereinafter "Department") in association with the proposed project (hereinafter "Project"): Downtown Project Authorization; Shadow Analysis; and Transportation Demand Management. The Project site (hereinafter "Site") is property at 98 Franklin Street, located on the east side of Franklin Street between Market and Oak Streets; Lots 008, 009 & 013 in Assessor's Block 0836. The Project includes the construction of a new 36-story mixed-use building reaching a roof height up to 365 feet tall (396'8" inclusive of rooftop screening/mechanical equipment). The Project includes a total of approximately 524,014 gross square feet of uses, with approximately 379,003 gross square feet of residential use (at least 345 dwelling units situated on floors 7 through 36) situated atop a 5-story podium containing approximately 84,815 square feet of school use (French American International High School) and approximately 3,229 square feet of retail, 306 Class 1 and 57 Class 2 bicycle parking spaces, and three below-grade levels that would accommodate up to 111 vehicle parking and 3 car share spaces provided for the residential and school uses. The Site is located within the C-3-G Zoning District and the 85-X // 120/365-R-2 Height and Bulk District.

A Shadow Study was prepared by qualified consultants ("Prevision Design") on February 11, 2019 that analyzed the potential shadow impacts of the Project to properties under the jurisdiction of the RPD (Case No. 2016-014802SHD). The analysis was conducted according to criteria and methodology as described in (1) the February 3, 1989 memorandum titled "Proposition K – The Sunlight Ordinance" ("the 1989 memorandum") prepared by RPD and the Department. (2) the July 2014 memorandum titled "Shadow Analysis Procedures and Scope Requirements" ("the 2014 memorandum") prepared by the Department, and (3) direction from Current Planning staff and RPD staff regarding the appropriate approach, deliverables, and scope of analysis appropriate in consideration of the open spaces affected.

The Shadow Study indicated that the Project would cast new shadows on the following four (4) properties under the jurisdiction of RPD: Koshland Community Park; Patricia's Green; Page & Laguna Mini Park; and the future 11<sup>th</sup>/Natoma Park Site, which were not named in the 1989 Memorandum.

Following guidance from the 1989 Memorandum, the existing conditions of the four affected park sites are as follows:

- Koshland Community Park is classified as a small park which is shadowed less than 20 percent of the time during the year. Per the 1989 Memorandum, there is no quantitative standard (limit) for additional shadows beyond the qualitative criteria of the 1989 Memorandum.
- Patricia's Green is classified as a small park which is shadowed less than 20 percent of the time during the year. Per the 1989 Memorandum, there is no quantitative standard (limit) for additional shadows beyond the qualitative criteria of the 1989 Memorandum.
- Page & Laguna Mini Park is classified as a small park which is shadowed approximately 50.80 percent of the time during the year. Per the 1989 Memorandum, there is no quantitative standard (limit) for additional shadows beyond the qualitative criteria of the 1989 Memorandum.
- The future 11<sup>th</sup>/Natoma Park Site is a future park site which is shadowed approximately 22.09 percent of the time during the year.

On March 12, 2020, the Department published a responses to comments document making a quantitative correction to Project shadowing on Koshland Community Park, Patricia's Green and the future 11<sup>th</sup>/Natoma park site to account for Project design revisions related to a parapet measuring approximately 32 feet above the proposed roofline.

### **Koshland Community Park**

The Koshland Community Park is a 0.82-acre (35,743 sf) urban park, located in the Western Addition neighborhood, occupies the northwest corner of the block and is bounded by Page Street to the north, Buchanan Street to the west, and private development along its eastern and southern borders. The park is not fenced, and the posted hours of operation are from sunrise to sunset. Entrances to Koshland Community Park are through a gate and stairs on Page Street as well as several points along Buchanan Street. The pathway diagonally bisects the upper and lower halves of the park. A half-court basketball area and playground sit on the Koshland Community Park's highest elevation and a community garden which can be accessed via terraced steps, a serpentine pathway, or several steps through the Page Street entrance occupies the sites eastern most border. A playground area featuring jungle gym and sand pit is centrally located in the park, which includes a tire swing, slide, and monkey bars. A community garden with vegetables, flowers and shrubbery occupies the eastern border of the park.

Under current conditions, the park receives 20,546,248 annual sfh of shadow. Based on a calculated TAAS of 133,014,951 sfh, Koshland Community Park's existing annual shadow load is 15.45 percent of its TAAS. Existing shadow patterns include very low levels of shadow falling throughout most of the day until late afternoon, when the western half of the park is cast in shadow. Spring and fall follow a similar pattern with most shadow falling over winter months.

The Project would result in net new shadow cast on Koshland Community Park, adding 3,963 net new annual sfh of shadow and increasing the sfh of shadow by 0.003% annually above current levels. This increase would result in a new annual total shadow load of 15.45%. Net new shadow from the Project would occur within the first nine minutes of the daily analysis period between approximately April 20 and August 22nd.

The portions of Koshland Community Park that would receive net new shadow include a portion of the community garden area in the northeastern corner of the park and a wooded area in the southeastern corner of the park. The features which could be of somewhat higher sensitivity include the community garden area, however this feature would only receive net new shadow over spring and summer in the early mornings for a short duration prior 7:15 a.m., times where lower levels of park use would be likely.

### **Patricia's Green**

Patricia's Green is a 0.41-acre (17,903 sf) urban park, located in the Western Addition/Hayes Valley neighborhood, extends generally north-south and is bounded by Octavia Street to the east and west, Hayes Street to the north, and Fell Street to the south. The park is divided into three sections. In the northern section of the park there is a picnic seating area located along Hayes Street. It features a plaza with four picnic tables around a mature tree and a mix of wooden and concrete benches. Two additional picnic tables are located on the western side of this area along Octavia Street next to restaurants. The central section is located where the park intersects Linden Street. It contains a circular plaza with four concrete benches and eight bollards, and functions as the area for art installations. To the north and south of the center plaza are lawns. The southern section of the park contains a children's play area, which features a dome structure with ropes and bars for climbing and poured rubber safety paving. Low concrete square pillars delineate the play area and lawn, and a metal fence encloses the Fell Street side. A service building is located at the southwest corner of the park. On the periphery of the park are concrete ledges and benches interspersed with approximately 24 trees and plantings.

Under current conditions the park receives 12,029,000 annual sfh of shadow. Based on a calculated TAAS of 66,622,661 sfh, Patricia's Green's existing annual shadow load is 18.06 percent of its TAAS. The park currently experiences higher levels of shading in the early mornings and late afternoons but is otherwise predominantly unshaded from late morning through midafternoon year-round.

The Project would result in net new shadow cast on Patricia's Green, adding 298,323 net new annual sfh of shadow and increasing the sfh of shadow by 0.45% annually above current levels. This increase would result in a new annual total shadow load of 18.51%. Net new shadow from the Project would occur within the first 52 minutes of the daily analysis period between February 2nd and March 28th and again between September 14th and November 7th.

Nearly all portions of Patricia's Green would receive net new shadow from the Project. The portions of Patricia's Green that would likely be most sensitive to the addition of net new shadow would be the children's play area, the park's fixed benches, and the tables and seating areas. All these features would receive some net new shadow, the presence of which would be noticeable to users of the park present at

that time. The timing of net new Project shadow would be in the early morning prior to 9:00 a.m., and the children's play area, which would potentially be the most sensitive to additional shadow, would not receive net new shadow at any point later than 8:30 a.m., corresponding to times where lower overall levels of use would be typical.

### **Page & Laguna Mini Park**

Page and Laguna Mini Park is a 6,600-sf urban park located in the Western Addition neighborhood and is under the jurisdiction of the RPD. It is located mid-block with residences east and west and is bounded by Page Street to the north and Rose Street to the south. Page and Laguna Mini Park is enclosed by fences, one along Rose Street and another that bisects the site from east to west. Posted signage indicates that the park hours are from 6 a.m. to 10 p.m. The mini park has two entrances, one on Page Street and one on Rose Street. The entrances are connected by a path, creating a pedestrian connection between the two streets. The mini park features two fixed benches, a designated community gardening area, and several trees ranging in size from small shrubbery to deciduous trees with larger canopies.

Under current conditions the park receives 12,469,084 annual sfh of shadow. Based on a calculated TAAS of 24,543,248 sfh, Page and Laguna Mini Park's existing annual shadow load is 50.80 percent of its TAAS. Existing shadow patterns include morning, afternoon, and evening shadow falling over the majority the park with little shadow around midday, year-round.

The Project would result in net new shadow cast on Page & Laguna Mini Park, adding 12,565 net new annual sfh of shadow and increasing the sfh of shadow by 0.05% annually above current levels. This increase would result in a new annual total shadow load of 50.85%. Net new shadow from the Project would occur within the first 22 minutes of the daily analysis period between approximately May 18 and July 25. Net new shadow would fall only on the northern edge of the park, affecting one public entry point, a portion of the paved walkways, one fixed bench, some grassy or landscaped areas, and a small section of the community garden.

The portions of Page & Laguna Mini Park that could be characterized as being of higher sensitivity include the community garden and the fixed bench; however, shadow cast by the Project would occur in the summer for a short duration (33 minutes or less) and be gone prior to 8 a.m., corresponding to times of typically lower levels of park use.

### **Future 11<sup>th</sup>/Natoma Park Site**

In 2017 RPD acquired a property on 11<sup>th</sup> Street between Minna and Natoma streets. The site is currently occupied by buildings that would be demolished as part of converting this site to a future park. The programming of the park, environmental review, permitting, and timing of construction are not known at this time, but the site for this contemplated future park is analyzed quantitatively and graphically in this section as it is under the jurisdiction of RPD and information is included for informational purposes.

Under current conditions the location of the proposed future park would receive (assuming the removal of existing buildings on site and full use of the site for a park) 16,085,624 annual sfh of shadow. Based on a



calculated TAAS of 72,829,287 sfh, the 11<sup>th</sup>/Natoma Park Site's existing annual shadow load would be 22.09 percent of its TAAS. Existing shadow patterns include early morning and later afternoon shadow falling over the majority of the park, with little to no midday and early afternoon shadow year-round.

The Project would result in net new shadow cast on the 11<sup>th</sup>/Natoma Park Site, adding approximately 130,635 net new annual sfh of shadow and increasing the sfh of shadow by 0.18 percent annually above current levels. This increase would result in a new annual total shadow load of 22.27 percent. Net new shadow from the Project would occur in the late afternoon/early evening (approximately 7pm) for up to 33 minutes between approximately May 4 and August 8. Net new shadow would fall only on the southern half of the park.

As the 11<sup>th</sup>/Natoma Park site is not yet a park and no future programming information has been developed nor approved, the possible features affected and qualitative impacts of project-generated shadow on such features are not determinable.

The Department determined that an environmental impact report (hereinafter "EIR") was required and provided public notice of that determination by publication in a newspaper of general circulation on May 23, 2018. Environmental review for the Project, as well as a separate private development project at 30 Van Ness Avenue, was coordinated with the City's Hub Plan, which would amend the 2008 Market and Octavia Area Plan of the San Francisco General Plan for the easternmost portions of the Market and Octavia Area Plan, including the Site. The Department provided public notice of that determination by publication in a newspaper of general circulation on May 23, 2018. The Department held a public scoping meeting on June 12, 2018 in order to solicit public comment on the scope of the project's environmental review.

On July 24, 2019, the Department published the draft EIR (hereinafter "DEIR") and provided public notice in a newspaper of general circulation of the availability of the DEIR for public review and comment, and of the date and time of the Commission public hearing on the DEIR; this notice was mailed to the Department's list of persons requesting such notice, and to property owners and occupants within a 300-foot radius of the site on July 24, 2019. Notices of availability of the DEIR and of the date and time of the public hearing were posted near the Site on July 24, 2019.

The EIR contains both analysis at a "program-level" pursuant to CEQA Guidelines section 15168 for adoption and implementation of the Hub Plan, and "project-level" environmental review for the Hub Plan streetscape and street network improvements, the individual development project at 30 Van Ness Avenue, and the Project. This EIR also evaluates the designation of portions or all of the Hub Plan area as a housing sustainability district ("HSD"), in accordance with Assembly Bill 73 (Government Code sections 66202 to 66210 and Public Resources Code sections 21155.10 and 21155.11). Designation of an HSD, through adoption of an ordinance by the San Francisco Board of Supervisors, would allow the City and County of San Francisco ("City") to exercise streamlined ministerial approval of residential and mixed-use development projects meeting certain requirements within the HSD.

On July 24, 2019, copies of the DEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DEIR, and to government agencies, the latter both directly and

through the State Clearinghouse. A notice of completion was filed with the State Secretary of Resources via the State Clearinghouse on July 24, 2019.

The Historic Preservation Commission held a duly advertised hearing on said DEIR on August 8, 2018 at which the Historic Preservation Commission formulated its comments on the DEIR.

The Commission held a duly advertised public hearing on said DEIR on August 29, 2019 at which opportunity for public comment was given, and public comment was received on the DEIR. The period for acceptance of written comments ended on September 9, 2019.

The Department prepared responses to comments on environmental issues received during the 46-day public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, and corrected clerical errors in the DEIR. This material was presented in a responses to comments document, published on March 12, 2020, distributed to the Commission and all parties who commented on the DEIR, and made available to others upon request at the Department.

The Department prepared a final EIR (hereinafter "FEIR") consisting of the DEIR, any consultations and comments received during the review process, any additional information that became available, and the responses to comments document, all as required by law.

On February 13, 2020, the Commission adopted Resolutions 20653 through 20656 to initiate legislation entitled (1) Ordinance amending the General Plan to amend the Market and Octavia Plan, (2) Ordinance amending the Planning Code to update the Market and Octavia Area Plan, (3) Ordinance amending the zoning map to change the land use, zoning, and height and bulk classifications in the Hub Plan area, respectively, and (4) Ordinance amending the Business and Tax Regulations and Planning Code to create the HUB Housing Sustainability District.

On May 21, 2020, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting regarding (1) the General Plan Amendment amending to amend the Market and Octavia Plan; and (2) the ordinance amending the Planning Code to update the Market and Octavia Area Plan, (3) Ordinance amending the zoning map to change the land use, zoning, and height and bulk classifications in the Hub Plan area, respectively, and (4) Ordinance amending the Business and Tax Regulations and Planning Code to create the HUB Housing Sustainability District.

On May 21, 2020, the Commission reviewed and considered the information contained in the FEIR and hereby found that the contents of said report and the procedures through which the FEIR was prepared, publicized, and reviewed comply with the provisions of CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code. The FEIR was certified by the Commission on May 21, 2020, by adoption of Motion No. 20707.

On May 21, 2020, through Motion No. 20707, the Commission approved findings required by CEQA, including adoption of a Mitigation Monitoring and Reporting Program (MMRP), under Case No. 2015-

000940ENV, for approval of the Hub Plan ("Hub CEQA Findings"), which findings are incorporated by reference as though fully set forth herein.

On May 21, 2020, the Commission adopted Resolutions 20709 through 20712 to recommend that the Board of Supervisors approve: (1) an Ordinance amending the General Plan to amend the Market and Octavia Plan; (2) an Ordinance amending the Planning Code to update the Market and Octavia Area Plan; (3) an Ordinance amending the zoning map to change the land use, zoning, and height and bulk classifications in the Hub Plan area, respectively; and (4) an Ordinance amending the Business and Tax Regulations and Planning Code to create the HUB Housing Sustainability District.

On May 21, 2020, the General Manager of the Recreation & Parks Department, in consultation with the Recreation and Park Commission, recommended to the Commission that the shadows cast by the Project on four (4) properties under the jurisdiction of the Recreation & Parks Department (Koshland Community Park; Patricia's Green; Page & Laguna Mini Park; and the future 11<sup>th</sup>/Natoma park site) would not be adverse to the use of those properties. (Recreation and Park Commission Resolution No. 2005-008).

On May 28, 2020, through Motion No. 20726, the Commission approved findings required by CEQA, including adoption of a Mitigation Monitoring and Reporting Program (MMRP), under Case No. 2016-014802ENV, for approval of the Project, which findings are found in "Attachment A" to this Motion No. 20727 and incorporated by reference as though fully set forth herein.

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

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

## **FINDINGS**

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

1. The foregoing recitals are accurate and constitute findings of this Commission.
2. The additional shadow cast by the Project would not be adverse and is not expected to interfere with the use of the four (4) properties under the jurisdiction of the Recreation & Parks Department (Koshland Community Park; Patricia's Green; Page & Laguna Mini Park; or the future 11<sup>th</sup>/Natoma park site) for the following reasons:
  - a. The magnitude of the additional shadow on each open space is well below one percent of TAAS on an annual basis, and amounts to a reasonable and small loss of sunlight for a park in an area intended for increased building heights and residential density.

- b. The Project would result in net new shadow cast on Koshland Community Park, adding 3,963 net new annual sfh of shadow and increasing the sfh of shadow by 0.003% annually above current levels. This increase would result in a new annual total shadow load of 15.45%. The portions of Koshland Community Park that would receive net new shadow include a portion of the community garden area in the northeastern corner of the park and a wooded area in the southeastern corner of the park. The features which could be of somewhat higher sensitivity include the community garden area, however this feature would only receive net new shadow over spring and summer in the early mornings for a short duration prior 7:15 a.m., times where lower levels of park use would be likely.
- c. The Project would result in net new shadow cast on Patricia's Green, adding 298,323 net new annual sfh of shadow and increasing the sfh of shadow by 0.45% annually above current levels. This increase would result in a new annual total shadow load of 18.51%. The portions of Patricia's Green that would likely be most sensitive to the addition of net new shadow would be the children's play area, the park's fixed benches, and the tables and seating areas. All these features would receive some net new shadow, the presence of which would be noticeable to users of the park present at that time; however, the timing of net new Project shadow would be in the early morning prior to 9:00 a.m., and the children's play area, which would potentially be the most sensitive to additional shadow, would not receive net new shadow at any point later than 8:30 a.m., corresponding to times where lower overall levels of use would be typical.
- d. The Project would result in net new shadow cast on Page & Laguna Mini Park, adding 12,565 net new annual sfh of shadow and increasing the sfh of shadow by 0.05% annually above current levels. This increase would result in a new annual total shadow load of 50.85%. Net new shadow would fall only on the northern edge of the park, affecting one public entry point, a portion of the paved walkways, one fixed bench, some grassy or landscaped areas, and a small section of the community garden. The portions of Page & Laguna Mini Park that could be characterized as being of higher sensitivity include the community garden and the fixed bench; however, shadow cast by the Project would occur in the summer for a short duration (33 minutes or less) and be gone prior to 8 a.m., corresponding to times of typically lower levels of park use.
- e. The 98 Franklin Street Project would result in net new shadow cast on the 11<sup>th</sup>/Natoma Park Site, adding approximately 130,635 net new annual sfh of shadow and increasing the sfh of shadow by 0.18 percent annually above current levels. This increase would result in a new annual total shadow load of 22.27 percent. Net new shadow would fall only on the southern half of the park. The 11<sup>th</sup>/Natoma Park site is not yet a park and no future programming information has been developed nor approved. The shadow cast by the Project would occur after approximately 7 pm in the spring and summer and is not likely to frustrate forthcoming planning efforts for the future park.



3. The Project implements the vision of the Market and Octavia Area Plan through the construction of 345 dwelling units with 20% provided as on-site affordable units (Below Market Rate), approximately 84,815 gross square feet of school use, and 3,229 of retail use. The Project's institutional use (school) and commercial use (retail) will provide educational and new employment opportunities within an intense, walkable urban context.
4. The findings of the Commission in this motion do not constitute an approval of the Project.

**DECISION**

That based upon the Record, the submissions by the Applicant, the staff of the Department, the recommendation of the General Manager of the Recreation and Parks Department, in consultation with the Recreation and Park Commission, and other interested parties, the oral testimony presented to Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **DETERMINES**, under Shadow Analysis Application No. 2016-014802SHD, that the net new shadow cast by the Project will not be adverse to the use of four (4) properties under the jurisdiction of the Recreation & Parks Department (Koshland Community Park; Patricia's Green; Page & Laguna Mini Park; or future 11<sup>th</sup>/Natoma park site).

I hereby certify that the Commission ADOPTED the foregoing Motion on May 28, 2020.



Jonas P. Ionin  
Commission Secretary

AYES: Koppel, Moore, Fung, Johnson, Imperial, Diamond, Chan

NAYS: None

ABSENT: None

ADOPTED: May 28, 2020



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Motion No. 20728

HEARING DATE: MAY 28, 2020

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

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Information:  
**415.558.6377**

*Record No.:* 2016-014802DNX  
*Project Address:* 98 FRANKLIN STREET  
*Zoning:* C-3-G (Downtown General Commercial) Zoning District  
85-X // 120/365-R-2 Height and Bulk District  
Van Ness & Market Residential Special Use District  
Downtown and Market & Octavia Plan Areas  
*Block/Lots:* 0836 / 008, 009 & 013  
*Project Sponsor:* Jim Abrams  
J. Abrams Law, P.C.  
One Maritime Plaza, Suite 1900  
San Francisco, CA 94111  
*Property Owner:* 98 Franklin Street, LLC  
150 Oak Street, 4<sup>th</sup> Floor  
San Francisco, CA 94102  
*Staff Contact:* Christy Alexander, AICP  
[christy.alexander@sfgov.org](mailto:christy.alexander@sfgov.org), (415) 575-8724

ADOPTING FINDINGS TO APPROVE A DOWNTOWN PROJECT AUTHORIZATION PURSUANT TO PLANNING CODE SECTION 309 TO ALLOW A PROJECT GREATER THAN 50,000 SQUARE FEET OF FLOOR AREA WITHIN THE C-3 ZONING DISTRICT WITH REQUESTS FOR EXCEPTIONS FOR AWNINGS, CANOPIES, AND MARQUEES (SECTION 136.1); USABLE OPEN SPACE FOR DWELLING UNITS (SECTION 135); DWELLING UNIT EXPOSURE REQUIREMENTS (SECTION 140); REDUCTION OF GROUND-LEVEL WIND CURRENTS IN C-3 DISTRICTS (SECTION 148); MINIMUM DWELLING UNIT MIX REQUIREMENTS (SECTION 207.6); HEIGHT LIMITS FOR PARCELS WITHIN THE VAN NESS & MARKET RESIDENTIAL SPECIAL USE DISTRICT (SECTION 263.19); AND BULK CONTROLS (SECTION 270) TO PERMIT NEW CONSTRUCTION OF A NEW 36-STORY MIXED-USE BUILDING REACHING A ROOF HEIGHT OF UP TO 365 FEET TALL (396'8" INCLUSIVE OF ROOFTOP SCREENING/MECHANICAL EQUIPMENT) WITH APPROXIMATELY 524,014 GROSS SQUARE FEET, INCLUDING APPROXIMATELY 379,003 GROSS SQUARE FEET OF RESIDENTIAL USE WITHIN A TOWER SITUATED ATOP A 5-STORY PODIUM CONTAINING APPROXIMATELY 84,815 GROSS SQUARE FEET OF INSTITUTIONAL USE (FRENCH AMERICAN INTERNATIONAL SCHOOL) AND APPROXIMATELY 3,229 GROSS SQUARE FEET OF GROUND FLOOR RETAIL USES, LOCATED AT 98 FRANKLIN STREET, LOTS 008, 009 & 013 OF ASSESSOR'S BLOCK 0836, WITHIN THE C-3-G (DOWNTOWN GENERAL COMMERCIAL) ZONING DISTRICT AND 85-X // 120/365-R-2 HEIGHT AND BULK DISTRICT, AND ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

### PREAMBLE

On October 27, 2017, 98 Franklin, LLC (hereinafter "Project Sponsor") filed an Environmental Evaluation Application for the Project, and thereafter submitted a revised Application on April 13, 2018, with the

Planning Department (“Department”). The application packet was assigned Case Number 2016-014802ENV.

On or after December 21, 2017, the Project Sponsor submitted the following applications with the Department: Downtown Project Authorization; Shadow Analysis; and Transportation Demand Management. The application packets were accepted on or after January 10, 2018 and assigned to Case Numbers: 2016-014802DNX; 2016-014802SHD; and 2016-014802TDM, respectively.

The City and County of San Francisco, acting through the Department fulfilled all procedural requirements of the California Environmental Quality Act (Cal. Pub. Res. Code section 21000 *et seq.*, hereinafter “CEQA”), the State CEQA Guidelines (Cal. Code. Regs. Title 14, section 15000 *et seq.*, (hereinafter “CEQA Guidelines”), and Chapter 31 of the San Francisco Administrative Code (hereinafter “Chapter 31”).

The Department determined that an environmental impact report (hereinafter “EIR”) was required. Environmental review for the Project, as well as a separate private development project at 30 Van Ness Avenue, was coordinated with the City’s Hub Plan, which would amend the 2008 Market and Octavia Area Plan of the San Francisco General Plan for the easternmost portions of the Market and Octavia Area Plan, including the project site. The Department provided public notice of that determination by publication in a newspaper of general circulation on May 23, 2018. The Department held a public scoping meeting on June 12, 2018 in order to solicit public comment on the scope of the project’s environmental review.

On July 24, 2019, the Department published the draft EIR (hereinafter “DEIR”) and provided public notice in a newspaper of general circulation of the availability of the DEIR for public review and comment, and of the date and time of the Planning Commission (“Commission”) public hearing on the DEIR; this notice was mailed to the Department’s list of persons requesting such notice, and to property owners and occupants within a 300- foot radius of the site on July 24, 2019. Notices of availability of the DEIR and of the date and time of the public hearing were posted near the Site on July 24, 2019.

The EIR contains both analysis at a “program-level” pursuant to CEQA Guidelines section 15168 for adoption and implementation of the Hub Plan, and “project-level” environmental review for the Hub Plan streetscape and street network improvements, the Project, and the individual development project at 98 Franklin Street. This EIR also evaluates the designation of portions or all of the Hub Plan area as a housing sustainability district (“HSD”), in accordance with Assembly Bill 73 (Government Code sections 66202 to 66210 and Public Resources Code sections 21155.10 and 21155.11). Designation of an HSD, through adoption of an ordinance by the San Francisco Board of Supervisors, would allow the City and County of San Francisco (“City”) to exercise streamlined ministerial approval of residential and mixed-use development projects meeting certain requirements within the HSD.

On July 24, 2019, copies of the DEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DEIR, and to government agencies, the latter both directly and through the State Clearinghouse. A notice of completion was filed with the State Secretary of Resources via the State Clearinghouse on July 24, 2019.



The Historic Preservation Commission held a duly advertised hearing on said DEIR on August 8, 2018 at which the Historic Preservation Commission formulated its comments on the DEIR.

The Commission held a duly advertised public hearing on said DEIR on August 29, 2019 at which opportunity for public comment was given, and public comment was received on the DEIR. The period for acceptance of written comments ended on September 9, 2019.

The Department prepared responses to comments on environmental issues received during the 46-day public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, and corrected clerical errors in the DEIR. This material was presented in a responses to comments document, published on March 12, 2020, distributed to the Commission and all parties who commented on the DEIR, and made available to others upon request at the Department.

The Department prepared a final EIR (hereinafter "FEIR") consisting of the DEIR, any consultations and comments received during the review process, any additional information that became available, and the responses to comments document, all as required by law.

On February 13, 2020, the Commission adopted Resolutions 20653 through 20656 to initiate legislation entitled (1) Ordinance amending the General Plan to amend the Market and Octavia Plan, (2) Ordinance amending the Planning Code to update the Market and Octavia Area Plan, (3) Ordinance amending the zoning map to change the land use, zoning, and height and bulk classifications in the Hub Plan area, respectively, and (4) Ordinance amending the Business and Tax Regulations and Planning Code to create the HUB Housing Sustainability District.

On May 21, 2020, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting regarding (1) the General Plan Amendment amending to amend the Market and Octavia Plan; and (2) the ordinance amending the Planning Code to update the Market and Octavia Area Plan, (3) Ordinance amending the zoning map to change the land use, zoning, and height and bulk classifications in the Hub Plan area, respectively, and (4) Ordinance amending the Business and Tax Regulations and Planning Code to create the HUB Housing Sustainability District.

On May 21, 2020, the Commission reviewed and considered the information contained in the FEIR and found that the contents of said report and the procedures through which the FEIR was prepared, publicized, and reviewed comply with the provisions of CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code. The FEIR was certified by the Commission on May 21, 2020, by adoption of Motion No. 20707.

On May 21, 2020, through Motion No. 20707, the Commission approved findings required by CEQA, including adoption of a Mitigation Monitoring and Reporting Program (MMRP), under Case No. 2016-014802ENX, for approval of the Hub Plan ("Hub Plan CEQA Findings"), which are incorporated by reference as though fully set forth herein.

On May, 21, 2020, the Commission adopted Resolutions 20709 through 20712 to recommend that the Board of Supervisors approve: (1) the Ordinance amending the General Plan to amend the Market and Octavia Plan; (2) an Ordinance amending the Planning Code to update the Market and Octavia Area Plan; (3) an Ordinance amending the zoning map to change the land use, zoning, and height and bulk classifications in the Hub Plan area, respectively; and (4) an Ordinance amending the Business and Tax Regulations and Planning Code to create the HUB Housing Sustainability District.

On May 28, 2020, through Motion No. 20726, the Commission approved findings required by CEQA, including adoption of a Mitigation Monitoring and Reporting Program (MMRP), under Case No. 2016-014802ENV, for approval of the Project, which findings are found in Attachment C to this Motion No. 20728 and incorporated by reference as though fully set forth herein.

On May 28, 2020, through Motion No. 20727, the Commission adopted findings, with the recommendation from the General Manager of the Recreation and Parks Department, in consultation with the Recreation and Park Commission, that the shadows cast by the Project on four properties under the jurisdiction of the Recreation & Park Department would not be adverse to the use of these properties, and that the Commission allocate to the Project allowable shadow from the absolute cumulative shadow limits for Civic Center Plaza (where such limits have been adopted) (Case No. 2017-008051SHD). As part of this recommendation, the Recreation and Park Commission adopted environmental findings in accordance with CEQA, along with a Mitigation Monitoring and Reporting program ("MMRP") for the Project (Recreation and Park Commission Resolution No. 2005-008).

The Department Commission Secretary is the custodian of records; all pertinent documents are located in the File for Case No. 2017-008051DNX, at 1650 Mission Street, Fourth Floor, San Francisco, California.

On May 28, 2020, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Downtown Project Authorization application No. 2017-008051DNX.

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

**MOVED**, that the Commission hereby authorizes the Downtown Project Authorization as requested in Application No. 2017-008051DNX, subject to the conditions contained in "EXHIBIT A" of this motion, and to the Mitigation, Monitoring and Reporting Program contained in "EXHIBIT C", and incorporated by reference, based on the following findings:

## **FINDINGS**

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

1. The above recitals are accurate and constitute findings of this Commission.

2. **Project Description.** The proposed project ("Project") includes the construction of a new 36-story mixed-use building reaching a roof height up to 365 feet tall (396'8" inclusive of rooftop screening/mechanical equipment). The Project includes a total of approximately 524,014 gross square feet of uses, with approximately 379,003 gross square feet of residential use (at least 345 dwelling units situated on floors 7 through 36) situated atop a 5-story podium containing approximately 84,815 square feet of school use (French American International High School) and approximately 3,229 square feet of retail, 306 Class 1 and 57 Class 2 bicycle parking spaces, and three below-grade levels that would accommodate up to 111 vehicle parking and 3 car share spaces provided for the residential and school uses. The Project would contain a mix of 259 studio or one-bedroom units, 52 two-bedroom units, and 35 three-bedroom units, with 20 percent (or 69 dwelling units) provided as on-site affordable dwelling units (also known as "Below Market Rate" units).
3. **Site Description and Present Use.** The Project Site ("Site") is an approximately 23,750 square-foot irregular-shaped corner lot located on the east side of Franklin Street, between Market Street and Oak Street, with approximately 142' of frontage along Oak Street, 54' of frontage along Market Street, and 154' of frontage along Franklin Street. The subject property (Lots 008, 009 and 013 of Assessor's Block 0836) is located within the C-3-G (Downtown General Commercial) Zoning District, the 85-X // 120/365-R-2 Height and Bulk District, and the Van Ness & Market Residential Special Use District. The Site currently contains a surface parking lot with 100 off-street vehicular parking spaces.
4. **Surrounding Properties and Neighborhood.** The Site is located within the southwestern edge of downtown in the C-3-G (Downtown Commercial, General) District. The area is characterized as an urban, mixed-use area that includes a diverse range of residential, commercial, institutional, office, and light industrial uses. Office use is prevalent located along Market Street and Van Ness Avenue, while most government and public uses are located to the north in the Civic Center. West of Franklin Street, is an NC-3 Moderate-Scale Neighborhood Commercial District that comprises a diverse mix of residential, commercial, and institutional uses. South of Market Street, and west of 12th Street, are the WSOMA Mixed Use, General and Production, Distribution and Repair (PDR) Districts. Further, the Site is within a block of the intersection of Market Street and Van Ness Avenue, two of the City's widest and most recognizable thoroughfares. As such, the Site is uniquely positioned at one of the most important transit nodes within the city: rail service is provided underground at the Van Ness Muni Metro Station as well as via historic streetcars that travel along Market Street while Bus service is provided on both Van Ness Avenue and Market Street.
5. **Public Outreach and Comments.** The Project Sponsor has conducted community outreach to stakeholders that includes local community groups, namely: Hayes Valley Neighborhood Associates, Hayes Valley Merchants, Civic Center Community Benefit District, SF Jazz, SF Ballet, SPUR, SF Housing Action Coalition, and SF Chamber of Commerce. To date, the Department has received three support letters from organizations and businesses, including: Mercy Housing, Civic

Center Community Benefit District, The Church of the Advent of Christ the King. The Department has not received any letters in opposition to the project.

6. **Planning Code Compliance.** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:

- A. **Use Compliance within the C-3-G Zoning District and Van Ness & Market Residential Special Use District (Sections 210.2 and 249.33).** The Planning Code lists the use controls for residential and non-residential uses within the C-3-G Zoning District and the Van Ness & Market Residential Special Use District.

*The Project includes a total of approximately 524,014 gross square feet of uses (total gross floor area of 449,406 gsf of uses per the Planning Code Section 102). The Project would include approximately 379,003 gross square feet of residential use, approximately 84,815 square feet of school use and approximately 3,229 square feet of retail. Residential uses, institutional school uses and sales and service use are all principally permitted within the C-3-G Zoning District. Therefore, the Project complies with Section 210.2.*

#### **Non-Residential Uses**

The use controls of the Van Ness & Market Residential Special Use District require at least three occupied square feet of residential use to be provided for each occupied foot of non-residential use.

*The Project includes a total of approximately 379,003 gross square feet of residential uses and approximately 88,044 gross square feet of new non-residential uses, equating to a ratio of approximately four (4) occupied feet of residential use for each occupied foot of non-residential use. While Planning Code Section 102 Occupied Floor Area calculations are not set forth in the Project's plan set, the Gross Floor Area calculations sufficiently establish that the Project will comply with Section 249.33(b)(1).*

#### **Retail Use Size**

In the Van Ness & Market Residential Special Use District, Retail Sales and Service Uses are permitted up to 5,999 gross square feet in size, with Conditional Use Authorization required above 6,000 gross square feet.

*The Project includes a total of one (1) retail space located on the ground floor totaling less than 6,000 gross square feet. Therefore, the Project complies with Section 210.2.*

#### **Micro-Retail (Section 249.33)**

The use controls of the Van Ness & Market Residential Special Use District require at least one Micro-Retail unit for every 20,000 gross square feet of lot area, rounded to the nearest unit. Projects providing ground floor uses that are larger than 1,000 gross square feet and defined as Arts Activities, Child Care Facility, Social Service, School, Community Facility, or Public



Facility are exempt from the Micro-Retail requirement. Exceptions to the micro-retail requirement may be granted through the Section 309 process, pursuant to Code Section 249.33(b)(9)(B)(iv).

*The Site is 23,750 square feet, leading to a requirement of one (1) Micro-Retail units. However, the Project includes approximately 10,000 gross square feet of school uses on the ground floor, so is therefore exempt from the micro-retail requirement.*

- B. Floor Area Ratio (Sections 123, 124, 128, and 210.2).** The Planning Code establishes a basic floor area ratio (FAR) for all zoning districts. For C-3 zoning districts, the numerical basic FAR limit is set in Section 210.2. The basic FAR for the C-3-G District is 6.0 to 1. Any development project within the Van Ness & Market Residential Special Use District that exceeds the base FAR shall be required to pay the Van Ness and Market Affordable Housing and Neighborhood Infrastructure Fee.

*The Site is 23,750 square feet (0.55 acres) in area. Therefore, up to 142,500 square feet of Gross Floor Area is allowed under the basic FAR limit (6:1). The Project proposes a total of 449,406 gsf, for a FAR of approximately 19-to-1. All uses in any development project within the Van Ness & Market Residential Special Use District shall pay \$30.00 per net additional gross square foot of floor area in any portion of building area exceeding the base development site FAR of 6:1 up to a base development site FAR of 9:1, and \$15.00 per net additional gross square foot of floor area in any portion of building area exceeding the base development site FAR of 9:1, as set forth in Code Section 424. Conditions of Approval are included to require the Project Sponsor pay the Van Ness and Market Affordable Housing and Neighborhood Infrastructure Fee for all floor area above 6:1 FAR.*

- C. Rear Yard (Section 134).** The Project is located within the Van Ness & Market Residential Special Use District where the rear yard requirements of Section 134 of Code shall not apply. Instead, lot coverage is limited to 80 percent at all levels containing a dwelling unit or group housing bedroom. The unbuilt portion of the lot shall be open to the sky except for those obstructions permitted in yards per Section 136(c) of this Code. Exceptions to the 20 percent open area may be granted pursuant to the procedures of Section 309.

*The Project includes a full lot coverage podium containing non-residential uses with a tower containing residential uses (dwelling units). The footprint of the residential tower occupies approximately 64% of lot coverage, well below the limit of 80 percent of lot coverage. Therefore, the Project complies with Section 249.33(b)(5).*

- D. Publicly Accessible Open Space (Section 138).** The Planning Code requires new Non-Residential buildings, or additions of Gross Floor Area equal to 20 percent or more to an existing Non-Residential building, in the C-3-G zoning district to provide public open space at a ratio of one square-foot per 50 gross square feet of all uses, except residential uses and institutional uses.

*The Project would include 379,003 gross square feet of residential use, 84,815 square feet of school use and 3,229 square feet of retail. Residential and school (Educational Institutional) uses are exempt from Planning Code Section 138's requirements. Because the significant majority of the building's use will be residential and exempted Institutional space, the building is not considered a Non-Residential building and the public open space requirement does not apply to the 3,229 square feet of ground floor retail. Therefore, the Project is not subject to Planning Code Section 138.*

- E. **Streetscape and Pedestrian Improvements (Section 138.1).** Planning Code Section 138.1 requires that additions of Gross Floor Area equal to 20 percent or more to an existing building provide streetscape improvements consistent with the Better Streets Plan. Under Section 138.1(c), the Commission may also require the Project Sponsor to install additional sidewalk improvements such as lighting, special paving, seating and landscaping in accordance with the guidelines of the Downtown Streetscape Plan if it finds that these improvements are necessary to meet the goals and objectives of the General Plan

*The Project Sponsor shall comply with this requirement. The conceptual plan shows improved pedestrian amenities along Franklin and Oak Streets, including, but not limited to improved and enlarged sidewalks, along with the installation of street trees and other improvements. In addition, contingent upon approval of an in-kind agreement crediting the amount owed by the Project under the Market and Octavia Community Infrastructure Fee for the full cost of the improvements, Project Sponsor may implement streetscape improvements on Lily Street between Gough and Franklin Streets, including but not limited to raised crosswalks, new street trees and a mid-alley furnished pedestrian zone. The precise location, spacing, and species of the street trees, as well as other streetscape improvements, will be further refined throughout the building permit review process. Therefore, the Project complies with Section 138.1.*

*The Project would apply to the San Francisco Municipal Transportation Agency's (SFMTA) Color Curb Program to install a passenger loading zone (white curb) along Oak Street and a school drop off zone (white curb) on Franklin Street.*

- F. **Standards for Bird-Safe Buildings (Section 139).** The Planning Code outlines the standards for bird-safe buildings, including the requirements for location-related and feature-related hazards.

*The Site is not located in close proximity to an Urban Bird Refuge as defined in Section 139. As such, the Project is only required to include feature-related standards, and includes such features. Therefore, the Project complies with Section 139.*

- G. **Street Frontage in Commercial Districts (145.1).** The Planning Code requires that within Downtown Commercial Districts, space for "active uses" shall be provided within the first 25 feet of building depth on the ground floor. Spaces such as lobbies are considered active uses only if they do not exceed 25% of the building's frontage at the ground level, or 40 feet,

whichever is greater. Section 145.1(c)(2) of the Planning Code requires that no more than one-third of the width or 20 feet, whichever is less, of any given street frontage of a new or altered structure parallel to and facing a street shall be devoted to parking and loading ingress or egress. With the exception of space allowed for parking and loading access, building egress, and access to mechanical systems, space for active uses as defined in Subsection (b)(2) and permitted by the specific district in which it is located shall be provided within the first 25 feet of building depth on the ground floor and 15 feet on floors above from any facade facing a street at least 30 feet in width. Section 145.1(c)(4) of the Planning Code requires that ground floor non-residential uses in all C-3 Districts shall have a minimum floor-to-floor height of 14 feet, as measured from grade. Section 145.1(c)(5) requires the floors of street-fronting interior spaces housing non-residential active uses and lobbies shall be as close as possible to the level of the adjacent sidewalk at the principal entrance to these spaces. Section 145.1(c)(6) of the Planning Code requires that within Downtown Commercial Districts, frontages with active uses must be fenestrated with transparent windows and doorways for no less than 60 percent of the street frontage at the ground level and allow visibility to the inside of the building.

*The Project includes 3,229 gross square feet of ground floor retail sales and service uses on Oak Street. This retail space is at least 25 feet deep at all locations, meeting the strict active use requirements of Section 145.1(c)(3). The balance of the ground floor on Oak Street is comprised of a residential building lobby that is 40 feet in width, as well as a school café space near the corner of Oak and Franklin streets. The majority of the Franklin Street frontage contains the main entrance to the school, including a furnished common space for student congregation. The balance of ground floor on Franklin Street is comprised of a 20' driveway to the building's basement vehicle parking area, as well as a dedicated ramp providing bicycle access to the first-floor basement bicycle parking area. The frontage on Market Street contains a multi-purpose assembly space for the school and gas meter access (permitted mechanical system). The three street frontages are fenestrated with transparent windows for at least 60 percent of the total street frontage, allowing visibility into the inside of the building. The ground floor height is at least 15'. Therefore, the Project complies with Section 145.1.*

- H. **Shadows on Public Sidewalks (Section 146).** The Planning Code establishes design requirements for buildings on certain streets in order to maintain direct sunlight on public sidewalks in certain downtown areas during critical use periods. Section 146(c) requires that other buildings should be shaped so as to reduce substantial shadow impacts on public sidewalks, if doing so would not create an unattractive design and without unduly restricting the development potential of the site in question.

*Section 146(a) does not apply to Franklin Street, Market Street, or Oak Street and therefore does not apply to the Project. Regarding Section 146(c), the Project would create new shadows on sidewalks and pedestrian areas adjacent to the Site. The amount of shadow cast on sidewalks would vary based on time of day, day of year, and weather conditions. Additionally, in certain locations, existing and future development would mask or subsume new shadows from the Project that would otherwise be cast on sidewalks in the Project vicinity. The Project's shadows would be limited in scope and would not*

*increase the total amount of shading above levels that are commonly accepted in dense urban areas. Therefore, the Project complies with Section 146.*

- I. **Shadows on Public Open Spaces (Section 147).** The Planning Code requires new buildings in the C-3 districts exceeding 50 feet in height to be shaped, consistent with the dictates of good design and without unduly restricting the development potential of the site, to reduce substantial shadow impacts on public plazas and other publicly-accessible spaces other than those under the jurisdiction of the Recreation and Parks Department under Section 295. The following factors shall be taken into account: (1) the amount of area shadowed; (2) the duration of the shadow; (3) the importance of sunlight to the type of open space being shadowed.

### **Background**

*The Hub Plan FEIR analyzed potential shadow impacts that could occur as a result of the Hub Plan, the two individual development projects (30 Van Ness Avenue and 98 Franklin Street), the Hub Housing Sustainability District (HSD), and cumulative conditions. For non-RPD parks and open spaces, the general timing of net new shadow effects was analyzed.*

### **Existing Non-RPD Open Spaces**

*The Hub Plan FEIR concluded that the Project would not cast shadow on non-RPD parks and open space.*

- J. **Off-Street Parking (Sections 151.1 and 249.33).** The Planning Code does not require any off-street parking spaces be provided, but instead provides maximum parking amounts based on land use type. Off-street accessory parking for all non-residential uses in the C-3-G Zoning District is limited to 7% of the gross floor area for such uses. For residential uses, one off-street parking space is principally permitted for every four Dwelling Units. The Van Ness & Market Residential Special Use District permits accessory non-residential parking to be used jointly as accessory residential parking for residential uses within the same project, so long as the project provides 25% or more on-site affordable housing units as defined in Section 415, and the total number of independently accessible parking stalls (whether residential or non-residential) provided in such project shall not exceed the sum of the maximum amount of accessory residential and accessory non-residential parking spaces permitted by the Planning Code and the total number of parking spaces used as residential accessory parking shall not exceed 0.4 spaces per each Dwelling Unit.

*The Project would provide a total of 111 off-street accessory parking spaces. 86 parking spaces would be available for 345 dwelling units, equating to parking ratio of 0.25 spaces per dwelling unit (within the 0.25 ratio limit as established by Code). The balance of the parking spaces (25 spaces or approximately 4,625 gross square feet) would be available for the school uses (within the limit of 7% of non-residential Occupied Floor Area as established by the Code). The Project therefore complies with Code Section 151.1.*



- K. **Off-Street Freight Loading (Sections 152.1, 153, and 154).** The Planning Code requires certain amounts of off-street freight loading space based on the type and size of uses in a project. For residential units and school uses, 2 off-street spaces are required between 200,001 and 500,000 square feet of Occupied Floor Area of each use. No loading is required for retail uses under 10,000 square feet of Occupied Floor Area. Pursuant to Section 153(a)(6), two service vehicle spaces can be substituted for one required freight loading space if at least 50% of the required number of freight loading spaces are provided. Planning Code Section 154 sets forth standards as to location and arrangement of off-street freight loading and service vehicle spaces. Off-street loading spaces are required to have a minimum length of 35 feet, a minimum width of 12 feet, and a minimum vertical clearance including entry and exit of 14 feet, except that the first freight loading space required for any structure or use shall have a minimum width of 10 feet, a minimum length of 25 feet, and a minimum vertical clearance, including entry and exit, of 12 feet.

*The Project would comply with the off-street freight loading requirement by providing one (1) space meeting the dimensional requirements of Code Section 154(b)(2) and two (2) service vehicle spaces, pursuant to Section 154(b)(2)(3). The Project therefore complies with Sections 152.1, 153, and 154.*

- L. **General Standards for Location and Arrangement of Off-Street Parking, Freight Loading, and Service Vehicle Facilities (Sections 155 and 155(u)).** The Planning Code requires all off-street freight loading and service vehicle spaces in the C-3 Zoning District be completely enclosed, and access from a public Street or Alley shall be provided by means of a private service driveway that is totally contained within the structure. Such a private service driveway shall include adequate space to maneuver trucks and service vehicles into and out of all provided spaces, and shall be designed so as to facilitate access to the subject property while minimizing interference with street and sidewalk circulation. Any single development is limited to a total of two façade openings of no more than 11 feet wide each or one opening of no more than 22 feet wide for access to off-street parking and one façade opening of no more than 15 feet wide for access to off-street loading. Shared openings for parking and loading are encouraged. The maximum permitted width of a shared parking and loading garage opening is 27 feet. The Planning Code requires any projects of more than 100,000 net new gross square feet within the Hub area to develop and implement a Driveway and Loading Operations Plan (DLOP) to address project-generated commercial and passenger loading issues.

*The Project includes one opening along the Franklin Street frontage: a 20-foot wide entrance for access to off-street parking and off-street loading. Therefore, the Project complies with Section 155(s)(4). The Project includes 524,014 net new gsf and the Project Sponsor will be required to prepare a DLOP for review and approval by Department staff, in consultation with the San Francisco Municipal Transportation Agency prior to issuance of the first site permit or building permit. Therefore, the Project will be in compliance with Section 155(u) prior to issuance of first site permit or building permit.*

- M. **Bicycle Parking (Sections 155.1, 155.2).** The Planning Code establishes bicycle parking requirements for new developments, depending on use. For projects with over 100 residential dwelling units, 100 Class 1 spaces are required, plus 1 additional space for every four units over

100. One Class 2 space is required for every 20 dwelling units. For school uses, four Class 1 space is required for every classroom, and one Class 2 space is required for every classroom. are required for the first 5,000 gross square feet, plus one Class 2 space for each additional 50,000 occupied square feet. For general retail uses, one Class 1 space is required for every 7,500 square feet of occupied floor area and a minimum of two Class 2 spaces or one Class 2 space for every 2,500 square feet of occupied floor area. For Retail Eating and Drinking uses, one Class 1 space is required for every 7,500 square feet of occupied floor area and a minimum of two Class 2 spaces or one Class 2 space for every 750 square feet of Occupied Floor Area. A Class 1 space is located in a secure, weather-protected facility and intended for long-term use by residents and employees. A Class 2 space is located in a publicly-accessible and visible location, and intended for use by visitors, guests, and patrons.

*The Project includes 306 Class 1 and 57 Class 2 bicycle parking spaces, 162 Class 1 spaces and 17 Class 2 spaces associated with residential uses, 144 Class 1 spaces and 36 Class 2 spaces associated with school uses and 4 Class 2 spaces associated with the ground-floor retail uses (which are conservatively assumed to be Eating and Drinking uses given the higher requirement for that subset of Retail uses under the Code). The Class 2 bicycle parking spaces would be located along all three of the Site's street frontages (Van Ness Avenue, Oak Street and Franklin Street), with the exact location to be determined in consultation with SFMTA. The Class 1 bicycle parking would be located on the first basement floor, accessible by a dedicated ramp from Franklin Street. Therefore, the Project complies with Section 155.1 and 155.2.*

- N. **Shower Facilities and Lockers (Section 155.4).** The Planning Code requires shower facilities and lockers for Institutional (school) Uses in the following amounts: four showers and 24 clothes lockers are required where the Occupied Floor Area exceeds 50,000 square feet. One shower and six clothes lockers are required where the Occupied Floor Area of retail exceeds 25,000 square feet.

*The Project includes more than 50,000 square feet of institutional school uses and thus a total of 4 showers 24 lockers are required per Code. The Project would provide 4 showers and 24 lockers on the first basement floor, adjacent to the ground floor Class 1 bicycle storage area. Therefore, the Project complies with Section 155.4.*

- O. **Car Sharing (Section 166).** The Planning Code establishes requirements for new developments to provide off-street parking spaces for car-sharing services. The number of spaces depends on the amount of residential or non-residential parking. Projects with over 200 residential units but less than 400 units require two spaces. For non-residential uses, one space is required if the project provides 25-49 off-street spaces for those uses. The car-share spaces must be made available to a certified car-share organization at the building site or within 800 feet of it.

*The Project includes three car share spaces, on the first floor of the basement immediately adjacent to the ramp from Franklin Street, for both the residential and non-residential uses where three are required by*

*Code (two for the 365 dwelling units and one for the 25 parking spaces associated with the school use). Therefore, the Project complies with Section 166.*

- P. **Unbundled Parking (Section 167).** The Planning Code requires all off-street parking spaces accessory to residential uses in new structures of 10 dwelling units or more, or in new conversions of non-residential buildings to residential use of 10 dwelling units or more, shall be leased or sold separately from the rental or purchase fees for dwelling units for the life of the dwelling units, such that potential renters or buyers have the option of renting or buying a residential unit at a price lower than would be the case if there were a single price for both the residential unit and the parking space.

*The Project will lease or sell all accessory off-street parking spaces separately from the rental or purchase fees for dwelling units for the life of the dwelling units. Therefore, the Project complies with Section 167.*

- Q. **Transportation Demand Management (TDM) Plan (Section 169).** The Planning Code requires applicable projects to finalize a TDM Plan prior Department approval of the first Building Permit or Site Permit.

*The Project submitted a completed Environmental Evaluation deemed complete on or after September 5, 2016, and before January 1, 2018. Therefore, the Project must only achieve 75% of the point target established in the TDM Program Standards, resulting in a required target of 11 points (75% of 14) for the school uses and 15 points (75% of 19) for the residential uses. As currently proposed, the Project would achieve a total of 11 of its required 11 points for the school uses through the following TDM measures:*

- Improve Walking Conditions (Option A)
- Bicycle Parking (Option A)
- Bicycle Repair Station
- Car-share Parking and Membership (Option A)
- Tailored Transportation Marketing Services (Option B)
- Unbundled Parking (Location E)

*As currently proposed, the Project would achieve 17 points (where 15 points are required) for the residential uses through the following TDM measures:*

- Improve Walking Conditions (Option A)
- Bicycle Parking (Option A)
- Bicycle Repair Station
- Car-share Parking and Membership (Option A)
- On-site Affordable Housing (Option A)
- Unbundled Parking (Location D)
- Parking Supply (Option G)

*Therefore, the Project complies with Section 169.*

- R. **Height: Rooftop Screening and Appurtenances (Section 141(b) and 260(b)(N)).** Pursuant to Planning Code 141, Rooftop mechanical equipment, if any is proposed as part of the Project, is required to be screened so as not to be visible from any point at or below the roof level of the subject building. In the Van Ness & Market Residential Special Use District, additional building volume may be used to enclose or screen from view the features listed in Sections 260(b)(1)(A) and 260(b)(1)(B). The rooftop form created by the added volume shall not be subject to the percentage coverage limitations otherwise applicable to the building, but shall meet the requirements of Section 141; shall not exceed 10 percent of the total height of any building taller than 200 feet; shall have a horizontal area not more than 100 percent of the total area of the highest occupied floor; and shall contain no space for human occupancy. The features described in Section 260(b)(1)(B) shall not be limited to 16 feet for buildings taller than 200 feet but shall be limited by the permissible height of any additional rooftop volume allowed by Section 260(b)(N).

*The Project contains a rooftop parapet reaching 385' (20' over the 365' height limit) and an elevator penthouse machine room reaching 396' 8" (31'8" over the 365' height limit). These features are permitted under the Van Ness & Market Residential Special Use District and therefore comply with Planning Code Sections 260(b)(N) and 141(b).*

- S. **Shadows on Parks (Section 295).** The Planning Code requires a shadow analysis for projects over 40 feet in height to ensure that new buildings do not cast new shadows on properties that are under the jurisdiction of the San Francisco Recreation and Park Department (RPD).

### **Background**

*A Shadow Study was prepared by qualified consultants ("Prevision Design"). The Shadow Study provides quantitative shadow calculations for parks under the jurisdiction of RPD. The analysis was conducted according to criteria and methodology as described in (1) the February 3, 1989 memorandum titled "Proposition K – The Sunlight Ordinance" ("the 1989 memorandum") prepared by RPD and the San Francisco Planning Department ("Planning"), (2) the July 2014 memorandum titled "Shadow Analysis Procedures and Scope Requirements" ("the 2014 memorandum") prepared by Planning, and (3) direction from current Planning and RPD staff regarding the appropriate approach, deliverables, and scope of analysis appropriate in consideration of the open spaces affected.*

*Note: An earlier design of the Project was reviewed for shadow impacts as part of the Hub Plan DEIR. Updates to these shadow effects due revisions to the design of the Project's parapet were subsequently detailed in the DEIR responses to comments published by the Department on March 12, 2020.*

### **Shadow Analysis Results**

*The Shadow Study indicated that the Project would cast new shadows on the following four (4) properties under the jurisdiction of RPD: Koshland Community Park; Patricia's Green; Page & Laguna; and Page & Laguna Mini Park.*



Koshland Community Park

*The Koshland Community Park is a 0.82-acre (35,743 sf) urban park, located in the Western Addition neighborhood, occupies the northwest corner of the block and is bounded by Page Street to the north, Buchanan Street to the west, and private development along its eastern and southern borders. The park is not fenced, and the posted hours of operation are from sunrise to sunset. Entrances to Koshland Community Park are through a gate and stairs on Page Street as well as several points along Buchanan Street. The pathway diagonally bisects the upper and lower halves of the park. A half-court basketball area and playground sit on the Koshland Community Park's highest elevation and a community garden which can be accessed via terraced steps, a serpentine pathway, or several steps through the Page Street entrance occupies the sites eastern most border. A playground area featuring jungle gym and sand pit is centrally located in the park, which includes a tire swing, slide, and monkey bars. A community garden with vegetables, flowers and shrubbery occupies the eastern border of the park.*

*Under current conditions, the park receives 20,546,248 annual sfh of shadow. Based on a calculated TAAS of 133,014,951 sfh, Koshland Community Park's existing annual shadow load is 15.45 percent of its TAAS. Existing shadow patterns include very low levels of shadow falling throughout most of the day until late afternoon, when the western half of the park is cast in shadow. Spring and fall follow a similar pattern with most shadow falling over winter months.*

*The Project would result in net new shadow cast on Koshland Community Park, adding 3,963 net new annual sfh of shadow and increasing the sfh of shadow by 0.003% annually above current levels. This increase would result in a new annual total shadow load of 15.45%. Net new shadow from the Project would occur within the first nine minutes of the daily analysis period between approximately April 20 and August 22nd.*

*The portions of Koshland Community Park that would receive net new shadow include a portion of the community garden area in the northeastern corner of the park and a wooded area in the southeastern corner of the park. The features which could be of somewhat higher sensitivity include the community garden area, however this feature would only receive net new shadow over spring and summer in the early mornings for a short duration prior 7:15 a.m., times where lower levels of park use would be likely.*

Patricia's Green

*Patricia's Green is a 0.41-acre (17,903 sf) urban park, located in the Western Addition/Hayes Valley neighborhood, extends generally north-south and is bounded by Octavia Street to the east and west, Hayes Street to the north, and Fell Street to the south. The park is divided into three sections. In the northern section of the park there is a picnic seating area located along Hayes Street. It features a plaza with four picnic tables around a mature tree and a mix of wooden and concrete benches. Two additional picnic tables are located on the western side of this area along Octavia Street next to restaurants. The central section is located where the park intersects Linden Street. It contains a circular plaza with four concrete benches and eight bollards, and functions as the area for art installations. To the north and south of the center plaza are lawns. The southern section of the park contains a children's play area, which features a dome structure with ropes and bars for climbing and poured rubber safety paving. Low*

*concrete square pillars delineate the play area and lawn, and a metal fence encloses the Fell Street side. A service building is located at the southwest corner of the park. On the periphery of the park are concrete ledges and benches interspersed with approximately 24 trees and plantings.*

*Under current conditions the park receives 12,029,000 annual sfh of shadow. Based on a calculated TAAS of 66,622,661 sfh, Patricia's Green's existing annual shadow load is 18.06 percent of its TAAS. The park currently experiences higher levels of shading in the early mornings and late afternoons but is otherwise predominantly unshaded from late morning through midafternoon year-round.*

*The Project would result in net new shadow cast on Patricia's Green, adding 298,323 net new annual sfh of shadow and increasing the sfh of shadow by 0.45% annually above current levels. This increase would result in a new annual total shadow load of 18.51%. Net new shadow from the Project would occur within the first 52 minutes of the daily analysis period between February 2nd and March 28th and again between September 14th and November 7th.*

*Nearly all portions of Patricia's Green would receive net new shadow from the Project. The portions of Patricia's Green that would likely be most sensitive to the addition of net new shadow would be the children's play area, the park's fixed benches, and the tables and seating areas. All these features would receive some net new shadow, the presence of which would be noticeable to users of the park present at that time. The timing of net new Project shadow would be in the early morning prior to 9:00 a.m., and the children's play area, which would potentially be the most sensitive to additional shadow, would not receive net new shadow at any point later than 8:30 a.m., corresponding to times where lower overall levels of use would be typical.*

#### Page & Laguna Mini Park

*Page and Laguna Mini Park is a 6,600-sf urban park located in the Western Addition neighborhood and is under the jurisdiction of the RPD. It is located mid-block with residences east and west and is bounded by Page Street to the north and Rose Street to the south. Page and Laguna Mini Park is enclosed by fences, one along Rose Street and another that bisects the site from east to west. Posted signage indicates that the park hours are from 6 a.m. to 10 p.m. The mini park has two entrances, one on Page Street and one on Rose Street. The entrances are connected by a path, creating a pedestrian connection between the two streets. The mini park features two fixed benches, a designated community gardening area, and several trees ranging in size from small shrubbery to deciduous trees with larger canopies.*

*Under current conditions the park receives 12,469,084 annual sfh of shadow. Based on a calculated TAAS of 24,543,248 sfh, Page and Laguna Mini Park's existing annual shadow load is 50.80 percent of its TAAS. Existing shadow patterns include morning, afternoon, and evening shadow falling over the majority the park with little shadow around midday, year-round.*

*The Project would result in net new shadow cast on Page & Laguna Mini Park, adding 12,565 net new annual sfh of shadow and increasing the sfh of shadow by 0.05% annually above current levels. This increase would result in a new annual total shadow load of 50.85%. Net new shadow from the Project*

*would occur within the first 22 minutes of the daily analysis period between approximately May 18 and July 25. Net new shadow would fall only on the northern edge of the park, affecting one public entry point, a portion of the paved walkways, one fixed bench, some grassy or landscaped areas, and a small section of the community garden.*

*The portions of Page & Laguna Mini Park that could be characterized as being of higher sensitivity include the community garden and the fixed bench; however, shadow cast by the Project would occur in the summer for a short duration (33 minutes or less) and be gone prior to 8 a.m., corresponding to times of typically lower levels of park use.*

#### *Future 11<sup>th</sup>/Natoma Park Site*

*In 2017 RPD acquired a property on 11<sup>th</sup> Street between Minna and Natoma streets. The site is currently occupied by buildings that would be demolished as part of converting this site to a future park. The programming of the park, environmental review, permitting, and timing of construction are not known at this time, but the site for this contemplated future park is analyzed quantitatively and graphically in this section as it is under the jurisdiction of RPD and information is included for informational purposes.*

*Under current conditions the location of the proposed future park would receive (assuming the removal of existing buildings on site and full use of the site for a park) 16,085,624 annual sfh of shadow. Based on a calculated TAAS of 72,829,287 sfh, the 11<sup>th</sup>/Natoma Park Site's existing annual shadow load would be 22.09 percent of its TAAS. Existing shadow patterns include early morning and later afternoon shadow falling over the majority of the park, with little to no midday and early afternoon shadow year-round.*

*The 98 Franklin Street Project would result in net new shadow cast on the 11<sup>th</sup>/Natoma Park Site, adding approximately 130,635 net new annual sfh of shadow and increasing the sfh of shadow by 0.18 percent annually above current levels. This increase would result in a new annual total shadow load of 22.27 percent. Net new shadow from the 98 Franklin Street Project would occur in the late afternoon/early evening (approximately 7pm) for up to 33 minutes between approximately May 4 and August 8. Net new shadow would fall only on the southern half of the park.*

*As the 11<sup>th</sup>/Natoma Park site is not yet a park and no future programming information has been developed nor approved, the possible features affected and qualitative impacts of project-generated shadow on such features are not determinable.*

#### **Conclusion**

*While the Project would cast net new shadow on four (4) existing parks, the Project would not create new shadow that would substantially and adversely affect the use or enjoyment of publicly accessible open spaces based upon the amount and duration of new shadow and the importance of sunlight to each of the open spaces analyzed.*

*Thus, the Project would not result in new or more severe shadow impacts than those identified in the Hub Plan FEIR. This conclusion is consistent with the findings of the Hub Plan FEIR, and the Project would not result in individual or cumulative shadow impacts beyond those analyzed in the Hub Plan FEIR, nor would it result in substantially more severe impacts than identified in the Hub Plan FEIR.*

*On May 28, 2020, the Commission held a duly noticed public hearing, at which the Recreation and Park Commission recommended that the General Manager of the Recreation & Park Department recommend to the Commission that the shadows cast by the Project on four (4) properties under the jurisdiction of the Recreation & Park Department would not be adverse to the use of these properties, and that the Commission find that the shadows cast by the Project on the four (4) properties would not be adverse to the use of the properties. (Case No. 2016-014802SHD).*

- T. Review of Residential, Hotel, and Motel Projects (Section 314).** In addition to any other factors appropriate for consideration under the Planning Code, the Department and Commission shall consider the compatibility of uses when approving Residential Uses, Hotel Uses, or Motel Uses, as those terms are defined in Chapter 116 of the Administrative Code, adjacent to or near existing permitted Places of Entertainment and shall take all reasonably available means through the City's design review and approval processes to ensure that the design of such new residential, hotel, or motel project takes into account the needs and interests of both the Places of Entertainment and the future residents or guests of the new development. Such considerations may include, among others: (a) the proposed project's consistency with applicable design guidelines; (b) any proceedings held by the Entertainment Commission relating to the proposed project, including but not limited to any acoustical data provided to the Entertainment Commission, pursuant to Administrative Code Section 116.6; and (c) any comments and recommendations provided to the Department by the Entertainment Commission regarding noise issues related to the project pursuant to Administrative Code Section 116.7.

*The Project is located within 300 radial feet of a Place of Entertainment ("POE") and is subject to Chapter 116 of the Administrative Code. On February 21st, 2020, the Entertainment Commission received notification of the Project. In accordance with the Entertainment Commission's approved "Guidelines for Entertainment Commission Review of Residential Development Proposals Under Administrative Code Chapter 116," Entertainment Commission staff determined that a hearing on this project was not required under Section 116.7(b) of the Administrative Code. The Entertainment Commission has adopted a set of standard "Recommended Noise Attenuation Conditions for Chapter 116 Projects". Accordingly, the Commission recommends that the Department and/or Department of Building Inspection impose these standard conditions on the development permit(s) for the Project. Therefore, the Project complies with Section 314.*

- U. Inclusionary Affordable Housing Program (Section 415 and Section 249.33).** The Planning Code Section sets forth the requirements and procedures for the Inclusionary Affordable Housing Program. Under Planning Code Section 415.3, these requirements would apply to



projects that consist of ten or more units. In the Van Ness & Market Residential Special Use District, projects that provide 20% of units as affordable to households at 50% of Area Median Income ("AMI") are not subject to the requirement for moderate- and middle-income units set forth in Section 415.6(a).

*The project filed a complete Environmental Evaluation Application after January 12, 2016, but before January 1, 2018. Therefore, the Project would be required to provide 18% of units (or 62 units) as affordable units, with rent for those units set at various AMI levels pursuant to Section 415.6(a)(3). The Project proposes 345 dwelling units and proposes to comply with the requirements of Code Section 415 by providing 20% of units (or 69 units) with rent set at 50% AMI, thereby complying with the provisions of the Van Ness & Market Residential Special Use District regarding required AMI levels for affordable units.*

- V. **Public Art (Section 429).** The Planning Code Section requires a project to include works of art costing an amount equal to one percent of the construction cost of the building for construction of a new building or addition of floor area in excess of 25,000 sf to an existing building in a C-3 District.

*The Project will comply with this Code requirement by dedicating one percent of the Project's construction cost to works of art. The public art concept and location will be subsequently presented to the Commission at an informational presentation.*

7. **Exceptions Request Pursuant to Planning Code Section 309.** The Commission has considered the following exceptions to the Planning Code, makes the following findings, and grants each exception to the Project as further described below:

- A. **Useable Open Space (Section 135).** The Planning Code requires that a minimum of 36 square feet of private usable open space, or 48 square feet (1.33 times 36 square feet) of common usable open space be provided for dwelling units in C-3 zoning districts. The area counting as usable open space must meet minimum requirements for area, horizontal dimensions, and exposure.

*The Project includes 345 dwellings units, and therefore requires private and/or common useable open space in service of the residential use. The Project includes 212 dwelling units with private balconies that meet the dimensional requirements for private useable open space (Code Section 135(f)). As such, the project is required to provide 6,384 square feet of common useable open space. The Project includes a 4,150 common open space on the roof of the tower that meets the strict dimensional requirements for common useable open space (Code Section 135(g)). The Project also includes a 3,100 square foot terrace open space associated with indoor amenities on floor 7 that does not meet the strict dimensional requirements for common useable open space, because the space is not 15 feet in every horizontal dimension. Therefore, the project proposes a total of 7,250 square feet of common open space (significantly exceeding the Code's square footage requirement), but approximately 35% of the required amount does not meet required dimensional standards.*

*Though the proposed common open space on floor 7 does not meet the strict dimensional requirements of Section 135, the floor plan supports that the space will provide safe and desirable outdoor living and recreation space for residents of the building. Taking together with the rooftop open space (which meets Section 135's dimensional requirements), the Project meets the intent of the provisions of Section 135.*

**Conclusion**

*The exception for dimensional standards for common open space on floor 7 is therefore warranted as the Project provides substantially more overall common open space than would otherwise be required and the open space that does not meet the Code's dimensional requirements provides safe and desirable outdoor living and recreation space for residents of the building.*

**B. Permitted Obstructions (Decorative Architectural Features) Over Sidewalks (Section 136).**

Within the C-3 zoning districts, the Planning Code permits decorative architectural features not increasing the interior floor area or volume of the space enclosed by the building over streets and alleys and into setbacks may project two feet, with a maximum vertical dimension of four feet. Exceptions to the permitted obstructions requirements in Section 136 for projects within the Van Ness & Market Special Use District as defined by Section 309(a)(20). The Commission shall only grant such an exception if it finds that the proposed obstructions assist the proposed development to meet the requirements of Section 148, or otherwise reduce wind speeds at the ground-level or at upper level open space.

*The Project includes ground-level decorative architectural features (canopies) along all the frontages of Oak Street and Franklin Street to assist the proposed development in meeting the requirements of Section 148 or otherwise reduce wind speeds at the ground-level. Implementation of Mitigation Measure M-WI-1b (included within the MMRP for the Project), requires a maintenance plan for landscaping and wind baffling measures in the public right-of-way. This mitigation measure would reduce the potential for a net increase in wind hazard exceedances and the hours of wind hazard exceedances through a specific maintenance plan to ensure wind baffling in perpetuity. The canopies extend to the following maximum projections (beyond property lines): up to 8 feet along the Oak Street frontage; and up to 8 feet along the Franklin Street frontage.*

*While these decorative canopies would project up to a maximum of 8 feet beyond the property lines of the Site, exceeding horizontal dimension permitted by Section 136(d), each of the canopies are located above the minimum vertical clearance (7.5') from sidewalk grade, as required by Code. The canopy along Franklin Street would reach a maximum height of approximately 67' 4", while the canopy along Oak Street would reach a maximum height of approximately 19 feet above grade. However, because each of these decorative canopies exceed the projection limits established by Code, an exception under the (Section 309) Downtown Project Authorization process is required.*

Conclusion

*The exception to the permitted obstructions requirements (Section 136) is therefore warranted since the decorative canopies would assist the proposed development in meeting the requirements of Section 148 or otherwise reducing wind speeds at the ground-level.*

- C. **Dwelling Unit Exposure (Section 140).** The Planning Code requires that at least one room of each dwelling unit must face onto a public street, a rear yard, or other open area that meets minimum requirements for area and horizontal dimensions.

*Of the 345 dwelling units proposed, 209 face on to either Franklin Street or Oak Street. 136 dwelling units face only the mid-block open space provided to the east or south of the proposed tower. The space provided at the interior of the lot on these sides is an irregularly shaped space equal to 25% or more of the lot area, but is not 25% of the lot depth or a minimum in all locations of 15 feet, meaning an exception pursuant to Section 309 is required. Adequate light and air is provided to the units because the adjacent buildings to the south and east of the Project are recently constructed residential buildings and are between 85' and 120', respectively. Only 6 of the 136 dwelling units facing the south or east mid-block open space are below the respective adjacent building's roofline. For the 6 dwelling units below the respective adjacent building's roofline, the adjacent buildings' wall do not have windows facing the shared property lines with the Project.*

Conclusion

*The exception to the unit exposure requirements (Section 140) is therefore warranted as the dwelling units that do not meet the area and horizontal dimension requirements are provided adequate light and air.*

- D. **Reduction of Ground-Level Wind Currents in C-3 Districts.** The Planning Code requires new buildings in the C-3 Districts to be shaped or otherwise designed with wind-baffling measures, so that the development will not cause ground-level wind current to exceed, more than 10 percent of the time year round, between 7:00am and 6:00pm, the comfort level of 11 m.p.h. equivalent wind speed in areas of substantial pedestrian use and seven m.p.h. equivalent wind speed in public seating areas. When preexisting 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 shall be designed to reduce the ambient wind speeds to meet the requirements.

Exceptions can be granted pursuant to Section 309 allowing the building to add to the amount of time the comfort level is exceeded if (1) the building cannot be shaped and other wind-baffling features cannot be adopted without creating an unattractive and ungainly building form, and without unduly restricting the development potential of the site; and (2) the addition is insubstantial, either due to the limited amount of exceedances, the limited location where the exceedances take place, or the short time when the exceedances occur. No exception shall be granted, and no building or addition shall be permitted that causes equivalent wind speeds to reach or exceed the hazard level of 26 miles per hour for a single hour of the year.

#### Background

The Hub Plan FEIR analyzed potential wind impacts that could occur as a result of the Hub Plan, the two individual development projects (30 Van Ness Avenue and 98 Franklin Street), the Hub Housing Sustainability District (HSD), and cumulative conditions. A qualified wind consultant (Rowan Williams Davies & Irwin Inc., "RWDI") analyzed ground-level wind currents in the vicinity of the Site through a series of wind studies. Wind studies were prepared for the Hub Plan, in addition to two individual development projects (30 Van Ness Avenue and 98 Franklin Street) using wind testing analysis and evaluation methods to determine conformity with Section 148 criteria. The wind studies measured wind speeds for the existing, existing plus project, and cumulative scenario. The cumulative scenario included massing models of other potential future development in the vicinity of the Hub Plan Area. The wind measurement locations for the Project are the same as the ones used for the Hub Plan Area. Wind speed measurements were taken at a total 181 locations for the Hub Plan EIR and cumulative scenarios whereas a total of 58 Project-specific test locations were included in the assessment of potential comfort level wind impacts for the Project.

#### Hazard Criterion

The wind studies found that, under existing conditions, 9 of the 58 locations exceeded the 26-mph wind hazard criterion for a total of 305 hours per year. With the addition of design features, such as an overhead canopy and landscaping, some existing on-site and nearby windy areas are expected to improve the wind hazard conditions compared to existing conditions. As such, with the addition of the Project, the number of locations with hazardous wind conditions would be reduced from 9 to 8, with the total duration of wind hazards decreasing from 305 to 289 hours. As the proposed landscaping is not guaranteed to be maintained during operation of the Project, impacts would be significant under CEQA. Implementation of Mitigation Measure M-WI-1b (included within the MMRP), requires a maintenance plan for landscaping and wind baffling measures in the public right-of-way.

#### Pedestrian/Seating Comfort Criterion

The wind studies found that, under the existing scenario, wind speeds exceed the 11-mph comfort criterion at 45 out of 58 test locations, averaging 14.1 mph across all test locations. With the addition of the Project, a small net increase (0.6 mph) in wind speeds is expected as compared to the existing scenario. While the Project would eliminate existing wind comfort exceedances at 4 test locations, it would create wind comfort exceedances at other locations and wind speeds at a total of 51 locations would exceed the comfort criterion of 11 mph for pedestrians, resulting in a net increase of 6 test locations as compared to the existing scenario. With implementation of the Project, the average wind speeds would increase to 14.7 mph, exceeding the 11-mph comfort criterion approximately 25 percent of the time, representing a 3 percent increase compared to existing conditions.

#### Conclusion

The Project would result in a net decrease of test locations exceeding the wind hazard criterion. In addition, the total number of hours with hazardous wind conditions would decrease by 16 hours under the Project. The addition of the proposed onsite landscaping (along with the combination of other wind control measures) is expected to improve the wind hazard conditions compared to the Existing Scenario.



*The net addition of 6 pedestrian comfort criterion exceedances and the total 51 pedestrian comfort criterion exceedances requires an exception under the (Section 309) Downtown Project Authorization process. The exception to the ground-level wind current requirements (Section 148) is warranted since it is unlikely that the Project could be designed in a manner that would eliminate all existing comfort criterion exceedances. Moreover, the 0.6 mph net increase in wind speed across the 6 net new comfort exceedance test locations is insubstantial due to the relatively short time (3 percent) when the exceedances would occur.*

- E. **Dwelling Unit Mix (Sections 207.6 and 249.33).** For projects located within the Van Ness & Market Residential Special Use District, the Planning Code requires a dwelling unit mix of either: 1) no less than 40% of the total number of proposed dwelling units shall contain at least two bedrooms; or 2) no less than 30% as three bedroom units; or 3) no less than 35% as two or three bedroom units, with at least 10% as three bedroom units. Any fraction resulting from this calculation shall be rounded to the nearest whole number of dwelling units.

*The Project will provide a total of 345 dwelling units, with the following dwelling unit mix: 259 studio and one-bedroom units (75%), 52 two-bedroom units (15%), and 35 three-bedroom units (10%). With 63% of the dwelling units containing at least two-bedroom units (of which 14% are three-bedroom units), the Project exceeds the dwelling unit mix requirement established by Code. Therefore, an exception is required pursuant to Section 309. In considering an exception, the Commission shall consider whether the Project demonstrates a need or mission to serve unique populations or whether the Project site features physical constraints that make it unreasonable to fulfill the requirements of Section 207.6 or subsection 309(a)(19)(i). Here, the Project proposes to exceed Code-required affordable housing requirements by providing 20% of units (69 units) at rents affordable at 50% AMI, thereby providing a substantial amount of new housing affordable to households considered to be low income pursuant to Section 415.*

Conclusion

*The exception to the unit mix requirement (Section 207.6) is therefore warranted as the project will provide a substantial amount of new housing affordable to households considered to be low income pursuant to Section 415.*

- F. **Height (Section 263.19).** In the R-2 bulk district and within the Van Ness and Market Residential Special Use District, maximum permitted building heights for both podiums and towers are expressed as two sets of numbers separated by a double slash. Each set of numbers represents the maximum heights for podium and tower applicable to the parcel and as regulated as follows: The first set of numbers represents the principally permitted height limits for the parcel, both for the podium and for the tower. The second set of numbers after the double slash represents the maximum height limits for podium and tower that can be granted by the Commission for that parcel through an exception pursuant to the procedures and findings of Section 309(a)(17). In considering such exceptions, the Commission shall consider the extent to which the project achieves the following: (A) sculpts the building massing to

achieve an elegant and creative tower form that enhances the skyline; (B) reduces or minimizes potential impacts on winds and shadows; (C) provides community-serving uses, including neighborhood-oriented retail, arts, social services or public-serving uses, particularly on the ground floor; and (D) maximizes housing density within the allowed envelope.

*The Site is located within the 85-X // 120/365-R-2 Height and Bulk District. The Project would construct a 5-story podium reaching a maximum height of 68', with a tower reaching a maximum finished roof height of 365', within the maximum allowable podium and tower height limits as permitted under Section 263.19, with benefit of a Section 309 exception for height.*

*The design of the tower features a prominent, angled shape, with each facade of the tower inset in the center (through sequentially receded window lines), such that each face of the tower presents two distinct faces. The result is a tower form that is visually distinctive from, yet also compatible with nearby towers. The tower's design results in reduced wind and shadow impacts. Further, the Project includes neighborhood-oriented retail uses on the ground floor, as well as a community-serving school use with active uses at street level. Finally, the Project maximizes residential density on the Site with 345 dwelling units located within the tower.*

Conclusion

*The exception for height is therefore warranted as the Project achieves all four of the required criteria for granting additional height on parcels within the Van Ness & Market Residential Use District.*

- G. **Bulk (Section 270).** In the R-2 Bulk District and within the Van Ness & Market Residential Special Use District, there are no bulk limitations below the podium height, and structures above the podium height shall meet the bulk limitations in Section 270(e)(2)(A-E). To ensure tower sculpting, the gross floor area of the top one-third of the height of the tower shall be reduced by not less than 10 percent from the maximum floor plates and the average diagonal of the top one-third by not less than 13% from the average diagonal of the tower, unless the overall volume is reduced by an equal or greater volume.

In the R-2 bulk district, the Commission may grant bulk exceptions through the procedures and findings of Section 309(a)(17) to increase the allowed bulk of buildings up to the limits described in subsections (A) – (D) below. The procedures for granting exceptions to bulk limits described in Section 272 shall not apply.

(A) Towers up to 350 feet in height may not exceed an average floor area of 10,000 square feet.

(B) Towers taller than 350 feet may not exceed an average floor area of 12,000 square feet, maximum plan length of 150 feet, and maximum diagonal dimension of 190 feet.

(C) Towers taller than 550 feet in height districts of 590 feet and greater may not exceed an average floor area of 18,500 square feet between a podium height of 140 feet and 170 feet. Building mass above 140 feet shall be set back at least 10 feet from the property line for a minimum of 90% of all street frontages.

(D) Exceptions to the tower sculpting requirements may be considered up to the limits as follows:

- (i) For towers less than 400 feet, the provision may be fully waived.
- (ii) For Towers taller than 400 feet in height, at least one-quarter of the tower's floors shall be reduced by not less than 9% from the maximum floor areas described in (2)(B) above.
- (iii) For towers between 500 and 550 feet in height, the average diagonal of the upper one-third of the height of the tower shall be reduced by not less than 5% of maximum diagonal dimension described in subsection (e).

In considering such exceptions, the Commission shall consider the extent to which the project achieves the following: (A) sculpts the building massing to achieve an elegant and creative tower form that enhances the skyline; (B) reduces or minimizes potential impacts on winds and shadows; (C) provides community-serving uses, including neighborhood-oriented retail, arts, social services or public-serving uses, particularly on the ground floor; and (D) maximizes housing density within the allowed envelope.

*The Project's tower includes an average floor area of approximately 11,577 sf, while the maximum plan length is 130' and the maximum diagonal dimension is 170'3.5", all of which are within the limits established by Code. However, the gross floor area of the top one-third of the height of the tower is only reduced by approximately 5 percent from the maximum floor plates, where a ten percent reduction is required by Code. Further, the average diagonal of the top one-third of the tower is not reduced where a 13 percent reduction is required by Code.*

*The design of the tower features a prominent, angled shape, with each facade of the tower inset in the center (through sequentially receded window lines), such that each face of the tower presents two distinct faces. The result is a tower form that is visually distinctive from, yet also compatible with nearby towers. The tower's design results in reduced wind and shadow impacts. Further, the Project includes neighborhood-oriented retail uses on the ground floor, as well as a community-serving school use with active uses at street level. Finally, the Project maximizes residential density on the Site with 345 dwelling units located within the tower.*

#### Conclusion

*The exception for bulk is therefore warranted as the Project achieves all four of the required criteria for granting bulk exceptions on parcels within the Van Ness & Market Residential Use District.*

8. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan, the Downtown Area Plan, and the Market and Octavia Plan Area Plan as follows:

## **GENERAL PLAN: HOUSING ELEMENT**

### **OBJECTIVE 1**

IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

#### **Policy 1.1**

Plan for the full range of housing needs in the City and County of San Francisco, especially affordable housing.

#### **Policy 1.8**

Promote mixed use development, and include housing, particularly permanently affordable housing, in new commercial, institutional or other single use development projects.

#### **Policy 1.10**

Support new housing projects, especially affordable housing, where households can easily rely on public transportation, walking and bicycling for the majority of daily trips.

### **OBJECTIVE 4**

FOSTER A HOUSING STOCK THAT MEETS THE NEEDS OF ALL RESIDENTS ACROSS LIFECYCLES.

#### **Policy 4.1**

Develop new housing, and encourage the remodeling of existing housing, for families with children.

#### **Policy 4.5**

Ensure that new permanently affordable housing is located in all of the City's neighborhoods, and encourage integrated neighborhoods, with a diversity of unit types provided at a range of income levels.

### **OBJECTIVE 5**

ENSURE THAT ALL RESIDENTS HAVE EQUAL ACCESS TO AVAILABLE UNITS.

#### **Policy 5.4**

Provide a range of unit types for all segments of need, and work to move residents between unit types as their needs change.

### **OBJECTIVE 11**

SUPPORT AND RESPECT THE DIVERSE AND DISTINCT CHARACTER OF SAN FRANCISCO'S NEIGHBORHOODS.



**Policy 11.1**

Promote the construction and rehabilitation of well-designed housing that emphasizes beauty, flexibility, and innovative design, and respects existing neighborhood character.

**Policy 11.2**

Ensure implementation of accepted design standards in project approvals.

**Policy 11.3**

Ensure growth is accommodated without substantially and adversely impacting existing residential neighborhood character.

**Policy 11.4**

Continue to utilize zoning districts which conform to a generalized residential land use and density plan and the General Plan.

**Policy 11.6**

Foster a sense of community through architectural design, using features that promote community interaction.

**Policy 11.8**

Consider a neighborhood's character when integrating new uses, and minimize disruption caused by expansion of institutions into residential areas.

**OBJECTIVE 12**

BALANCE HOUSING GROWTH WITH ADEQUATE INFRASTRUCTURE THAT SERVES THE CITY'S GROWING POPULATION.

**Policy 12.1**

Encourage new housing that relies on transit use and environmentally sustainable patterns of movement.

**Policy 12.2**

Consider the proximity of quality of life elements, such as open space, child care, and neighborhood services, when developing new housing units.

**Policy 12.3**

Ensure new housing is sustainably supported by the City's public infrastructure systems.

**OBJECTIVE 13**

PRIORITIZE SUSTAINABLE DEVELOPMENT IN PLANNING FOR AND CONSTRUCTING NEW HOUSING.

**Policy 13.1**

Support "smart" regional growth that located new housing close to jobs and transit.

**Policy 13.3**

Promote sustainable land use patterns that integrate housing with transportation in order to increase transit, pedestrian, and bicycle mode share.

*The Project would develop a mixed-use school and residential tower development on an existing surface parking lot located near two of the City's most utilized streets (Market Street and Van Ness Avenue), furthering numerous policies that support a vision for "The Hub" as a vibrant, new mixed-use neighborhood. One of the overarching goals of the Market Octavia Plan Amendment is to concentrate additional growth where it is most responsible and productive to do so — maximizing residential density and on-site affordable housing near public transit service.*

*This Project implements the vision of the Market and Octavia Area Plan through the construction of 345 dwelling units with 20% provided as on-site affordable units, approximately 84,815 gross square feet of school use, and ground floor retail. The Project would add a significant amount of housing to a site that is currently undeveloped, well-served by existing and future transit, and is within walking distance of substantial goods and services. Future residents can walk, bike, or access BART, MUNI, or regional bus service from the Site, furthering access for all residents at all income levels.*

**GENERAL PLAN: URBAN DESIGN ELEMENT**

**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 1.3**

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

**Policy 1.7**

Recognize the natural boundaries of districts, and promote connections between districts.

**OBJECTIVE 3**

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

**Policy 3.1**

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

**Policy 3.3**

Promote efforts to achieve high quality of design for buildings to be constructed at prominent locations.

*The Project would develop a mixed-use school and residential tower development on an existing surface parking lot located near two of the City's most utilized streets (Market Street and Van Ness Avenue), furthering numerous policies that support a vision for "The Hub" as a vibrant, new mixed-use neighborhood.*

*This Project implements the vision of the Downtown Area Plan, the Van Ness & Market Residential Use District, and "the Hub" as it is specifically designed to contribute a distinctive, and complementary massing to the city's skyline as shaped by the cluster of new high-rise buildings in "the Hub," as well as contribute to a vibrant street level experience.*

## **GENERAL PLAN: TRANSPORTATION**

### **OBJECTIVE 1**

MEET THE NEEDS OF ALL RESIDENTS AND VISITORS FOR SAFE, CONVENIENT, AND INEXPENSIVE TRAVEL WITHIN SAN FRANCISCO AND BETWEEN THE CITY AND OTHER PARTS OF THE REGION WHILE MAINTAINING THE HIGH QUALITY LIVING ENVIRONMENT OF THE BAY AREA.

#### **Policy 1.2**

Ensure the safety and comfort of pedestrians throughout the city.

#### **Policy 1.3**

Give priority to public transit and other alternatives to the private automobile as the means of meeting San Francisco's transportation needs particularly those of commuters.

#### **Policy 1.6**

Ensure choices among modes of travel and accommodate each mode when and where it is most appropriate.

### **OBJECTIVE 2**

USE THE EXISTING TRANSPORTATION INFRASTRUCTURE 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 would develop a mixed-use school and residential tower development on an existing surface parking lot located near two of the City's most utilized streets (Market Street and Van Ness Avenue), and is well-served by existing and future transit, and is within walking distance of substantial goods and services. Future residents can walk, bike, or access BART, MUNI, or regional bus service from the Site. The Project is designed to contribute a distinctive, and complementary streetscape along with others in the cluster of new high-rise buildings in "the Hub," to better contribute to a vibrant street level experience.*

## **DOWNTOWN AREA PLAN**

### **OBJECTIVE 7**

EXPAND THE SUPPLY OF HOUSING IN AND ADJACENT TO DOWNTOWN.

#### **Policy 7.1**

Promote the inclusion of housing in downtown commercial developments.

#### **Policy 7.2**

Facilitate conversion of underused industrial and commercial areas to residential use.

### **OBJECTIVE 13**

CREATE AN URBAN FORM FOR DOWNTOWN THAT ENHANCES SAN FRANCISCO'S STATURE AS ONE OF THE WORLD'S MOST VISUALLY ATTRACTIVE CITIES.

#### **Policy 13.1**

Relate the height of buildings to important attributes of the city pattern and to the height and character of existing and proposed development.

*The Project would develop a mixed-use school and residential tower development on an existing surface parking lot located near two of the City's most utilized streets (Market Street and Van Ness Avenue), furthering numerous policies that support a vision for "The Hub" as a vibrant, new mixed-use neighborhood.*

*This Project implements the vision of the Downtown Area Plan through the construction of 345 dwelling units with 20% provided as on-site affordable units, approximately 84,815 gross square feet of school use, and ground floor retail. The Project would add a significant amount of housing to a site that is currently undeveloped, well-served by existing and future transit, and is within walking distance of substantial goods and services. Future residents can walk, bike, or access BART, MUNI, or regional bus service from the Site. The Project is designed to contribute a distinctive, and complementary massing to the city's skyline as shaped by the cluster of new high-rise buildings in "the Hub," as well as contribute to a vibrant street level experience.*

## **MARKET AND OCTAVIA AREA PLAN**

### **OBJECTIVE 1.1**

CREATE A LAND USE PLAN THAT EMBRACES THE MARKET AND OCTAVIA NEIGHBORHOOD'S POTENTIAL AS A SUSTAINABLE MIXED-USE URBAN NEIGHBORHOOD.

#### **Policy 1.1.2**

Concentrate more intense uses and activities in those areas best served by transit and most accessible on foot.



**Policy 1.1.5**

Reinforce the importance of Market Street as the city's cultural and ceremonial spine.

**Policy 1.1.8**

Reinforce continuous retail activities on Market, Church, and Hayes Streets, as well as on Van Ness Avenue.

**OBJECTIVE 1.2**

ENCOURAGE URBAN FORM THAT REINFORCES THE PLAN AREA'S UNIQUE PLACE IN THE CITY'S LARGER URBAN FORM AND STRENGTHENS ITS PHYSICAL FABRIC AND CHARACTER.

**Policy 1.2.2**

Maximize housing opportunities and encourage high-quality commercial spaces on the ground floor.

**Policy 1.2.5**

Mark the intersection of Van Ness Avenue and Market Street as a visual landmark.

**Policy 1.2.7**

Encourage new mixed-use infill on Market Street with a scale and stature appropriate for the varying conditions along its length.

**OBJECTIVE 2.2**

ENCOURAGE CONSTRUCTION OF RESIDENTIAL INFILL THROUGHOUT THE PLAN AREA.

**Policy 2.2.2**

Ensure a mix of unit sizes is built in new development and is maintained in existing housing stock.

**Policy 2.2.4**

Encourage new housing above ground-floor commercial uses in new development and in expansion of existing commercial buildings.

**Policy 2.2.7**

Without rendering new projects infeasible, increase affordable housing or other requirements on market rate residential and commercial development projects to provide additional affordable housing.

**OBJECTIVE 3.1**

ENCOURAGE NEW BUILDINGS THAT CONTRIBUTE TO THE BEAUTY OF THE BUILT ENVIRONMENT AND THE QUALITY OF STREETS AS PUBLIC SPACE.

**Policy 3.1.1**

Ensure that new development adheres to principles of good urban design.

**OBJECTIVE 4.3**

REINFORCE THE SIGNIFICANCE OF THE MARKET STREET STREETSCAPE AND CELEBRATE ITS PROMINENCE AS SAN FRANCISCO'S SYMBOLIC "MAIN STREET."

**Policy 4.3.3**

Mark the intersections of Market Street with Van Ness Avenue, Octavia Boulevard, and Dolores Street with streetscape elements that celebrate their particular significance.

*The Project would develop a mixed-use school and residential tower development on an existing surface parking lot located near two of the City's most utilized streets (Market Street and Van Ness Avenue), furthering numerous policies that support a vision for "The Hub" as a vibrant, new mixed-use neighborhood. One of the overarching goals of the Market Octavia Plan Amendment is to concentrate additional growth where it is most responsible and productive to do so — maximizing residential density and on-site affordable housing near public transit service. The increase in development, in turn, will provide additional revenue for the necessary improvements and infrastructure within the Van Ness & Market Residential Use District.*

*This Project implements the vision of the Market and Octavia Area Plan through the construction of 345 dwelling units with 20% provided as on-site affordable units, approximately 84,815 gross square feet of school use, and ground floor retail. The Project would add a significant amount of housing to a site that is currently undeveloped, well-served by existing and future transit, and is within walking distance of substantial goods and services. Future residents can walk, bike, or access BART, MUNI, or regional bus service from the Site. The Project is designed to contribute a distinctive, and complementary massing to the city's skyline as shaped by the cluster of new high-rise buildings in the Hub, as well as contribute to a vibrant street level experience.*

9. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project complies with said policies in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

*The Project would have a positive effect on existing neighborhood-serving retail uses because it would bring additional residents to the neighborhood, thus increasing the customer base of existing neighborhood-serving retail. The Project will provide employment opportunities with the addition of retail uses at the ground level and school uses within the podium.*

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

*The Project would not negatively affect the existing housing and neighborhood character. The Site is currently used as a surface parking lot. The Project's unique mixed-use program provides amenities to*

*visitors and residents, and contributes significantly to the neighborhood character envisioned by the Market and Octavia Area Plan.*

- C. That the City's supply of affordable housing be preserved and enhanced,

*The Project would not displace any housing given the Site contains only non-residential, automotive parking uses. The Project would improve the existing character of the neighborhood by developing a high-density, mixed-use building containing 345 dwelling units, including the provision of no less than 20 percent of units (or 69 units) as on-site inclusionary affordable units.*

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

*The Project would not impede MUNI transit service or overburden local streets or parking. The Project is located in one of the most transit-rich environs in the city and would therefore promote rather than impede the use of MUNI transit service. Future residents and employees of the Project could access both the existing MUNI rail and bus services. The Project also provides a nominal amount of off-street parking for future residents so that neighborhood parking will not be overburdened by the addition of new residents.*

- E. 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 mixed-use Project would not negatively affect the industrial and service sectors, nor would it displace any existing industrial uses. The Project would also be consistent with the character of existing development in the neighborhood, which is characterized by neighborhood-serving ground floor retail within residential high-rise buildings, as well as a number of longstanding institutional and public uses.*

- F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

*The Project will be designed and will be constructed to conform to the structural and seismic safety requirements of the Building Code. This proposal will not impact the property's ability to withstand an earthquake.*

- G. That landmarks and historic buildings be preserved.

*Currently, the Site does not contain any City Landmarks or historic buildings.*

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

*A Shadow Study indicated the Project may cast a shadow on the following four (4) properties under the jurisdiction of the San Francisco Recreation and Park Department: Koshland Community Park; Patricia's Green; Page & Laguna Mini Park; and the future 11<sup>th</sup>/Natoma park site. However, based upon the amount and duration of new shadow and the importance of sunlight to each of the open spaces analyzed, the Project would not substantially affect, in an adverse manner, the use or enjoyment of these open spaces beyond what was analyzed and disclosed in the Hub Plan FEIR. The Project would not otherwise shadow public plazas and other publicly-accessible spaces other than those protected under Section 295.*

10. **First Source Hiring.** The Project is subject to the requirements of the First Source Hiring Program as they apply to permits for residential development (Administrative Code Section 83.11), and the Project Sponsor shall comply with the requirements of this Program as to all construction work and on-going employment required for the Project. Prior to the issuance of any building permit to construct or a First Addendum to the Site Permit, the Project Sponsor shall have a First Source Hiring Construction and Employment Program approved by the First Source Hiring Administrator, and evidenced in writing. In the event that both the Director of Planning and the First Source Hiring Administrator agree, the approval of the Employment Program may be delayed as needed.

*The Project Sponsor submitted a First Source Hiring Affidavit and prior to issuance of a building permit will execute a First Source Hiring Memorandum of Understanding and a First Source Hiring Agreement with the City's First Source Hiring Administration.*

11. The 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 contribute to the character and stability of the neighborhood and would constitute a beneficial development.
12. The Commission hereby finds that approval of the Downtown Project Authorization would promote the health, safety and welfare of the City.



## **DECISION**

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Downtown Project Authorization Application No. 2016-014802DNX** subject to the following conditions attached hereto as “EXHIBIT A” in general conformance with plans on file, dated May 11 2020, and stamped “EXHIBIT B”, which is incorporated herein by reference as though fully set forth.

The Commission hereby adopts the MMRP attached hereto as “EXHIBIT C” and incorporated herein as part of this Motion by this reference thereto. All required improvement and mitigation measures identified in the Hub Plan FEIR and contained in the MMRP are included as Conditions of Approval.

**APPEAL AND EFFECTIVE DATE OF MOTION:** Any aggrieved person may appeal this Section 309 Downtown Project Authorization to the Board of Appeals within fifteen (15) days after the date of this Motion. The effective date of this Motion shall be the later of (a) the effective date of the ordinances approving the amendments to the Planning Code and General Plan required to conform the Project as shown in “EXHIBIT B” to the Planning Code and General Plan (if this Authorization is not appealed to the Board of Appeals), or (b) the date of the decision of the Board of Appeals if appealed to the Board of Appeals. Any appeal shall be made to the Board of Appeals, unless an associated entitlement is appealed to the Board of Supervisors, in which case the appeal of this Motion shall also be made to the Board of Supervisors (see Charter Section 4.135). For further information, please contact the Board of Appeals at (415) 575-6880, 1660 Mission, Room 3036, San Francisco, CA 94103, or the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

**Protest of Fee or Exaction:** You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development.

If the City has not previously given Notice of an earlier discretionary approval of the project, the Commission’s adoption of this Motion constitutes the approval or conditional approval of the development and the City hereby gives **NOTICE** that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not re-commence the 90-day approval period.

I hereby certify that the Commission ADOPTED the foregoing Motion on May 28, 2020.

A handwritten signature in blue ink, appearing to read 'Jonas P. Ionin'.

Jonas P. Ionin  
Commission Secretary

AYES: Koppel, Moore, Fung, Johnson, Imperial, Diamond, Chan

NAYS: None

ABSENT: None

ADOPTED: May 28, 2020

## **EXHIBIT A**

### **AUTHORIZATION**

This authorization is for a **Downtown Project Authorization and Request for Exceptions** relating to a Project that would allow for the construction of mixed-use building up to 365-feet tall (396 feet, 8 inches inclusive of rooftop mechanical features) with a total gross floor area of approximately 449,406 gross square feet, including 345 dwelling units, approximately 84,815 gross square feet of school use, and approximately 3,229 gross square feet of retail uses located at 98 Franklin Street, within Assessor's Block 0836, Lots 008, 009, 013, pursuant to Planning Code Sections 135, 136, 140, 148, 210.2, 249.33, 263.19, 270 and 309 within the C-3-G (Downtown General Commercial) Zoning District and 85-X // 120/365-R-2 Height and Bulk District, in general conformance with plans, dated May 11, 2020, and stamped "EXHIBIT B" included in the docket for Record No. **2016-014802DNX** and subject to conditions of approval reviewed and approved by the Commission on **May 28, 2020** under Motion No. **20728**. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

### **RECORDATION OF CONDITIONS OF APPROVAL**

Prior to the issuance of the building permit or commencement of use for 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 for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Commission on **May 28, 2020** under Motion No. **20728**.

### **PRINTING OF CONDITIONS OF APPROVAL ON PLANS**

The conditions of approval under the "EXHIBIT A" of this Commission Motion No. **20728** shall be reproduced on the Index Sheet of construction plans submitted with the site or building permit application for the Project. The Index Sheet of the construction plans shall reference to the Downtown Project Authorization and Request for Exceptions and any subsequent amendments or modifications.

### **SEVERABILITY**

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

### **CHANGES AND MODIFICATIONS**

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Commission approval of a new Conditional Use authorization.

## Conditions of Approval, Compliance, Monitoring, and Reporting PERFORMANCE

1. **Validity.** The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. The Department of Building Inspection shall have issued a Building Permit or Site Permit to construct the project and/or commence the approved use within this three-year period, unless an extension is granted by the Zoning Administrator as described below. .

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

2. **Expiration and Renewal.** Should a Building or Site Permit be sought after the three (3) year period has lapsed, the project sponsor must seek a renewal of this Authorization by filing an application for an amendment to the original Authorization or a new application for Authorization. Should the project sponsor decline to so file, and decline to withdraw the permit application, the Commission shall conduct a public hearing in order to consider the revocation of the Authorization. Should the Commission not revoke the Authorization following the closure of the public hearing, the Commission shall determine the extension of time for the continued validity of the Authorization.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

3. **Diligent Pursuit.** Once a site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. Failure to do so shall be grounds for the Commission to consider revoking the approval if more than three (3) years have passed since this Authorization was approved.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

4. **Extension.** All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where implementation of the project is delayed by an Act of God (such as pandemic or earthquake), a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

5. **Conformity with Current Law.** No application for Building Permit, Site Permit, or other entitlement shall be approved unless it complies with all applicable provisions of City Codes in effect at the time of such approval.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*



6. **Additional Project Authorization.** The Project Sponsor must obtain approval of an Ordinance amending the General Plan to amend the Market and Octavia Plan; an Ordinance amending the Planning Code to update the Market and Octavia Area Plan; and an Ordinance amending the Zoning Map to change the height and bulk classifications on the Project site. The Project Sponsor also requires the adoption of shadow findings, pursuant to Section 295.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

7. **Mitigation Measures.** Mitigation measures described in the MMRP attached as “EXHIBIT C” are necessary to avoid potential significant effects of the proposed project and have been agreed to by the project sponsor. Their implementation is a condition of project approval.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

## ENTERTAINMENT COMMISSION – NOISE ATTENUATION CONDITIONS

8. **Chapter 116 Residential Projects.** The Project Sponsor shall comply with the “Recommended Noise Attenuation Conditions for Chapter 116 Residential Projects,” which were recommended by the Entertainment Commission on February 21, 2020. These conditions state:

- A. **Community Outreach.** Project Sponsor shall include in its community outreach process any businesses located within 300 feet of the proposed project that operate between the hours of 9PM-5AM. Notice shall be made in person, written or electronic form (email).

- B. **Sound Study.** Project sponsor shall conduct an acoustical sound study, which shall include sound readings taken when performances are taking place at the proximate Places of Entertainment, as well as when patrons arrive and leave these locations at closing time. Readings should be taken at locations that most accurately capture sound from the Place of Entertainment to best of their ability. Any recommendation(s) in the sound study regarding window glaze ratings and soundproofing materials including but not limited to walls, doors, roofing, etc. shall be given highest consideration by the project sponsor when designing and building the project.

- C. **Design Considerations.**

- i. During design phase, project sponsor shall consider the entrance and egress location and paths of travel at the Place(s) of Entertainment in designing the location of (a) any entrance/egress for the residential building and (b) any parking garage in the building.
- ii. In designing doors, windows, and other openings for the residential building, project sponsor should consider the POE’s operations and noise during all hours of the day and night.
- iii. During the design phase, project sponsor shall consider an outdoor lighting plan at the development site to protect residents as well as patrons of surrounding Places of Entertainment.

- D. **Construction Impacts.** Project sponsor shall communicate with adjacent or nearby Place(s) of Entertainment as to the construction schedule, daytime and nighttime, and consider how this schedule and any storage of construction materials may impact the POE operations.
- E. **Communication.** Project Sponsor shall make a cell phone number available to Place(s) of Entertainment management during all phases of development through construction. In addition, a line of communication should be created to ongoing building management throughout the occupation phase and beyond.

## DESIGN – COMPLIANCE AT PLAN STAGE

9. **Final Materials.** The Project Sponsor shall continue to work with Department staff on the building design. Final materials, glazing, color, texture, landscaping, and detailing shall be subject to Department staff review and approval. The architectural addenda shall be reviewed and approved by the Department prior to issuance.  
*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*
10. **Garbage, Composting and Recycling Storage.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and clearly labeled and illustrated on the building permit plans. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.  
*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*
11. **Rooftop Mechanical Equipment.** Pursuant to Planning Code 141, the Project Sponsor shall submit a roof plan to the Department prior to Planning approval of the building permit application. Rooftop mechanical equipment, if any is proposed as part of the Project, is required to be screened so as not to be visible from any point at or below the roof level of the subject building.  
*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*
12. **Streetscape Plan.** Pursuant to Planning Code Section 138.1, the Project Sponsor shall continue to work with Department staff, in consultation with other City agencies, to refine the design and programming of the Streetscape Plan so that the plan generally meets the standards of the Better Streets Plan and all applicable City standards. The Project Sponsor shall complete final design of all required street improvements, prior to issuance of first architectural addenda, and shall complete construction of all required street improvements prior to issuance of first temporary certificate of occupancy. Contingent upon approval of an in-kind agreement crediting the amount owed by the Project under the Market and Octavia Community Infrastructure Fee for the full cost of the improvements, the Project Sponsor may implement streetscape improvements on Lily Street

between Gough and Franklin Streets, conceptual plans for which are included in "EXHIBIT B"; however, improvements on Lily Street are not required pursuant to Section 138.1.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

13. **Signage.** The Project Sponsor shall develop a signage program for the Project which shall be subject to review and approval by Department staff before the Department approves the architectural addendum of the Site Permit for the Project. All subsequent sign permits shall conform to the approved signage program. Once approved by the Department, the signage program/plan information shall be submitted and approved as part of the site permit for the Project. All exterior signage shall be designed to complement, not compete with, the existing architectural character and architectural features of the building.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

14. **Transformer Vault Location.** The location of individual project PG&E Transformer Vault installations has significant effects to San Francisco streetscapes when improperly located. However, they may not have any impact if they are installed in preferred locations. Final detail regarding PG&E Transformer Vault location for the Project shall adhere to the Memorandum of Understanding regarding Electrical Transformer Locations for Private Development Projects between Public Works and the Department dated January 2, 2019.

*For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org>*

15. **Noise.** Plans submitted with the building permit application for the approved project shall incorporate acoustical insulation and other sound proofing measures to control noise.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

16. **Odor Control Unit.** In order to ensure any significant noxious or offensive odors are prevented from escaping the premises once the project is operational, the building permit application to implement the project shall include air cleaning or odor control equipment details and manufacturer specifications on the plans. Odor control ducting shall not be applied to the primary façade of the building.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

## PARKING AND TRAFFIC

17. **Transportation Demand Management (TDM) Program.** Pursuant to Planning Code Section 169, the Project shall finalize a TDM Plan prior to the issuance of the first Building Permit or Site Permit to construct the project and/or commence the approved uses. The Property Owner, and all successors, shall ensure ongoing compliance with the TDM Program for the life of the Project,

which may include providing a TDM Coordinator, providing access to City staff for site inspections, submitting appropriate documentation, paying application fees associated with required monitoring and reporting, and other actions.

Prior to the issuance of the first Building Permit or Site Permit, 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 for the subject property to document compliance with the TDM Program. This Notice shall provide the finalized TDM Plan for the Project, including the relevant details associated with each TDM measure included in the Plan, as well as associated monitoring, reporting, and compliance requirements.

*For information about compliance, contact the TDM Performance Manager at [tdm@sfgov.org](mailto:tdm@sfgov.org) or 415-558-6377, [www.sf-planning.org](http://www.sf-planning.org).*

18. **Driveway Operations and Loading Plan.** The Project must prepare and submit a Driveway Operations and Loading Plan (DLOP) in accordance with Planning Code Section 155(u). The DLOP must be submitted prior to issuance of the first site or building permit.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org).*

19. **Parking for Affordable Units.** All off-street parking spaces shall be made available to Project residents only as a separate “add-on” option for purchase or rent and shall not be bundled with any Project dwelling unit for the life of the dwelling units. The required parking spaces may be made available to residents within a quarter mile of the project. All affordable dwelling units pursuant to Planning Code Section 415 shall have equal access to use of the parking as the market rate units, with parking spaces priced commensurate with the affordability of the dwelling unit. Each unit within the Project shall have the first right of refusal to rent or purchase a parking space until the number of residential parking spaces are no longer available. No conditions may be placed on the purchase or rental of dwelling units, nor may homeowner’s rules be established, which prevent or preclude the separation of parking spaces from dwelling units.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

20. **Car Share.** Pursuant to Planning Code Section 166, no fewer than **three (3)** car share space shall be made available, at no cost, to a certified car share organization for the purposes of providing car share services for its service subscribers.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

21. **Bicycle Parking** Pursuant to Planning Code Sections 155, 155.1, and 155.2, the Project shall provide no fewer than **306** Class 1 and **57** Class 2 bicycle parking spaces (**162** Class 1 and **17** Class 2 spaces for the residential portion of the Project and **144** Class 1 and **36** Class 2 spaces for the school portion of the Project and **four** Class 2 spaces for the retail portion of the Project, or other number of Class

1 and Class 2 spaces in compliance with Planning Code Section 155.3). SFMTA has final authority on the type, placement and number of Class 2 bicycle racks within the public ROW. Prior to issuance of first architectural addenda, the project sponsor shall contact the SFMTA Bike Parking Program at [bikeparking@sfmta.com](mailto:bikeparking@sfmta.com) to coordinate the installation of on-street bicycle racks and ensure that the proposed bicycle racks meet the SFMTA's bicycle parking guidelines. Depending on local site conditions and anticipated demand, SFMTA may request the project sponsor pay an in-lieu fee for Class II bike racks required by the Planning Code.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

22. **Showers and Clothes Lockers.** Pursuant to Planning Code Section 155.3, the Project shall provide no fewer than 4 showers and 24 clothes lockers.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org).*

23. **Parking Maximum.** Pursuant to Planning Code Section 151.1, the Project shall provide no more than 111 off-street parking spaces (not including car share spaces).

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

24. **Off-Street Loading.** Pursuant to Planning Code Section 152, the Project will provide 3 off-street loading spaces (1 freight loading spaces and 2 service vehicle spaces), or another number of off-street loading spaces meeting the requirements of Section 152.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

25. **Managing Traffic During Construction.** The Project Sponsor and construction contractor(s) shall coordinate with the Traffic Engineering and Transit Divisions of the San Francisco Municipal Transportation Agency (SFMTA), the Police Department, the Fire Department, the Department, and other construction contractor(s) for any concurrent nearby Projects to manage traffic congestion and pedestrian circulation effects during construction of the Project.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

## PROVISIONS

26. **Anti-Discriminatory Housing.** The Project shall adhere to the requirements of the Anti-Discriminatory Housing policy, pursuant to Administrative Code Section 1.61.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

27. **First Source Hiring.** The Project shall adhere to the requirements of the First Source Hiring Construction and End-Use Employment Program approved by the First Source Hiring



Administrator, pursuant to Section 83.4(m) of the Administrative Code. The Project Sponsor shall comply with the requirements of this Program regarding construction work and on-going employment required for the Project.

*For information about compliance, contact the First Source Hiring Manager at 415-581-2335, [www.onestopSF.org](http://www.onestopSF.org)*

28. **Transportation Sustainability Fee.** The Project is subject to the Transportation Sustainability Fee (TSF), as applicable, pursuant to Planning Code Section 411A.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

29. **Jobs-Housing Linkage.** The Project is subject to the Jobs Housing Linkage Fee, as applicable, pursuant to Planning Code Section 413.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

30. **Residential Child Care Impact Fee.** The Project is subject to the Residential Child Care Fee, as applicable, pursuant to Planning Code Section 414A.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

31. **Inclusionary Affordable Housing Program.** Pursuant to Planning Code Section 415

**Affordable Units.** The following Inclusionary Affordable Housing Requirements are those in effect at the time of Commission action. In the event that the requirements change, the Project Sponsor shall comply with the requirements in place at the time of issuance of first construction document.

- A. **Number of Required Units.** Pursuant to Planning Code Section 415.3, the Project is required to comply with the in-lieu fee requirement set forth in Section 415.5, the on-site requirement set forth in Section 415.6 or the off-site requirement in Section 415.7. The Project contains 345 rental dwelling units and has elected to comply by providing on-site affordable units pursuant to Section 415.6, as modified by the Van Ness & Market Residential Special Use District provision regarding income levels set forth in Section 249.33(b)(15); therefore, the Project will include 20% of dwelling units (69 dwelling units) affordable to households with 50% Average Median Income. If the number of market-rate units change, the number of required affordable units shall be modified accordingly with written approval from Department staff in consultation with the Mayor's Office of Housing and Community Development ("MOHCD"). If the Project Sponsor elects to provide affordable dwelling units in excess of the 20% of dwelling units described above, those additional affordable dwelling units would not be subject to the requirements and standards of Code Section 415.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing and Community Development at 415-701-5500, [www.sf-moh.org](http://www.sf-moh.org).*

- B. **Notice of Special Restrictions.** The affordable units required pursuant to this condition shall be shown on a reduced set of plans recorded as a Notice of Special Restrictions on the property prior to architectural addenda. The designation shall comply with the designation standards published by the Department and updated periodically.  
*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing and Community Development at 415-701-5500, [www.sf-moh.org](http://www.sf-moh.org).*
- C. **Duration.** Under Planning Code Section 415.8, all units constructed pursuant to Section 415.6, must remain affordable to qualifying households for the life of the project.  
*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing and Community Development at 415-701-5500, [www.sf-moh.org](http://www.sf-moh.org).*
- D. **Expiration of the Inclusionary Rate.** Pursuant to Planning Code Section 415.6(a)(10), if the Project has not obtained a site or building permit within 30 months of Commission Approval of this Motion No. 20728, then it is subject to the Inclusionary Affordable Housing Requirements in effect at the time of site or building permit issuance.  
*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing and Community Development at 415-701-5500, [www.sf-moh.org](http://www.sf-moh.org).*
- E. **Reduction of On-Site Units after Project Approval.** Pursuant to Planning Code Section 415.5(g)(3), any changes by the project sponsor which result in the reduction of the number of on-site affordable units shall require public notice for hearing and approval from the Commission.  
*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing and Community Development at 415-701-5500, [www.sf-moh.org](http://www.sf-moh.org).*
- F. **Other Conditions.** The Project is subject to the requirements of the Inclusionary Affordable Housing Program under Section 415 et seq. of the Planning Code, and City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual ("Procedures Manual"). The Procedures Manual, as amended from time to time, is incorporated herein by reference, as published and adopted by the Commission, and as required by Planning Code Section 415. Terms used in these conditions of approval and not otherwise defined shall have the meanings set forth in the Procedures Manual. A copy of the Procedures Manual can be obtained at the MOHCD at 1 South Van Ness Avenue or on the Department or MOHCD websites, including on the internet at: <http://sf-planning.org/Modules/ShowDocument.aspx?documentid=4451>. As provided in the

Inclusionary Affordable Housing Program, the applicable Procedures Manual is the manual in effect at the time the subject units are made available for sale.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing and Community Development at 415-701-5500, [www.sf-moh.org](http://www.sf-moh.org).*

- i. The affordable unit(s) required pursuant to this condition shall be designated on the building plans prior to the issuance of the first construction permit by the Department of Building Inspection ("DBI"). The affordable unit(s) shall (1) be constructed, completed, ready for occupancy and marketed no later than the market rate units, and (2) be distributed throughout the building in accordance with the requirements of the Planning Code; and (3) be of comparable overall quality, construction and exterior appearance as the market rate units in the principal project. The interior features in affordable units should be generally the same as those of the market units in the principal project, but need not be the same make, model or type of such item as long they are of good and new quality and are consistent with then-current standards for new housing. Other specific standards for on-site units are outlined in the Procedures Manual.
- ii. The Project Sponsor is responsible for following the marketing, reporting, and monitoring requirements and procedures as set forth in the Procedures Manual. MOHCD shall be responsible for overseeing and monitoring the marketing of affordable units. The Project Sponsor must contact MOHCD at least six months prior to the beginning of marketing for any unit in the building.
- iii. Required parking spaces shall be made available to initial buyers or renters of affordable units according to the Procedures Manual.
- iv. Prior to the issuance of the first construction permit by DBI for the Project, the Project Sponsor shall record a Notice of Special Restriction on the property that contains these conditions of approval and a reduced set of plans that identify the affordable units satisfying the requirements of this approval. The Project Sponsor shall promptly provide a copy of the recorded Notice of Special Restriction to the Department and to MOHCD or its successor.
- v. If the Project Sponsor fails to comply with the Inclusionary Affordable Housing Program requirement, the Director of DBI shall deny any and all site or building permits or certificates of occupancy for the development project until the Department notifies the Director of compliance. A Project Sponsor's failure to comply with the requirements of Planning Code Section 415 et seq. shall constitute cause for the City to record a lien against the development project and to pursue any and all available remedies at law, including penalties and interest, if applicable.

**32. Market Octavia Affordable Housing Fee.** The Project is subject to the Market and Octavia Affordable Housing Fee, as applicable, pursuant to Planning Code Section 416.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

33. **Market Octavia Community Improvements Fee.** The Project is subject to the Market and Octavia Community Improvements Fee, as applicable, pursuant to Planning Code Section 421.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

34. **Market and Octavia – Van Ness & Market Street Affordable Housing Fee.** The Project is subject to the Market and Octavia – Van Ness & Market Affordable Housing Fee, as applicable, pursuant to Planning Code Section 424.3.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

35. **Art.** The Project is subject to the Public Art Fee, as applicable, pursuant to Planning Code Section 429, unless the Project installs public art generally as described in this Motion and as required below.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

36. **Art Plaques.** Pursuant to Planning Code Section 429(b), the Project Sponsor shall provide a plaque or cornerstone identifying the architect, the artwork creator and the Project completion date in a publicly conspicuous location on the Project Site. The design and content of the plaque shall be approved by Department staff prior to its installation.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

37. **Art.** Pursuant to Planning Code Section 429, the Project Sponsor and the Project artist shall consult with the Department during design development regarding the height, size, and final type of the art. The final art concept shall be submitted for review for consistency with this Motion by, and shall be satisfactory to, the Director of the 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 prior to the submittal of the first building or site permit application

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

38. **Art.** Pursuant to Planning Code Section 429, prior to issuance of any certificate of occupancy, the Project Sponsor shall install the public art generally as described in this Motion and make it available to the public. If the Zoning Administrator concludes that it is not feasible to install the work(s) of art within the time herein specified and the Project Sponsor provides adequate

assurances that such works will be installed in a timely manner, the Zoning Administrator may extend the time for installation for a period of not more than twelve (12) months.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

39. **Art - Residential Projects.** Pursuant to Planning Code Section 429, the Project Sponsor must provide on-site artwork, pay into the Public Artworks Fund, or fulfill the requirement with any combination of on-site artwork or fee payment as long as it equals 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. Payment into the Public Artworks Fund is due prior to issuance of the first construction document.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

## MONITORING - AFTER ENTITLEMENT

40. **Enforcement.** Violation of any of the Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

41. **Monitoring.** The Project requires monitoring of the conditions of approval in this Motion. The Project Sponsor or the subsequent responsible parties for the Project shall pay fees as established under Planning Code Section 351(e) (1) and work with the Department for information about compliance.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

42. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in "EXHIBIT A" of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*



## OPERATION

43. **Eating and Drinking Uses.** As defined in Planning Code Section 202.2, Eating and Drinking Uses, as defined in Section [102](#), shall be subject to the following conditions:

- A. The business operator shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Street and Sidewalk Maintenance Standards. In addition, the operator shall be responsible for daily monitoring of the sidewalk within a one-block radius of the subject business to maintain the sidewalk free of paper or other litter associated with the business during business hours, in accordance with Article 1, Section [34](#) of the San Francisco Police Code.

*For information about compliance, contact the Bureau of Street Use and Mapping, Department of Public Works at 415-554-.5810, <http://sfdpw.org>.*

- B. When located within an enclosed space, the premises shall be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building, and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.

*For information about compliance of fixed mechanical objects such as rooftop air conditioning, restaurant ventilation systems, and motors and compressors with acceptable noise levels, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, [www.sfdph.org](http://www.sfdph.org).*

*For information about compliance with construction noise requirements, contact the Department of Building Inspection at 415-558-6570, [www.sfdbi.org](http://www.sfdbi.org).*

*For information about compliance with the requirements for amplified sound, including music and television, contact the Police Department at 415-553-0123, [www.sf-police.org](http://www.sf-police.org).*

- C. While it is inevitable that some low level of odor may be detectable to nearby residents and passersby, appropriate odor control equipment shall be installed in conformance with the approved plans and maintained to prevent any significant noxious or offensive odors from escaping the premises.

*For information about compliance with odor or other chemical air pollutants standards, contact the Bay Area Air Quality Management District, (BAAQMD), 1-800-334-ODOR (6367), [www.baaqmd.gov](http://www.baaqmd.gov) and Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org).*

- D. Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.

*For information about compliance, contact the Bureau of Street Use and Mapping, Department of Public Works at 415-554-.5810, <http://sfdpw.org>.*

44. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards.

*For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org>*

45. **Community Liaison.** Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator and all registered neighborhood groups for the area with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator and registered neighborhood groups shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

46. **Lighting.** All Project lighting shall be directed onto the Project site and immediately surrounding sidewalk area only, and designed and managed so as not to be a nuisance to adjacent residents. Nighttime lighting shall be the minimum necessary to ensure safety, but shall in no case be directed so as to constitute a nuisance to any surrounding property.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Resolution No. 20709

HEARING DATE: MAY 21, 2020

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*Project Name:* **Market and Octavia Area Plan Amendment: General Plan Amendments**  
*Case Number:* **2015-000940GPA**  
*Initiated by:* **Planning Commission**  
*Staff Contact:* **Lily Langlois, Principal Planner**  
**Lily.Langlois@sfgov.org, 415-575-9083**  
*Reviewed by:* **Joshua Switzky, Land Use and Community Planning Program Manager**  
**Joshua.switzky@sfgov.org, 415-575-6815**

**RESOLUTION ADOPTING A PROPOSED ORDINANCE AMENDING THE SAN FRANCISCO GENERAL PLAN TO AMEND THE MARKET AND OCTAVIA AREA PLAN; MAKING CONFORMING AMENDMENTS TO THE ARTS ELEMENT AND THE HOUSING ELEMENT; AND MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF THE PLANNING CODE SECTION 101.1, AND FINDINGS OF PUBLIC NECESSITY, CONVENIENCE AND GENERAL WELFARE UNDER PLANNING CODE SECTION 340, AND FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.**

WHEREAS, Section 4.105 of the Charter of the City and County of San Francisco mandates that the Planning Commission (hereinafter "Commission") shall periodically recommend to the Board of Supervisors for approval or rejection proposed amendments to the General Plan in response to changing physical, social, economic, environmental or legislative conditions; and

WHEREAS, The Commission, at a duly noticed public hearing on February 13, 2020 and in accordance with Planning Code Section 340(c), initiated the General Plan Amendments for the Market and Octavia Area Plan by Planning Commission Resolution No. 20653.

WHEREAS, this Resolution adopting and recommending that the Board of Supervisors approve the General Plan Amendments is a companion to other legislative approvals relating to the amendments of the Market and Octavia Area Plan, including recommendations that the Board of Supervisors approve Planning Code, Business and Tax Regulations Code, and Zoning Map Amendments.

WHEREAS, in 2008 the City adopted the Market and Octavia Area Plan, including new land use controls, height controls and proposed community improvements. The "Hub" neighborhood (hereinafter "Plan Area") was included within the boundaries of the Market and Octavia Area Plan. The Market and Octavia Area Plan included numerous policies that supported a vision for the Hub as a "vibrant new mixed-use neighborhood," and it also created the Van Ness and Market Downtown Residential Special Use District (SUD). This SUD facilitated the development of a transit-oriented, high-density, mixed-use residential neighborhood around the intersections of Market Street and Van Ness Avenue and Mission Street and South Van Ness Avenue.

WHEREAS, While the Market and Octavia Area Plan established a new framework for development, the San Francisco Planning Department (herein after “Planning Department”) did not receive many major development applications in the Hub neighborhood until 2012 (four years after the plan was adopted) due to the Great Recession.

WHEREAS, In 2016, the Planning Department initiated a community planning process to take a new look at the Hub area holistically and identify opportunities to increase the amount of housing and affordable housing near transit, to develop and coordinate updated designs for the public realm, and to update the Market and Octavia public benefits program and prioritize projects for implementation.

WHEREAS, The Planning Department is seeking to make amendments to the existing Market and Octavia Area Plan and other elements of the General Plan, Planning Code, Business and Tax Regulations Code, Zoning Map, and public benefits document to provide a comprehensive updated set of policies and implementation programming to realize the vision of the Hub area as originally described in the Market and Octavia Area Plan; and

WHEREAS, Amended policies envisioned for the Area Plan are consistent with the existing General Plan. However, there are a minimal number of amendments to the General Plan that are required to further achieve and clarify the vision and goals of the Market and Octavia Area Plan, and generally to update the General Plan to reflect changed physical, social and economic conditions. Proposed amendments to the General Plan, including the amendments to the Market and Octavia Area Plan, are attached hereto as Exhibit III-2. The City Attorney’s Office has reviewed this proposed Ordinance and approved it as to form; and

WHEREAS, On May 21, 2020, after a duly noticed public hearing, the Commission reviewed and considered the Final Environmental Impact Report for the Hub Plan, 30 Van Ness Avenue Project, 98 Franklin Street Project, and Hub Housing Sustainability District (HSD) (“FEIR”) and found the FEIR to be adequate, accurate, and objective, thus reflecting the independent analysis and judgment of the Department and the Commission, and that the summary of comments and responses contained no significant revisions to the Draft EIR, and by Motion No. 20707 certified the FEIR for the Hub Plan, 30 Van Ness Avenue Project, 98 Franklin Street Project, and Hub Housing Sustainability District (HSD) as accurate, complete, and in compliance with the California Environmental Quality Act (“CEQA”), the regulations implementing CEQA (“the CEQA Guidelines”), and the local law implementing CEQA, Chapter 31 of the San Francisco Administrative Code.

WHEREAS, On May 21, 2020, by Motion No. 20708, the Commission approved CEQA Findings, including a statement of overriding considerations, and adoption of a Mitigation Monitoring and Reporting Program (“MMRP”), under Case No. 2015-000940ENV, for approval of the amendments to the Market and Octavia Area Plan.

WHEREAS, The Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, All pertinent documents may be found in the files of the Department, as the Custodian of Records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby **adopts** the proposed ordinance.

## FINDINGS

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

1. The General Plan Amendments realize and implement the original Market and Octavia Area Plan vision and policies for the Hub area. In the Market and Octavia Area Plan, the Hub area is identified as a “vibrant new mixed-use neighborhood,” and the existing Van Ness and Market Downtown Residential Special Use District (SUD) encouraged the development of a transit-oriented, high-density, mixed-use residential neighborhood around the intersections of Market Street and Van Ness Avenue and Mission Street and Van Ness—and reduced parking.
2. The General Plan Amendments will help maintain the diversity of residents by providing new on-site affordable units and additional affordable housing resources for the City and by requiring that the first priority for new affordable housing units should be built within the Van Ness and Market Residential Special Use District.
3. The General Plan Amendments will help provide safe and convenient transportation by funding capital projects that will improve conditions for people walking, bicycling, and taking transit.
4. The General Plan Amendments will help facilitate the creation of new parks and improve existing recreational facilities.
5. The General Plan Amendments would incorporate policy direction to support sustainability and climate resilience and to advance racial and social equity.
6. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

## AIR QUALITY ELEMENT

### OBJECTIVE 3

DECREASE THE AIR QUALITY IMPACTS OF DEVELOPMENT BY COORDINATION OF LAND USE AND TRANSPORTATION DECISIONS

#### Policy 3.1

Take advantage of the high-density development in San Francisco to improve the transit infrastructure and also encourage high density and compact development where an extensive transportation infrastructure exists.



**Policy 3.2**

Encourage mixed land use development near transit lines and provide retail and other types of service-oriented uses within walking distance to minimize automobile dependent development.

**Policy 3.4**

Continue past efforts and existing policies to promote new residential development in and close to the downtown area and other centers of employment, to reduce the number of auto commute trips to the city and to improve the housing/job balance within the city.

**Policy 3.6**

Link land use decision making policies to the availability of transit and consider the impacts of these policies on the local and regional transportation system.

*The amended Plan will continue to support this Objective and Policy by directing development to an area that is highly accessible to public transit, Muni Metro (with Van Ness BRT), and within walking distance of BART.*

**ENVIRONMENTAL PROTECTION ELEMENT**

**Objective 15**

INCREASE THE ENERGY EFFICIENCY OF TRANSPORTATION AND ENCOURAGE LAND USE PATTERNS AND METHODS OF TRANSPORTATION WHICH USE LESS ENERGY.

**Policy 15.1**

Increase the use of transportation alternatives to the automobile.

*The Plan supports this Objective and Policy by facilitating the efficient and intelligent use of energy for transportation. For transportation, the Plan locates new development in an area where a high percentage of trips will be taken by energy efficient modes of transportation, including walking, bicycling, and transit.*

**HOUSING ELEMENT**

**OBJECTIVE 1:**

IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING

**Policy 1.1**

Plan for the full range of housing needs in the City and County of San Francisco, especially affordable housing.

**Policy 1.2**

Focus housing growth and infrastructure-necessary to support growth according to community plans.

**Policy 1.3**

Work proactively to identify and secure opportunity sites for permanently affordable housing.

**Policy 1.4**

Ensure community-based planning processes are used to generate changes to land use controls.

**Policy 1.10**

Support new housing projects, especially affordable housing, where households can easily rely on public transportation, walking and bicycling for the majority of daily trips.

*The Plan supports this Objective and these Policies by increasing the amount of housing potential through a comprehensive community plan developed through a community based planning process, achieving approximately 29% of all new units in the plan area as affordable, and doing so in a location where new residents can rely on public transportation, walking, and bicycling for the majority of daily trips.*

**OBJECTIVE 2**

RETAIN EXISTING HOUSING UNITS, AND PROMOTE SAFETY AND MAINTENANCE STANDARDS, WITHOUT JEOPARDIZING AFFORDABILITY.

**Policy 2.1**

Discourage the demolition of sound existing housing, unless the demolition results in a net increase in affordable housing.

**OBJECTIVE 3**

PROTECT THE AFFORDABILITY OF THE EXISTING HOUSING STOCK, ESPECIALLY RENTAL UNITS.

**Policy 3.2**

Promote voluntary housing acquisition and rehabilitation to protect affordability for existing occupants.

**OBJECTIVE 7**

SECURE FUNDING AND RESOURCES FOR PERMANENTLY AFFORDABLE HOUSING, INCLUDING INNOVATIVE PROGRAMS THAT ARE NOT SOLELY RELIANT ON TRADITIONAL MECHANISMS OR CAPITAL.

**Policy 7.6**

Acquire and rehabilitate existing housing to maximize effective use of affordable housing resources.

*The Plan supports this Objective and Policies by maintaining existing prohibitions and limitations on housing demolition and facilitating and funding acquisition/rehabilitation of existing housing to create permanently affordable housing.*

**OBJECTIVE 10**

ENSURE A STREAMLINED, YET THOROUGH, AND TRANSPARENT DECISION MAKING PROCESS.

**Policy 10.1**

Create certainty in the development entitlement process, by providing clear community parameters for development and consistent application of these regulations

**Policy 10.3**

Use best practices to reduce excessive time or redundancy in local application of CEQA.

*The Plan supports this Objective and these Policies by creating clear controls for housing, streamlining the approval process for certain housing projects and enabling projects to utilize Community Plan Evaluations under CEQA.*

**OBJECTIVE 12**

BALANCE HOUSING GROWTH WITH ADEQUATE INFRASTRUCTURE THAT SERVES THE CITY'S GROWING POPULATION.

**Policy 12.1**

Encourage new housing that relies on transit use and environmentally sustainable patterns of movement.

*The Plan supports additional housing directly adjacent to a major transit station and multiple transit lines.*

**OBJECTIVE 13**

PRIORITIZE SUSTAINABLE DEVELOPMENT IN PLANNING FOR AND CONSTRUCTING NEW HOUSING.

**Policy 13.1**

Support "smart" regional growth that locates new housing close to jobs and transit.

**Policy 13.3**

Promote sustainable land use patterns that integrate housing with transportation in order to increase transit, pedestrian, and bicycle mode share.

**Policy 13.4**

Promote the highest feasible level of "green" development in both private and municipally supported housing.

*The Plan amendments supports these Objectives and Policies by locating housing and job growth in an area highly accessible by public transit, by funding improvements for people walking and bicycling, and by proactively supporting environmental sustainability and resilience in new buildings and on publicly-owned rights-of-way and parks.*

**RECREATION AND OPEN SPACE ELEMENT**

**OBJECTIVE 1:**

ENSURE A WELL-MAINTAINED, HIGHLY UTILIZED, AND INTEGRATED OPEN SPACE SYSTEM.

**Policy 1.1**

Encourage the dynamic and flexible use of existing open spaces and promote a variety of recreation and open space uses, where appropriate.

**Policy 1.2**

Prioritize renovation in highly-utilized open spaces and recreational facilities and in high needs areas.

**OBJECTIVE 2:**

INCREASE RECREATIONAL AND OPEN SPACE TO MEET THE LONG-TERM NEEDS OF THE CITY AND BAY REGION.

**Policy 2.1**

Prioritize acquisition of open space in high needs areas.

*The Plan amendments supports these Objectives and Policies by helping to fund improvements of existing parks while facilitating the development of new parks in and adjacent to the plan area.*

**OBJECTIVE 3**

IMPROVE ACCESS AND CONNECTIVITY TO OPEN SPACE.

**Policy 3.1**

Creatively develop existing publicly-owned right-of-ways and streets into open space.

*The Plan amendments supports this Objective and Policy by transforming 12<sup>th</sup> Street into a linear open space by widening sidewalks and adding additional greening. The Plan amendments also support the design and implementation of living alleys, which will create more pedestrian-oriented streets that are designed to focus on livability, instead of parking and traffic.*

**TRANSPORTATION ELEMENT**

**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 Plan amendment will continue to support this Objective and Policy by directing development to an area that is highly accessible to public transit, Muni Metro (with Van Ness BRT), and within walking distance of BART. The Plan also continues to support walking and bicycling by facilitating improvements to all of the neighborhood's major streets as outlined in the Hub Public Realm Plan.*

**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.

*The Plan amendment will continue support dense residential development directly adjacent to major transit infrastructure and is consistent with the City's Transit First Policy and the Transportation Element of the General Plan.*

**OBJECTIVE 24**

DESIGN EVERY STREET IN SAN FRANCISCO FOR SAFE AND CONVENIENT WALKING.

**Policy 24.1**

Every surface street in San Francisco should be designed consistent with the Better Streets Plan for safe and convenient walking, including sufficient and continuous sidewalks and safe pedestrian crossings at reasonable distances to encourage access and mobility for seniors, people with disabilities and children.

**Policy 24.2**

Widen sidewalks where intensive commercial, recreational, or institutional activity is present, sidewalks are congested, where sidewalks are less than adequately wide to provide appropriate pedestrian amenities, or where residential densities are high.

*The Plan amendments supports this Objective and Policies by facilitating improvements that will transform an area that lacks amenities and is often unsafe for people walking, bicycling, and taking transit into an area that is safe and comfortable for all. This includes strategies to widen sidewalks, decrease the length of crosswalks and create protected bicycle lanes. The proposed amendments also include reference to the Hub Public Realm Plan which outlines additional treatments and designs to the Hub's major streets and alleys.*

**URBAN DESIGN ELEMENT**

**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 1.3**

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

*The Plan supports this Objective and Policy through establishment of height and bulk limits that support the Urban Design Element by harmonizing the Hub neighborhood within the city as a whole, highlighting the Hub as a center of activity and transit and tapering heights in the Hub to meet smaller-scales adjacent neighborhoods.*

7. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:



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 Plan amendment establishes maximum height and bulk districts which can be achieved through a 309 exception. One of the criteria to receive this exception is through the provision of community serving uses at the ground floor including neighborhood-oriented retail. New opportunities for neighborhood serving retail uses would be available on the ground floor of new development. In addition, the Plan will increase opportunities for smaller and independent local businesses with more affordable rent by limiting formula retail uses and requiring “micro-retail” uses of 1,000 square feet or less on certain lots. The Plan would substantially increase the residential population of the area, which largely consists of commercial establishments, increasing the available 24/7 customer base for local retail businesses.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

*The existing Hub area is largely commercial, with limited existing housing. No parcels with existing housing would be upzoned through the Plan amendments. The Plan amendments would carry forward existing city policy to support high density residential development near the intersection of Van Ness and Market and Mission and South Van Ness. Existing City regulations and programs to protect and preserve existing housing, including the City’s substantial existing restrictions on evictions and demolitions would continue to apply. The Plan will further protect the neighborhood’s economic diversity by reinforcing the area’s existing mixed-use land use pattern. The Plan will facilitate the development of primarily residential buildings whose ground floors will consist of a mix of retail and community serving uses.*

3. That the City’s supply of affordable housing be preserved and enhanced.

*The Plan could generate up to \$682 Million dollars in affordable housing resources for the City. This includes up to 2,200 affordable units created or funded by development in the Plan Area. In addition, the up zoning would result in over 400 additional affordable housing units than would be created under the existing zoning.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

*On balance, the Plan will not result in commuter traffic impeding Muni transit service or overburdening the streets or neighborhood parking. Given the minimal increase in the number of jobs in the area that would result from these Plan amendments, adoption of this Plan amendment would not increase commuter traffic in the Plan Area. In addition, the Plan Area is well served by local and regional transit, including BART and Muni Metro (including the new Van Ness BRT). The City expects to generate up to \$116 million to improve transit capacity in this area. The Plan is designed to shift the way people travel away from use of private vehicles to more sustainable modes of transportation. The proposed street designs would help to improve vehicle movement and facilities for transit riders. In addition to supporting public transit, the Plan amendments decreases the amount of parking required for residential uses, which will discourage commuter traffic, in conjunction with the City’s existing Transportation Demand Management requirements.*

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 Plan will not displace any industrial or service sectors due to commercial office development. New development in the plan will be predominantly residential, and any new commercial office space would be small components of new mixed-use residential development.*

6. That the City achieves the greatest possible preparedness to protect gains injury and loss of life in an earthquake.

*The Plan will improve preparedness to protect against injury and loss of life in an earthquake. The Plan will facilitate additional new construction that will comply with all current Building Code, Fire Code, and other applicable safety standards.*

7. That landmarks and historic buildings be preserved.

*The Plan will support the preservation of landmarks and historic buildings. The General Plan amendments have been revised to additionally refer to buildings identified under Article 11 of the Planning Code and buildings that have been determined eligible for listing in the California and National Registers.*

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

*On balance, the Plan amendments would not negatively affect the area's existing parks and open space or their access to sunlight.*

8. **Planning Code Section 340 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the General Plan as set forth in Section 340.
9. **CEQA Findings.** The Planning Commission adopts and incorporates by reference as though fully set forth herein the CEQA Findings set forth in Planning Commission Motion No. 20708.
10. **Mitigation Monitoring and Reporting Plan.** The Planning Commission adopts and incorporates by reference as though fully set forth herein the Mitigation Monitoring and Reporting Plan, the requirements of which are made conditions of approval.

NOW THEREFORE BE IT RESOLVED that the Commission hereby ADOPT the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on May 21, 2020.



Jonas P. Ionin  
Commission Secretary

AYES: Koppel, Moore, Diamond, Fung, Johnson

NOES: Imperial

ABSENT: None

ADOPTED: May 21, 2020



# SAN FRANCISCO PLANNING DEPARTMENT

## Planning Commission Resolution No. 20710

HEARING DATE: MAY 21, 2020

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*Project Name:* **Market and Octavia Area Plan Amendment: Planning Code Amendments**  
*Case Number:* **2015-000940PCA-01**  
*Initiated by:* **Planning Commission**  
*Staff Contact:* **Lily Langlois, Principal Planner**  
**Lily.Langlois@sfgov.org, 415-575-9083**  
*Reviewed by:* **Joshua Switzky, Land Use and Community Planning Program Manager**  
**Joshua.switzky@sfgov.org, 415-575-6815**

**RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO AMEND THE VAN NESS AND MARKET DOWNTOWN RESIDENTIAL SPECIAL USE DISTRICT, TO ENCOURAGE MORE HOUSING AND USES THAT SUPPORT THE NEIGHBORHOOD RESIDENTS AND BUSINESS, AND TO GIVE EFFECT TO AMENDMENTS IN THE MARKET AND OCTAVIA PLAN; AND AMENDING PLANNING CODE SECTIONS 145.4, 151.1, 155, 207.6, 249.33, 260, 261.1, 263.19, 270, 270.2, 309, 341.5, 401, 411A.5, 416.3, 421.5, 424.1, 424.3, 424.4, AND 424.5; AND MAKING ENVIRONMENTAL FINDINGS, INCLUDING ADOPTING A STATEMENT OF OVERRIDING CONSIDERATION, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE EIGHT PRIORITIES OF THE PLANNING CODE, SECTION 101.1, AND FINDINGS OF PUBLIC NECESSITY, CONVENIENCE, AND WELFARE UNDER PLANNING CODE SECTION 302.**

WHEREAS, The Planning Commission (hereinafter "Commission"), at a duly noticed public hearing on February 13, 2020 and in accordance with Planning Code Section 340(c), initiated the Planning Code Amendments for the Market and Octavia Area Plan by Planning Commission Resolution No. 20654.

WHEREAS, In 2008 the City adopted the Market and Octavia Area Plan, including new land use controls, height controls and proposed community improvements. The "Hub" neighborhood (hereinafter "Plan Area") was included within the boundaries of the Market and Octavia Area Plan. The Market and Octavia Area Plan included numerous policies that supported a vision for the Hub as a "vibrant new mixed-use neighborhood," and it also created the Van Ness and Market Downtown Residential Special Use District (SUD). This SUD facilitated the development of a transit-oriented, high-density, mixed-use residential neighborhood around the intersections of Market Street and Van Ness Avenue and Mission Street and South Van Ness Avenue.

WHEREAS, While the Market and Octavia Area Plan established a new framework for development, the San Francisco Planning Department (herein after "Planning Department") did not receive many major development applications in the Hub neighborhood until 2012 (four years after the plan was adopted) due to the Great Recession.

WHEREAS, In 2016, the Planning Department initiated a community planning process to take a new look at the Hub area holistically and identify opportunities to increase the amount of housing and affordable housing near transit, to develop and coordinate updated designs for the public realm, and to update the Market and Octavia public benefits package program and prioritize projects for implementation.

WHEREAS, The Planning Department is seeking to make amendments to the existing Market and Octavia Area Plan and other elements of. Amendments to the General Plan, Planning Code, Business and Tax Regulations Code, Zoning Map, and public benefits document to provide a comprehensive updated set of policies and implementation programming to realize the vision of the Hub area as originally described in the Market and Octavia Area Plan; and

WHEREAS, The Planning Code governs permitted land uses and planning standards in the City. Thus, conforming amendments to the Planning Code are required for this Plan amendment. An ordinance, approved as to form by the City Attorney and attached hereto as Exhibit IV-2, has been drafted in order to revise the Planning Code. The Ordinance amends Planning Code Sections including but not limited to 145.4, 151.1, 155, 207.6, 249.33, 261.1, 263.19, 270, 270.2, 309, 341.5, 401, 411A.5, 416.3, 421.5, 424.1, 424.3, 424.4, and 424.5.

WHEREAS, These amendments contain proposals for changes to standards from those currently established by the Planning Code, including but not limited to those for land use, height and bulk, building design, parking, and impact fees.

WHEREAS, On May 21, 2020, after a duly noticed public hearing, the Commission reviewed and considered the Final Environmental Impact Report for the Hub Plan, 30 Van Ness Avenue Project, 98 Franklin Street Project, and Hub Housing Sustainability District (HSD) ("FEIR") and found the FEIR to be adequate, accurate, and objective, thus reflecting the independent analysis and judgment of the Department and the Commission, and that the summary of comments and responses contained no significant revisions to the Draft EIR, and by Motion No. 20707 certified the FEIR for the Hub Plan, 30 Van Ness Avenue Project, 98 Franklin Street Project, and Hub Housing Sustainability District (HSD) as accurate, complete, and in compliance with the California Environmental Quality Act ("CEQA"), the regulations implementing CEQA ("the CEQA Guidelines"), and the local law implementing CEQA, Chapter 31 of the San Francisco Administrative Code.

WHEREAS, On May 21, 2020, by Motion No. 20708, the Commission approved CEQA Findings, including a statement of overriding considerations, and adoption of a Mitigation Monitoring and Reporting Program ("MMRP"), under Case No. 2015-000940ENV, for approval of the amendments to the Market and Octavia Area Plan.

WHEREAS, The Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, The Planning Commission recommends the City pursue a nexus study in order to establish a new Community Services Facilities Fee in the Van Ness and Market Residential Special Use District to fund, design, engineer, and develop community facilities, including but not limited to cultural/arts facilities, social welfare facilities, and community health facilities.



WHEREAS, All pertinent documents may be found in the files of the Department, as the Custodian of Records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, The Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, The Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, That the Planning Commission hereby **approves** the proposed ordinance

## FINDINGS

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

1. **The Market and Octavia Area Plan Amendment would**
  - Enable construction of new housing including new on-site affordable units and generate additional affordable housing resources for the City.
  - Create new parks and improve existing recreational opportunities.
  - Provide safe and convenient transportation by funding capital projects that will improve conditions for people walking, bicycling, and taking transit.
  - Incorporate policy direction to support sustainability and climate resilience and advance racial and social equity.
2. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.
3. **CEQA Findings.** The Planning Commission adopts and incorporates by reference as though fully set forth herein the CEQA Findings set forth in Planning Commission Motion No. 20708.
4. **Mitigation Monitoring and Reporting Plan.** The Planning Commission adopts and incorporates by reference as though fully set forth herein the Mitigation Monitoring and Reporting Plan, the requirements of which are made conditions of approval.

AND BE IT FURTHER RESOLVED, that the Commission finds the Planning Code Amendments are in general conformity with the General Plan as set forth in Planning Commission Resolution No. 20709.

AND BE IT FURTHER RESOLVED, that the Commission finds the Planning Code Amendments are in general conformity with Planning Code Section 101.1 as set forth in Planning Commission Resolution No. 20709.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on May 21, 2020.



Jonas P. Ionin  
Commission Secretary

AYES: Koppel, Moore, Diamond, Fung, Imperial, Johnson

NOES: None

ABSENT: None

ADOPTED: May 21, 2020



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Resolution No. 20711

HEARING DATE: MAY 21, 2020

*Project Name:* **Market and Octavia Area Plan Amendment: Zoning Map Amendments**  
*Case Number:* **2015-000940MAP**  
*Initiated by:* Planning Commission  
*Staff Contact:* Lily Langlois, Principal Planner  
Lily.Langlois@sfgov.org, 415-575-9083  
*Reviewed by:* Joshua Switzky, Land Use and Community Planning Program Manager  
Joshua.switzky@sfgov.org, 415-575-6815

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**RESOLUTION ADOPTING A PROPOSED ORDINANCE THAT WOULD AMEND THE ZONING MAP OF THE PLANNING CODE TO AMEND THE BOUNDARIES OF THE VAN NESS & MARKET RESIDENTIAL SPECIAL USE DISTRICT, AND MAKE OTHER AMENDMENTS TO THE HEIGHT AND BULK DISTRICT MAPS AND ZONING USE DISTRICT MAPS CONSISTENT WITH THE AMENDMENTS TO THE MARKET AND OCTAVIA AREA PLAN; AND MAKING ENVIRONMENTAL FINDINGS, INCLUDING ADOPTING A STATEMENT OF OVERRIDING CONSIDERATION, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE EIGHT PRIORITIES OF THE PLANNING CODE, SECTION 101.1, AND FINDINGS OF PUBLIC NECESSITY, CONVENIENCE, AND WELFARE UNDER PLANNING CODE SECTION 302.**

WHEREAS, The Planning Commission (hereinafter "Commission"), at a duly noticed public hearing on February 13, 2020 and in accordance with Planning Code Section 340(c), initiated the Zoning Map Amendments for the Market and Octavia Area Plan by Planning Commission Resolution No. 20656.

WHEREAS, In 2008 the City adopted the Market and Octavia Area Plan, including new land use controls, height controls and proposed community improvements. The "Hub" neighborhood (hereinafter "Plan Area") was included within the boundaries of the Market and Octavia Area Plan. The Market and Octavia Area Plan included numerous policies that supported a vision for the Hub as a "vibrant new mixed-use neighborhood," and it also created the Van Ness and Market Downtown Residential Special Use District (SUD). This SUD facilitated the development of a transit-oriented, high-density, mixed-use residential neighborhood around the intersections of Market Street and Van Ness Avenue and Mission Street and South Van Ness Avenue.

WHEREAS, While the Market and Octavia Area Plan established a new framework for development, the San Francisco Planning Department (herein after "Planning Department") did not receive many major development applications in the Hub neighborhood until 2012 (four years after the plan was adopted) due to the Great Recession.

WHEREAS, In 2016, the Planning Department initiated a community planning process to take a new look at the Hub area holistically and identify opportunities to increase the amount of housing and affordable

housing near transit, to develop and coordinate updated designs for the public realm, and to update the Market and Octavia public benefits package program and prioritize projects for implementation.

WHEREAS, The Planning Department is seeking to make amendments to the existing Market and Octavia Area Plan and other elements of. Amendments to the General Plan, Planning Code, Business and Tax Regulations Code, Zoning Map, and public benefits document to provide a comprehensive updated set of policies and implementation programming to realize the vision of the Hub area as originally described in the Market and Octavia Area Plan; and

WHEREAS, The proposed zoning map amendments to land use, special use, and height and bulk districts Are contained in the proposed Ordinance, approved as to form by the City Attorney and attached hereto as Exhibit VI-2.

WHEREAS, On May 21, 2020, after a duly noticed public hearing, the Commission reviewed and considered the Final Environmental Impact Report for the Hub Plan, 30 Van Ness Avenue Project, 98 Franklin Street Project, and Hub Housing Sustainability District (HSD) ("FEIR") and found the FEIR to be adequate, accurate, and objective, thus reflecting the independent analysis and judgment of the Department and the Commission, and that the summary of comments and responses contained no significant revisions to the Draft EIR, and by Motion No. 20707 certified the FEIR for the Hub Plan, 30 Van Ness Avenue Project, 98 Franklin Street Project, and Hub Housing Sustainability District (HSD) as accurate, complete, and in compliance with the California Environmental Quality Act ("CEQA"), the regulations implementing CEQA ("the CEQA Guidelines"), and the local law implementing CEQA, Chapter 31 of the San Francisco Administrative Code.

WHEREAS, On May 21, 2020, by Motion No. 20708, the Commission approved CEQA Findings, including a statement of overriding considerations, and adoption of a Mitigation Monitoring and Reporting Program ("MMRP"), under Case No. 2015-000940ENV, for approval of the amendments to the Market and Octavia Area Plan.

WHEREAS, The Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, All pertinent documents may be found in the files of the Department, as the Custodian of Records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, The Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, The Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, That the Planning Commission hereby **approves** the proposed ordinance.

## **FINDINGS**

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

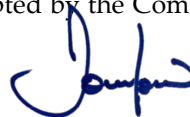
1. **The Market and Octavia Area Plan Amendment would**
  - Enable construction of new housing including new on-site affordable units and generate additional affordable housing resources for the City.
  - Create new parks and improve existing recreational opportunities.
  - Provide safe and convenient transportation by funding capital projects that will improve conditions for people walking, bicycling, and taking transit.
  - Incorporates policy direction to support sustainability and climate resilience and advance racial and social equity.
2. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.
3. **CEQA Findings.** The Planning Commission adopts and incorporates by reference as though fully set forth herein the CEQA Findings set forth in Planning Commission Motion No. 20708
4. **Mitigation Monitoring and Reporting Plan.** The Planning Commission adopts and incorporates by reference as though fully set forth herein the Mitigation Monitoring and Reporting Plan, the requirements of which are made conditions of approval.

AND BE IT FURTHER RESOLVED, that the Commission finds the Zoning Map Amendments are in general conformity with the General Plan as set forth in Planning Commission Resolution No. 20709.

AND BE IT FURTHER RESOLVED, that the Commission finds the Zoning Map Amendments are in general conformity with Planning Code Section 101.1 as set forth in Planning Commission Resolution No. 20709.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on May 21, 2020.



Jonas P. Ionin  
Commission Secretary

AYES: Koppel, Diamond, Fung, Johnson  
NOES: Imperial, Moore  
ABSENT: None  
ADOPTED: May 21, 2020





# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Resolution No. 20712

HEARING DATE: MAY 21, 2020

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*Project Name:* **Market and Octavia Area Plan Amendment: Hub Housing Sustainability District**  
*Case Number:* **2015-000940PCA-02**  
*Initiated by:* **Planning Commission**  
*Staff Contact:* **Lily Langlois, Principal Planner**  
**Lily.Langlois@sfgov.org, 415-575-9083**  
*Reviewed by:* **Joshua Switzky, Land Use and Community Planning Program Manager**  
**Joshua.switzky@sfgov.org, 415-575-6815**

**RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND THE BUSINESS AND TAX REGULATIONS CODE AND THE PLANNING CODE TO CREATE THE HUB HOUSING SUSTAINABILITY DISTRICT; AND MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE EIGHT PRIORITIES OF THE PLANNING CODE, SECTION 101.1, AND FINDINGS OF PUBLIC NECESSITY, CONVENIENCE, AND WELFARE UNDER PLANNING CODE SECTION 302, AND FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.**

WHEREAS, Section 4.105 of the Charter of the City and County of San Francisco mandates that the Planning Commission shall periodically recommend proposed amendments to the Planning Code to the Board of Supervisors; and the San Francisco Planning Department is proposing to amend the Planning Code as part of the Market and Octavia Area Plan Amendment; and

WHEREAS, The Commission, at a duly noticed public hearing on February 13, 2020 and in accordance with Planning Code Section 340(c), initiated the Business and Tax Regulations Code and the Planning Code for Hub Housing Sustainability District by Planning Commission Resolution No. 20655.

WHEREAS, Assembly Bill 73 (hereinafter "AB 73"), California Government Code Sections 66200 et seq., which took effect January 1, 2018, authorizes local municipalities to designate by ordinance one or more Housing Sustainability Districts (hereinafter "HSD") to provide a streamlined, ministerial approval process for residential and mixed-use developments meeting certain requirements. AB 73 requires local agencies to prepare an Environmental Impact Report (hereinafter "EIR") to identify and mitigate the environmental impacts of designating an HSD. Projects approved under an HSD ordinance must implement applicable mitigation measures identified in the EIR.

WHEREAS, The Planning Code and Business and Tax Regulation Code Amendments would establish the Hub Housing Sustainability District (hereinafter "Hub HSD") which would provide a streamlined, ministerial process for approval by the Planning Department of developments in the Market and Octavia Plan Area meeting the requirements of AB 73 and other eligibility criteria. The Amendments propose to

remove the requirement to hold a Planning Commission hearing to consider discretionary review of these development proposals, in order to meet the streamlining requirements of AB 73.

WHEREAS, These Amendments contain proposals for changes to standards from those currently established by the Planning Code and Business and Tax Regulations Code, including but not limited to those for review and approval of residential and mixed-use developments and appeals of permit decisions to the Board of Appeals.

WHEREAS, This Resolution adopting and recommending that the Board of Supervisors approve the Planning Code and Business and Tax Regulation Code is a companion to other legislative approvals relating to amendments to the Market and Octavia Area Plan, including amendments to the General Plan, Planning Code, Zoning Map and implementation program.

WHEREAS, These Planning Code and Business and Tax Regulations Code Amendments, together with the proposed General Plan, Planning Code, and Zoning Map Amendments and the Implementation Program document, provide a comprehensive set of policies and implementation programming to realize the vision of the Plan. The Planning Code and Business and Tax Regulations Code Amendments help to implement the vision for the Hub area as described in the Market and Octavia Area Plan by streamlining approval of residential and mixed-use development projects meeting certain eligibility criteria and thereby encouraging construction of on-site, permanently affordable housing units in the Plan Area.

WHEREAS, The Planning Code governs permitted land uses and planning standards in the City. The Business and Tax Regulations Code provides the legislative basis for, direction to, and limitations on the review, approval, denial, and revocation of permits by executive agencies of the City. Thus, conforming amendments to the Planning Code and Business and Tax Regulations Code are required in order to establish and implement the Hub HSD. An ordinance, approved as to form by the City Attorney and attached hereto as Exhibit IV-2, has been drafted in order to make revisions to the Business and Tax Regulations Code and Planning Code necessary to implement the proposed Hub HSD. This ordinance amends Business and Tax Regulations Code Section 8 and 26 and adds Planning Code Section 344 to establish and implement the Hub HSD.

WHEREAS, On May 21, 2020, after a duly noticed public hearing, the Commission reviewed and considered the Final Environmental Impact Report for the Hub Plan, 30 Van Ness Avenue Project, 98 Franklin Street Project, and Hub Housing Sustainability District (HSD) ("FEIR") and found the FEIR to be adequate, accurate, and objective, thus reflecting the independent analysis and judgment of the Department and the Commission, and that the summary of comments and responses contained no significant revisions to the Draft EIR, and by Motion No. 20707 certified the FEIR for the Hub Plan, 30 Van Ness Avenue Project, 98 Franklin Street Project, and Hub Housing Sustainability District (HSD) as accurate, complete, and in compliance with the California Environmental Quality Act ("CEQA"), the regulations implementing CEQA ("the CEQA Guidelines"), and the local law implementing CEQA, Chapter 31 of the San Francisco Administrative Code.

WHEREAS, On May 21, 2020, by Motion No. 20708 the Commission approved CEQA Findings, including a statement of overriding considerations, and adoption of a Mitigation Monitoring and Reporting Program ("MMRP"), under Case No. 2015-000940ENV, for approval of the amendments to the Market and Octavia Area Plan.

WHEREAS, the Final EIR analyzes the creation of a Housing Sustainability District in the Market and Octavia Area Plan. The Planning Code and Business and Tax Regulations Code Amendments are within the scope of the Project evaluated in Final EIR.

WHEREAS, the Planning Code and Business and Tax Regulations Code Amendments would require developments approved under the Hub HSD to implement applicable mitigation measures identified in the Final EIR.

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the Custodian of Records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

NOW, THEREFORE, BE IT RESOLVED, that the Commission hereby delegates its authority to the Planning Department to review applications for development eligible for streamlined review under the Hub HSD. The Planning Commission would not hold a public hearing for discretionary review of applications for eligible development under the Hub HSD if the legislation is adopted substantially as proposed.

MOVED, that the Planning Commission hereby **adopts** the proposed ordinance.

## **FINDINGS**

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

1. **The Market and Octavia Area Plan Amendment would**
  - Enable construction of new housing including new on-site affordable units and generate additional affordable housing resources for the City.
  - Create new parks and improve existing recreational opportunities.
  - Provide safe and convenient transportation by funding capital projects that will improve conditions for people walking, bicycling, and taking transit.
  - Incorporates policy direction to support sustainability and climate resilience and advance racial and social equity.
2. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

**HOUSING ELEMENT:**

**OBJECTIVE 1**

IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

Policy 1.1

Plan for the full range of housing needs in the City and County of San Francisco, especially affordable housing.

*The proposed Ordinance will require 10% of units in any HSD project to be affordable to households of very low or low income. HSD projects subject to San Francisco's Section 415 inclusionary requirements must satisfy this requirement through the on-site option, and then may choose to provide the rest of the requirement on-site (affordable units at AMI levels required in 415) or through payment of the off-site fee option.*

Policy 1.2

Focus housing growth and infrastructure necessary to support growth according to community plans. Complete planning underway in key opportunity areas.

Policy 1.10

Support new housing projects, especially affordable housing, where households can easily rely on public transportation, walking and bicycling for the majority of daily trips.

**OBJECTIVE 2**

Retain existing housing units, and promote safety and maintenance standards, without jeopardizing affordability.

Policy 2.1

Discourage the demolition of sound existing housing, unless the demolition results in a net increase in affordable housing.

Policy 2.2

Retain existing housing by controlling the merger of residential units, except where a merger clearly creates new family housing.

*The proposed Ordinance will not allow projects to participate in the Hub HSD if they propose demolishing or merging any existing residential units.*

**OBJECTIVE 3**

Protect the affordability of the existing housing stock, especially rental units.

Policy 3.1

Preserve rental units especially rent controlled units, to meet the City's affordable housing needs.  
*The proposed Ordinance will not allow projects to participate in the Hub HSD if they propose demolishing or merging any existing residential units, including rental units subject to Rent Control.*

**OBJECTIVE 4**

Foster a housing stock that meets the needs of all residents across lifecycles.

Policy 4.4

Encourage sufficient and suitable rental housing opportunities, emphasizing permanently affordable rental units wherever possible.

*The proposed Ordinance will require 10% of units in any HSD project, whether it consist of rental or ownership units, to be permanently affordable to households of very low or low income*

Policy 4.5

Ensure that new permanently affordable housing is located in all of the city's neighborhoods, and encourage integrated neighborhoods, with a diversity of unit types provided at a range of income levels.

*100% affordable housing projects of any height will be eligible to participate in the proposed HSD and receive ministerial approval, if they meet all criteria of Section 344. All mixed income housing projects developed pursuant to the proposed Ordinance will be required to provide 10% of units on-site permanently affordable to very low or low income households.*

**OBJECTIVE 7**

Secure funding and resources for permanently affordable housing, including innovative programs that are not solely reliant on traditional mechanisms or capital.

Policy 7.5

Encourage the production of affordable housing through process and zoning accommodations, and prioritize affordable housing in the review and approval process.

*100% affordable housing projects of any height will be eligible to participate in the proposed HSD and receive ministerial approval, if they meet all criteria of Section 344. All mixed income housing projects developed pursuant to the proposed Ordinance will be required to provide 10% of units on-site permanently affordable to very low or low income households.*

**OBJECTIVE 10**

Ensure a streamlined, yet thorough, and transparent decision-making process.

Policy 10.1

Create certainty in the development entitlement process, by providing clear community parameters for development and consistent application of these regulations.

*The proposed Ordinance will offer ministerial approval to projects meeting the clear, consistent requirements of proposed Section 344. Ministerial approvals offer an increased degree of certainty in the entitlement process.*

Policy 10.2

Implement planning process improvements to both reduce undue project delays and provide clear information to support community review.



*In addition to offering ministerial approval to qualifying projects, reducing project delay, the proposed Section 344 would require all HSD projects undergo a publicly noticed informational hearing prior to receiving approval. This hearing, which would be held in accordance with the Brown Act, would provide an opportunity for community review of the HSD project.*

**Policy 10.4**

Support state legislation and programs that promote environmentally favorable projects. The proposed Ordinance would implement locally a State Law (AB73) intended to promote environmentally favorable projects, and streamline environmental and entitlement review of such projects.

**Policy 11.3**

Ensure growth is accommodated without substantially and adversely impacting existing residential neighborhood character.

*The proposed Ordinance would require all HSD projects to undergo design review and comply with all adopted design standards in the Urban Design Guidelines as well as the Market and Octavia Area Plan.*

**Policy 11.7**

Respect San Francisco's historic fabric, by preserving landmark buildings and ensuring consistency with historic districts.

*The proposed Ordinance would not allow any project on a parcel containing a building listed in Articles 10 or 11 to participate in the HSD and receive ministerial approvals.*

**Policy 12.1** Encourage new housing that relies on transit use and environmentally sustainable patterns of movement.

**OBJECTIVE 13**

Prioritize sustainable development in planning for and constructing new housing.

**Policy 13.1**

Support "smart" regional growth that locates new housing close to jobs and transit.

*The proposed Ordinance will accelerate entitlements of certain qualifying housing projects in the Market and Octavia Plan Area. The proposed zoning would allow for primarily residential land uses in close proximity to transit.*

**Policy 13.2**

Promote sustainable land use patterns that integrate housing with transportation in order to increase transit, pedestrian and bicycle mode share

*The proposed Ordinance will accelerate entitlements of certain qualifying housing projects in the Market and Octavia Plan Area. The Market and Octavia Area Plan envisions the Hub as a high-density mixed use residential neighborhood. Existing transit nodes on Market Street and Van Ness Avenue and a future*

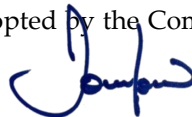
*planned improvements to Market Street and Van Ness Avenue will improve transit connections to and from this area. The Area Plan also calls for large scale investments in pedestrian and bicycle infrastructure.*

3. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.
4. **CEQA Findings.** The Planning Commission adopts and incorporates by reference as though fully set forth herein the CEQA Findings set forth in Planning Commission Motion No. 20708.
5. **Mitigation Monitoring and Reporting Plan.** The Planning Commission adopts and incorporates by reference as though fully set forth herein the Mitigation Monitoring and Reporting Plan, the requirements of which are made conditions of approval.

AND BE IT FURTHER RESOLVED, that the Commission finds the Planning Code and Business and Tax Regulations Code Amendments are in general conformity with Planning Code Section 101.1 as set forth in Planning Commission Resolution No. 20709

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on May 21, 2020.



Jonas P. Ionin  
Commission Secretary

AYES: Koppel, Diamond, Fung, Johnson  
NOES: Imperial, Moore  
ABSENT: None  
ADOPTED: May 21, 2020

**BOARD of SUPERVISORS**



**City Hall**  
**1 Dr. Carlton B. Goodlett Place, Room 244**  
**San Francisco, CA 94102-4689**  
**Tel. No. (415) 554-5184**  
**Fax No. (415) 554-5163**  
**TDD/TTY No. (415) 554-5227**

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**MEMORANDUM**

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Date: June 26, 2023  
To: Planning Department  
From: Stephanie Cabrera, Clerk of the Government Audit and Oversight  
Subject: Board of Supervisors Legislation Referral - File No. 221163  
Development Agreement - 98 Franklin Street, LLC - 98 Franklin Street; Certain  
Administrative Code Waivers.

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- ☒ California Environmental Quality Act (CEQA) Determination  
(*California Public Resources Code, Sections 21000 et seq.*)
  - ☒ Ordinance / Resolution
  - ☐ Ballot Measure
- ☐ Amendment to the Planning Code, including the following Findings:  
(*Planning Code, Section 302(b): 90 days for Planning Commission review*)
  - ☐ General Plan    ☐ Planning Code, Section 101.1    ☐ Planning Code, Section 302
- ☐ Amendment to the Administrative Code, involving Land Use/Planning  
(*Board Rule 3.23: 30 days for possible Planning Department review*)
- ☐ General Plan Referral for Non-Planning Code Amendments  
(*Charter, Section 4.105, and Administrative Code, Section 2A.53*)  
(Required for legislation concerning the acquisition, vacation, sale, or change in use of City property; subdivision of land; construction, improvement, extension, widening, narrowing, removal, or relocation of public ways, transportation routes, ground, open space, buildings, or structures; plans for public housing and publicly-assisted private housing; redevelopment plans; development agreements; the annual capital expenditure plan and six-year capital improvement program; and any capital improvement project or long-term financing proposal such as general obligation or revenue bonds.)
- ☐ Historic Preservation Commission
  - ☐ Landmark (*Planning Code, Section 1004.3*)
  - ☐ Cultural Districts (*Charter, Section 4.135 & Board Rule 3.23*)
  - ☐ Mills Act Contract (*Government Code, Section 50280*)
  - ☐ Designation for Significant/Contributory Buildings (*Planning Code, Article 11*)

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## MEMORANDUM

TO: Rich Hillis, Director, Planning Department  
Eric D. Shaw, Director, Mayor's Office of Housing and Community Development

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: November 22, 2022

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Preston on November 15, 2022.

**File No. 221163**

**Ordinance approving a Development Agreement between the City and County of San Francisco and 98 Franklin Street, LLC, for certain real property at 98 Franklin Street (Assessor's Parcel Block No. 0836, Lot Nos. 008, 009, and 013), consisting of three parcels located in the Van Ness & Market Residential Special Use District on the east side of Franklin Street, between Oak and Market Streets; waiving certain provisions of Administrative Code, Chapter 56; adopting findings under the California Environmental Quality Act; and making findings of conformity with the General Plan, and the eight priority policies of Planning Code, Section 101.1(b), and findings of public necessity, convenience, and general welfare under Planning Code, Section 302.**

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: Erica.Major@sfgov.org.