

File No. 131059

Committee Item No. 3

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

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date February 24, 2014

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
<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/Agreement
<input 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 type="checkbox"/>	<input type="checkbox"/>	Public Correspondence

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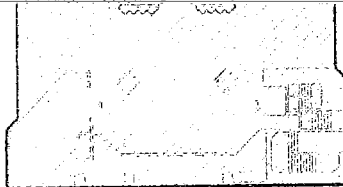
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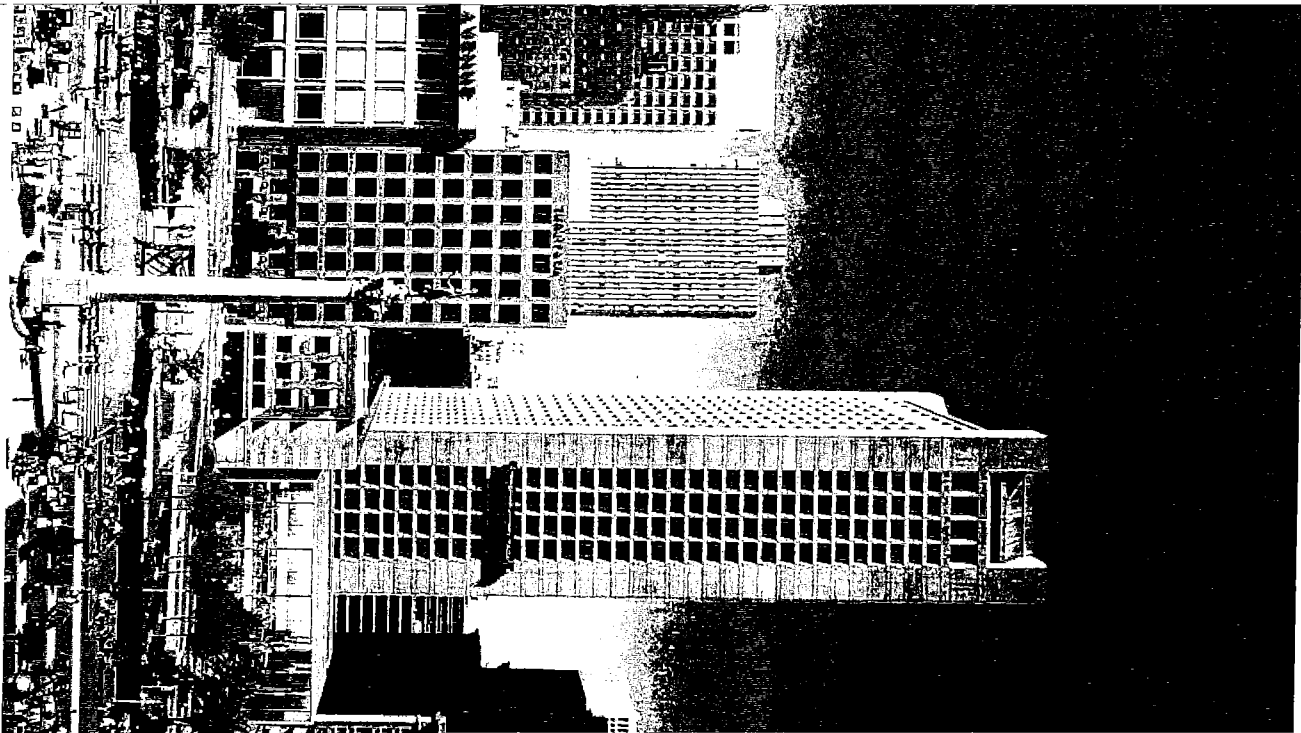
Completed by: Andrea Ausberry Date February 20, 2014

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

1 [Planning Code - Allowing Certain Non-Conforming Structures to be Rebuilt Under Certain  
2 Conditions]

3 **Ordinance amending the Planning Code to allow non-conforming secondary structures**  
4 **in a C-3-R (Downtown Retail) Zoning District to be demolished and rebuilt to the prior**





10. Pursuant to Planning Code Section 182, the Board finds that this Planning Code

will serve the public necessity, convenience, and welfare for the reasons set forth

in Commission Resolution No. \_\_\_\_\_ and the Board incorporates such reasons

8 SEC. 188. NONCOMPLYING STRUCTURES: ENLARGEMENTS, ALTERATIONS  
9 AND RECONSTRUCTION.

10 (a) Within the limitations of this Article 1.7, and especially Sections 172 and 180  
11 hereof, a noncomplying structure as defined in Section 180 may be enlarged, altered or  
12 relocated, or undergo a change or intensification of use in conformity with the use limitations  
13 of this Code, provided that with respect to such structure there is no increase in any  
14 discrepancy, or any new discrepancy, at any level of the structure, between existing  
15 conditions on the lot and the required standards for new construction set forth in this Code,  
16 and provided the remaining requirements of this Code are met.

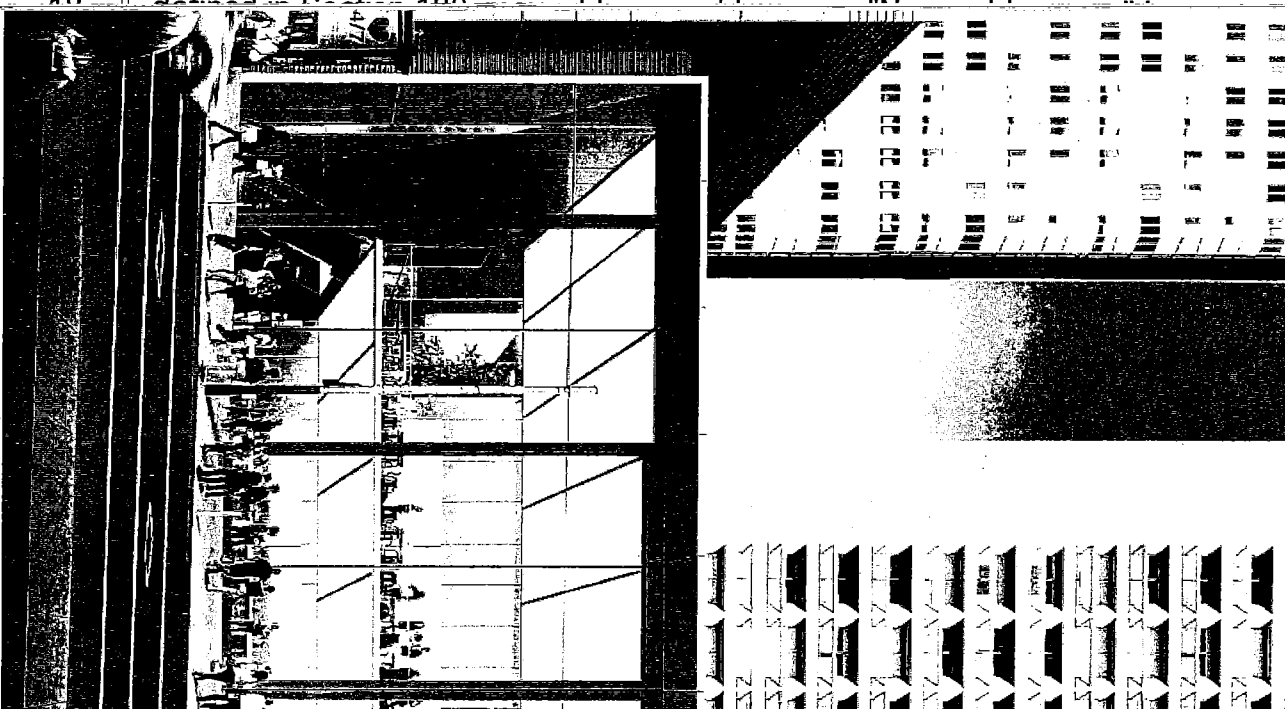
17 (b) A noncomplying structure that is a

1 (c) In order that major life safety hazards in noncomplying structures may be  
2 eliminated as expeditiously as possible, a noncomplying structure constructed of unreinforced  
3 masonry that is inconsistent with the requirements of the UMB Seismic Retrofit Ordinance,  
4 Ordinance No. 227-92, may be demolished and reconstructed to the same level of  
5 noncompliance; provided that:

6 (1) The current requirements of the Building, Housing and Fire Codes and, as  
7 applicable, Planning Code are met, provided that the Zoning Administrator may, and is hereby  
8 empowered to, permit minor modifications to Planning Code requirements (which may include  
9 permitting an increase in the building envelope or a reduction in the number of parking  
10 spaces) to the extent necessary and required to bring the replacement building up to such  
11 applicable Code requirements and to allow replacement of the demolished building with a  
12 building which contains a comparable amount of square footage or the same number of  
13 residential units as that of the demolished building. The Zoning Administrator shall provide a  
14 written determination regarding such permitted Planning Code modifications; and

15 (2) Such restoration or reconstruction is started within one year after razing or  
16 other demolition work on the structure and diligently prosecuted to completion.

17 (d) Notwithstanding Subsection (a) of this Section, a noncomplying structure as  
18 defined in Section 100



1 (A) Be necessary to comply with Building Code, Fire Code or Planning  
2 Code requirements; or

3 (B) Enhance the life safety aspects of the building and/or mechanical,  
4 environmental control systems; or

5 (2) Be located within a C-3 District, and:

6 (A) Be necessary to comply with Building Code, Fire Code or Planning  
7 Code requirements; or

8 (B) Enhance aesthetic qualities and/or character; or

9 (C) Enhance the life safety aspects of the building and/or mechanical,  
10 environmental control systems; or

11 (D) Accommodate rooftop features exempted from height limits under  
12 Section 260(b) or as provided for under Sections 270, 271 or 272 of this Code.

13 (3) Application for enlargement of a non-complying structure under Subsection  
14 (d)(1) shall be considered as part of an application for a Certificate of Appropriateness under  
15 Article 10 or a Permit to Alter under Article 11 of this Code. Any application to enlarge a  
16 noncomplying structure under Article 11 shall be considered as a major alteration under



1 (C) That the structure provides an appropriate transition to adjacent  
2 properties, as necessary; and

3 (D) That the interior block open space formed by the rear yards of  
4 abutting properties will not be adversely affected; and

5 (E) That the access of light and air to abutting properties will not be  
6 significantly affected; and

7 (F) That public view corridors not be significantly affected; and

8 (4) The City Planning Commission, subject to the same application procedures  
9 of Section 188(d)(3) above, may grant an exception to the Planning Code requirements rather  
10 than expansion of the structure to accommodate the Planning Code requirements. The  
11 exception of the Planning Code requirement shall be subject to the criteria below:

12 (A) That the exception promote the health, safety and welfare of the  
13 public; and

14 (B) That the exception result in an increased benefit to the public and the  
15 adjacent properties over the increase in nonconformance; and

16 (C) That the exception not be detrimental to either the occupants of the



1 (1) For the purposes of this Section, "Qualified Movie Theater" shall mean a  
2 building that: (A) is currently or has been used as a movie theater; and (B) is listed on or  
3 eligible for listing on the National Register of Historic Places or the California Register of  
4 Historical Resources, designated a City Landmark or a contributor to a City Landmark District  
5 under Article 10, or designated as a Significant or Contributory Building under Article 11.

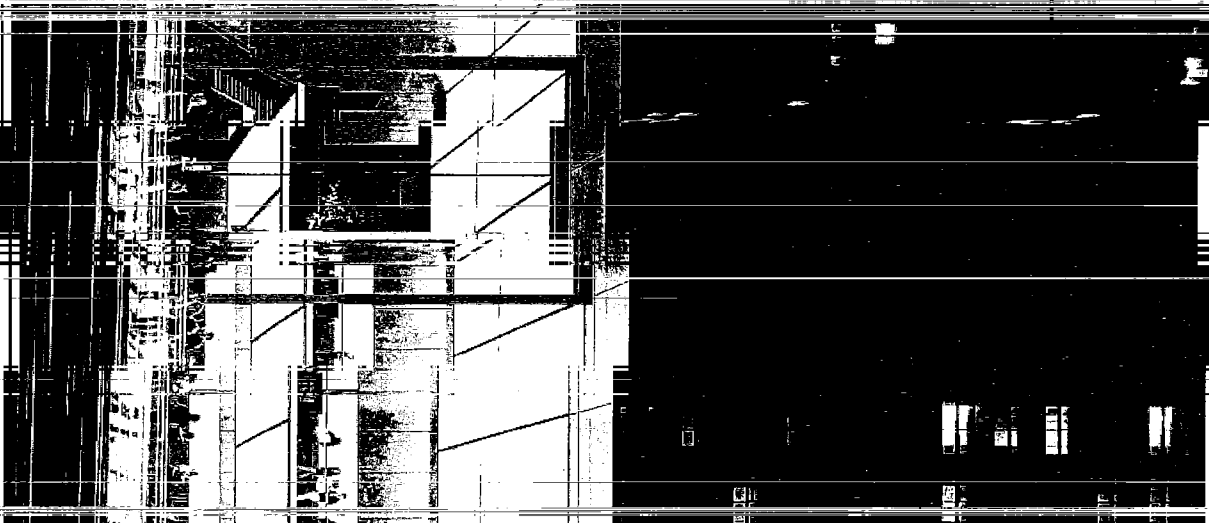
6 (2) Any preservation, rehabilitation, restoration, or reconstruction permitted  
7 under this Section shall be in strict conformity with the overall design, scale, and character of  
8 the existing or previously existing Historic Movie Theater Sign or Historic Movie Theater  
9 Marquee and:

10 (A) For a Qualified Movie Theater that retains its Historic Movie Theater  
11 Projecting Sign and/or Historic Movie Theater Marquee, the signage features shall be limited



1 (ii) On a Historic Movie Theater Marquee, the historic name  
2 associated with a previous theater occupant and, where applicable, on the signboard, other  
3 information that is an Identifying Sign, as defined in Section 602.10, provided such information  
4 shall be contained within the signboard, shall not consist of any logos, and shall be in the  
5 character of lettering historically found on movie theater signboards in terms of size, font, and  
6 detail.

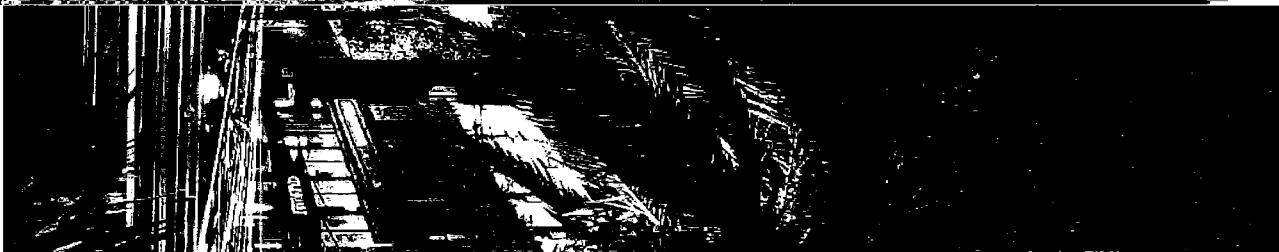
7 (C) Any application to reconstruct shall include evidence of the  
8 dimensions, scale, materials, placement, and features of the previously existing Historic Movie  
9 Theater Building or Historic Movie Theater Marquee, as well as any other



10 Theater, Projecting Sign and/or Historic Movie Theater Marquee, as well as any other

information required by the Zoning Administrator.

- 1 (G) Not result in an adverse impact to a historic resource;  
2 (H) Not cause significant shadows or wind impacts on public sidewalks or  
3 parks;  
4 (I) Not obstruct significant public view corridors; and  
5 (J) Not significantly impair light and air to abutting properties.  
6 (2) An application for removal and reconstruction of a non-complying secondary  
7 structure shall be considered under the provisions of Section 309(b) of this Code.  
8



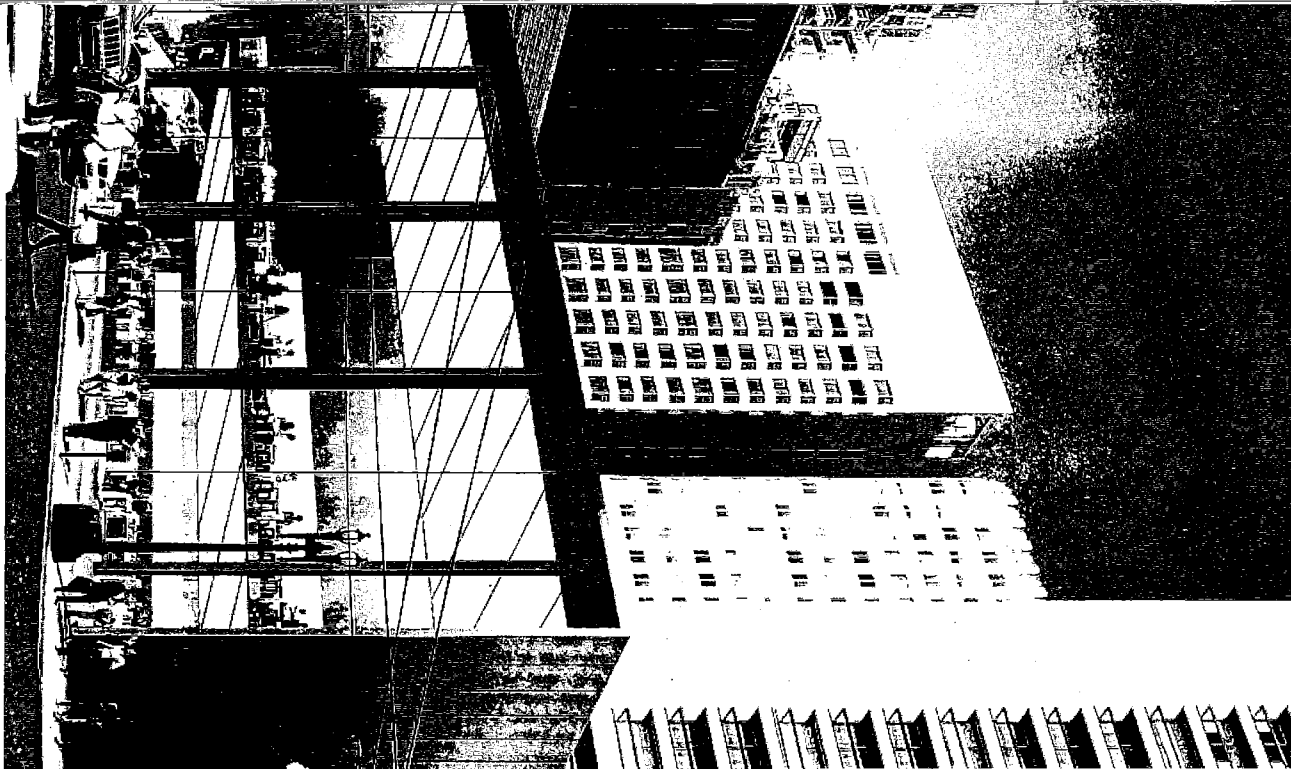
## LEGISLATIVE DIGEST

[Planning Code – Allowing certain non-conforming structures to be rebuilt under certain conditions]

**Ordinance amending the Planning Code to allow non-conforming secondary structures in a C-3-R zoning district to be demolished and rebuilt to the prior non-conforming size under certain conditions.**

### Existing Law

Planning Code Section 188 allows noncomplying structures to be rebuilt only if the structure would not increase any discrepancy or create any new discrepancy between existing conditions on the lot and the required standards for new construction set forth in the Planning Code.



A noncomplying structure may also be rebuilt to its former condition if it has been destroyed by fire or other calamity and if the restoration is started within 18 months of its destruction. No noncomplying structure that is voluntarily razed may be restored to its former noncomplying condition.

### Amendments to Current Law

New Section 188(f) would allow a secondary structure that is noncomplying with respect to the maximum floor area ratio limit to be removed and reconstructed to its former noncomplying condition if it meets a number of criteria. The secondary structure must be located within a C-3-R district and may contain no more than one-quarter of the gross floor area of the primary structure on the lot. The proposed removal and reconstruction of a secondary structure must promote and enhance the C-3-R district as a retail destination, result in an increased benefit to the public and the adjacent properties, enhance the aesthetic qualities and/or character of the lot, result in a net decrease of gross floor area of all structures on the lot, result in a



# SAN FRANCISCO PLANNING DEPARTMENT

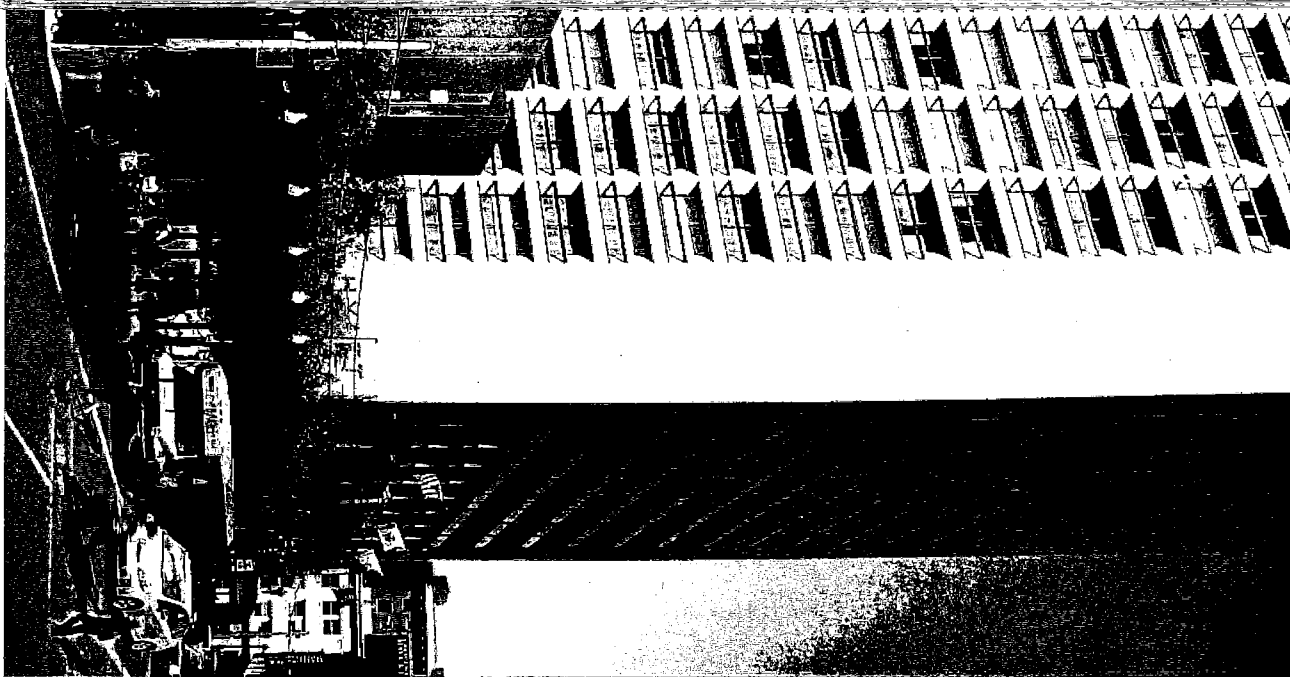
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February 13, 2014

Ms. Angela Calvillo, Clerk  
Board of Supervisors  
City and County of San Francisco

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

Reception:  
415 559 6270





# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Planning Code Text Change

HEARING DATE: FEBRUARY 06, 2014

1650 Mission St.  
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CA 94103-2479

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**415.558.6409**

Planning  
Information:  
**415.558.6377**

*Project Name:* **Amendments allowing the reconstruction of structures that are non-complying with regard to Floor Area Ratio within the C-3-R District**

*Case Number:* 2013.1695T [Board File No. 13-1059]

*Initiated by:* Supervisor Chiu / Introduced October 29, 2013

*Staff Contact:* Elizabeth Watty, Current Planning  
Elizabeth.Watty@sfgov.org, 415-558-6620

*Reviewed by:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395

*Recommendation:* **Recommend Approval with Modifications**

### PLANNING CODE AMENDMENT

The proposed Ordinance would amend Planning Code Section 188 (Noncomplying Structures: Enlargements, Alterations and Reconstruction), to allow noncomplying secondary structures located within the C-3-R (Downtown Retail) Zoning District that exceed a property's maximum floor area ratio limit to be reconstructed after a voluntary demolition or partial demolition, if certain findings can be made by the Planning Commission through the Downtown Project Authorization process (Planning Code Section 309). The Ordinance would not modify other existing restrictions relating to the demolition of buildings, including processes relating to historic properties.

#### The Way It Is Now:

Planning Code Section 188 prohibits the reconstruction of noncomplying structures after a voluntary demolition, even if the proposed reconstruction would result in a net decrease in the property's floor area ratio (FAR).

#### The Way It Would Be:

The proposed Ordinance would allow through the Downtown Project Authorization process, noncomplying secondary structures<sup>1</sup> located within the C-3-R Zoning District to be removed, in whole or in part, and reconstructed pursuant to the following criteria:

1. The project would promote and enhance the C-3-R District as a retail destination;
2. The project would result in an increased benefit to the public and the adjacent properties;
3. The project would enhance the aesthetic qualities and/or character of the property;

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<sup>1</sup> For the purposes of this legislation, a secondary structure means a structure located on a lot with two or more structures that has no more than one-quarter of the gross floor area of the primary structure on the lot.

4. The project would result in a net decrease of gross floor area of all structures on the property;
5. The project would result in a structure that more closely conforms to the floor area ratio limit;
6. The project would not result in an adverse impact to a historic resource;
7. The project would not cause significant shadows or wind impacts on public sidewalks or parks;
8. The project would not obstruct significant public view corridors; and
9. The Project would not significantly impair light and air to abutting properties.

## REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

## RECOMMENDATION

The Department recommends that the Commission recommend **approval with modifications** of the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department recommends modifying the scope of this legislation so that it will only affect Lot 016 of Assessor's Block 0295, which is occupied by the Grand Hyatt Hotel and a retail store, most recently occupied by Levi Strauss, and has a current proposal to replace the Levi Strauss store with a retail store for Apple Inc. As currently drafted, the legislation would only apply to those properties in the C-3-R District that contain a secondary structure. In effect, this narrows the legislation's applicability down to one parcel: Lot 016 of Assessor's Block 0295. No other properties within the C-3-R District have a secondary structure. The Department believes that adding the block and lot number of the one affected parcel helps to clarify the applicability of the legislation and provide certainty that its effect is limited to this one parcel within the C-3-R District.

## BASIS FOR RECOMMENDATION

Section 188 states that a noncomplying structure may be enlarged, altered or relocated, or undergo a change or intensification of use in conformity with the use limitations of this Code, provided that with respect to such structure there is no increase in any discrepancy, or any new discrepancy, at any level of the structure, between existing conditions on the lot and the required standards for new construction set forth in the Planning Code. However, a noncomplying structure that is voluntarily razed – in whole or in part – may only be reconstructed in full conformity with the requirements of the Planning Code.

The City's Downtown Retail District (C-3-R) is a regional center for retail shopping and includes many supporting uses, such as tourist hotels and other consumer services. It covers a compact area with the City, generally bounded by Bush Street to the north (with the exception of a few parcels that extend to Bush Street), the west side of Powell Street to the west, the north side of Mission Street to the south, and the west side of Third/Kearny Street to the east. It includes many properties that pre-date the Downtown Plan, which established the current FAR limits, thereby resulting in 38 parcels that exceed the current FAR controls.

Within the C-3-R District, there are 238 parcels, of which, 38 sites – or 16% - are noncomplying with regard to floor area ratio (FAR).

The table below identifies the 38 parcels in the C -3-R District that are noncomplying with regard to FAR:

STREET NO.	STREET	LOTAREA	BLDGSQFT	FAR
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450-464	Sutter St	23,597	294,416	12.48
390-390	Stockton St	3,528	34,215	9.70
433	Powell St	3,792	48,713	12.85
201-209	Post St	7,838	99,223	12.66
281	Geary St	6,073	104,872	17.27
55-65	Stockton St	2,287	100,715	44.04
321-323	Grant St	2,105	23,100	10.97
201-209	Grant St	8,865	96,870	10.93
132-140	Geary St	5,474	56,933	10.40
750-780	Market St	31,368	327,339	10.44
77-79	O'farrell St	7,219	68,472	9.49
701-703	Market St	5,218	94,519	18.11
50	03 <sup>rd</sup> St	39,594	490,000	12.38
432-462	Powell St	15,976	232,984	14.58
70-76	Geary St	6,118	120,334	19.67
37-45	Geary St	5,926	55,584	9.38
201-225	Powell St	9,577	97,137	10.14
77	O'farrell St	2,250	68,472	30.43
785	Market St	8,481	90,896	10.72
350-360	Post St	10,313	110,893	10.75
345	Stockton St	35,894	610,645	17.01
73-77	Geary St	13,931	132,356	9.50
170	O'farrell St	12,052	114,468	9.50
55-59	Stockton St	2,266	100,715	44.44
41 -55	Stockton St	6,046	100,715	16.66
55	04 <sup>th</sup> St	128,263	1,194,693	9.31
555	Pine St	20,631	356,820	17.30
340	Stockton St	8,142	92,000	11.30
300-330	Geary St	56,250	508,714	9.04
234-240	Stockton St	4,200	45,260	10.78
60	Maiden Lane	6,498	59,786	9.20

101	Stockton St	26,048	264,780	10.17
188	O'farrell St	7,599	81,360	10.71
281	Geary St	6,066	104,872	17.29
201-221	Powell St	1,854	97,137	52.40
111	O'farrell St	4,546	100,715	22.15
799	Market St	16,963	155,871	9.19
166-170	Geary St	5,378	48,600	9.04
233	Geary St	19,033	243,612	12.80

The Ordinance is further limited in scope by tying the controls to those sites with "Secondary Structures." With the Secondary Structure limitation, this Ordinance appears to apply to only one parcel: 345 Stockton Street (aka 300 Post Street), which is the site of the pending Apple Inc., retail store. The Apple store project would require the approval of this Ordinance in order to be approved. The Department's recommendation, discussed above, does not change the effect of the proposed Ordinance as drafted, but rather makes it more explicit that this Ordinance will only affect one parcel (Lot 016 of Assessor's Block 0295), now and in the future. The Department's recommendation has shifted since this item was originally scheduled for hearing, in response to concerns raised by several Commissioners about the unintended consequences that could result from applying this Ordinance to all of the properties that are noncomplying with regard to FAR within the C-3-R District, not just those with secondary structures. The Department appreciates those concerns, and has since modified our recommendation to support the legislation as drafted, with minor modifications to clarify its applicability within the C-3-R District.

The Department supports this Ordinance since nine other findings would have to be made by the Planning Commission at a public hearing through a Downtown Project Authorization process (Section 309), in order to grant the reconstruction of floor area that exceeds the site's maximum FAR. The Commission would need to make the findings that the project would promote and enhance the C-3-R District as a retail destination; result in an increased benefit to the public and the adjacent properties; enhance the aesthetic qualities and/or character of the property; result in a net decrease of gross floor area of all structures on the property; result in a structure that more closely conforms to the floor area ratio limit; would not result in an adverse impact to a historic resource; would not cause significant shadows or wind impacts on public sidewalks or parks; would not obstruct significant public view corridors; and would not significantly impair light and air to abutting properties. The project would also be subject to a public hearing by the Zoning Administrator, in order to grant a variance from the transparency requirements along Stockton Street.

The proposed Ordinance is very limited in scope and would affect only one parcel. It enables an irregularly-shaped building at 300 Post Street (345 Stockton Street) to be regularized in form, lowered in height, and reduced in overall square footage. This rezoning serves the public interest by enabling an improved and regularized building form at 300 Post Street, strengthening the street wall along Stockton Street, and by reducing the degree of noncompliance relating to FAR at 300 Post Street. This Ordinance gives the property owner of this one parcel more flexibility in how they can alter and improve the property, while ensuring that a noncomplying structure is becoming more in compliance with the spirit of Planning Code Section 188.

In sum, the Department supports the proposed Ordinance to permit a noncomplying structure on Lot 016 of Assessor's Block 0295 to be removed and reconstructed, with review by the Planning Commission through the Downtown Project Authorization process.

## **ENVIRONMENTAL REVIEW**

On January 28, 2014, pursuant to CEQA Guidelines Section 15302, a Certificate of Determination of Categorical Exemption from Environmental Review was published by the Environmental Planning division of the Planning Department (Case No. 2013.0628E).

## **PUBLIC COMMENT**

As of the date of this report, the Planning Department has received comments from the Service Employees International Union – United Service Workers West (“SEIU-USWW”) expressing opposition to this Ordinance. The Department has also received a letter in support of the proposed Apple, Inc. retail store project – which relies on this Ordinance – from the Union Square Business Improvement District.

<b>RECOMMENDATION:</b>	<b>Recommendation of Approval with Modifications</b>
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### **Attachments:**

Exhibit A: Draft Planning Commission Resolution  
Exhibit B: Board of Supervisors File No. 13-1695T  
Exhibit C: Map of Potentially Affected Properties



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Resolution No. XXXX

HEARING DATE: FEBRUARY 06, 2014

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

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*Project Name:* **Amendments allowing the reconstruction of structures that are non-complying with regard to Floor Area Ratio within the C-3-R District**

*Case Number:* 2013.1695T [Board File No. 13-1059]

*Initiated by:* Supervisor Chiu / Introduced October 29, 2013

*Staff Contact:* Elizabeth Watty, Current Planning  
Elizabeth.Watty@sfgov.org, 415-558-6620

*Reviewed by:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395

*Recommendation:* **Recommend Approval with Modifications**

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE SECTION 188 (NONCOMPLYING STRUCTURES: ENLARGEMENTS, ALTERATIONS AND RECONSTRUCTION), TO ALLOW NONCOMPLYING SECONDARY STRUCTURES LOCATED WITHIN THE C-3-R (DOWNTOWN RETAIL) ZONING DISTRICT THAT EXCEED A PROPERTY'S MAXIMUM FLOOR AREA RATIO ("FAR") LIMIT TO BE DEMOLISHED, IN WHOLE OR IN PART, AND RECONSTRUCTED, IF CERTAIN FINDINGS CAN BE MADE BY THE PLANNING COMMISSION THROUGH THE DOWNTOWN AUTHORIZATION PROCESS (SECTION 309).

### PREAMBLE

Whereas, on October 29, 2013, Supervisor Chiu introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 13-1059 which would amend Planning Code Section 188 (Noncomplying Structures: Enlargements, Alterations and Reconstruction), to allow noncomplying secondary structures located within the C-3-R (Downtown Retail) Zoning District that exceed a property's maximum floor area ratio limit to be demolished, in whole or in part, and reconstructed, if certain findings can be made by the Planning Commission through the Downtown Project Authorization process (Planning Code Section 309); and

Whereas, on December 19, 2013, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, on December 19, 2013, the Commission continued the public hearing to January 16, 2014; and

Whereas, on January 16, 2014, the Commission continued the public hearing to February 06, 2014; and

Whereas, on January 28, 2014, pursuant to CEQA Guidelines Section 15302, a Certificate of Determination of Categorical Exemption from Environmental Review was published by the Environmental Planning division of the Planning Department (Case No. 2013.0628E); and

Whereas, 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; and

Whereas, the 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 Commission has reviewed the proposed Ordinance; and

**MOVED**, that the Commission hereby recommends that the Board of Supervisors recommends ***approval of the proposed Ordinance with modifications*** and adopts the attached Draft Resolution to that effect.

## 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. As a result of the adoption of the Downtown Plan, 38 existing buildings within the C-3-R District became noncomplying with regard to FAR.
2. Out of the 38 existing buildings that are noncomplying with regard to FAR, only one property appears to contain a Secondary Structure; this is Lot 016 of Assessor's Block 0295. Since only one parcel is affected by this Ordinance, the Planning Commission recommends that the Ordinance be amended to clearly limit its affect to this one Parcel.
3. Planning Code Section 188 prohibits the demolition and reconstruction of any portion of a noncomplying structure, which significantly limits a property owner's ability to modify a parcel to accommodate changing tenant needs and improve a building's overall aesthetics.
4. This Ordinance allows a property owner within the C-3-R District the ability to reconstruct a noncomplying secondary structure after voluntary razing all or a portion of it, so long as the project would promote and enhance the C-3-R District as a retail destination; result in an increased benefit to the public and the adjacent properties; enhance the aesthetic qualities and/or character of the property; result in a net decrease of gross floor area of all structures on the property; result in a structure that more closely conforms to the floor area ratio limit; not result in an adverse impact to a historic resource; not cause significant shadows or wind impacts on public sidewalks or parks; not obstruct significant public view corridors; and would not significantly impair light and air to abutting properties. The Ordinance would not otherwise alter the approval of requirements for a demolition,

including the requirement for Historic Preservation Commission approval of a Permit to Demolish for buildings rated under Articles 10 or 11.

5. By allowing this parcel within the C-3-R District the ability to be modified, this Ordinance empowers the property owner of buildings within the City's regional shopping center with the ability to renovate, replace one retail building with another retail building, and remain competitive with the changing needs of future retail tenants.
6. The Commission believes that by allowing such noncomplying retail structure to be modified within the aforementioned constraints, it will provide the Commission with greater tools to encourage a well-designed alteration, which benefits the public realm within the City's regional retail destination.
7. By requiring that any such alteration remains below the existing building's FAR and by clearly limiting the scope of this Ordinance to one parcel, it minimizes the potential for this Ordinance to have any adverse effects on the neighborhood, since any such project would bring a building closer into conformity with the current Planning Code regulations.
8. The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendment in order to allow for an improved urban form and public plaza at a an important corner of the City's regional retail shopping district. Without the proposed amendment, the existing triangular-shaped store could not be replaced by a retail store that is rectangular in shape and that holds the corner of Post and Stockton Streets, which would be detrimental to the character of the district.
9. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

## COMMERCE & INDUSTRY ELEMENT

### OBJECTIVE 1

#### MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT

##### Policy 1.1

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

##### Policy 1.2

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

### 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.

**OBJECTIVE 3**

**PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.**

**Policy 3.1**

Promote the attraction, retention and expansion of commercial and industrial firms which provide employment improvement opportunities for unskilled and semi-skilled workers.

**DOWNTOWN PLAN**

**OBJECTIVE 1**

**MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT**

**Policy 1.1**

Encourage development which produces substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences which cannot be mitigated.

**OBJECTIVE 3**

**IMPROVE DOWNTOWN SAN FRANCISCO'S POSITION AS THE REGION'S PRIME LOCATION FOR SPECIALIZED RETAIL TRADE.**

**Policy 3.1**

Maintain high quality, specialty retail shopping facilities in the retail core.

*The proposed Ordinance provides substantial net benefits and minimizes undesirable consequences by providing an unusually-shaped legal noncomplying structure on Lot 016 of Assessor's Block 0295 with increased renovation options, making the C-3-R District a more attractive location for retail establishments to do business.*

10. The proposed replacement project is consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

- A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

*The proposed Ordinance will affect only one parcel within the City's Downtown Retail District. This Ordinance will allow an alteration and redesign of an irregularly-shaped building, thereby enhancing the aesthetic character of the retail shopping District.*

- B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

*The proposed Ordinance requires the Planning Commission to consider nine criteria before allowing any noncomplying structure to be reconstructed, in whole or in part. The Commission must determine through the Downtown Project Authorization process that any project utilizing the provisions in this Ordinance would occur only on Lot 016 of Assessor's Block 0295, would promote and enhance the C-3-R District as a retail destination; result in an increased benefit to the public and the adjacent properties; would not cause significant shadows or wind impacts on public sidewalks or parks; would not obstruct significant public view corridors; would not significantly impair light and air to abutting properties; would not result in an adverse impact to a historic resource; and would result in a net decrease in the building's floor area ratio. The Downtown Project Authorization process will ensure that existing housing – which there's very little of in the C-3-R District – and the neighborhood character will be conserved and protected.*

- C) The City's supply of affordable housing will be preserved and enhanced:

*This Ordinance will not affect the City's supply of affordable housing, as it targets projects that will promote and enhance the C-3-R District as a retail destination.*

- D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

*The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

*The proposed Ordinance would not adversely affect the industrial or service sectors, nor would it affect future opportunities for resident employment or ownership in these sectors. The Ordinance does not change the permitted uses within the C-3-R District, which promote retail uses, particularly at the ground floor.*

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

*Preparedness against injury and loss of life in an earthquake is unaffected by the proposed amendments. Any new construction or alteration associated with a project would be executed in compliance with all applicable construction and safety measures. The Ordinance would, however, provide the property owner of one parcel with greater flexibility in seismically upgrading their property, since it would enable one property owner to remove a noncomplying portion of a building and recapture some of the space elsewhere on the property.*

- G) That landmark and historic buildings will be preserved:

*Landmarks and historic buildings would be unaffected by the proposed amendments. Through the Downtown Project Authorization process, the Commission must review any project utilizing this provision to ensure that it will not result in an adverse impact to a historic resource. The one parcel affected by this Ordinance is not a historic building. Although the one parcel affected by this Ordinance is located in the Kearny-Market-Mason-Sutter Conservation District, the Historic Preservation Commission will review the details of any project implementing this Ordinance for compatibility with said District.*

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

*The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed amendments. Through the Downtown Project Authorization process, the Commission must review any project utilizing this provision to ensure that it will not cause significant shadows or wind impacts on public sidewalks or parks, obstruct significant public view corridors, or significantly impair light and air to abutting properties, including public open spaces.*

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on February 06, 2014.

Jonas P. Ionin  
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: February 06, 2014

[Planning Code - Allowing Certain Non-Conforming Structures to be Rebuilt Under Certain Conditions]

**Ordinance amending the Planning Code to allow non-conforming secondary structures in a C-3-R (Downtown Retail) Zoning District to be demolished and rebuilt to the prior non-conforming size under certain conditions; making environmental findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

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 ~~strikethrough 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. Findings.

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and is incorporated herein by reference.

(b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_, adopted findings that the actions contemplated in this ordinance are consistent, on balance, with the City's General Plan and eight priority policies of Planning Code Section 101.1. The Board adopts these findings [OR, this determination] as its own. A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.

1 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code  
2 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth  
3 in Planning Commission Resolution No. \_\_\_\_\_ and the Board incorporates such reasons  
4 herein by reference.

5  
6 Section 2. The Planning Code is hereby amended by revising Section 188, to read as  
7 follows:

8 SEC. 188. NONCOMPLYING STRUCTURES: ENLARGEMENTS, ALTERATIONS  
9 AND RECONSTRUCTION.

10 (a) Within the limitations of this Article 1.7, and especially Sections 172 and 180  
11 hereof, a noncomplying structure as defined in Section 180 may be enlarged, altered or  
12 relocated, or undergo a change or intensification of use in conformity with the use limitations  
13 of this Code, provided that with respect to such structure there is no increase in any  
14 discrepancy, or any new discrepancy, at any level of the structure, between existing  
15 conditions on the lot and the required standards for new construction set forth in this Code,  
16 and provided the remaining requirements of this Code are met.

17 (b) A noncomplying structure that is damaged or destroyed by fire, or other calamity,  
18 or by Act of God, or by the public enemy, may be restored to its former condition; provided  
19 that such restoration is permitted by the Building Code, and is started within eighteen months  
20 and diligently prosecuted to completion. Except as provided in Subsection (c) below, no  
21 noncomplying structure that is voluntarily razed or required by law to be razed by the owner  
22 thereof may thereafter be restored except in full conformity with the requirements of this Code.

23 For purposes of this Subsection (b), "started within eighteen months" shall mean that  
24 within eighteen months of the fire or other calamity or Act of God, the structure's owner shall  
25 have filed a building permit application to restore the structure to its former condition and use.

1 (c) In order that major life safety hazards in noncomplying structures may be  
2 eliminated as expeditiously as possible, a noncomplying structure constructed of unreinforced  
3 masonry that is inconsistent with the requirements of the UMB Seismic Retrofit Ordinance,  
4 Ordinance No. 227-92, may be demolished and reconstructed to the same level of  
5 noncompliance; provided that:

6 (1) The current requirements of the Building, Housing and Fire Codes and, as  
7 applicable, Planning Code are met, provided that the Zoning Administrator may, and is hereby  
8 empowered to, permit minor modifications to Planning Code requirements (which may include  
9 permitting an increase in the building envelope or a reduction in the number of parking  
10 spaces) to the extent necessary and required to bring the replacement building up to such  
11 applicable Code requirements and to allow replacement of the demolished building with a  
12 building which contains a comparable amount of square footage or the same number of  
13 residential units as that of the demolished building. The Zoning Administrator shall provide a  
14 written determination regarding such permitted Planning Code modifications; and

15 (2) Such restoration or reconstruction is started within one year after razing or  
16 other demolition work on the structure and diligently prosecuted to completion.

17 (d) Notwithstanding Subsection (a) of this Section, a noncomplying structure as  
18 defined in Section 180, may add nonusable space. "Nonusable space" is space not used for  
19 living, sleeping, eating, cooking or working. Public corridors, mechanical space, fire stairs and  
20 similar areas, are nonusable space. The enlargement must:

21 (1) Facilitate the adaptive reuse or the rehabilitation of a landmark site or  
22 contributory structure within a Historic District designated under Article 10 of this Code or a  
23 significant structure or contributory structure within a Conservation District designated under  
24 Article 11 of this Code; and  
25

1 (A) Be necessary to comply with Building Code, Fire Code or Planning  
2 Code requirements; or

3 (B) Enhance the life safety aspects of the building and/or mechanical,  
4 environmental control systems; or

5 (2) Be located within a C-3 District, and:

6 (A) Be necessary to comply with Building Code, Fire Code or Planning  
7 Code requirements; or

8 (B) Enhance aesthetic qualities and/or character; or

9 (C) Enhance the life safety aspects of the building and/or mechanical,  
10 environmental control systems; or

11 (D) Accommodate rooftop features exempted from height limits under  
12 Section 260(b) or as provided for under Sections 270, 271 or 272 of this Code.

13 (3) Application for enlargement of a non-complying structure under Subsection  
14 (d)(1) shall be considered as part of an application for a Certificate of Appropriateness under  
15 Article 10 or a Permit to Alter under Article 11 of this Code. Any application to enlarge a  
16 noncomplying structure under Article 11 shall be considered as a major alteration under  
17 Section 1111 of the Planning Code. Application to alter a noncomplying structure not  
18 designated an Article 11 significant or contributory building under Subsection (d)(2) shall be  
19 considered under the provisions of Section 309(b) of this Code. These applications shall be  
20 subject to the following additional criteria:

21 (A) That the enlargement promote the health, safety and welfare of the  
22 public; and

23 (B) That the enlargement not cause significant shadows or wind impacts  
24 on public sidewalks and parks; and  
25

1 (C) That the structure provides an appropriate transition to adjacent  
2 properties, as necessary; and

3 (D) That the interior block open space formed by the rear yards of  
4 abutting properties will not be adversely affected; and

5 (E) That the access of light and air to abutting properties will not be  
6 significantly affected; and

7 (F) That public view corridors not be significantly affected; and

8 (4) The City Planning Commission, subject to the same application procedures  
9 of Section 188(d)(3) above, may grant an exception to the Planning Code requirements rather  
10 than expansion of the structure to accommodate the Planning Code requirements. The  
11 exception of the Planning Code requirement shall be subject to the criteria below:

12 (A) That the exception promote the health, safety and welfare of the  
13 public; and

14 (B) That the exception result in an increased benefit to the public and the  
15 adjacent properties over the increase in nonconformance; and

16 (C) That the exception not be detrimental to either the occupants of the  
17 proposed project or to the neighborhood.

18 (e) Notwithstanding Subsection (a) of this Section, and in order that certain character-  
19 defining architectural elements of Qualified Movie Theaters be preserved and enhanced, a  
20 noncomplying Historic Movie Theater Projecting Sign, as defined in Section 602.25, and/or a  
21 noncomplying Historic Movie Theater Marquee, as defined in Section 602.26, may be  
22 preserved, rehabilitated, or restored. A noncomplying Historic Movie Theater Projecting Sign  
23 or a noncomplying Historic Movie Theater Marquee removed from a Qualified Movie Theater  
24 prior to or in absence of an application for replacement may be reconstructed.

1 (1) For the purposes of this Section, "Qualified Movie Theater" shall mean a  
2 building that: (A) is currently or has been used as a movie theater; and (B) is listed on or  
3 eligible for listing on the National Register of Historic Places or the California Register of  
4 Historical Resources, designated a City Landmark or a contributor to a City Landmark District  
5 under Article 10, or designated as a Significant or Contributory Building under Article 11.

6 (2) Any preservation, rehabilitation, restoration, or reconstruction permitted  
7 under this Section shall be in strict conformity with the overall design, scale, and character of  
8 the existing or previously existing Historic Movie Theater Sign or Historic Movie Theater  
9 Marquee and:

10 (A) For a Qualified Movie Theater that retains its Historic Movie Theater  
11 Projecting Sign and/or Historic Movie Theater Marquee, the signage features shall be limited  
12 to the following:

13 (i) On a Historic Movie Theater Projecting Sign, the historic name  
14 associated with a previous theater occupant;

15 (ii) On a Historic Movie Theater Marquee, the historic name  
16 associated with a previous theater occupant and, where applicable, on the signboard, other  
17 information that is an Identifying Sign, as defined in Section 602.10, provided such information  
18 shall be contained within the signboard, shall not consist of any logos, and shall be in the  
19 character of lettering historically found on movie theater signboards in terms of size, font, and  
20 detail.

21 (B) For a Qualified Movie Theater where the Historic Movie Theater  
22 Projecting Sign and/or Historic Movie Theater Marquee has been removed and is proposed to  
23 be reconstructed, the overall design and signage features shall be limited to the following:

24 (i) On a Historic Movie Theater Projecting Sign, the historic name  
25 associated with a previous theater occupant;

(ii) On a Historic Movie Theater Marquee, the historic name associated with a previous theater occupant and, where applicable, on the signboard, other information that is an Identifying Sign, as defined in Section 602.10, provided such information shall be contained within the signboard, shall not consist of any logos, and shall be in the character of lettering historically found on movie theater signboards in terms of size, font, and detail.

(C) Any application to reconstruct shall include evidence of the dimensions, scale, materials, placement, and features of the previously existing Historic Movie Theater Projecting Sign and/or Historic Movie Theater Marquee, as well as any other information required by the Zoning Administrator.

(D) General advertising signs shall not be permitted on either a Historic Movie Theater Projecting Sign or a Historic Movie Theater Marquee.

(f) Notwithstanding Subsection (a) of this Section 188, a secondary structure that is noncomplying with respect to the maximum floor area ratio limit may be removed, in whole or in part, and reconstructed pursuant to the criteria below. For purposes of this Subsection (f), a secondary structure means a structure located on a lot with two or more structures that has no more than one-quarter of the gross floor area of the primary structure on the lot.

(1) The proposed removal and reconstruction shall:

(A) Be located within a C-3-R District;

(B) Promote and enhance the C-3-R District as a retail destination;

(C) Result in an increased benefit to the public and the adjacent properties;

(D) Enhance the aesthetic qualities and/or character of the lot;

(E) Result in a net decrease of gross floor area of all structures on the subject property;

(F) Result in a structure that more closely conforms to the floor area ratio limit;

1                    (G) Not result in an adverse impact to a historic resource;  
2                    (H) Not cause significant shadows or wind impacts on public sidewalks or  
3 parks;  
4                    (I) Not obstruct significant public view corridors; and  
5                    (J) Not significantly impair light and air to abutting properties.  
6                    (2) An application for removal and reconstruction of a non-complying secondary  
7 structure shall be considered under the provisions of Section 309(b) of this Code.  
8

9                    Section 3. Effective Date. This ordinance shall become effective 30 days after  
10 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
11 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
12 of Supervisors overrides the Mayor's veto of the ordinance.  
13

14                    Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
15 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
16 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
17 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
18 additions, and Board amendment deletions in accordance with the "Note" that appears under  
19 the official title of the ordinance.  
20

21 APPROVED AS TO FORM:  
22 DENNIS J. HERRERA, City Attorney

23 By: \_\_\_\_\_  
24 KATE HERRMANN STACY  
25 Deputy City Attorney



## C-3-R Zoning District

- C-3-R parcels with a FAR < 9.0
- C-3-R parcels with a FAR > 9.0
- C-3-R parcels with a FAR > 9.0 and a secondary structure

1,000 Feet



# SAN FRANCISCO PLANNING DEPARTMENT

## Certificate of Determination Exemption from Environmental Review

*Case No.:* 2013.0628E  
*Project Title:* 300 Post Street/345 Stockton Street  
*Zoning:* C-3-R (Downtown Retail)  
Kearny-Market-Mason-Sutter Conservation District  
80-130-F Height and Bulk District  
*Block/Lot:* 0295/016  
*Lot Size:* 35,391 square feet  
*Project Sponsor:* Apple, Inc., c/o Daniel Frattin, Reuben, Junius & Rose

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**



(415) 567-9000

*Staff Contact:* Jeanie Poling – (415) 575-9072  
jeanie.poling@sfgov.org

### PROJECT DESCRIPTION:

The project site is located in the Downtown/Civic Center neighborhood on the northwest corner of Post and Stockton Streets within the block bounded by Post, Stockton, Sutter, and Powell Streets. The project site contains a 550,599-square-foot (sf) building complex with two above-grade components (a 35-story hotel structure fronting Stockton and Sutter Streets, and four-story 37,234 sf retail structure fronting Post Street), an elevated plaza between the two structures, and basement levels below the entire project site. The proposed project would replace the existing retail structure with a three-story 23,470 sf retail structure.

### EXEMPT STATUS:

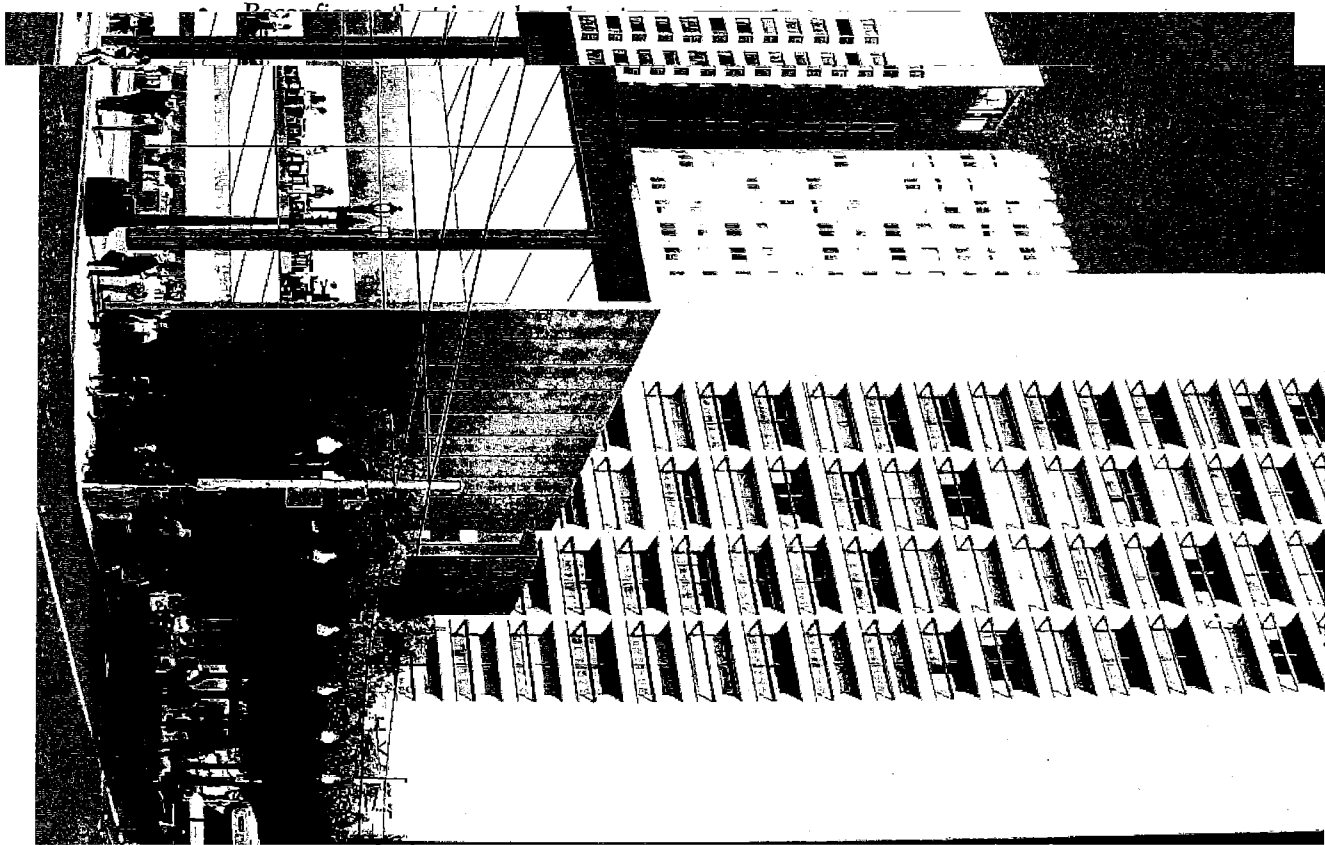
Categorical Exemption, Class 2 (California Environmental Quality Act (CEQA) Guidelines Section 15302(b))

**PROJECT DESCRIPTION (continued):**

The northern portion of the project site contains a 35-story hotel structure that fronts Stockton and Sutter Streets. The southern portion of the project site contains a four-story triangular retail structure and above-grade support space and loading access for the hotel. The two structures share a three-level basement, and the retail structure has a partial fourth basement level (mechanical room). Between the two structures is an elevated triangle-shaped retail plaza that is accessed by a set of wide brick steps leading up from the sidewalk on Stockton Street. On the steps leading up to the plaza is a fountain designed by noted sculptor Ruth Asawa.

The proposed project would include the following elements:

- Reconfigure the triangular structure to an L-shaped plan with the two-story retail store at the street corner and a narrow three-story back of house space between the retail store and the adjacent building to the west along Post Street.
- Reduce the height of the retail store structure from four to two stories at the Post Street (front) façade (from approximately 63 feet to approximately 47.5 feet) and reclad the exterior.



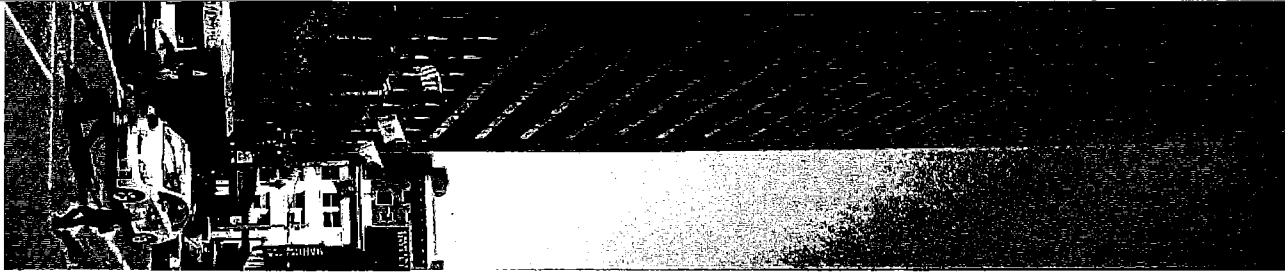
- Reconfigure the triangular plaza into a rectangle, increasing the plaza in size from 4,586 sf to 6,059 sf, and renovating it with new landscaping, lighting, seating, and paving.

- Move the Ruth Asawa fountain 10 feet from its current location to the center of the stairs that lead from Stockton Street to the renovated and expanded plaza.

The proposed retail structure would be supported by two main column foundations that would be approximately 19 feet by 10 feet by 6 feet deep; three additional wall footings approximately 31 feet by 5 feet by 2.5 feet deep, 24 feet by 5 feet by 2.5 feet deep, and 18 feet by 6 feet by 3 feet deep; and about 12 other footings that would be approximately 5 feet by 5 feet by 3 feet deep.

**REMARKS:**

**Historical Architectural Resources.** In evaluating whether the proposed project would be exempt from environmental review under CEQA, the Planning Department must first determine whether the existing property is a historical resource. Under CEQA, a property qualifies as a historic resource if it is listed in, or determined to be eligible for listing in, the California Register of Historical Resources, or if it is



The fountain, designed by San Francisco sculptor Ruth Asawa, is significant for its high artistic values and association with Ruth Asawa. Asawa was commissioned for many public art projects throughout the Bay Area, and she has been recognized and honored for her contributions to San Francisco's public spaces. Highly visible on a busy block of Stockton Street, the fountain displays iconic scenes specific to San Francisco, cast in bronze, and has been recognized for its accessibility for blind and visually impaired people to actually touch and feel. Thus, the fountain appears to be individually significant as an object and eligible for listing on the California Register due to its design and association with a master artist (Criterion 3).

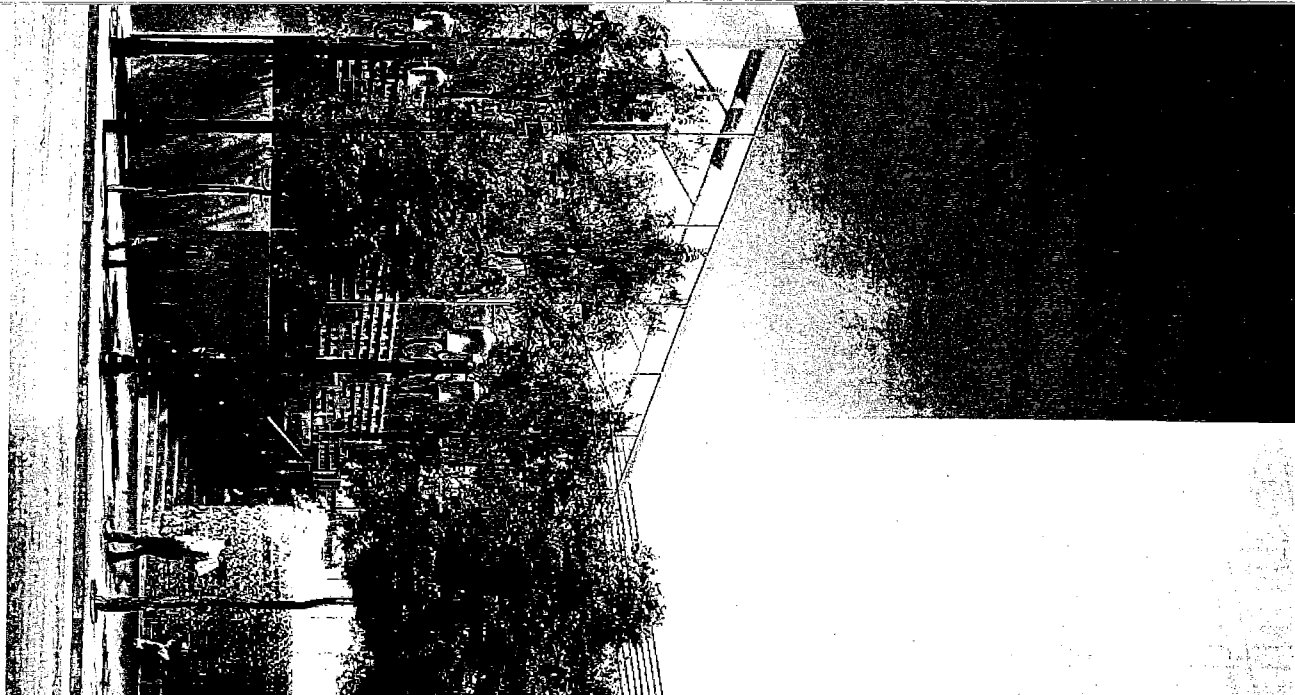
The project site is not significant under Criterion 4 (important in prehistory or history), which is typically associated with archaeological resources. This significance criterion typically applies to rare construction types when involving the built environment. Neither the retail structure nor the fountain is a rare construction type.

The Ruth Asawa fountain retains integrity of location, design, materials, feeling, association, and workmanship. Integrity of setting has been somewhat compromised by alterations to the retail store. Overall, the Ruth Asawa fountain conveys its significance individually.

The character-defining features of the fountain include its installation within the stairs accessing the plaza, its cast bronze panels, and its function as a fountain. The character-defining features of the Kearny-Market-Mason-Sutter Conservation District include rectilinear massing, two- or three-part vertical compositions, articulated bays, vertical orientation, masonry cladding in earth tones, and fine details such as arches, columns, pilasters, projecting bracketed cornices, multiple belt-courses, elaborate lintels and pediments, and decorated spandrels.

The HRER prepared by the Planning Department's preservation staff evaluated the proposed project's consistency with the *Secretary of the Interior's Standards for Rehabilitation* (Secretary's Standards) and is summarized as follows:

- The removal of the existing structure at 300 Post would not have an adverse impact on the district, because the structure is a non-contributory resource.
- The proposed replacement structure would reintroduce a rectilinear plan that would extend to



projecting chamfered frame would suggest a Classical colonnade in a contemporary idiom. The raised entrance and stairs would help organize the elevation into a two-part composition with a base and shaft. The shaft would be capped by the projecting metal frame in a manner consistent with projecting cornices typical of buildings within the district.

- The large windows would be framed with full-height steel members that would articulate the façade into five bays, with the end bays differentiated by their reduced width and the location of the two main retail entrances. This emphasis on the end or center bays is a common compositional device in the district, as noted in the district designation.
- The steel framing members would articulate the façade, emphasize the vertical composition, and express underlying structural requirements in a contemporary manner that would be in conformance with the Secretary's Standards and that would be compatible with the district.
- At the Stockton Street façade, the frontage would be broken into two parts with the inset full-height glazed bay. Emphasis on the vertical composition would be made with the orientation and size of the metal panel cladding and with the glazed bay. The glazed bay would divide this façade into two parts in a manner similar to historic buildings with wider frontages; the glazed bay would be broken up by articulation of the facade, making the structure appear narrower. As divided, the Stockton Street frontage would relate in width and proportion with buildings found within the district.
- The cladding material and color of back of house portion of the retail structure would be compatible with the surrounding district and would be in conformance with the Secretary's



In conclusion, the proposed project would be consistent with the Secretary's Standards and would not result in a substantial adverse change in the significance of the Kearny-Market-Mason-Sutter Conservation District or on individual resources within the District.

**Air Quality.** Project construction activities would be temporary and variable in nature and would not be expected to expose sensitive receptors to substantial air pollutants. Furthermore, the proposed project would be subject to, and would comply with, California regulations limiting idling to no more than five minutes,<sup>3</sup> which would further reduce the exposure of nearby sensitive receptors to temporary and variable toxic air contaminant emissions. The project would also be subject to the City's construction dust control ordinance (Ordinance 176-08, effective July 30, 2008), which requires specific fugitive dust control measures that reduce the quantity of dust generated during site preparation, demolition, and



construction in order to protect the health of the general public and of onsite workers. Therefore, project construction would result in a less-than-significant impact with respect to exposing sensitive receptors to substantial levels of air pollution.

**Greenhouse Gas Emissions.** The significance standard applied to greenhouse gas (GHG) emissions generated during project construction and operation is based on whether the project complies with a plan for the reduction of GHG emissions. San Francisco's *Greenhouse Gas Reduction Strategy* documents the City's policies, programs, and regulations that reduce municipal and communitywide GHG emissions. The proposed project would be consistent with San Francisco's *Greenhouse Gas Reduction Strategy*, as demonstrated by completion of the Compliance Checklist for Greenhouse Gas Analysis.<sup>4</sup> Therefore, the proposed project would result in a less-than-significant impact with respect to GHG emissions.







## SAN FRANCISCO PLANNING DEPARTMENT

### Historic Resource Evaluation Response

*Date* January 21, 2014  
*Case No.:* 2013.0628E  
*Project Address:* 345 STOCKTON STREET (aka 300 POST STREET)  
*Zoning:* C-3-R (Downtown Retail) District  
80-130-F Height and Bulk District  
Kearny-Market-Mason-Sutter Conservation District  
*Block/Lot:* 0295/016  
*Date of Review:* January 21, 2014 (Part II)  
*Staff Contact:* Jeanie Poling (Environmental Planner)  
(415) 575-9072  
[jeanie.poling@sfgov.org](mailto:jeanie.poling@sfgov.org)  
Pilar LaValley (Preservation Planner)  
(415) 575-9084  
[pilar.lavalley@sfgov.org](mailto:pilar.lavalley@sfgov.org)

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415.558.6378

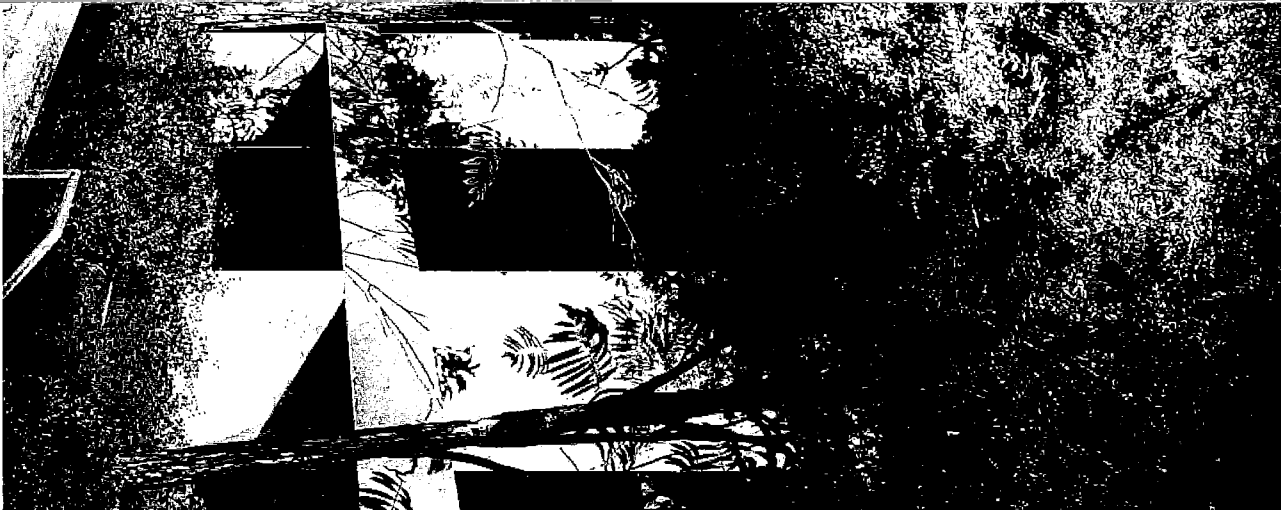
Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

#### PART I: HISTORIC RESOURCE EVALUATION

##### Buildings and Property Description

The subject property, in Assessor's Block 0295, Lot 016, on the west side of Stockton Street between Post and Sutter Streets, contains a 550,599-square-foot (sf) building complex with two above-grade components (a 35-story hotel structure fronting Stockton and Sutter Streets, and four-story 37,234 sf retail structure fronting Post Street), an elevated plaza between the two structures, and basement levels below



scored poured concrete. The Levi's logo, designed like a clothing tag and placed vertically, is located at the easternmost end of the face between the second and third levels.

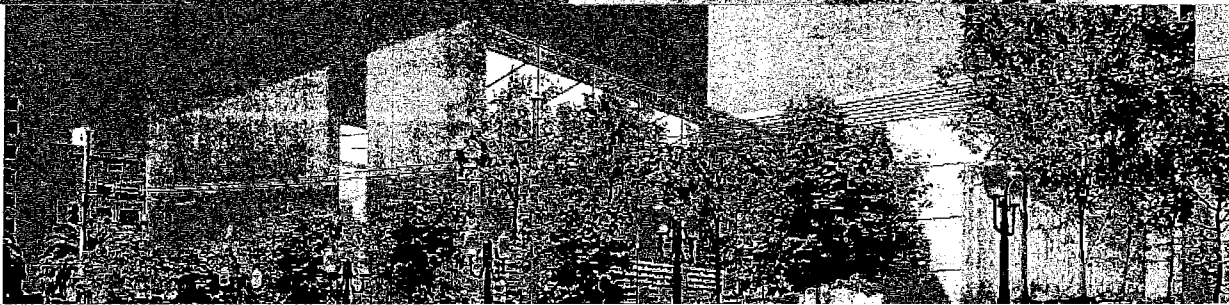
The northeast (rear) façade is angled diagonally at the Grand Hyatt Hotel plaza. The finishes at the rear are similar to the front of the building but the glass curtain wall is smaller and shorter and recessed with a horizontal metal I-beam separating the first and second levels (raised above the street by the plaza).

The Grand Hyatt Hotel plaza is located on the west side of Stockton Street between the subject building and the Grand Hyatt Hotel. The plaza was built in 1972 as part of the two-building complex as designed by SOM. The raised triangular plaza is accessed by a set of wide brick steps leading up from the sidewalk on Stockton Street, and contains potted plants. The focal point of the plaza is the circular fountain by San Francisco sculptor Ruth Asawa, located on the steps leading up to the plaza. The fountain, completed in 1973, is nearly flush with the top level of the plaza on the west side, and includes 41 individual plaques made of baker's dough cast in bronze. The plaques depict a history of the city, with iconic San Francisco destinations including Mission Dolores, the Golden Gate bridge, Nob Hill, the Palace of Fine Arts, Playland at Ocean Beach, and cable cars.



For the most part, building facades in the district are two- or three-part vertical compositions consisting either of a base and a shaft, or a base, a shaft and a capital. In addition, the facade of a building is often divided into bays expressing the structure (commonly steel and reinforced concrete) beneath the facade. This was accomplished through fenestration, structural articulation or other detailing which serves to break the facade into discrete segments. The massing of the structures is usually a simple vertically oriented rectangle, which is an important characteristic of the District





Further, staff concurs that the Ruth Asawa fountain appears to qualify as individually eligible for the California Register as an object under Criteria 3 (Architecture).

To assist in the evaluation of the subject property and proposed project, the Project Sponsor has submitted the following consultant report:

- Page & Turnbull, Inc. *300 Post Street/345 Stockton Street Historic Resource Evaluation* (August 15, 2013)
- Page & Turnbull, Inc. letter to Pilar LaValley, Preservation Technical Specialist, dated January 17, 2014, revised project analysis for the *300 Post Street/345 Stockton Street Historic Resource Evaluation* (August 15, 2013)

The following is an assessment of the potential individual eligibility of the subject building (300 Post Street) and the Ruth Asawa fountain.

**Criterion 1: Property is associated with events that have made a significant contribution to the broad patterns of local or regional history, or the cultural heritage of California or the United States.**

To be eligible under the event Criterion, the building cannot merely be associated with historic events or trends but must have a specific association to be considered significant. Staff concurs with the Page & Turnbull report and finds that the subject building is not eligible for inclusion on the California Register individually under Criterion 1.

The 300 Post Street/345 Stockton Street complex was built during the early stages of a broader redevelopment trend of in the second half of the twentieth century that included the demolition of the City of Paris and Fitzhugh buildings surrounding Union Square. This project does not appear to have been the catalyst for development. Indeed, the square itself had been redesigned many times over the years. None of these trends appear to have made a significant contribution to patterns of local and regional historic in a manner that would make the subject building or complex eligible for listing in the California Register under this criteria.

Further, there appears to be no information to indicate that the Ruth Asawa fountain is associated with historic events or trends that would make it eligible for inclusion on the California Register individually under Criterion 1.

**Criterion 2: Property is associated with the lives of persons important in our local, regional or national past.**

The 300 Post Street/345 Stockton Street complex and the Ruth Asawa fountain do not appear eligible for listing in the California Register under Criterion 2. No persons who have made significant contributions to local, state, or national history have been identified with the establishment or operation of the Grand Hyatt, Levi's Store, or any of the other hotel-associated uses and retail business that have occupied the subject property. Although Ruth Asawa was a well-known San Francisco sculptor and artist, her association with the fountain is most significant under Criterion 3.

The 300 Post Street/345 Stockton Street complex does not appear eligible for listing in the California Register under Criterion 3. The buildings were completed in 1972 in a Corporate Modern style designed by noted architectural firm, Skidmore, Owings, and Merrill (SOM). Though sensitive to the scale of the surrounding historic commercial area, the site layout and massing are not remarkable enough to render the complex individually significant. Therefore, the complex does not appear to be exemplary as a type, period, or method of construction, nor does it exhibit high artistic value. The design of the complex and of the individual buildings and features does not rise to a level such that a 41-year old complex would be considered eligible for listing in the California Register.

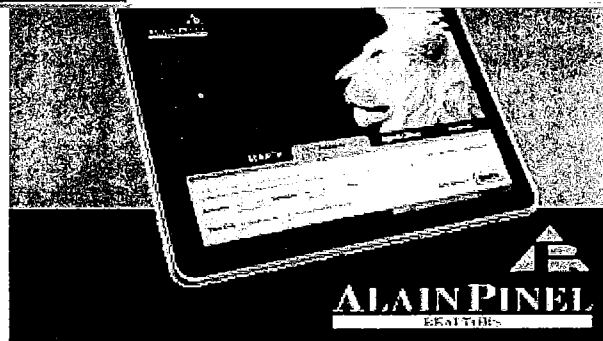
The fountain, designed by San Francisco sculptor Ruth Asawa, does appear to be individually significant as an object and eligible for listing on the California Register. The fountain is significant for its high artistic values and association with Ruth Asawa. Asawa was commissioned for many public art projects throughout the Bay Area, including nine in San Francisco. She designed four fountains in San Francisco, as well as art in other mediums, and has been recognized and honored for her contributions to San Francisco's public spaces. The fountain at the Grand Hyatt complex has been an important part of the public space between the buildings and is highly visible on the busy block of Stockton Street. The fountain displays iconic scenes of specific to San Francisco, cast in bronze, and has been recognized for its accessibility for blind and visually impaired people to actually touch and feel. The fountain appears significant for its design and association with a master artist.

**Criterion 4: Property yields, or may be likely to yield, information important in prehistory or history.**

Based upon a review of information in the Department's records, the subject property is not significant under Criterion 4, which is typically associated with archaeological resources. Furthermore, the subject property is not likely significant under Criterion 4, since this significance criteria typically applies to rare construction types when involving the built environment. Neither the subject building nor the fountain are examples of rare construction types.

**Step B: Integrity**

*To be a resource for the purposes of CEQA, a property must not only be shown to be significant under the California Register of Historical Resources criteria, but it also must have integrity. Integrity is defined as "the authenticity of a property's historic identity, evidenced by the survival of physical characteristics that existed during the property's period of significance." Historic integrity enables a property to illustrate significant aspects of its past. All seven*



**Step C: Character Defining Features**

*If the subject property has been determined to have significance and retains integrity, please list the character-defining features of the building(s) and/or property. A property must retain the essential physical features that enable it to convey its historic identity in order to avoid significant adverse impacts to the resource. These essential features are those that define both why a property is significant and when it was significant, and without which a property can no longer be identified as being associated with its significance.*

**Fountain**

The character-defining features of the fountain include the following:

- Installation within the stairs accessing the plaza
- Cast bronze panels
- Function as a fountain

**Conservation District**

The character-defining features of the district include the following:

- Rectilinear massing
- Two- or three-part vertical compositions
- Articulated bays
- Vertical orientation
- Built to property lines
- Masonry cladding in earth tones
- Fine details such as arches, columns, pilasters, projecting bracketed cornices, multiple belt-courses, elaborate lintels and pediments, and decorated spandrels.

**CEQA Historic Resource Determination**

**Fountain**

- ☒ Historical Resource Present
- ☒ Individually-eligible Resource
  - ☐ Contributor to an eligible Historic District
  - ☐ Non-contributor to an eligible Historic District

☐ No Historical Resource Present

**300 Post Street building**

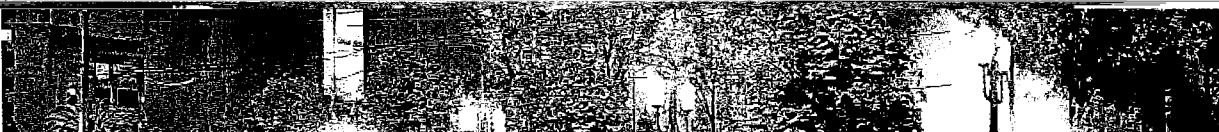
- ☐ Historical Resource Present
- ☐ Individually-eligible Resource
  - ☐ Contributor to an eligible Historic District
  - ☒ Non-contributor to an eligible Historic District

☐ No Historical Resource Present

**PART I: SENIOR PRESERVATION PLANNER REVIEW**

Signature: Tim Frye  
Tim Frye, Preservation Coordinator

Date: 1/21/14



## PART II: PROJECT EVALUATION

PROPOSED PROJECT ☐ Demolition ☒ Alteration ☒ New Construction

PER DRAWINGS SUBMITTED: JANUARY 6, 2014 (FOSTER & PARTNERS)

### PROJECT DESCRIPTION

The proposed project involves removal of the Levi's Store structure, construction of a new retail structure, and reconfiguration and renovation of the Grand Hyatt Hotel plaza. The proposed scope of work, based on the informational packet prepared by Foster + Partners and Page & Turnbull, submitted January 6, 2014, would include:

- Reconfiguring the triangular building to an L-shaped plan with the retail store holding the street corner and the back of house space ("Bar Building") as a narrow hyphen-type structure between the retail store and the adjacent building to the west along Post Street.
- Reducing the height of the retail store portion of the building from four- to two-stories (from approximately 63 feet to approximately 47.5 feet) and recladding the exterior. The retail portion of the building will have a clear span and cantilevered structural system to allow for a column-free area above grade and will be clad with bead blasted stainless steel panels and structural glass. At the Post Street (front) façade, stairs clad with gray terrazzo will lead to the slightly raised entrance; entrances will be at each end of the façade, and in the center of the façade when the operable glazing is in the open position. Full-height, powder-coated steel framing members will separate the large butt-glazed glass panels into six bays at the Post Street (front) façade. The center bays of the façade will be operable so they will slide open to create a full-height opening at the center of the façade. The steel-framed glazing is setback from a chamfered projecting frame clad with bead blasted stainless steel panels that extends to the property line at Post Street.

The Stockton Street façade will be clad with vertically-oriented, bead blasted metal panels with minimal construction joints. One full-height, slightly inset glazed bay articulates the wall. The rear elevation (facing into the reconfigured plaza) consists of full-height butt-glazed structural glass with glass support fins at interior.

- Recladding the back of house (Bar Building) building. The back of house portion of the building will be clad with cast stone panels articulated with regular horizontal joints suggesting belt or string coursing over the body of the building and more closely-spaced joints at the roofline to suggest a cornice detail. The Bar Building will have a solid gate at Post Street to provide vehicular access to existing loading docks, will be unfenestrated, and will support a water feature/wall at the east elevation facing onto the reconfigured plaza. A narrow inset clad with

But it might turn out to be branding of the most exquisite sort. And if so, it also will be three-

- Retaining and relocating the fountain, designed by local artist Ruth Asawa. The fountain would be moved to a new location in the center of the stairs leading from Stockton Street to the renovated and expanded plaza.

## PROJECT EVALUATION

*If the property has been determined to be a historical resource in Part I, please check whether the proposed project would materially impair the resource and identify any modifications to the proposed project that may reduce or avoid impacts.*

### Subject Property/Historic Resource: (Ruth Asawa fountain)

- ☒ The project will not cause a significant adverse impact to the historic resource as proposed.
- ☐ The project will cause a significant adverse impact to the historic resource as proposed.

### California Register-eligible Historic District or Context:

- ☒ The project will not cause a significant adverse impact to a California Register-eligible historic district or context as proposed.
- ☐ The project will cause a significant adverse impact to a California Register-eligible historic district or context as proposed.

To assist in the evaluation of the subject property and proposed project, the Project Sponsor has submitted a consultant report:

- Page & Turnbull, Inc. 300 Post Street/345 Stockton Street Historic Resource Evaluation (August 15, 2013)
- Page & Turnbull, Inc. letter to Pilar LaValley, Preservation Technical Specialist, dated January 17, 2014, revised project analysis for the 300 Post Street/345 Stockton Street Historic Resource Evaluation (August 15, 2013)

Staff has determined that the proposed project will not have a significant impact on the District or California Register-eligible fountain, and will generally be in conformance with the *Secretary of Interior's Standards for Rehabilitation (Secretary's Standards)* as explained below. As the proposed project would not result in a significant impact to historic resources, it is not anticipated to contribute to any potential cumulative impact to historic resources.

### Replacement of 300 Post Street

Replacement of the existing above-grade retail structure at 300 Post Street will not have an adverse impact on the District, because the structure is, as explained above, non-contributory to the Kearny-Market-Mason-Sutter District.

### New Building

The proposed building will have an L-shaped plan, consisting of a two-story retail store holding the street corner and a three-story back-of-house space between the retail store and the adjacent building to the west along Post Street. The building will have a flat roof. The retail portion of the building will have a

clear span and cantilevered structural system to allow for a column-free area above grade and will be clad with bead blasted stainless steel panels and structural glass. Stairs clad with gray terrazzo will lead to the slightly raised entrance; entrances will be at each end of the façade, and in the center of the façade when the operable glazing is in the open position. Full-height, powder coated steel framing members will separate the large butt-glazed glass panels into six bays at the Post Street (front) façade. The steel-framed glazing is setback from a chamfered projecting frame clad with metal panels that extends to the property line. The center bays of the façade will be operable so that they will slide open to create a full-height opening. The Stockton Street façade will be clad with vertically oriented, bead blasted metal panels with minimal construction joints. One full-height, slightly inset glazed bay articulates the wall. The rear elevation (facing into the reconfigured plaza) consists of full-height butt-glazed structural glass with full-height steel framing members that mirror those on the Post Street façade. A narrow, inset wall clad with metal louvers transitions the retail store to the taller back-of-house portion of the building. The back of house portion of the building will be clad with cast stone panels articulated with regular horizontal joints over the body of the building and closely-spaced joints at the roofline to suggest a cornice detail. The back of house portion of the building will have a solid gate at Post Street to provide vehicular access, will be unfenestrated, and will support a water feature/wall at the east elevation facing onto the reconfigured plaza.

Although of a lesser height than the existing building on this site, the proposed massing appears to be compatible with the District. The proposal reintroduces a rectilinear plan that extends to the property line at both Post and Stockton Streets, which characterizes buildings throughout the District. Although a taller building at the corner would be acceptable, there is no consistent height for such buildings facing onto Union Square as corner buildings facing the square range in height from three- to nine-stories. The proposed building height matches that of its immediate neighbor to the west, which is the only historic building along that block of Post Street, and provides a strong street wall massing at the Post and Stockton Street elevations. Overall, the proposed height and massing is consistent with the varied building heights found throughout the District, and as such appears to be in conformance with the *Secretary's Standards*.

The new construction proposes to respond to the character of the surrounding district in a contemporary

~~At the back of house portion of the building, inset joints in the cast stone paneling break up its~~  
along Stockton Street and then makes a 90-degree turn to become the roof. The north-facing wall is glass as well, opening onto a deep rectangular plaza that will be shared by the 35-story Grand Hyatt.

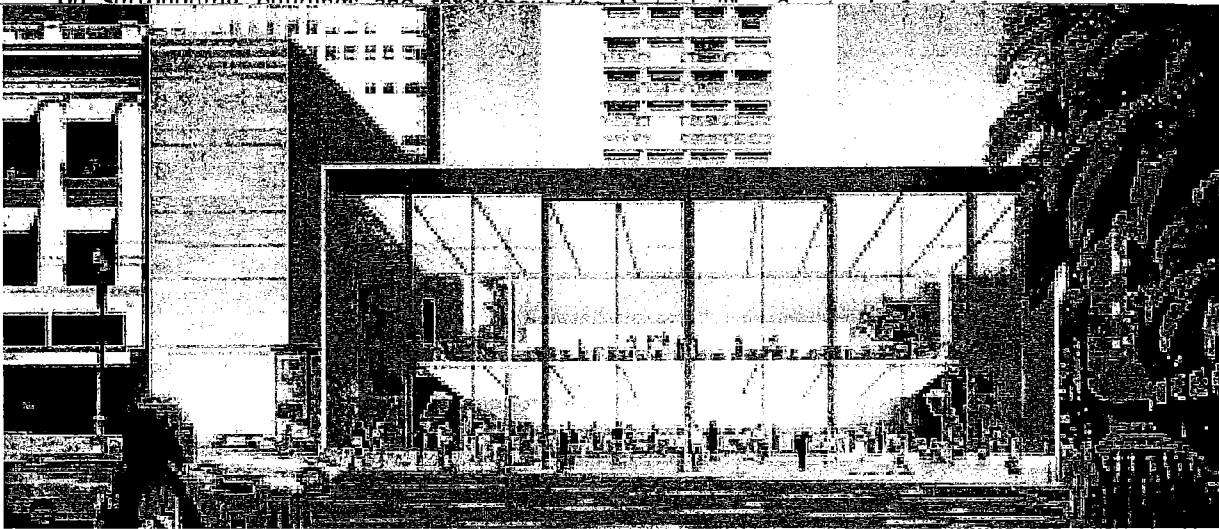
All of which is quite a change from what's there now, a triangular concrete building paired with a triangular brick plaza.

The design is by England's Foster + Partners, the renowned firm also doing Apple's headquarters in Cupertino.

That futuristic circular structure, sleek as any sci-fi vision, tries to be nothing if not distinct. By contrast, what first was proposed for Union Square was a perfunctory knock-off of something the tech giant has done hundreds of times before.

At the Stockton Street façade, the frontage is broken into two parts with the inset full-height glazed bay. Emphasis on the vertical composition is made with the orientation and size of the metal panel cladding and with the glazed bay. The glazed bay divides this façade into two parts in a manner similar to historic buildings with wider frontages, which are broken up by articulation of the facade, making the buildings appear narrower. As divided, the Stockton Street frontage relates in width and proportion with buildings found within the District.

The back of house portion of the new building is proposed to be clad in Indiana Limestone cast stone panels. This cladding material and color appears to be compatible with the surrounding District in conformance with the *Secretary's Standards* as it is a stone material with a texture and color that is consistent with other masonry cladding found throughout the District. Although the metal panel cladding proposed on the retail store portion of the building is not a material that is typical of the District, the color and matte finish proposed appears to be compatible with the texture and tone of masonry found on surrounding buildings and throughout the District.



The *Secretary's Standards* allow, or don't discourage, use of contemporary materials provided they are "harmonious" with the surrounding character. Although it is not a typical cladding material found within the District, the proposed metal paneling will not be reflective and will have a matte finish such that it will not be disruptive to the character of the District.

#### Plaza and fountain

In addition to construction of the new building, the project also proposes to reconfigure and renovate the existing Grand Hyatt Hotel Plaza (shown in plan on Page 57). Along with the newly reconfigured building, the shape of the plaza will change from triangular to rectangular. New stairs will encircle the slightly relocated Ruth Asawa fountain to lead to the raised plaza; the manner in which the fountain and existing stairs are constructed will be documented during demolition so that the relocated fountain can be reinstalled to match the existing relationship with the stairs as closely as possible. The tree-lined east-west paved (Kuppan Green stone pavers) plaza will consist of a paved open space lined with concrete benches and large planter boxes (Kuppan Green stone for both benches and planters). Examples of the proposed finishes are depicted in photographs on Pages 72-73 of the Project Sponsor Packet. The open space will terminate at the proposed water feature/wall affixed to the east elevation of the back-of-house portion of the new building. Lighting fixtures will consist of recessed wall step lights, recessed bench lights, floor recessed lights, and uplights at the proposed trees. Proposed fixtures are shown on Pages 73 and 78-79 of the Project Sponsor Packet. The Ruth Asawa fountain will be photo-documented in situ and carefully removed from its existing location, protected, and stored during construction in conformance with the *Secretary's Standards*. When the site is ready, the fountain will be reinstalled approximately 10 feet from its existing location in a manner that matches existing as closely as possible in conformance with the *Secretary's Standards*.

PART II: SENIOR PRESERVATION PLANNER REVIEW

Signature: \_\_\_\_\_

Tim Frye, Preservation Coordinator

Date: \_\_\_\_\_

1/21/14

Miavalle, Foster + Partners

*The redesigned Apple Store for Union Square retains the retailer's hallmark glass and steel walls.*

These changes, simple and blunt, add layers of detail to what otherwise would be a two-dimensional tale. They're a meticulous modern take on the formal architecture nearby.

So what happened? A public outcry that started when The Chronicle revealed that the plans did away with the Asawa fountain that's the lone attraction of the existing plaza - a bronze treasure cast from bakers' dough that had been fashioned by schoolchildren and "regular" San Franciscans to resemble places and people of civic renown.

Mayor Ed Lee, who had blessed Apple's initial design as "quite simply incredible," soon clarified that he hadn't realized the fountain was missing. This provided an opening for city planners to emphasize to Apple that the design as proposed had nothing in common with the rich classical structures for which Union Square is known.

Apple took the hint, and touts its changes as shining examples of contextual design. The column-like



Commission. Apple could open the store next summer if the Board of Supervisors gives the plan green light.

### ***Potential obstacle***

The only obstacle is if the board goes along with a flurry of objections to the project from the Service Employees International Union-United Service Workers West. The union has called for a full environmental impact report, though the motive appears to be an attempt to gain leverage in a drive to organize security guards in Silicon Valley.

At one point, the SEIU attorney argued that the redone plaza would have a "significant" negative impact on the Asawa fountain by placing it in a more confined setting.

The opposite is the case.

The charm of the fountain is its intricacy, the panels studded with lore that only becomes visible by close inspection. Viewed from afar, it's just a dark rough blob.

The new setting would give Asawa's treasure the renewed prominence it deserves. It also might pull members of the public up to the privately built plaza with its tables and trees and a water wall at the back. That's a pay-off for everyone, even people who still think of Apple as a fruit.

# REUBEN, JUNIUS & ROSE, LLP

February 20, 2014

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## By Personal Delivery

San Francisco Board of Supervisors  
Land Use & Economic Development Committee  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Andrea Ausberry, Clerk

**Re: Planning Code Amendment—Allowing Certain Non-Conforming Structures  
in a C-3-R District to be Rebuilt Under Certain Conditions  
Board of Supervisors File No. 13-1059**

Dear Supervisors Cohen, Wiener and Kim:

Our office represents Apple, Inc. ("Apple") in connection with its proposed new store ("Project") at the Grand Hyatt property at 300 Post Street/345 Stockton Street (Assessor's Block: 0295, Lot: 016; the "Property"). Earlier this month, the Planning Commission and Historic Preservation Commission ("HPC") approved the entitlements for the Project which will replace

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- **Limited Scope.** The Property is the only parcel that could take advantage of the new legislation. The Ordinance only applies to secondary structures in the C-3-R District that are noncomplying with respect to the FAR limit. The existing store is the only such structure in the C-3-R District. The Planning Department has further recommended an amendment to the Ordinance that would expressly limit it to the Property.
- **Public Benefit Findings.** The Planning Commission may only approve a project under the Ordinance where it finds ten (10) separate public interest criteria have been satisfied.

30X DAILY STREET SUITE 401 SAN FRANCISCO, CA 94102  
TEL: 415-774-1861 FAX: 415-181-0163

the early 1970s. Indeed, the store is located on top of the hotel's loading area and ballrooms and a portion of it originally served as the hotel's restaurant. The retail space was substantially modified in 1998 for the Levi's store. The Project will replace the existing four-story building comprising 37,234 square feet of retail space with a new two-story building comprising 23,470 square feet of retail space, using a more innovative and sustainable design. The Project will be the first in San Francisco by the renowned architectural firm of Foster + Partners, the same firm designing Apple's iconic new campus in Cupertino.

## 2. Collaborative Design Process

Apple initially submitted a request for a preliminary project assessment in May 2013. Apple recognized that input from the Planning Department staff would be critical to the orderly implementation of a project that will be a showpiece of the City's premier retail area. This collaboration included: a meeting with the Issues Committee of San Francisco Architectural Heritage; the Streetscape Committee of the Union Square Business Improvement District; a voluntary meeting with the Architectural Review Committee ("ARC") on December 4, 2013; and several meetings with Planning Department staff. Through these communications, Apple was able to identify and respond to key concerns raised by the City and the community.

As a result, Apple made several modifications to the Project, including changing the current uninviting plaza to provide a much better public experience, altering plans for the Stockton Street frontage to include more window area, adding bay features to the Post Street façade, and finding a way to preserve and highlight the beloved Asawa fountain. According to the *San Francisco Chronicle*:

Apple's revised blueprint for a new flagship store at Union Square reflects a due respect for the site's history without losing the distinctive touch of modernity it will bring to one of the city's prime shopping areas....Now that the Planning Commission gave its approval on a 5-1 vote, the Board of Supervisors should reward Apple's attention to public concerns by sealing the deal.

---

Elizabeth Warty

January 23, 2014  
Page Two

## 1. Summary

We apologize for the length of this letter. Unfortunately, the SEIU's attorneys threw up every conceivable argument (many of which previously would have been considered inconceivable), in the hopes that something might stick. Nothing does, but it takes some analysis to show that.

This letter first describes the Project background. It then shows that the Project, as the replacement of an existing structure by a smaller structure used for the same purpose, exactly meets the criteria for a Categorical Exemption under CEQA. The next section of the letter demonstrates that there are no "unusual circumstances" that prevent the Project qualifying for this Exemption. Specifically:

- There is absolutely no evidence of environmental impacts relating to soil

The City Attorney advised the HPC that it was not required by the Charter to make a recommendation on the Ordinance, but could hold a hearing to solicit comment at its discretion. The HPC declined to do so.

On February 6, 2013, the Planning Commission granted a Downtown Project Authorization (Section 309 Review) for the Project on a 5-1 vote and the Zoning Administrator stated he was inclined to grant a Variance from fenestration requirements. As part of the Downtown Project Authorization, the Planning Commission made findings required by the Ordinance. The Ordinance itself was forwarded without recommendation.

#### **4. The Need and Precedent for the Planning Code Amendment**

The Grand Hyatt Hotel and secondary retail structure on Post Street were built as an integrated development in the early 1970s. At the time, the FAR limit was more permissive. With FAR bonuses, the Property was allowed an FAR of 15.3-to-1, substantially higher than the current 9-to-1 limit. Consequently, the entire Property is noncomplying with respect to FAR, meaning that it was lawfully built but does not comply with today's zoning.

Currently, under Planning Code Section 188, legally non-complying buildings cannot be voluntarily removed and rebuilt unless the rebuilt portion fully complies with the Planning Code. Because the Grand Hyatt Hotel by itself exceeds the FAR limit, the existing structure

frontage to include more window area, and making a way to preserve and integrate the beloved Asawa folk art fountain. This has been a transparent and inclusive process, and the result is a project of which both Apple and the City can be proud. It represents the best of modern, sustainable design, befitting its place in the center of a world-class city.

While the end product will be a superb addition to the City's architectural fabric and reputation for innovation, the benefits to the community will start much sooner. Apple's commitment to sustainability begins with the design process and continues through implementing best management practices during construction and operation. In addition, the Project will utilize a skilled union workforce throughout the construction process, including members of the carpentry, ironworkers, plumbing, electrical, sheet metal, equipment operators and masonry trades, as well as the teamsters.

- **Reconstruction of Historic Theater Marquees.** In 2008, the Board of Supervisors unanimously amended the Planning Code to allow the reconstruction and rehabilitation of movie theater marquees on historic buildings. See San Francisco Board of Supervisors Ord. No. 242-08, Plan. Code § 188(e).
- **Reconstruction of Damaged or Destroyed Buildings.** The Planning Code has long allowed for reconstruction of noncomplying buildings that are destroyed by fire, natural disaster or the “public enemy.” Plan. Code § 188(b). In 2011, Supervisor Cohen’s legislation extending the time limit to reconstruct such buildings was unanimously approved. San Francisco Board of Supervisors Ord. No. 224-11.

## 5. The Project Meets the Requirements of the Ordinance

The Planning Commission found that the Project would meet all of the Ordinance’s requirements for a Categorical Exemption Class 11 for the replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.” Cal. Code Regs. tit. 14 (known as CEQA Guidelines), § 15302. Here, it’s indisputable that the Project will be located on the same site and will serve exactly the same purpose as the Levi’s Store, a retail establishment. The Project’s capacity is actually less than the Levi’s store, by about 14,000 square feet, or 37%.

Given that the Project dovetails exactly with the requirements for a Categorical Exemption, the SEIU’s attorneys are left to devise distinctions that are both irrelevant and misleading. The January 9 letter from SEIU’s attorneys (“SEIU Letter”) claims, without citing any authority, that the Project does not qualify because it is an “entirely different structure, with different architecture, scale and aesthetic design from the Levi’s Store.” SEIU Letter at 12. But the Categorical Exemption specifically applies to entirely different structures. CEQA Guideline § 15302(b) states that it applies to any “[r]eplacement of a commercial structure with a *new structure* of substantially the same size, purpose, and capacity.” [emphasis added]. Moreover, as indicated, the scale of the Project in terms of size and capacity is substantially less than the Levi’s store. Contrary to the SEIU’s letter, the Exemption is not limited to exact replicas. This strained reading was considered and rejected in *Dehne v. County of Santa Clara*, 115 Cal. App. 3d 827, 837 (1981), where the Exemption was applied to the modernization of a six-acre cement plant. Rather, as the *Dehne* case made clear, the Exemption does not “demand minute scrutiny of each of the individual components of a project”—it does not require replacement structures to be “precisely or literally the same

- D. Decrease floor area and more closely conform to the FAR limit. By reducing the subject property's gross floor area by approximately 14,000 gross square feet, the Project will bring the entire Hyatt Complex into conformity with the 9-to-1 FAR limit.
- E. Not result in an adverse impact to an historic resource. The Hyatt Complex—including the existing store—is a Category V (Unrated) Building under the Planning Code. It is not historic and the HPC has determined that the Project is compatible with the surrounding Commission Motion No. 14952, "Categorical Exemptions from the California Environmental Quality Act," August 17, 2000.

It's crystal clear that the Project meets the requirements for the Categorical Exemption.

**B. The "Unusual Circumstances" Exception Does Not Apply to the Project**

Categorical Exemptions are based on a finding by the State of California Resources Agency "that a class or category of projects does not have a significant effect on the environment." *Davidon Homes v. City of San Jose*, 54 Cal. App. 4th 106, 115 (1997). Based on that finding, it is well established that where projects fall within an exempt class, no additional environmental review is required. *Apartment Ass'n of Greater Los Angeles v. City of Los Angeles*, 90 Cal. App. 4th 1162, 1172 (2001) (agency not required to conduct initial study before declaring project exempt from environmental review.); *Ass'n for Prot. of Envtl. Values in Ukiah v. City of Ukiah*, 2 Cal. App. 4th 720, 726 (1991) (once determination is made project is categorically exempt, project may be implemented without any CEQA compliance whatsoever). Therefore, once a project meets the requirements for a Categorical Exemption, the burden shifts to the party challenging the Exemption to show that an exception to the general rule applies.

Here, the SEIU's Letter claims CEQA Guidelines § 15300.2(c) applies, which provides that "[a] categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." The "unusual circumstances" exception entails two separate inquiries: (1) whether the project presents "unusual circumstances" and (2) whether there is a "reasonable possibility of a significant effect on the environment due to the unusual circumstances." *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego*, 139 Cal. App. 4th 249, 278 (2006) (emphasis added). This test is satisfied only when both the circumstances of the Project differ from the "general circumstances" of projects that fall under the Categorical Exemption, and those circumstances create an environmental risk that "does not exist for the general class of exempt projects." *Banker's Hill*, 139 Cal. App. 4th at 278. Neither of those elements applies here.

~~The SEIU's Letter fails to recognize these dual elements, and the need for a causal~~  
Conservation District. The only historic resource on the site – the Ruth Asawa fountain – will be preserved in a manner that the HPC, Planning Department preservation staff, and Page & Turnbull preservation architects have found consistent with the *Secretary of the Interior's Standards for Rehabilitation*. See San Francisco Planning Department Historic Resource Evaluation Response, 345 Stockton Street, at p. 10 (Jan. 21, 2014). No historic resources will be negatively impacted by the Project.

- F. Not cause significant shadows or wind impacts on public sidewalks or parks. The Project will reduce the subject property's height by two stories and would lower any existing shadows cast on any public sidewalks or on Union Square. The new Apple building will

2014.) San Francisco has properly used “spot zoning” to establish at least 27 Special Use Districts (“SUD”) and Special Sign Districts (“SSD”) that tailor zoning controls to single parcels or single developments. A few encompass a large master-planned neighborhood, e.g. the Park Merced SUD. See Plan. Code § 249.64. Others like the Page Street Residential Care SUD apply to a single 5,400 sq. ft. lot. See Plan. Code § 249.41A. The public purposes served by them also run the gamut from creating housing for homeless veterans (Veterans Common SUD) to allowing grocery stores (Fulton Street Grocery Store SUD) to creating aesthetically pleasing and appropriately scaled signage in a commercial development (City Center SSD). See Plan. Code §§ 249.46, 249.35A, and 608.16.

Like each of the above districts, the Ordinance would apply only to one Property. However, as explained above, it facilitates a Project that would serve the public interest by improving the architectural quality of the Property, drawing foot traffic to surrounding businesses, renovating a public plaza, and preserving a historic fountain. This is clearly permissible under state law and has ample local precedent.

#### **7. Proper Review of the Ordinance by the Historic Preservation Commission**

The SEIU’s attorneys argue that the City violated its Charter by not separately referring the Proposed Legislation to the Historic Preservation Commission. Letter from Richard T. Dury to the Historic Preservation Commission and the Planning Commission (Feb. 4, 2014) at 6-7. However, the HPC is required only to review “ordinances and resolutions concerning historic preservation issues and historic resources.” See San Francisco Charter § 4.135. The legislation here applies only to the replacement of the existing Levi’s store – a Category V building of no historic significance whatsoever. The Proposed Legislation stipulates that any project approved pursuant to it cannot have a material adverse effect on a historic resource. The City Attorney

~~has determined that the HPC is not required to review the Proposed Legislation but could do so at its~~  
San Francisco Planning Department, Guidelines for Storefront Transparency (Nov. 2013). Those goals are realized here, where the entire front façade on Post Street is glass, as is the rear façade on the plaza. Apple has worked with the Planning staff to provide significant transparency on Stockton Street via a floor to ceiling glass panel. However, in the end, as discussed in more detail in Section E, below, these types of aesthetic issues are not considered CEQA impacts for infill developments such as the Project, and therefore cannot support application of the unusual circumstances exception. *See Ass’n for Prot. of Envtl. Values in Ukiah*, 2 Cal. App. 4th 720 at 736 (alleged environmental impacts must be related to City’s approval of a nonconforming use to be considered an “unusual circumstance”).

The analysis of whether the Exemption applies can stop at the conclusion that there are no unusual circumstances. However, to correct the record, we will address claims in the SEIU’s Letter of significant environmental impacts, even though the Letter fails to proffer any facts showing a connection between the alleged unusual circumstances of the Project and

Please do not hesitate to contact me if you have questions or require further information.

Very truly yours,

REUBEN, JUNIUS & ROSE, LLP



Daniel Frattin (CMA)

cc (Exhibit A omitted):

Mayor Edwin M. Lee  
David Chiu, President, Board of Supervisors  
Supervisor Eric Mar  
Supervisor Mark Farrell  
Supervisor Katy Tang  
Supervisor London Breed  
Supervisor Norman Yee  
Supervisor David Campos  
Supervisor John Avalos  
Ken Rich, Mayor's Office of Economic and Workforce Development  
John Rahaim, Director, San Francisco Planning Department  
Elizabeth Watty, San Francisco Planning Department  
Jeanie Poling, San Francisco Planning Department

**C. ~~There is No Evidence of Any Significant Environmental Impacts Related~~  
to Hazards or Hazardous Substances**

The SEIU's Letter states that because the Project would involve the excavation of ten feet of soil, there is a fair argument that such excavation would result in significant environmental hazards. SEIU Letter at 14-15. However, the SEIU's Letter does not present any evidence that the soil is contaminated with hazardous substances or that, even if it were, it would present a risk of exposure. Indeed, the outside consultant used by the SEIU, Matt Hagemann, a hydro-geologist, identifies no site-specific information that excavation on the property would cause any environmental impact, only that excavation could possibly uncover some hazardous materials. Such generalized statements go way too far—they are true of virtually any construction anywhere. They are not evidence of an environmental impact. Cal. Pub. Res. Code § 21082.2(c) ("Argument, speculation, unsubstantiated opinion or narrative . . . is not substantial evidence.").

This is particularly true here where none of the typical indicators of contamination are present and excavation is limited. According to Page & Turnbull's Historic Resource Evaluation, the Project site "was one of the first developed in San Francisco and has consistently housed either a social club or a hotel and associated commercial businesses." Page & Turnbull Preservation Architects, 300 Post Street/345 Stockton Street Historic Resource Evaluation at 31 (August 15, 2013). The Property is not within an area of historic fill soils, and has never been the site of a gasoline station or industrial use. *See* Expanded Maher Map, Planning Department (October 2013). Further, the Project is not an all-new building that requires large volumes of soil to be removed or disturbed; it is an alteration of the single, integrated development (mostly surface structures) that comprises the Hyatt Complex. An existing ballroom for the Hyatt will remain under the new store. To reduce the impact on the hotel and ballroom, excavation will be limited to the minimum number of



## **1.0 Project Overview**

### **1.1 Building History and Description**

## **2.0 Site Context Map**

### **2.1 Site Location**

## **3.0 Existing Conditions**

### **3.1 Site Photos**

### **3.2 District Context Photos**

### **3.3 Existing Drawings**

### **3.4 Ruth Asawa Fountain**

## **4.0 Proposed Design**

### **4.1 Drawings**

## **5.0 Comparisons**

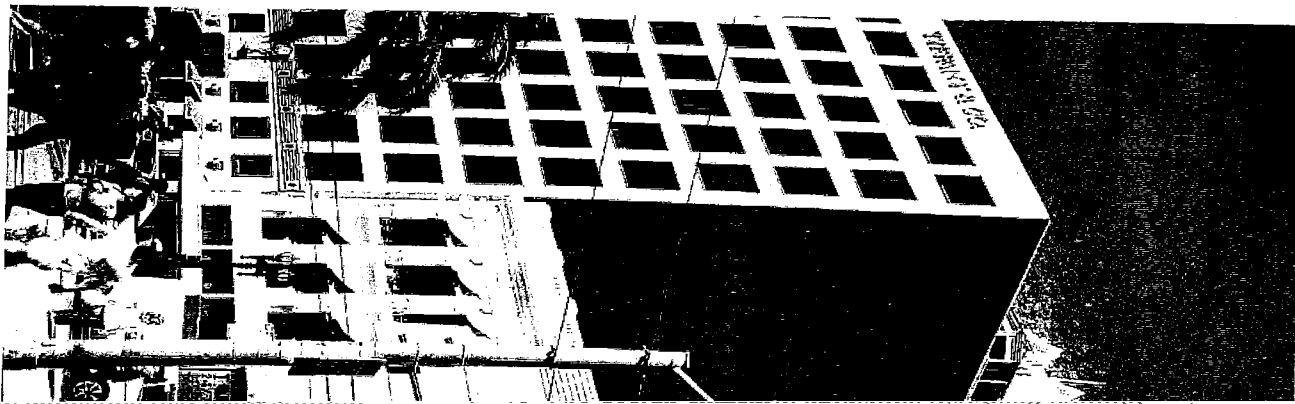
### **5.1 Elevation Comparisons**

### **5.2 Existing and Proposed Massing**

### **5.3 FAR Studies**

## **6.0 Renderings**

### **6.1 Day/Night-Time Renderings**



eliminates the need for deep excavations. The design currently envisions two main foundations that are approximately 19' x 10' x 6' deep, three additional wall footings and about twelve other minor footings that are approximately 5' x 5' x 3' deep.

Mr. Hagemann does not offer one shred of site-specific evidence of contamination. Instead, he asserts that a detailed study is required to analyze potential impacts. He alleges that, unless such studies are completed, there is a risk of exposure to contaminants. However, "[o]pinions that state nothing more than it is reasonable to assume that something potentially adverse to the environment may occur...do not constitute substantial evidence necessary to invoke an exception to a categorical exemption." *Magan v. County of Kings*, 105 Cal. App. 4th 468 (2002).

The SEIU and Mr. Hagemann know very well that speculation and calls for additional study are not evidence of significant impacts. Just three months ago, the First District Court of Appeal flatly rejected the same claim by SEIU's attorneys and Mr. Hagemann against a project in Berkeley, stating:

Hagemann contended that future residents are at risk because vapors from the two VOCs [volatile organic compounds] may travel through the soil into buildings...and thereby expose these buildings' residents to polluted air. Based on the levels of the VOCs, Hagemann suggested a vapor-intrusion study be performed. This opinion is insufficient to create a fair argument of a significant effect on the environment because a suggestion to investigate further is not evidence, much less substantial evidence, of an adverse impact.

*Parker Shattuck Neighbors v. Berkeley City Council*, - Cal. App. 4th -, 2013 Cal. LEXIS 1052, \*23 (2013) (holding building on a contaminated site is not in itself a significant environmental impact). It would have served the public process better had the SEIU's Letter at least acknowledged the *Parker Shattuck* case in recycling this rejected argument.

Even if there were evidence of soil contamination—which there is not—it would be insufficient to raise a fair argument of an environmental impact. In *Parker Shattuck*, unlike here, Mr. Hagemann was able to demonstrate the presence of contamination. Nevertheless, the court specifically held that the mere presence of past contamination on a property is not evidence of a significant environmental impact, without evidence that it was at a level



defines "sensitive receptors" as "[f]acilities or land uses that include members of the population that are particularly sensitive to the effects of air pollutants, such as children, the elderly, and people with illnesses. Examples include schools, hospitals and residential areas." BAAQMD CEQA Guidelines at 10 (1999). Commercial areas are not considered "sensitive" because people spend shorter periods of time in them compared to residential areas. Here, the area is heavily commercial with no sensitive uses located in the immediate vicinity of the Project and the scale of construction is such that use of heavy equipment will be limited. As part of the environmental review for the Project, the Planning Department reviewed the type of construction equipment that will be used and concluded that the Project would not result in significant health risks.

The SEIU has not identified any sensitive receptors in the immediate vicinity of the Project and has not provided any Project-specific evidence that health impacts would occur. San Francisco imposes some of the most stringent standards and requirements for controlling emissions from construction equipment, and Apple will follow these standards. Indeed, as Mr. Hagemann himself points out, Planning Staff noted in the Preliminary Project Assessment that the Project must comply with dust control and other emissions standards.

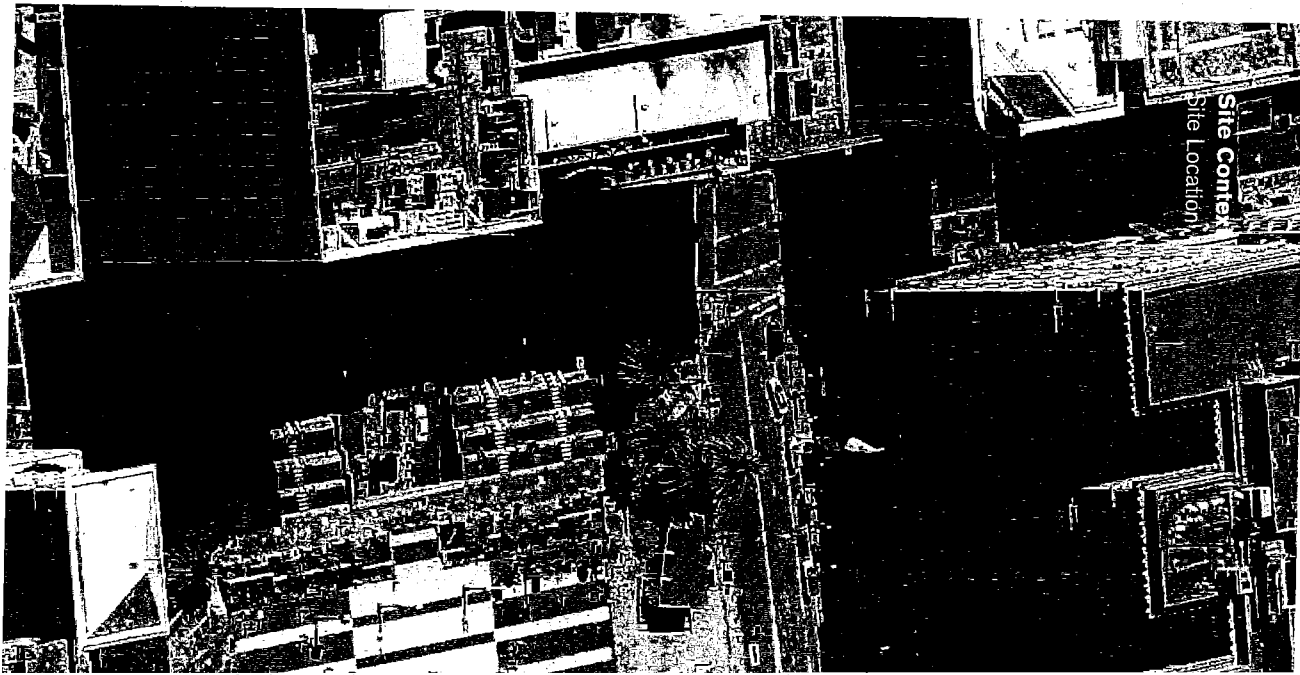


Site Cont  
300 Post S




Major Filtration under SF Green.

sf-3375565



only is this irrelevant to the Project and CEQA in general, but the SEIU's Letter purposely misleads by quoting only a part of the staff's discussion, and failing to disclose that the

sf-3375565



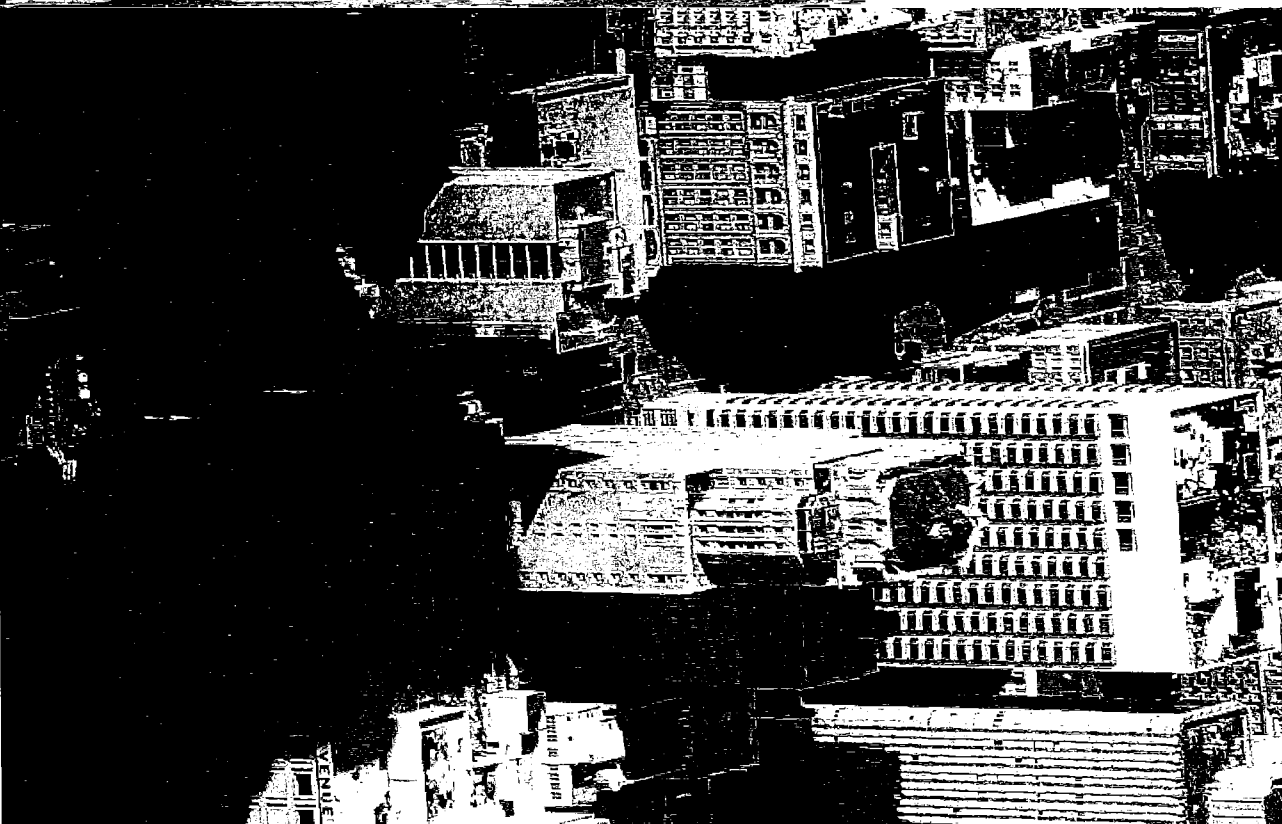
## Standards for Determining Qualifications of Projects

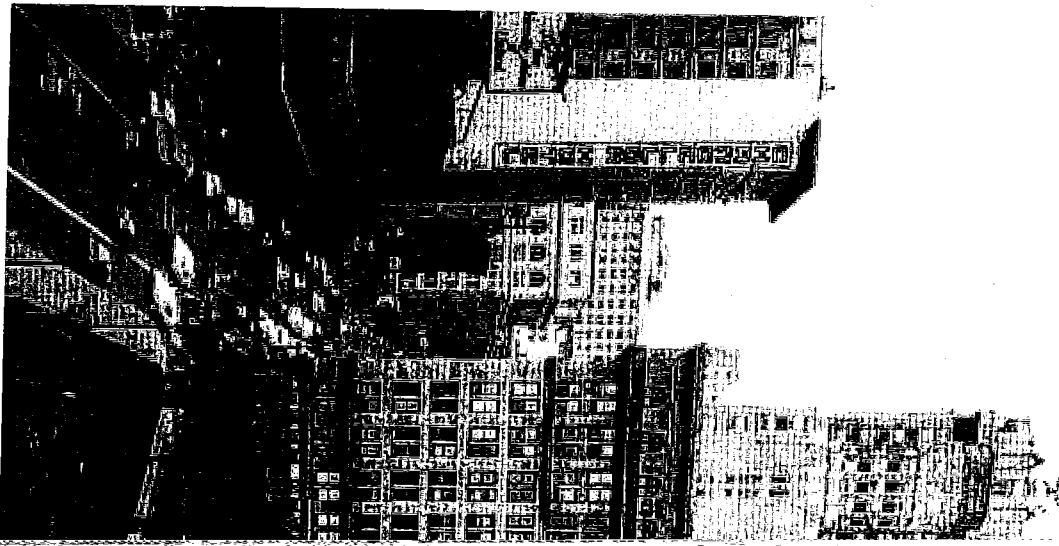
The SEIU's attorneys argue that the Project cannot both qualify for a Class II exemption under CEQA and be exempt from the standards for commercial structures under the San Francisco Green Building Code ("SF Green"). February 4 Letter at 2, 18-19. CEQA and SF Green are two separate regulatory regimes administered by different agencies, with independent public policy considerations. As is often the case, each has different standards for where a particular project fits within its provisions. That a project qualifies for a Class II exemption under state law does not automatically mean it meets the definition of "new construction" under the City Code.

There is no inconsistency between CEQA and SF Green's treatment of the Project. For a Class II exemption to apply, there must be an existing structure at the location. CEQA Guidelines § 15302 (exempting "replacement or reconstruction of existing structures and facilities"). "New construction" under SF Green refers to a "building that has never before been used or occupied for any purpose and does not include additions, alterations or repairs." San Francisco Green Building Code § 202. There is no dispute that the Project is the reconstruction of the existing Levi's Store (at a smaller size and with the same use) to be built on top of the Hyatt's ballroom, tying into the Hyatt's loading dock, chilled water supply, heating hot water supply, potable water supply, low voltage power supply, sanitary and rainwater, and drainage. Accordingly, it meets the requirements for a Class II exemption, but does not fall within the definition of "new construction" for SF Green. *See* Apple Letter at 4-5, 11-12.

### 3. The Observation Deck Is Not a CEQA Issue

The SEIU's attorneys claim that Apple should be forced to construct an observation deck that was required mitigation when the Hyatt Complex was built in 1972. February 4 Letter at 23-24. There is nothing in the record indicating that this mitigation measure was related to any CEQA environmental impact. Rather, the observation deck was related to a density bonus granted to the Hyatt Complex as a whole. The Hyatt Complex was approved before CEQA became law. As noted before, the Project actually reduces density at the site. *See* Apple Letter at 16-17. There is no reasonable connection between the Project and the alleged need to construct an observation deck.





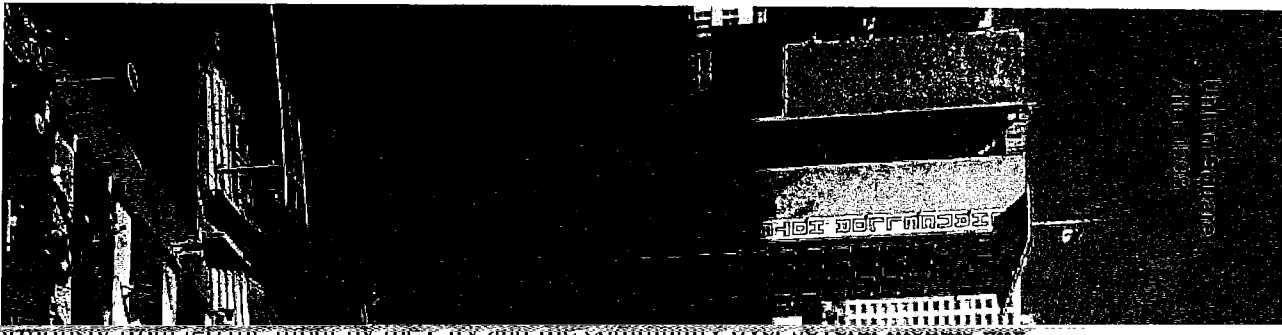
Union Square  
Before 1978

does not change or damage a resource is not a substantial adverse impact. *Eureka Citizens for Responsible Gov't v. City of Eureka*, 147 Cal. App. 4th 357, 375 (2007).

Far from demolishing or materially altering the Ruth Asawa Fountain, the Project would preserve and make it a focal point of the Plaza. Under the Project's design, the Fountain's features, finishes and craftsmanship would be maintained and the public use of the space and interaction with the resource enhanced. See Major Permit to Alter Report at 7. The letter submitted by the SEIU's consultant does not (and cannot) establish otherwise—there is no evidence in the record that the Fountain will be damaged or modified in any way that would affect its historical significance. See Cal. Pub. Res. Code § 21080(e)(2) (substantial evidence is not unsubstantiated opinion or speculation). Submitting an “expert” report does not, in itself, raise any fair argument of a significant impact on the environment. See *Parker Shattuck Neighbors v. Berkeley City Council*, - Cal. App. 4th -, 2013 Cal. LEXIS 1052, \*23 (2013). There is no credible argument otherwise and the SEIU's claims should be rejected outright.

#### **8. There Is No Evidence of Any New Greenhouse Gas Impacts**

The SEIU's attorneys argue that the Project should be considered “new construction” or a “major alteration” for the purposes of SF Green and, as such, it does not meet certain



meetings. The result is a beautiful store that will become a San Francisco icon.

**10. The Project Does Not Include Mitigation Measures to Preclude the Application of the Class II Exemption.**

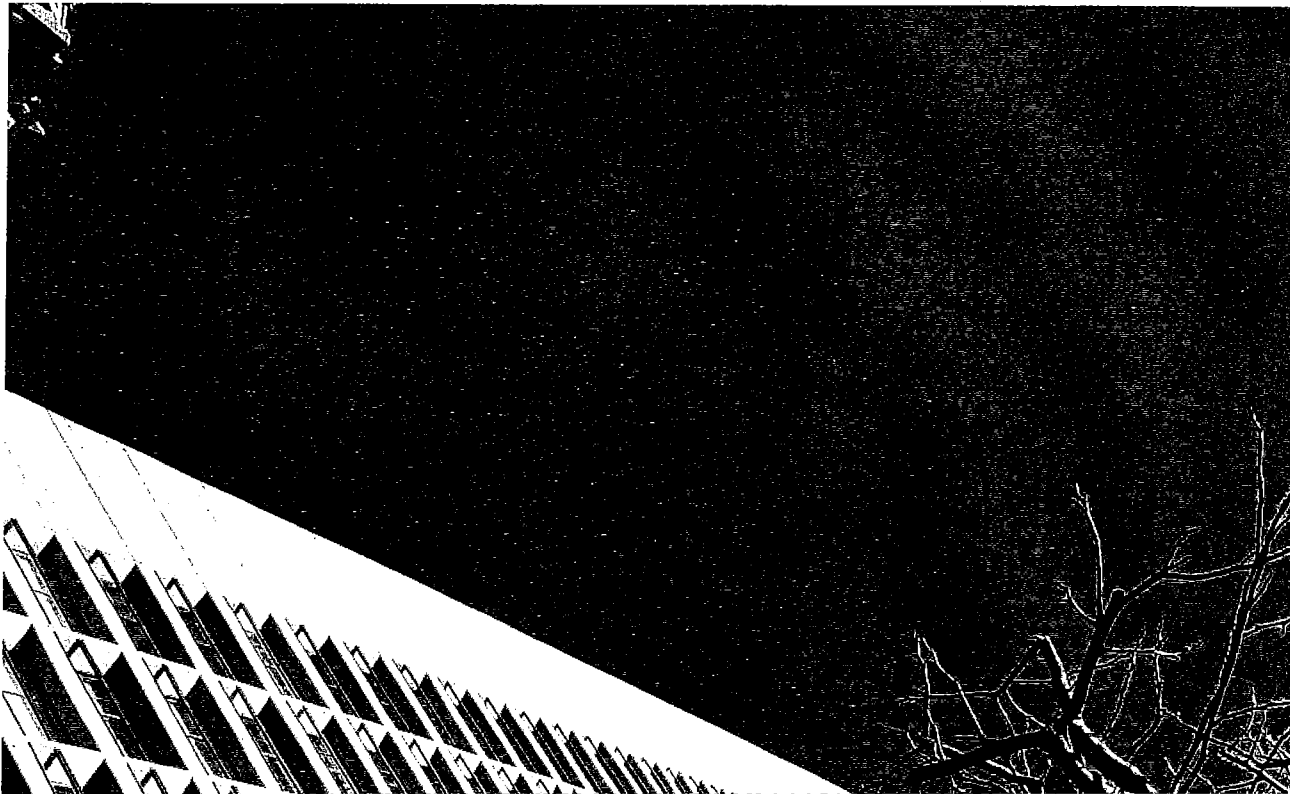
The SEIU's attorneys claim that because the Project is designed to accommodate the Ruth Asawa Fountain, it includes a mitigation measure that precludes the use of a categorical exemption. February 4 Letter at 24-25. This is a mischaracterization of the Project and the law. CEQA does not prohibit a project from being designed to minimize impacts on the environment from the outset. *See Banker's Hill, Hillcrest, Park West Cmty. Pres. Group v. City of San Diego*, 139 Cal. App. 4th 249, 275 (2006).

We appreciate your consideration of this matter. Please let us know if you have any questions or require additional information.

Sincerely,

Christopher J. Carr

cc: Supervisor David Chiu - [David.Chiu@sfgov.org](mailto:David.Chiu@sfgov.org)  
Judson True, Aide to Sup. Chiu - [Judson.True@sfgov.org](mailto:Judson.True@sfgov.org)  
John Rahaim, Planning Director - [John.Rahaim@sfgov.org](mailto:John.Rahaim@sfgov.org)  
Scott Sanchez, Zoning Administrator - [Scott.Sanchez@sfgov.org](mailto:Scott.Sanchez@sfgov.org)  
Jeff Joslin, Director of Current Planning - [Jeff.Joslin@sfgov.org](mailto:Jeff.Joslin@sfgov.org)  
Mark Luellen, Planning Dept. (Northeast Team Manager) - [Mark.Luellen@sfgov.org](mailto:Mark.Luellen@sfgov.org)  
Pilar Lavalley, Planning Dept. (Preservation Planner) - [Pilar.Lavalley@sfgov.org](mailto:Pilar.Lavalley@sfgov.org)  
Nannie Turrell, Planning Dept. (Senior Planner) - [Nannie.Turrell@sfgov.org](mailto:Nannie.Turrell@sfgov.org)  
Ken Rich, Office of Economic & Workforce Development - [ken.rich@sfgov.org](mailto:ken.rich@sfgov.org)  
Rick Millitello, Apple Inc. - [rmillitello@apple.com](mailto:rmillitello@apple.com)  
Daniel Frattin, Reuben, Junius & Rose LLP - [dfrattin@reubenlaw.com](mailto:dfrattin@reubenlaw.com)



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AND OF SUPERVISOR  
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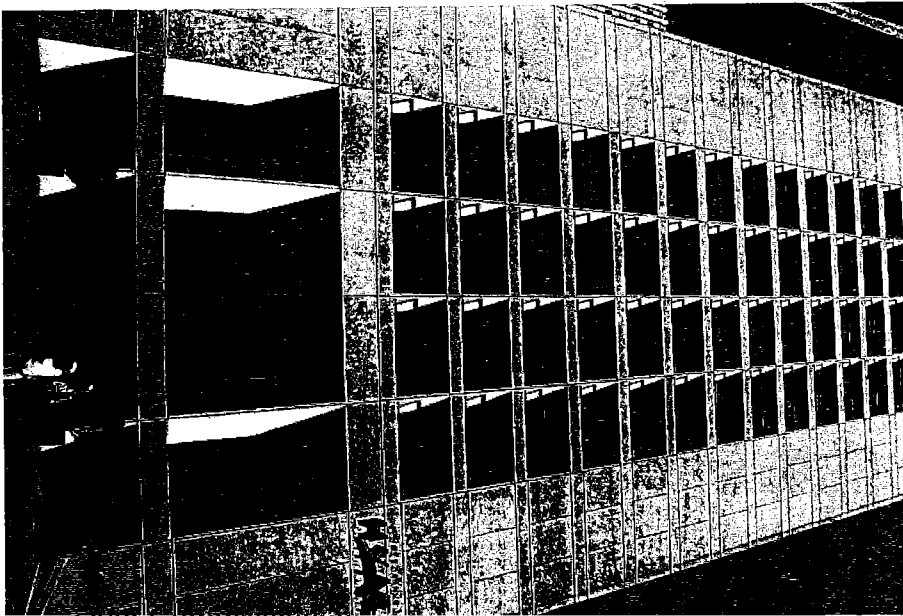
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Ak

cc. Supervisor David Chiu

1 DR. CARLTON B. GOODLETT PLACE, ROOM 200  
SAN FRANCISCO, CALIFORNIA 94102-4681  
TELEPHONE: (415) 554-6141

131059



Site Photos  
Grand Hyatt

Dear Commissioners,

On October 29, 2013, Supervisor Chiu introduced the following legislation:

**File No. 131059**

Ordinance amending the Planning Code to allow non-conforming secondary structures in a C-3-R Zoning District to be demolished and rebuilt to the prior non-conforming size under certain conditions; making environmental findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

The proposed ordinance is being transmitted pursuant to Planning Code Section 302(b) for public hearing and recommendation. The ordinance is pending before the Land Use & Economic Development Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

*Alisa Miller*

By: Alisa Miller, Committee Clerk  
Land Use & Economic Development Committee

- c: John Rahaim, Director of Planning  
Scott Sanchez, Zoning Administrator  
Sarah Jones, Chief, Major Environmental Analysis  
AnMarie Rodgers, Legislative Affairs  
Monica Pereira, Environmental Planning  
Nannie Turrell, Environmental Planning

*Not a project project  
per CEQA Guidelines  
Section 15060(c)(3) and  
15378. Individual  
proposed projects will  
be evaluated for  
physical impacts  
under CEQA.  
Nannie Turrell  
Nov. 12, 2013*

A. View of the Grand  
Source: Page & Turnbull3.1 Site Photo  
Rear Plaza

DATE: November 8, 2013

SUBJECT: LEGISLATION INTRODUCED

---

The Board of Supervisors' Land Use and Economic Development Committee has received the following proposed legislation, introduced by Supervisor Chiu on October 29, 2013:

**File No. 131059**

Ordinance amending the Planning Code to allow non-conforming secondary structures in a C-3-R Zoning District to be demolished and rebuilt to the prior non-conforming size under certain conditions; making environmental findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

If you would like to submit reports or comments prior to the hearing, 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: [alisa.miller@sfgov.org](mailto:alisa.miller@sfgov.org) and [andrea.ausberry@sfgov.org](mailto:andrea.ausberry@sfgov.org).

- c: William Strawn, Department of Building Inspection  
Carolyn Jayin, Department of Building Inspection



January 08, 2014

CEQA and Land Use Notice Request for Apple Retail Store at 300 Post St./345  
Stockton St.  
Page 3 of 3

Code governing California Planning and Zoning Law. **This request is filed pursuant to Public Resources Code Sections 21092.2 and 21167(f), and Government Code Section 65092**, which require agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body.

Please send notice by mail and electronic mail to:

Richard Drury  
Christina Caro  
Stacey Osborne  
Lozeau Drury LLP  
410 12<sup>th</sup> Street, Suite 250  
Oakland, CA 94607  
[richard@lozeaudrury.com](mailto:richard@lozeaudrury.com); [christina@lozeaudrury.com](mailto:christina@lozeaudrury.com);  
[stacey@lozeaudrury.com](mailto:stacey@lozeaudrury.com)

Please call should you have any questions. Thank you for your attention to this matter.

Sincerely,

Stacey Osborne  
Paralegal  
Lozeau | Drury LLP



pursuant to Government Code Section 65091.

2. Any and all notices prepared for the Project pursuant to the California Environmental Quality Act ("CEQA") [...] CEQA actions and notices of any public hearings to be held under any provision of Title 7 of the California Government CEQA and Land Use Notice Request for Apple Retail Store at 300 Post St./345 Stockton Street.  
(Reference request attached)

**The Office of the Clerk of the Board does not have any records responsive to your request. By copy of this email, we are referring your attached request to the attention of the Planning Department and Planning Commission.**

At this time, the date of hearing for File No. 131059 by the Board's Land Use and Economic Development Committee is to be determined. Just for your reference, we are providing all contents of File No. 131059 to date attached; Action and meeting details are also publicly available via our Legislative Research Center (LRC) by clicking here.

If you have any questions, please feel free to contact me at 415-554-7725.

Sincerely,

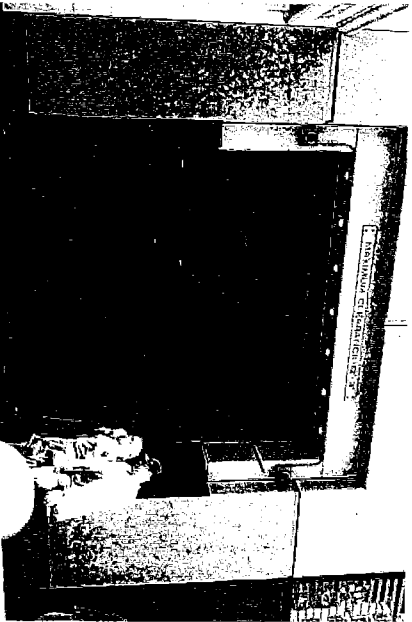
—  
**Wilson L. Ng**  
Records Manager  
San Francisco Board of Supervisors

Email: Wilson.L.Ng@sfgov.org

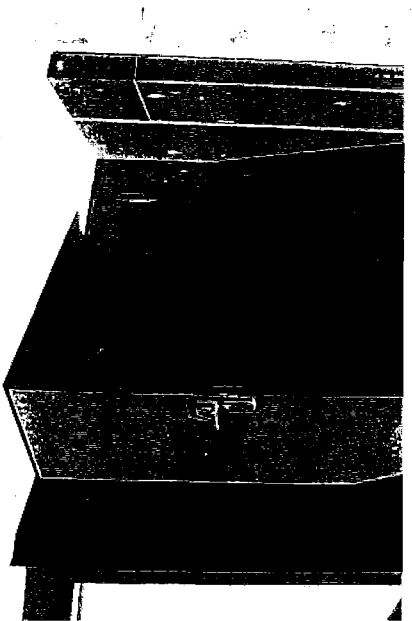
Phone: (415) 554-7725

 Click here to complete a Board of Supervisors Customer Service Satisfaction form

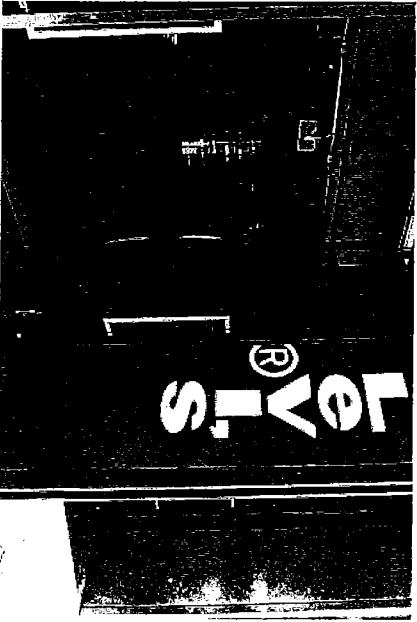
**Disclosures:** Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.



B. View of service garage door entry, facing south on Post Street.  
Source: Page & Turnbull



C. View of metal double service door, facing south on Post Street.  
Source: Page & Turnbull



E. Detail of the entrance doors on the primary facade of the Levi's store.  
Source: Page & Turnbull



F. Looking west down on Post street  
Source: Foster + Partners



















































































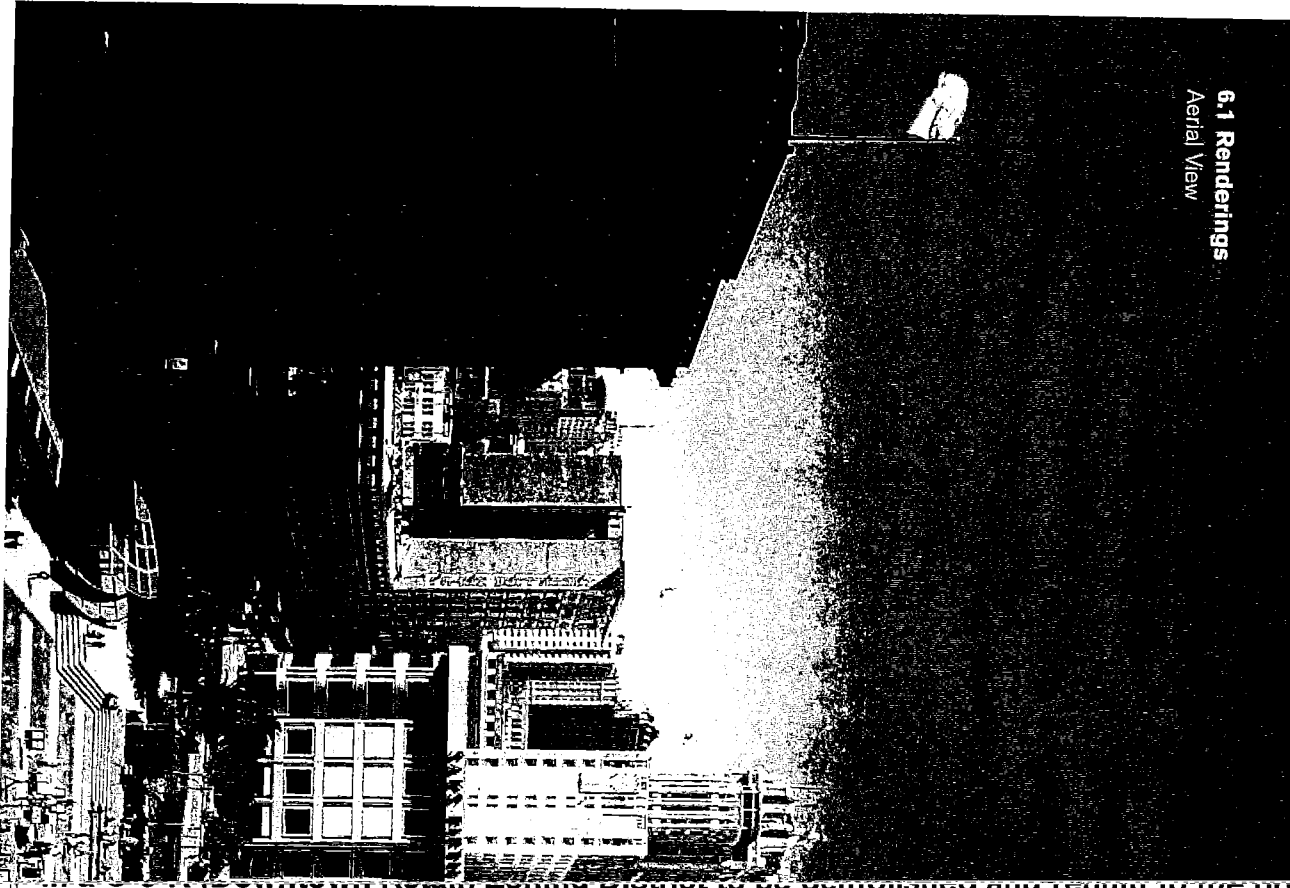












5 non-conforming size under certain conditions; making environmental findings, and  
6 findings of consistency with the General Plan, and the eight priority policies of  
7 Planning Code, Section 101.1.

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

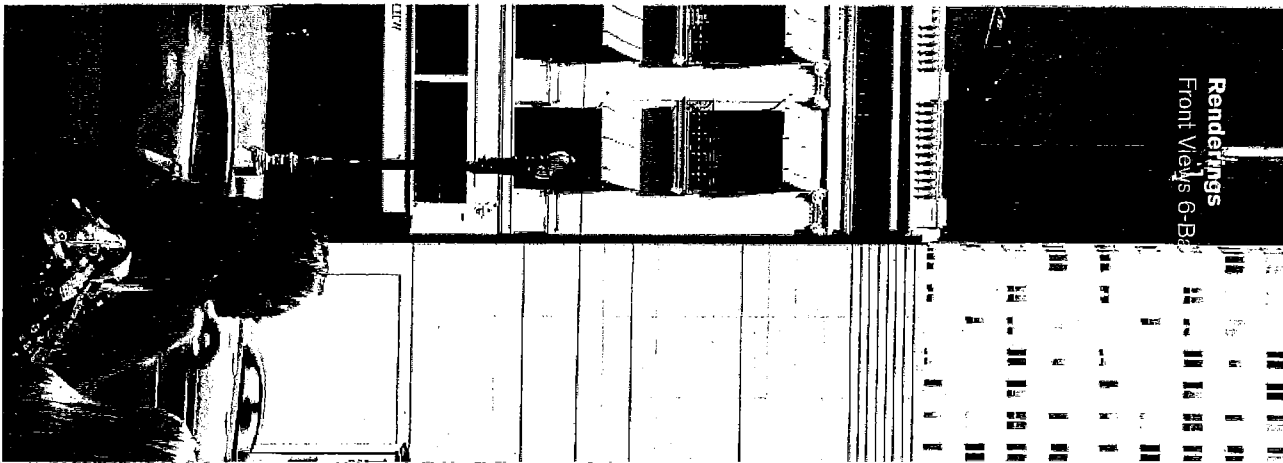
15 Be it ordained by the People of the City and County of San Francisco:

16 Section 1. Findings.

17 (a) The Planning Department has determined that the actions contemplated in this  
18 ordinance comply with the California Environmental Quality Act (California Public Resources  
19 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
20 Supervisors in File No. \_\_\_\_\_ and is incorporated herein by reference.

21 (b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_, adopted  
22 findings that the actions contemplated in this ordinance are consistent, on balance, with the  
City's General Plan and eight priority policies of Planning Code Section 101.1. The Board





24 within eighteen months of the fire or other calamity or Act of God, the structure's owner shall  
25 have filed a building permit application to restore the structure to its former condition and use.

Mayor Lee, Supervisors Chiu, Cohen  
BOARD OF SUPERVISORS

17 Section 11.1.1 of the Planning Code. Application to alter a nonconforming structure not  
18 designated an Article 11 significant or contributory building under Subsection (d)(2) shall be  
19 considered under the provisions of Section 11.1.1 of this Code. These applications shall be

20 subject to the following additional criteria:

21 (A) That the enlargement promote the health, safety and welfare of the  
22 public; and

23 (B) That the enlargement not cause significant shadows or wind impacts  
24 on public sidewalks and parks; and  
25

Mayor Lee, Supervisors Chiu, Cohen  
BOARD OF SUPERVISORS



17 proposed project or to the neighborhood.

18 (e) Notwithstanding Subsection (a) of this Section, and in order that certain character-  
19 defining architectural elements of Qualified Movie Theaters be preserved and enhanced, a  
20 noncomplying Historic Movie Theater Projecting Sign, as defined in Section 602.25, and/or a  
21 noncomplying Historic Movie Theater Marquee, as defined in Section 602.26, may be  
22 preserved, rehabilitated, or restored. A noncomplying Historic Movie Theater Projecting Sign  
23 or a noncomplying Historic Movie Theater Marquee removed from a Qualified Movie Theater  
24 prior to or in absence of an application for replacement may be reconstructed



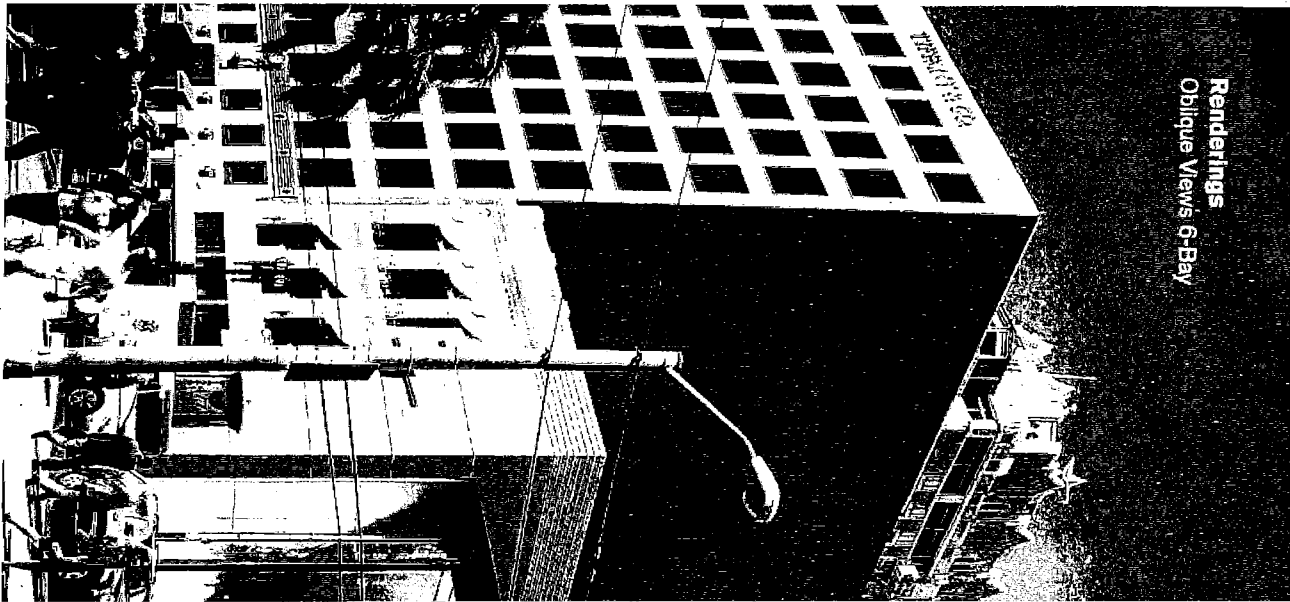
12 to the following:

13 (i) On a Historic Movie Theater Projecting Sign, the historic name  
14 associated with a previous theater occupant;

15 (ii) On a Historic Movie Theater Marquee, the historic name  
16 associated with a previous theater occupant and, where applicable, on the signboard, other  
17 information that is an Identifying Sign, as defined in Section 602.10, provided such information  
18 shall be contained within the signboard, shall not consist of any logos, and shall be in the  
19 character of lettering historically found on movie theater signboards in terms of size, font, and  
20 detail.

21 (B) For a Qualified Movie Theater where the Historic Movie Theater  
22 Projecting Sign and/or Historic Movie Theater Marquee has been removed and is proposed to  
23 be reconstructed, the overall design and signage features shall be limited to the following:

24 (i) On a Historic Movie Theater Projecting Sign, the historic name  
25 associated with a previous theater occupant;



Renderings  
Oblique Views 6-Bay

to enactment. Enactment occurs when the Mayor signs the ordinance. The Mayor returns the

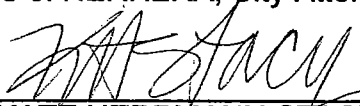
12 of Supervisors overrides the Mayor's veto of the ordinance.

13

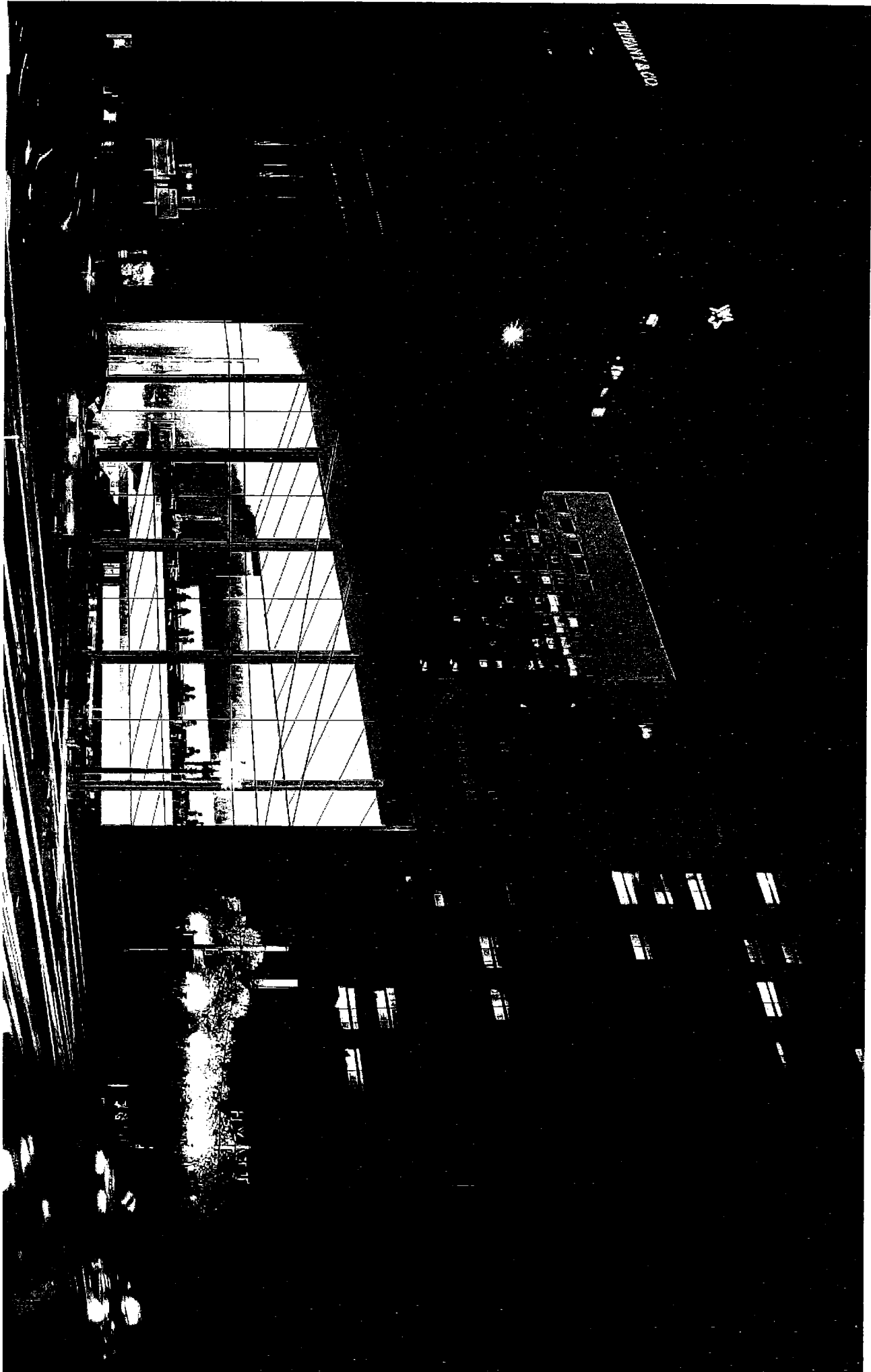
14 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
15 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
16 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
17 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
18 additions, and Board amendment deletions in accordance with the "Note" that appears under  
19 the official title of the ordinance.

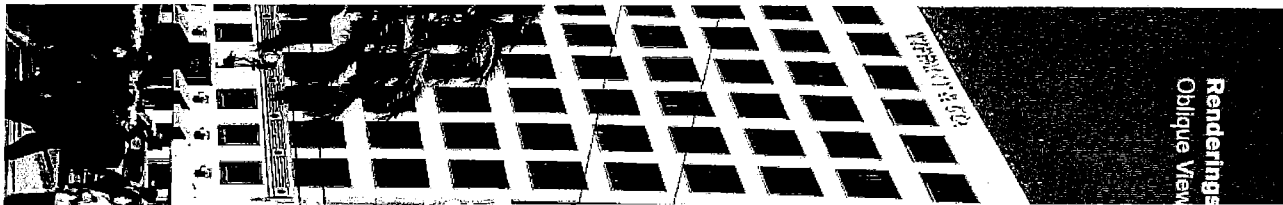
20

21 APPROVED AS TO FORM:  
22 DENNIS J. HERRERA, City Attorney

23 By:   
24 KATE HERRMANN STACY  
25 Deputy City Attorney

Mayor Lee, Supervisor Chiu  
BOARD OF SUPERVISORS





City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

Re: Transmittal of Planning Department Case Number:  
2013.1695T: Allowing Certain Non-Conforming Structures to be Rebuilt Under  
Certain Conditions  
BOS File No.: 131059  
Planning Commission Recommendation: Disapproval

Dear Ms. Calvillo,

On February 3, 2014, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearings at a regularly scheduled meeting to consider the proposed Ordinance under Board of Supervisors File Number 13-1059. The proposed Ordinance would amend Planning Code Section 188 to allow noncomplying secondary structures in the C-3-R District to be demolished, in whole or in part, and rebuilt, if certain findings can be made by the Planning Commission.

At the February 6<sup>th</sup> Hearing, a motion was made to recommend the approval of the proposed Ordinance with non-substantive modifications. The Commission voted 3-3 on that motion, which constitutes a failed motion. Since the motion to recommend approval of the proposed Ordinance failed, the Commission's lack of action constitutes a recommendation of disapproval, pursuant to Planning Code Section 306.4.

If you have any questions or require further information please do not hesitate to contact me at (415) 558-6395.

Sincerely,

AnMarie Rodgers  
Manager of Legislative Affairs

Cc: City Attorneys Kate Stacy, Jon Givner  
Andrea Ausberry, Clerk's Office  
Jason Elliott, Mayor's Office  
Judson True, Supervisor Chiu's Office  
Andrea Bruss, Supervisor Cohen's Office

Attachments (one copy of the following):

Department Executive Summary

[www.sfplanning.org](http://www.sfplanning.org)

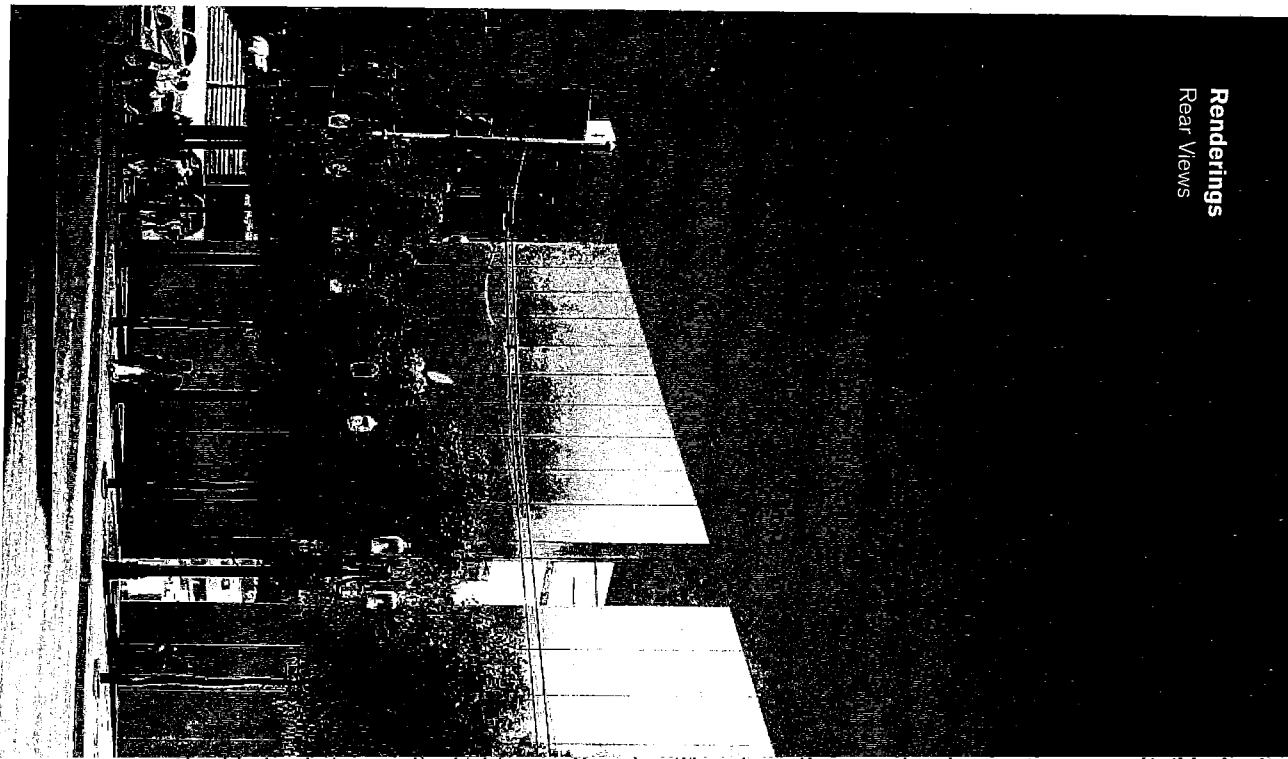


or determined to be eligible for listing in the California Register of Historical Resources, or if it is considered a contributor to a potential historic district.

An earlier version of the proposed project was reviewed by the Architectural Review Committee (ARC) of the Historic Preservation Commission on December 4, 2013. At the ARC meeting, the Commissioners questioned whether certain aspects of the proposed design were compatible with the surrounding Conservation District. These comments were summarized in a memorandum to the project sponsor dated December 17, 2013. In response to the ARC comments, the project sponsor submitted a revised project design on January 6, 2014. The historic resource evaluation response (HRER) prepared by the Planning Department's preservation staff evaluates the currently proposed project and is summarized as follows.<sup>2</sup>

The project site is located in the locally designated Kearny-Market-Mason-Sutter Conservation District, which is considered a historic resource for purposes of CEQA. The project site is a non-contributing property within the district designated pursuant to Article 11 of the Planning Code. The 300 Post Street/345 Stockton Street complex was constructed in 1972, and the Ruth Asawa fountain was completed in 1973. The retail structure was substantially altered in 1998.

The hotel and retail complex was built during the early stages of a broader redevelopment trend in the second half of the twentieth century and does not appear to have made a significant contribution to patterns of local and regional history in a manner that would make it eligible for listing in the California Register under Criterion 1 (events). There appears to be no information to indicate that the Ruth Asawa fountain is associated with historic events or trends that would make it eligible for inclusion on the California Register of Historical Resources.



Renderings  
Rear Views

eligible for listing in the California Register. Therefore, the complex does not appear eligible for listing in the California Register under Criterion 3 (architecture).

---

<sup>2</sup> San Francisco Planning Department, *Historic Resource Evaluation Response, 345 Stockton Street, Case No. 2013.0628E*, January 21, 2014. This report is attached.



Standards, as it is a stone material with a texture and color that would be consistent with other masonry cladding found throughout the district.

- While the metal panel cladding proposed on the retail structure is not a material that is typical of the district, the color and matte finish proposed would be compatible with the texture and tone of masonry found on surrounding buildings and throughout the district. The Secretary's Standards allow, or do not discourage, use of contemporary materials provided they are "harmonious" with the surrounding character. The proposed metal paneling would not be reflective and would have a matte finish such that it would not be disruptive to the character of the district.
- The plaza to the north of the proposed new retail structure would change in shape from triangular to rectangular. While there are no specific requirements for open spaces within the Kearny-Market-Mason-Sutter Conservation District, the proposed reconfiguration of the plaza would be designed in a manner that would improve the compatibility of the plaza with the district. The rectilinear space would be more consistent with the pattern and shape of buildings in the district. The proposed stone paving and simple landscaping would be compatible with the character of the district and in conformance with the Secretary's Standards.
- The Ruth Asawa fountain would be photo-documented in situ and carefully removed from its existing location, protected, and stored during construction in conformance with the Secretary's Standards. When the site is ready, the fountain would be reinstalled approximately 10 feet from its existing location in a manner that matches the existing as closely as possible in conformance with the Secretary's Standards.



During a site visit on August 6, 2013, individual birds were observed and counted. Accounting for seasonal breeding and migratory patterns, an assessment was made of the suitability of vegetation within the survey area to support birds that might not have been present during the site visit, and how birds might use resources around the project site. The assessment also included an Internet search for bird observations at Union Square and contact with San Francisco Recreation & Park Department representatives to determine whether bird strikes had been reported at Union Square.

Of the 123 individual birds observed in and around Union Square and the project site at elevations at or below the height of the proposed project, the vast majority (114) were non-native urban-adapted species that are not protected by the Federal Migratory Bird Treaty Act or California Fish and Game Code. Only eight individuals of three native bird species (protected by State and federal law) were seen perched at elevations at or below the height of the proposed project – five Brewer's blackbirds, including three in Union Square Park and two along Stockton St. on the east side of the project site; a juvenile white-crowned sparrow in Union Square; and two California gulls perched on light posts around the park. Of these species, the Brewer's blackbirds and white-crowned sparrow could potentially nest in the park. More than 10 California gulls, 50 or more western gulls, and four American crows were observed flying high overhead. In addition, a pair of adult peregrine falcons was observed flying very high over Union Square and perched on the east side of the hotel structure on the north side of the project site.

The potential for avian collisions with the façades of the proposed structure was assessed, taking into account the location of the structure relative to food and vegetation, the distance from the glass façades to those resources, the potential for vegetation to be reflected in the glass façades, and the existing conditions of the façades of other buildings around Union Square.

No vegetation, water, food sources, or other native bird attractants are currently present or are proposed as part of the project immediately in front of the store. Thus, there is no reason why birds would fly toward the store unless vegetation from Union Square or the sky were reflected in the façade, unless birds were flying around in conditions of poor visibility (e.g., fog), or unless birds were able to see vegetation on the back side of the store through the front windows. The glass to be used on these façades would not be highly reflective and the glass on the front façade would be set back 8 feet below an overhang, reducing the degree to which the sky and vegetation would be reflected.

In summary, while occasional collisions between native birds and the glass façades of the proposed project may occur — as could occur with any building — the number of such collisions is expected to be low due to the low abundance of native birds and suitable habitat for those birds present in the vicinity.





and the plaza. The property is identified as Category V (Unrated) in the Kearny-Market-Mason-Sutter Conservation District and is within a C-3-R (Downtown Retail) Zoning District and an 80-130-F Height and Bulk District.

The current Levi's Store structure (300 Post Street) is located at the northwest corner of Post and Stockton Streets, at the south end of the subject parcel. The building was constructed in conjunction with the Grand Hyatt Hotel in 1972 and was also designed by Skidmore, Owings, and Merrill, LLP (SOM). It was substantially altered from its original appearance in 1998 for its current tenant (Levi's). It is a three-story steel frame and reinforced concrete building that is triangular in plan, is clad with poured concrete scored in a rectangular grid, and has a flat roof surrounded by a parapet.<sup>1</sup>

The primary (south) façade, facing Union Square, features five bays of plate glass that are three stories in height and separated vertically by four copper I-beams. The bays at the ground floor are delineated by a heavy horizontal metal I-beam and the primary entrance is located in the center bay and consists of two sets of double glass doors under a metal awning. The glass bays are framed to the sides and above by

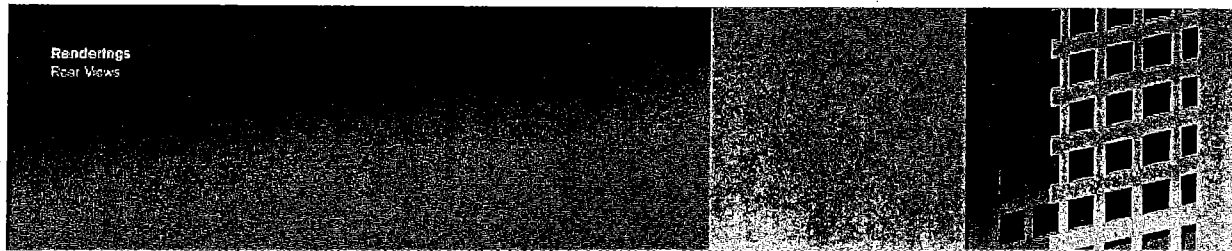
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<sup>1</sup> The building and plaza descriptions are excerpted from Page & Turnbull *300 Post Street/345 Stockton Street Historic Resource Evaluation* (August 15, 2013).

# Editorials

San Francisco Chronicle

## Apple listened - store blueprint reflects community concerns



Almost without exception, the buildings in the Kearny-Market-Mason-Sutter Conservation District are built to the front property line and occupy the entire site.

The buildings are of small to medium scale with bay widths that range from 20 feet to 30 feet and heights that range from four to eight stories, although a number of taller buildings exist. The wider frontages are often broken up by articulation of the facade, making the buildings appear narrower. The base is generally delineated from the rest of the building giving the District an intimate scale at the street.

Buildings are usually clad in masonry materials over a supporting structure. The cladding materials include terra cotta, brick, stone and stucco. The materials are generally colored light or medium earth tones, including white, cream, buff, yellow, and brown.

### CEQA Historical Resource(s) Evaluation

#### Step A: Significance

Under CEQA section 21084.1, a property qualifies as a historic resource if it is "listed in, or determined to be eligible for listing in, the California Register of Historical Resources." The fact that a resource is not listed in, or determined to be eligible for listing in, the California Register of Historical Resources or not included in a local register of historical resources, shall not preclude a lead agency from determining whether the resource may qualify as a historical resource under CEQA.

Individual	Historic District/Context
<b>Ruth Asawa Fountain only</b> Property is individually eligible for inclusion in a California Register under one or more of the following Criteria:	<b>Kearny-Market-Mason-Sutter District</b> Property is within a California Register Historic District/Context that is eligible for inclusion under one or more of the following Criteria:
Criterion 1 - Event: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Criterion 2 - Persons: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Criterion 3 - Architecture: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Criterion 4 - Info. Potential: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Criterion 1 - Event: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Criterion 2 - Persons: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Criterion 3 - Architecture: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Criterion 4 - Info. Potential: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Period of Significance:	Period of Significance: approx. 1906-1930
	Property's status within the eligible district: <input type="checkbox"/> Contributor <input checked="" type="checkbox"/> Non-Contributor

Asawa's folk-art fountain at Post and Stockton streets. The earlier version also included a rather off-putting wall of metal on the Stockton Street side.

Apple listened, and found solutions that will add to the look and pedestrian utility of the two-story glass-and-steel structure that will replace the four-story Levi's store on Union Square.



The fountain was not only preserved, but was also made into the centerpiece of an enlarged plaza that should help attract foot traffic. An 8-foot-wide window was incorporated into the Stockton Street wall.

The new Apple Store could help infuse Union Square with a jolt of energy and youthful demographic. Its current store on Market and Stockton streets is almost always bustling during the day.

As Planning Director John Rahaim observed, this is how the process is supposed to work: The public offers its feedback, issues arise and the project designers address them.

Now that the Planning Commission gave its approval, on a 5-1 vote, the Board of Supervisors should reward Apple's attention to public concerns by sealing the deal.

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construction, or represents the work of a master, or possesses high artistic values.

2/20/2014

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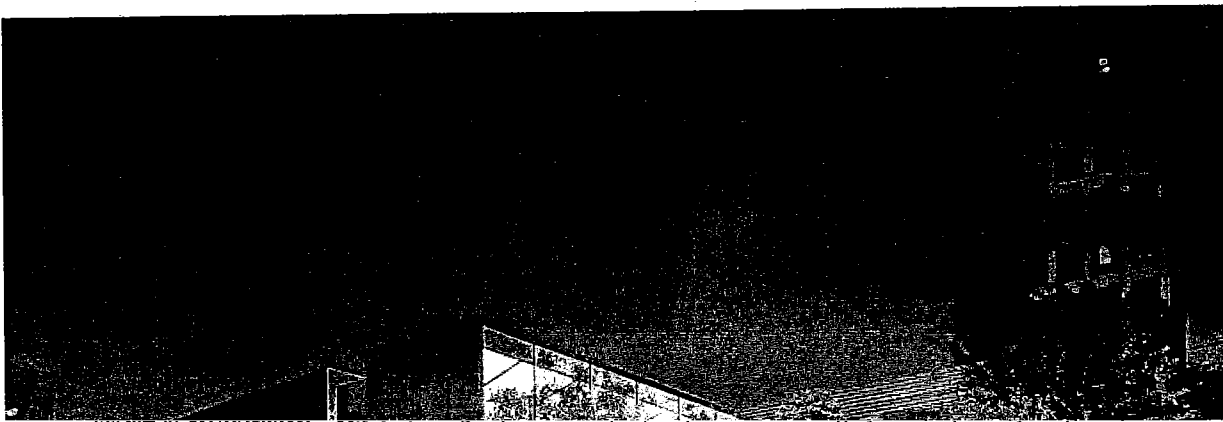
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Local

San Francisco Chronicle

# Apple Store redesign for Union Square is more polished



*qualities do not need to be present as long the overall sense of past time and place is evident.*

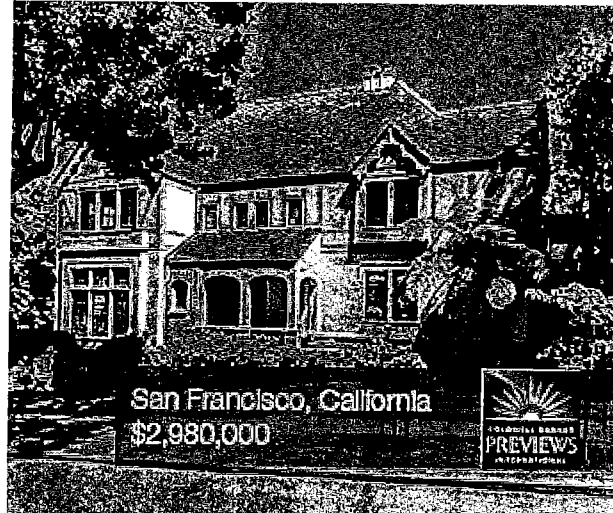
The fountain has retained from the period of significance noted in Step A:

<b>Location:</b>	<input checked="" type="checkbox"/> Retains	<input type="checkbox"/> Lacks	<b>Setting:</b>	<input checked="" type="checkbox"/> Retains	<input type="checkbox"/> Lacks
<b>Association:</b>	<input checked="" type="checkbox"/> Retains	<input type="checkbox"/> Lacks	<b>Feeling:</b>	<input checked="" type="checkbox"/> Retains	<input type="checkbox"/> Lacks
<b>Design:</b>	<input checked="" type="checkbox"/> Retains	<input type="checkbox"/> Lacks	<b>Materials:</b>	<input checked="" type="checkbox"/> Retains	<input type="checkbox"/> Lacks
<b>Workmanship:</b>	<input checked="" type="checkbox"/> Retains	<input type="checkbox"/> Lacks			

The Ruth Asawa fountain retains integrity of location, design, materials, feeling, association, and workmanship. Integrity of setting has been somewhat compromised by alterations to the Levi's store. Overall, the Ruth Asawa fountain conveys its significance individually.

dimensional proof that sometimes, public scrutiny and bureaucratic second-guessing make big-name architecture better, not worse.

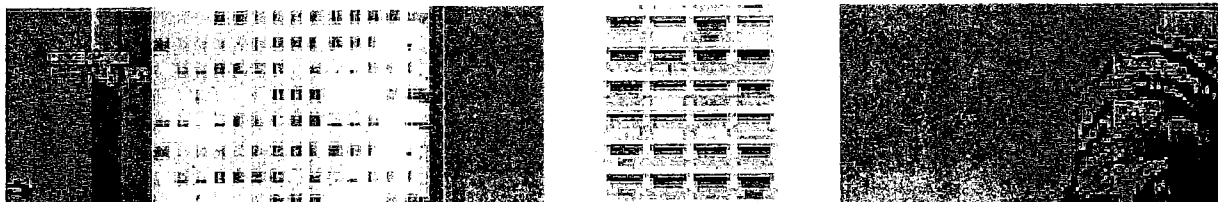
Instead of a chic but generic box, the building approved for the corner of Post and Stockton streets this week by two city commissions has a depth and clean tension that was missing from the design unveiled last May. It also preserves a fountain by sculptor Ruth Asawa from the early 1970s, a work of communal folk art that's a visual time capsule of San Francisco back then.



Yes, the basic elements of the project are the same. A 44-foot wall of glass faces Union Square, framed in steel that extends in from the sidewalk

- Reconfiguring the triangular plaza into a rectangle increasing the plaza in size from 4,586 square feet to 6,059 square feet, and renovating it with new landscaping, lighting, seating, and paving.

foot-wide band of insulated glass set 12 inches behind the metal surface, a see-through vein from bottom to top.



manner. At the back-of-house portion of the building, incised joints in the cast stone paneling break up its mass in a manner similar to belt or string coursing and additional articulation at the roofline references cornice details found within the District in a contemporary manner. At the front (Post Street) façade of the retail portion of the building, the raised entrance and stairs emphasize the base of the building while the full-height steel framing members set within the projecting chamfered frame suggest a Classical colonnade in a contemporary idiom. The raised entrance and stairs help organize the elevation into a two-part composition with a base and shaft. The shaft is capped by the projecting metal frame in a manner that is consistent with projecting cornices typical of buildings within the District. The large windows are framed with full-height, powder coated steel members that articulate the façade into six bays with the end bays being differentiated by their reduced width and the location of the two main retail entrances. This emphasis on the end or center bays is a common compositional device in the District noted in the District designation. Although the steel framing members do not express the underlying structure of the building in this case, they do serve a structural purpose in supporting the weight of the large glass panels and for the full-height operable bays, which are proposed to slide open. In this sense, the steel framing members articulate the façade, emphasize the vertical composition, and express underlying structural requirements in a contemporary manner that is in conformance with the *Secretary's Standards for Rehabilitation (Secretary's Standards)* and that is compatible with the District.

2/20/2014

Apple Store redesign for Union Square is more polished - San Francisco Chronicle

steel bars that would be set within the main glass wall, for instance, "echo traditional bay widths."

Contextual is in the eyes of the beholder; I'd prefer the store to be framed in stone, similar to Apple crates on Chicago's Michigan Avenue and near Lincoln Center in Manhattan. This option was tucked on Page 215 of the 258-page project packet, along with the comment that besides being "more massive," the "stone wall design represents older store direction."

Still, the design won the blessing of the Historic Preservation Commission, which had a say since the corner falls within an architectural conservation district. It also was approved by the Planning

cc: Virnaliza Byrd, Environmental Division/ Historic Resource Impact Review File  
Elizabeth Watty, Current Planner

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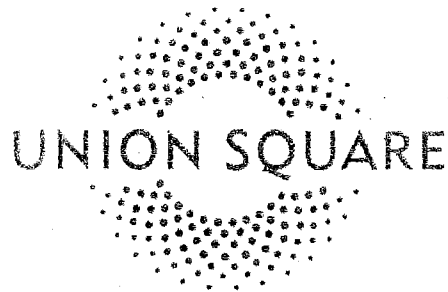
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**300 Post Street/345 Stockton Street**



January 27, 2014

Dear Members of the Planning Commission:

The Union Square Business Improvement District is dedicated to making the Union Square area clean, safe and vibrant. We are a membership organization of property owners, and as such, support efforts of our property owners to make investments in their respective properties which in turn contribute to the vitality of the district.

The Apple design team presented their plans for the new store at Post and Stockton to our Streetscapes Committee on September 27, 2013. I also further studied the revised plans for the building and the adjacent plaza and had followed John King's commentary in the San Francisco Chronicle regarding the Ruth Asawa fountain and the "wall" along Stockton which were critiques in the first design.

The Union Square BID appreciates how the Apple design team addressed these issues. It is our understanding that the steel panels along Stockton Street have now been redesigned with an 8-foot-wide glass window that will break up the "wall", create some visual interest and add interior light.

Secondly, the Ruth Asawa fountain which created some controversy by suggesting that it might be relocated has now been reconfigured into the design of the plaza and will only be moved ever so slightly. In addition, by adding an entrance off of this plaza to the second level of the store and by adding some seating to the plaza this development will activate and revitalize this underutilized space.

The relocation of the current Apple Store from 1 Stockton to this new site will perhaps most importantly pull some of the retail energy and vibe north toward Union Square Park which is more in the center of the Union Square district. This will have the positive impact of benefitting other businesses in the Union Square area because shoppers will be drawn in this direction.

For all of these reasons we are in support of the new Apple Store project.

Sincerely,

A handwritten signature in cursive script that reads "Karin Flood".

Karin Flood, Executive Director  
Union Square Business Improvement District

---

a dated structure and inhospitable open space with a dynamic new store and renovated plaza. Although the Project will result in a net reduction in floor area, it will not bring the entire Grand Hyatt Property into compliance with current floor area ratio ("FAR") limits. Because current zoning regulations prohibit the replacement of such noncomplying structures, the Planning Code Amendment ("Ordinance") is needed for the Project to move forward.

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January 23, 2014

Writer's Direct Contact

+1 (415) 268.7246

CCarr@mofo.com

Via E-Mail and U.S. Mail

Jeannie Poling  
Elizabeth Watty  
San Francisco Planning Department  
1650 Mission Street, Suite 400  
San Francisco, CA 94103

Re: 300 Post Street (Case No. 2103.0628)

Dear Ms. Poling and Ms. Watty:

I am writing on behalf of Apple Inc. ("Apple"), applicant for the 300 Post Street Project, a proposed Apple store at Post Street and Stockton (Assessor's Block 2095, Lot 016) ("Project"). In connection with the Project, Apple has applied to the City and County of San Francisco ("City") for approval of a (1) Major Permit to Alter, (2) a Planning Code Section 309 Review for a Downtown Project Authorization, and (3) a Variance to modify the storefront transparency on the Stockton Street side of the Project. The Project also requires a code change to allow reconstruction of noncomplying floor area, as provided in the proposed amendment to Planning Code § 188.

This letter responds to matters raised under the California Environmental Quality Act ("CEQA") by the Service Employees International Union – United Service Workers West ("SEIU") in its letters dated December 4, 2013, December 18, 2013, and January 9, 2014. The SEIU raises certain issues with replacing an existing retail store with a smaller, more modern store, contending that its members are uniquely concerned about the environmental impacts of such a project. However, these letters mischaracterize the Project, misstate the law, and misdirect the public process.

The evidence in the record clearly supports the City's finding that the Project qualifies for a Categorical Exemption under CEQA.

Isabella Polino

These include findings that a project will deliver net public benefits, enhance the retail character of the C-3-R District, and not cause adverse impacts to a historic resource. In approving the Project, the Planning Commission found that the Project satisfied these public benefit criteria.

- **Community Benefits & Union Construction.** Apple anticipates staffing approximately 425 employees at the store, about 70% of whom Apple expects to be San Francisco residents, based on its current Union Square store makeup. Additionally, the Project will utilize a skilled union workforce throughout the construction process, including carpenters, ironworkers, plumbers, electricians, equipment operators, masons, and teamsters.
- **Community Support.** The Bay Area Council, the Union Square Business Improvement District, the Hotel Council, the Northern California Carpenters Regional Council, the Northern California District Council of Laborers and the editorial board of the San Francisco Chronicle support the Project and the Ordinance. Certain letters and articles of support are attached as group **Exhibit B**, and additional letters will be provided before the hearing.

Apple has developed stores throughout the world, including in some of the most challenging permitting regimes. By working with local governments and communities, Apple has been able to develop iconic stores in Paris, London, Berlin, Barcelona, Hong Kong, Shanghai, Sydney, New York, and other world-class cities. For years Apple has been determined to bring to San Francisco an expanded store with a cutting-edge design. The Project site presents the perfect opportunity to achieve this goal, and also give back to the community by energizing a neglected public space and burnishing Union Square's reputation as a premier retail location. Apple proudly brands its products as "designed in California." It seeks to develop a store in its own backyard that will rival any of its other significant stores around the globe.

## 1. Project Description

The Project is the development and construction of a new and significant Apple store on San Francisco's Union Square. The new store would be located at the site of an existing large-scale retail establishment (formerly the Levi's store) at 300 Post Street. The existing retail space was built as part of an integrated project with the Grand Hyatt Hotel (the "Hyatt Complex") in

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fax: 415-399-9480

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Jeannie Poling  
Elizabeth Watty  
January 23, 2014  
Page Three

determined to bring to San Francisco an expanded store with a cutting-edge design. The Project site presents the perfect opportunity to achieve this goal, and also give back to the community by energizing a neglected public space and burnishing Union Square's reputation as a premier retail location. Apple proudly brands its products as "designed in California." It seeks to develop a store in its own backyard that will rival any of its other significant stores around the globe.

## 2. Project Background

The Project is the development and construction of a new Apple store on San Francisco's Union Square. The new store would be located at the site of an existing large-scale retail establishment (formerly the Levi's store) at 300 Post Street. The existing retail space was constructed as part of an integrated project with the Grand Hyatt Hotel (the "Hyatt Complex") during the 1970s. Indeed, the store is located on top of the hotel's loading area and ballrooms, and a portion of it originally served as the hotel's restaurant. The retail space was substantially modified in 1998 for Levi's retail purposes. The Project replaces the existing four-story building comprising 37,234 square feet of retail space with a new two-story building comprising 23,470 square feet of retail space, using a more innovative and sustainable design. The Project will be the first in San Francisco by the renowned architectural firm of Foster + Partners, the same firm designing Apple's new campus in Cupertino.

Apple initially submitted a request for a preliminary project assessment in May 2013. Apple recognized that input from the Planning Department staff would be critical to the orderly implementation of a project that will be a showpiece of the City's premier retail area. By working closely and cooperatively with City staff and stakeholders, Apple was able to identify and respond to key concerns raised by the City and the community. As a result,

Apple made several modifications to the Project, including changing the current, uninviting

Editorial Board. *Apple Listened - Store Blueprint Reflects Community Concerns*, S.F. CHRON, Feb. 7, 2014 (See **Exhibit B**). This has been a transparent and inclusive process, and the result is a project of which both Apple and the City can be proud. It represents the best of modern, sustainable design, befitting its place in the center of a world-class city.

## 3. Prior Approvals

Though the Hyatt Complex is classified as a Category V (Unrated) Building with no preservation merit, the HPC has jurisdiction over the Project due to its location in the Kearny-Market-Mason-Sutter Conservation District. On February 5, 2014, the HPC approved a Major Permit to Alter for the Project on a 6-1 vote, finding that it was compatible with the Conservation District.

Jeannie Poling  
Elizabeth Watty  
January 23, 2014  
Page Four

### 3. The California Environmental Quality Act

Apple values its role in the community and appreciates the consideration that the Planning Department staff has given to its proposal. Apple has worked hard to foster a collaborative and cooperative relationship with the City and the community. The late-breaking attack by SEIU's attorneys neither furthers a rational deliberative process nor promotes any legitimate environmental interests. As set forth below, the attack ignores relevant facts, distorts the record, warps the law, and relies on speculation and unsupported assumptions. It mischaracterizes the Planning Department's comments on the Project and fails to acknowledge changes in the Project that are responsive to certain concerns. It's just plain wrong—and it should not be allowed to derail a project that will add to the City's luster and economic vitality, and create high-quality union jobs.

#### A. The Project Is the Replacement or Reconstruction of an Existing Structure and Thereby Qualifies for a Categorical Exemption

As discussed above, the Project replaces the existing Levi's retail store at 300 Post Street with a smaller Apple retail store at the same location. Accordingly, the Project cannot be replaced or rebuilt. In essence, without the Ordinance, the City is stuck with an unsightly and dated store that frames an oddly-shaped and inhospitable plaza.

The Ordinance remedies this situation by permitting reconstruction in narrowly defined circumstances, discussed below. It will allow Apple to proceed with an innovative flagship retail store of the highest architectural quality and cutting edge design, as well as a renovated and expanded plaza which maintains the Ruth Asawa fountain as its focal point. For your reference, a selection of the existing site conditions and proposed Project renderings are included in Exhibit A.

There are numerous circumstances where the City has relaxed regulations of nonconforming uses and noncomplying structures to avoid the harsh or undesirable results that flow from an absolute prohibition on altering or rebuilding them. These include, but are by no means limited to, the following:

- **Enlargement, Alteration or Reconstruction of Nonconforming Dwellings.** In December 2013, the Board of Supervisors unanimously approved Supervisor Avalos' legislation to allow enlargement and reconstruction of nonconforming dwellings, provided all work is within the existing building envelope.

Jeannie Poling  
Elizabeth Watty  
January 23, 2014  
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size as old structures” or in “exactly the same location.” 115 Cal. App. 3d at 839. The Planning Commission’s policies reflect this flexible standard, providing that the “same site” means the “same lot or lots as were occupied by the original structure(s).” Planning criteria. Specifically, the Project would:

- A. Promote and enhance the C-3-R District as a retail destination by “creating a well-designed, contemporary new Apple...store on Union Square.” See San Francisco Planning Commission (“Plan. Com”) Section 309 Motion at p. 4. Among other things, the Union Square Business Improvement District supports the Project because it will “pull some of the retail energy and vibe north toward Union Square Park....benefitting other businesses in the Union Square area.” Letter from Karin Flood, Executive Director, Union Square Business Improvement District, to Planning Commission (Jan. 27, 2014) (See **Exhibit B**).
- B. Result in an increased benefit to the public and the adjacent properties by anchoring retail activity on the north end of Union Square with a structure of the highest architectural quality. The renovated plaza will be a more inviting setting with the Ruth Asawa fountain as its centerpiece for enjoyment by another generation of San Franciscans and tourists alike.
- C. Enhance the aesthetic qualities and/or character of the lot by replacing the current building, which is “triangular in shape and is not considered an exemplar of quality design.” See Plan. Com. Section 309 Motion at p. 5. The Project, by contrast, is a destination retail store designed by Foster + Partners. In the words of architecture critic John King, the new store is a “meticulous modern take on the formal architecture nearby,” while the renovated plaza will “give Asawa’s treasure the renewed prominence it deserves.” John King, *Apple Store Redesign for Union Square is More Polished*, S.F. CHRON., Feb. 7, 2014.

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qualifying for the Categorical Exemption. *See Wollmer v. City of Berkeley*, 193 Cal. App. 4th 1329, 1351 (2011) (holding location of an infill project at a major intersection is expected and not unusual as a matter of law).

There are no facts that would support the application of the unusual circumstances exception to the Project. Indeed, the SEIU's Letter fails to identify any facts that would explain why the Project—a retail store replacing an existing, larger retail store at the same location—presents any unusual circumstances. It's instructive to note that the Categorical Exemption covers much larger projects than a retail store, such as hospitals and industrial operations. CEQA Guidelines § 15302(a) (Class II Exemption even applies to major projects such as replacement schools and hospitals, including expansion up to 50%); *Dehne*, 115 Cal. App. 3d 827 (substantial modernization to a cement plant). The SEIU's attorneys have not set forth evidence—nor can they—that the attributes of the Project are outside “the range of characteristics one would expect” for the class of projects covered by the Exemption, here a retail store. *Wollmer*, 193 Cal. App. 4th at 1351.

It is true that, like most replacement projects, the Project would require certain City approvals in order to be built, specifically a variance to allow for less storefront transparency on the Stockton Street façade than is currently permitted under Planning Code § 145.1(c)(6). The Planning Code requires street frontages to have no less than 60% transparency at ground level to allow for visibility into buildings. However, such an adjustment from the established standards does not create an “unusual circumstance” under CEQA. The requirement is not environmental, but rather reflects the City's policy determinations that an open storefront encourages customers and discourages crime (with more “eyes on the street”), reduces energy consumption through the use of natural light, and enhances curb appeal. *See San*

*Communities Coalition v. County of Orange*, 2014 Cal. App. LEXIS 22 (4<sup>th</sup> Dist., January 13,

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a reasonable possibility of significant environmental impacts that do “not exist for the general class of exempt projects.” *Banker’s Hill*, 139 Cal. App. 4th at 278.

The SEIU’s Letter also fails to provide the Commissioners and the public the correct legal context by claiming (based on generalizations and speculation) that the facts support a “fair argument” that the Project would cause a significant environmental impact. SEIU Letter at 14-20. In doing so, the SEIU’s Letter fails to disclose the split of authority on the appropriate standard for whether an activity that would otherwise be categorically exempt is subject to an exception. This issue is currently up for review before the California Supreme Court in *Berkeley Hillside Preservation v. City of Berkeley*, 203 Cal. App. 4th 656 (1st Dist. 2012), rev. granted 137 Cal. Rptr. 3d 500 (2012). While we believe the correct standard of review is whether the City’s determination is supported by substantial evidence, even under the more lenient “fair argument” standard, the SEIU’s Letter falls short.

advised the HPC that it was not required to take up the Proposed Legislation as a separate matter. Instead, it reviewed the Project as a whole, including the effect of the Proposed Legislation (a necessary approval for the Project). Nothing more was required.

## 8. Conclusion

For the reasons stated above, we respectfully request that the Land Use & Economic Development Committee recommend approval of the Ordinance. It makes a limited, site-specific exception to regulations governing non-complying structures to allow a Project that will enhance the retail character of the Union Square shopping district, energize a neglected public space and burnish Union Square’s reputation as a premier retail location. It has the support of the Union Square BID, the Hotel Council, the Northern California Carpenters Regional Council, and the Northern California District Council of Laborers. We respectfully urge you to reject the pretextual arguments against the Ordinance and recommend its approval to the full Board of Supervisors.

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micropiles and footings required to support the new structure. The use of micropiles

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**300 Post Street - San Francisco**

**Planning Commission**

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None of this is to say that construction workers would be left unprotected if contamination exists. The SEIU's Letter fails to recognize that there are statutory and regulatory measures in place to ensure the protection of workers if any contamination is identified before or during construction. (29 C.F.R. Part 1926.650; Cal. Code Regs. tit. 8 §§ 3203, 5194; San Francisco Health Code Chapter 22A.) If a project is subject to "specific performance criteria imposed by various ordinances, codes and standards . . . it is reasonable to expect that these environmental regulations will be followed." *Oakland Heritage Alliance v. City of Oakland*, 195 Cal. App. 4th 884, 910 (2011).

Apple is committed to ensuring that its Project complies with (or exceeds) all applicable laws and regulations, including required construction measures. These are the types of measures that would apply to any construction project. Accordingly, even if unusual circumstances existed, there are no facts in the SEIU's Letter or attached reports of a significant environmental impact that would preclude application of the Categorical Exemption here.

**D. There Is No Evidence of Any Significant Environmental Impacts Related to Greenhouse Gases or Air Quality**

As with the claims regarding impacts from contamination, the SEIU's Letter ignores the question of whether the Project's air quality and greenhouse gas impacts are atypical. The SEIU's Letter then claims those impacts are significant on the basis of general assertions without any evidence related to the Project.

**i. No New Greenhouse Gas Emissions**

To claim that an infill, replacement project, which reduces the building size by more than one-third, has a potentially significant impact on global climate change is nonsensical. Apple has a long-track record of minimizing energy consumption by its facilities around the world, and supplying its energy needs with renewable power. See the Apple Facilities Environmental Footprint Report, Fiscal 2012, at the following link:

[http://images.apple.com/environment/reports/docs/Apple\\_Facilities\\_Report\\_2013.pdf](http://images.apple.com/environment/reports/docs/Apple_Facilities_Report_2013.pdf)

This Project is no different. For example, as with Apple's new campus, the Project will use LED lighting and rely heavily on natural ventilation. LED lighting is 50% more efficient than fluorescent lighting typically found in retail stores. By operating on natural ventilation up to 70% of the year the retail store will cut its energy consumption by 35% compared to a traditional building that relies on standard HVAC units to provide heating and cooling. Accordingly, based on the reduced size and improved energy efficiency, the Project will result in a net reduction in energy use and greenhouse gases.

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**ii. Construction Dust Will Not Be Significant**

Dust generated by the Project will not be significant. Excavation is limited to approximately 250 cubic yards and no grading activities will occur. Because partial demolition will be carried out while the hotel continues to operate underneath and adjacent to the new construction, only small equipment that can be transported into the basement will be used. The building will be demolished piece by piece; there will be no grand demolition event. Any potential dust will be mitigated with water misting. The water waste will be disposed of per industry standards and disposal will comply with all regulations. Consequently, construction dust will be minimal, temporary, and intermittent.

Contrary to the SEIU's characterization, the Dust Control Ordinance requires a Dust Control Plan only where the land area of construction is more than one-half acre. San Francisco Health Code § 1242(a). However, even where a Dust Control Plan is not mandated, any project that disturbs more than 10 cubic yards or 500 square feet of soil must comply with San Francisco Building Code requirements to prevent airborne dust. San Francisco Building Code § 106A.3.2.1. The Project will comply with applicable standards under this Code section.

**iii. There Are No Sensitive Receptors**

A Project may have a significant health impact if it would expose sensitive receptors to toxic air contaminants. The Bay Area Air Quality Management District



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As described above, case law confirms it is reasonable to assume environmental regulations will be followed.

**iv. The Façade Glass Is Highly Efficient**

Early concerns expressed by the Planning Department staff about the glass façades have been addressed in the course of project review. Specifically, the Project's glass facades, while extensive in nature to optimize to the use of natural daylight and to evoke a sense of openness, have been designed to minimize energy consumption. External shading devices have been integrated into the design in the form of overhangs and side fins on the southern facade to block both low angle morning sun and high angle summer sun. The proposed storefront glass within the retail space will be high performance with both low-emissivity and solar coatings. The proposed insulated glass panels will have a thermal performance approximately four times better than a regular store front while solar gain will be reduced by a factor of two relative to a typical glass storefront. The large sliding glass doors on the Post Street façade will also allow for rapid dissipation of solar heat gain via natural ventilation when climatic conditions permit.

**v. The Project Complies with the Green Building Code**

Because it cannot identify any evidence that the Project will generate significant quantities of GHGs, the SEIU alleges that the Project will nonetheless result in significant impacts because it does not comply with San Francisco's Green Building Code ("SF Green"). This too is incorrect.

SF Green establishes three tiers of commercial projects that are subject to requirements that exceed those of the California Green Building Standards Code ("CalGreen"): New Large Commercial Buildings (over 25,000 square feet), New Mid-Size Commercial Buildings (5,000 to 25,000 square feet), and Major Alterations. San Francisco Green Building Code § 202. Projects outside of these three categories are subject to the CalGreen standards only.

The SEIU claims that the Project should be classified as "New Construction" under SF Green and that the City has determined the Project to be a "Major Alteration" under SF Green. Both claims are false.

**(1) Not "New Construction"**

"New construction" under SF Green refers to a "building that has never before been used or occupied for any purpose and does not include additions, alterations or repairs." San Francisco Green Building Code § 202. Under this standard, the Project is not new

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construction. Rather, it is an alteration of the larger Hyatt Complex. The Hyatt Complex is an integrated structure comprising a high-rise portion and a low-rise portion, which are built above common basement levels and share many building systems. The Hyatt Complex was built under a single permit for the entire site. See Building Permit No. 376021.

In pre-application meetings with the Department of Building Inspection ("DBI") and Fire Department staff, the Project has been treated as an alteration to the existing Hyatt

## Building History and Description

### Building History

The project site has had a long history of construction by several buildings, including the Club in the late nineteenth century and the Union Square Hotel/Hotel Plaza during the twentieth century. In 1967, building permits were issued for demolition of the Hotel to allow for new construction for the Hotel, restaurant, and conference center. Building permit from November 1967 listed a plan for a hotel with 36,931 square feet of floor space and 39 stories in height. The design was completed by Skidmore, Owings, and Merrill (SOM). In 1972, according to building permits and historic photographs, the hotel complex was completed. The hotel and various retail stores were located on the lower-level building at the corner of Stockton Street.

Grand Hyatt Hotel is a 365-foot tall, reinforced concrete, modernist tower, designed by Skidmore, Owings, and Merrill (SOM). Marc Goldstein was design architect. The structure was completed in 1972. It contains 660 guest rooms. It is located on the eastern portion of Block 0295 on the corner of Stockton Street between Post and Sutter Streets. The primary facades face east on Stockton Street. The flat roof tapers in the top floor to give the impression of a roof on four sides with the corner posts up at the four edges. The modernist hotel is a parcel area of 35,931 square feet.

The hotel is located on the northwest corner of Post and Sutter Streets. The structure is a multi-story building. The hotel is a part of the hotel complex, connected to the guest tower at several levels below grade. The hotel contains various retail stores and restaurants since the hotel opened in 1972. The hotel is a part of the hotel complex, connected to the guest tower at several levels below grade. The hotel contains various retail stores and restaurants since the hotel opened in 1972. The hotel is a part of the hotel complex, connected to the guest tower at several levels below grade. The hotel contains various retail stores and restaurants since the hotel opened in 1972.

surrounded by an extended cornice. The facility is constructed of reinforced concrete faced with precast panels (installed in 1998) and has large glass windows with copper detailing on the primary and northeast facades.

The Grand Hyatt Hotel plaza is located on the eastern portion of Block 0295 on the western side of Sutter Street between the Levi's store and the Grand Hyatt Hotel. This plaza was built as part of a multi-building complex in 1972 as designed by Skidmore, Owings, and Merrill, LLP. The plaza is accessed by a set of wide steps up from the sidewalk on Stockton Street. The plaza contains benches and landscaping, including potted plants. The focal point of the plaza is a circular bronze folk art fountain inserted into the Stockton Street stairway that was created by San Francisco sculptor Ruth Asawa in 1972. The fountain was a part of the design for the Grand Hyatt Plaza and was installed in conjunction with the completion of the hotel complex.

### Current Historic Status

The following section examines the national, state, and local historical ratings currently assigned to the hotel complex at Post & Stockton Streets (345 Stockton Street).

The National Register of Historic Places (National Register) is the nation's most comprehensive inventory of historic resources. The National Register is administered by the National Park Service and includes buildings, structures, sites, objects, and districts that possess historic, architectural, engineering, archaeological, or cultural significance at the national, state, or local level.

345 Stockton Street is not currently listed in the National Register of Historic Places. The California Register of Historical

Resources (California Register) is an inventory of significant architectural, archaeological, and historic resources in the State of California. Resources can be listed in the California Register through a number of methods. State Historical Landmarks and National Register-listed properties are automatically listed in the California Register. Properties can also be nominated to the California Register by local governments, private organizations, or citizens. The evaluative criteria used by the California Register for determining eligibility are closely based on those developed by the National Park Service for the National Register of Historic Places.

San Francisco City Landmarks are buildings, properties, structures, sites, districts and objects of "special character or special historical, architectural or aesthetic interest or value and are an important part of the City's historical and architectural heritage." Adopted in 1967 as Article 10 of the City Planning Code, the San Francisco City Landmark program protects listed buildings from inappropriate alterations and demolitions through review by the San Francisco Historic Preservation Commission. These properties are important to the city's history and help to provide significant and unique examples of the past that are irreplaceable. In addition, these landmarks help to protect the surrounding neighborhood development and enhance the educational and cultural dimension of the city.

As of 2012, there are 262 landmark sites, eleven historic districts, and nine Structures of Merit in San Francisco that are subject to Article 10.

345 Stockton Street is not listed as a San Francisco City Landmark or Structure of Merit. However, 345 Stockton Street does fall within the boundaries of the Kearny-Market-Mason-Sutter conservation district.

The State of California's Historic Resources are assigned a significance rating of 1\* to 4\* (1\* is the lowest significance rating and 4\* is the highest). Properties listed in the California Register of Historic Resources (CRHR) or CRP are assigned a significance rating of 1\* or 2\*. Properties listed in the California Register of Historic Resources (CRHR) or CRP are assigned a significance rating of 1\* or 2\*. Properties listed in the California Register of Historic Resources (CRHR) or CRP are assigned a significance rating of 1\* or 2\*. Properties listed in the California Register of Historic Resources (CRHR) or CRP are assigned a significance rating of 1\* or 2\*.

Complex, which is a single, integrated structure across the entire property. See Preapplication Meeting Minutes at 1 (December 24, 2013). Written summaries of these meetings were prepared and signed by DBI staff. Applicants are entitled to rely on these signed written summaries, which expressly state that such summaries "will be honored by the responsible plan reviewer during the plan review process and subsequently by field inspection staff." The new Apple store will be built atop an existing Hyatt ballroom. It will share the Hyatt's loading dock, chilled water supply, heating hot water supply, potable water supply, low voltage power supply, sanitary and rainwater, and drainage. Integrating the

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Rather, the Planning Department indicated that the Project was a "Major Alteration" for purposes of design review under Planning Code section 309 (Downtown Permit Review) and a Major Permit to Alter from the Historic Preservation Commission under Article 11. Preliminary Project Assessment at 5. It's clear from the context of the Preliminary Project Assessment that the reference to a "Major Alteration" with respect to Planning Code section 309 has nothing to do with green building requirements (a completely different code section and departmental responsibility). This distinction between zoning and building regulations is typical, and it warps the public discourse to conflate them.

**E. CEQA Does Not Require Analysis of the "Aesthetic Impacts" of the Project**

The SEIU's Letter also claims that the Project would result in aesthetic impacts, disqualifying the project from application of the Categorical Exemption. SEIU Letter at 18-20. However, the SEIU's Letter fails to note that the law with respect to CEQA's treatment of aesthetic impacts in urban areas changed, effective January 1, 2014. Specifically, Senate Bill 743 provides that, "aesthetics and parking impacts of a residential, mixed use residential, or employment center project on an infill site within a transit priority area shall not be considered significant impacts on the environment." Based on the November 26, 2013 Memorandum to the Planning Department on CEQA Update: Senate Bill 743 Summary – Aesthetics, Parking and Traffic, Attachment A, the Project is located on an infill site within a transit priority area. Furthermore, the Project is considered an "employment center project," which is defined as any project within a transit priority area zoned for commercial uses with a floor area ratio of no less than 0.75. The Project site is zoned for commercial use. Accordingly, as CEQA has been amended, the aesthetics of the Project cannot constitute a significant impact.

Even if the aesthetics of the Project could properly be considered an impact under CEQA, the location of the Project on Union Square could not present "unusual circumstances" with respect to such alleged impacts. The existing retail establishment at the



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Historic Preservation Commission (“HPC”) and a letter from Katherine Petrin, an architectural historian and preservation planner. However, both sets of comments have been superseded by subsequent changes to the Project and related legislative approvals. Moreover, as addressed below, even if these changes were not made, the comments fail to show evidence of a significant impact.

**i. The Project Would Not Cause a “Substantial Adverse Change” to the Conservation District**

A substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired. CEQA Guidelines § 15064.5(b)(1). CEQA Guidelines § 15064.5(b)(1) limits material impairment to a project that “demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify” its inclusion in the California Register of Historical Resources or other registry.

Here, the historical resource that would be affected by the Project is the Kearny-Market-Mason-Sutter Conservation District (“Conservation District”). This is a district that includes some portion of 30 City blocks and 324 buildings. It is notable for its concentration of Beaux Arts buildings. In order for the Project or related legislative approvals to have a significant impact on historic resources, they would have to “demolish or materially alter the physical characteristics of the Conservation District that justify its inclusion in the California Register” or Article 11 of the Planning Code. CEQA Guidelines § 15064.5(b)(1).

At the ARC meeting in December, commissioners questioned if certain aspects of the Project’s design were compatible with prevalent features of the Conservation District. However, this does not equate to a significant impact on the District as a whole, nor did any commissioner suggest that the Project would have such an impact. It does not. The Project does not demolish or alter any historic buildings, i.e., the features that justify the Conservation District’s historic status. It replaces one building of modern vintage—that is classified by the Planning Code as “Category V – Unrated”, meaning a building of no preservation merit whatsoever—with another, slightly smaller modern building designed by one of the premier architects practicing today. In this respect, the Project simply maintains the District’s environmental status quo, though it significantly upgrades the architectural merit of this single location.

Moreover, the Project has changed to respond to the comments from the ARC. The ARC’s primary focus was on the scale and composition of the Post Street façade. At the time, the frontage on Post Street was primarily glass, with glass fins as the only elements

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dividing the façade. The ARC was concerned that the fins would not be sufficiently visible to echo the pattern of 20-30 foot wide bays that typifies historic buildings in the Conservation District.

In response to this comment, Apple has revised the Project to incorporate vertical columns that echo traditional bay widths. The columns divide the Post Street façade into four discrete elements of roughly 23 to 31 feet each. The columns frame and support two large sliding glass doors, each 23 feet wide and 44.5 feet tall, that will allow half the store to be opened to the street.

The only expert opinion in the record that squarely addresses the Project's impact on historic resources was prepared by Page & Turnbull (January 17, 2014). That report



historic resources was prepared by Page & Turnbull (January 17, 2014). That report concludes:

[T]he project complies with the Standards in regard to compatibility with the Conservation District...It should be noted, however, that neither the Grand Hyatt Hotel nor that portion of the hotel known as 300 Post Street are considered historic resources, and that the presence or absence of either building would not change the essential form and integrity of the surrounding Kearny-Market-Mason-Sutter Conservation District, which has some hundreds of buildings and is the city's largest such entity.

The ARC comments have been superseded by the revised Project design, and the SEIU's preservation consultant did not comment on the design of the Project itself. There is simply no evidence in the record to support a fair argument of historic resource impacts.

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to approve replacement construction where it would “not result in an adverse impact to a historic resource.” This standard would prohibit the Planning Commission from approving any replacement building that involved demolition of a protected building in the Conservation District. Finally, the proposed legislation does not provide any change to the controlling standards for demolition in the Conservation District. Except in cases where there is an “imminent safety hazard,” demolition of historic significant (Cat. I and Cat. II) buildings in the Conservation District is allowed only where the HPC finds “that the property retains no substantial remaining market value or reasonable use.” San Francisco Planning Code § 1111.7(a)(1). These protections were sufficient to protect against historic resource impacts.

### iii. There Is No Improper Piecemealing

The SEIU’s Letter argues that the City failed to properly analyze the impacts of the proposed amendment to Planning Code section 188. SEIU Letter at 20-25. Again, this is a red herring. As discussed above, Apple understands the proposed ordinance would apply only to the Project site, and therefore its impacts are analyzed as part of the project. This is not a situation where separate projects are broken up to mask their impacts, but rather the proposed ordinance and the project specific approvals have the same effect of allowing Project construction. There is no improper piecemealing and the impacts of the Project as a whole have been addressed under CEQA.

Similarly, the SEIU’s claim that the rezoning is illegal “spot zoning” entirely misses the mark. At the outset, the City is not singling out the Project site for preferential treatment—the Planning Code amendment would merely conform the proposed floor area ratio to the existing level (and, actually, much less, as the Project would be significantly smaller than the current building). However, even if this change would be considered “spot zoning”, it is not improper. As held just two weeks ago in *Foothill Communities Coalition v. County of Orange*, - Cal. App. 4th -, 2014 Cal. App. LEXIS 22 (January 13, 2014), so-called spot zoning (providing for greater or lesser zoning than surrounding properties) is improper only if it is not in the public interest. The Project, modifying the floor area ratio to reflect the existing on-the-ground reality is sound public policy, particularly when, as in this case, the result will be a smaller building with a lesser floor area ratio.

### G. The SEIU’s Comment Regarding the Observation Deck Is Deliberately Misleading

The SEIU’s Letter claims the City improperly failed to enforce a mitigation measure for an observation deck when the Hyatt was constructed in 1972. SEIU Letter at 20-21. Not



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Project's reduction in size eliminates the bonus gained by the observation deck. This "issue" is another red herring and has no relationship to the Project. Further, imposition of the observation deck cannot be a CEQA issue, because it predated CEQA.

We appreciate your consideration of this matter. Please let us know if you have any questions or require additional information.

Sincerely,



Christopher J. Carr

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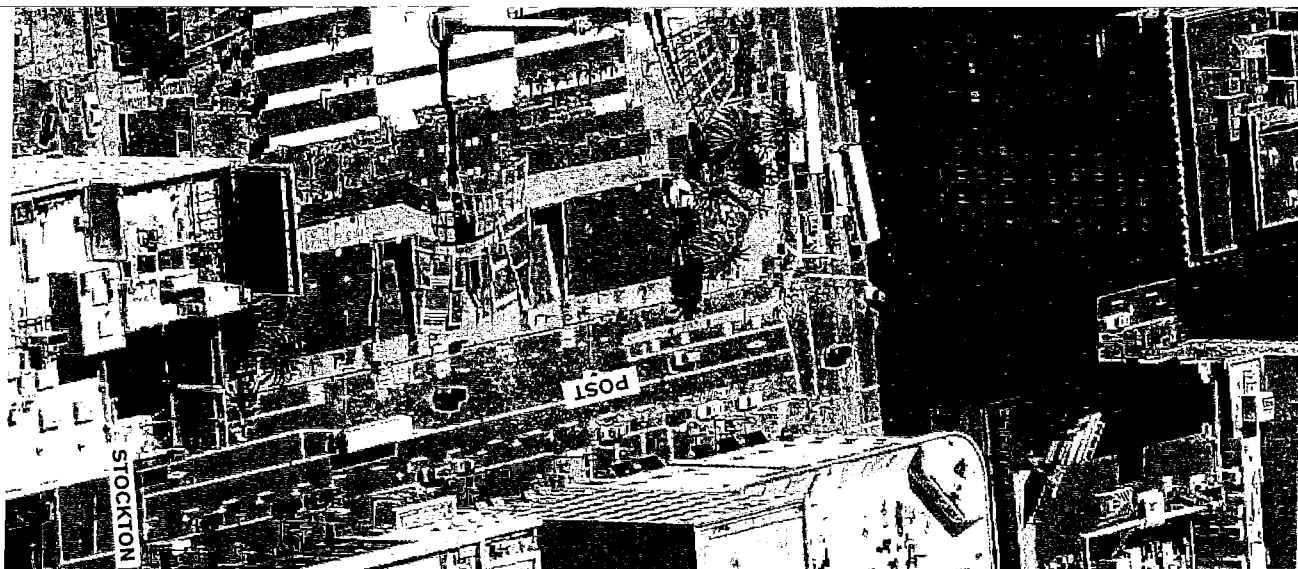
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Via E-Mail

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Elizabeth Watty  
San Francisco Planning Department  
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Re: 300 Post Street (Case No. 2103.0628): Response to SEIU February 4, 2014  
Comments



Dear Ms. Poling and Ms. Watty:

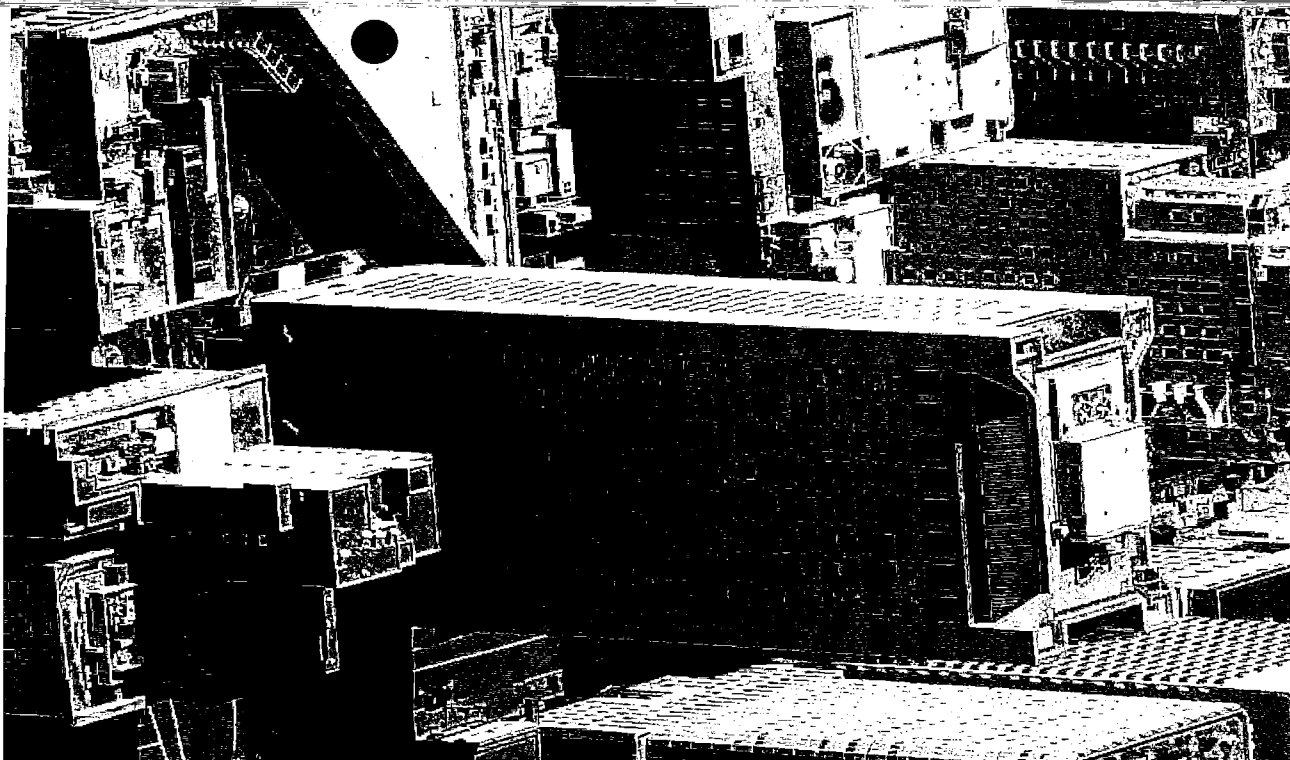
I am writing on behalf of Apple Inc. ("Apple"), applicant for the 300 Post Street Project, a proposed Apple store at Post Street and Stockton Street (Assessor's Block 2095, Lot 016) ("Project"). This letter responds to matters raised under the California Environmental Quality Act ("CEQA") by attorneys for the Service Employees International Union – United Service Workers West ("SEIU") in its letter dated February 4, 2014.

The SEIU's attorneys submitted this 25-page letter (with a 21-page exhibit) one day before the Historic Preservation Commission's hearing and two days before the Planning Commission's hearing. Given its length and timing, the letter's obvious purpose was to throw sand in the gears of the City's methodical, measured, and deliberate process for considering the Project. The letter regurgitates, at length, the same spurious claims made in prior letters. Apple does not believe it serves the public process, nor is it necessary, to reply

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that includes the existing steep and narrow stairs leading to the Plaza, which are not part of the Plaza. Even if the steps are included in calculating the area of the Plaza, the Project would result in a very slight reduction in that area (245 square feet)—nothing approaching the 30% asserted by the SEIU's attorneys and consultants. The renovated Plaza will be more user-friendly and will include enhanced lighting, landscaping and seating.

2 The CEQA Guidelines and San Francisco Green Building Code Use Different



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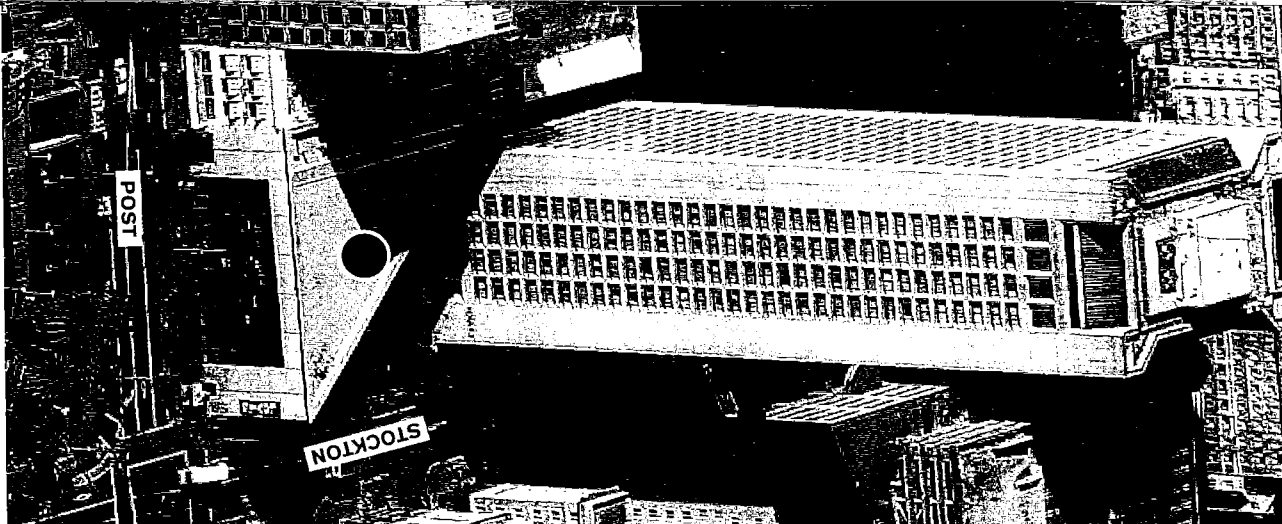
#### **4. The Historic Preservation Commission Properly Reviewed the Project**

The SEIU's attorneys argue that the City violated its Charter by not separately referring the Proposed Legislation to the Historic Preservation Commission ("HPC"). February 4 Letter at 6-7. However, the HPC is required only to review "ordinances and resolutions concerning historic preservation issues and historic resources." Charter § 4.135. The legislation here applies only to the replacement of the existing Levi's store—a Category V building of no historic significance whatsoever. The Proposed Legislation stipulates that any project approved under it cannot have a material adverse effect on an historic resource. The City Attorney advised the HPC that it was not required to review the Proposed Legislation but could do so at its discretion. The HPC declined to take up the Proposed Legislation as a separate matter. Instead, it reviewed the Project as a whole, including the effect of the Proposed Legislation (a necessary approval for the Project). Nothing more was required.

#### **5. The Facts Support Granting a Variance to the Store Transparency Requirements**

The SEIU's attorneys claim that the City cannot make the necessary findings to support a variance from the City's fenestration requirements. February 4 Letter at 7-8. The Zoning Administrator makes the findings required by the Planning Code based on a detailed and comprehensive review of the Project, the requested variance and the purposes and requirements of the specific provision for which the variance is sought. For the SEIU to simply say such findings are impossible demeans the authority and discretion of the City. Moreover, exceptional or extraordinary circumstances exist in this case, as the need for a 60% fenestration on the Stockton Street side is lessened by the unique design for the Project, which includes glass on the entire front façade on Post Street and rear façade on the Plaza.

This analysis is markedly different than the test for the "unusual circumstances" exception under CEQA. An adjustment from the established standards does not create an "unusual circumstance" under CEQA. Apple Letter at 6. Furthermore, as noted again



Jeannie Poling  
Elizabeth Watty  
February 6, 2014  
Page Four

City blocks and 324 buildings. Under the City's Code, compatibility is assessed "*in general* with respect to the building's composition and massing, scale, materials and colors, and detailing and ornamentation." San Francisco Planning Code art. 11, § 7(a) (emphasis added). There is no requirement that a building be exactly compatible, especially given the different sizes and varieties of structures already within the District. Indeed, emphasis is placed on compatibility with nearby buildings. Given that the Project would replace a building of modern vintage and is adjacent to the Hyatt Complex, there is no merit to the SEIU's claims. See Apple Letter at 14-16.

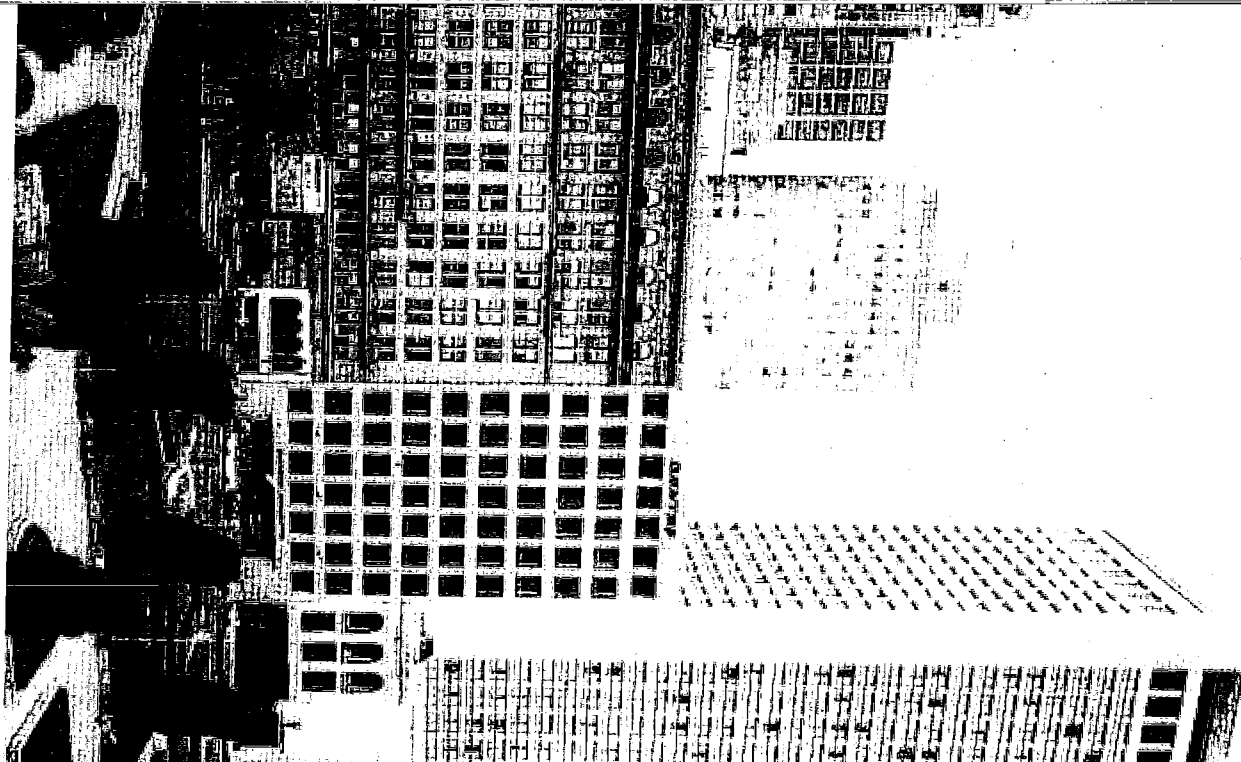
#### 7. The Project Celebrates the Ruth Asawa Fountain

The SEIU's attorneys claim that the Project is not exempt from CEQA because it would adversely affect the Ruth Asawa Fountain. February 4 Letter at 13-16. This is wrong—the Project would not result in a "substantial adverse change" to the Ruth Asawa Fountain. CEQA Guideline section 15064.5(b)(1) defines a substantial adverse change to an historical resource as "physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings *such that the significance of an historical resource would be materially impaired* [emphasis added]." The significance of an historical resource is impaired only when a project "[d]emolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance." CEQA Guidelines § 15064.5(b)(2). Construction in the vicinity of an historical resource that



Jeannie Poling  
Elizabeth Watty  
February 6, 2014  
Page Five

requirements for greenhouse gas emissions. February 4 Letter at 16-21. However, the record demonstrates that the Project does not meet these definitions and that the Project is not required to comply with SF Green standards. *See* Apple Letter at 11-13. Moreover, there is no evidence that the Project, which will reduce the intensity of use at the site, will have any adverse impacts on greenhouse gas emissions. The SEIU claims that the Project will have light spillover and heat loss impacts, but there is no evidence of any significant impact on the environment, particularly in light of the state-of-the-art and sustainable materials that will be used for the Project. *See* Apple Letter at 11. The SEIU's attorneys miss the point of natural ventilation, claiming that open doors will result in "massive loss of



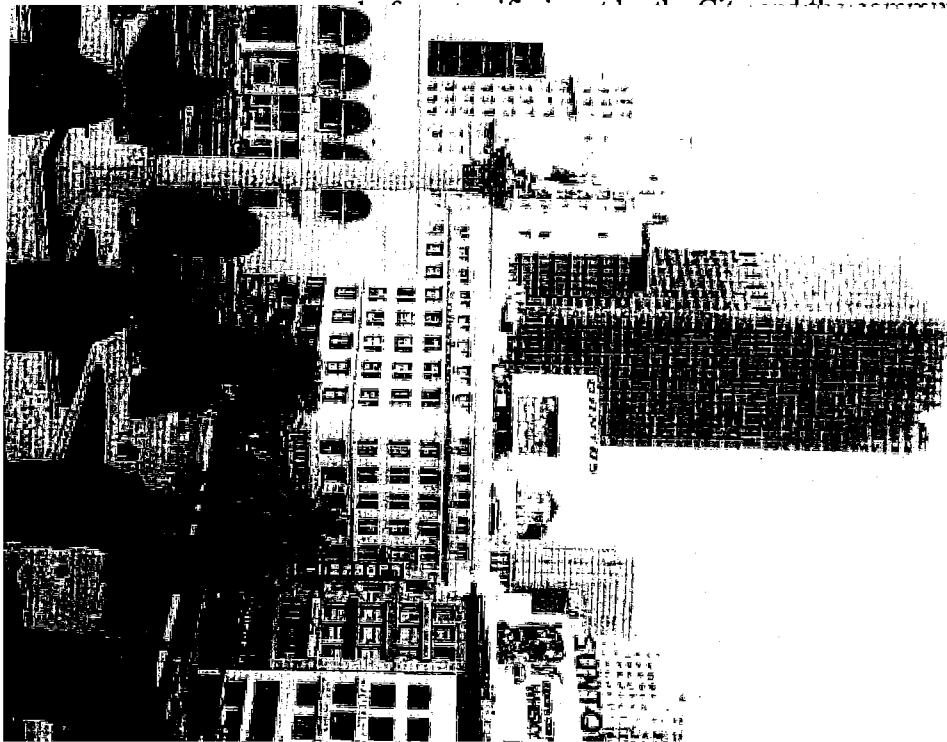
cooled and heated air." February 4 Letter at 16. The point is that open doors let in natural air, reducing the need for forced air. They also let in natural light, reducing the need for artificial light.

#### 9. The Project Does Not Require Analysis of Aesthetic Impacts

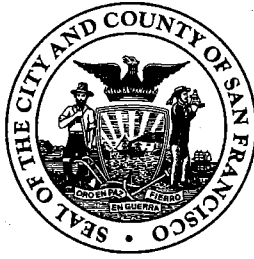
The SEIU's attorneys claim that Senate Bill 743 is not effective because the State Air Resources Board has yet to approve a sustainable communities strategy for San Francisco. Letter at 23. This is a blatant misstatement of the law. California Public Resources Code section 21099(d)(1)—a new provision enacted by Senate Bill 743—states only that "[a]esthetic and parking impacts of a residential, mixed-use residential, or employment center project on an infill site within a transit priority area shall not be considered significant impacts on the environment." There is no requirement that a sustainable communities strategy be adopted first. Accordingly, as the Project meets the standard under section 21099, any alleged aesthetic impacts are not considered CEQA impacts as a matter of

MORRISON | FOERSTER

Jeannie Poling  
Elizabeth Watty  
February 6, 2014  
Page Six



**BOARD of SUPERVISORS**

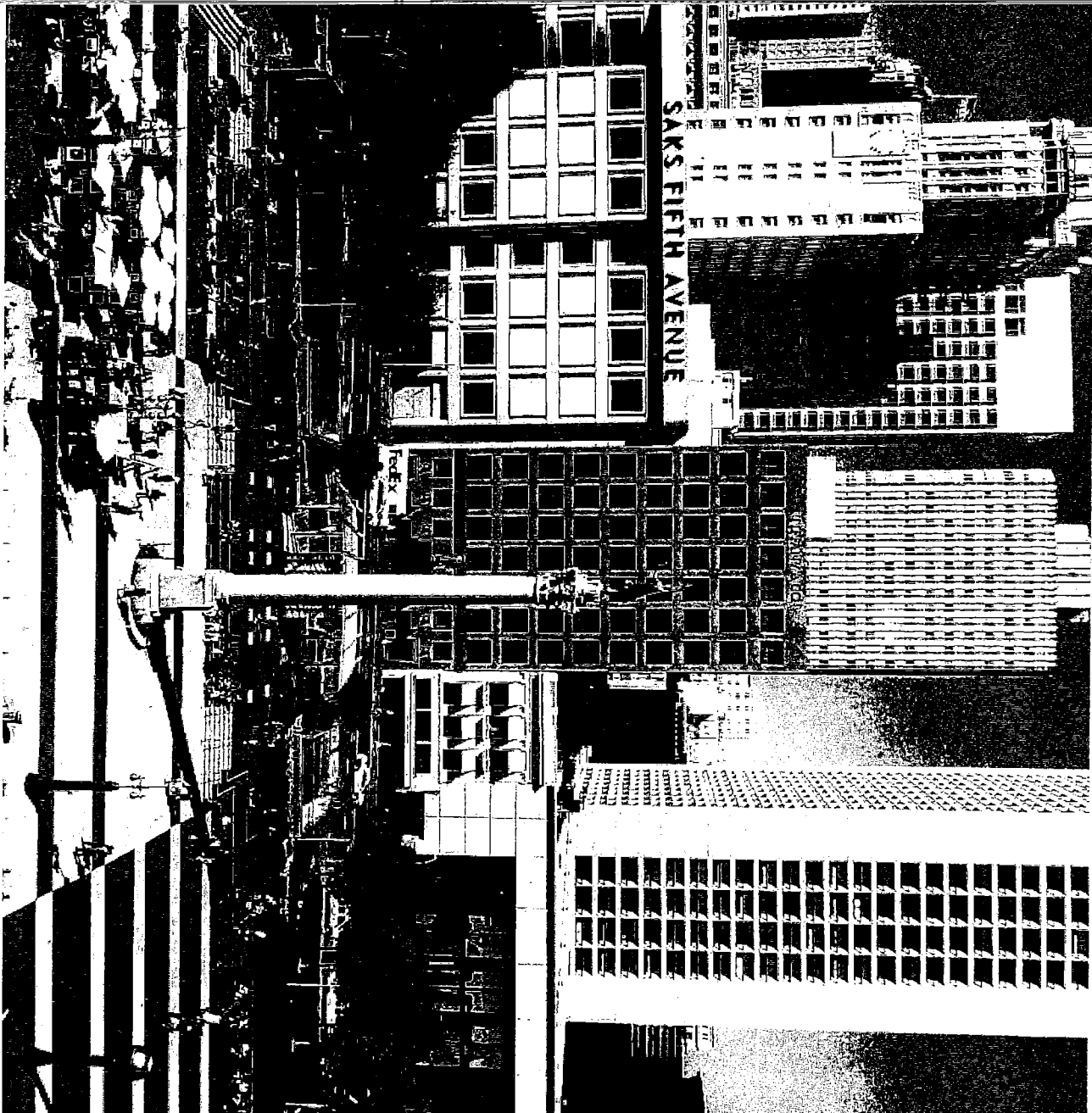


City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

November 8, 2013

File No. 131059

Sarah Jones  
Environmental Review Officer  
Planning Department



OFFICE OF THE MAYOR  
SAN FRANCISCO



EDWIN M. LEE  
MAYOR

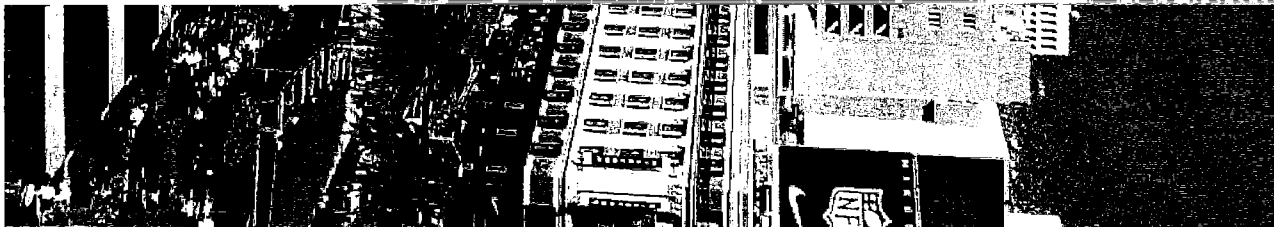
TO: Angela Calvillo, Clerk of the Board of Supervisors  
FROM: *for* Mayor Edwin M. Lee *for*  
RE: Planning Code – Allowing certain non-conforming structures to be rebuilt  
under certain conditions  
DATE: October 29, 2013

---

Attached for introduction to the Board of Supervisors is the ordinance amending the Planning Code to allow non-conforming secondary structures in a C-3-R zoning district to be demolished and rebuilt to the prior non-conforming size under certain conditions; making environmental findings and findings of consistency with the General Plan and the eight priority policies of Planning Code Section 101.1.

Please note this item is cosponsored by Supervisor Chiu, *Cohen*

Should you have any questions, please contact Jason Elliott (415) 554-5105



BOARD of SUPERVISORS



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

## MEMORANDUM

TO: Regina Dick-Endrizzi, Director  
Chris Schulman, Commission Secretary  
Small Business Commission, City Hall, Room 448

FROM: Alisa Miller, Clerk, Land Use and Economic Development Committee  
Board of Supervisors

DATE: November 8, 2013

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS  
Land Use & Economic Development Committee

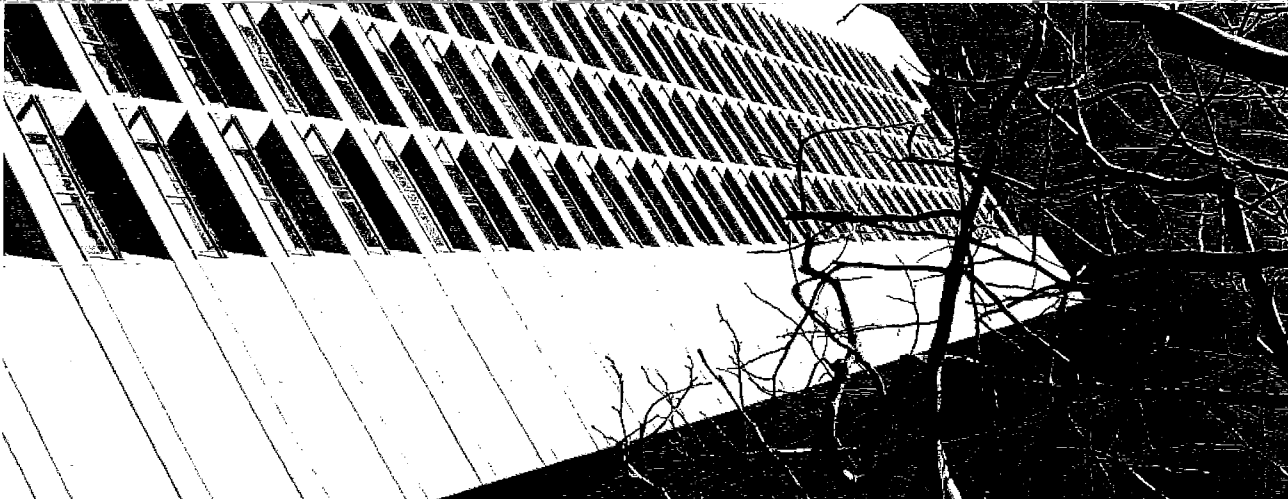
The Board of Supervisors' Land Use and Economic Development Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 131059

Ordinance amending the Planning Code to allow non-conforming secondary structures in a C-3-R Zoning District to be demolished and rebuilt to the prior non-conforming size under certain conditions; making environmental findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

\*\*\*\*\*  
RESPONSE FROM SMALL BUSINESS COMMISSION - Date: 10 / 11 / 12





SMALL BUSINESS COMMISSION  
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO  
EDWIN M. LEE, MAYOR

December 11, 2013

Ms. Angela Calvillo, Clerk of the Board  
Board of Supervisors  
City Hall Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**File No. 131059 [Planning Code - Allowing Certain Non-Conforming Structures to be Rebuilt Under Certain Conditions]**

Small Business Commission Recommendation: N/A

Dear Ms. Calvillo:

Please be advised that the Small Business Commission will not hear the subject legislation. The nature of the proposed changes do not appear to have the potential for substantive impacts on small businesses.

The Commission and I thank you for the opportunity to review this legislation.

Sincerely,

Regina Dick-Endrizzi  
Director, Office of Small Business

Cc: Jason Elliot, Mayor's Office  
Andrea Ausberry, Office of the Clerk of the Board  
Alisa Miller, Office of the Clerk of the Board

**BOARD of SUPERVISORS**



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

**November 8, 2013**

**Planning Commission and**  
**Attn: Jonas Ionin**  
**1660 Mission Street, 5<sup>th</sup> Floor**  
**San Francisco, CA 94103**

**Dear Commissioner:**



BOARD of SUPERVISORS



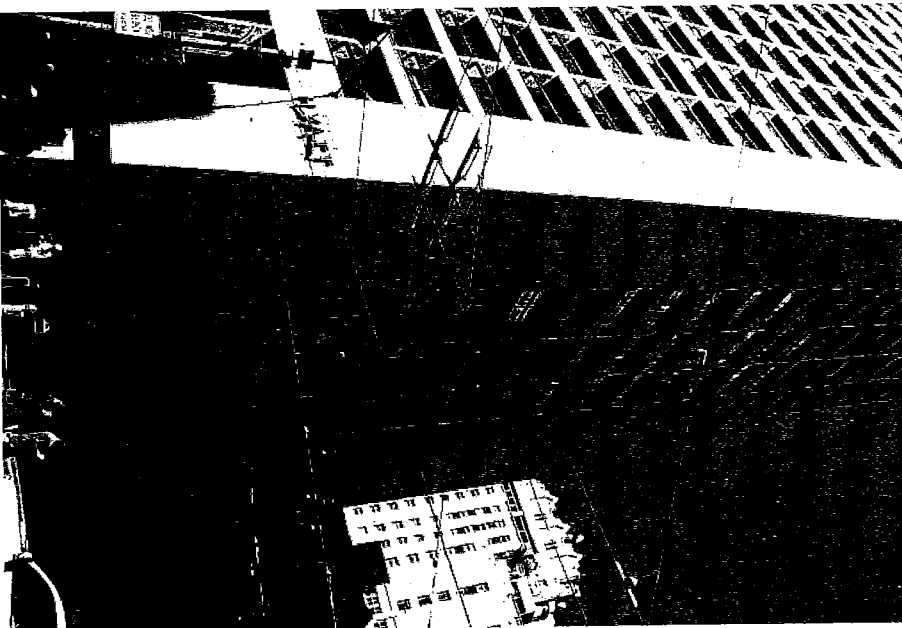
City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## MEMORANDUM

TO: Tom Hui, Director, Department of Building Inspection

FROM: Alisa Miller, Clerk, Land Use and Economic Development Committee  
Board of Supervisors

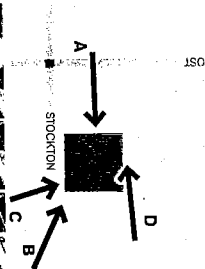
B. The north facade of the Grand Hyatt hotel faces north onto Sutter Street.  
Source: Page & Turnbull



D. The west facade of the Grand Hyatt hotel fronts onto a pedestrian passageway between the building at 419-437 Sutter Street.  
Source: Page & Turnbull



C. View of the west facade of the Grand Hyatt hotel.  
Source: Page & Turnbull





T 510.836.4200  
F 510.836.4205

410 12th Street, Suite 250  
Oakland, Ca 94607

www.lozeaudrury.com  
christina@lozeaudrury.com

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BOARD OF SUPERVISORS  
SAN FRANCISCO

2014 FEB -3 PM 3:21

File 131059

BOS-11

LU Clerk, COB  
Leg Dep,  
Dep City Atty

Via Email and U.S. Mail

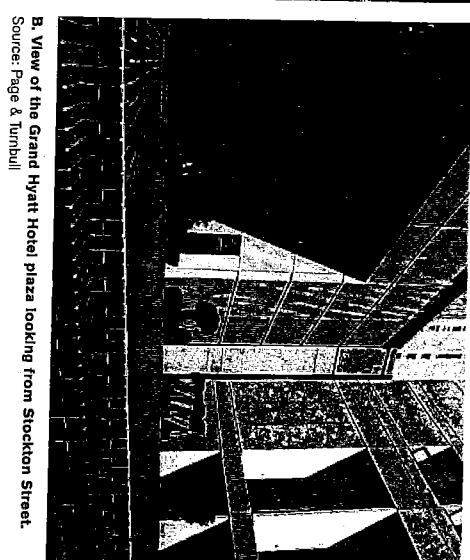
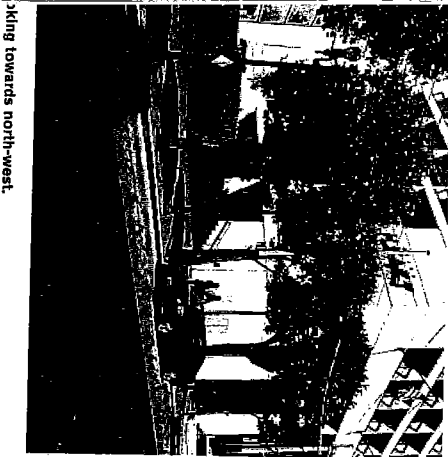
January 30, 2014

Office of the County Clerk  
City and County of San Francisco  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 168  
San Francisco, CA 94102-4678  
[county.clerk@sfgov.org](mailto:county.clerk@sfgov.org)

Ms. Angela Calvillo, Clerk of the Board  
Board of Supervisors of the  
City and County of San Francisco  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102-4689  
[Board.of.Supervisors@sfgov.org](mailto:Board.of.Supervisors@sfgov.org)

Mr. Rodney Fong, President

Mr. Jonas P. Ionin, Commission Secretary



January 30, 2014

CEQA and Land Use Notice Request for Apple Retail Store at 300 Post St./345

Stockton St.

Page 2 of 3

regard to Floor Area Ratio within the C-3-R district (Case No. 2013.1695T [Board File No. 13-1059]), the Exemption of Environmental Review for the 300 Post Street/345 Stockton Street project (Case No. 2013.0628.E), and any other approvals pertaining to the Apple Retail Store project at the above-referenced location, including but not limited to any approvals and/or actions contemplated in the Preliminary Project Assessment for Case No. 2013.0628U dated June 24, 2013 (collectively, "Project").

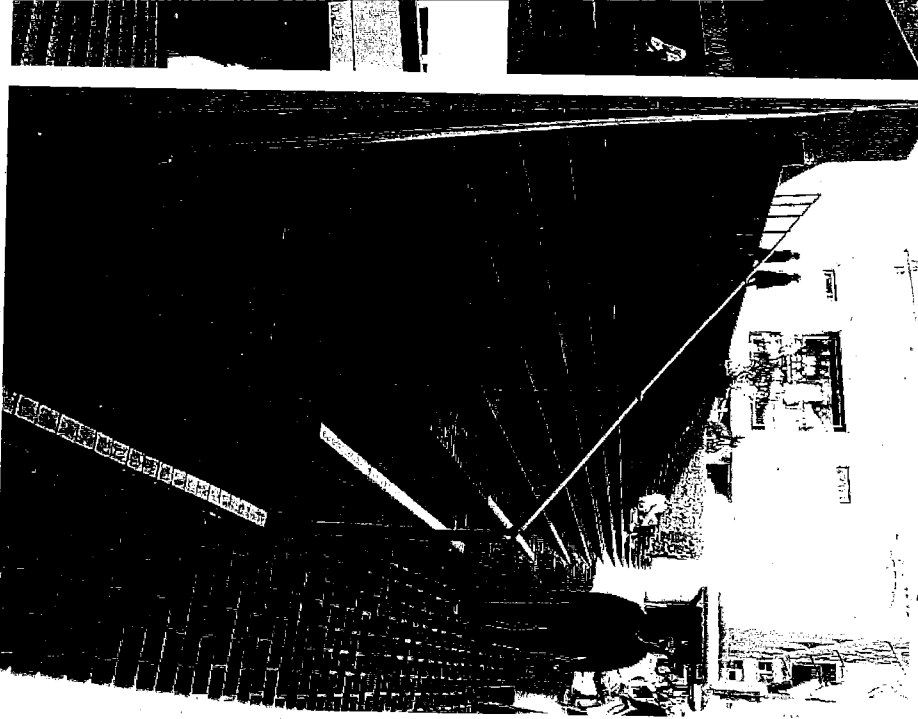
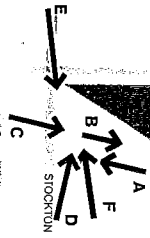
We hereby request that the City and County of San Francisco ("City") send by mail and electronic mail to our firm at the address below notice of any and all actions or hearings related to activities undertaken, authorized, approved, permitted, licensed, or certified by the City and any of its subdivisions, and/or supported, in whole or in part, through contracts, grants, subsidies, loans or other forms of assistance from the City, including, but not limited to the following:

- Notice of any public hearing in connection with the Project as required by California Planning and Zoning Law pursuant to Government Code Section 65091.
- Any and all notices prepared for the Project pursuant to the California Environmental Quality Act ("CEQA"), including, but not limited to:
  - Notices of any public hearing held pursuant to CEQA.
  - Notices of determination that an Environmental Impact Report ("EIR") is required for a project, prepared pursuant to Public Resources Code Section 21080.4.
  - Notices of any scoping meeting held pursuant to Public Resources Code Section 21083.9.
  - Notices of preparation of an EIR or a negative declaration for a project, prepared pursuant to Public Resources Code Section 21092.
  - Notices of availability of an EIR or a negative declaration for a project, prepared pursuant to Public Resources Code Section 21152 and Section 15087 of Title 14 of the California Code of Regulations.
  - Notices of approval and/or determination to carry out a project, prepared pursuant to Public Resources Code Section 21152 or any other provision of law.
  - Notices of approval or certification of any EIR or negative declaration, prepared pursuant to Public Resources Code Section 21152 or any other provision of law.
  - Notices of determination that a project is exempt from CEQA, prepared pursuant to Public Resources Code section 21152 or any other provision of law.
  - Notice of any Final EIR prepared pursuant to CEQA.

Please note that we are requesting notices of CEQA actions and notices of any public hearings to be held under any provision of Title 7 of the California Government

January 30, 2014

POST



E. View of the steps leading up plaza level  
Source: Foster + Partners

## Ausberry, Andrea

---

**From:** Ng, Wilson L (BOS)  
**Sent:** Friday, February 07, 2014 3:21 PM  
**To:** stacey@lozeaudrury.com; richard@lozeaudrury.com; christina@lozeaudrury.com  
**Cc:** Ausberry, Andrea; Calvillo, Angela; Licavoli, Madeleine; BOS-Operations; Clerk, County; planning@rodneyfong.com; Ionin, Jonas; Rahaim, John; Hwang, Lulu; Macaulay, Kirsten  
**Subject:** RE: PRR - CEQA and Land Use Notice Request for Apple Retail Store at 300 Post St./345 Stockton St. (San Francisco Planning Department Case Nos. 2013.1695T [Board File No. 13-1059], 2013.0628E, and 2013.0628U)  
**Attachments:** PRR - Lozeau Drury - File No. 131059.pdf; File No. 131059.pdf

Dear Ms. Stacey Osborne (Lozeau|Drury LLP),

I am writing in response to your request received on February 3, 2014, addressed to Angela Calvillo, Clerk of the Board, titled "CEQA and Land Use Notice Request for Apple Retail Store at 300 Post St./345 Stockton St. (San Francisco Planning Department Case Nos. 2013.1695T [Board File No. 13-1059], 2013.0628E, and 2013.0628U)."

You have requested for the following information:

1. Notice of any public hearing in connection with the Project as required by California Planning and Zoning Law



Several for Land Use

## MEMORANDUM

TO: Clerk of the Board

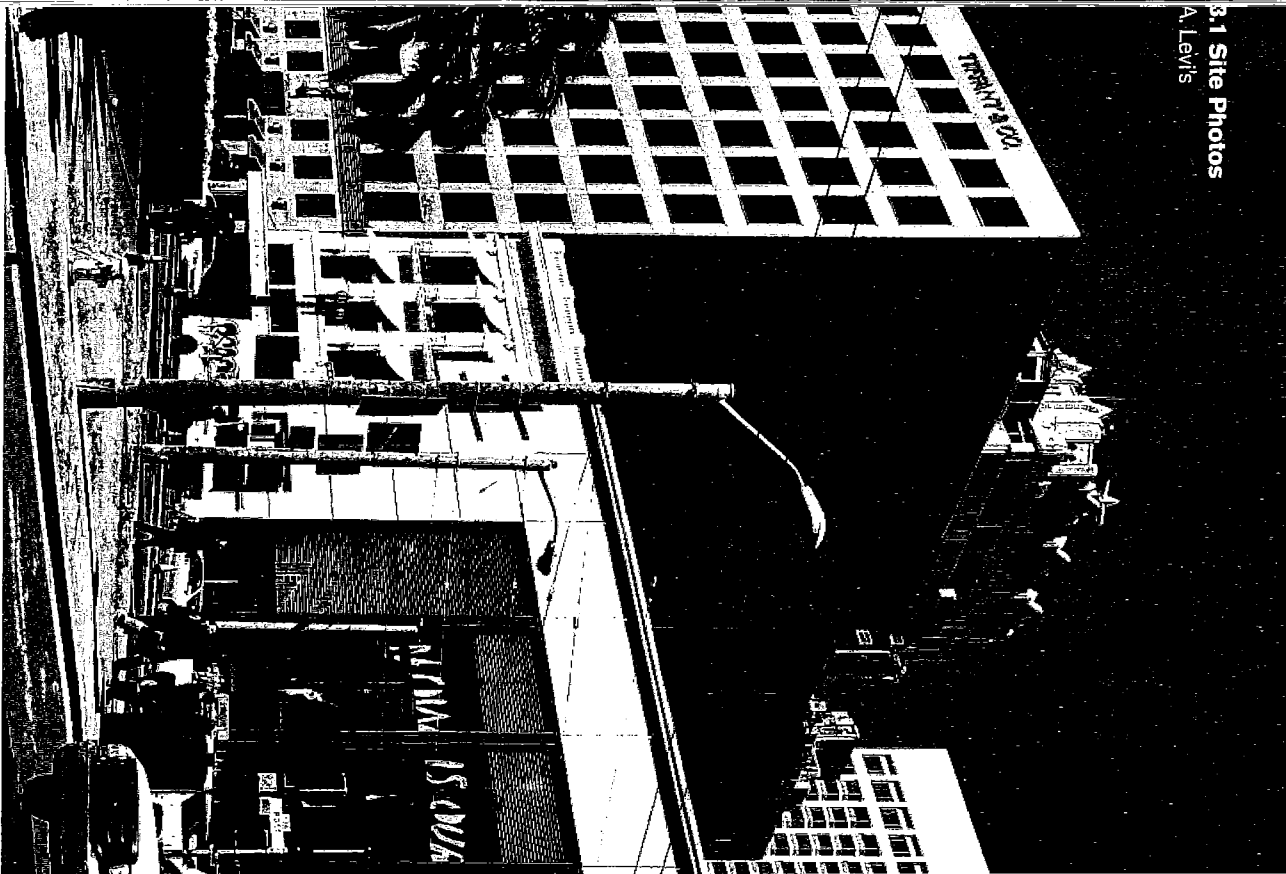
FROM: Supervisor

Cohen

MEETING DATE:

Oct 29, 2013

Please add my name as a SPONSOR to the following agenda items:



• Ordinance #131059

• #131061

#131062