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BOARD OF SUPERVISORS
SAN FRANCISCO

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BY BA

October 15, 2018

Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94103

Re: Letter of Appeal - 450-474 O'Farrell Street/532 Jones Street Project
Final Environmental Impact Report

Dear Clerk of the Board and President Cohen:

Pursuant to Administrative Code Section 31.16, San Francisco Heritage (Heritage) is appealing the Planning Commission's certification of the Final Environmental Impact Report (FEIR) for the 450-474 O'Farrell Street/532 Jones Street project. The project will demolish three historic resources within the Uptown Tenderloin National Register Historic District, most notably Fifth Church of Christ, Scientist, while providing nominal mitigation to help compensate for their destruction. Heritage submitted written comments on the Draft EIR on December 11, 2017. In its EIR comments and testimony before the Historic Preservation Commission and Planning Commission, Heritage has consistently promoted alternatives and incentives that would potentially enable the historic church building to be incorporated into the proposed project.

In approving the preferred demolition project, the FEIR failed to analyze – and the Planning Commission failed to adopt – feasible mitigation measures that would substantially reduce the project's significant adverse impacts on historic resources in the Uptown Tenderloin Historic District.

Executive Summary

The proposed project will demolish Fifth Church of Christ, Scientist Church, built in 1923 and listed in the National Register of Historic Places as a contributor to the Uptown Tenderloin Historic District.¹ The original project design incorporated a portion of the historic façade into the new building, at an estimated cost of \$5 million – an approach criticized by the Historic Preservation Commission and widely rejected by the broader preservation

¹ The church is also individually eligible for listing in the California Register of Historic Resources.

community.² At the EIR certification hearing on September 13, Heritage recommended (1) deletion of the proposed incorporation of the original facade from the project design and, as additional mitigation for demolition of the church, (2) reallocation of the net cost savings of that revised design to historic preservation projects located in the Uptown Tenderloin Historic District. The Planning Commission endorsed Heritage's framework by approving a revised design (sans original facade) and encouraging the sponsors to reach agreement with Heritage on the amount of savings to be reallocated to three city-administered funds for historic preservation, facade improvement, and affordable housing projects within the historic district.

The project sponsors have stated that they had budgeted \$5 million to prop up, shore, retrofit, and restore the historic facade during excavation and construction. With removal of the original facade from the design, Heritage estimates that the sponsors will realize a net savings of over \$3.5 million, taking into account new hard and soft costs associated with redesigning that portion of the building and assuming roughly the same volume.³ Yet to date the sponsors have not agreed to fund additional mitigation measures that are commensurate with the project's significant and irreversible impacts on historic resources.⁴

I. The project will demolish three historic resources and will result in significant cumulative impacts to the Uptown Tenderloin Historic District

The proposed project would result in significant adverse impacts on historic resources, including: (1) demolition of Fifth Church of Christ, Scientist and two other contributing historic resources, and (2) reasonably foreseeable cumulative impacts to the Uptown Tenderloin Historic District. Built in 1923, Fifth Church of Christ, Scientist is individually eligible for the California Register of Historic Resources and is also a contributing resource to the Uptown Tenderloin Historic District. ***The proposed project would be the first to demolish an individually significant historic building within the historic district for market-***

² When the facade retention project was presented to the Historic Preservation Commission on March 1, 2017, Commissioner Jonathan Pearlman commented: "At any level of preservation this kind of design, to me, is the height of facadism. It really does not preserve anything of the building other than this little wall that wraps around."

³ Assuming that roughly the same volume is maintained, Heritage's analysis estimates additional costs of approximately \$1,314,000, including construction of 5 new floors to infill the void left after removal of original facade (60 feet x 14 feet x 5 floors x \$200/sf = \$840,000) and replacement of the historic facade with a newly-designed facade (est. 3,650 sf x \$130/sf = \$474,500). Notably, Heritage's calculation of net cost savings does not include the anticipated increase in total project value that will result from increasing the project's square footage.

⁴ As mitigation for demolition of the historic church building, the FEIR prescribed HABS documentation, the development of an interpretive display, and salvage and reinstallation of the oculus, select stain glass windows, and bronze doors.

rate housing. Its approval will almost certainly spur future proposals to demolish other historic buildings in the Tenderloin, regardless of their significance, for market-rate housing.

II. The Planning Commission failed to adopt feasible mitigation measures to reduce or avoid significant adverse impacts on the Uptown Tenderloin Historic District

The California Environmental Quality Act (CEQA) “requires public agencies to deny approval of a project with significant adverse effects when feasible alternatives or feasible mitigation measures can substantially lessen such effects.”⁵ CEQA defines “feasible” to mean “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.”⁶ Section 15126.4 of the CEQA Guidelines acknowledges that mitigation measures must have an “essential nexus” to a legitimate government interest, and that those mitigation measures imposed as ad hoc exactions must bear a “rough proportionality” to the project’s significant impacts.⁷

A. With removal of the original façade from the design, the resulting cost savings should be allocated to off-site mitigation projects within the Uptown Tenderloin Historic District

In determining appropriate mitigation to help compensate for the demolition of Fifth Church of Christ, Scientist, the city should focus on the net cost savings to be realized by the project sponsors for no longer having to preserve the original façade. Heritage proposes reallocating a significant portion of the cost savings for historic preservation, façade improvement, and affordable housing projects within the Uptown Tenderloin Historic District, to be distributed equally among the following city-administered funds:

- 1. San Francisco Historic Preservation Fund Committee (OEWD):** Eligible projects include historic context statements, architectural and historic surveys, preservation feasibility studies, historic structure reports, nominations of properties to local, state and federal historic registers, and preservation education programs and projects.
- 2. SF Shines Façade Improvement Program (OEWD):** SF Shines provides grants, design assistance, and project management to cover the cost of non-structural improvements (e.g., removal of security grilles, roll ups,

⁵ *Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41; also see PRC §§21002, 21002.1.

⁶ CEQA Guidelines, §15364.

⁷ 14 Cal. Code Regs., §15126.4(a)(4)(A), (B), citing *Nollan v. California Coastal Com’n* (1987) 483 U.S. 825, 837; *Dolan v. City of Tigard* (1994) 512 U.S. 374, 391; *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 866-877.

painting), rehabilitation of historic façades, storefront windows, doors, signage, interior upgrades, and ADA improvements.

3. **Mayor’s Office of Housing and Community Development (MOHCD):** To fund acquisition and/or rehabilitation of historic buildings in the Uptown Tenderloin Historic District for use as affordable, below-market-rate housing.

The proposed mitigation funding would restore and improve other contributing resources located within the Uptown Tenderloin Historic District. There is a clear nexus to the primary adverse impacts of the proposed project, i.e. demolition of three contributing resources located within the historic district.

The concept of requiring a project sponsor to fund off-site mitigation, also known as “creative mitigation,” is explicitly recognized under the definition of “mitigation” in the National Environmental Policy Act, which includes “rectifying the impact by repairing, rehabilitating, or restoring the affected environment” and “compensating for the impact by replacing or providing substitute resources or environments (i.e., ‘off-site mitigation’).”⁸ Recent guidance from the Federal Advisory Council on Historic Preservation also endorses creative mitigation as a legitimate approach to “compensate for adverse effects that cannot be avoided or offset by using standard mitigation techniques.”⁹ Similar off-site mitigation is commonplace for California projects affecting wetlands or wildlife habitat.¹⁰

In 2015, the California Office of Historic Preservation (OHP) recommended funding for off-site preservation projects as a condition of approval for demolition of the Old Courthouse and City Hall-Library Complex in Long Beach.¹¹ In so doing, the OHP noted that creative CEQA mitigation has a clear “nexus” to projects with significant impacts to historical

⁸ CFR §1508.20(c) and (e).

⁹ Notice of Adoption of Policy Statement on Historic Preservation and Community Revitalization, Advisory Council on Historic Preservation, November 16, 2016.

¹⁰ California agencies commonly prescribe off-site mitigation to compensate for the loss of prime farmland by requiring the acquisition and/or conservation of equivalent prime farmland land at another location, in the form of agricultural conservation easements or the payment of in lieu fees. Similarly, agencies will require the acquisition or conservation of off-site land as mitigation for the loss of biological resources, e.g., endangered species, resulting from new development. See *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296 and *Preserve Wild Santee v. City of Santee* (2012) 201 Cal.App.4th 260.

¹¹ Letter from Julianne Polanco, State Historic Preservation Officer, to Craig Chalfant, City of Long Beach, May 13, 2015, re Draft Supplemental Environmental Impact Report (SEIR) for the Civic Center Project. Off-site mitigation measures requested by the OHP include: (1) additional historic surveys in parts of the city that have not been surveyed; (2) development of design guidelines for future re-use of public buildings; and (3) creation of a Historic Preservation Mitigation Fund.

resources and that, more broadly, historic preservation has been found to serve a legitimate public benefit and be a valid exercise of municipal police powers.

B. No demolition permit should be issued unless and until the project sponsor has secured necessary financing for construction

The Statement of Overriding Considerations adopted by the Planning Commission rejects less harmful preservation alternatives because “equity investors require a certain profit margin to finance development projects and must achieve established targets for their internal rate of return and return multiple on the investment.” However, two financial feasibility studies included in the FEIR conclude that the preferred project would yield only 4.2 to 4.5%, falling “below the typical feasibility range” of 5.5 to 6.5% to secure financing and raising doubts about whether the project will be built. The feasibility study commissioned by the project sponsors assumes an average monthly rent of \$4,400 per unit based on December 2016 data,¹² yet more recent market studies show that the median rent in Downtown San Francisco is significantly lower (\$3,759) and has been declining over the past 18 months.¹³

To safeguard against speculative demolition of historic resources, Heritage asks the Board to impose an additional mitigation measure that requires the project sponsors (or their successor) to demonstrate that (1) commercially reasonable financial resources are available to complete the new construction project, and (2) commencement of new construction will take place within six months of receipt of all necessary city approvals.

Thank you for your consideration of this appeal. Should you have questions, please do not hesitate to contact me directly at mbuhler@sfheritage.org or 415/441-3000 x15.

Sincerely,



Mike Buhler
President & CEO

¹² 450 O’Farrell Street Development Feasibility Review and Evaluation, November 13, 2017, prepared by Economic & Planning Systems, Inc. for project sponsor, Thompson Dorfman Partners, LLC.

¹³ “Rental Inventory in San Francisco Rises, While Rent Growth Slows,” March 28, 2018, *Business Insider*. See <https://markets.businessinsider.com/news/stocks/rental-inventory-in-san-francisco-rises-while-rent-growth-slows-1019707216>.



SAN FRANCISCO PLANNING DEPARTMENT

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Planning Commission Motion No. 20279

HEARING DATE: September 13, 2018

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Case No.: 2013.1535ENV
 Project Address: 450-474 O'Farrell Street/532 Jones Street
 Zoning: RC-4 (Residential-Commercial, High Density)
 North of Market Residential SUD #1
 80-T-130-T Height and Bulk District
 Block/Lot: 0317/007, 009, and 011
 Project Sponsor: 450 O'Farrell Partners, LLC
 Bruce Dorfman, (415) 381-3001
BD@ThompsonDorfman.com
 Fifth Church of Christ, Scientist
 Elzbieta Strong, (510-579-4179)
ela@elastrong.com
 Staff Contact: Chelsea Fordham – (415) 575-9071
Chelsea.Fordham@sfgov.org

ADOPTING FINDINGS RELATED TO THE CERTIFICATION OF A FINAL ENVIRONMENTAL IMPACT REPORT FOR A PROPOSED MIXED-USE PROJECT THAT INCLUDES APPROXIMATELY 182,668 SQUARE FEET OF RESIDENTIAL USES (APPROXIMATELY 176 UNITS), 3,827 SQUARE FEET OF RESTAURANT/RETAIL SPACE, AND 9,555 SQUARE FEET OF RELIGIOUS INSTITUTION USES. THE PROJECT WOULD ALSO INCLUDE VEHICULAR PARKING, BICYCLE PARKING, AND PUBLICLY-ACCESSIBLE AND PRIVATE OPEN SPACE.

MOVED, that the San Francisco Planning Commission (hereinafter "Commission") hereby CERTIFIES the final Environmental Impact Report identified as Case No. 2013.1535ENV, for the 450-474 O'Farrell Street/532 Jones Street Project at 450-480 O'Farrell Street and 532 Jones Street Project, above (hereinafter "Project"), based upon the following findings:

1. The City and County of San Francisco, acting through the Planning Department (hereinafter "Department") fulfilled all procedural requirements of the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 *et seq.*, hereinafter "CEQA"), the State CEQA Guidelines (Cal. Admin. Code Title 14, Section 15000 *et seq.*, hereinafter "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code (hereinafter "Chapter 31").
 - A. The Department determined that an Environmental Impact Report (hereinafter "EIR") was required and provided public notice of that determination by publication in a newspaper of general circulation on August 21, 2015.
 - B. On October 25, 2017, the Department published the Draft Environmental Impact Report (hereinafter "DEIR") and provided public notice in a newspaper of general circulation of the availability of the DEIR for public review and comment and of the date and time of the Planning

- Commission public hearing on the DEIR; this notice was mailed to the Department's list of persons requesting such notice, and to property owners and occupants within a 300-foot radius of the site on October 25, 2017.
- C. Notices of availability of the DEIR and of the date and time of the public hearing were posted near the project site by Department staff on October 25, 2017.
 - D. On October 25, 2017, copies of the DEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DEIR, to adjacent property owners, and to government agencies, the latter both directly and through the State Clearinghouse.
 - E. Notice of Completion was filed with the State Secretary of Resources via the State Clearinghouse on October 25, 2017.
2. The Commission held a duly advertised public hearing on said DEIR on November 30, 2017 at which opportunity for public comment was given, and public comment was received on the DEIR. The period for acceptance of written comments ended on December 11, 2017.
 3. The Department prepared responses to comments on environmental issues received at the public hearing and in writing during the 47-day public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, and corrected errors in the DEIR. This material was presented in a Comments and Responses document, published on June 13, 2018, distributed to the Commission and all parties who commented on the DEIR, and made available to others upon request at the Department.
 4. A Final Environmental Impact Report (hereinafter "FEIR") has been prepared by the Department, consisting of the DEIR, any consultations and comments received during the review process, any additional information that became available, and the Comments and Responses document all as required by law.
 5. Project EIR files have been made available for review by the Commission and the public. These files are available for public review at the Department at 1650 Mission Street, Suite 400, and are part of the record before the Commission.
 6. On June 28, 2018, the Commission reviewed and considered the information contained in the FEIR and hereby does find that the contents of said report and the procedures through which the FEIR was prepared, publicized, and reviewed comply with the provisions of CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code.
 7. The project sponsor has indicated that the presently preferred project is the Preferred Project, analyzed in the Comments and Responses document, and as further refined as described in the various proposed approvals for the 450-474 O'Farrell Street/532 Jones Street Project.
 8. The Planning Commission hereby does find that the FEIR concerning File No. 2013.1535ENV reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate

and objective, and that the Comments and Responses document contains no significant revisions to the DEIR, and hereby does CERTIFY THE COMPLETION of said FEIR in compliance with CEQA and the CEQA Guidelines.

9. The Commission, in certifying the completion of said FEIR, hereby does find that the project described in the EIR:

A. Will have significant, project-specific impact on historic architectural resources;

10. The Planning Commission reviewed and considered the information contained in the FEIR prior to approving the Project.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting of September 13, 2018.



Jonas P. Ionin
Commission Secretary

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

NOES: None

ABSENT: None

ADOPTED: September 13, 2018

San Francisco Architectural Heritage

2007 Franklin St
San Francisco, CA 94109
415 441 3000

First Republic Bank
2001 Van Ness Ave
San Francisco, CA 94109
11-8166/3210

9495

10/15/18

PAY TO THE
ORDER OF

San Francisco Planning Department

\$ 617⁰⁰

Six hundred and seventeen dollars & ⁰⁰/₁₀₀

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Two Signatures req over \$5000

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450 O'Farrell FEIR/CEQA Appeal

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BJ

BOARD OF SUPERVISORS APPEAL FEE WAIVER FOR NEIGHBORHOOD ORGANIZATIONS

APPLICATION

Appellant's Information

Name: Mike Buhler, President + CEO, SF Heritage
Address: 2007 Franklin St. San Francisco, CA 94109
Email Address: mbuhler@sfheritage.org
Telephone: 415/441-3000 x15

Neighborhood Group Organization Information

Name of Organization: San Francisco Architectural Heritage
Address: 2007 Franklin St. San Francisco, CA 94109
Email Address: mbuhler@sfheritage.org
Telephone: 415/441-3000 x15

Property Information

Project Address: 450-474 O'Farrell St. / 532 Jones St.
Project Application (PRJ) Record No:
Building Permit No:
Date of Decision (if any): September 13, 2018

Required Criteria for Granting Waiver

All must be satisfied; please attach supporting materials.

Table with 3 columns: REQUIRED CRITERIA, YES, NO. Contains 4 rows of criteria with checkmarks in the YES column.

For Department Use Only

Application received by Planning Department:

By: Date:

Submission Checklist:

- APPELLANT AUTHORIZATION
CURRENT ORGANIZATION REGISTRATION
MINIMUM ORGANIZATION AGE
PROJECT IMPACT ON ORGANIZATION

WAIVER APPROVED WAIVER DENIED



BOARD OF SUPERVISORS APPEAL FEE WAIVER FOR NEIGHBORHOOD ORGANIZATIONS INFORMATIONAL AND APPLICATION PACKET

Pursuant to Planning Code Section 350(j)(3) and Ordinance No. 149-16, Section 4, the Planning Director shall consider and make determinations regarding applications for the authorization of a Board of Supervisors Appeal Fee Waiver.

For questions, call 415.558.6377, email pic@sfgov.org, or visit the Planning Information Center (PIC) at 1660 Mission Street, First Floor, San Francisco, where planners are available to assist you.

Español: Si desea ayuda sobre cómo llenar esta solicitud en español, por favor llame al 415.575.9010. Tenga en cuenta que el Departamento de Planificación requerirá al menos un día hábil para responder

中文: 如果您希望獲得使用中文填寫這份申請表的幫助, 請致電415.575.9010。請注意, 規劃部門需要至少一個工作日來回應。

Tagalog: Kung gusto mo ng tulong sa pagkumpleto ng application na ito sa Filipino, paki tawagan ang 415.575.9120. Paki tandaan na mangangailangan ang Planning Department ng hindi kukulangin sa isang araw na pantrabaho para makasagot.

WHAT IS AN APPLICATION FOR A BOARD OF SUPERVISORS APPEAL FEE WAIVER?

Planning Code Section 350(j)(3) and Ordinance No. 149-16, Section 4, establishes a waiver from the Board of Supervisor Appeal fees if the appeal is filed by a neighborhood organization that has been in existence for 24 months prior to the filing date of the request, is on the Planning Department's neighborhood organization notification list and can demonstrate to the Planning Director or his/her designee that the organization is substantially affected by the proposed project.

WHO MAY APPLY FOR A DISCRETIONARY REVIEW FEE WAIVER?

Any individual or neighborhood group can file for a Board of Supervisors Appeal. Exact criteria for neighborhood group organizations in order to qualify for a fee waiver are specified below:

- the appellant is a member of the stated neighborhood organization and is authorized to file the appeal on behalf of the organization. Authorization may take the form of a letter signed by the President or other officer of the organization;
- the appellant is appealing on behalf of the organization that is registered with the Planning Department and that appears on the Planning Department's current list of neighborhood organization. To determine if the neighborhood group organization is registered with the Planning Department, visit <http://sf-planning.org/neighborhood-groups-map>;
- the appellant is appealing on behalf of an organization that has been in existence at least 24 months prior to the submittal of the fee waiver request. Existence may be established by evidence including that relating to the organization's activities at that time such as meeting minutes, resolutions, publications, website or roster; and
- the appellant is appealing on behalf of a neighborhood organization that is affected by the project and that is the subject of the appeal.

HOW DO I SUBMIT THE APPLICATION?

If the requirements above are met, complete the following application, along with any necessary supporting materials, and submit it to the Planning Information Center (PIC) at 1660 Mission Street, First Floor, San Francisco, CA 94013.

A check must be made for the correct amount per the [Planning Department Fee Schedule](#), payable to San Francisco Planning Department. Once the Department determines that the requestor is eligible for the fee waiver, the Department will mail the check back to the entity.